



Lights, Camera, Action:

The Do's and Don'ts When Working with the Media

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Agenda

- (1) Communicating with the Media
- (2) the South Carolina Freedom of Information Act
- (3) the Family Educational Records and Privacy Act
- (4) Additional Privacy Protections



Communicating with the Media

Three Common Mistakes that Board Members Make When Dealing with the Media

- Not accessible.
- Don't do homework.
- Say too much and/or sensitive information.

Media Relations

- Education reporters need the insights and cooperation of the school board to cover their assignments.
- School boards need a reporter's cooperation and willingness to listen to get detailed and correct information to the school district's publics.
- By working with local reporters, the school board can improve the district's image and enhance the school district's coverage, thereby gaining a community's better understanding of the district's successes and challenges.

Tips on How to Develop a Successful Relationship with the Local News Media

- **Watch your words** - As a public official, what you say is news and in varying degrees it influences what the public thinks about the school district.
- **Don't exchange punches** - If a reporters' manner is confrontational, don't respond in kind. Stick to what you want to say and keep repeating your main points.
- **Everything gets shortened** - Remember that your comments may be summarized or paraphrased. Often reporters will build one concise statement out of several lengthy statements. Be careful what you say at all times. Keeping your comment short, in soundbites, reduces the editing.

Tips on How to Develop a Successful Relationship with the Local News Media

- **Do not speculate** - Even if you've got a good, educated guess, don't share it. You may not have all the pertinent information; what you say now you may regret later when you know the facts. If you don't want your words repeated or quoted, don't say them. Don't go off the record. Most reporters are people of integrity who will keep your confidence for background information. But can you or your school district afford the consequences of having information you shared in confidence be published or broadcast? It frequently is easy for a reporter to turn information received "off the record" into an "on the record" quote from another source.
- **Speak in one voice** - If you are asked to comment on a decision of the board with which you disagree, stand by the board's action. Don't fuel the fires of controversy by taking on your colleagues in the news media

Tips on How to Develop a Successful Relationship with the Local News Media

- **Be prepared** - Finally, make sure you have done everything you can in advance to be a positive influence on the story. If you have notice of the issue, prepare a set of three-to five key messages you want to get across. Have a set of factual talking points in your head or on paper. Get agreement from the board on who will be a spokesperson on the issue and stick to it
- **Remember “no comment” is a comment** - If you cannot give specifics or discuss, then say that and why (legal issue, respect privacy, etc.).

When Speaking to the Media as an Individual

- **Clarify at the beginning that you are not speaking on behalf of the Board.**
- Consider the impact your comments will have.
- Always advise the superintendent when you are going to or have had an interaction with the media.

Using Social Media as Board Member

- **Think before you post.** Is this something that you do not mind seeing on the front page of the newspaper? Will this be something that you would want your own children or the students of the school district to see as a good example of the way to communicate or comment? Post responsibly.
- **Be careful of what information you share.** Do not share personal information about students, employees, yourself, other board members, and citizens. Likewise, do not share information that the school district has contractually agreed to keep confidential; for example, proprietary information, trade secrets, and security information. Think before sharing legally protected, privileged information, such as attorney-client, physician-patient, and other privileged information recognized by a court.
- **Social media is not for private conversations.** Face-to-face meetings or telephone conversations may be more appropriate.
- **Use appropriate language.** Do not use abusive, profane, threatening, or offensive language.

Using Social Media (Continued)

- **Don't let negative emotions drive you to post or respond.** Anger may cause you to post information that you will be sorry for later. Is this something that you would be ashamed of if you read it months or years from now? Remember that what you place on social media sites – and in emails, text messages, and chat rooms – can spread quickly and permanently remain on the Internet or in someone's possession. Statements that are harassing, discriminatory, defamatory, and terroristic are not suitable and could subject board members, and possibly the school district, to legal action. Be polite.
- **Do not post on behalf of the school district.** Do not post self-promotions, items for sale, commercial messages, and advertisements that are associated with the school district.
- **Use social media for listening.** Do not conduct board business on social media sites. Instead, use these sites for listening or reading about others' opinions, making announcements, having conversations, and obtaining feedback.

The South Carolina Freedom of Information Act



General Requirements – What is FOIA?

- True or False? FOIA is often called the “Sunshine Law”.
- True or False? FOIA is a federally-mandated law that applies to all U.S. states.

General Requirements – What is FOIA?

