

Pre-Meeting Protocols and Considerations

Practices for Establishing the Board Agenda, Structure Of Public Comment Period and Accessibility



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Planning for School Board Meetings

- ▶ Purposes of Agendas
- ▶ Placement of Items on the Agenda
- ▶ Agenda Preparation
- ▶ Consent Agenda
- ▶ Public Hearings
- ▶ Public Comment Periods
- ▶ Accessibility
- ▶ Virtual Meeting Planning



Before the Meeting: Constructing the Agenda

Purposes of Agendas

- ▶ Compliance with the [Wisconsin Open Meetings Law](#)
 - Additional [Open Meetings Law Resources](#)
- ▶ Organize the school board's business in an efficient, transparent and accountable manner.
 - See [BoardDocs](#)® eGovernance Solutions as an example.

Purposes of Agendas

▶ Community Engagement

- Information sharing regarding district operations
- Information sharing regarding district policies, goals and mission/vision
- Solicitation of public input
 - Public Comment Period
 - Public Hearings

Effective Agenda Setting Facilitates

- Legal compliance—performing the board’s duties and exercising the board’s powers
- Overall prioritization of the board’s work
- Controlling the scope of individual meetings
- Determining a logical order of items for individual meetings (items normally can also be re-ordered at the meeting itself)
- Being prepared for meetings (e.g., identifying key staff input and key background information/data for each item)
- Being able to give proper public notice of a meeting

Question: Isn't the agenda the same thing as the meeting notice?

Structure of the Agenda

- ▶ **Structure:** There are a number of ways school boards structure a meeting agenda.

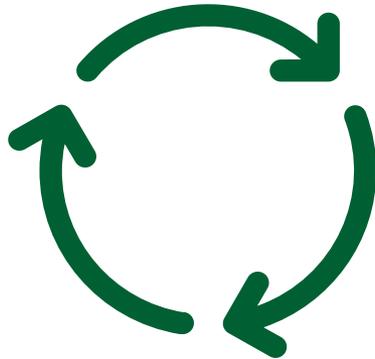
The best agenda structure for any individual school district often depends on a variety of district-specific factors, and the preferred format can change over time as the composition and goals of the board and administration change.

Structure of the Agenda

- ▶ Some school boards group items of business on the agenda according to the type of action the board is being asked to take on them.
- ▶ The three most common types of board agenda item groupings in this case are:
 - **Action items** (items in which the board is expected to reach a decision during the meeting),
 - **Discussion items** (items in which the board will only hold discussions, but where no motions or votes are anticipated), and
 - **Informational items** (items on which the board will only receive information and be given the opportunity to clarify any ambiguities in the information received—no discussion or action takes place on these items).

Structure of the Agenda

▶ **Standing Agenda Item – Process Review:**



- Establishing future meeting dates;
- Establishing future agenda items;
- Discussing how the meeting procedurally went
 - No action taken
 - Discussion pertains just to process

Agenda Items Arise From Many Sources

- ▶ **State Law**
- ▶ **Decisions of the School Board**
- ▶ **School Board Policy**
- ▶ **Decisions of the Board President**
- ▶ **Decisions of the District Administrator**
- ▶ **Items Referred from Committees**
- ▶ **Requests by Individual Board Members**
- ▶ **Requests from District Staff**
- ▶ **Requests from the Community**

A large percentage of agenda decisions occur at this level.

Placement of Items on the Agenda

- **Policy Requirements:** Most boards have a **policy** that addresses agenda creation. Evaluate whether your current policy reflects current/desired practices.
- **Collaborative and Fluid Process:** In most districts, agenda setting is a collaborative and somewhat fluid process, with some deference given to the judgement of the district administrator and the board president as to how items will be prioritized from meeting to meeting.

