



# **SCHOOL BOARD MEMBER ETHICS, RIGHTS & RESPONSIBILITIES**

## **TRANSYLVANIA COUNTY BOARD OF EDUCATION**

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# School Board Landscape


- Primary Role:
  - Hire a Superintendent
  - Hire and Fire Other Employees Upon Superintendent's Recommendation
  - Set policy
  - Hear Appeals and Make Final Decisions
  - Make Final Budget Decisions & Provide Financial Oversight

# Changing Dynamics\*

- There are more than 13,500 public school boards in the U.S.
- The highest % of School Boards oversee between 2,500 and 4,999 students.
- In Denver in 2015, the nine candidates for school board raised over \$1,000,000 dollars in campaign funds.
- School Boards account for \$700 Billion in annual spending
- Disagreements between school board members often provide front page news.

\*School Library Journal. January 2020



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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 regular meetings and members have no authority to act on behalf of the Board unless first authorized to do so. (Some duties cannot be delegated.)

# 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).

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





- Unless authority is delegated, board members have no independent authority to act alone. Some duties of the board cannot be delegated at all.

*Bowles v. Fayetteville Graded Schools*,  
211 N.C. 36 (1936).

- 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).

# 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. – 



# Rules for “Remote Meetings”

- During a “declared state of emergency”, a “remote meeting” is any Board meeting where at least one (1) member joins electronically
- A remote meeting notice must include information on how the public can access the meeting electronically
- All members must be able to hear and be heard by everyone
- Members must identify themselves when speaking if joining by audio only
- All votes must be by roll call

# Rules for “Remote Meetings”

- By statute:
  - 1) "All chats, instant messages, texts, or other written communications between members of the public body regarding the transaction of the public business during the remote meeting are deemed a public record."
  - 2) The minutes must "reflect that the meeting was conducted by use of simultaneous communication, which members were participating by simultaneous communication, and when such members joined or left the remote meeting."
  - 3) The Board does NOT have to a) provide a “live location” to view the meeting or b) allow everyone entrance to the Board room during a remote meeting.

# 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).

# 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:
  - 1) dismissal and demotion of career and mid-contract employees;
  - 2) recommendations not to renew an administrator's contract;
  - 3) suspension and expulsion of students;
  - 4) student admission and assignment appeals; or
  - 5) appeals from final administrative decisions.

