Open Meetings and Public Records Manual

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Mission Statement

The Iowa Association of School Boards is an organization of elected school board members dedicated to assisting school boards in achieving their goal of excellence and equity in public education.

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This manual is provided as a service of the IASB Risk Management Program, a preventative program designed to assist school boards and administrators in following proper procedures to help avoid financial liability and litigation.

The manual is intended to provide general information about open meetings and public records. IASB is available to assist member school boards and their superintendents, board secretaries, employees and attorneys in complying with and understanding open meetings and public records issues.

This manual is designed to provide accurate and authoritative information regarding the subject matter covered. It is furnished with the understanding that IASB is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, please contact the school attorney.

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Chapter I

Introduction

This manual is designed to help board members, school officials and employees understand the Iowa open meetings and public records laws. The manual explains basic meeting procedures and gives examples of how to implement those procedures. The manual is a reference tool for questions on public records, including student and employee records. The charts and main concepts can be consulted quickly and easily, but the *Open Meetings and Public Records* manual will not, and is not designed to, replace competent professional advice. Board members and administrators having more detailed questions or encountering unusual circumstances should contact the school attorney. All references to the IOWA CODE are to the 2011 edition unless otherwise stated.

GOVERNMENT IN THE SUNSHINE

Chapter 21 of the IOWA CODE is titled "Official Meetings Open to Public," but it is more often called the "open meetings law." The open meetings law, along with IOWA CODE, chapter 22, "Examination of Public Records," comprise Iowa's "government in the sunshine laws." These acts establish the state requirements with which governmental bodies, including school boards, area education agency (AEA) boards and community college trustees, must comply in their meetings and records. For ease of understanding, the term "board" will be substituted for "governmental bodies" in this manual. It is important to remember that all governmental bodies as defined by the open meetings and public records laws are subject to these laws—not just school boards. *For more discussion, see page 4*. Student records are also governed by the federal Family Education Rights and Privacy Act (FERPA), 20 U.S.C. §1232g (2010).

School boards are governmental bodies and must comply with the mandates of the sunshine laws in conducting school business. The stated intent of the open meetings law, reinforced by Iowa court decisions and Iowa attorney general opinions, is the law is to be interpreted liberally. When in doubt, a board should err on the side of openness. IOWA CODE § 21.1 (2011).

The open meetings law was written to provide the public accessibility to a board's deliberations and the decisions made by the board. The open meetings law does not solely address the openness of meetings; it also addresses public notice of board meetings, minutes and related matters. Throughout this manual whenever the term "meeting" is used, it means an open meeting. If another type of meeting is being discussed, the specific type of meeting will be stated.

"Government in the sunshine" refers to the legislative intent for governmental bodies to hold their meetings in a way that is open to the public as opposed to meetings being held in secret or in a way which does not permit the public free access to information. The law mandates that meetings of governmental bodies be open to the public unless there is a legal exemption or exception. Iowans value the public's right to know over a governmental body's desire for privacy. This legislative decision must be respected. It is the law, it is strictly enforced by the courts, and penalties for noncompliance can be severe. *For more discussion, see page 4*.

Open meetings serve both the board and the public. Open meetings allow the public to know what decisions are being made about the education of their children and the expenditure of public funds. By seeing the board in action, the public may acquire a deeper appreciation for the amount of work a board handles, the difficult decisions it faces, and the knowledge needed to become a board member. Open meetings can also improve community relations because they allow opportunities for input and access to meetings. There are certain instances when it is lawful for a board to meet in private, and these exceptions to the open meetings law are also called closed sessions. There are also exemptions from the open meetings law which are called exempt meetings.

Closed sessions and exempt meetings are necessary in certain instances to provide for the efficient operation of the board and to protect the rights of individuals. Because the provisions for closed sessions and exempt meetings

are very limited, the section of this manual dealing with those provisions should be read thoroughly, keeping in mind that the public's right to know must always be carefully weighed against an individual's right to privacy. Unlike the open meetings law, the public records law is not preceded by a statement of intent; however, its purpose is similar to that of the open meeting law—accessibility to boards' records. All board records are considered public records and accessible to the public unless state or federal law defines them as confidential records.

This manual has two sections: open meetings and public records. The appendix includes current versions of both laws, as well as forms, exhibits and sample policies to assist boards in complying with the laws. *See Appendices F and G.* The appendix also includes commonly asked questions and answers about the open meetings law. *See Appendix D.*

BOARD MEMBER RESPONSIBILITY

Through board meetings, individual board members discharge their function and responsibility for public education in their school district. As a board member, becoming familiar with the open meetings and public records laws is an extremely important responsibility. In a 1985 Iowa Court of Appeals decision, the court held:

> Persons serving on governmental bodies should be constantly aware that their activities are subject to public scrutiny and should avoid even the appearance of engaging in unauthorized closed sessions. The public is entitled to openness in the making of public policy by governmental bodies.

