

# Grab Bag: Avoiding Legal Risks From the Top Down

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EMPOWERING BOARD MEMBERS TO BE  
EFFECTIVE LEADERS FOR STUDENTS

## TOPICS FOR TODAY'S GRAB BAG

1

Avoiding conflict of interest issues that require board member recusal during meetings and votes [[S.C. Code Ann. § 8-13-100 – S.C. State Ethics Act](#)].

2

Steering clear of S.C. Freedom of Information Act (FOIA) violations in board meetings and through board member communications [[S.C. Code Ann. § 30-4-10](#)].

3

Harmonizing with the superintendent to prevent breach of contract issues. [[S.C. Code Ann. § 59-19-90](#)].

4

Recognizing [First Amendment](#) rights but steering clear of media snafus.

# CONFLICTS OF INTEREST AND BOARD MEMBER RECUSAL

ETHICS,  
GOVERNMENT  
ACCOUNTABILITY,  
AND CAMPAIGN  
REFORM ACT OF  
1991

S.C. Code Ann. § 8-13-700 :

- A board member cannot knowingly:
  - Use his office to obtain an economic interest for himself, a family member, or an individual or business with which he is associated.
  - Influence a governmental decision in which he, a family member, or an individual or business with which he is associated has an economic interest.

## BOARD MEMBER RECUSAL



When there is advance notice, prepare a written statement requiring action and the nature of the potential conflict.



Give a copy to the presiding officer who will have the statement printed in the minutes.



During the meeting, the presiding officer will require the member to be excused from any votes, deliberations, or other actions on the matter.

## LET YOUR POTENTIAL CONFLICTS OF INTEREST BE KNOWN

If you have a spouse, child, etc., teaching at/attending a school, let another board member know so he/she can also help ensure you are properly recusing yourself from votes that could serve to directly benefit you or your family member for personal gain.

Having an “accountability partner” not only helps you, but it also encourages other board members to actively assess whether recusal is necessary.

## NON-ETHICS ACT RECUSAL ISSUES AS A BONUS GRAB BAG ITEM (POLICY CONSIDERATIONS)

- Warren Wonderful is a newly elected board member serving ABC School District. He takes his role very seriously, having attended the SCSBA's New Board Member orientation, which included an informative session on The Ethics Act. Warren loves to make the rounds in his district and often can be found talking to parents and students in the grocery store, local library, and Walmart. Warren even posted his phone number to his board member Facebook page and encouraged community members to "dial direct" for any concerns. Less than twenty minutes after making that post, Attitude Ashley, a disgruntled former employee who was terminated three days ago, calls Warren and asks him how he is going to vote on her employee grievance that she just sent to Super Superintendent in accordance with Board Policy GBK. Warren encourages Ashley to spill the beans and explain to him exactly what happened, so he can do his own research and prepare for the hearing that is sure to be scheduled very soon.

## PRO TIPS

- Make sure your conflict-of-interest policy (B Section of policy manual, BCA and/or BCB) is accurate and has been recently updated.
- Facilitate a culture of disclosure.
  - It is expected for board members to disclose potential conflicts, and board members will be more apt to lead with transparency and integrity.
- Redirect parents and constituents to chain-of-command and consider your adjudication function before you take in information that you can't take back.



# STEERING CLEAR OF FOIA VIOLATIONS

## TRUE OR FALSE GAME – WARM UP

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.



TRUE OR  
FALSE

- FOIA's intent is for public bodies to “operate in the sunshine.”
  - With limited exceptions, all meetings of public bodies are open to the public.
  - Allows media and citizens to obtain copies of public records, with exceptions, of course.
  - S.C. FOIA is a state law that applies to South Carolina.

# WHY DOES FOIA MATTER TO SCHOOL BOARDS?

- School districts (and their boards) fall under the guidelines set within FOIA because 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.

## TWO FOIA STATUTORY TRACKS

- Meetings: S.C. Code Ann. §§ 30-4-60 to -90
- Records: S.C. Code Ann. §§ 30-4-10 to -55

**Subject:** Weekly FOIA Incoming and High Visibility Requests  
**Attachments:** TransitionCasessummary04-11-2017PTOedits4.17.17.docx; Weekly FOIA Incoming and High Visibility Requests 04.12.17 - 04.19.17.xls

Good Morning,

Attached please find this week's report.

This week, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (b)(5)  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED] (b)(5)  
[REDACTED]

[REDACTED] (b)(5)  
[REDACTED]  
[REDACTED]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)

## TRUE OR FALSE GAME – MEETINGS

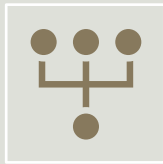
True or False? FOIA does not apply to a board committee/subcommittee meeting that includes community members who are on the committee/subcommittee because they are not board members and, therefore, are not members of the public body.

True or False? To have a quorum, members of the public body must be physically present together in the same room.

## APPLICATION OF FOIA TO MEETINGS



Applies to meetings of public bodies as well as meetings of public bodies' committees and subcommittees.



It does not matter whether there are other individuals on the committee/subcommittee to trigger FOIA.

## 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 work sessions, email conversations, and texts involving a quorum of members, and may be a meeting even if personal technology is used.



## AMENDING THE AGENDA AT THE MEETING



Discussion Items: If the 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.



Final Action: 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 public body that an “emergency or an exigent circumstance exists.”



Special Called: 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”).

## TRUE OR FALSE GAME – EXECUTIVE SESSIONS

True or False? The board's lawyer attends the meeting, so the board can discuss anything – even something outside of the agenda – during executive session because it's covered as "receipt of legal advice."

