What is the Open Meetings Law?
The Open Meetings Law ("OML") is a law that was passed in New York in 1977 with the purpose of ensuring that public business is conducted in an "open and public manner." This law has a presumption of access for the public to the meetings and deliberations of public bodies. The text of the law can be accessed on the website of the Committee on Open Government at http://www.dos.state.ny.us/coog/openmeetlaw.htm.

What is a "public body"?
A public body is defined as an entity consisting of 2 or more people that carries out some sort of governmental function and conducts public business as a body. This covers bodies like city councils, community boards, and the boards of charter schools. It is important to note that the Charter School Act specifies that charter schools are subject to the terms of both the Open Meetings Law and the Freedom of Information Act.

What is considered a meeting under the OML?
A meeting happens any time a majority of a board gathers to conduct public business, even if there is no intent to take action at that particular gathering. It does not matter what the gathering is called, but it must be for the purpose of conducting business collectively as a body; an event that a majority of the board happens to attend as private citizens would not be subject to OML requirements. It is important to note that a quorum, under a different statute in New York, is defined as a majority of the total number of slots on the board, regardless of whether there are currently vacancies; that is, 5 will always be the quorum for a 9-person board even if there are only 7 or 8 active members at a particular time.

When do OML requirements kick in when a new charter school is being opened?
The Open Meetings Law applies as soon as a school's charter has been approved and the board has been formed.

What about a social event hosted for the members of the board? What about something like a fundraiser for the school at which the board members discuss the school with potential donors?
It is not the purpose of either of these events for the board to be meeting and taking action collectively, so they would not be considered meetings under the OML. However, it is important to keep in mind that if a majority of the board members end up sitting at a table together and discussing official business like the budget, the issue would be much closer and so it would be best to postpone that discussion until a board meeting can be called and properly carried out under OML regulations.

What are the notification requirements when a meeting is scheduled?

The time and place of all meetings must be made public, which means that notice must be given to the news media and the public via a posting in one or more designated conspicuous public locations each time a meeting is scheduled. This notice must be given not fewer than 72 hours prior to a meeting that has been scheduled at least a week in advance; if a meeting is scheduled less than a week in advance, notice must be given "to the extent practicable" prior to the meeting. If board meetings are held in the same place and at the same time on a consistent basis, it is acceptable to post a yearly schedule at the beginning of the year without having to provide notice again every time an individual meeting time approaches.

How do entities typically meet these requirements, particularly with regard to notice to the news media?
Notice should be given in whatever way is reasonable, which could include faxing the notice, emailing it, or putting it in the mail to the relevant local news media outlets. The law only requires that the notice be given to the media; it is not the responsibility of the board to ensure that the media outlet then actually publishes it. For meetings scheduled on short notice, providing notice by email or phone is probably the most common manner.

Are board retreats covered by the OML?
A board retreat that does not have the purpose of conducting business, such as one for the board members to get to know each other, would not be covered by OML. A retreat to discuss long-term policies and goals, on the other hand, would be considered a meeting to conduct public business despite the fact that it may be called a retreat rather than a meeting. Boards should be very careful, then, in managing the purposes of their retreats; any discussion of public business as a group would most likely fall under the OML, and for retreats held at a remote location or in other unusual circumstances it would be very difficult to satisfy the relevant OML requirements. It is important to monitor discussions to ensure that non-OML retreats don't end up bringing up topics like staff performance that would trigger OML requirements.

Are board committees covered by the OML? What are their requirements around taking minutes and public participation?
If a committee consists of 2 or more members of the board, that committee is also considered a public body under the OML and thus is subject to the same requirements as the board itself even though the committee may not be able to take any final action by itself. If the committee consists only of citizens, rather than board members, or a mix of citizens and board members, it is not considered a public body and the OML would not apply. The committee may still hold open meetings to facilitate communication with the public, but it is not required to do so by law.