Hettinga v. Dallas County Board of Adjustment, 375 N.W.2d 293, 295-96 (Iowa App. 1985).

Knowledge of the laws is essential to the smooth operation and management of a school district. It is important for board members to know the provisions of the open meetings and public records laws for many reasons:

- The public and the news media know board meetings are open and generally know their rights at meetings. The public and news media also know that most governmental records are accessible to them. Board members should acknowledge and respect those rights. Under Iowa law, information about meetings and public records must be provided to board members by the county auditor; IOWA CODE § 21.10.

- Misunderstandings about the open meetings and public records laws can result in negative publicity for the board. If the board knows how the law works and complies with it, the school district can function more smoothly;

- Knowingly violating either law could lead to personal liability for board members, including personal financial loss as well as negative publicity; and, *See page 23 and Appendices F and G.*

- Boards comprised of elected public officials have a duty as overseers of a public corporation to open their meetings and to allow students, parents, employees and citizens to know what board decisions are made, how they are made and why they are made.

PUBLIC MEETING v. MEETING OF THE PUBLIC

There is often confusion about the role of the public in a board's open meeting. The term "open meeting" means that the meeting is open to the public to observe and listen to the proceedings of the meeting. The term, "open meeting," does not mean the public may join in the board's discussion. As the Iowa Supreme Court stated:

> It is clear the purpose of chapter 98 [now chapter 21] is to prohibit secret and "star chamber" sessions of public bodies, to require such meeting be open and to permit the public to be present unless within the exceptions stated therein. The statute does not require the public body to allow any individual or group to be heard on the subject being considered.

Dobrovolny v. Reinhardt, 173 N.W.2d 837, 840 (Iowa 1970).

Boards are authorized to make rules in order to conduct their own business. IOWA CODE § 279.8. In addition, the law makes it clear that the public may attend and use cameras or recording devices at any open meeting; it is also clear the board may make and enforce "reasonable rules for the conduct of its meetings to assure those meetings

are orderly and free from interference or interruption by spectators." IOWA CODE § 21.7. The public may not necessarily participate in meetings.

The board decides the level of participation by the public, if any. Some boards set aside a specific time during the meeting for public comment. Other boards allow public participation during discussion of specific agenda items and still others offer a combination. The level of public participation the board chooses should be clearly addressed in board policy, and the policy should be made available upon request.

A board's policy addressing public participation in its meetings should include:

- How public speakers notify the board they want to speak;
- How long public speakers are allowed to address the board;
- When, during the meeting, public speakers will be allowed to address the board;
- That public speakers must be recognized by the board president before speaking; and,
- That public participation is not a right and, in order for board business to be completed within a reasonable time, public participation may be limited.

To ensure the public understands the level of participation allowed by the board in its meetings, the board president could read a statement at the beginning of a meeting or before the public participation portion of the meeting. The statement should explain the procedure to be followed when addressing the board. In addition, the statement should notify public speakers that if they address an issue not already on the agenda, board action on that issue will be deferred. The statement may also notify public speakers they must respect the rules of the board and general meeting decorum. These statements are particularly helpful as a reminder to both the board and the public prior to a public hearing or meeting on an issue or topic of extreme interest to the public.

Chapter II

OPEN MEETINGS LAW

This chapter outlines which boards are subject to the law, the definition of a meeting and what boards need to do to comply with the law.

WHICH BOARDS ARE SUBJECT TO THE LAW?

Iowa law requires all governmental bodies, including school boards, to perform their official functions in the open. The law states:

> Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

IOWA CODE § 21.3.

School boards, AEA boards and community college boards are expressly subject to the law because they are governmental bodies of the state. The term "governmental bodies" also applies to two types of board advisory committees:

- those created by the board which develop and make recommendations on public policy issues; and,
- those established by statute.

IOWA CODE § 21.2(1)(h).

"Advisory committee" includes an advisory board, advisory commission, advisory committee or task force. Whenever the term "board" is used throughout the discussion of meetings, it also means "advisory committee."

Advisory committees established by statute are subject to the open meetings law whether or not they make recommendations on public policy issues. An example of an advisory committee established by statute and therefore subject to the open meetings law is the IOWA CODE § 280.12 committee which develops and reviews the goals and plans of the school district.

Some advisory committees are not mandated but merely recommended by statute. However, an advisory committee recommended by statute, will most likely make recommendations on public policy issues and be subject to the open meetings law as well.

Which boards are subject to the act?

- School boards
- AEA boards
- Community College boards of trustees
- Iowa State Board of Education

Which board advisory committees are subject to the act?

- Advisory committees created by statute
- Advisory committees created or appointed by a board to develop and make recommendations on public policy issues.

