

**Transylvania County Schools  
School Board Member Training**

*Rights and Responsibilities*

December 19, 2022

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**Road Map for Success**



- Part I:** Legal Considerations and Best Practices
- Part II:** Protected Rights of Students, Employees and Parents
- Part III:** Ethics Laws and Conflicts of Interest
- Part IV:** Other Legal Duties and Responsibilities of School Board Members (for information only)

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**Part I**

**Legal Considerations & Best Practices**

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**School Board Landscape**

Primary Roles:

- Hire Superintendent;
- Hire and Fire Other Employees Upon Superintendent's Recommendation;
- Set Policies;
- Hear Appeals and Make Final Decisions; and
- Make Final Budget Decisions & Provide Financial Oversight.

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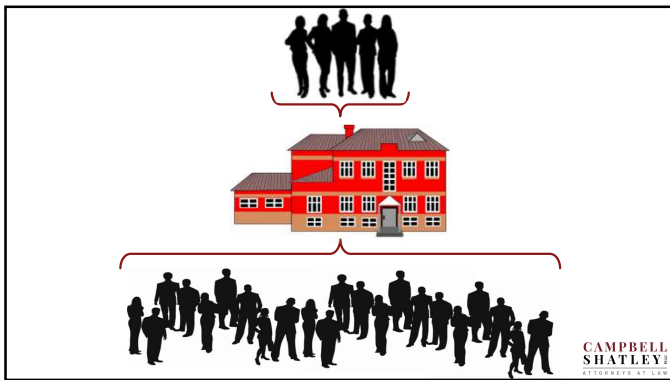
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- N.C.G.S. 115C-40 provides that a local board is a "corporate body." As a corporate body, the Board has no legal existence apart from its members or committees.
- Further, the Board has no authority to act outside of a meeting and members have no authority to act on behalf of the Board unless first authorized to do so.

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## Duty to Act Only as a Corporate Body, Not Individually

- Because of its corporate nature, a county Board of Education can exercise its powers only in a regular or special meeting attended by a quorum of its members and **cannot perform its functions through its members acting individually, informally, and separately.**

*Iredell County Board of Education v. Dickson*, 235 N.C. 359 (1952).

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## What is a Public Meeting?

- A meeting of a majority of Board Members (or a committee formed by the Board regardless of the number of Board Members) involving Board action, deliberation and information gathering.
- "Meeting" does **NOT** include non-School Board events/social/ceremonial gatherings or meetings of less than a majority of Board Members.
- HOWEVER, less than a majority cannot meet if the meeting is **intended to circumvent the law:**
  - to avoid public debate; ❌
  - to obtain agreement on an outcome; ❌
  - for the Superintendent to inform / seek input; ✅
  - for Board members to ask questions / get info. ✅

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## Remote Meetings

- NC State of Emergency for Covid-19 ended on August 15, 2022.
- Streaming/recording meetings is permitted but not required.
- If applicable, notice should state that the meeting will be streamed and should set out how the public can access the meeting remotely.



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## Rules for "Remote Meetings" post State-of-Emergency

- The Open Meetings law recognizes "electronic meetings" where everyone participates remotely by some means.
- Board Policy 2302:
  - The Board will **not hold wholly remote meetings** in the absence of a state- or locally-declared emergency.
  - The Board authorizes **remote participation by individual members** . . . in any meeting of the Board that is not a hearing or other quasi-judicial proceeding.

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## Remote "Participation" Board Policy 2302

**D. Procedure for Remote Participation**

1. A member of the board who is prevented from physically attending may participate in a meeting remotely if they notify the board chair and the superintendent at least four hours in advance of the meeting so that necessary arrangements can be made.
2. Remote participation shall not be used for the Board member's convenience or to avoid physical attendance.
3. All votes must be by voice vote.
4. **Remote participation is limited to a maximum of 3 meetings. Additional permission requires a 2/3 vote of the Board.**

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## You MUST Vote (unless recused)

- ❖ Board Policy 2342
- ✓ Normally a voice vote
- ✓ A member can request a "show of hands"
- ✓ No secret ballots
- ✓ Members must vote unless
  - conflict of interest
  - cannot remain impartial in a hearing
  - The reason for a recusal must be stated before the vote and recorded in the minutes



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## Duty to Make Hiring and Firing Decisions

- Local Boards of Education are authorized to make hiring (and firing) decisions **upon the recommendation of the Superintendent only.**

See e.g., N.C. Gen. Stat. § 115C-315(b).



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## Duty to Exercise Certain Judicial Functions

- The Board is called upon to conduct administrative hearings and decide matters in a judicial capacity, including in the following types of cases:
  - Dismissal and demotion of career and mid-contract employees;
  - Recommendations to not renew an administrator's contract;
  - Suspension and expulsion of students;
  - Student admission and assignment appeals; and
  - Appeals from final administrative decisions.

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## Duty to Maintain Impartiality in the Exercise of Judicial Functions

- The Board has a duty to maintain impartiality as a part of its judicial function.
- The Fourteenth Amendment to the U.S. Constitution guarantees the right to "due process" before a liberty or property interest can be taken away. The right to due process includes the right to a **fair hearing before an impartial decision-maker.**

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**Duty to Maintain Impartiality in the Exercise of Judicial Functions**

- When performing their judicial function during a Board hearing and resulting deliberations, Board Members must act impartially and in a fair manner.

*Crump v. Board of Education*, 93 N.C. App. 168, aff'd, 326 N.C. 603 (1990).



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**Duty to Maintain Impartiality in the Exercise of Judicial Functions**

- Members must be able to set aside their prior knowledge and preconceptions concerning the matter at issue and base their considerations solely upon the evidence presented at the hearing.

*Crump v. Board of Education*, 93 N.C. App. 168, aff'd, 326 N.C. 603 (1990).



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**Duty to Maintain Impartiality in the Exercise of Judicial Functions**

- Mere familiarity with facts concerning a charge against a person or prior involvement in the case does not automatically indicate bias. However, a fixed decision, made prior to the hearing, to vote in a particular way is impermissible bias.

*Crump v. Board of Education*, 93 N.C. App. 168, aff'd, 326 N.C. 603 (1990).



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**Duty to Maintain Impartiality in the Exercise of Judicial Functions**

- The bias of a single Board Member is sufficient to taint the hearing process and deprive an individual of due process. This is true regardless of the impact, if any, of that bias on the Board's final decision.