True or False? FOIA requires that minutes be taken for executive sessions.

## SC FOIA EXECUTIVE SESSION RULES

- Prior to going into executive session, the Board must state the specific reason, which can only fall under one of the following:
  - Personnel matters;
  - Contract negotiations/contractual matters;
  - Legal matters related to a pending, threatened, or potential claim; settlement of a claim; or the position of the agency in other adversary situations;
  - Security and safety measures; and/or
  - Investigative proceedings related to potential criminal conduct.
- Courts have said to quote your reason for entering executive session directly from the statute. [S.C. Code Ann. § 30-4-70](#)

## TRUE OR FALSE GAME – DOCUMENTS

True or False? FOIA does not include disclosure of text messages between board members about district business.

True or False? FOIA requires a school district to create a document upon request.

## PRO TIPS

- Stick to your meeting agenda; when in doubt, make motions using language from the agenda itself. Parliamentary procedure like *Robert's Rules of Order* can be used to assist.
- Do not allow for straying off topic during meetings, especially not during executive session.
- It is possible to “meet” electronically; avoid this by refraining from “reply-all” emailing and using group text functions.
- Be cognizant of generating documents that are disclosable pursuant to FOIA. (Including texts and emails.)
- If you don't want what you said to be on the front page of the newspaper, then don't say it or write about it.

# BOARD AND SUPERINTENDENT RELATIONS – AVOIDING A BREACH

## ROLES OF THE BOARD OF TRUSTEES (THINK B SECTION OF YOUR POLICY MANUAL)

- The Board of Trustees possesses the following functions:
  - Legislative/Policymaking – Review and adoption of policy.
  - Quasi-judicial – Hear appeals of parents, pupils, or students.
  - Operational Action – Conduct meetings, elect board officers, and adhere to state laws and DOE directives.
  - Financial Resources – Adopt the budget.
- All powers of the Board of Trustees lie in its action as a group.
- The Board will handle administrative services through the superintendent.
- The Board will not give orders to any subordinates of the superintendent, publicly or privately, but may make suggestions and recommendations.
- See [S.C. Code Ann. § 59-19-90](#).

SUPERINTENDENT  
(CONSIDER C  
SECTION OF YOUR  
POLICY MANUAL AND  
THE  
SUPERINTENDENT'S  
CONTRACT)

- The superintendent's responsibilities include:
  - Recommending policy adoption to the board;
  - Implementing policies adopted by the board;
  - Recommending positions for hire;
  - Nominating for appointment and assigning duties to all instructional personnel, subject to board approval; and
  - Keeping the board and public informed regarding the school's activities, accomplishments, and financial matters.
- The board will rely on its chief executive officer to provide professional administrative leadership.
- The implementation of board policies at all schools will be under the auspices of the superintendent.
- The superintendent is expected to maintain close working relationships and channels of communication with the school and community.



## 6 ELEMENTS FOR A SUCCESSFUL BOARD- ADMIN RELATIONSHIP

Community input is important. Include teachers, students, parents, businesses, government agencies, and residents on the District's vision.

Once that vision is established, the board should seek a superintendent who shares the same outlook.

Be mindful of your role. There are clearly defined responsibilities – keep your roles clear and your communication open.

Give and earn mutual respect; direct your focus to working with each other to avoid infighting. Find common ground and execute an agenda that prioritizes student achievement over all else.

Flexibility and collaboration are preferred as opposed to authoritativeness – confront complex and unexpected problems with flexible thinking.

Prioritization of student achievement is crucial for success – be accountability driven and devote your time to achieving student success rather than operational issues.

## PRO TIPS

- Stay in your lane. Ask yourself, “Am I micromanaging the daily aspects of the district?” If the answer is “yes,” then you’re out of your lane.
- Understand that the board’s one employee is the superintendent. Use the evaluation cycle for accountability.
- Recognize the importance of the contractual relationship between the board and the superintendent and also understand that most breach claims are not covered by your insurance policy if litigation arises, which may affect your general operating fund.

**FIRST AMENDMENT RIGHTS  
AND THE MEDIA –  
AVOIDING SNAFUS**

# GENERAL FIRST AMENDMENT RIGHTS

- Board members, like employees, have First Amendment free speech rights to comment on matters of public concern, which are things of interest to the public outside of the internal employment environment or board environment.
- Remember that often the types of communication posted/shared on social media are not protected speech.
- Also, know that “liking” or “sharing” a post is the same as if you said it yourself.
- Unprotected speech examples:
  - Office/board water cooler talk
  - Gossip
  - Personal attacks



Does this post comply with the law (relevant district policies, state/federal laws, etc.)?



Does this post share any confidential or personal information?



Would I react well to reading this if another board member posted it?



Will this demonstrate a good example of ways to communicate to children and parents in the district?



Is this something I will be embarrassed about posting in a month?

## QUESTIONS TO ASK BEFORE POSTING

- Never speak on behalf of the district on your personal account.
- Be mindful that some people will only ever view your posts as relating to the district/board.
  - Try and maintain your social media in a way that reflects well on the district/board.
- Don't let negative posts or your own reactionary emotions drive you to respond to criticisms you may see of the district/board.
  - Use social media as a tool to listen and hear public concerns so that you can effectively address them; this can be one of your greatest assets.

KEEPING  
YOUR  
PERSONAL  
SOCIAL  
MEDIA  
PERSONAL

## PRO TIPS

- Social media can be an effective communication tool between board members and their constituents, but you must use it judiciously.
- You are setting an example for students in your speech and conduct.
- Typically, the chair is the designated spokesperson for the board – check your board policy manual.

QUESTIONS?