

Colchester Board of Education

A Board Member's Guide to Working With the Superintendent and Stakeholders



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January 14, 2021

Topics Addressed

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Board Roles

Legal Rights and Responsibilities of Board Members

I. Responsibilities of the Board of Education

- A. Agent of the State
- B. Policy-maker for the district
- C. Compare administration responsibility for day-to-day district operations

II. Rights of Board members

- A. Authority at meetings only
- B. Otherwise same rights as other citizens
- C. Role of committees
- D. Indemnification

Legal Rights and Responsibilities of Board Members

III. Duties of Board members

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Legal Rights and Responsibilities of Board Members

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Legal Rights and Responsibilities of Board Members

VI. Freedom of Information

A. Records – presumption in favor of disclosure

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5. Types of meetings

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Board vs. Superintendent General Duties

Superintendent

- Handles the district's day-to-day operations
- Serves as the "face" of the district
- Typically serves as the district's spokesperson
- Supervises district staff

Board of Education

- Represents the residents of the Town in carrying out legal mandates pertaining to education
- Determines all questions of general policy to be employed in the conduct of the schools. In doing so, it:
 - Hears and considers facts and recommendations
 - Adopts plans, policies, and courses of action, and
 - Authorizes the Superintendent to carry out its policy
- Sets the budget
- Supervises the Superintendent

Board's Specific Powers and Duties

- A. Create, abolish, modify and maintain such positions, schools, divisions and classifications as may be necessary for the efficient administration of the educational enterprise
- B. To elect a Superintendent of Schools in accordance with state statutes
- C. To consider and adopt an annual budget, prepared by the Superintendent of Schools
- D. To determine the number, classification, duties and remuneration of employees
- E. To establish policies for employment, promotion and dismissal of personnel in accordance with the state statutes

Board's Specific Powers and Duties

- F. To provide for the appraisal of the efficiency of personnel
- G. To initiate and approve the acquisition and disposition of school sites, to initiate and approve plans for school buildings
- H. To consider any specific recommendations made by the Superintendent of Schools
- I. To keep the citizenry informed of purposes, values, conditions and needs of public education in the Town
- J. To consider, revise and adopt any changes in the curriculum
- K. To take any other actions required or permitted by law

Board's Specific Powers and Duties

- L. To make reasonable provision to implement the educational interests of the State, as defined by law, so that:
 1. Each child shall have for the period prescribed in the General Statutes equal opportunity to receive a suitable program of educational experiences;
 2. The school district shall finance at a reasonable level an educational program designed to achieve this end;
 3. The school district shall provide educational opportunities for its students to interact with students and teachers from other racial, ethnic and economic backgrounds;
 4. The mandates in the General Statutes pertaining to education within the jurisdiction of the State Board of Education shall be implemented.

FOIA

- The Freedom of Information Act (the "FOIA"), (Conn. Gen. Stat. §§ 1-200 through 1-241 inclusive), represents Connecticut's commitment to open government and a **strong policy in favor of public access to meetings and records.**
- Subject to narrow exceptions, which are strictly construed, the FOIA mandates that the public has access to:
 - ◆ **Meetings** of public agencies
 - ◆ **Records** that are developed and/or maintained by public agencies



“Public Agency” or “Agency” Means

- Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, **board**, commission, authority or official of the state or of any city, town, borough, municipal corporation, **school district**, regional district or other district or other political subdivision of the state, including **any committee of, or created by**, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official. . . Conn. Gen. Stat. § 1-200.