- FOIA stands for the Freedom of Information Act.
- It is a series of laws designed to guarantee public access to records of government bodies in the state – Sunshine Law.
- FOIA can be found under S.C. Code Ann. §30-4-10 to 30-4-165.

Why does FOIA matter to School Districts/Boards?

- True or False? My School District is not subject to FOIA because it conducts business involving students, and their records are protected by federal law.
- True or False? FOIA only applies to meetings and documents generated by the School Board of Trustees.

Why does FOIA matter to School Districts/Boards?

- SC school districts fall under the guidelines set within FOIA as they are defined as “public bodies”*.
- FOIA provides government transparency that promotes public trust in and communication with public bodies.
- FOIA is not restricted to documentation – it includes meetings, too.

*Section 30-4-20(a)

Meetings



FOIA – Meetings by Public Bodies

- True or False? School Board meetings are subject to the rules of FOIA.
- True or False? Public bodies can vote in executive session.

*Section 30-4-20(d)

FOIA – Meetings by Public Bodies

- Under the S.C. FOIA, ALL meetings by public bodies must be open to the general public UNLESS a specific exemption or other state law applies.
- As defined by the law, a meeting is “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power”*.

*Section 30-4-20(d)

FOIA Meeting Guidelines, cont.

- ALL public bodies must give written public notice of their regular meetings at the beginning of each calendar year*.
- This includes dates, times, and location of each meeting.
- Furthermore, an agenda for regular or special meetings must be posted in a publicly accessible place AND on a public website NO LATER than 24 hours prior to the meeting**.
- Once a meeting agenda has been posted, no items can be added to the agenda without an additional 24 hours notice to the public.

*Section 30-4-80(a)

**DOES NOT apply to
Emergency Meetings

Does FOIA require Public Bodies to allow Public Participation?

- No, the public DOES NOT have a right under FOIA to participate in public body meetings.
- However, public forums are helpful in promoting effective communication with the local constituency.
- Public participation guidelines are formalized under board policies.

Executive Session

- True or False? The Board can vote in Executive Session.
- True or False? The Board can make a motion to return to open/public session while in executive session.
- True or False? When the Board attorney is present during Executive Session, the Board can discuss whatever it wants because it's "receipt of legal advice" and protected under FOIA.

Executive Session



- FOIA prescribes certain rules for Executive Session, including entering into and exiting.
- Types of discussion exempt from the open meeting:
 - (1) 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; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.
 - (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.
 - (5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

Records



Handling records under FOIA...

- True or False? FOIA requires that requestors use a specific form to obtain records under FOIA.
- True or False? If a requestor asks a question as a FOIA request, the entity is not required to answer it.
- True or False? FOIA requires public entities to create documents when the requestor seeks a record the entity does not possess.
- True or False? Text messages from a Board member's personal phone are not subject to FOIA.

Handling records under FOIA...

- FOIA does not require a public body to create a record where one does not exist.
- FOIA does not require a public body to generate electronic records or to make records electronic.
- Must respond within 10 working/business days to the initial request.
- Can charge a fee if there is a posted fee schedule.
- The fee must not be higher than the hourly rate of the lowest compensated employee who has the necessary skills to respond to the request.
- Can charge for gathering, copying, and redacting records.
- Disclosable records must be produced within 30 calendar days (if less than 24 months old).

Common Records Issues

- True or False? Student records are disclosable under FOIA.
- True or False? Personnel records are disclosable under FOIA.

Common Records Issues

- Federal law instructs that student records and privacy related to the same outweighs the public's interest in obtaining student records covered by the Family Educational Rights Privacy Act.
- For personnel records, consider balancing the public's interest and promotion of transparency with the FOIA privacy exemption and the applicable personal records protection laws.

Practical Tips

1. Follow FOIA to avoid litigation.
2. Don't say or write something that you wouldn't want to be said on the front page of the newspaper.
3. Don't conduct illegal meetings and remember the quorum rule.
4. Be mindful of the documents that you generate are subject to FOIA unless there's an exception, i.e. could a phone call be useful?
5. If you're not sure if you received a FOIA request, call a staff member right away (remember the 10-day turnaround)!
6. Remember how FOIA may compel records on personal devices; don't try to skirt the law.
7. Consider involving legal counsel on issues that may become sticky later.



FERPA

Family Educational
Rights & Privacy Act

The Family Educational Rights and Privacy Act

What is FERPA?

- The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords **parents** the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records.
- When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").

Who and What is covered?