Placement of Items on the Agenda

- **Role of District Administrator:** As a practical matter, it is critical to the job of the district administrator that he/she be able to timely raise and have items of business placed on meeting agendas.
- **Procedure for District Administrator and Board President Collaboration:** The procedure should detail how the president and district administrator set the agenda and how differences in opinion between the two are resolved.

Question: What can be done if the board president and the district administrator disagree?

Placement of Items on the Agenda

▶ Agenda setting – by Board Members – President’s Role:

- The president often acts as a conduit where individual board members may contact the board president to request an item is placed on the agenda.
- The president works closely with the superintendent to review and set the agenda for the upcoming meeting(s).
- Determine how your present policy and/or procedure operates.
- Determine what criteria, if any, exist to determine how individual board member requests are considered for agenda placement.

Placement of Items on the Agenda

▶ Agenda setting – by Board Members – President’s Role:

- Recognizing the value of the contributions and interests of all members of the leadership team.
- Prioritizing time and effort in a way that reflects the will of the board majority and, ideally, the best interests of the school district.
- Avoiding power struggles between the board president and another board member.
- Preventing abuse of process by a difficult board member.

Placement of Items on the Agenda

- Initially, the board president and individual board member discuss the suggestion and possible options.
- If the two cannot resolve the prioritization issues, the topic will be brought to the full board at an upcoming meeting purely as a question of future agenda setting.
- The board can give its answer by (for example):
 - Passing a motion to calendar the item for a future meeting; or
 - Voting to postpone the item indefinitely.

Placement of Items on the Agenda

- The individual board member's tool of last resort is calling a special meeting, although that is easier in common and union high school districts (see above), and potentially imposes an inconvenience.
- However, the board as a whole still holds the final card in that scenario. A board member can move to adjourn the special meeting as soon as it starts!

Placement of Items on the Agenda

▶ **Special Board Meetings:**

- If a board member feels that the board president and/or district administrator are using their discretion to improperly "block" that board member's item(s) of business from being brought forward in a timely manner, the board member can attempt to call a special meeting of the school board. The process varies depending upon whether the district is a unified ([Wis. Stat. § 120.43](#)) or common school district ([Wis. Stat. § 120.11](#)).

Placement of Items on the Agenda

▶ **Agenda Setting by Administrators:**

- While the school board has ultimate authority to set its meeting agendas and allocate its meeting time, as a practical matter it is critical to the job of the district administrator that he/she is able to timely raise and place items of business on board meeting agendas.
- A common practice is that **the district administrator and board president work collaboratively to determine the final meeting agenda.**

Placement of Items on the Agenda

▶ **Agenda Items Requested by the Public:**

- Generally, it is undesirable for board policy to state or imply that students, parents, non-administrators, or other individuals in the community have the power to place specific items of business on a board meeting agenda.
- Such policies may unintentionally create a limited public forum for the exercise of First Amendment rights that would compromise the board's ability to control its meetings.

Placement of Items on the Agenda

▶ Agenda Items Requested by the Public:

- As a practical matter, regardless of any board policy, any individual in the community can raise a suggestion for an agenda item simply by communicating with administrative staff or with an individual board member.
- In addition, **administrative rules and/or staff handbooks can explain how an individual employee can appropriately raise an issue through his/her supervisor.**
- Finally, board policy can direct members of the public to any period of public comment that may be established by the board as part of the agenda for board meetings.

Placement of Items on the Agenda

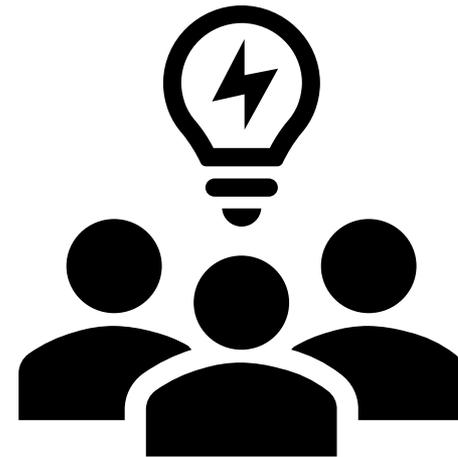
▶ Agenda Items Requested by the Public:

- Policies that provide (or ambiguously imply) that the board has granted employees and members of the public a “right” to place a topic on the agenda for a board meeting are not recommended.
- Some boards have adopted policies that define a procedure for submitting *suggestions* for possible agenda items, with clear language stating that such suggestions may or may not be approved/accepted. (Such suggestions could be made even without having a formal policy/procedure.)