Meetings

- The FOIA defines a meeting as follows:
- “Meeting” means any **hearing or other proceeding** of a public agency, any **convening or assembly of a quorum** of a multimember public agency, and any **communication by or to a quorum** of a multimember public agency, whether **in person or by means of electronic equipment**, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

“Meeting” Does Not Include

- Any meeting of a **personnel search committee** for executive level employment candidates;
- Any **chance meeting, or a social meeting** neither planned nor intended for the purpose of discussing matters relating to official business;
- **Strategy or negotiations with respect to collective bargaining;**
- A **caucus of members of a single political party** notwithstanding that such members also constitute a quorum of a public agency;
- An **administrative or staff meeting of a single-member public agency;** and communication limited to notice of meetings of any public agency or the agendas thereof

Meetings

- In general, there is a meeting **anytime a quorum of a public agency convenes or engages in interactive communication to discuss or act upon a matter for which it has responsibility**. There can even be a statutory FOIA meeting where it is "anticipated" that a quorum will be present.
- Note:
 - ◆ A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.
Conn. Gen. Stat. § 1-200(2)

Meetings

- A **conference call or other communication by means of electronic equipment** may constitute a meeting
- Agencies are cautioned to be particularly careful that **email exchanges** may constitute a meeting for FOIA purposes

Under FOIA

- Meetings fall into one of three categories:



Regular

Special

Emergency

Regular Meetings

- **Regular meetings** are those for which the public agency must file a schedule with the Town Clerk, by January 31, for the ensuing year. Conn. Gen. Stat. § 1-225(b)
- The agenda of a regular meeting of every public agency must be posted at least 24 hours prior to the meeting in the public agency's regular office or place of business
 - ◆ **Other business** may be added to the posted agenda by a **two-thirds vote** of those members present and voting
 - ◆ **Minutes** of a regular meeting must be available for public inspection within **seven days of the meeting**

Special Meetings

- **Special meetings** are those meetings that are not included on the list of regular meetings filed with the Town Clerk.
 - ◆ Notice of a special meeting, including the time, place and business to be transacted, must be posted **at least 24 hours in advance**. Conn. Gen. Stat. § 1-225(d). The **agenda for a special meeting must also be posted on the agency's website** "if available."
 - ◆ **No business other than that on the posted agenda may be discussed at a special meeting.** Items cannot be added to the agenda.
 - ◆ **Minutes** must be available for inspection within **seven days of the meeting**.

Emergency Meetings

- **Emergency special meetings** may be called in an emergency without advance notice (Note: The term "emergency" will be **strictly construed**)
 - ◆ The meeting must be limited to the matter that requires "emergency" attention
 - ◆ **Minutes** of an emergency special meeting must be filed with the Town Clerk **within 72 hours** of the emergency meeting and include a **statement setting forth the nature of the emergency**
Conn. Gen. Stat. § 1-225(a)

Executive Sessions

Under circumstances narrowly prescribed by the FOIA, a public agency may exclude the public from a portion of its meeting by calling an executive session. Executive sessions, are defined in Conn. Gen. Stat. § 1-200(6) as follows:



Executive Sessions

- **“Executive sessions”** means a meeting of a public agency at which the public is excluded for one or more of the following purposes:
 - ◆ Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a **public officer or employee, provided that such individual may require that discussion be held at an open meeting;**
 - ◆ **Strategy and negotiations with respect to pending claims or pending litigation** to which the public agency or a member thereof, because of the member’s conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled;

Executive Sessions

- Matters concerning **security strategy** or the deployment of security personnel, or devices affecting public security;
- Discussion of the selection of a site or the **lease, sale or purchase of real estate** by the state or a political subdivision of the state **when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price** of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and
- **Discussion of any matter which would result in the disclosure of records that are exempt from disclosure** under Section 1-210(b)

Executive Sessions: Requirements

- There are specific requirements for conducting business in executive session:
 - ◆ **Two-thirds** of those members of the public agency present must vote at a public meeting to go into executive session and **state the reason(s)** for such executive session. Conn. Gen. Stat. § 1-225(a).
 - ◆ **Only members of the public agency and those persons whose presence is necessary** to present testimony or give opinions may be present during the executive session. Conn. Gen. Stat. § 1-231(a).