What about informal working groups that include board members? If the Board tasked the staff with providing a report on facilities options and a trustee or two were on the task force, would this trigger the OML?
Case law has held that only groups consisting solely of board members trigger the OML. Therefore an informal working group made up of staff and board members should not

need to hold meetings consistent with OML requirements. However, there is some level of inconsistency in the case law, and it is possible that a mixed-membership working group that includes a *majority* of the board members in addition to staff or whoever else may fall under the OML (that is, if a majority of the total board is in the working group, not just if a majority of the working group consists of members of the board). If you have a committee or working group that falls into this gray area you may wish to get further guidance on your specific situation from the Committee on Open Government.

What are the requirements for taking minutes at an open meeting?
Minutes for an open meeting must consist of a record or summary of all the motions, proposals, resolutions, actions taken, and the votes of the members of the board. They can, of course, contain more detail than that, but they are not required to under the OML. There is no specification of who must take these minutes, so the board may designate whatever minute-taker is most convenient. These minutes must then be prepared and made available upon request within two weeks. It is important to note that nothing in the OML requires the board to approve the minutes prior to them being made available to the public; a board can still choose to approve the minutes at the following board meeting, but they must still be made available within the 2-week time frame. If it so chooses, a board can have the minutes stamped with something like "unapproved" or "draft" when they are requested prior to their board approval.

Are there different rules if the board or members of the public wish to record the meeting using audio or video tape?
There is no obligation that boards record their meetings, though boards may choose to do so to ensure the accuracy of their minutes. The use of recording devices by members of the public can only be prohibited or limited if the presence of the recording device is disruptive or obtrusive to the deliberative process; the fact that the board may find it distasteful is not enough to support removing it from the meeting.

Is it permissible for members to call in to board meetings? Under what conditions, if any, can a board member participate remotely in board meetings as a voting member?
Board members cannot teleconference in and take part of a board meeting to be counted toward a quorum or to act as a voting member. Videoconferencing, however, is allowed as long as both sides of the videoconference can see the other and the remote location has been subject to the same notice procedures and access requirements as the main meeting site. The purpose of this distinction is for all voting members of the board and their surroundings to be visible to the members of the public who wish to observe the deliberative process. Members who have no option but to call into such a meeting can still participate in the discussion, however.

Are there requirements around translation of meetings or making them accessible to persons with disabilities that schools must comply with? What are some effective practices even when there may be no relevant requirements?
Public bodies must make or cause to be made "reasonable efforts" to permit persons with disabilities to have barrier-free access to their meetings at existing facilities. While this

may mean that there are cases where an inaccessible location is still the most reasonable place to hold a board meeting, the best practice would be to find a location that allows access easily. It is important to keep in mind that locations like a board member's home may be generally intimidating to members of the public, regardless of the physical accessibility of the site. There are also accessibility requirements that must be met when constructing new facilities, but those are found under other sections of the law. There is no requirement under OML that boards must provide translation services for their public meetings.

Does the public have the right to speak at any open meeting?
The OML is concerned only with the public's ability to attend, listen, and observe open meetings; it does not create a right for members of the public to speak and contribute. If your board does choose to allow public comment, it must adopt reasonable rules that apply evenly and fairly to all members of the public. Case law has also held that if the door is open to positive comments then negative comments from the public must be allowed in the same manner.

What is an executive session?
An executive session under the OML is a portion of an open meeting from which the public can be excluded. There are three elements required to move into an executive session: someone on the board must make a motion in public to close the doors, the motion must indicate in general terms what will be discussed and reasons that an executive session is proper, and the motion must be carried by a majority of the board. Executive sessions are required for privacy reasons for discussions about "the medical, financial, credit, or employment history of a particular person or corporation" or "matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation." Board members are the only people who have the right to attend the executive session, but the board can also authorize any non-board member to attend the executive session if it is necessary for the topic to be discussed.