According to an Iowa Attorney General opinion, board-created advisory committees are subject to the provisions of the open meetings law if they develop and make recommendations on public policy issues. *O.A.G. Nov. 18, 1993*. Advisory committees are considered created by the board if the board:

- appoints members of the advisory committee;
- authorizes the appointment of committee members; or,
- adopts a board policy establishing an advisory committee and delegates the authority to appoint the members to the administration.

Id.

Since it is unlikely that a board would appoint or create an advisory committee that would not be making recommendations on public policy issues, it is safe to say all board-created or board-appointed advisory committees are subject to the open meetings law.

As stated in the open meetings law, any ambiguity should be resolved in favor of openness. Examples of board-created advisory committees include those created to research whole-grade sharing, facilities, reorganization or the recommendation of a bond issue.

Advisory committees subject to the open meetings law are subject to all provisions of that law: they must post public notice of their meetings, have an agenda, keep minutes and enter a closed session for only the specific exceptions authorized in the open meetings law. However, advisory committees are not required to publish minutes of their meetings in the newspaper. The board minutes publication requirement is not a requirement of the open meetings or public records laws; rather, it is a requirement of IOWA CODE § 279.35.

WHAT IS A MEETING?

This section of the manual outlines the provisions and the terms of the open meetings law defining when a meeting does and does not occur. In most cases, reviewing these provisions and terms assists the board in complying with the open meetings law. When in doubt, the board should contact its school attorney.

Iowa courts and Iowa attorney general opinions have further defined and clarified the provisions and terms of the open meetings law and their application. Although attorney general opinions are merely advisory in nature, they provide guidance on the operation of the open meetings law. Again, when in doubt, boards should err on the side of openness. Boards unclear whether they are or are not holding a meeting should contact their school attorney for guidance.

Meeting Defined

There are four essential elements in the definition of meeting:

- A gathering in person or by electronic means, formal or informal;
- A majority of board members must attend the gathering;
- Deliberation or action must occur; and,
- The deliberation or action must be within the scope of the board's policy-making duties.

1982 O.A.G. 162.

A "meeting" is a gathering in person or by electronic means whether formal or informal. If a majority of the board members is present and there is deliberation or action upon any matter within the scope of the board's policy-making duties, then there is a meeting. To qualify as a meeting, a board does not need to gather in its regular meeting room. A meeting can occur at a local restaurant or the co-op.

Electronic meetings are permitted by the open meetings law. They are generally held in conjunction with an in-person meeting because one or more board members are unable to be present. The most common form of electronic meeting is when the absent parties are present by telephone. In order to hold a meeting using a telephone, those present must be able to hear the absent party's comments, and the absent party must be able to hear those present at the meeting site. IOWA CODE § 21.8. It should also be documented in the minutes that a board member or members were present by telephone and were not present in person.

What is a Meeting?

A gathering in person or by electronic means:

- Formal or informal;
- A majority of members of a board, including advisory committees; and
- Where deliberation or action upon any matter within the scope of the board's policy-making duties takes place.

Majority of Members

The Iowa Supreme Court has determined that a gathering of less than a majority of the board does not qualify as a meeting. *Telegraph Herald Inc. v. City of Dubuque*, 297 N.W.2d 529, 532 (Iowa 1980). However, a meeting of two board members designated as a committee by the full board (members who are asked to go talk to another board) to develop and make policy recommendations is subject to the open meetings law. *Id*. at 533. That the definition of "meeting" applies to only a majority of board members should not be interpreted to circumvent the obvious intent of the open meetings law that school matters are to be discussed primarily in an open meeting.

Deliberating or Taking Action

A meeting exists when the board deliberates or takes action on a policy issue within the board's scope. An Iowa attorney general's opinion referred to Webster's definition of "policy" and noted the term includes consideration of alternatives and conditions and the exercise of discretion or judgment by a board with respect to its statutory responsibilities. Thus, policy discussion among board members is not limited to a specific policy adopted by the board but refers to all discussions relating to a policy issue. 1980 O.A.G. 164, 166.

Ministerial Acts and Social Gatherings

Ministerial acts and social gatherings involving a majority of the board are not meetings subject to the open meetings law. "Ministerial act" is defined as "one which a person or board performs under a given state of facts in a prescribed manner in obedience to the mandate of legal authority without regard to or the exercise of his, or their, own judgment upon the propriety of the act being done." *Black's Law Dictionary* 689 (6th ed. 1991).

What is not a Meeting?

A gathering of members of a board:

- Formal or informal;
- Of a majority of members of a board, including certain advisory committees;
- For purely ministerial or social purposes; and,
- Where there is not discussion of policy or intent to avoid the purposes of the open meetings law.

The Iowa attorney general defined "ministerial purposes" as acts performed by a board which do not involve an exercise of discretion or judgment on the part of its board members. In an opinion concerning a North Central Association presentation to the Sioux City School Board the attorney general stated:

> . . . "purely ministerial" purposes may include a situation in which members of a governmental body gather simply to receive information upon a matter within the scope of the body's policy-making duties. During the course of such a gathering, individual members may, by asking questions, elicit clarification about the information presented. We emphasize, however, that the nature of any such gathering may change if either "deliberation" or "action," as defined above, occurs. A "meeting" may develop, for example, if a majority of the

> members of a body engage in any discussion that focuses at all concretely upon matters over which they may exercise judgment or discretion.

