

Transparency and Ethics for State Charter Schools

State Charter Schools
Commission of Georgia



Gregg Stevens
Deputy Director
General Counsel

Overview

- Open Meetings
- Open Records
- Communicating with Stakeholders
- Ethical Standards
- Statutory Conflicts of Interest

Transparency

Charter schools are the very essence of local control. Charter petitioners create and then operate schools to complement traditional public schools. To remain responsive to the needs of the students and its community, charter schools must not only adhere to the minimum and legally-required standards for open governance, they must dedicate themselves to transparency.

What is a meeting?

- A “meeting” is:

- (i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or
- (ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.

What is NOT a meeting?

■ A “meeting” is not:

- (i) Inspecting a facility or property of the school;
- (ii) Multijurisdictional trainings;
- (iii) Meeting with legislative or executive branch officials at state or federal offices;
- (iv) Traveling to a meeting;
- (v) Social, ceremonial, civic, or religious events.

Exceptions do not apply if the purpose is to evade conducting a meeting to discuss or act upon official business.

What notice is required for a meeting?

- **Regular Meetings:** Adopt a regular schedule. Provide notice of the meeting physically posted in a conspicuous place at the meeting site and on the school's website.
- **Called Meetings:** Notice to the legal organ at least 24 hours in advance of the meeting as well as any media outlet that has requested advance notice of called meeting. Provide notice of the meeting physically posted in a conspicuous place at the meeting site and on the school's website.
- **Emergency Meetings:** Notice to the legal organ as soon as reasonable under the circumstances as well as any media outlet that requested advance notice of called meetings. Minutes must reflect the notice and reason for holding the meeting.

A Note on Emergency Meetings:

- Your Emergency Meeting probably is not an emergency.
- “Emergency Conditions” is defined elsewhere in the statute as “involving public safety or the preservation of property or public services.”

A Note on Notice:

- Notices for meetings must meet the technical requirements of the law AND be sufficient to reasonably apprise a concerned party of the upcoming meeting.
- The notice must not be misleading.
- Hint: Avoid general and generic agendas.

Can I Hold Meetings via Conference Call?

- State charter schools CANNOT hold meetings via teleconference.
- A quorum of board members MUST be present in person.
- Governing boards may allow the public to attend virtually, but there MUST be a physical meeting place with a quorum of board present.
- Individual board members may participate via teleconference ONLY if: a) his or her health precludes the ability to be present; or B) he or she is out of the jurisdiction. This may only be used twice per board member per calendar year absent a doctor's note.

When is Executive Session Authorized?

- Mediation;
- Discussing acquisitions, dispositions, or leasing of property;
- Discussing or deliberating upon appointment, employment, compensation, hiring, discipline or evaluation of personnel;
- Student discipline hearings;
- Legal discussions – attorney must be present – threat of litigation must be pending or potential.

When is Executive Session NOT Authorized?

- Budget Discussions;
- Policy Discussions;
- Employee Discipline Hearings

What does Executive Session Look Like?

- State each reason to go into executive session;
- Have a majority vote of those present to close;
- Minutes must reflect the result of the vote;
- Take minutes of executive session (but do not publish);
- Execute an affidavit stating what was discussed;
- Incorporate affidavit into the minutes (best practice).

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How do we vote from Executive Session?

- All votes on official actions must occur in public.
- Preliminary votes on real estate matters can occur in executive session, but the vote must be held again in public.
- Votes must make the specific action of the board clear and transparent.
- It is not consistent with the Open Meetings Act to “adopt the recommendations made in executive session.”
- Specifically – votes on personnel need to provide sufficient detail to clearly allow the public to determine what action was taken with regard to an individual.

What Must be Included in Meeting Minutes?

- The names of members present;
- A description of each motion or other proposal made;
- The names of those making and seconding a motion or proposal;
- A record of all votes.
- Minutes must be released after approval; and
- A summary of the meeting must be available within two business days.

Open Meetings Odds and Ends

- Members of the public must be allowed to make video and/or audio recordings of the meeting.
- Agendas can be modified at a meeting when it is necessary to do so. Items may not have been known in advance and deliberately omitted.

O.C.G.A. Sec. 20-2-167.1

- State charter schools must hold at least two public meetings to discuss and allow input on its annual budget prior to its adoption.
- Should be the entire board (not a committee).
- Cannot be held within the same calendar week.
- Must be advertised in the legal organ.
- Summary of the budget must be posted on the website. Detailed budget must available upon request.
- What about amendments?

Open Meetings Compliance Tips

- Have a policy and procedures for ensuring the technical requirements are met.
- Make duties clear – designate someone to ensure notice is provided, meetings are recorded, affidavits are executed, etc.
- Keep your records and know where they are kept.

What is a document subject to Open Records?

- A public record of a state charter school is any tangible or intangible document created, received, or maintained by the school or any entity on behalf of the school.
- A public record of a state charter school remains a public record of the state charter school even if it is transferred to another party for storage or maintenance.
- All public records, except for those specifically exempt from disclosure by law or court order, must be available for public review and copying.
- Common Exemptions:
 - Education records containing personally identifiable student information.
 - Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance...
- Personnel Records largely are NOT exempt.