Executive Sessions: Requirements

- Executive sessions may only be called for the limited statutory purposes set out above
- **Only discussion is permitted in executive session; any votes must be taken in open session**
 - ◆ There should not be a vote taken to come out of executive session
- **Minutes must include the vote to go into executive session; the reason for the executive session; and, the names of the persons in attendance at the executive session (subject to limited exceptions)**

Executive Session

- The Nutmeg Board was in a special budget meeting when it learned of dire economic news that meant significant staffing cuts were necessary. Knowing that the Board would need to discuss and decide the elimination of specific positions, and not wishing to needlessly distress or excite its employees, the Chair added an executive session item to the agenda to discuss “personnel matters.” With a 5-3 vote, the Board entered executive session. After an hour of discussion, the Board members agreed, without a vote, to direct the Superintendent to cut 10 staff positions. So far, so good?

Executive Session

- Not an agenda item, but a means of dealing with an agenda item
- Specify who is invited into executive session
- Board does not take action in executive session
- Board members are not to disclose discussion which occurs in executive session
- Be respectful of the public when scheduling executive sessions

Meeting Requirements

- **Minutes**: Generally, minutes must be available for public inspection **within seven (7) days** of session to which they refer, Conn. Gen. Stat. § 1-225(a), and minutes should include:
 - ◆ When the meeting was convened;
 - ◆ Which members of the public agency were present;
 - ◆ A short description of the business transacted;
 - ◆ A listing of any action taken by the public agency, specifying the votes of each member;
 - ◆ Any executive session held, with a statement of the reason(s) for the executive session and who was in attendance; and
 - ◆ When the meeting was adjourned

Meeting Requirements

- **Agendas:** - There is no specific guidance in the FOIA as to the level of detail that is required in an agenda, but, as a practical matter, the agenda should provide **reasonable notice of the business to be transacted**
- **Votes:** - The votes (as distinguished from meeting minutes) of all members of the public agency must be reduced to writing and be **available for public inspection within 48 hours** of the meeting

Who Can Call a Meeting?

- Board Member Mal Content has been after the Nutmeg Union of Teachers for the last two years because they refused to give salary concessions during these difficult times. He has been asking to put an item on the agenda for a public meeting, during which the Board would consider a formal censure of the union and its membership. You, the Board Chair, have been advised that such a vote could be problematic. But Mal is persisting, and now he and two fellow Board members he co-opted are threatening to hold a public meeting with or without you. *Can he do this?*

Requirements for Calling a Meeting

- **Conn. Gen. Stat. Section 10-218 provides in relevant part:**
 - ◆ The chairperson of the board of education or, in case of such chairperson's absence or inability to act, the secretary shall call a meeting of the board at least once in six months and whenever such chairperson deems it necessary or is requested in writing so to do by three of its members. If no meeting is called within fourteen days after such a request has been made, one may be called by any three members by giving the usual written notice to the other members.

Board Member Conduct

- Board member, Mal Content, had been causing issues for the Nutmeg Board. He would often visit school buildings unannounced, demanding to be able to visit classrooms to “check on underperforming teachers.” But the last straw for the Board was when he voted to approve the new teachers’ contract, even though his wife was a teacher in the district. In a special meeting, where Mal was not in attendance, they voted 8-0 to oust him from the Nutmeg Board. *Valid?*

Board Member Conduct

- Board members cannot be removed from their elected position on the Board by a vote of the Board
- Board officers can be removed from their office by a vote of the Board
- The Board can vote to “censure” a Board member

Conflict of Interest

- Board members cannot be employed by the school district
- No statutory provision against a relative being employed by the school district
- Board member actions may be governed by Board policies or ethics provision in local charter
- Board members may need to recuse themselves from impartial BOE hearings

Board Member Conduct

- Board member, Pamela Parent, has concerns that her child is being bullied at Charter Oak Elementary School. She visits her daughter's school unannounced, demanding to be able to visit her daughter's classroom, cafeteria and playground to "check on schoolyard bullies." She regularly refers to the specific observations she has made in her public statements made to the Board as part of Board discussions of school climate. *Concerns?*

Board Member Conduct

- Concerned that her daughter may have a social communication disability, and this is making her vulnerable to the “bullies” at Charter Oak, Pamela Parent emails Peter Principal and requested an evaluation of her child for a disability. After the evaluation is complete, the Planning and Placement Team determines that Pamela’s daughter does not qualify for special education and Pamela threatens to sue the Board. *Concerns?*

Records: A Brief Overview

- The FOIA **defines “public record” broadly** as follows:
 - ◆ A public record or file is defined as any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostatted, photographed or recorded by any other method. Conn. Gen. Stat. §1-200(5).