*Crump v. Board of Education*, 93 N.C. App. 168, aff'd, 326 N.C. 603 (1990).



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**Duty to Maintain Impartiality in the Exercise of Judicial Functions**

- If a Board determines that a member is not impartial on a matter that is before the Board for hearing, the Board may disqualify the member from the hearing.

54 Op. N.C. Att'y. Gen. 86 (1985).



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**Employee Investigation/Discipline Milestones**

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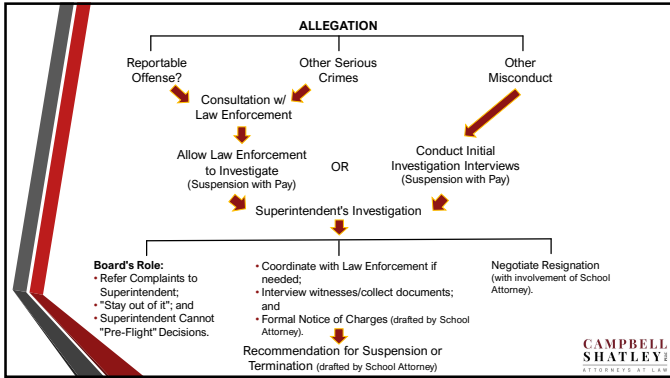
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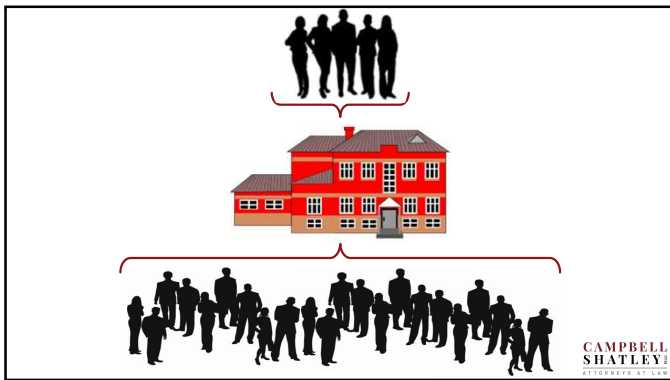
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- What are "public records"?
- What is "not subject to disclosure"?
- Responding to requests generally.
- Responding to "those uncivilized folk among us who are convinced that you spend a majority of your workday determining how to destroy, hide, and falsify public records . . . and those who are simply impatient and/or don't really know what they want in the first place. Bless their hearts!"



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### What is a "Public Record"?

- Our courts have:
  - Ruled that the statute applies to any records created or kept, merely "carrying out the agency's lawful duties";
  - Applied a very broad definition and focused more on the exceptions; and
  - Been reluctant to recognize any exceptions outside those in existing statutes.
- The "form of" the record is irrelevant. "What the document says" is the test.



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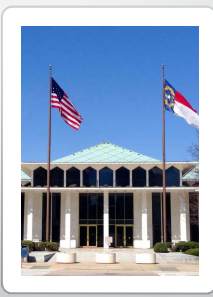

### Common Statutory Exceptions:

**Student Records**

- Education records of a student or prospective student and personally identifiable information under FERPA are not considered public records.

**Personnel Records**

- Most information on an employee or applicant, gathered by the employer, regarding the employee's performance, evaluation and/or disciplinary action is likely to be a personnel record. This can include records outside of the central office personnel file.

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**Common Statutory Exceptions:**

Attorney-Client Communication

- Communications from the Attorney to the client regarding legal matters.

Trial Preparation Materials

- In order to be excluded, trial prep material must be prepared in anticipation of legal proceedings and include mental impressions and opinions of the author.

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**Board Policy 2125/7315: Confidential Information**

Employees and Board members "have an absolute duty to maintain the confidentiality of records as required by law."

**A. Personnel Files**

It is a criminal violation for an employee or board member to do either of the following:

1. Knowingly, willfully, and with malice permit any unauthorized person to have access to information contained in a personnel file; and
2. Knowing and willfully examine, remove, or copy a personnel file that he or she is not specifically authorized to access pursuant to G.S. 115C-321.

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**Board Policy 2125/7315: Confidential Information**

Employees and Board members "have an absolute duty to maintain the confidentiality of records as required by law."

**B. Student Records**

Employees and board members shall safeguard the confidentiality of student records as provided in policy 4700, Student Records.

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**FERPA "don't go there".**

Knock, knock.  
Who's there?  
FERPA.  
FERPA, who?  
  
I'm sorry, I can't  
tell you that.



someecards  
user card

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**Letter to Wagoner, from LeRoy S. Rooker,  
Director, Family Policy Compliance  
Office, March 10, 1999.**

- FERPA does permit the nonconsensual disclosure of information from education records in certain limited circumstances.
- However, none of these circumstances permits nonconsensual disclosure of education records to the public, even if a parent or student has made certain claims in public about the educational agency or institution or certain of its employees or representatives. This restriction applies to educational agencies and institutions even if the information could be obtained from another source.

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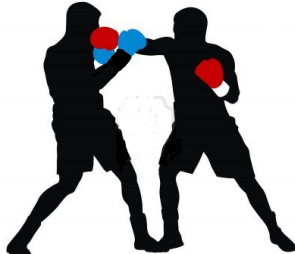
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**Duck, Pivot, & Punch**



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## Duck, Pivot, & Punch



- Duck and Pivot: "In accordance with federal law we cannot discuss specific student matters. However, we take student safety very seriously and work hand-in-hand with law enforcement anytime a serious issue arises. In addition, school policies allow for short- and long-term suspensions of students when necessary to maintain order and safety in our schools."
- Punch: "We know of no current safety issues at the High School."

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## Public Comment

- Opportunity for the Board to hear from the public.
- Board members should not respond but may ask for clarification.
- NOT a "question and answer session".
- If you believe a response is needed, normally consult with the Chair and Superintendent after the meeting.



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## Public Comment

- Board members must have thick skin.
- Only truly "personal attacks" against Board members or disruptions can be stopped.
- Personnel complaints and student matters cannot be responded to during public comment so speakers are asked speak with the Superintendent per policy.



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**The Mirrored Shield**

Deal with the ISSUE

NOT the form of Social Media



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**Fight Back!?**

- 1) Ask yourself: Is anyone even reading this? Who cares? Am I really harmed?
- 2) If a response is needed, make it targeted to the **audience you care about**.
- 3) Options include:
  - a) Individual phone calls, emails or letters to set the record straight
  - b) Cease and desist letter from School Attorney or private attorney?
  - c) Responsive postings on the same social media site?



