

## THE SCHOOL BOARD, ITS POWER, AND HOW TO ADVOCATE

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School boards play a pivotal role in shaping the education that public school students receive. Among their many responsibilities, they set budgets, adopt curriculum, and approve school policies, including disciplinary policies.

School boards are accountable to the residents of the district they serve and who elected them. This means they have a responsibility to keep the community informed and must make their decisions using input from the public and members of the school community.

### WHAT IS A SCHOOL BOARD?

A school board is the local legislative body that governs a school district.<sup>1</sup> The board adopts and revises districtwide policies and oversees resources for the schools in the district. Each school board consists of nine members,<sup>2</sup> and one superintendent appointed by the board.<sup>3</sup> School board members are elected by residents of the district, except in Philadelphia, where board members are appointed by the mayor and confirmed by City Council.<sup>4</sup> School board members serve terms of four years, with roughly half the board up for reelection every two years.<sup>5</sup>

### WHAT POWERS DOES A SCHOOL BOARD HAVE?

School boards have the duty to “establish, equip, furnish, and maintain” the schools in their district.<sup>6</sup> As such, they have numerous powers that include the power to levy taxes,<sup>7</sup> adopt curriculum and courses of study, establish disciplinary policies and other districtwide policies, and hire school personnel.<sup>8</sup>

**THE POWER TO HIRE OR TERMINATE A SUPERINTENDENT:** Under Pennsylvania law, the authority to hire a superintendent falls on the school board.<sup>9</sup> School boards must vote on their choice for superintendent in a public meeting and make the superintendent’s contract available to the public through the PA Right-to-Know Law.<sup>10</sup> School boards in Pennsylvania are required by law to conduct formal superintendent evaluations.<sup>11</sup> If a superintendent is not meeting expectations, a school board may vote to terminate the superintendent’s contract for “neglect of duty, incompetency, intemperance, or immorality.”<sup>12</sup>

**THE POWER TO ADOPT AND CHANGE CURRICULUM:** School boards have the power to “arrange a course or courses of study” for their schools.<sup>13</sup> Therefore, the school board has the power to make important curriculum decisions, such as whether to fund a new robotics program or whether to approve a new ethnic studies class.

In making curriculum decisions, including whether to remove books, school boards cannot contradict the state’s learning standards<sup>14</sup> or violate the First Amendment by imposing what the

U.S. Supreme Court has called a “pall of orthodoxy” in the classroom.<sup>15</sup> For example, the Supreme Court has struck down a school board’s decision to mandate the pledge of allegiance.<sup>16</sup> In addition, local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and cannot seek by their removal to “prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”<sup>17</sup>

For more information relating to book bans, see [ELC’s fact sheet on book bans](#). For more information on a board’s power to adopt curriculum as well as strategies for advocating for inclusive schools and honest education, [see this ELC webpage](#).

**THE POWER TO ESTABLISH DISCIPLINARY POLICIES:** School boards have considerable power to adopt and enforce districtwide policies regarding student conduct.<sup>18</sup> Under the law, they may regulate student conduct that occurred while the student was at school – including the time spent coming to and returning from school<sup>19</sup> and at any school-sponsored event<sup>20</sup> – or conduct that caused a “substantial disruption or material interference with the operations of the school,” even if it occurred off school grounds.<sup>21</sup> There are important limitations and First Amendment protections against some discipline. You can read more in ELC’s [fact sheet about student expression rights](#).

Pennsylvania’s school code requires school boards to establish and make available formal complaint procedures on their websites.<sup>22</sup>

### WHAT ARE THE LIMITATIONS OF A SCHOOL BOARD’S POWERS?

**LIMITATIONS TO BOARD AUTHORITY:** There are important constraints to a board’s power. 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.<sup>23</sup>

Boards cannot issue rules that are vague<sup>24</sup> or discipline students for rules not yet listed in the code of conduct. Each school district must publish a code of conduct and give copies to students and their families so that students know what is expected of them.<sup>25</sup> For more information about a school board’s disciplinary power, including the rights of students, see ELC’s fact sheets about [suspensions](#) and [expulsions](#).