Placement of Items on the Agenda

▶ Agenda Items Requested by the Public:

- Employee handbooks can provide staff with direction about how to raise suggestions/issues through a supervisor.
- Public comment periods and electronic mail are other avenues for individuals to communicate with the board.



Consent Agendas

- A consent agenda is a list of multiple motions that have been consolidated (grouped together) and that the school board will be asked to adopt under a single motion and vote for the sake of efficiency.
- A consent agenda is most appropriate for routine and non-controversial matters.
- Any school board member may **unilaterally** require that any individual item(s) listed on the consent agenda be “separated” for independent consideration.
- Discussion on a motion to approve the consent agenda can be permitted, although some board policies will say that there is no discussion other than the opportunity to separate.
- **Open Meetings Law concerns:** (1) adequate public notice of the subject matter, and (2) creating a sufficient record of the actions taken.
- Consider avoiding “nested” consent-type actions (i.e., a second consent grouping listed as one item within a consent agenda).

Steps Toward a Better Consent Agenda

1. In the meeting notice, identify each item included in the consent agenda at the same level of specificity that you would use if each of the consolidated items were being voted on separately.
2. Prior to the meeting, pre-draft a complete proposed/recommended motion for each of the items that are being consolidated under the consent agenda. Make the complete list of pre-drafted motions available to the board.

Steps Toward a Better Consent Agenda

3. The motion to approve the consent agenda would be a motion to approve all of the pre-drafted motions at once, except for any items that a board member has requested be separated.
4. The meeting minutes will include each of the complete motions that were approved by the single vote.
5. Recognize that there may be exceptions to these recommendations. (For example, for dealing with a single motion to approve a large group of pending, routine disbursements—which is essentially a type of a consent agenda.)

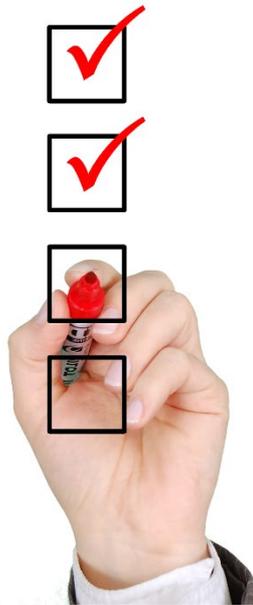
Some Tips for Agenda Setting

- Review the local process for establishing meeting agendas with new board members as part of their orientation.
- Using a generally consistent format for the agenda (allowing for exceptions) can help both the members of the board and the community to follow the flow of board meetings.
- Consider pre-drafting certain recommended motions. It helps to have draft phrasing even if there are changes and amendments. It is also helpful to the person taking the minutes.

Placement of Items on the Agenda – Practice Tip

- ▶ **Plan for the regular school board meetings during the fiscal year**
 - This can be done by seeing what items have to occur at certain regular board meetings, e.g., setting the tax levy, establishing open enrollment space availability limits.
 - Based upon this extended calendar, the president and superintendent can see where opportunities exist for professional development and other topics that the board may wish to discuss more in-depth.

Some Tips for Agenda Setting



- It is OK, and often helpful, to identify certain agenda items as “for information/discussion only; no final action will be taken.”
- Review the agenda for any special voting requirements and for items where a board member may need to consider abstention.

