



**Knowing What You
Don't Know**
**Important Questions Board
Members Should Ask**

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Why do board members need to be familiar with school law?



School law can encompass a wide range of legal concepts. School board members should have a working knowledge of the basic principles of those laws so that they can carry out their main functions: create policies, develop a budget, and employ the superintendent. We will discuss the key areas of special education, personnel (certified and non-certified staff), student discipline, and South Carolina's FOIA, as they relate to school boards.

Key Laws

Individuals with Disabilities Education Act (IDEA) and Section 504

Federal laws that guarantee certain rights to students with special needs

South Carolina Freedom of Information Act

State law that provides rules for much of the work of school boards, including board agendas, executive session topics, and sharing of information with the public

Student Discipline

(Mostly) state law that determines how students can be disciplined and what rights they are afforded

South Carolina Teacher Employment and Dismissal Act (and basic employment law in SC)

State law that shapes the contractual rights of teachers at different stages of their careers

Individuals with Disabilities Education Act and Section 504

IDEA

- The Individuals with Disabilities Education Act (IDEA) is a federal law that entitles children to special education services if a disability significantly impacts their access to education and a specially designed program is needed.
- IDEA was passed in 1990 but originated from the Education for All Handicapped Children Act, passed in 1975.
- A primary principle of the IDEA is the right to FAPE (Free Appropriate Public Education) in the LRE (Least Restrictive Environment)
- 13 eligibility categories

Section 504

- Section 504 of the Rehabilitation Act of 1973 is a federal law that guarantees accommodations for students who have a physical or mental impairment that substantially limits one or more major life activities. Almost limitless range of impairments can trigger 504 rights.
- Also requires a FAPE
- These students are fully educated in the general education classroom, but they may receive slight alterations, such as preferential seating, extended time on assignments, etc.

Board Considerations Related to Special Education Students

Costs:

- The cost of educating special education students is significantly higher than that of regular education students: smaller class sizes, additional staff members, related services, specialized transportation, certain equipment, etc.
- The number of students with autism (or other developmental disabilities) increases yearly, and many students are assigned one-to-one paraprofessionals/shadows.
- The IDEA was originally intended to be funded by the federal government at a much larger rate than it ever has been. The federal government currently funds approximately 14.6% of the costs of the IDEA—which leaves the rest of the funding to states and local school districts.
- Districts do receive some state funding for students with disabilities, the per pupil cost is weighted based on the category of the child's disability.

Board Considerations Related to Special Education Students

Regardless of Congress' lack of funding of the IDEA, there are significant costs associated with districts failing to provide everything a special education student needs to receive a FAPE. Generally speaking, most disputes in special education fall into categories that are not covered by insurance, leaving districts to pay for all legal costs associated with disagreements.

When reviewing your district's annual budget, keep these costs in mind.

If the cost/number of one-on-one assistants seems too high, consider asking the special services department whether a special education classroom should be assigned more staff members, alleviating the need for every child to have a one-on-one.

Be sure your special services department is assigning a student's primary disability as the one with the heaviest weight (= \$\$)



Board Considerations Related to Special Education Students

Discipline:

- Students with disabilities (with 504 Plans and IEPs) receive additional protections surrounding disciplinary matters.
- If a child with a 504 or IEP is being disciplined and the discipline will result in a change of placement, the school must determine if the child's behavior was related to his/her disability or a failure of the school to properly implement the IEP or 504.
- A change of placement can be to a more restrictive setting, an alternative school, a homebased placement, etc., but a change in placement is also triggered when the student is suspended for more than 10 days in one school year with no services.

Board Considerations Related to Special Education Students

- If the child's behavior was related to his/her disability OR a failure of the school to properly implement the plan, the child must be returned to his/her original setting and cannot receive the normal disciplinary consequences. If the behavior is unrelated, the child can be disciplined as other students are.
- Board members are frequently confronted with questions about why a misbehaving student is allowed to stay in school with no consequences. Keep in mind when you are asked these questions in public that there could be specific legal requirements regarding a child's discipline that may account for what consequences they receive.
- Also consider confidentiality rights of all students when being asked questions about a specific situation—would this person want highly sensitive information about their child shared with the community at large?

Student Discipline

Most matters of student discipline are addressed in state law, Section 59-63-210 *et seq.*

Any district board of trustees may authorize or order the expulsion, suspension, or transfer of any pupil for the commission of any crime, gross immorality, gross misbehavior, persistent disobedience, or for violation of written rules and promulgated regulations established by the district board, county board, or the State Board of Education, or when the presence of the pupil is detrimental to the best interest of the school. Each expelled pupil has the right to petition for readmission for the succeeding school year...

Students may be suspended not in excess of ten days for any one offense, not more than thirty days in any one school year, and not during the last ten days of a year if the suspension will make the pupil ineligible to receive credit for the school year without the approval of the school board unless the presence of the pupil constitutes an actual threat to a class or a school or a hearing is granted within twenty-four hours of the suspension.

The district board must expel for no less than one year a student who is determined to have brought a firearm to a school...The one-year expulsion is subject to modification by the district superintendent of education on a case-by-case basis.

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The board may expel a student for the remainder of the school year, and they may petition for reentry the following school year.