In addition, a school board may be challenged for acting “arbitrarily and capriciously” or unreasonably, including situations where a school board or superintendent does not follow or enforce its laws.<sup>26</sup> “Arbitrary” has been defined as “conduct ... based on random or convenient selection or choice rather than on reasonable nature.” “Capricious” means “erratic, flighty, or unpredictable.” Examples often involve school board policies regarding student discipline but can also include grooming policies or residency documentation requirements.<sup>27</sup>

**DUTY TO UPHOLD SEPARATION BETWEEN CHURCH AND STATE:** School boards have a duty to comply with the First Amendment, which both prevents the government from establishing religion and protects religious expression from unwarranted government interference and discrimination.<sup>28</sup> While schools cannot discriminate against private religious expression by students, a school board or school official cannot promote religion, favor one faith over another, or adopt policies that

coerce students.<sup>29</sup> For example, a public school and its officials may not prescribe prayers to be recited by students or by school authorities, including at school board meetings.<sup>30</sup>

### HOW ARE POLICIES ADOPTED?

School boards are policy-making bodies responsible for developing and revising policies that govern the actions of board and school district employees. These policies provide the framework or guardrails for district activities and ensure school district actions comply with state and federal law. Policy revisions must go through a public review process, which generally includes review by a committee and consideration at two separate board meetings. The public must have the opportunity to provide input on proposed policy changes, as described more fully below.

### WHAT KIND OF PUBLIC ACCESS AND INPUT MUST SCHOOL BOARD MEETINGS HAVE?

School boards, as local government bodies, must comply with Pennsylvania’s open meetings law, referred to as the Sunshine Act.<sup>31</sup> The Sunshine Act applies to all meetings where the board may take “official action,” which includes making recommendations, establishing policies, making decisions, or taking a vote on any motion or proposal.<sup>32</sup> The Sunshine Act requires that all meetings involving “official action” and deliberation be open to the public unless they are executive sessions (detailed below).<sup>33</sup> Meetings may be recorded or livestreamed, and the public must be given at least 24 hours’ notice of a meeting, including an agenda of business to be addressed during the meeting.<sup>34</sup>

A school board is required to allow a “reasonable opportunity” for public comment at each general meeting before it can take official action or vote on a proposal or motion.<sup>35</sup> The law does not detail exactly how long this comment period must last, but generally, school boards will set a certain amount of time per speaker (like three minutes), a maximum number of speakers, or a total time allowed for comment.

Anyone attending a public meeting may object to a perceived violation of the Sunshine Act at any time during the meeting.<sup>36</sup> You can do this by simply verbally “objecting” or asking for a “point of order” to clarify what action the board is or isn’t taking, though you will be required to explain your perceived violation of the Sunshine Act.<sup>37</sup> Unfortunately, there is no agency to file a complaint with for a violation of the Sunshine Act. If you believe your school board has violated the Sunshine Act and you would like to pursue legal action to enforce it, you must file a complaint in the Court of Common Pleas within 30 days of the incident.<sup>38</sup> You can file this on your own (called filing *pro se*) or can seek legal representation by searching online or through your local bar association. You are also entitled to make a request under Pennsylvania’s Right-to-Know Law for school board records as long as they don’t contain confidential or privileged information.<sup>39</sup> For more information, see our fact sheet, [Transparency in Public Schools: The Sunshine Act and Right to Know Law](#).

### CAN SCHOOL BOARD MEMBERS MAKE COMMENTS OUTSIDE OF BOARD MEETINGS?

Yes, with certain limitations. A board member is permitted to discuss agency business with members of the public, whether in-person or by email or social media. However, board members are not permitted to deliberate except at a public meeting so board members exchanging opinions about an upcoming policy vote or encouraging other board members to vote in a particular way in an email discussion or via social media would violate the Sunshine Act.<sup>40</sup>

Recent cases have considered whether school board members' social media posts can be attributed to the school and if board members can block community members on social media without violating the First Amendment. The U.S. Supreme Court created a new test to determine if the social media activity of a public official, including a school board member, is considered state action attributable to the government entity. Public officials can be held liable for violating the First Amendment when they block their critics on social media only when (1) they have actual authority to speak on behalf of the government entity and (2) are actually exercising that authority with their comments on social media.<sup>41</sup> This will be a fact-specific analysis that requires considering whether the official is using speech to fulfill their official responsibilities, and whether a social media account is solely or sometimes used for personal versus official use.<sup>42</sup> Merely repeating or sharing information that is otherwise available is less likely to be an exercise of authority and instead permissible private speech related to their public employment or concerning information learned during that employment.<sup>43</sup>

