



Public Schools of North Carolina

LEGAL OVERVIEW

Board Governance

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Overview

- Public Records
- Open Meetings





Public Schools of North Carolina

PUBLIC RECORDS

G.S. 132

Definition

"Public record" or "public records" = all...

- documents
- papers
- letters
- maps
- books
- photographs
- films
- sound recordings
- magnetic or other tapes
- electronic data- processing records
- artifacts, or
- other documentary material regardless of physical form or characteristics (e.g., email) **made or received** in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.



More examples...

Examples of email, email attachments, and text mail messages that are public records:

- Policies or directives
- Final drafts or reports and recommendations
- Correspondence and memos related to official business
- Work schedules and assignments
- Meeting agendas or minutes
- Any document or message that initiates, facilitates, authorizes, or completes a business transaction
- Messages that create a precedent, such as issuing instructions or advice



What Isn't “public” (general)?

- Written communications from an attorney to any public board, council, or other governmental body that fall within the attorney-client privilege
- Tax records
- Trade secrets, if properly submitted to a government entity
- Information that reveals an account number for electronic payment
- Settlement documents in medical malpractice actions against a hospital
- Information technology security features (passwords, security standards, procedures, processes, configurations, software, and codes)
- Criminal investigative records
- Medical records
- Anything other than basic personnel information



What isn't public (for schools)?

- Student files and other education records
- Former student records
- Student PII
- Mediation records for children with disabilities
- Student records derived from contractors
- Juvenile court records
- Special education records
- Criminal history checks
- Certain Information in an Employee Personnel File
- Emergency Response Plans



Who can access public records, When, and How?

- Any person
 - We do not have to know who is requesting records or why
- At reasonable times under reasonable supervision
- In any media (format) available



Time to Respond

- Reasonable time and manner
- What is reasonable?



Protocols

- Forward request to DPI Communications
- Typical Timeline - 2 hours or less for initial response
- Communications directs to the appropriate DPI staff member (s).
- Request for email archives



Considerations

- Fees
- Verbal Information
- Commingled (Public/Nonpublic) Records
- Creating Records



Remedies

- Order to compel release
- Attorney's fees unless reasonable reliance





Public Schools of North Carolina

OPEN MEETINGS

G.S. 143-318.9, *et seq.*

What are your legal responsibilities?

Open meetings

- **A meeting is open to the public if a “public body” meets.**
- **A public body is defined broadly as any:**
 - Authority
 - Board
 - Commission
 - Committee
 - Council
 - Other body of state or local government



Who Must Follow Open Meetings Laws?

- **The State Board of Education and its committees**
- **Other examples within DPI are:**
 - Council on Educational Services for Exceptional Children
 - Charter School Advisory Board
 - Textbook Commission



Which Meetings?

- All official meetings where a majority of the members are gathered
 - As long as the purpose of the meeting is to execute one of five functions:
 - legislative
 - policy-making
 - quasi-judicial
 - administrative
 - advisory
- Does not matter when, where, or how the meeting is held



What should we be doing?

- **Public notice is required.**
 - Purpose
 - Time, date, location
 - Required length for notice depends on type of meeting
 - Regular
 - Special
 - Emergency
- **Minutes of the meetings must be kept and available to the public.**
 - Written
 - Audio/video taped
 - Webinar recordings
 - Must reflect what happened



Closed Session

- Procedures
 - Only during official meeting, after public body makes motion and gives reason
- Applies to
 - Confidential records (e.g. student)
 - A-C privileged matters
 - Contract negotiations
 - Specific personnel matters



Remedies

- **Injunction**
- **Invalidation**



Resources

Online:

- www.ncdoj.com
 - NC Department of Justice (primers on open government laws)
- www.elon.edu/e-web/academics/communications/ncopengov/
 - NC Open Government Coalition, a group of organizations interested in promoting public access to government
- www.sunshineweek.org
 - More info about open access to government



Resources

Print:

Institute of Government Publications:

- *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*
– *Seventh Edition* by David Lawrence
- *Public Records Law for North Carolina Local Governments*
– by David Lawrence