■ O.C.G.A. § 50-18-70 et. seq.

What is a document subject to Open Records?

- Unless expressly exempt by law:
- All documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.

What Does My School Need to do When We Receive an Open Records Request?

- Respond within 3 business days. Provide the records within that timeframe if possible.
- If records cannot be provided within three days, provide an estimate as to when they will be available, the costs associated with the request, and whether any information will be withheld.
- If information or records will be withheld, the response must state the express statutory authority for exempting the record.

Does the Form of the Request Matter?

- An open records request may be oral or in writing.
- Any request for a school's documents (other than a request for a student's educational records) must be treated as an open records request.
- However, only requests made in writing are subject to civil and criminal penalties.
- An agency may designate a specific person to whom requests must be made by notifying the legal organ and placing that information on the website.
- If the agency designates an individual, the 3-day timeline begins after that person receives the request in writing.

Does the Reason for the Request Matter?

- If a school has documents that are responsive to an open records request, the reason the individual makes the request is irrelevant.

Can a Student's Educational Records be Requested?

- State law expressly exempts personally-identifiable student information in educational records from disclosure under the open records act.
- Certain individuals may request student records pursuant to the Family Educational Rights and Privacy Act (FERPA).
- If documents requested pursuant to the open records act can be redacted to exclude personally-identifiable student information, such documents must be provided.

Can We Charge Fees for Producing Records?

- For each page of physical copies produced, you may charge \$.10.
- You may charge the hourly rate of the LOWEST paid capable employee for searching and producing responsive records (not including the first 15 minutes).
- You ***MAY NOT*** charge attorney's fees for them to search, produce, or respond to open records requests.

What are Some Common Records that are Exempt?

- Personally identifiable information in educational records.
- Secure test materials.
- Personal contact information for staff.
- Health insurance and financial information for staff.
- TKES/LKES evaluations.

What are Some Common Records that are NOT Exempt?

- Records involving students not related to education – e.g. security video.
- Designated Directory Information under FERPA.
- Employee discipline actions.
- Employee salaries.
- Employee evaluations that are not TKES/LKES.

SCSC Rule 691-2-.03

- Governing Board membership;
- Governing Board meeting calendar;
- Meeting agendas for upcoming Governing Board meetings;
- Meeting minutes for past Governing Board meetings unless the Georgia Open Meetings Act limits their publication;
- Procedure for contacting the school's Governing Board;
- Procedure for contacting the school's most senior school administrator;
- Any admissions application utilized by the school;
- Notification of enrollment and admission procedures required by SCSC Rule 691-2-.05, including the date, time, and location of any upcoming enrollment lottery;
- Annual operating budget or summary thereof as required by O.C.G.A. § 20-2-167.1; and
- The charter school's Charter Contract.

The Interplay Between Transparency and Ethics

Preventative Sunshine

- Unethical actions thrive in darkness.
- Breaching fiduciary duties, conflicts of interest, fraud, waste, and abuse all need some degree of cover.
- Open, honest, and clear actions and communications promote proper board governance and a positive school community.

Fiduciary Duty

- A state charter school governing board has a fiduciary duty to the school – its students, staff, and community. Each member of a state charter school governing board must independently exercise his or her judgment with care, loyalty, and obedience.

Public Comment

- Public Comment opportunities are not required by law.
- Public Comment opportunities are necessary for an open, transparent, and well-governed charter school.
- Public Comment opportunities cannot be restricted based on content.

Tips for Public Comment

- Set a time restriction;
- Set the tone for decorum – describe what type of comments will be constructive and how other concerns may be expressed;
- Limit the board's response;
- Always remember that its your meeting.

Board Member Conflicts of Interest

- A Member of the Governing Board of a State Charter School MUST NOT:
 - Act in his or her official capacity in any matter where he or she, his or her immediate family member, or a business organization in which he or she has an interest has a material financial interest that would reasonably be expected to impair his or her objectivity or independence of judgment;
 - Solicit or accept or knowingly allow his or her immediate family member or a business organization in which he or she has an interest to solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing that board member in the discharge of his or her duties as a board member;
- O.C.G.A. § 20-2-2084(e)(2)

Board Member Conflicts of Interest

- Also, Member of the Governing Board of a State Charter School MUST NOT:
 - Use, or knowingly allow to be used, his or her position or any information not generally available to the members of the public which he or she receives or acquires in the course of and by reason of his or her position for the purpose of securing financial gain for himself or herself, his or her immediate family member, or any business organization with which he or she is associated; or
 - Be an officer or serve on the board of directors of any organization that sells goods or services to that state charter school.
- O.C.G.A. § 20-2-2084(e)(2)

Employee Conflict of Interest

- Employees of State Charter Schools MUST NOT:
 - Serve on the board of directors of an organization that sells goods or services to the state charter school.
- “Employee” means an individual that works at the school or an individual that has administrative oversight at a state charter school.

Tips to Promote Transparency in Ethics

- Be available to stakeholders (but remember to respect your role);
- Set standards and expectations for staff and board communications;
- Establish and follow a tiered grievance policy;
- Ensure board actions are well-communicated to stakeholders;
- Ensure board actions are consistent with the school's mission and vision and part of a long-term strategic plan.