### WHAT ARE THE TYPES OF SCHOOL BOARD MEETINGS?

What you can expect at a school board meeting will largely depend on the type of meeting you are attending. There are two types of meetings open to the public: general action and committee meetings. A third type, executive sessions, takes place behind closed doors because of the confidential and sensitive nature of the issues involved.<sup>44</sup> Here is a description of each type of meeting:

**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:** Since the tasks a school board must complete are so varied, school boards are typically subdivided into committees. Committees meet at a separate time and may not include the presence of 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 requirements on notice, agenda publication, and allowing the public “reasonable opportunity” to speak on matters of concern before the board may take official action.

**EXECUTIVE SESSIONS:** Executive sessions are meetings in which the board is deliberating on confidential and sensitive issues. Often this involves the termination of an employee, an expulsion hearing, or a private consultation with the board's attorney.<sup>45</sup> 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.<sup>46</sup>

School boards must announce when they are holding executive sessions, identify the matters to be discussed with sufficient specificity to indicate a real, discrete matter, and use such sessions sparingly.<sup>47</sup> If a school board is not following these parameters for executive sessions, it may be a violation of the Sunshine Act and can be challenged. However, in general, a school board's operations during an executive session will be considered acceptable as long as they take “official

action” during a subsequent general meeting to ratify whatever happened during the executive session, even if it violated the Sunshine Act. In such cases, courts often conclude that the subsequent public meeting “cured” the prior error.<sup>48</sup>

### HOW CAN I LEARN MORE ABOUT BOARD ACTIONS OR ADVOCATE TO MY SCHOOL BOARD?

**RESEARCH YOUR LOCAL SCHOOL BOARD:** School boards are required to post agendas, minutes,<sup>49</sup> policies,<sup>50</sup> and votes<sup>51</sup> on their public websites. Policies are arranged by topic and identify who in the district is responsible for implementing the policy. Many school districts make their policies easy to access and read.

You can also learn about members of your school board, including their priorities, values, and how they intend to ensure access to a quality education for all students in the district. If a school board member is particularly committed to an issue of interest to you, consider raising your concerns with that person directly.

**ATTEND A MEETING:** You have the right to attend all nonconfidential school board meetings.<sup>52</sup> School boards are required to announce when and where meetings will be held and post their agendas on their website.<sup>53</sup> During the school term, school boards are required to meet at least once every two months, but most meet at least once per month.<sup>54</sup> Most school districts provide an opportunity for the public to attend virtually.

**TIP:** Boards typically follow formal parliamentary procedures, i.e., call to order, reading and approving of prior minutes, committee reports, etc. Print the agenda ahead of time and bring it with you; it will help you follow along and understand what is happening.

**CONTACT YOUR SCHOOL BOARD REPRESENTATIVES:** School boards have the obligation to engage with the community they represent. Under the Pennsylvania School Code, school board members must post their email addresses on the board’s website within 180 days of assuming office.<sup>55</sup> Writing an email, giving a call, or arranging a brief meeting with your representative is a common way to engage with your school board.

**TIP:** Email can be an effective way to communicate with school board members. Here are three tips for writing an effective email:

- (1) Introduce yourself and why you are emailing up front.** Tell your board members that you are a parent or resident of the district and identify the specific policy or issue you are writing about.
- (2) Keep it brief.** Limit your email to a few short paragraphs. School board members are often very busy and may not have time to go through more than a few paragraphs.
- (3) Personalize your message.** Tell a personal story that shows how this issue affects you and your community. School board members are more likely to be persuaded by a personal story than facts and data points.
- (4) Ask questions.** You may ask a board member to propose a recommendation or ask a question at an open meeting relating to your concern.

For a sample email to school board members, [click here](#).