Planning Meetings in the Bigger Picture

- Give your board's most important decisions a longer runway leading up to a vote:
 - Introduce the topic and background over multiple meetings.
 - Provide background materials (reports, data, articles, etc.) over a longer period of time. Do not limit the distribution of such information to the meeting packet that is provided just before the final decision.
 - Use committees or “workshop” meetings to lay some of the groundwork.
 - Consider whether stakeholder input sessions should be offered.

Planning Meetings in the Bigger Picture

- Involve staff in meetings—meetings can provide an opportunity for leadership development and for the board to make more personal connections.
- In the rush of near-term tasks and priorities, make time on your monthly agendas to revisit progress on the district's longer-term strategic priorities and goals.
- Use some meeting time to tell your district's story.
 - Showcase some of the many positive things that are happening.
 - Talk about some of the district's ongoing challenges.

Public Access to the Meeting Agenda Packet

- ▶ The meeting agenda and related support information in the agenda packet are records of the board and school district, and, as such, they are subject to public inspection, review and copying in accordance with the [Wisconsin Public Records Law \(Chapter 19, Subchapter II\)](#).
- ▶ Certain materials within the packet of supporting information may be subject to such exceptions to public access as are authorized by law.

Before the Meeting: Planning for the Public Comment Period

Public Comment Period

- A school board has no legal obligation to regularly include a period of public comment on its meeting agendas.
- When a school board chooses to allow members of the public an opportunity to address the board at a meeting, the period of public comment must be included on the meeting notice.
 - [Wis. Stat. § 19.84\(2\)](#)
- When a school board receives public comments on topics/issues that are not otherwise part of the publicly-noticed meeting agenda, it is permissible for board members to briefly discuss and respond to the issue. However, the school board may not take formal action on any such topic/issue (i.e., on a subject that is not otherwise identified in the meeting notice). See [Wis. Stat. § 19.84\(2\)](#), [DOJ Open Meeting Law Compliance Guide](#)

Public Hearings

- ▶ Some state and federal laws require the school board to hold “public hearings” or seek other public input prior to taking certain actions or adopting certain policies. Examples:
 - Annual budget hearing. [Wis. Stat. § 65.90\(4\)](#)
 - Hearings on borrowing resolutions. [Wis. Stat. § 67.05\(6a\)\(a\)2.b](#)
 - Hearings on school district requests for a waiver of rules or statutory requirements from DPI. [Wis. Stat. § 118.38\(1\)\(b\)](#)
 - Hearings regarding the establishment of a charter school. [Wis. Stats. §§ 118.40\(2\) and \(2m\)](#)
 - In some cases, school board policy may specify that the school board will hold a “public hearing” before the board takes certain actions (e.g., changing school attendance boundaries).
 - These hearings are subject to the open meetings law.

Public Comment Period - Overview

- ▶ The law provides a lot of flexibility to school boards in structuring public comment periods, but boards must be very cautious about content-based and viewpoint-based restrictions.
- ▶ It is almost always helpful to have (and follow!) a formal board policy regarding periods of public comment.
- ▶ The presiding officer of the meeting must be willing to assert a strong presence, consistently enforce the “rules,” and exercise patience.

Public Comment Period – Overview

- ▶ A public comment period is not the only way, or typically the “best” way, to:
 - (1) obtain broad input on an important question; or
 - (2) have fact-specific issues/complaints brought to the district’s attention.



Public Comment Period – Notice and Agendas

- ▶ **Notice:** When a school board chooses to allow members of the public an opportunity to address the board at a meeting, the period of public comment must be included on the meeting notice. [Wis. Stat. § 19.84\(2\)](#)

- ▶ **Scope of Public Comments:** When a school board receives public comments on topics/issues that are not otherwise part of the publicly noticed meeting agenda, it is permissible for board members to briefly discuss and respond to the issue.