# 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.**



# 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).



# 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).



# 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, but 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).





# 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).



# 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.

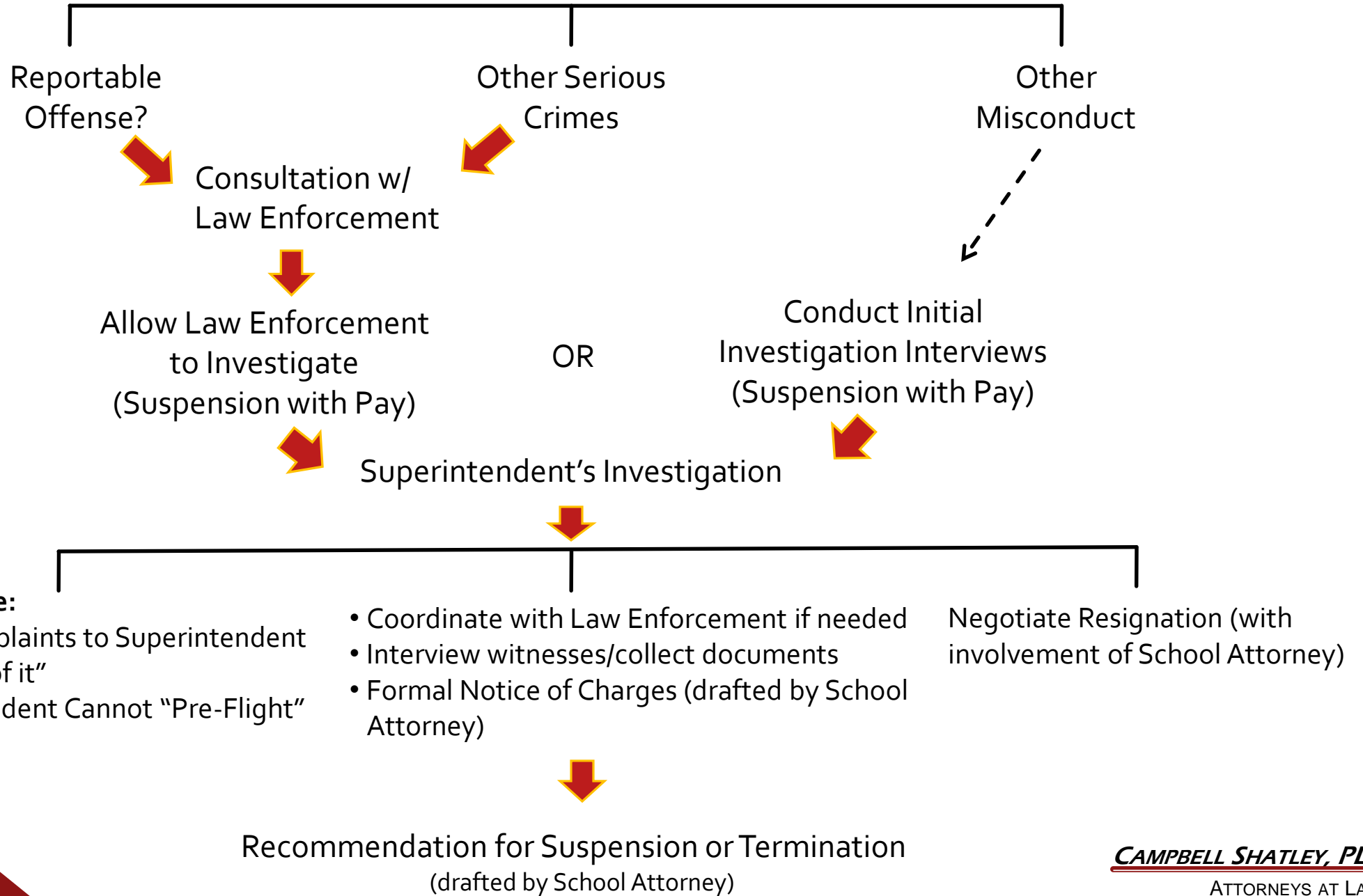
54 Op. N.C. Att'y. Gen. 86 (1985).

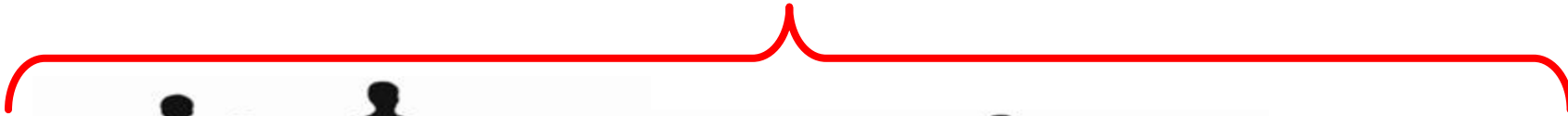




# **Employee Investigation/Discipline Milestones**

# ALLEGATION





## Public Records Best Practice

**Assume that ALL written communications and voicemails will be made available to parents, the public and/or the media upon request.**

**If that makes you nervous,**

**DON'T PUT IT IN WRITING!**



# Public Records: Assume everything that "relates" in any way to the school district is a public record (e.g. notes, voicemails, letters, e-mails, and text messages).

The most common exceptions are:

## Purely Personal Records

- Personal records, including e-mail, that do not have anything to do with the school district or its business are not a public record (i.e. an e-mail to Mom saying Happy Birthday).

## 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.

## Student Records

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

### Attorney-Client Communication

- ONLY CERTAIN COMMUNICATIONS FROM THE ATTORNEY ARE EXCLUDED, NOT EMAILS FROM YOU! Legal questions, or requests for legal advice are public records (unless about personnel or another exception).

### 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.

### Public Security Plans

- After 9/11, the General Assembly excluded information about government buildings and their security, including school emergency plans.