1982 O.A.G. 162.

"Social purposes" include those gatherings of a purely nonbusiness nature. The exception to the open meetings law for "social purposes" takes note of the fact board members, as private citizens and members of a community, may be invited to the same parties and receptions and may belong to the same clubs or civic organizations. On such occasions, it is important to remember that no discussion of matters within the scope of the board's policy-making duties takes place and there be no intent to avoid the purposes of the open meetings law. *Telegraph Herald, Inc*., 297 N.W. 2d 533.

All board members could be present at the same place, and the open meetings law would not be an issue if no official business was discussed or transacted. Such situations might include school open houses, graduation ceremonies, the signing of documents after an official decision had already been made, conventions or similar functions.

In conclusion, in the event a majority of board members is present and the group begins to deliberate upon matters within the scope of the board's policy-making duties, the board members should know this is not permitted by the open meetings law and should leave or stop deliberating. A discussion of policy or an intent to avoid the purposes of the law makes even ministerial or social gatherings subject to the open meetings law. In short, if a majority of the board is present, board members cannot discuss or deliberate upon board business outside of a meeting or an exempt session authorized by law.

Use of E-Mail

With the ever- increasing use of e-mail, the questions naturally arise about the implications of the open meetings law on the use of e-mail. The definition of a "meeting" is "a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is a deliberation or action upon any matter within the scope of the governmental body's policy-making duties." IOWA CODE § 21.2(2). So, if a majority of the board gets together and engages in a discussion about any policy issue, no matter where they are – café, co-op or courthouse, it is arguably a meeting in violation of the law.

The question is whether the same type of gathering electronically, via e-mail, is also a meeting subject to the open meetings law. While Iowa law is currently silent with no cases having been decided, other jurisdictions have determined that certain e-mail discussions are considered meetings subject to the open meetings law – it doesn't matter that the discussion takes place over the span of a couple of days. *See Del Papa v. Board of Regents of the University and Community College System*, 956 P.2d 770 (Nev., 1998) and *Wood v. Battle Ground School District*, 27 P. 3rd 1208 (Wash., 2001). What matters is that a majority of the board is discussing a policy issue and all members can see the comments and respond. It's really no different than a conference call where board members aren't physically together but they are communicating back and forth. Courts in other states have determined that even though a majority of the board members were not simultaneously communicating, that didn't mean a quorum wasn't present. They've determined quorums were present for the entirety of the discussions. If, however, a board member e-mails the rest of the board to notify fellow board members of a new item on the IASB Web site, and it's strictly an informational e-mail with no ensuing discussion, the open meetings law probably hasn't kicked in as policy issues haven't been discussed.

It is recommended that when the superintendent gives updates via e-mail, the superintendent should remind board members to not hit "reply to all" so a discussion doesn't ensue. The same advice goes for board members e-mailing information to fellow board members. Board members and administrators need to go to extra lengths to ensure discussions do not take place via e-mail.

It is recommended that boards limit their on-line communication to merely informational items and keep the discussion for the board table. The citizens have a right to hear the board's discussions and they should have that opportunity at every board meeting.

Chapter III

TYPES OF MEETINGS

The open meetings law provides for different types of meetings. This chapter discusses the five types of meetings: regular meetings, work sessions, special meetings, emergency meetings and closed sessions.

This chapter also discusses exempt meetings which are separate and distinct from the open meetings law. Subsequent chapters of the manual discuss requirements of notice, agenda and minutes.

Types of school board meetings

- Regular
- Work sessions
- Special
- Emergency
- Closed sessions
- Exempt

Types of exempt school board meetings

- Termination hearings of licensed employees
- Termination of an administrator's contract
- Collective bargaining or strategy sessions
- Strategy sessions regarding non-union employees

REGULAR MEETINGS

Regular meetings include those meetings of the board generally held at the same time, in the same place and on the same day(s) every month. Some school districts have two regular meeting times, one for use during the school months and another during the summer months. Boards should set their regular meeting time for the year at the organizational meeting. Boards may want to have a board policy which establishes the regular meeting time and location. *See Exhibit 1.* Citizens and news media depend upon the regularity of the meeting time and location. It is recommended boards not deviate from their regular meeting time and, if they do, the reason for the deviation should be noted in board minutes.