Student Discipline

For an expulsion hearing, parents or legal guardian of the pupil shall be notified in writing of the time and the place of a hearing either before the board or a person or committee designated by the board. At the hearing the parents or legal guardian shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses. If the hearing is held by any authority other than the board of trustees, the right to appeal the decision to the board is reserved to either party. The hearing shall take place within fifteen days of the written notification at a time and place designated by the board and a decision shall be rendered within ten days of the hearing. The pupil may be suspended from school and all school activities during the time of the expulsion procedures. The action of the board may be appealed to the proper court. The board may permanently expel any incorrigible pupil.

The board or a designated administrator may transfer a pupil to another school in lieu of suspension or expulsion but only after a conference or hearing with the parents or legal guardian. The parents or legal guardian may appeal a transfer made by an administrator to the board.

The governing body of each school district may provide corporal punishment for any pupil that it deems just and proper.

Board Concerns Related to Student Discipline

Boards typically appoint a hearing officer to hear all recommendations for expulsion, and, depending on your district's structure, there may be various levels of appeal before a case could come to the board.

Most board policies state that boards will review the written materials of an appeal rather than holding a full-blown hearing for a student disciplinary matter. These decisions are made in executive session and are an appropriate topic for executive session under FOIA.

Suspensions and transfers are not appealable to the board or a court, but expulsions can be appealed.

If a student is expelled and then appeals to circuit court, the court will only ascertain whether the board's decision is supported by substantial evidence and should not substitute its own decision in place of that of the school authorities regarding whether the student "deserved" to be expelled.

Teacher Employment and Dismissal Act

Districts employ two types of employees: certified and non-certified.

Certified employees, generally teachers and administrators, and subject to the Teacher Employment and Dismissal Act.

Non-certified employees (generally) are at-will employees and have fewer continuing employment rights.

Within the category of certified employees, teachers may hold induction, annual, or continuing contracts, with annual contracts having the least amount of rights and continuing contracts having the most amount of rights.

Teacher Employment and Dismissal Act

Induction contracts are typically issued for the first three years of a teacher's career. During this time, if the teacher is terminated, he/she only has a right to a meeting with the superintendent before the dismissal becomes final.

Annual contracts are issued to teachers after the induction period or sometimes when a teacher transfers from another state. During the annual contract period, if the teacher is terminated, he/she may request a hearing in front of the superintendent and may appeal the superintendent's decision to the board. The board has discretion whether to hear the appeal.



Teacher Employment and Dismissal Act

Continuing contracts are the closest thing South Carolina offers to tenure.

They may be terminated under two different statutes:

- **SC 59-25-430:** When a teacher manifests an evident unfitness for teaching, as evidenced by persistent neglect of duty, willful violation of rules/regulations of board, drunkenness, conviction of violation of state or federal law, gross immorality dishonesty, drug use/sale/possession
- **SC 59-25-440:** Addresses situations where the teacher is struggling with responsibilities of job but not committing overt bad acts. Teacher must be given written notice, the principal must make a reasonable effort to assist the teacher in correcting the behavior and must be given a reasonable time to improve.

Board Concerns Related to Teacher Employment and Dismissal Act

Termination under either statute requires the teacher to be provided with an opportunity before the board before dismissal.

Boards may hear teacher's case directly or may (by policy) appoint a hearing officer to hear the case and make a recommendation. The board's decision is final but can be appealed to circuit court within 30 days of the decision.

These hearings can be costly and (again) are not covered by your district's insurance policy. Costs associated include an attorney for the board, an attorney for administration, a court reporter, the costs of any depositions prior to the hearing, the cost of transcripts, and, if applicable, the cost of the hearing officer.

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records.

Generally, schools must have written permission from the parent or eligible student to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.



Family Educational Rights and Privacy Act

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. Schools are not required to disclose this information to third parties but may not withhold information in a discriminatory fashion.

However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA.

Schools may not disclose to the general public or media personally identifiable information about a student without parental consent, even when the student has posed a threat to the school. Accordingly, press releases or other information about student threats, fights, etc. are required to be vague. "Information that, alone or in combination is linkable to a specific student that a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty," cannot be included in a school's message.



SC Freedom of Information Act

FOIA is South Carolina's "sunshine" law, and can be divided into two main functions:

- It governs the content and conduct of meetings of public bodies, including school boards and
 - It governs the public's access to records maintained by public bodies
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- Regarding Board meetings:
 1. agendas must be posted no less than 24 hours before a meeting and no items may be added within that 24 hour period.
 2. To add an agenda item after a meeting has begun, an item upon which action can be taken only may be added to the agenda with a two-thirds vote of the members present and voting; an action upon which final action can be taken may only be added to the agenda with a two-thirds vote of the members present and voting and upon a finding that exigent or emergency circumstances exist.

SC Freedom of Information Act

- Regarding Executive Session:
 1. Meetings or portions of meetings of public bodies may only be closed to the public for the discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body;
 - (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.
 - (3) Discussion regarding the development of security personnel or devices.
 - (4) Investigative proceedings regarding allegations of criminal misconduct.

A close-up photograph of a person's hands holding a succulent plant in a dark pot. The person is wearing a blue and white plaid shirt. The succulent has thick, layered, light blue-green leaves. A semi-transparent, light-colored rectangular box is overlaid on the center of the image, containing the text "Questions?".

Questions?