## Volunteer File

- Any information that relates to the volunteer's performance, selection, non-selection, disciplinary action, or termination.

## Other Exceptions:

- Address Confidentiality Program Information
- Medical Records
- Criminal Investigations
- Trade Secrets of Bidders/Vendors/Contractors

## Public Records Best Practice

**Assume that ALL written communications and voicemails will be made available to parents, the public and/or the media upon request.**

**If that makes you nervous,**

**DON'T PUT IT IN WRITING!**



# 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)

# 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]

# 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.

# 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.*

# TOP TEN THINGS EVERY GOOD BOARD CHAIR KNOWS

10. The Chairperson makes sure that decisions are made by the Board at official Board meetings.
9. On any item requiring immediate action at a meeting, a motion and second should be received before discussion.
8. The Chairperson welcomes folks for public comment and reminds them to be respectful.
7. The Chairperson reminds speakers before public comments begins that complaints about individual employees need to be directed to the school administration before the Board will consider accepting public comment on the issue to ensure the rights of everyone are respected.
6. The Chairperson makes sure all other members have spoken before he/she weighs-in.

# TOP TEN THINGS EVERY GOOD BOARD CHAIR KNOWS

5. The Chairperson knows what can and cannot be discussed in closed session.
4. When the Chairperson speaks to County Commissioners, the media, and others she speaks for the Board and should be clear if her personal views differ from the majority.
3. The Board acts as a group not as individuals.
2. The Chairperson ensures that all personnel matters are referred to the Superintendent for investigation, recommendation or action.
1. The Chairperson immediately notifies the Superintendent of any concerns that Board members have to prevent small problems from becoming bigger problems.



# Best Practice: Complaints and Concerns

- **Especially right now due to the myriad of individual impacts of the pandemic**, employees, parents, students, vendors, community leaders etc. will come directly to Board Members with complaints or concerns for three (3) four (4) reasons:
  - First, they voted for you, not the Superintendent;
  - Second, they don't know the correct protocol and need help; or
  - Third, they want a special favor or advantage from you personally; and
  - **Fourth, they are directly and personally impacted by, and/or disagree with, a school district decision affecting the education of students, student safety and well-being, child-care, and/or employee safety with regards to Plan A, B and C school reopening.**

# 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 folks in identifying the correct administrator to address their concern (i.e use the “lazy board member” policy = if unsure, direct them to the Superintendent)
- Refer student / personnel issues requiring investigation, research and/or study to the Superintendent for action or recommendation.

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

- Relaying Concerns v. Rallying the Troops
  - Individual Board members may not support a management decision by the Administration and/or a policy decision made by the Board of Education
  - It is appropriate for the full board to discuss and make decisions
  - **Best Practice: It would not be appropriate for Board members to challenge decisions by conducting their own investigations and/or by initiating complaints from certain groups or individuals**

# Best Practice: Complaints and Concerns

## Bottom-Line Advice

- Listen to concerns but don't promise specific outcomes or results
- Never promise to “keep someone's name confidential” – you can't!
- Educate employees and others on the proper procedure and notify the appropriate administration of the concern
- Always give the Board Chair, Vice Chair and/or Superintendent a “heads up” about issues that sound significant
- **Do not act alone and seek to undermine the difficult decisions being made by the full Board and administration. If unhappy, ask for a Board discussion on the topic with advance notice to the Chair.**

# 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.

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

- Board members should contact the Chair or Superintendent to request that items be added to the Board of Education meeting agenda a certain number of working days before the meeting (double check your policy).
- However, remember:
  - If a majority of the Board does not want to discuss an issue then the member must respect that decision.
  - If the Chair does not schedule the item, the Board member can make a motion to amend the agenda by majority vote at the start of the meeting.
  - After agenda adoption, a 2/3 majority is required to amend the agenda during 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.
  - Work sessions are the best time to discuss / brainstorm topics.