Boards may also want to establish a standard meeting agenda in policy. This makes writing the agenda easier and more efficient since certain items, like approval of bills, are regular items on the board agenda. The tentative agenda for a regular meeting needs to be posted at least 24 hours in advance of the meeting. *See page 17on meeting notice for more details.*

WORK SESSIONS

Work sessions are open meetings generally held when the board wants to engage in board development, planning or goal setting. At work sessions, while the board may be discussing or deliberating policy issues, it is not acting upon any of the issues. Even though the board is not acting on policy issues, the board is deliberating policy issues, so a work session is considered a meeting, and all the provisions of the open meetings law apply including the provision that meetings be accessible to the public and minutes be kept and published. *See Exhibit 3, and also* *page 18 on meeting accessibility*.

SPECIAL MEETINGS

Special meetings are held in addition to regular meetings. Special meetings are held to consider lengthy issues or those issues needing attention prior to the next regular meeting of the board. At least 24 hours public notice is re-

quired prior to a special meeting. Action is generally taken at a special meeting. The agenda for special meetings should be limited to only those issues for which the meeting was called. For example, the public hearing and meeting on the budget may be considered a special meeting if it is not held as part of a regular meeting. The budget is the only item on the agenda, and the only action taken is the board's approval of the budget. Even though other issues, such as open enrollment requests, arise between the time of the notice of the meeting and the meeting, action on those other items should be deferred until the next regular meeting. *See Exhibit 2*.

EMERGENCY MEETINGS

Emergency meetings are held only when the board must act immediately and cannot wait the required 24-hour notice period for a special meeting. For example, if a board has bid on a piece of property, the bid is accepted and the board must act that same day in order to finalize the bid, then an emergency meeting is appropriate. Only on rare occasions will a board need to hold an emergency meeting as most items can wait the required 24 hours for a special meeting or until the next regular meeting. The minutes of the emergency meeting should state why the meeting was held without the required 24 hours notice. *See Exhibit 2*.

CLOSED SESSIONS

Closed sessions are those sessions within an open board meeting which take place without the public present. The open meetings law sets out specific exceptions to the law which allow boards to go into closed sessions. The open meetings law outlines the closed session procedures and how minutes are to be taken and treated. To go into a closed session, the board must vote in the open meeting. A board member must make a motion to go into closed session stating the exception to the open meetings law which allows the closed session. This motion must be a part of the open meeting minutes. IOWA CODE §§ 21.5 (1), (2).

After the motion and a second, a roll call vote is required. A board may hold a closed session only by the affirmative vote of either two-thirds of the entire board or all of the members present—assuming a quorum is present. *Id.*

Voting to go into closed session requires:

- two-thirds of the entire board
  - — 7 member - if 7, 6 or 5 are present, 5 must vote "yes"
  - — 5 member - if 5 or 4 are present, 4 must vote "yes"

- all present must vote "yes"
  - — 7 member - with 4 present, 4 must vote "yes"
  - — 5 member - with 3 present, 3 must vote "yes"

If there is an unfilled vacancy on the board, then not all board members are present, and two-thirds of the entire board or all present must vote to go into closed session. IOWA CODE § 21.5(1).

Ordinarily, the board secretary is present at closed sessions to take the required detailed minutes. However, the board may exclude everyone except board members from a closed session as long as one of the board members acts as secretary to keep the detailed minutes and record the closed session.

The open meetings law specifies that a closed session may be held "only to the extent a closed session is necessary." IOWA CODE § 21.5(1). In voting on the motion for a closed session, the motion must state the specific legal exception in the law which authorizes the closed session. IOWA CODE § 21.5(2). *See Appendix B and Exhibit 5*. The open meetings law further provides, "a governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session." *Id.*

Discussion during the closed session may not extend beyond the authorized purpose for the closed session. The Iowa attorney general has stated:

> A school board may not discuss any business during a closed session which does not relate directly to the specific reason announced as justification for the session. Hence, if the board is conducting a closed session un-

> der section 21.5(2)(i) with respect to the discharge of a particular teacher, it does not have authority to engage in a general discussion of the qualifications of other teachers or the need for discharge of a school administrator. 1982 O.A.G. 162.

The board secretary or board president generally has the responsibility of ensuring the discussion stays on the authorized purpose for the closed session. However, each individual board member is responsible for raising the question of whether the discussion has strayed from the authorized purpose of the closed session. Because the penalties of the law are strict and potentially, expensive, each board member has a stake in ensuring that only topics directly related to the closed session are discussed.

Once the discussion is questioned, the president is obligated to immediately determine whether the topic is directly related to the authorized purpose of the closed session. While this may seem unduly formal and strict, the spirit and intent of the open meetings law clearly requires openness in the deliberation and action of the board. If a board member insists on discussing a topic unrelated to the reason for holding the closed session, the closed session should be immediately adjourned.

When discussion on the topic for which the board entered into a closed session is completed, the board president should determine if the board members are ready to return to the open meeting. This can be done by reaching a consensus among the board members or asking whether board members are ready to return to the open meeting. A motion is not recommended and is not necessary to return to the open meeting as a vote should not be taken in a closed session.

