

EDUCATION  
LAW CENTER

# SUNSHINE WEEK: TRANSPARENCY & ACCOUNTABILITY IN PENNSYLVANIA'S SCHOOLS

SPOTLIGHT-PA: HOW TO HOLD PENNSYLVANIA'S SCHOOLS ACCOUNTABLE  
THURSDAY, MARCH 13, 2024

ASHLI D. GILES-PERKINS, M.ED., ESQ., STAFF ATTORNEY

# WHO WE ARE

Education Law Center-PA (ELC) is a statewide legal services nonprofit. Our mission is to ensure access to a quality public education for all children in Pennsylvania. We have offices in Philadelphia and Pittsburgh.

We pursue this mission by focusing on the most underserved students: children living in poverty, children of color, children with disabilities, children in the foster care and juvenile justice systems, children experiencing homelessness, English learners, LGBTQ and gender-nonconforming students - and many who are at the intersection of these identities.

Our priority areas include:

Equal Access to  
Quality Schools

Adequate &  
Equitable School  
Funding

Dismantling the  
School-to-Prison  
Pipeline

# ELC'S INCLUSIVE SCHOOLS & HONEST EDUCATION PROJECT

**Schools must be welcoming & inclusive for all students.**

**Every child deserves an education that prepares them for success, provides a safe place for learning, and honors their history and experiences.**

**Welcoming and inclusive schools that provide accurate information to our children give them the freedom to pursue their dreams and prepare them to fully participate in our democracy and society.**

**ELC's key focus areas: *Book Bans and Resource Materials, Supporting & Affirming LGBTQ+ Students, Curriculum and Classroom Censorship, and Local-State-Federal Legislation & Policy.***



# SCHOOL BOARDS, GENERALLY

**Boards must follow state and federal laws, including laws that protect students and staff from discrimination on the basis of race, national origin, disability, sex, gender identity, and sexual orientation.**

Policies cannot be vague

Board actions may not be arbitrary and capricious (unreasonable)

See 24 P.S. § 3-301

# SCHOOL BOARDS & PUBLIC PARTICIPATION



All "official actions" of school boards must comply with Pennsylvania's open meetings law, known as the Sunshine Act.

Making recommendations

Establishing policies

Making decisions

Taking a vote on any motion or proposal



All meetings with "official action" must be open to the public.



Must allow a "reasonable opportunity" for public comment at each general meeting before it can take official action, such as vote on a proposal or motion.



Notice and Agenda

Must give notice and make an agenda listing each matter of agency business available to public at least 24 hours before meeting  
No additions to agenda unless one of the narrow exceptions

# TYPES OF MEETINGS

## General Action Meetings

General action meetings often take place with the full board present, with the board president presiding. After considering and revising a proposed policy at committee meetings, the board takes final action on new or revised policies at these meetings. General action meetings must comply with the Sunshine Act requirements on notice, agenda publication, and allowing the public “reasonable opportunity” to speak on matters of concern before the board may take official action.