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**Attention!**

SOCIAL MEDIA AND PUBLIC RECORDS IN 3 LESSONS!



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## Lesson 1

Don't put it in writing if you would be embarrassed to read it on the front page of the newspaper.



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## Lesson 2

Assume You Are Being Recorded, because . . .  
You Are Being Recorded!

Don't get caught being audio or video taped  
if you would be embarrassed to see or hear it as  
a news story on television.



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## Lesson 3

DON'T BE FOOLISH IN CYBERSPACE

- ALL electronic communications are more permanent than Samsonite Luggage!



- BEWARE of your Facebook "Friends".

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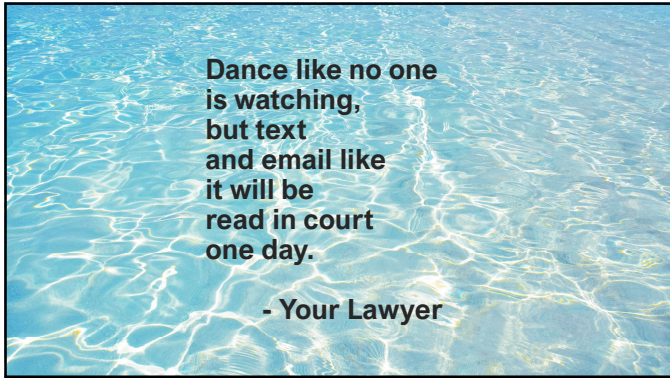
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**Closed Session Motion  
(most frequently used subsections)**

- Chairperson: I will entertain a motion for the Board of Education to go into closed session pursuant to G.S. § 143-318.11 for the following purposes:  
  
(Announce ALL that Apply)

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**Closed Session Motion  
(most frequently used subsections)**

1. Under subsection (a)(1) to prevent the disclosure of privileged or confidential student information pursuant to 20 U.S.C. 1232g (FERPA) and G.S. § 115C-402(e) [includes student discipline and student transfers/releases];
2. Under subsection (a)(1) to prevent the disclosure of privileged or confidential personnel information pursuant to G.S. § 115C-319-321 [includes employee matters];
3. Under subsection (a)(3) to discuss matters protected by the attorney-client privilege [includes attorney update];

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**Closed Session Motion  
(most frequently used subsections)**

4. Under subsection (a)(3) to receive advice from the School Board Attorney regarding the following lawsuit(s): [list all lawsuits to be discussed];
5. Under subsection (a)(5) to discuss the acquisition of real property;
6. Under subsection (a)(5) to discuss the terms of a contract for employment [includes discussing contract terms for new employees];
7. Under subsection (a)(6) to hear a complaint or grievance, by or against an employee.

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**Closed Session Motion  
(most frequently used subsections)**

Sample motion when closed session involves student issues, personnel issues, and attorney updates:

*I move that the Board of Education go into closed session pursuant to G.S. § 143.318.11 for the following purposes: under subsection (a)(1) to prevent the disclosure of privileged or confidential student information pursuant to 20 U.S.C. 1232g (FERPA) and G.S. § 115C-402(e); under subsection (a)(1) to prevent the disclosure of privileged or confidential personnel information pursuant to G.S. § 115C-319-321; and under subsection (a)(3) to discuss matters protected by the attorney-client privilege.*

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**Best Practice: Complaints and Concerns (Board Policy 1742/5060)**

- Board policy states that each complaint or concern should be addressed "at the level closest to which the complaint originated."
- Board members should assist individuals in identifying the correct administrator to address their concern.
- Refer student/personnel issues requiring investigation, research and/or study to the Superintendent for action or recommendation.



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### Best Practice: Role of Board Members (Board Policy 2122)

- Board policy states an individual Board member will refer a complaint to the appropriate school administrator, Superintendent, and/or Board attorney.
- "Individual board members will refrain from taking individual action with regard to such complaints other than referring them to the proper administrative employee."



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### Best Practice: Complaints and Concerns Bottom-Line Advice

- 1 Listen to concerns but don't promise specific outcomes or results.
- 2 Never promise to "keep someone's name confidential" – you can't!
- 3 Educate employees and others on the proper procedure and notify the appropriate administration of the concern / don't "rally the troops."
- 4 Always give the Board Chair, Vice Chair, and/or Superintendent a "heads up" about issues that sound significant.



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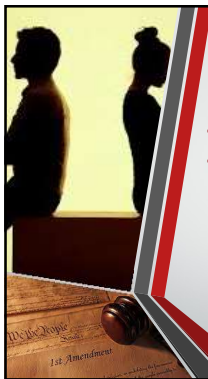
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### Best Practice: When Board Members Disagree

- Board Members retain their First Amendment Right to disagree.
- However,
  - Do not act to undermine the difficult decisions being made by the full Board and administration.
  - It is not appropriate to go directly to a staff member other than the Superintendent with a serious concern.
  - If you have a concern with the Superintendent, you should talk with the Chair, Vice Chair, and Board Attorney, if legal.
  - Do not foster division among staff by meeting privately with employees that agree with your position and/or solicit them to file grievances or undermine their superiors.
  - If you are unhappy, ask for a Board discussion on the topic with advance notice to the Chair, Vice Chair, and Superintendent.



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### Best Practice: "Information" v. Studies or Research

- Board members are free to request basic information from school employees.
- **Best practice is to request information directly from the Superintendent.**
- However, remember:
  - **Only a majority of the Board should direct the Superintendent to conduct a study or do research on an issue.**
  - Board Members should not request access to employee information without alerting the Superintendent and the Chair.
  - It is not the job of Board Members to "investigate" matters.



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### Best Practice: Setting the Board Meeting Agenda (Policy 2330)

- Board Members must contact the Chair or Superintendent to request that items be added to the Board of Education meeting agenda at least 6 working days before a meeting.
  - Board Members should receive copies of proposed agendas 6 working days prior to a meeting.
  - New policies / budget items must wait until the next meeting for action.
  - However, emergency / time sensitive issues will be addressed case-by-case.
  - After the agenda is approved, new items require 2/3 vote to add.
  - Work sessions are the best time to discuss / brainstorm topics.