If a board decides to take action on the topic discussed in the closed session, the vote must be taken in the open meeting. If the topic is confidential, such as the expulsion of a student, the motion should not state the name of the student. Instead, a board member could make a motion such as, “I move to expel the student who was the subject of the previous closed session” or “I move to expel A. B. who was the subject of the previous closed session.”

Minutes of a closed session, both written and recorded, are sealed records. The law does not require approval of the minutes but board policy may. Because of the recording, it is not necessary to approve the written minutes. To obtain board approval of the closed session written minutes, the board secretary asks for approval individually. Only board members present at the closed session initial the minutes. Closed session minutes are confidential public records and, once approved, are sealed unless opened by a court order, and then only for the purpose of enforcing the open meetings law. Board members, however, who were not present at the closed session may listen to the recordings. IA. O.A.G. 01-11-1. *See Appendix B and Exhibit 5.* An attorney general's opinion has stated that board members have a right to examine closed session minutes. IA. O.A.G. 01-11-1 (L). To interpret the statute more narrowly, denying access to board members "hamstrings a body," so board members should have access. *Id.*

In conclusion, closed sessions are held within a meeting and should be an agenda item. To enter a closed session, the board must first convene in an open meeting and then actively enter a closed session by stating the purpose of the closed session, citing the applicable exception to the open meetings law in the motion for the closed session, receive a second to the motion, and take a roll call vote with two-thirds of the board or all present voting in favor of the closed session. Action is not taken in a closed session, and the board must return to the open meeting to take action.

Closed sessions may be held only for the purposes authorized in the open meetings law. The open meetings law lists 10 items that may be addressed by a board in closed session and are considered exceptions to the open meetings law. Of these 10 exceptions, boards generally use only five. They include the review or discussion of confidential records, litigation strategy discussions with legal counsel, student expulsion or suspension hearings, purchase or sale of real estate, and to evaluate the professional competency of an individual. Each of these is addressed in detail below.

Confidential Records

One exception to the open meetings law authorizes the board to go into closed session to discuss records which may be held confidential under either Iowa or federal law. IOWA CODE § 21.5(1)(a). The Iowa public records law

provides that certain records are confidential including personal information in a student's file and personal information in confidential personnel records. IOWA CODE § 22.7(1). Federal law also provides that personally identifiable information of students, unless listed as directory information as designated by the school district are confidential records. Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g (2010). If a student's personal record is to be discussed, the board must enter a closed session in order to avoid public disclosure of the contents of the records, unless a duly authorized person (parent or guardian or the student if 18 years of age or older) agrees to the release of information. *See page 28.*

Litigation Strategy Discussion with the School Attorney

Boards are authorized under an exception to the open meetings law to hold a closed session to discuss strategy with the school attorney on matters in litigation or where litigation has been filed or is imminent ***and*** where its disclosure would likely prejudice or disadvantage the position of the board in that litigation. IOWA CODE § 21.5(1)(c). To use this exception, the school attorney must be present to participate in the discussion, either in-person or electronically, and litigation strategy must be discussed.

For the record, the board must determine that opening the discussion to the public would prejudice or disadvantage the board in the litigation. This exception can only be used when the lawsuit is imminent, not simply when there is a concern that a lawsuit may be filed. For example, the school attorney may want to report a petition has been filed in court and state the petition's allegations. In that instance, a closed session is not warranted since there is no discussion of strategy. The fact a petition has been filed and its contents are public records. However, if the merits of the petition are to be discussed and strategy is to be considered, a closed session may be held with the school attorney present.

In some cases, courts have upheld decisions made in a closed session using this exception even though the open meetings law requires final action be taken in an open meeting. In *Dillon v. City of Davenport,* 366 N.W. 2d 918 (1985), the court upheld a vote on a resolution taken by the city council in closed session. In the closed session with the city's attorney, the city council discussed a settlement agreement between the city and a former employee. In closed session, the city council voted on a resolution authorizing the city's attorney to settle the case. After the attorney negotiated a settlement on the terms authorized, the city council had a change of heart and refused to ratify the settlement in an open meeting. In court, the city council argued that the settlement was not enforceable because a binding vote cannot be taken in closed session.

The Iowa Supreme Court disagreed and stated:

> . . . the only practical method of providing authority to the city attorney to negotiate was in closed session. To make a public disclosure and alert the opposing side to the proposed settlement negotiations would be self-defeating. Consequently, in this limited circumstance a resolution authorizing settlement is merely a part of a strategy discussion with counsel.

Id. at 923.

The court found no merit in the claim that the action on the resolution was void because it occurred in closed session.

Student Expulsion or Suspension Hearings

A board may hold a closed session to discuss whether to conduct a hearing, or to conduct a hearing to suspend or expel a student, unless an open meeting is requested by the student or, if the student is a minor, by a parent or guardian of the student. This exception to the open meetings law is the only one that presumes the session is closed unless requested to be open.