Records

- **Except as otherwise provided by any federal or state law, all records maintained or kept on file by any public agency shall be public records.**
- The FOIC has no authority to order a public agency to create records where none exist
- The FOIA does not require a public agency to conduct legal research or to respond to questions. However, “research” or searching to locate public records is always required!

Responding to Records Requests

- There should be a clear process in place for processing and responding to FOI requests (including a designation of the individual(s) responsible for responding).
- Disclosure must be made "**promptly.**" "Promptness" will turn on the nature and extent of the specific request.
- A person making a request is generally entitled to a **response within four business days.** (If the request involves employee personnel or medical files and the agency reasonably believes an invasion of privacy would occur, a response must be made within ten business days, and special notice requirements apply).
- However, that **does not mean the public agency automatically has four days to respond to a request. If a record is readily available for inspection or copying, it is an FOI violation to make the person requesting the record wait four days.**

FOIA Exemptions from Disclosure

There are several specific exemptions to the general rule requiring disclosure of public records. See Conn. Gen. Stat. § 1-210(b). The following are examples from the complete list of exemptions:

- **Records exempt from disclosure under federal or state law** (e.g. Section 10-151c of the Connecticut General Statutes, which exempts teacher evaluation records from disclosure)
- **Education records** not subject to disclosure under the federal Family Educational Rights and Privacy Act (**FERPA**)

FOIA Exemptions from Disclosure

- **Personnel or medical files and similar files, the disclosure of which would constitute an invasion of personal privacy.**
 - Note: The legal standard for invasion of privacy is very strict: 1) the record at issue does not pertain to a matter of public concern, **and**; 2) disclosure of the record would be highly offensive to a reasonable person.
- **Communications privileged by the attorney/client relationship**
- Records, reports and statements of strategy or negotiations with respect to **collective bargaining**
- Records pertaining to **strategy and negotiations with respect to pending claims or litigation** to which the public agency is a party until such litigation or claim is finally adjudicated or settled

FOIA Exemptions from Disclosure

- **Test questions**, scoring keys and other data used to administer a licensing examination, examination for employment or academic examinations
- **Responses to any request for proposals or bid solicitation** issued by a public agency, or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for such award have ended, whichever is earlier, provided the chief executive officer of such public agency certifies that the public interest in disclosure of such records is outweighed by the public interest in the confidentiality of such records
- **Preliminary drafts or notes provided that the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure**

FOIA Exemptions from Disclosure

- However, “disclosure shall be required of: interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report compromising part of the process by which governmental decisions and policies are formulated, except **disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of the public agency, which is subject to revision** prior to submission to or discussion among the members of such agency.”
- Informal advice from the FOIC staff indicates that if the personal notes are an agency member’s own notes, thoughts, etc., and are **not disseminated to other members of the agency**, they may not be subject to disclosure

General Confidentiality Considerations

- The district must comply with all legal requirements concerning confidentiality (e.g., FERPA)
- Matters discussed in executive session should be maintained as confidential unless the Board authorizes disclosure of the information
- Disclosure of confidential information can have significant consequences for the district (e.g., legal violations, increased liability, compromised position regarding negotiations)
- When in doubt, treat the information as confidential until a proper determination has been made regarding confidentiality vs. disclosure

Electronic Communications

- It was time for the Nutmeg Board to elect officers. In the week leading up to the annual meeting, the internet was full of e-mails among Board members soliciting support from other members. In addition, Board members had caucused with their respective party Chairs to decide on who would be the next chair. At the meeting, Mal Content nominated Penny Pincher as the next Chair. Infuriated, Bob Bombast sent an angry text message to Mal saying, “What gives, I thought we had a deal?” Mal responded, “Sorry, Penny is supporting me for Vice-Chair. Snooze you lose.”
Any issues?