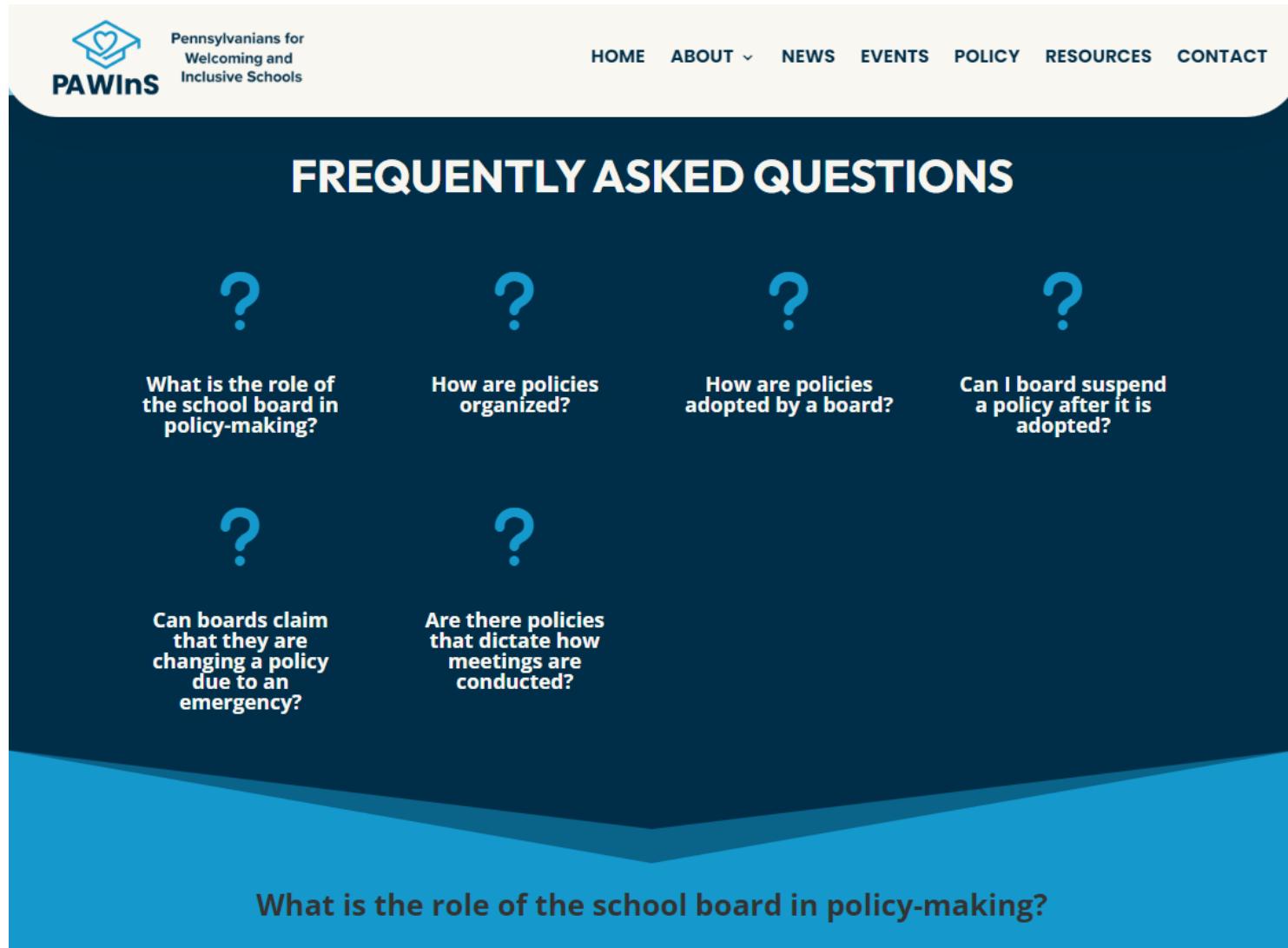
## Committee Meetings

Committees meet at a separate time and may not include the full board. At committee meetings, school board members may discuss and propose initiatives, set and track achievement goals, or hear experts and members of the public express their concerns. Committees often make official recommendations and final revisions on policies for the full board to vote on at general action meetings. Committee meetings must comply with the Sunshine Act on notice, agenda publication, and allowing the public an opportunity to speak before the board may take official action.

## Executive Session

Must be announced prior to entering. Executive sessions are meetings in which the board deliberates on confidential or sensitive issues. Ex: the termination of an employee, an expulsion, or consultation with the board’s attorney. Executive sessions are limited to certain subjects, and under the Sunshine Act, a school board cannot discuss or take “official action” – that is, take a vote or make a recommendation – on an issue that should have been in a meeting open to the public.

# PROCESS - HOW SCHOOL BOARDS MAKE POLICY



The screenshot shows the PAWIns website with a navigation bar at the top. The navigation bar includes the PAWIns logo, the text "Pennsylvanians for Welcoming and Inclusive Schools", and links for HOME, ABOUT, NEWS, EVENTS, POLICY, RESOURCES, and CONTACT. Below the navigation bar, a large dark blue section titled "FREQUENTLY ASKED QUESTIONS" in white capital letters. This section contains seven question marks arranged in two rows: the top row has four question marks, and the bottom row has three. Each question mark is followed by a question: "What is the role of the school board in policy-making?", "How are policies organized?", "How are policies adopted by a board?", "Can I board suspend a policy after it is adopted?", "Can boards claim that they are changing a policy due to an emergency?", and "Are there policies that dictate how meetings are conducted?". At the bottom of this section, a blue banner contains the text "What is the role of the school board in policy-making?" in white.

What is the role of the school board in policy-making?

How are policies organized?

How are policies adopted by a board?

Can I board suspend a policy after it is adopted?

Can boards claim that they are changing a policy due to an emergency?

Are there policies that dictate how meetings are conducted?

What is the role of the school board in policy-making?

[www.pawins.org/policy](http://www.pawins.org/policy)

- How school boards make policy, including committee steps
- How policies are organized & available on school websites
- How school board meetings should be conducted

# SUNSHINE ACT (OPEN MEETINGS LAW)

The Pennsylvania Sunshine Act, [65 Pa.C.S. §§ 701-716](#), requires agencies to deliberate and take official action on agency business in an open and public meeting. It requires that:

- meetings have prior published notice,
- that the public can attend, participate, and
- comment *before* an agency takes official action.