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### Best Practice: School Visits Beyond Public Events

- Board Members are free to visit schools in the district.
- However, remember:
  - No advance notice to the principal is needed when the Board Member has pre-arranged to volunteer or is visiting family members.
  - Board Members should provide the principal with advance notice for other visits.
  - Board Members should provide the Superintendent with advance notice if the purpose of the visit is to obtain information.
  - It is not the job of Board Members to investigate matters at schools.



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## Board / Administrative Budget Review

- Local Budget Calendar
  - Budget review – Fall and Spring
  - Superintendent submits budget to School Board by May 1
  - Board submits budget to county by May 15
  - Final action by county by July 1
- State Budget and Federal Allotments??
- Budget allocations by fund / purpose / program / object



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## Part II

### Protected Rights of Students, Employees and Parents

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## Qualified Immunity and Public Official Immunity

- **Qualified immunity** protects individual government officials from civil damages for **Federal Constitutional or Statutory violations** to the extent the officials do not violate clearly established constitutional rights.
- **Public official immunity** protects individual government officials from civil damage for **State Constitutional, statutory or negligence law violations taken within the scope of duties** unless the action was malicious or corrupt.

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## Qualified Immunity and Public Official Immunity

- If immunity is NOT available under the facts of the case – members of the Board of Education could be personally liable for such violations.
- Insurance policies do NOT typically cover damage awards for civil rights violations.
- *Yes!, your house, your boat, and your savings account could be at risk if you intentionally violate the law.*



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## Student Surveys

### The "Don'ts"



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## Survey of Students Board Policy 4720

- Tracks the federal "Protection of Pupil Rights Amendment".
- Addresses a list of "protected topics" for mandatory surveys and "any instructional materials used in any such survey".
- School district must notify parents "at the beginning of the year" of dates of surveys and the right to parental review.

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**Survey of Students  
Board Policy 4720**

- Parents must provide prior written consent for any required "Department of Ed." funded survey.
- Parents must be allowed to opt out of any other survey on "protected topics".
- Parents can review any other "third-party" survey upon request.

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**Survey of Students  
Board Policy 4720**

- The "Protected Topics"
  - ✓ Political affiliations or beliefs of the student or the student's parent;
  - ✓ Mental or psychological problems of the student or the student's family;
  - ✓ Sex behavior or attitudes;
  - ✓ Illegal, anti-social, self-incriminating, or demeaning behavior;

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**Survey of Students  
Board Policy 4720**

- The "Protected Topics"
  - ✓ Critical appraisals of other individuals with whom respondents have close family relationships;
  - ✓ Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
  - ✓ Religious practices, affiliations, or beliefs of the student or the student's parent; or
  - ✓ Income (other than that required by law to determine financial aid).

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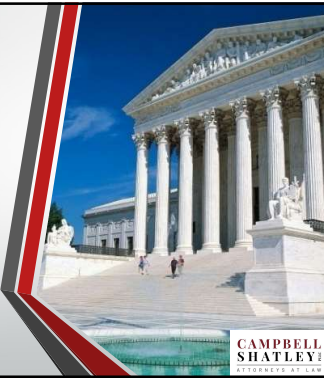
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**14<sup>th</sup> Amendment Rights**

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."



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**14<sup>th</sup> Amendment Rights**

It is unlawful to discriminate or harass a student or employee on the basis of a **protected category**:

- Race
- Sex
- Color
- National origin
- Religion
- Disability



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**Actions "On the Basis of Sex"**

Title IX of the Education Amendments of 1972:


- Prohibits discrimination on the basis of sex in any education program or activity offered by public schools.

Title VII of the Civil Rights Act of 1964:

- Prohibits discrimination on the basis of sex in employment practices.

**Bostock v. Clayton County (United States Supreme Court 2020):**

- Discrimination based on sexual orientation or gender identity inherently involve treating individuals differently "because of their sex" and is prohibited by the Civil Rights Act of 1964.



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**"On the Basis of Sex"**  
**Grimm v. Gloucester County BOE**

- The US Court of Appeals for the Fourth Circuit (which covers North Carolina) held that a school board's policy requiring a transgender student to use the restroom consistent with their "biological gender" violated Title IX.
- The Supreme Court of the United States declined to review the holding in *Grimm*. Thus, it is law in North Carolina.
- The Court also found a violation of Title IX where the school system refused to update the transgender student's school records to list him as male after he received an amended birth certificate from the state.

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**Student and Employee Rights to be Free from Bullying and Harassing Behavior**  
**G.S. 115C-407.15 & Policy**

G.S. 115C-407.15 states that "[b]ullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability."

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**Parental Rights Under the U.S. Constitution**

The right to direct the upbringing and education of one's children is subject to reasonable state regulations and does not include the legally recognized right to veto or "opt out" from curricular decisions of school officials. For example:

- Compulsory attendance at a school assembly on AIDS awareness did not unconstitutionally infringe parents' right to direct their child's education because **that right does not include the right to dictate the curriculum at the public school** to which they have chosen to send their children. (*Brown v. HSS Productions*).
- Parent did not have the right to exempt her child from participating in middle school health curriculum because **parents do not have a fundamental right to tell a public school what their child will and will not be taught.** (*Leebaert v. Harrington*).

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## Parental Rights Under the U.S. Constitution

Parental rights may be broader when a law or policy interferes with both:

- 1) the parents' interest in directing the upbringing of their children
- AND
- 2) their **free exercise of religion**.

This is an emerging area of the law.

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## Religious Rights in Schools:

❖ **Generally protected by courts:** "Infringing on Individual Rights" or "Endorsing a Religion"

❖ **Not General Protected by courts:** "Exposure to Things Contrary to One's Religious Beliefs"

- Jehovah's Witnesses are not required to **salute** the American flag. (*Barnette v. West Virginia State Board of Education*).
- Exemption given from **mandatory age attendance** for Amish students at age 14. (*Wisconsin v. Yoder*).
- Religious objection to compulsory military **training**. (*Spence v. Bailey*).
- Religious objection to **wearing** immodest apparel in coeducational physical education class. (*Moody v. Cronin*).

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## Religious Rights in Schools Recognized by Statutes and Statutory Opt-Outs in North Carolina



- Students may engage in prayer and religious activities per G.S. 115C-407.30.
- Parental grant or denial for their student's participation in any portion of sex education instruction per G.S. 115C-81.30.
- Religious objection to immunization requirements for enrollment in public schools per Chapter 130A of the General Statutes.