Which statement is correct?

1. It is improper for Board members to commit support on an issue before the actual meeting
2. A majority of Board members cannot discuss Board business via e-mail
3. E-mail communication between Board members is okay as long as it is one-on-one
4. Board members cannot caucus to discuss Board issues

Electronic Communications

- Email communication on Board business by Board members to each other (or to or from the Superintendent to Board members) is permissible.
- Such emails will typically be subject to public disclosure unless exempt (personally identifiable student info, attorney/client information). Even if on personal computer or personal email.

Electronic Communications

- Where email communication is *unilateral*, it will likely not be considered a “meeting” that would trigger FOIA concerns.
- Where such a communication generates responses that are shared with a quorum of the Board, it is possible that a “discussion” (and hence a “meeting” in violation of the FOIA) will be found

Who Speaks for the Board?

- Each Board's bylaws should state who the Board's spokesperson is
- Generally, it is the Board's chairperson
- Board members do not lose their first amendment rights

Handling Personnel Matters

Impartial Hearing

- Under Connecticut General Statute 10-151, all teachers have certain due process rights, including to a hearing before an impartial hearing panel
- The Board may serve as that panel
- As a result, to preserve the impartiality of the Board members, they should not become involved in the details of an individual employee's performance
- Connecticut General Statute 10-222 provides due process protections to athletic coaches who have coached a sport for at least 3 consecutive seasons
- They may appeal any decision not to renew, or to terminate, their contracts to the Board of Education. The Board must conduct a hearing and sit as an impartial panel.

Due Process Violations

- A Board may violate an employee's due process right to an impartial hearing by reviewing a personnel file prior to a hearing.
- Obtaining other evidence of an employee's performance prior to the hearing.
- Discussing the employee's performance with other Board members outside of the context of a termination or non-renewal proceeding.

Communication with the Public

General Preparedness

- Districts should have procedures/practices for handling sensitive communications.
- The district may want to develop a “response team” that designates who is responsible for:
 - ◆ Speaking on the district’s behalf
 - ◆ Coordinating with outside agencies if necessary
- The district should establish clear lines of communication for decision-making for various situations, such as
 - ◆ Responding to law enforcement investigations
 - ◆ Closing of a building
 - ◆ Shutting down of a computer system
 - ◆ Handling onsite medical emergencies

General Preparedness

Districts may also want to include directions for Board members on:

- When and how to communicate with the community at large, the press, parents, and/or staff
- Developing steps for dealing with the press and public

Dealing with Parents and Staff

- Determine whether the Board should make a statement at all, or whether the matter should be left to an administrator
- Determine the subset of persons, if any, who should be notified of an event/crisis
- Promptly address immediate safety and educational concerns
 - ◆ Be sure not to reveal any FERPA or IDEA-protected or other confidential information
 - ◆ Consider what resources, if any, may be necessary to assist with student needs and parental concerns
 - ◆ Consider the appropriateness of a school community meeting

Dealing with Parents and Staff

- Communicate, as appropriate, the school district's next steps
- Identify and provide contact information of a school or district-based contact person to address follow-up concerns and questions
- Prepare staff to deal with media inquiries

Dealing with the Press

- Investigative reports and related documents must be disclosed, if requested, when the investigation is complete
- Personnel records are public records unless they fall under a specific exception
- Maintain a positive relationship with local press and work with local media prior to a crisis
- Designate an individual to handle media inquiries
- Fulfill FOI requests promptly if possible

Handling Student Issues

Family Education Records Privacy Act

- While the Board is ultimately responsible for setting policy that will affect each student within the district, individual students have privacy rights guaranteed by FERPA
- Federal law that applies to recipients of federal funds (e.g. public schools, colleges and universities)
- Protects the confidentiality of student education records/limits disclosure to 3rd parties without parental consent
- Provides parents/guardians with a right to access student records of their children

What is an Education Record?

