

# Open Meetings and Open Records, 211:

## Beyond the Statutes

March 13, 2023



# Transparency Matters

Embracing a culture of transparency and public good reinforces critical motivation for upholding fiduciary duties.

Open Meetings and Open Records Requirements are not only required by law and contract but also foundational standards for public trust.

# The Georgia Open Meetings Act

- Charter schools must comply with Georgia Open Meetings Act (OMA).
- The OMA ensures that the public can observe the governing board's decision-making process.
- OMA requirements are construed in favor of citizens seeking access.
- The OMA applies to non-exempt “meetings” of the governing board.

# What are Meetings?

- A gathering of a quorum of the members of the governing body (or a committee thereof)

at which any official business, policy, or public matter of the charter school is formulated, presented, discussed, or voted upon.

# Are Committee Meetings Really Meetings?

**Yes.**

# Are Committee Meetings Really Meetings?

**(A)** “Meeting” means:

- (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?

- Inspecting a facility or property Multijurisdictional training
- Meetings with members of the legislative or executive branch at state or federal offices
- Travel to a meeting
- Social, ceremonial, civic, or religious events
- Emails\*

# Virtual Meetings

- The Open Meetings Act severely limits the ability to use virtual meeting platforms.
- Virtual Meetings are only permitted for schools with statewide attendance zones - absent emergency conditions.



# Executive Session

- Executive session is the portion of a meeting lawfully closed to the public.
- The OMA identifies matters that may be discussed in executive session.
- All votes must occur during the open portion of the meeting.

# Executive Session

- Executive session is permitted for meetings when the governing board is:
  - Matters subject to attorney-client privilege
  - discussing or deliberating on specific personnel matters
  - Considering a portion of a record exempt from disclosure when there are no reasonable means of considering the record in the public portion of the meeting without disclosing exempt content.
  - Discussions or deliberations of cybersecurity plans, procedures, and contracts regarding cybersecurity services.

Associated votes must be taken in the public portion of the meeting.

# The Georgia Open Records Act

The Open Records Act (ORA) ensures that the public has access to all public records for personal inspection and copying, except those required to be kept confidential.

Public records must be made available for public inspection without delay.

# Public Record

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 the charter school or by a private person or entity in the performance of a service or function for or on behalf of the charter school or when such documents have been transferred to a private person or entity by the charter school for storage or future governmental use.

# Records Requests

- Can be made orally or in writing
- Any request other than one for student educational records must be treated as an open records request.
- The school can designate one or more employees as open records officers.

# Student Records

- Personally-identifiable student information in educational records is exempt.
- 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, the documents must be provided.

# Common Exemptions

- School safety plans
- Secure test materials.
- Personal contact information for staff.
- Health insurance and financial information (not salaries) for staff.
- TKES/LKES evaluations.

# Nonexempt Records

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



# Resources

- ❑ [Georgia First Amendment Foundation](#)
- ❑ [Red Book](#) (Open Meetings and Records Generally)
- ❑ [Green Book](#) (Open Records and FERPA' Open Meetings)

# What Lurks Beyond the Statutes?

# Open Meetings

- [APS Bars Reporter](#)
- A lot is happening - any thoughts?

# Public Comment

- [Cobb Public Input Policy](#)
- Concerns? Is this Permissible? A good idea?

# Public Comment

- [Mamma Bears](#)
- Where do we begin?

# Open Meetings

- ❑ [Slaughter v. Brown](#)  
Georgia Court of Appeals  
269 Ga. App. 211

What could they have done differently?

# Open Meetings

- ❑ [Decatur County v. Bainbridge Post Searchlight, Inc.](#)  
Georgia Supreme Court  
280 Ga. 706

Does this sound familiar?

# Executive Session Danger!

- [Attorney General Opinion U95-15](#)
- Does this impact your personnel policies or procedures?



# Executive Session Warning:!

- What happens in Executive Session may not always stay in Executive Session

Statutory or ethical obligations of confidentiality will likely not restrict one's Freedom of Speech.

# Open Records

**Joseph Gooden v. Pat Carson and Forsyth County  
U.S. District Court Northern District of Georgia  
2006 U.S. Dist. Lexis 28838 (2006)**

After Gooden was fired from Forsyth County for failing a drug test, he appealed his termination to the Forsyth County Civil Service Board. The board held a closed meeting and upheld the termination. After Gooden's termination, Forsyth County received an open records request from a private citizen and the press for materials related to Gooden's termination, which were released by the county. Gooden sued the human resources director and Forsyth County claiming that they violated federal law by disclosing the results of his drug test, private personnel information, and an audiotape of his closed hearing. The Court held that the information released by the county was not exempted by the Open Records Act. Since the records relating to the employment investigation were not released to the public prior to the conclusion of that investigation, their release by the county was proper and did not constitute an invasion of privacy.

# Other Interesting Open Records Issues

- Are security videos educational records?
- What about clinic records?
- Records of Multiple Students?
- What if I want to release records?

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