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### Social Emotional Learning and the General Statutes

- Per Students with Disabilities under IDEA and Section 504 may have social / emotional delays and deficits that IEP plans must address
- The N.C. Healthful Living Curriculum must include instruction on mental and emotional health. G.S. 115C-81.25
- Both reproductive health and safety education programs must include instruction on health and emotional problems. G.S. 115C-81.30
- Almost 20% students in N.C. have a mental health and/or substance abuse disorder. N.C. School Mental Health Initiative.



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### Part III

### Ethics Laws and Conflicts of Interest



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### Ethics

- Generally speaking, most people think of "ethics" as referring to questions of right and wrong.\* Accepted ethical principals include:
  - Trustworthiness;
  - Respect;
  - Responsibility/accountability;
  - Fairness;
  - Caring; and
  - Civic virtue and citizenship.



\*A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials* (2<sup>nd</sup> ed.) UNC School of Government (2010).



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**Code of Ethics for School Board Members (Policy 2120)**

The board recognizes that, collectively and individually, all members of the board must adhere to a code of ethics as required by G.S. 160A-86 and G.S. 115C-47(57).

**A. Board Member Ethical Requirements**

The following standards will guide each board member in the performance of his or her official duties:

1. the need to obey all applicable state and federal laws regarding official actions taken as a board member;

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**Code of Ethics for School Board Members (Policy 2120)**

2. the need to uphold the integrity and independence of the board member's office;
3. the need to avoid impropriety in the exercise of the board's and board member's official duties;
4. the need to perform faithfully the duties of the office; and
5. the need to conduct the affairs of the board in an open and public manner, complying with all applicable laws governing open meetings and public records.

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**Code of Ethics for School Board Members (Policy 2120)**

**B. Specific Board Member Commitments**

1. attend all regularly scheduled board meetings insofar as possible and become informed concerning the issues to be considered at those meetings;
2. endeavor to make policy decisions while always keeping in mind the objective of providing students the opportunity to receive a sound basic education and only after full discussion at publicly held board meetings;
3. render all decisions based on the available facts and independent judgment and refuse to surrender that judgment to individuals or special interest groups;

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**Code of Ethics for School Board Members (Policy 2120)**

4. model civility and integrity to students, employees, and all elements of the community by encouraging the free expression of opinion by all board members; engaging in respectful dialogue with fellow board members on matters being considered by the board; and complying with all board policies that set expectations for conduct, regardless of whether the policies expressly require compliance by board members;
5. respect the confidentiality of information that is privileged under applicable law and refrain from unauthorized disclosure of matters discussed in closed session;
6. work with other board members to establish effective board policies and to delegate authority for the administration of the schools to the superintendent;

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**Code of Ethics for School Board Members (Policy 2120)**

7. communicate to other board members and the superintendent expressions of public reaction to board policies and school programs;
8. learn about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by the state and national school boards associations;
9. comply with North Carolina General Statute 115C-50 by earning the required 12 hours of training every two years;
10. comply with G.S. 160A-87 by earning two hours of ethics education within 12 months of election or appointment to the board;

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**Code of Ethics for School Board Members (Policy 2120)**

11. support the employment of those persons best qualified to serve as school employees and avoid allowing personal relationships and biases to influence decision making;
12. refrain from investigating or attempting to resolve complaints received personally, but instead direct the complainant to follow the board's complaint or grievance process to resolve concerns;
13. avoid being placed in a position of conflict of interest and refrain from using the board member's position on the board for personal or partisan gain;

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**Code of Ethics for School Board Members (Policy 2120)**

14. as stated in board policy 2121, Board Member Conflict of Interest, refrain from participating in, deliberating on, voting on, or attempting to influence any person with respect to any matter pertaining to the employment with the board of the board member's spouse, including but not limited to hiring, transfer, promotion, demotion, suspension, discipline, performance evaluation, or review or investigation of a complaint of any kind;

15. take no private action that will compromise the board or administration; and

16. remember always that a board member's first and greatest concern must be the educational welfare of the students attending the public schools.

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**Willfully Failing to Discharge Duties**

- N.C. Gen. Stat. Sec. 14-230

It is a Class 1 misdemeanor for School Board Members to willfully omit, neglect, or refuse to perform the duties of office. An additional sanction is removal from office.

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**State Conflict of Interest Laws**

- \*N.C. Gen. Stat. § 14-234. Prohibition Against Benefiting from Public Contracts.
- N.C. Gen. Stat. § 14-234.1. Misuse of Confidential Information.
- \*N.C. Gen. Stat. § 14-234.2. Criminal Conflicts.
- \*N.C. Gen. Stat. § 14-234.3. Participating in Contracts benefiting Nonprofits.
- \*N.C. Gen. Stat. § 133-32. Accepting Gifts and Favors.

\* Addressed in this presentation.

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## Prohibition Against Benefiting from Public Contracts – G.S. 14-234(a)(1)

- **Prohibition #1**  
 School Board Members and school system employees **involved in making or administering a contract** on behalf of the Board **may NOT derive a direct benefit** from the contract (unless they fall under an exception).



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## Prohibition Against Benefiting from Public Contracts – G.S. 14-234(a)(2)

- **Prohibition #2**  
 A School Board Member or a school system employee **who will derive a direct benefit** from a contract with the School Board, but who is **not involved in making or administering the contract**, shall **not attempt to influence** any other person who is involved in making or administering the contract.

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## Prohibition Against Benefiting from Public Contracts – G.S. 14-234(a)(3)

- **Prohibition #3**  
 School Board Members and school system employees may NOT **solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing or attempting to influence the award** of a contract by the School Board he or she serves.

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**Prohibition Against Benefiting from Public Contracts – Definitions**

1) A School Board Member or school employee is involved in "making" a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract.

- Board Members cannot simply decide not to vote on a contract and get around this prohibition.



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**Prohibition Against Benefiting from Public Contracts – Definitions**

2) Those "administering" a contract are those who oversee the performance of the contract or those who have authority to make decisions about a contract.

- This does not include those performing ministerial duties related to the contract.

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**Prohibition Against Benefiting from Public Contracts – Definitions**

3) A "direct benefit" is when the Board Member or covered employee, or his or her spouse:

- a) Has more than a 10% ownership or other interest in the company that is party to the contract;
- b) Derives any income or commission directly from the contract; or
- c) Acquires property under the contract.