- ▶ However, the school board may not take formal action on any such topic/issue (i.e., on a subject that is not otherwise identified in the meeting notice).
 - [Wis. Stat. § 19.83\(2\)](#) and the Wisconsin DOJ [Open Meetings Law Compliance Guide](#)

Public Comment Period – Scheduling and Agenda Issues

- ▶ During which meetings will the board offer a period of public comment? (e.g., regular meetings, special meetings, committee meetings)
- ▶ Will comments be open to any topic/issue, or will the period of public comment be confined, e.g., to noticed agenda topics?
- ▶ Will the board limit the total amount of meeting time that will be allocated to public comment, e.g., 30 minutes?
- ▶ When will the public comment period take place during the board meeting? (e.g., at the beginning of the meeting or at the end of the meeting)

Public Comment Period – Procedural Guidelines

- ▶ What pre-comment speaker “registration” process will be required for those interested in speaking?
- ▶ Will the board place a limit on the length of time each person will be permitted to speak, e.g., 3 minutes?
- ▶ Will the board limit the “class” of eligible speakers, e.g., school district residents and taxpayers?

Public Comment Period – Procedural Guidelines

- ▶ Will the Board allow for exceptions to be made to its “normal” public comment procedures?
- ▶ What additional “content-neutral” limitations will be placed upon speakers? (e.g., prohibiting repetitive appearances, and comments that are obscene, threatening, or that would constitute harassment)

Public Comment Period – Virtual Meetings

- ▶ If the board is going to offer an opportunity for public comment during a meeting via communications technology, that also needs to be accounted for.
 - The platform(s) selected for board member participation must also take into account the need to make the meeting appropriately accessible to the public. (See the section titled, “Considerations for Providing Public Access to Virtual Meetings,” below.)
 - Board member platforms and public platforms do not need to be exactly the same, but they do need to be sufficiently compatible.

Public Comment Period – Virtual Meetings

- ▶ Temporarily suspending all in-meeting public comment periods (perhaps emphasizing alternative methods of communicating with the board, such as sending an email).
 - Limiting public comment exclusively to comments that address one or more agenda items for the meeting in question.
 - Arranging for public comment to occur via a technology-facilitated method.
 - Note that a district that suspends or modifies their normal approach to public comment periods at board meetings still needs to be prepared to implement an approach to holding any legally-mandatory public hearings that may be required (e.g., in connection with requesting a waiver of legal requirements from DPI). See above for more information on public hearings.

Public Comment Period – President’s Role

- ▶ Many districts start the period of public comment by having the president deliver a standard “speech” that:
 - (1) identifies procedures; and
 - (2) reminds speakers that they are not immune from legal consequences related to the content of their speech.
- ▶ The president needs to consistently enforce an established limitations on speaker time or content.

Public Comment Period – President’s Role

- The president may interject during a speaker’s comments and attempt to redirect a complaint/issue to an established procedure.
- The president may interrupt, and potentially cut off, a speaker whose speech is, e.g., threatening, obscene, or unduly disruptive/disorderly (make sure board policy prohibits such conduct).
- The president may help direct the nature of the board’s response, if any, to a speaker’s comments.

Public Comment Period – First Amendment

- ▶ A period of public comment is a type of “designated forum” for speech that, generally speaking, has a substantial degree of protection under the First Amendment—including a requirement of “viewpoint neutrality.”
 - Any content-based exclusion of speech in a designated forum must serve a compelling government interest and be narrowly drawn to achieve that end.
 - The government may enforce reasonable “time, place and manner” restrictions, provided they are content-neutral, narrowly tailored to serve a significant government interest, and leave ample alternative channels for communication.

Before the Meeting: Public Accessibility

Open Meetings Law: Public Accessibility

- ▶ The Public Accessibility Requirement: Meetings must be reasonably accessible to members of public and must be open to citizens at all times (excluding closed sessions).
 - The public's right *to attend* does not require the board to allow citizen participation at the meeting.
 - In connection with technology-facilitated virtual/remote meetings, the DOJ has advised governmental bodies:
 - The meeting notice should inform the public that the meeting will be held remotely;
 - The meeting notice should provide all information necessary for the public to monitor the meeting;
 - Not every meeting topic is amenable to every type of remote public access.