What are the requirements relating to minutes for an executive session?
Boards of Education, unlike all other public bodies, cannot in general vote behind closed doors. This means that votes based on discussions held in executive sessions should not be taken until the executive session is closed and the board has returned to the open meeting. Because of this, then, there is no requirement that minutes be taken during the executive session (see the previous answer regarding minutes requirements for an open meeting). However, for the one situation in which a vote may be taken in private, that of an action identifying a specific student that would run afoul of federal privacy laws if taken in public, minutes should be recorded of the vote and any identifying information should be removed from the record. It may also be that that particular discussion is held in public with code words used to protect the privacy of the student, in which case the same rules apply as in any open meeting, where all motions, proposals, resolutions, actions taken, and votes of the members of the board must be recorded.

If a board allows for public comment and a member of the public raises something that is appropriately handled in executive session (e.g., a complaint about a specific employee) how should that be handled?

It is important to note that "personnel" is not a word that ever appears in the OML; there is no blanket statement that all issues pertaining to personnel matters be discussed only behind closed doors. The first answer, then, is to be sure that the matter actually requires an executive session, as outlined in the previous answers, and if it does then be sure that the motion for executive session includes enough information to show why the executive session is necessary. An example to illustrate this point is that general policy discussion of the value of a certain position, such as an art teacher, may not be specific enough to trigger an executive session requirement even though there may only be one art teacher currently at a school. Another example is discussion of staff bonuses: if it's an across-the-board bonus that affects all staff members, an executive session would not be proper, but if it's a discussion of a particular staff member and whether his performance merits a bonus, then an executive session would be appropriate.

Are there any other circumstances in which a matter need not be discussed in public?

In addition to the mechanism for executive session, the OML contains a section of exemptions for matters to which the OML requirements would not apply. One of the exemptions applies to matters made confidential by federal or state law, which means that any information that might identify a student must be discussed in private unless the parents of the student affected consent to public discussion (the relevant privacy law in this case would be the Federal Educational Rights and Privacy Act). If the board still wishes for the discussion to be private and it falls under the "particular person" language of the executive session regulations, the board may move into executive session even if the consenting parent would prefer it to be public.

As a trustee what should I do if I feel like the Board is violating the OML?

The first step should be to make sure the board members are educated about the OML and the duties it places upon them as a board; in many cases the problem is merely that not all board members are familiar enough with the law to ensure it is being followed. There are a number of potential consequences if violations continue or are to such a degree that someone outside the school complains. The most serious, of course, is that any violation of law could potentially be grounds for a school's charter to be revoked. While it is unlikely that small accidental violations of the OML would lead to this worst case scenario, it is the best reason for putting extra effort into ensuring that all of its provisions are being followed. Parents or community members who feel that the OML is being violated and that they are not being allowed the proper access can potentially cause a great deal of trouble for the board and the school, so it is the best idea for the board to do everything they can to bolster public support by following the OML's provisions. Another possible consequence is that a court could nullify a decision made in private that should have been made in an open meeting, but the reality is that this happens rarely, and in all likelihood far less often than community dissatisfaction disrupts in the functioning of a board or its school.

What are the most common violations you see of the OML and what advice would you give entities on avoiding common issues?

Situation 1: A board goes into an executive session to discuss topic X, but during the course of the session discussion drifts over to include topic Y.

Answer: In this case, it is up to the members of the board to pay attention to the focus of the discussion and to end the executive session when topic X has been fully discussed. It would be improper to discussion topic Y in that executive session if it were not included in the relevant motion.

Situation 2: A board uses the threat of potential litigation to go into executive session when such a move is not warranted.

Answer: Boards can go into executive session to discuss "proposed, pending, or current litigation," as courts have ruled that it is not a requirement that a public body be forced to disclose its litigation strategies to its adversary due to OML requirements. However, the mere threat of potential litigation is not enough to justify closing the public out of a discussion, and so boards must avoid voting for an executive session motion when it is not warranted. The motion for the board to go into executive session under this litigation provision must be specific; it cannot merely regurgitate the section of the law listing "proposed, pending, or current litigation" as acceptable grounds, but rather it must identify the specific litigation in question.