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**Prohibition Against Benefiting from Public Contracts – Definitions**

4) A School Board Member or covered employee is NOT involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.

- A ministerial duty is one that does not require discretion.

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**Scenario #1**

Betty Board Member owns 100 shares of stock in Office Depot. Other than this, Betty has no connection with Office Depot. Is there a problem if the school system enters into a contract with Office Depot for the purchase of office equipment?

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**Scenario #1**

**Answer**

- Under G.S. 14-234, Betty's small investment in Office Depot would not be defined as deriving a direct benefit because she does not own 10% of the company. There is no problem with the school entering into a contract with Office Depot or with Betty voting on the proposed contract with Office Depot.

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**Scenario #2**

You are employed as a salesperson by ABC car dealership. Before you were elected to the School Board, you earned commission from selling vehicles to the school system.

1. After you are sworn in as a Board Member, may the school system continue to buy cars from ABC car dealership?
2. After you are sworn in, may you continue to receive commission for selling vehicles to the school system?
3. After you are sworn in, may your spouse, who is also a salesperson for ABC car dealership, receive a commission for selling vehicles to the school system?

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**Scenario #2**

**Answers**

1. The car dealership may still sell cars to the school system, assuming that you do not have more than a 10% ownership in the dealership.
- 2/3. You and your spouse may not earn commission selling cars to the school system. G.S. 14-234 (a1)(4) provides that a public officer or covered employee derives a direct benefit from a contract if the Board Member or spouse derives any income or commission directly from the contract.

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**Scenario #3**

After you are sworn in as a Board Member, may your brother, who also works for ABC car dealership, receive commission from selling vehicles to the school system?

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**Scenario #3**

**Answer**

- G.S. 14-234 does NOT prohibit your brother from receiving a commission from a sale to the School Board. The statute only prohibits Board Members, covered employees, and their spouses from deriving a direct benefit from contracts with the School Board.

*Is anyone having a problem with this last answer?*

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**Scenario #4**

You own a party supply store and regularly sell balloons, paper products and banners to local schools. After you are sworn in as a Board Member, may you continue to sell items to local schools?

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**Scenario #4**

**Answer**

- No. You are the owner. You will receive a direct benefit from selling items to schools and individual schools are NOT legal entities. Only the "Board of Education" is a recognized legal entity, and you are a Board Member. It does NOT matter if you sell items "at cost."

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**Scenario #5**

You own a landscaping business. After you are sworn in as a Board Member, may you donate your time to plant trees at the high school from your business?

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**Scenario #5**

**Answer**

- Yes. You can donate your time, money and resources to the school district. Remember, however, you must donate items. You cannot charge anything for the trees. The issue is not "profit." Selling the trees to the school district at, or even below, your actual cost would violate G.S. 14-234.

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**Exceptions to the Prohibition Against Benefiting from Public Contracts**

Relevant Exception:

The statute does not prohibit the School Board from employing:

- 1) The spouse of a School Board Member; or
- 2) The Superintendent.



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## What Happens if a Board Member Engages in an Activity Prohibited by this Statute?

- Sanctions
  - Violation of the statute is a class 1 misdemeanor criminal offense punishable by a fine and sometimes imprisonment depending upon the offender's prior criminal record.

See also N.C. Gen. Stat. § 14-234 and § 115C-48.

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## Other Sanctions

- G.S. 14-234(f) provides that a contract entered into in violation of this section is void.
- *Gibbs v. Mayo*, 162 N.C. App 549 (2004). The NC Court of Appeals held that a member of the Hyde County Board of Commissioners was required to return over \$270,000 he received in payment for repairs and renovations he performed on two government facilities in Hyde County in violation of G.S. 14-234. According to the court, the Board Member must "suffer the loss incident to his breach of his public duty."

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## Misuse of Confidential Information

N.C.G.S. 14-234.1

### 14-234.1. Misuse of confidential information.

(a) It is unlawful for any officer or employee of the State or an officer or an employee of any of its political subdivisions, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information which was made known to him in his official capacity and which has not been made public, to commit any of the following acts:

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**Misuse of Confidential Information**  
 N.C.G.S. 14-234.1

(1) Acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or official action; or

(2) Intentionally aid another to do any of the above acts.

(b) Violation of this section is a Class 1 misdemeanor. 146; 1994, Ex. Sess., c. 24, s. 14(c.)

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**Criminal Conflicts**  
 G.S. 14-234.2

- Board Members are prohibited from soliciting or receiving personal financial gain from their position through intimidation, undue influence, or misuse of employees.
- Personal financial gain does not include financial gain received for lawfully acting in the individual's official capacity or with approval of the political subdivision in which the individual serves.
- Violation is a Class H felony, punishable by imprisonment ranging from 4 to 25 months.

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**Board Contracts with Nonprofits**  
 G.S. 14-234.3

- Applies to "public officials" including School Board Members and Superintendents.
- Public officials cannot knowingly participate in making or administering contracts with a nonprofit with which they are associated.
- Making or administering contracts includes awarding money through grants, loans, or other appropriations.
- Board Members connected to a nonprofit contracting with the Board must record their recusal with the Board Clerk before the Board enters the contract.

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## Board Contracts with Nonprofits

Making or administering a contract includes:

- Deliberating or voting on the contract;
- Attempting to influence any other person who is deliberating or voting on the contract; or
- Soliciting or receiving any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the board to the nonprofit.

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## Board Contracts with Nonprofits

Contracts in violation are void; however, they may remain in effect until an alternative can be arranged if:

- Immediate termination would harm public health or welfare; and
- The continuation is approved by the chair of the Local Government Commission following a request from the board to continue the contract.

Violations of this statute are a Class 1 misdemeanor, unless the contract is between the board and banks, savings and loan associations, and public utilities; is for an interest in property conveyed through condemnation; or is an employment relationship between the Board and the spouse of a Board Member or Superintendent.

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## Accepting Gifts and Favors from Contractors

### • Prohibitions

- 1) Board Members and covered employees are prohibited from accepting gifts and favors from contractors and potential contractors with the Board.
- 2) Contractors are prohibited from giving gifts and favors to Board Members and covered employees.



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## Accepting Gifts and Favors from Contractors



- Covered Persons

This prohibition applies to School Board Members and any officers or employees of a Board of Education who:

- 1) Prepare plans, specifications or estimates for public contracts;
- 2) Award or administer public contracts; or
- 3) Inspect or supervise construction.

