

**EDUCATION
LAW CENTER**

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

SPOTLIGHT-PA: HOW TO HOLD PENNSYLVANIA'S SCHOOLS ACCOUNTABLE

THURSDAY, MARCH 13, 2024

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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)

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 header with the logo and navigation links. Below is a dark blue section titled 'FREQUENTLY ASKED QUESTIONS' containing six question cards, each with a blue question mark icon. The questions are: '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 is a light blue banner with the text 'What is the role of the school board in policy-making?'. The PAWINS logo and tagline 'Pennsylvanians for Welcoming and Inclusive Schools' are in the top left. The navigation menu includes HOME, ABOUT, NEWS, EVENTS, POLICY, RESOURCES, and CONTACT.

PAWINS Pennsylvanians for Welcoming and Inclusive Schools

HOME ABOUT NEWS EVENTS POLICY RESOURCES CONTACT

FREQUENTLY ASKED QUESTIONS

- 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

- 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

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 | 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 | |

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