- What records are covered by FERPA?
 - Any record that can be linked to a specific student, whether by name, by social security number, by student ID, or through any other kind of personally identifiable information (e.g., transcripts, financial records, assignments, etc.) is covered.
- Who is subject to FERPA?
 - All schools that receive federal funding are subject to FERPA. Failure to abide by the regulations of FERPA may result in the loss of federal funding. Thus, it is very important that schools protect the privacy rights of both student and parents under this law.

FERPA Timeline

- The school must comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request. Also, the school shall respond to reasonable requests for explanations and interpretations of the records.
- For every FERPA request, you should document who is requesting and what was released by the school. The need to document is one of the things that schools forget the most.

FERPA Violations

- Emailing protected student information to everyone in the class
- Including social security numbers on shared documents
- Posting grades and identifying information in public
- Publicly disclosing a student athlete's academic status

Parental Consent

- Parental Consent is required for the release of personally identifiable records under FERPA.
- What is parental consent?
 - Under FERPA, a parent must provide consent to release the child's record up until the age of 18. Consent would be the parent authorizing and agreeing to the school releasing the records to a specified person

Proof of Parental Consent

Written Parental Consent is preferred!



FERPA CONSENT TO RELEASE STUDENT INFORMATION

TO: _____ School District,

Please provide information from the education records of _____ to:

The only type of information that is to be released under this consent is:

_____ Transcript

_____ Disciplinary records

_____ All Records

_____ Others (specify) _____

The information is to be released for the following purpose:

_____ Family communications about education

_____ Legal matters

_____ Employment

_____ Other (specify) _____

I understand the information may be released orally or in the form of copies of written records, as preferred by the requester. I have a right to inspect any written records released pursuant to this Consent. I understand that I may revoke this Consent upon providing written notice to Greenwood School District 50. I further understand that until this revocation is made, this consent shall remain in effect and the educational records of the above-named student will continue to be provided to the listed attorneys for the specific purpose described above.

Name: _____

Please print

Signature: _____

Date: _____

Can I Provide the Child's Educational Records?

Who is asking? Is it one of the parents (or someone acting as a parent)?

- Considerations:
 - Do they have proof that they are the child's parent?
 - Are they a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian?
 - Is there a court order, state law, or legally binding document relating to divorce, separation, or custody that specifically revokes their parental rights?

If there is proof that the person has the status of a parent and no legal document or statute revokes that status, the parent should be provided with the child's educational records.

Can I Provide the Child's Educational Records?

- Who's asking? Is it a grandparent, aunt or uncle, step-parent, or friend?
 - Considerations:
 - Do they have written consent from the child's parent?
 - Are they themselves an individual acting as a parent in the absence of a parent or guardian?
 - Do they have legal and/or physical custody of the child?
 - Is there a court order showing proof of this?
 - Are there any special circumstances that warrant them to act as a parent?
- If they have written consent from the child's parent, they are absolutely entitled the educational records.
- Also, if they have custody of the children and a Court order awarding them custody of the children, they are also entitled to the records. In the absence of parental consent or parental-like rights, these individuals have no rights to records under FERPA.

Can I Provide the Child's Educational Records?

- There are some instances where parental consent is not required. Schools may provide educational records:
- To authorized representatives of, among others, State and local educational authorities, such as a State department of education, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs.
- To a representative of a State or local child welfare agency or Tribal organization regarding a child in foster care.
- To State and local officials or authorities pursuant to a State statute concerning the juvenile justice system and the system's ability to effectively serve the student whose records are being disclosed.
- To organizations conducting studies for, or on behalf of, the school for specified purposes including improving instruction.
- In connection with a health or safety emergency.

Things to Remember

1. The first question should always be: "Who's asking?"
2. Parental consent is key! Written Parental consent is preferred!
3. Assume the person asking is not a parent. They have the burden of proving that they should have access.
4. Err on the side of safekeeping information.
5. Look to official documents like court orders before jumping to conclusions.
6. If you have questions do not hesitate to seek legal advice.



Additional Privacy Protections

The Family Privacy Protection Act of 2002

- The Family Privacy Protection Act of 2002 prohibits persons or private entities from using personal information obtained from State agencies/political subdivisions for commercial solicitation purposes.
 - S.C. Code Ann. Sections 30-2-10 through 30-2-50
- Each state agency, local government, and political subdivision of the State shall provide a notice to all requestors of records pursuant to this chapter and to all persons who obtain records pursuant to this chapter that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

The Family Privacy Protection Act of 2002

Continued

- All state agencies, local governments, and political subdivisions of the State shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.
- A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both.

Questions?

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