# 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.

# The Added Pressure of the Covid 19 Pandemic & Decision Making

- This is hard!
- No easy decisions and all actions have pros and cons.
- Especially right now, there are any number of ways to address new issues. **Board members should never presume that they have the best idea and expect the Superintendent and administration to implement their individual ideas.** More times than not, a simple approach is not the best approach because of details unknown to the School Board member. **Here again, trust the educational professionals you hired to make good decisions even if there are other ways to approach an issue.**





# **CONFLICTS OF INTEREST**

# 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
  - 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).*

# Willfully Failing to Discharge Duties

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

It is a Class 1 misdemeanor for school board members to omit, neglect or refuse to perform the duties of office. An additional sanction is removal from office.

# 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. § 133-32. Accepting Gifts and Favors.



# 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).

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

- **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.



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

- **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.



# 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.)





# 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.)

# 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.



# 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.)

# 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?

# 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.

## 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?

## 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.

## 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?

### **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?***



## 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?

### **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."

## 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?

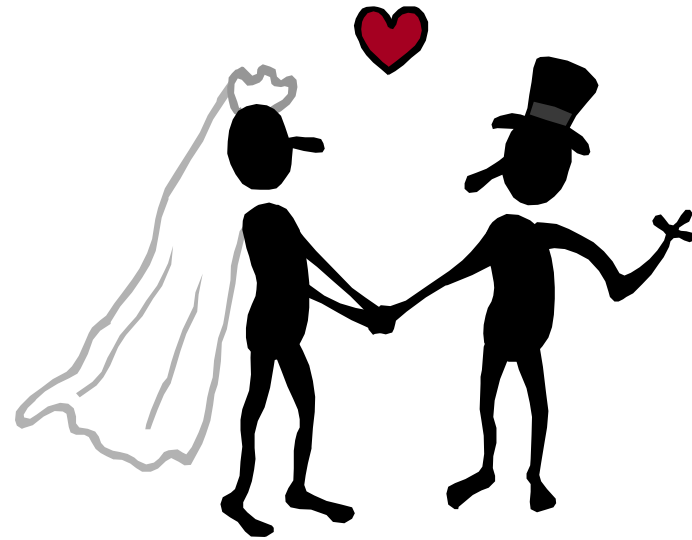
### **Answer**

- 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.

# Exceptions to the Prohibition Against Benefiting from Public Contracts

## Relevant Exception #3

The statute does not prohibit the school board from employing 1) the spouse of a school board member or 2) the Superintendent (per G.S. 115C-47(17a))



# Exceptions to the Prohibition Against Benefiting from Public Contracts

## Relevant Exception

**15,000 Population Limit** – Prohibition #1 against contracting with the Board does not apply to any elected or appointed person filling an office

1. on a county school board in a county where there is no town with a population of more than 15,000 **OR**
2. on a city school board in a city having a population of no more than 15,000.

# Exceptions to the Prohibition Against Benefiting from Public Contracts

**When relying on the 15,000 population exception all of the following must apply.**

The undertaking or contract or series of contracts between the Board of Education and one of its officials must be

1. Approved by specific resolution of the board adopted in an open and public meeting;
2. Recorded in the minutes; and
3. The amount of the contract may not EXCEED \$20,000 for medically related services and \$40,000 for other goods and services within a 12 month period.

# Exceptions to the Prohibition Against Benefiting from Public Contracts

**In addition, when relying on this exception . . .**

1. The official entering into the contract with the school Board must not participate in any way in the decision or vote on the matter.
2. The total annual amount of contracts with each official shall be specifically noted in the audited annual financial statement of the Board.



# Exceptions to the Prohibition Against Benefiting from Public Contracts

3. The school Board that contracts with any of its members or officials must post, in a conspicuous place in the village, town, city hall or courthouse, as the case may be, a list of all such officials with whom the contracts have been made and a brief description of the subject matter of the contract(s) showing the total amounts. The list must cover the preceding 12 months and shall be brought up to date at least quarterly.

# 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.*



# 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, 591 S.E.3d 905 (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.”