**MAKE YOUR VOICE HEARD:** You have the right to speak at a school board meeting regarding matters that are within the authority of the board. School boards can enact **reasonable** rules limiting public comment, but they cannot refuse to receive public input.<sup>56</sup>

Courts have held that school boards' restrictions on public comment must be viewpoint-neutral and evenly enforced. This means that the school board cannot restrict public comments simply because they disagree with the opinions or ideas of the speaker.<sup>57</sup>

Reasonable and viewpoint-neutral restrictions on public comment include requiring speakers to sign up in advance, restricting speakers to 2-5 minutes, limiting overall time allotted to public comments, prohibiting disruptive conduct, and limiting comments to agenda items only.<sup>58</sup>

**TIP:** Research the board's rules and procedures ahead of time. Some school boards require speakers to sign up in advance, while others distribute speaking slots on a first-come, first-served basis. Keep your message short and simple; most likely, you will only have a few minutes to speak. Be respectful. Boards reserve the right to eject anyone engaging in offensive or disruptive conduct.

**VOTE AND RUN IN A SCHOOL BOARD ELECTION:** School board elections are held every two years, with roughly half the positions up for election. There are no limits to the number of terms a member may serve, and there is no compensation for the time spent on the board.<sup>59</sup> Just about anyone can become a school board member. The main qualifications are that you must be 18 years or older, have good moral character, and have lived as a resident of the district for at least one year.<sup>60</sup> Check out the Pennsylvania School Boards Association's "Great Pennsylvania Schools" website for its section on "[How to Run For School Board – A Guide for School Board Candidates in Pennsylvania.](#)"

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

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<sup>1</sup> See 24 P.S. § 3-301 ("The public school system of the Commonwealth shall be administered by a board of school directors, to be elected or appointed...").

<sup>2</sup> See 24 P.S. §§ 3-302.1-303.

<sup>3</sup> 24 P.S. § 10-1071.

<sup>4</sup> Generally, school boards are elected by the residents of the district. School members may be elected in at large, regional, or a combination of both election plans. If elected at large, candidates must be residents of the school district, but may live anywhere in the district and are chosen by all the voters in the district. If elected by region, school directors who reside in each region are elected by the voters of their respective regions, with each region electing an equal number. See 24 P.S. §§ 3-302.1-303; *How To Run for School Board: A Guide for School Board Candidates in Pennsylvania*, PENNSYLVANIA SCHOOL BOARDS ASSOCIATION, <https://greatpaschools.com/how-to-run-for-school-board/> (last visited August 2024). In the City of Philadelphia, school board members are nominated by the Educational Nominating Panel and finalists are appointed by the mayor. See [Philadelphia Home Rule Charter Article XII § 12-201](#).

<sup>5</sup> 24 P.S. §§ 3-302.1-303.

<sup>6</sup> See 24 P.S. §§ 5-501-528.

<sup>7</sup> 24 P.S. § 5-507.

<sup>8</sup> See 24 P.S. § 5-508 (listing actions a school board can take: fixing length of school term; adopting textbooks; appointing or dismissing district superintendent; adopting the annual budget; levying and assessing taxes; purchasing or selling land; locating new buildings; dismissing a teacher after a hearing; adopting courses of study; establishing additional schools; fixing salaries etc.).

<sup>9</sup> 24 P.S. § 10-1071.

<sup>10</sup> 24 P.S. § 10-1073.

<sup>11</sup> 24 P.S. § 10-1073.1.

<sup>12</sup> 24 P.S. § 10-1080 (requiring hearing notice sent by mail to the accused and board members at least one week prior to the vote).

<sup>13</sup> 24 P.S. § 15-1512.

<sup>14</sup> See 22 Pa. Code § 4.12.

<sup>15</sup> See *Zykan v. Warsaw Cmty. Sch. Corp.*, 631 F.2d 1300, 1306 (7th Cir. 1980) (holding school board has the right to establish a curriculum on the basis of its own discretion, but forbidden to impose a “pall of orthodoxy” over the classroom”); see also *Bd. of Educ., Island Trees Union Free Sch. Dist. v. Pico*, 457 U.S. 853, 864 (1982) (must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.”).

<sup>16</sup> 22 Pa. Code § 12.10; *Circle School v. Pappert*, 381 F.3d 172, 174 (3d Cir. 2004) (holding that state law that required school officials to notify guardians of students who declined to recite the pledge of allegiance or salute the flag violated the students’ First Amendment right to free speech); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (compelling students to salute the American flag violates First Amendment religious and free speech rights).