It is a crime to violate the Sunshine Act, punishable by up to a \$1,000 fine for a first offense, and up to \$2,000 for subsequent offenses. Criminal sanctions may be imposed against individual board members if a court finds an intentional violation occurred. Anyone can file a private criminal complaint with the county district attorney, who will then determine if criminal charges are appropriate.

# LODGING SUNSHINE ACT VIOLATIONS

- The Sunshine Act allows you to object to a perceived violation of the law at any time during a public meeting. Whenever raised the objection must be noted in the minutes. The Sunshine Act also allows a court to impose civil penalties against the agency and criminal sanctions against individual board members for violations.
- To pursue an action against the agency, a civil lawsuit is necessary. For local agencies, the county Court of Common Pleas would have jurisdiction
- You have only **30 days from the date of a suspected violation** to file a lawsuit. And if you manage to make it into court on time, the courts have ruled that the public has the burden of proof to show a violation took place, a significant hurdle since the public has virtually no information upon which to meet that burden.

# PA'S RIGHT TO KNOW LAW

PA Office of Open Records - <https://www.openrecords.pa.gov/>

The purpose of Pennsylvania's Right to Know Law is to give the public *access to public records*.

- **Every record of an Agency is *presumed to be public*.**
- *Agencies bear the burden* of proving that a record is not public.  
(Exemptions; law or court order making nonpublic; privilege)
- Record = “Any information regardless of its physical form or character that ***documents a transaction or activity of an agency*** AND is created, received, or retained pursuant to law **OR** in connection with a transaction, business or activity of an agency.”
- Initial response within 5 business days; agency can extend 30 calendar days

# ANYONE CAN FILE A RTK (RIGHT TO KNOW) REQUEST



## Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: \_\_\_\_\_ (Attn: AORO)

Date of Request: \_\_\_\_\_ Submitted via:  Email  U.S. Mail  Fax  In Person

### PERSON MAKING REQUEST:

Name: \_\_\_\_\_ Company (if applicable): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Email: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

How do you prefer to be contacted if the agency has questions?  Telephone  Email  U.S. Mail

**RECORDS REQUESTED:** Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.

The Pennsylvania Right to Know Law ([RTKL](#)), Act 3 of 2008, is a law that is designed to guarantee that the public has access to public records of governmental bodies. It sets forth procedures for requesting documents, procedures for appeals of an agency's determination, imposes penalties, sets fee limitations and directs that an Open Records Officer be appointed.

# ELC RESOURCES & CONTACT INFORMATION

## Individual Requests For Assistance & Advice

Call: 215-238-6970 (Philadelphia) 412-258-2120 (Pittsburgh)

Email: [intake@elc-pa.org](mailto:intake@elc-pa.org)

## ELC's webpage about Inclusive Schools & Honest Education

<https://www.elc-pa.org/advocating-for-inclusive-schools-and-honest-education/>

- Fact sheets about School Board Authority; Book Bans; LGBTQ Student Rights
  - ELC open letters to school boards about problem policies

## Back to School Guide for 2023

<input type="checkbox"/> Affirming & Safe Schools	<input type="checkbox"/> Honest & Inclusive Schools	<input type="checkbox"/> Homelessness
<input type="checkbox"/> Act 1: Accessing Supports	<input type="checkbox"/> Students with Disabilities	<input type="checkbox"/> English Learners & Immigrant Students
<input type="checkbox"/> Enrollment	<input type="checkbox"/> Early Childhood Education	<input type="checkbox"/> School Funding
<input type="checkbox"/> School Discipline	<input type="checkbox"/> KYR: Students in Care	<input type="checkbox"/> LGBTQ & Gender Nonconforming Students
<input type="checkbox"/> Attendance & Truancy	<input type="checkbox"/> Juvenile Justice Involvement	
<input type="checkbox"/> Bullying & Harassment	<input type="checkbox"/> Students Experiencing	

# EDUCATION LAW CENTER-PA

**ASHLI GILES-PERKINS**  
[agiles-perkins@elc-pa.org](mailto:agiles-perkins@elc-pa.org)

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## PHILADELPHIA

1800 JFK Blvd., 19<sup>th</sup> Floor  
Philadelphia, PA 19107  
215-238-6970

## PITTSBURGH

429 Fourth Avenue, Suite 702  
Pittsburgh, PA 15219  
412-258-2120

[www.elc-pa.org](http://www.elc-pa.org)



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