How has COVID-19 affected perspectives on virtual meetings and remote participation?

Virtual Meetings and Remote Participation

▶ Pre-COVID

- Many school boards and school attorneys took a cautious, even skeptical, view of extensive remote participation in board meetings and virtual meetings.
- Concerns centered on:
 - Quorum counts,
 - Voting while not physically present,
 - Holding closed sessions with a remote participant,
 - Public accessibility, and
 - Changing the dynamics of board meetings.

Virtual Meetings and Remote Participation

▶ More Technology Options + COVID

- Many boards have taken a major leap in the direction of virtual meetings and remote participation.
 - Spurred by necessity
 - More capable technology
 - Permissive [Department of Justice guidance](#)
 - Local decisions to prioritize health concerns over other “unknowns”

Virtual Meetings and Remote Participation in a COVID-19 World

▶ Some of the lessons learned thus far:

- Adopting policy to establish a board's path toward virtual meetings has been critical.
- There is readily-available technology that, generally, has allowed districts to reasonably implement their intended processes.
- There has been relatively little public pushback to the transition. The context of the pandemic has likely facilitated a certain level of openness to the changes and an understanding attitude.

Virtual Meetings and Remote Participation in a COVID-19 World

▶ Some of the lessons learned thus far:

- Boards still have challenges with and concerns about providing meaningful public access to meetings, including comment periods.
- Closed sessions, hearings, and other special cases present challenges.
- It may take more time to evaluate how virtual meetings change the dynamics of the board's meetings.

Virtual Meetings and Remote Participation in a COVID-19 World

▶ Some of the lessons learned thus far:

- Going virtual adds some extra notice obligations for meetings.
- Preparing and testing the technology for each meeting is a new and important step.
- If the technology fails, there may be no meeting.
- Board members need practice/training using new tools.
- Little glitches and “user errors” inhibit holding a smooth virtual meeting.

Virtual Meetings and Remote Participation in a COVID-19 World

▶ Some of the lessons learned thus far:

- Using roll call votes for all motions at virtual meetings can be helpful.
- Trying to elect board officers with secret ballots is a huge challenge if board members are going to participating in that process remotely.
*(**Note: A board may choose not to use secret ballots this year.)*
- A board may find itself with recordings of board meetings for the first time—creating a records management and policy issue.

Virtual Meetings and Remote Participation in a COVID-19 World

- ▶ **Where will the experience take school boards in a post-COVID (hopefully) world?**
 - Is the expansion of virtual board meetings here to stay?
 - We essentially have “proof of concept” that virtual meetings can work and that the legal barriers do not appear to be insurmountable.
 - “Resistance to change” as a potential barrier has already been rendered moot in many districts.

Virtual Meetings and Remote Participation in a COVID-19 World

- ▶ **Where will the experience take school boards in a post-COVID (hopefully) world?**
 - What should school boards make of the DOJ's caution that "virtual only" public access to meetings may not be sufficient in a post-pandemic scenario?
 - Think about "digital divides" based on location and socioeconomic status.
 - Will we have board meetings where the only in-person attendees at the district building are staff and members of the public?