# 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.

# 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.

# 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.

# Accepting Gifts and Favors from Contractors

- **Exceptions**

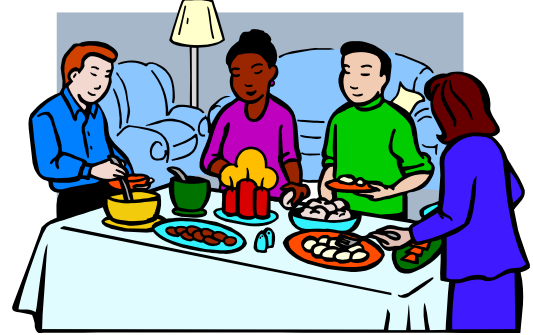
The following gifts are not covered by the statute:

- 1) Gifts and honorariums for participating in meetings;
- 2) Advertising items or souvenirs of nominal value;



# Accepting Gifts and Favors from Contractors

- Exceptions



- 3) Meals furnished at banquets;
- 4) Donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations;

# Accepting Gifts and Favors from Contractors

- Exceptions
  - 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

# Accepting Gifts and Favors from Contractors

- Exceptions

- 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;



# Accepting Gifts and Favors from Contractors

- Exceptions
  - 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;

# Accepting Gifts and Favors from Contractors

- Exceptions
  - 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;

# Accepting Gifts and Favors from Contractors

- Exceptions
  - 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.

# 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.



# 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.)

# 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
  - McKinney-Vento

# Federal Conflict of Interest Rules

- Requirements:
  - Have a written policy including the UG rules (see updated NCSBA Policy 2121)
  - Purchasing Rules (updated NCSBA Policy 8305 – Federal Grant Administration)

# 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.



# 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.

# Comparison in Conflicts of Interests Standards

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 <u>a contract</u>

# Federal Conflict of Interest Rules

- Take-home messages:
  - Federal rules 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.



# **OTHER LEGAL DUTIES AND RESPONSIBILITIES OF SCHOOL BOARD MEMBERS**

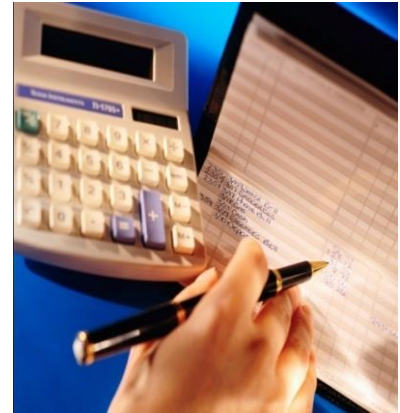
# Duty to Provide General Control and Supervision of All School Matters



- 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.*

# 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.

# 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).

# 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;



# 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:
  - 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;
  - 3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and

# 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:
  - 4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

*Leandro v. State of North Carolina*, 346 N.C. 336, 488 S.E.2d 249, 120 Ed. Law Rep. 304 (1997).