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## Accepting Gifts and Favors from Contractors

- Covered Persons

The prohibition also extends to prohibit the contractors, subcontractors or suppliers from giving gifts and favors to public officials if they:

- 1) currently have a contract with the Board;
- 2) have performed under a contract with the Board during the past year; or
- 3) anticipate bidding on a contract with the Board in the future.

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## Be Careful! Vendors will get you in trouble!!

- Winner of the "gift card of the month" drawing?
- Free lunch or dinner to "hear about our services"?
- All expense paid trip to an "educational seminar"?
- Sporting events / concerts etc. "during" a conference.



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## Accepting Gifts and Favors from Contractors

- Exceptions

The following gifts are not covered by the statute:

- 1) Gifts and honorariums for participating in meetings;
- 2) Advertising items or souvenirs of nominal value;
- 3) Meals furnished at banquets;



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## An Expensive meal at the Steak House is NOT a "BANQUET"!



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## Accepting Gifts and Favors from Contractors

- 4) Donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations;
- 5) Customary gifts and favors between employees or officers and their friends, relatives, spouse, minor children or members of their household where it is clear that it is the relationship rather than the business of the individual that is the motivating factor for the gift or favor; and

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### Accepting Gifts and Favors from Contractors

- 6) Gifts permitted to legislators, legislative employees and other state agency officials and employees covered by the State Ethics Act, N.C. Gen. Stat. 138A-32, including:
  - a) Food and beverages for immediate consumption in connection with public events;
  - b) Informational materials relevant to the official's duties;
  - c) Reasonable actual expenses for attending educational meetings, speaking at a meeting, attending organizational meetings of which the official's organization is a member;
  - d) A plaque or non-monetary memento;
  - e) Gifts accepted on behalf of the school system for the benefit of the school system;

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### Accepting Gifts and Favors from Contractors

- f) Anything made available to or distributed to the general public;
- g) Gifts from family members or members of the same household;
- h) Gifts given as part of a business, civic, religious, fraternal, personal or commercial relationship if not related to the public service and the gift was not given for the purposes of lobbying;
- i) Food and beverages for immediate consumption if not given by a lobbyist, or if provided during a conference or meeting under certain circumstances; or
- j) Food and beverages for immediate consumption at an organized gathering which the individual is invited to attend for purposes related to his or her official duties.

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### Accepting Gifts and Favors from Contractors

- Sanctions
  - 1) Violation is a Class 1 misdemeanor for the School Board Member, the school employee and the contractor.
  - 2) Prohibited gifts and favors cannot be claimed as a tax deduction.



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## Accepting Gifts and Favors from Contractors

- Interpretations

The North Carolina Attorney General has interpreted this statute as prohibiting those doing business or seeking to do business with the Board, including your Board Attorney and other independent contractors, from taking Board Members or other public officials out for meals. (See May 13, 1993 Attorney General opinion.)

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## Federal Conflict of Interest Rules

- Source: IRS "Uniform Guidance" (UG).
- Applies to employees, officers and agents participating in the selection, award, or administration of a contract involving federal funds.
- Examples in the K-12 context:
  - Title I, II, III;
  - IDEA;
  - Child Nutrition Act; and
  - CARES Act and Elementary and Secondary Schools Emergency Relief.

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## Federal Conflict of Interest Rules

- Requirements:
  - Have a written policy including the UG rules (Board Policy 8305, Federal Grant Administration); and
  - Purchasing Rules (Board Policy 8305-R, Federal Grant Administration Procurement Procedures).

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## Federal Conflict of Interest Rules

- Requirements for Board Members:
  - No employee, member, officer or agent may participate in selection, award, or administration of a contract supported with federal funds if "he or she has a real **or apparent** conflict of interest."
  - Real or apparent conflict of interest – occurs when an officer, agent, or employee, his/her family, his/her business or employer, or any other parties would gain a financial or other interest or "tangible personal benefit" from a contract award.

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## Federal Conflict of Interest Rules

- Requirements for Board Members:
  - Board Members will not deliberate, vote on, or otherwise participate in a contract supported, in whole or part, by federal funds when the member has a conflict that violates federal rules.
- Consequences for violation:
  - For the district, range from audit findings up to loss of federal funds.
  - For Board Member, up to possible criminal referral.

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Federal Uniform Guidance	State Rules
Only applies to contracts and purchases involving federal money/grants.	Applies to all contracts and purchases
Applies to benefit obtained by the employee or board member, his/her immediate family, his/her partner, or his/her employer	Only applies to benefit obtained by the employee or Board member and his/her spouse
Benefit standard is broad — any financial or other interest in or a <u>tangible personal benefit</u>	Direct personal benefit is more specifically defined as three conditions and types of benefit (10% ownership or other interest in contracting entity, income or commission, or acquiring property)
Applies to any financial or other interest/tangible personal benefit <u>ever</u> received by a contractor	Public officers/employees cannot solicit or receive tangible benefits (gifts, favors, services, future employment) in exchange for awarding or influencing the award of a contract

## Comparison in Conflicts of Interests Standards

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**Federal Conflict of Interest Rules**

- Take-home messages:
  - Federal rules are more expansive than state rules (conflict of interest under state law will be a conflict under federal rules as well; not necessarily vice-versa).
  - UG rules are federal purchasing standards, but violations could implicate other federal or state criminal laws.
  - When in doubt, err on the side of caution and seek guidance.

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**Part IV**

**Other Legal Duties and Responsibilities of School Board Members**

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**Duty to Provide General Control and Supervision of All School Matters**



- State law provides that "all powers and duties conferred and imposed by law respecting public schools, **which are not expressly conferred and imposed upon some other official**, are conferred and imposed upon the board."
- School Boards have "general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units."

*N.C. Gen. Stat. § 115C-36.*

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## Duty to Provide General Control and Supervision of All School Matters

- **Example – Duty to Provide Financial Oversight**

- 1) Each local school system is required to have an annual financial audit of all accounts.
- 2) Local Boards of Education are to get a copy of the audit and have an obligation to review internal audit procedures and submit a plan for corrective action to the Local Government Commission.



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## Duty to Make Hiring and Firing Decisions

- Local Boards of Education are authorized to make hiring (and firing) decisions upon the recommendation of the Superintendent only.

