



# **NEW BOARD MEMBER ORIENTATION**

## **SC Freedom of Information Act (“FOIA”)**

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# PURPOSE

Maximize citizen participation in government process and decision-making

- Simple in abstract; more difficult in application
- FOIA is continually changing as the General Assembly revisits; courts decide cases and school officials increase technology use

# PREMISE

- With limited exceptions, all meetings of public bodies are open
  - FOIA's intent is to for public bodies, such as school boards, to operate 'in the sunshine.'



# APPLIES TO:

- Meetings of boards as well as board committees and subcommittees
- It doesn't matter if a committee or subcommittee is composed of a quorum of the board or if there are other individuals on the committee/subcommittee



# WHAT IS A MEETING?

- Any convening of a quorum (majority of members) of a public body to discuss or act upon the business of the public body
- Applies to both in-person and electronic gatherings
- Includes Board work sessions, email conversations and texts between a quorum of members  
may be a meeting even if personal technology is used



# NOTICE

## Regular meetings:

- Written notice given at the beginning of the year; notice with agenda posted 24 hours prior; notify local media of all meetings

## Called or special meetings:

- Notice and agenda posted 24 hours prior; written notice to local media

## Emergency meetings:

- Make reasonable effort to give notice

# AGENDA

- The final agenda must be posted at least 24 hours before any regular, called, special or rescheduled meeting SC Code Section 30-4-80(a)
- Items may be added only if the amended agenda is posted at least 24 additional hours before meeting
- Amendments at the meeting: Discouraged and require very specific process to be followed

# AMENDING AGENDA AT THE MEETING

- If amendment would add an item upon which action can be taken (example: first reading/approval of a policy), 2/3 of the members present must vote to add the item.
- If the amendment would add an item for final action, or if the item is one where there has not been and will not be an opportunity for public comment with prior public notice, the item may only be added if two things occur: 2/3 favorable vote AND a finding by the board that an “emergency or an exigent circumstance exists” if the item is not added to the agenda.
- An agenda for a special called meeting may not be amended at that meeting to add an item for action that was not on the original agenda for that meeting. (example: the agenda posted for the special meeting indicated only an Executive Session to discuss the employment of personnel, but, following the Executive Session, a motion is made to add for action “approval of a contract to purchase property.”)



# MINUTES

- **Must be written and available to public**
  - Include
    - Date, time and place of meeting
    - Members present and absent
    - Substance of all matters proposed, discussed or decided
    - Request for recording individual member votes
  - Available for review during regular hours
    - Copies immediately available for preceding six-month period
  - Executive session minutes not required, but skeletal minutes may be useful



# EXECUTIVE SESSION



- Must vote in open session to enter executive session
- Motion must state specific reason as permitted by law
- Can take no action in executive session

# EXECUTIVE SESSION

## When may a meeting be closed?

- Receipt of legal advice but only if that advice pertains to a pending, threatened or potential legal action
- Discipline of a student
- Hiring, firing, discipline of an employee (except at employee's option, if an adversarial hearing is involved)

# EXECUTIVE SESSION

## When can a meeting be closed?

- Discussion of contractual negotiations and proposed sale or purchase of property
- Discussion of development of security personnel or devices
- Investigations of criminal misconduct
- Certain industrial development matters

# PUBLIC RECORDS

- FOIA also permits the public to obtain copies of “public records.”
- Are personnel files of school employees subject to disclosure under FOIA? It depends!
  - Complaints
  - Reprimands (SC Ct of Appeals decision)
  - Evaluations (2015 AG Opinion)



# **PUBLIC RECORDS**

- **What about videos captured by cameras on school buses or on school grounds?**
- **Can parents view and/or obtain a copy?**
- **Can the media view and/or obtain a copy?**

# COMMON FOIA VIOLATIONS

- Having a board dinner before or after the meeting and talking business at that time
- Calling a meeting a “work session” without complying with FOIA
- Discussing general personnel matters in executive session
- Improper Agendas



# COMMON FOIA VIOLATIONS

- Closing a meeting to receive “legal advice” just because your lawyer is present
- Abuse of executive session – topic “drift”
- Failure to state specific reason for closing a meeting; i.e., not permitted to merely state “personnel matters” or “contractual matters”



# 2017 FOIA AMENDMENTS

- Shortens time to initially respond to FOIA request to 10 business days
- Provides that responsive records must then be provided within 30 calendar days
- Requires districts to post a fee schedule for FOIA requests
- Allows public body to request a court hearing to challenge a FOIA request that it believes is “overbroad, unduly burdensome, vague, repetitive or otherwise improper.”

# QUESTIONS?