# 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 the board erred.

*N.C. Gen. Stat. § 115C-44.*



# Authority to Assign Students to Attendance Areas

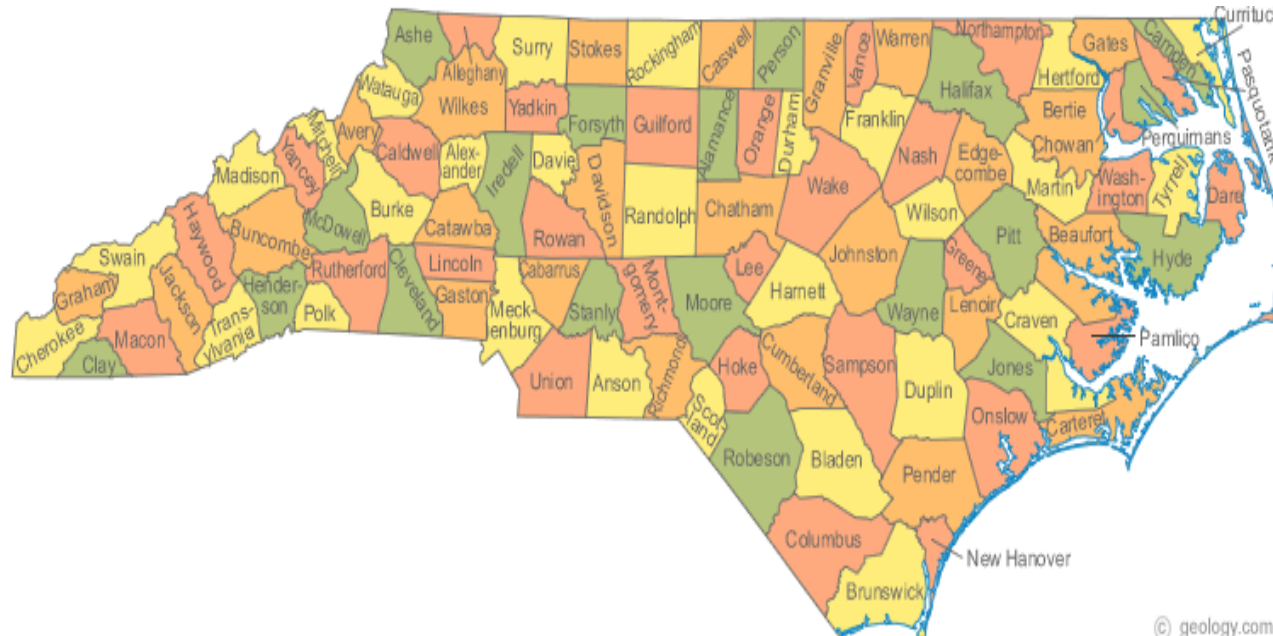
- Local boards of education have “full and complete” authority to assign children to any school within its district and its assignment decision shall be final. The board may not transfer its authority or delegate its duties regarding student assignment.

*N.C. Gen. Stat. § 115C-366(b).*

# 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.*



# 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;
  - 4) When an assignment is made pursuant to a parental choice pursuant to a choice plan voluntarily adopted by the board of education;
  - 5) For any other reason which the board of education in its sole discretion deems sufficient.

# 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).



# Authority to Assign Students to Attendance Areas

- Assignment plans allowing for school of choice or neighborhood schools may not be used to defeat desegregation.

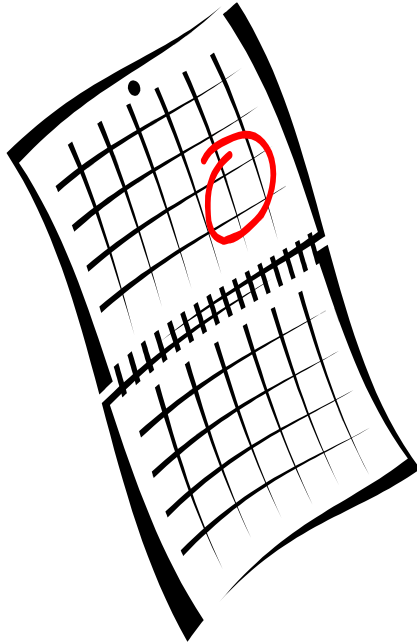
*Swann*, 402 U.S. at 21, 91 S. Ct. at 1278, 28 L.Ed.2d at 554.



# Authority to Assign Students to Attendance Areas

- The permissible use of race as a factor in student assignment plans was severely restricted by the United States Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S.Ct. 2738 (2007).
- Boards should include their attorneys in any discussion of student assignment plans in which race is being considered.

# Duty to Determine the School Calendar



- The opening day for public schools may not be before August 25, and school must end by June 10, absent a waiver. Year-round programs are exempted.

*N.C. Gen. Stat. § 115C-84.2.*

# 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.*

# 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 boards 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.

(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.)

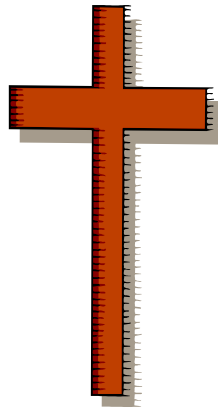
# Authority to Make Rules Concerning the Conduct and Duties of Personnel

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



# 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.






# 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.

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

- Student information is highly protected by federal law pursuant to a statute called the Family Educational Rights and Privacy Act (FERPA).
- Information from employee personnel files is also protected from disclosure under state law. (This will be covered more specifically in the Public and Employee Records presentation in School Board 101.)





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