Before holding an expulsion/suspension hearing in an open meeting, the board should obtain a written request for an open meeting from a student if the student is 18 or older or, if the student is under 18, from the student's parent or guardian. This is necessary to ensure compliance with the Iowa open meetings law, the Iowa public records law and FERPA. The request for holding the expulsion/suspension hearing in an open meeting should specifically allow the disclosure of confidential records in the open meeting. If a written request is not obtained, the record of

the hearing should clearly state the parents' or student's request for an open meeting. Further, the parents or student should state on the record that they authorize the disclosure of confidential records in the open meeting. *See Appendix C.*

If more than one student is recommended for expulsion to the board at the same time, to avoid prejudice, each student must have his or her own hearing. Separate hearings should be conducted even if two students were involved in the same incident. This is recommended because evidence admitted to prove the guilt of one student could prejudice the determination of the guilt or innocence of the other student(s). *In re Eric Plough*, 9 D.o.E. App. Dec. 234, June 4, 1992.

While the board may be in closed session for the expulsion or suspension hearing, final action by the board must be taken in an open meeting. To protect confidentiality, a motion made to expel or suspend a student should not state the student's name. The motion may state that the board is expelling the student discussed in the previously completed board hearing, or the motion can use the student's initial.

In Schumacher v. Lisbon School Board, the Iowa Supreme Court had the opportunity to review this exception to the open meetings law in conjunction with IOWA CODE § 21.5(1)(i), evaluation of professional competency exception. 582 NW. 2d. 183 (Iowa 1998). *In Schumacher*, an education associate and a student had a verbal disagreement. As a result, both were disciplined. The parents found out the discipline imposed upon the associate and felt it was not as severe as that imposed upon their child, an out-of-school suspension, and therefore, appealed the student's suspension to the board. In their appeal, the parents asked that the suspension hearing be held in an open session pursuant to IOWA CODE § 21.5(1)(e), the student suspension or expulsion exception.

The associate found out about the student's appeal and was concerned the parents would criticize her and injure her reputation in an open session. The Lisbon school attorney notified the parents that the appeal hearing would be in closed session pursuant to IOWA CODE § 21.5(1)(i), the evaluation of professional competency exception. The board went in to closed session pursuant to IOWA CODE § 21.5(1)(i). Upon returning to open session, the board voted to uphold the student's suspension. The parents challenged the board's action in court and won.

The court disagreed with the board's determination that the rights of an employee to have a closed session superceded those of a student to have an open session. The court stated the board had not met the requirements under IOWA CODE § 21.5(1)(i) as the board was not meeting to evaluate the professional competency of an individual but to discuss the suspension of a student. Since the parents had requested an open session as the law allowed, the meeting should have been in the open.

This exception to the open meetings law applies only to student suspensions or expulsions and not to other student matters such as placement of students in special education programs. However, if appropriate, such matters may be discussed in closed session under the first exception, confidential records. *See page 28.*

Purchase or Sale of Real Estate

A board may hold a closed session to discuss the purchase or sale of real estate where premature disclosure could reasonably be expected to increase the price of property being considered for purchase or lower the value of the property the board could receive for it. The minutes and the recording of a closed session under this section are to be made available for public examination when the transaction is completed. IOWA CODE § 21.5(1)(j). See SF289 (section 5).

If the transaction is not completed, the information should be made public within a reasonable time. Boards in this situation should review the matter with the school attorney prior to disclosure.

To Evaluate the Professional Competency of an Individual

Another exception to the open meetings law allows the board to hold a closed session to evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and when that individual requests a

closed session. IOWA CODE § 21.5(1)(i). Boards have four options available to them when evaluating the professional competency of an individual:

- Hold the session in open;
- Hold a closed session pursuant to IOWA CODE § 21.5(1)(i);
- Hold a closed session pursuant to IOWA CODE § 21.5(1)(a); or,
- Hold the session in both open and closed pursuant to IOWA CODE § 21.5(1)(i).

A three-part test must be met to use IOWA CODE § 21.5(1)(i) exception to the open meetings law:

1. The issue is the evaluation of the professional competency of an individual whose appointment, hiring, performance or discharge is being considered;
2. The closed session is necessary to prevent needless and irreparable injury to the individual's reputation as determined by the board; and,
3. The individual must request the closed session.

In determining whether to hold an open meeting or a closed session, the board should be extremely cautious of potential liability for injury to an individual's reputation. Some school districts inform employees their performance will be evaluated at the next meeting and offer them an opportunity to request an open or closed session. However, a board must be aware that routine solicitation of a request for a closed meeting may not meet the legislative mandate of promoting openness. Boards should check with the school attorney regarding the facts of each case.