<sup>17</sup> *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. at 872 (citing *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

<sup>18</sup> 24 P.S. § 5-510 (“The board of school directors ... may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding ... the conduct and deportment ... of all pupils ...”).

<sup>19</sup> *Id.*

<sup>20</sup> 24 P.S. § 5-511.

<sup>21</sup> See 22 Pa. Code § 12.9(b) (“Students shall have the right to express themselves unless the expression materially and substantially interferes with the educational process, threatens serious harm to the school or community, encourages unlawful activity or interferes with another individual’s rights.”); *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) (holding that student action of wearing political armbands was protected by the First Amendment because it was disruptive).

<sup>22</sup> 24 P.S. § 5-510.2(5)(v).

<sup>23</sup> 42 U.S.C. § 2000d (Title VI of the Civil Rights Act of 1964); 20 U.S.C. § 1681 (Title IX); 43 P.S. Ch. 17 (Pennsylvania Human Relations Act).

<sup>24</sup> Courts must balance the requirement of putting students on fair notice of proscribed behavior with the school’s need to impose sanctions for a “wide range of unanticipated conduct.” See *Sypniewski v. Warren Hill Reg’l Bd. of Educ.*, 307 F.3d 243, 260 (3d Cir. 2002) (holding school policy limiting racially provocative speech was acceptable); see also *Killon v. Franklin Reg’l Sch. Dist.*, 136 F. Supp.2d 446, 459 (W.D. Pa. 2001) (holding rule prohibiting “verbal/written abuse of a staff member” to be unconstitutionally vague); *Flaherty v. Keystone Oaks Sch. Dist.*, 247 F. Supp.2d 698, 704 (W.D. Pa. 2003) (holding that a policy that prohibited “abuse, offense, and harassment” was overly vague because the terms were not defined in any way); *Miller v. Penn Manor Sch. Dist.*, 588 F. Supp.2d 606, 610 (E.D. Pa. 2008) (holding that a rule prohibiting student dress that is “a distraction to the educational environment” was void for vagueness).

<sup>25</sup> 22 Pa. Code § 12.3(c); see also 22 Pa. Code § 12.6(a) (explaining that the school board must “define and publish the types of offenses that would lead to exclusion from school.”).

<sup>26</sup> See 24 P.S. § 5-510; 22 Pa. Code § 12.3(b); *Katzman v. Cumberland Valley Sch. Dist.*, 479 A.2d 671, 675 (Pa. Commw. Ct. 1984) (reducing student’s grades for entire marking period as punishment for having a glass of wine while on school trip held unreasonable because punishment misrepresented academic achievement).

<sup>27</sup> See e.g., *Thunberg v. Strause*, 682 A.2d 295, 299 (Pa. 1996) (defining “arbitrary” and “capricious”); *First Phila. Charter Sch. for Literacy v. Dudely (In re C.D.)*, 2011 Phila. Ct. Com. Pl. LEXIS 136 (Phila. Cty. Ct. C.P. May 23, 2011) (finding the permanent expulsion of a kindergartener who touched teacher’s thighs to be arbitrary); *DeCaro v. Pocono Mountain Sch. Dist.*, No. 5561-cv-2010, 15 Pa. D. & C.5<sup>th</sup> 388, 392 (Monroe Cty. Ct. C.P. June 18, 2010) (punishing vandalism of non-school property more harshly than vandalism of school property held to be arbitrary); *Bender v. Exeter Township Sch. Dist.*, 63 Pa. D. & C.4<sup>th</sup> 414, 425 (Berks Cty. Ct. C.P. July 18, 2003), *aff’d mem.*, 839 A.2d 486 (Pa. Commw. Ct. 2003) (holding that a transfer to an alternative school for minor misbehavior was arbitrary and capricious).

<sup>28</sup> U.S. Const. amend. I. ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.") These clauses are often referred to as the Establishment Clause and the Free Exercise Clause of the First Amendment, collectively the Religion Clauses. The Supreme Court has held that the Fourteenth Amendment makes these provisions applicable to states and localities, *see, e.g., Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), including public schools.