See e.g., N.C. Gen. Stat. § 115C- 315(b).

- Failure to make decisions according to the appropriate procedure and for the appropriate reasons can result in personal liability for Board Members.

See *Chadwell v. Lee County School Board*, 535 F.Supp. 2d 586 (W.D.Va. 2008).

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## Duty to Make Hiring and Firing Decisions

- Board Policy 2010: Board and Superintendent Relations
  - The Board of Education recognizes the importance of an effective working relationship between the Board and Superintendent.
  - The Board further recognizes the distinct and separate areas of responsibility of the Board and Superintendent to the school district.
  - The Superintendent is responsible for the administration of the system of schools consistent with the Board's policies.

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**Duty to Provide an Adequate School System**

- Students in North Carolina have a state constitutional right to a "sound basic education." This is defined as:
  - 1) Sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;
  - 2) Sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation;

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**Duty to Provide an Adequate School System**

- Students in North Carolina have a state constitutional right to a "sound basic education." This is defined as:
  - 3) Sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and
  - 4) Sufficient academic and vocational skills to enable the student to compete with others in further formal education or gainful employment in contemporary society.

*Leandro v. State of North Carolina*, 346 N.C. 336 (1997).

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**Deminski v. State Board of Education**

- State Supreme Court held when a student is unable to access classroom instruction due to ongoing harassment, and the school district is deliberately indifferent to such conditions, the student has a claim under the State Constitution.
- "The government must provide a safe environment where learning can take place."

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### Duty to Participate in Certain Suits and Actions

- The local Board is required to institute suit to collect all monies due to it.
- The action of the local Board is presumed to be correct in all actions brought against it. The burden is on the complaining party to show that the Board erred.

*N.C. Gen. Stat. § 115C-44.*

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### Authority to Assign Students to Attendance Areas

- Local Boards of Education have "full and complete" authority to assign children to any school within its district and its assignment decision shall be final. The Board may not transfer its authority or delegate its duties regarding student assignment.

*N.C. Gen. Stat. § 115C-366(b).*

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### Authority to Assign Students to Attendance Areas

- If the local Board has divided the geographic area into attendance districts or zones, students shall be assigned to schools within such attendance districts.

*N.C. Gen. Stat. § 115C-367.*



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### Authority to Assign Students to Attendance Areas

- However, students may be assigned outside of such attendance districts:
  - 1) To attend a specialized school, such as a vocational school or a school operating programs for mentally and physically handicapped students;
  - 2) Temporarily due to the unsuitability of a school for its intended purpose;
  - 3) When necessitated by overcrowded conditions;

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### Authority to Assign Students to Attendance Areas

- However, students may be assigned outside of such attendance districts:
  - 4) When an assignment is made pursuant to a parental choice pursuant to a choice plan voluntarily adopted by the Board of Education; and/or
  - 5) For any other reason which the Board of Education in its sole discretion deems sufficient.

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### Authority to Assign Students to Attendance Areas

- No person may be refused admission or excluded from school on the basis of race, creed, color or national origin, and no attendance zone may be drawn for the purpose of segregating people from other races, creeds, etc.

*Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554, rehearing denied, 403 U.S. 912, 91 S. Ct. 2201, 29 L.Ed.2d 690 (1971).



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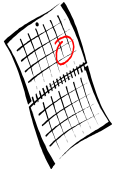
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### Duty to Determine the School Calendar



- The opening day for public schools may not be before the Monday closest to August 26, and school must end by the Friday closest to June 11, absent a waiver. Year-round programs are exempted.

*N.C. Gen. Stat. § 115C-84.2.*

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### Duty to Elect a Superintendent

- The only employee the Board hires without the Superintendent's recommendation is the Superintendent.

*N.C. Gen. Stat. § 115C-271.*

- The Board is required by law to have a Superintendent, whether permanent, interim, or acting.

*N.C. Gen. Stat. § 115C-275.*

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### Authority to Remove a Superintendent

The Board may remove a Superintendent during the term of his or her contract only pursuant to the provisions of N.C. Gen. Stat. § 115C-274.

**§ 115C-274. Removal.**

(a) Local board of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who shall fail or refuse to perform the duties required of him by law. In case the State Board of Education has sufficient evidence at any time that any superintendent of schools is not capable of discharging, or is not discharging, the duties of his office as required by law or is guilty of immoral or disreputable conduct, the State Board of Education shall report this matter to the board of education employing said superintendent of schools. It shall then be the duty of that board of education to hear the evidence in the case and, if after careful investigation it shall find the charges true, it shall declare the office vacant at once and proceed to elect a successor: Provided, that such superintendent shall have the right to try his title to office in the courts of the State.

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(b) If the superintendent shall fail in the duties enumerated in G.S. 115C-276(g), 115C-276(h), 115C-276(i), or any other duties as may be assigned him, he shall be subject, after notice, to an investigation by the State Board of Education or by his board of education for failure to perform his duties. For persistent failure to perform these duties, the State Board of Education may revoke the superintendent's certificate and the superintendent may be dismissed by his board of education.

(c) The identification by the State Board of Education of more than half the schools in a local school administrative unit as low-performing under G.S. 115C-105.37 is evidence that the superintendent is unable to fulfill the duties of the office, and the State Board may appoint an interim superintendent to carry out the duties of the superintendent under G.S. 115C-105.39, may revoke the superintendent's certificate under this section, may dismiss the superintendent under G.S. 115C-105.39, or may take any combination of these actions. (1955, c. 1372, art. 5, s. 25; art. 6, s. 4; 1981, c. 423, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 6.)

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### Authority to Make Rules Concerning the Conduct and Duties of Personnel

- This authority is carried out through the Board's policy making function.



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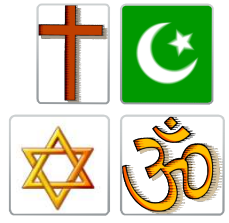
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### Duty to Ensure Freedom of Religion

- This state statutory requirement is consistent with the requirements of the United States Constitution in that it ensures both the freedom to practice one's own religion in the schools and prohibits coercion of students into religious practices.



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**Duty to Establish Alternative Learning Programs and Develop Policies and Guidelines**

- Each local School Board must establish at least one alternative program.
- The Board must adopt policies consistent with State Board of Education Standards to govern these programs and regularly assess the compliance and effectiveness of these programs.

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Questions?  
Comments?  
Rude Remarks?

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