



Absence During Executive Session

Question:

If our board goes into executive session and one board member is absent from the meeting, can we discuss the executive session with the absent board member?

Answer:

Your question is more difficult than expected. Generally speaking, so long as the board member was not excused from the executive session out of a concern for bias or conflict, the board member is entitled to have information as to what occurred during an executive session for which the individual were absent. This is especially true in a situation where the matter is and/or will be ongoing. There are some limited exceptions to this general rule for which we would rather have the board member only advised of what occurred, in a more general sense, rather than delving into details. For example, if the executive session was being held for the purposes of a student hearing (whether expulsion or admission) and the matter is at a conclusion, there is arguably no longer an educational “need to know” under FERPA, for the individual board member to be provided with the details of the executive session. The same can arguably be said for an executive session relating to an employee disciplinary matter. If the matter is at a conclusion, there is no need for the specifics of the information to be shared. This is especially true if the situation is an individual being placed onto a period of probation and the board member may later be asked to sit on a due process hearing for a possible termination or non-renewal – one does not want to have to explain what has or has not been told to them outside of a meeting setting regarding that employee that could serve as a basis for a bias claim. There may be other very limited exceptions to the general ability to find out details of the discussion which occurred during executive session.

contact us with your question:



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