<sup>29</sup> *See e.g., Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 142 S. Ct. 2407, 213 L.Ed.2d 755 (2022) (football coach alleging freedom of expression who knelt at midfield after games to offer a quiet prayer of thanks and led pregame or postgame prayers for those who wanted to participate did not coerce students to participate). *See also Freedom from Religion Foundation, Inc.*, 127 F.Supp.3d 283, 318 (W.D. Pa. Aug. 28, 2015) (school board's unanimous vote to retain monument with inscription of the Ten Commandments violated Establishment Clause as it endorsed a religious message rather than acknowledging religious history); *Hilsenrath on behalf of C.H. v. Sch. Dist. of the Chathams*, 698 F. Supp. 3d 752 (D.N.J. 2023)(school board's curriculum and materials instructing seventh-graders about Islam were not coercive and did not otherwise resemble the hallmarks of religious establishments the framers sought to prohibit); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337 (5th Cir. 1999) (school board drafted disclaimer to be read to students before a unit on evolution violated the Establishment Clause).

<sup>30</sup> *Town of Greece v. Galloway*, 572 U.S. 565, 581 (2014) (citing *Engel v. Vitale*, 370 U.S. 421, 430 (1962)); *See Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 290 (3d Cir. Aug. 5, 2011) (holding that the school board's prayer policy that permitted board members to open its meetings with a prayer violated Establishment Clause); *Lee v. Weisman*, 505 U.S. 577 (1992); *Sch. Dist. of Abington Tp., Pa v. Schempp*, 374 U.S. 203, 225 (1963).

<sup>31</sup> Sunshine Act, 65 Pa.C.S. § 701-716; *see also Pennsylvania's Sunshine Act (Open Meetings Law)*, OFFICE OF OPEN RECORDS, <https://www.openrecords.pa.gov/SunshineAct.cfm>, (last visited June 12, 2023).

<sup>32</sup> 65 Pa.C.S. § 703.

<sup>33</sup> 65 Pa.C.S. § 704.

<sup>34</sup> 65 Pa.C.S. § 711(a); 65 Pa.C.S. § 709(a)-(c.1).

<sup>35</sup> 65 Pa.C.S. § 710.1(a); *see also Pennsylvania's Sunshine Act (Open Meetings Law)*, OFFICE OF OPEN RECORDS, <https://www.openrecords.pa.gov/SunshineAct.cfm>, (last visited June 12, 2023).

<sup>36</sup> 65 Pa.C.S. § 710.1(c).

<sup>37</sup> *See Pennsylvania's Sunshine Act (Open Meetings Law)*, OFFICE OF OPEN RECORDS, <https://www.openrecords.pa.gov/SunshineAct.cfm>, (last visited June 12, 2023). For a recent example of a public meeting objection, *see* Mike Crowley, *Penncrest Approves Policy to Restrict Library Materials*, MEADVILLE TRIBUNE (Jan. 14, 2023), [https://www.meadvilletribune.com/news/penncrest-approves-policy-to-restrict-library-materials/article\\_f48dcd16-9371-11ed-b462-b7961ca97f83.html](https://www.meadvilletribune.com/news/penncrest-approves-policy-to-restrict-library-materials/article_f48dcd16-9371-11ed-b462-b7961ca97f83.html).

<sup>38</sup> *See Pennsylvania's Sunshine Act (Open Meetings Law)*, OFFICE OF OPEN RECORDS, <https://www.openrecords.pa.gov/SunshineAct.cfm>, (last visited June 12, 2023); *Smith v. Twp. Of Richmond*, 623 Pa. 209 (Pa. 2013) (holding that a complainant bore the burden of proof in proving an infraction of the Sunshine Act).

<sup>39</sup> 65 P.S. § 67.101 et seq.; *see also About the Right-To-Know Law*, OFFICE OF OPEN RECORDS, <https://www.openrecords.pa.gov/RTKL/About.cfm>, (last visited June 12, 2023); Ed Mahon, *Sunshine Week: 5 Tips to Win a Pa. Open Records Fight and Overcome Secrecy in Government*, SPOTLIGHT PA (Mar. 17, 2023), <https://www.spotlightpa.org/news/2023/03/pa-sunshine-week-appeal-records-denial/>.