Virtual Meetings and Remote Participation in a COVID-19 World

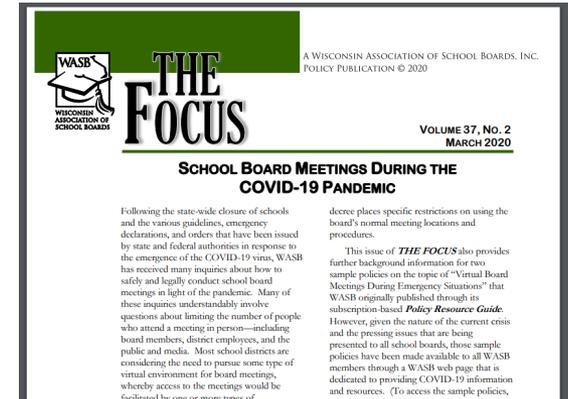
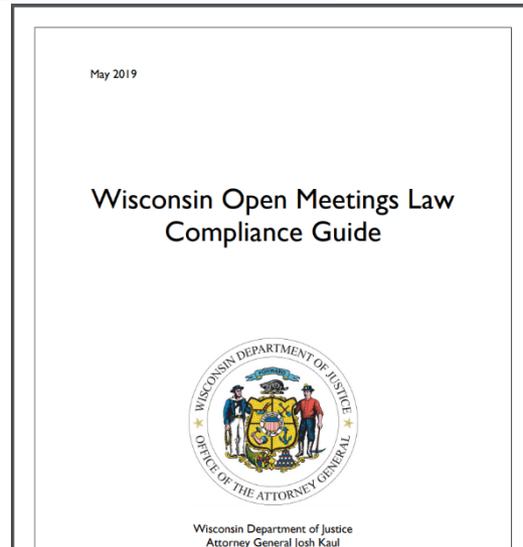
- ▶ **Where will the experience take school boards in a post-COVID (hopefully) world?**
 - Will boards end up using a “blended” approach for their meetings?
 - Some meetings will require in-person attendance,
 - Some meetings will be optional remote participation, and
 - Some meeting will be essentially all virtual participation.
 - If a board does take a blended approach, what factors will determine the choice of format for each meeting?

Virtual Meetings and Remote Participation in a COVID-19 World

- ▶ **Where will the experience take school boards in a post-COVID (hopefully) world?**
 - Will we see the rise of the “instant meeting”?
 - With 24-hours’ notice, everyone joins remotely from home for 20 minutes and a couple of decisions get made at a time.
 - If so, how would that affect governance?
 - Will the change trickle down to board committees, and how will that change the utility and actual work of committees?

Open Meetings Law Resources

- ▶ [Wisconsin Statutes §§19.81 to 19.98](#)
- ▶ Department of Justice's [Open Meetings Law Compliance Guide](#)
- ▶ WASB's [Open Meetings Law Brochure](#)
- ▶ WASB's March 2020 issue of *The FOCUS*, [School Board Meetings During the COVID-19 Pandemic](#)



Meeting Resources

- ▶ [BoardDocs eGovernance Solutions](#) - Online Policy Management and Paperless Meeting Services
- ▶ [April 2017](#) WASB Legal Comment entitled “Board Agendas, Voting and Minutes”
- ▶ [April 2010](#) WASB Legal Comment entitled “Public Participation at Board Meetings”
- ▶ [August 2007](#) WASB Legal Comment entitled “Courts Decide Significant Cases Involving Open Meetings Law”
- ▶ [November 2003](#) issue of WASB's policy publication The FOCUS entitled “Holding Effective Board Meetings”
- ▶ [February 1999](#) issue of WASB's policy publication The FOCUS entitled “School Board Meeting Agenda”
- ▶ **Annual Meeting** [The Annual School District Meeting](#)

Agenda and Meeting Resources

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- ▶ **Annual Meeting** [The Annual School District Meeting](#)

Presenter Bio



bbutler@wasb.org

877-705-4422 (phone)

608-512-1703 (direct phone)

Bob Butler has been a WASB staff counsel since 1990. He is also, along with attorney Barry Forbes, the Association's co-associate executive director. Bob directly represents more than 40 school districts in Wisconsin on employment, human resources and school law matters. Bob also provides membership services, including general legal information, to all school districts that are members of WASB.

He graduated from the University of Wisconsin Law School and received his undergraduate degree in industrial and labor relations from Cornell University.