



# Policy Services

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## Reasons for Executive Session

### [Nonrenewal of First-year: NDCC 5.1-15-02\(1-2\)](#)

1. If the board of a school district contemplates not renewing the contract of an individual employed as a first-year teacher, the board shall review the individual's evaluations required by section [15.1-15-01](#) and meet with the individual in an executive session to discuss the reasons for the contemplated nonrenewal.
2. The individual employed as a first-year teacher may be accompanied by two representatives selected by the individual for the purpose of speaking on behalf of the individual and by the individual's spouse or one other family member.

### [Nonrenewal of Principal - Employed for less than two years: NDCC 15.1-15-05.1\(1\)](#)

1. If the board of a school district elects not to renew the contract of a principal, an assistant superintendent, or an associate superintendent, who has been employed by the board in that position for less than two years, the board shall provide written notice of the nonrenewal to the individual before May first. At the request of the individual, the board shall meet with the individual, in executive session, to convey the reasons for the nonrenewal.

### [Nonrenewal Hearing: NDCC 15.1-15-06\(6\)](#)

Unless otherwise agreed to by the board of the school district and the individual subject to the nonrenewal, the hearing must be conducted as an executive session of the board, except that:

- a. The individual may invite to the hearing any two representatives, and the individual's spouse or one other family member; and
- b. The board may invite to the hearing any two representatives, the school district business manager, and the school district superintendent

### [Discharge Hearing: NDCC 15.1-15-08\(3\)](#)

Unless otherwise agreed to by the board and the individual, the administrative law judge shall close the hearing, except for the parties, their legal representatives, witnesses, three invitees requested by the individual, and three invitees requested by the board

### [Suspending a licensed employee during discharge proceeding: NDCC 15.1-15-10\(1-2\)](#)

1. The board of a school district may suspend an individual employed as a teacher, a principal, or as an assistant or associate superintendent if, by unanimous vote, the board determines that suspension is appropriate during the period in which a discharge for cause is pursued.
2. The board shall address the matter of the individual's suspension in an executive session, unless both the board and the individual agree that the matter may be addressed in the presence of others or at an open meeting of the board.

### [Negotiations Caucus: NDCC 15.1-16-22](#)

The board of a school district, or any authorized subcommittee of the board, may hold an executive session under section [44-04-19.2](#) to discuss negotiating strategies or to provide to its representative negotiating instructions, which are applicable to anticipated or pending: 1. Litigation; 2. Adversarial administrative proceedings; or 3. Contracts.

### [Applicant Consideration: NDCC 44-04-18.27](#)

The board of a school district may enter into executive session to review and discuss confidential applications prior to the board designating three or more qualified applicants as finalists. If the school board receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public.

### [Health/medical records: NDCC 44-04-19.2\(1\)](#)

A governing body may hold an executive session to consider or discuss closed or confidential records.

**[NDCC 44-04-18.1](#). Public employee personal, medical, and employee assistance records - Confidentiality - Personal information maintained by state entities.** Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be used or disclosed without the written authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.

### [Student Records: NDCC 44-04-19.2\(1\)](#)

A governing body may hold an executive session to consider or discuss closed or confidential records.

- [A.G. Opinion 2000-O-04](#): A discussion of the content of "education records" which are confidential under FERPA must be held in an executive session rather than in an open meeting. [NDCC 44-04-19.2\(1\)](#); [N.D.A.G. 98-O-06](#); [N.D.A.G. 94-F-28](#). It is important to note that this exception applies only to the discussion of records, and not to all discussion regarding students.
- [A.G. Opinion 94-F-28](#): It is my opinion that if a hearing held by a public school board will create or discuss records that are confidential under [20 U.S.C. 1232g](#), the hearing must be closed to the public unless the student's parent or guardian consents in writing to the hearing being open.

### [Attorney Consultation NDCC 44-04-19.1\(2\)](#)

That portion of a meeting of a governing body during which an attorney consultation occurs may be closed by the governing body under section [44-04-19.2](#).

### [Negotiations Strategy: NDCC 44-04-19.1 \(9\)](#)

A governing body may hold an executive session under section [44-04-19.2](#) to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator

regarding litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.

**Security Plans: NDCC 44-04-26**

Those portions of a meeting, which would reveal a security system plan, a public health or security plan, or a portion of any such plan, made exempt by section [44-04-24](#) or [44-04-25](#), are exempt from section [44-04-19](#) and section 5 of article XI of the Constitution of North Dakota.

**If the reason is not on this list, then the matter needs to be discussed in an open public meeting.**

**Executive sessions are for the purpose of deliberations only. No action may be taken during an executive session.**

**Executive Session Procedures**

Only the portions of a public meeting that are specifically confidential or exempt from the open meetings law, or during which confidential or exempt records are discussed, may be closed to the public and held in executive session. The remainder of the meeting must be open to the public.

Although certain statutes may apply to particular meetings or entities, state law specifies the following general procedure for holding an executive session.

1. Convene in an open session preceded by public notice;
2. Pass a motion to hold an executive session, unless a motion is unnecessary because a confidential meeting is required;
3. Announce during the open portion of the meeting the topics to be considered during the executive session and the legal authority for holding an executive session on those topics;
4. Record the executive session electronically or on audio or video tape;
5. Limit the topics considered during the executive session to the announced, authorized topics; and
6. Take final action on the topics considered in the executive session during the open portion of a meeting.

Under these provisions, a governing body's authority to hold an executive session may be invoked only during a properly noticed open meeting, and not during a separate meeting for which public notice is not provided. To close a portion of the meeting, the governing body may either excuse the public or reconvene in another location.

Under [NDCC 44-04-19.2\(2\)](#), a vote to go into executive session is not necessary if a confidential meeting is required or if the governing body is closing the meeting to discuss confidential

records. However, because a discussion of exempt records does not necessarily have to occur in an executive session, a vote is necessary to determine whether the discussion will occur in an open meeting or in an executive session.

- Final action on the topics considered in the executive session must be taken during the open portion of the meeting. All substantive votes must be recorded by roll call.

### **Executive Session Agendas, Recordings and Retention of Information**

The minutes of an open meeting during which an executive session is held must indicate the names of the members attending the executive session, the date and time the executive session was called to order and adjourned, a summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, and the legal authority for holding the executive session. [NDCC 44-04-19.2\(4\)](#)

All meetings of the governing body of a public entity that are not open to the public must be recorded electronically or on audiotape or videotape. The recording must be disclosed pursuant to court order under subsection 2 of section [44-04-18.11](#) or to the attorney general for the purpose of administrative review under section [44-04-21.1](#). The attorney general may not disclose to the public any recording received under this subsection and must return the recording to the governing body upon completion of the administrative review. The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as provided in this subsection is a violation of section [12.1-13-01](#).

All recordings under this subsection must be retained for a minimum of six months after the executive session that is the subject of the recording. [NDCC 44-04-19.2\(5\)](#)

### **Additional Resources**

[Open Records Information](#)

[Open Meetings Information](#)

[Open Meeting Opinions](#)