<sup>40</sup> *Pennsylvania's Sunshine Act (Open Meetings Law)*, OFFICE OF OPEN RECORDS, <https://www.openrecords.pa.gov/SunshineAct.cfm>, (last visited June 12, 2023).

<sup>41</sup> *Lindke v. Freed*, 601 U.S. 187, 191 (2024).

<sup>42</sup> *Lindke*, 601 U.S. at 203.

<sup>43</sup> *Id.* *See also O'Connor-Ratcliff v. Garnier*, 601 U.S. 205, 207 (2024)(applying *Lindke* test to school board members' use of social media and remanding for fact-specific analysis).

<sup>44</sup> 24 P.S. § 4-425(a); 65 Pa. C.S. § 703.

<sup>45</sup> 65 PA. C.S. § 708(a); *see* *Smith v. Twp. Of Richmond*, 623 Pa. 209 (Pa. 2013) (holding that a closed executive session where members only received information about an upcoming decision was acceptable under the Sunshine Law).

<sup>46</sup> 24 P.S. § 4-425(c); 65 Pa. C.S. § 708 ("Nothing in this section . . . shall be construed to required that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of [the Sunshine Law].").

<sup>47</sup> 24 P.S. § 4-425(b); *Reading Eagle Co. v. Council*, 156 Pa. Commw. 412, 416-17 (1993) (finding that when an executive session is called, the Sunshine Act requires the agency to describe with specificity what is being discussed, and "legal matters" is insufficient).

<sup>48</sup> *See, e.g., Picone v. Bangor Area Sch. Dist.*, 936 A.2d 556 (Pa. Commw. Ct. 2007) ("[T]his Court has repeatedly held that official action taken at a later, open meeting cures a prior violation of the Sunshine Act.").

<sup>49</sup> 65 Pa. C.S. § 706.



<sup>50</sup> 24 P.S. § 5-510.2.

<sup>51</sup> 65 Pa. C.S § 705.

<sup>52</sup> 65 Pa. C.S § 704.

<sup>53</sup> 65 Pa. C.S. § 709(a)-(c.1).

<sup>54</sup> 24 P.S. § 4-§ 4-421.

<sup>55</sup> 24 P.S. § 3-329.

<sup>56</sup> 65 Pa. C.S. § 710.1 (“the board ... shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents ... or for taxpayers ... to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.”); *but see* 65 Pa. C.S. § 710 (“Nothing in this chapter shall prohibit the agency from adopting ... rules and regulations necessary for the conduct of its meetings and the maintenance of order.”); *Sklaroff v. Abington Sch. Dist.*, No. 2134 C.D. 2016, 2017 WL 4582638, at \*2 (Pa. Cmwlth. 2017) (“[T]he denial of a right to speak before a board ... may give rise to cause of action under the [Sunshine] Act, [but] limiting comments is not violative thereof as long as a person is afforded a reasonable opportunity to comment on matters of concern.”).

<sup>57</sup> *Madison Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm’n*, 429 U.S. 167 (1976) (holding First Amendment protections apply to speaking at public school board meetings); *Marshall v. Amuso*, 571 F. Supp.3d 412 (E.D. Pa. 2017)

(“[V]iewpoint discrimination ... is presumed impermissible when directed against speech otherwise within the forum’s limitations.”) (citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829-30 (1995)).

<sup>58</sup> 65 Pa. C.S 710; *Sklaroff v. Abington Sch. Dist.*, No. 2134 C.D. 2016, 2017 WL 4582638, at \*3 (Pa. Cmwlth. 2017)

(holding policy limiting speakers to 3 minutes and to agenda items only, not violative of the Sunshine Act); *Duff v. City of Philadelphia*, 2015 WL 4644138 (E.D. Pa. 2015) (holding that policy limiting public comment to agenda items did not violate First Amendment because it was narrowly tailored to serve an important government interest); *Alekseev v. City Council of Philadelphia*, 976 A.2d 1253 (Pa. Cmwlth. 2009) (“[L]imiting public comment to the subject of the proposed legislation under consideration by the committee is patently reasonable and in no way violates the [Sunshine] Act.”).

<sup>59</sup> 24 P.S. § 3-321.

<sup>60</sup> 24 P.S. § 3-322.