- Any documented information **directly relating** to a student and **maintained** by the educational institution
- May include documents, video, audio, film, photographs or computer records
- School districts must **maintain the confidentiality** of any **personally identifiable student information** contained in educational records

The Interaction Between FOI and FERPA

- The Freedom of Information Act (“FOIA”)
- State law
- Mandate: records must be ***disclosed, unless there’s an applicable exception***
- The Family Educational Rights and Privacy Act (“FERPA”)
- Federal law
- Mandate: records are ***confidential, unless parent consents or there’s an applicable exception***

The Interaction Between FOI and FERPA

- FOI Statute: ***Except as otherwise provided by any federal or state law***, all records maintained or kept on file by any public agency shall be public records
- Records protected by the Family Educational Rights and Privacy Act (FERPA) are ***exempt from disclosure under the FOIA***

Personally Identifiable Student Information

- Personally identifiable student information *also* includes information that is **linked or is linkable to a specific student** that would allow a reasonable person in the school community to identify the student with reasonable certainty

Targeted Requests

- Even if the request or disclosure does not include explicit personally identifiable student information, a district may **not** release information if requested by someone who the district “reasonably believes knows the identity of the student to whom the education record relates”

Confidentiality

- As a general rule, all personally identifiable information in educational records must be kept confidential ***unless*** a parent/guardian or eligible student ***consents***, in writing, to disclosure
- Written consent must:
 - ◆ Specify which records are being disclosed
 - ◆ Specify the purpose of disclosure
 - ◆ Identify the recipient
- Exceptions to this general rule are outside the scope of this presentation but can be found at www.ct.gov/foi/.

When is Prior Written Consent Not Required?

- When disclosure is to a **school official**, where that person has a **legitimate educational interest** in the information
 - ◆ Who is a school official?
 - *Must be under direct control of district*
 - *Must perform an institutional service/function*
 - *Access only to information needed; and used only for that purpose*
 - ◆ Annual notification requirements
 - ◆ District must use reasonable methods to ensure that school officials have access **only** to those records in which they have a legitimate educational interest

Consent Not Required

- When a student moves to **another school district**, records may be sent to the receiving district
- In a **health or safety emergency**
 - ◆ *May consider “totality of circumstances”*
 - ◆ *Must have an **articulable and significant threat** to the health/safety of the student or others*
 - ◆ *May disclose to “appropriate parties,” including parents*
 - ◆ *Recording requirement*

Consent Not Required

- For **directory information**
 - ◆ *District must give public notice of what qualifies as directory information*
 - ◆ *Right to opt out*
 - ◆ *May include: name, address, tel. #, email address, photo, DOB, participation in athletics etc.*
 - ◆ *May NOT include social security numbers*
- In response to a **court order or subpoena**

Consent Not Required

- Records that have been **de-identified** (i.e. the personally identifiable student information has been removed) may also be released without prior written consent

(**Reminder:** personally identifiable information includes information that alone, or in combination, is linked or linkable to a specific student that would allow someone in the school community without personal knowledge to identify the student with reasonable certainty)

Consent Exception

- To **parents** of an eligible student (18 yrs +) if the parents still claim the student as a **dependent for tax purposes**
- To representatives of a **child welfare agency** (DCF) if it is legally responsible for the care/protection of the student

Communications Regarding Student Matters

- FERPA significantly restricts the district's ability to communicate on student matters
 - ◆ FERPA prohibits disclosure/discussion of matters identifiable to an individual student
 - ◆ Comment by the parent of a student does not permit the district to comment on matters related to that student

Communications Regarding Student Matters

- Importance of centralized communication
- General statements regarding district's commitments to student safety/wellbeing
- No communications regarding identifiable students

Questions?