If a board wants to evaluate an employee's performance and, after notification, the employee does not ask for a closed session, the board should get the employee to sign a waiver to discuss confidential records in an open meeting. *See Appendix E for a waiver form.* If no statement is received, the confidential records should be reviewed in closed session using the exception regarding confidential records and the evaluation form should be given to the employee in a sealed envelope. IOWA CODE § 21.5(1)(a). To ensure appropriate procedures are followed, the school attorney should be contacted.

The board makes the final determination of whether to enter a closed session under this exception to the open meetings law. Once the employee requests the closed session, the board determines whether the other two parts of the test are met. A governmental body's refusal to enter closed session under this exception was considered in *Feller v. Scott County Civil Service Commission*, 435 N.W.2d 387 (Iowa App. 1988) *(Feller I) and Feller v. Scott County Civil Service Commission*, 482 N.W.2d 154 (Iowa 1992) *(Feller II). In Feller I*, the Iowa Court of Appeals had held that an unreasonable failure to close a public meeting at the request of an employee violated the open meetings law. In *Feller II*, Iowa Supreme Court affirmed the result of *Feller I*, but disapproved the language about open meetings remedies being available for failure to close a meeting. The Supreme Court noted the refusal to close the meeting might be reviewable by the courts by a writ of certiorari.

A question often asked is whether the board may evaluate an employee in closed session using this exception without first advising the employee of the evaluation. The answer is "no." First, the open meetings law requires the employee to request a closed session in order for a closed session to be held. Second, the board must determine whether an evaluation in an open meeting will cause needless and irreparable injury to the employee's reputation.

A common question is what to do when an employee requests a closed session but makes the request contingent upon the employee being present during the entire closed session. If the board does not agree with the conditions and cannot negotiate with the employee to change the employee's demand to be present, the board has three options. The first is to cancel or postpone the closed session until an agreement can be reached. The second is to hold the session in an open meeting. The third is to hold a closed session as long as the criteria to use that exception is met are pursuant to IOWA CODE § 21.5(1)(a), the confidential records exception.

If the board chooses the open session option, the employee should be informed that confidential records will be disclosed in an open meeting. The board should get the employee to sign a release stating that he or she is aware

that confidential records will be released in an open meeting. *See Appendix E*. Boards that cannot get the employee to sign the release should document, the refusal to sign in the minutes.

As this exception to the open meetings law covers appointment, hiring, performance and discharge, the board may discuss an applicant in closed session if the applicant requests a closed session and, if the board determines it should grant that request because discussion in an open meeting will cause needless and irreparable injury to the applicant's reputation. Applications may also be kept confidential. *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895 (Iowa 1988). Prior to soliciting applications for vacant positions, the board should determine whether they want to withhold applicants' names and, if so, should ask applicants to indicate on either the application form or in a cover letter if they wish their application to remain confidential.

An alternative to a completely closed process is to have a hiring process that is both closed and open. When interviewing, the board could hold parts of the interview in the open – those questions which should not impact a candidate's reputation and part in closed – those questions which may impact a candidate's reputation. For example, discussions about a candidate's educational philosophy should not impact a candidate's reputation. But, questions about why a candidate left abruptly from a previous position might, and could be, asked in a closed session.

The general subjects of staff reduction or elimination of a particular position must be discussed in open meeting. However, the discussion should not name the person or persons who would be affected by the board's decision.

In evaluating an employee or potential employee, the board may consider holding a closed session under three exceptions:

1. the exception for evaluating the professional competency of an individual;
2. the exception for confidential records; or,
3. the exception for litigation.

It is important to know the difference between the confidential records exception and the evaluation of the professional competency of an individual's reputation exception. Even if the board is unable to make the distinction in all cases, advice from the school attorney should be sought. The confidential records exception allows the board to review and discuss confidential records in closed session. This exception does not require a request for a closed session from the individual whose records are being reviewed. *See page 33 for a discussion of employee records*. The exception for litigation requires that litigation be imminent and that the school attorney be present either in-person or by telephone.

Often, boards are asked to listen to citizens' or parents' complaints about a specific employee at the meeting. The question arises whether the board should require these complaints to be heard in closed session, as is likely the discussion will touch upon the professional competency of the employee and that items brought out during the discussion, whether accurate or not, may irreparably harm the reputation of the employee. However, in most cases, the employee is not present and therefore is unable to request a closed session. When boards are approached by citizens or parents regarding the performance of an employee, it is recommended the board refer the issue to the administration for resolution. This course of action avoids the open meetings issue and, hopefully, also resolves the issue.

If an individual has followed the administrative procedures set forth in board policy and still wants to address the board, the board president needs to determine whether it is an appropriate topic for board discussion. In the case of a licensed employee, the board must be careful to remain impartial in the event the licensed employee is later recommended for termination. It is suggested that boards in this situation contact their school attorney for guidance. For more details, *see IASB's Licensed Employee Contract Termination Procedures Manual*, Chapter I, contract termination procedures for teachers (2007).

EXEMPT MEETINGS

Exempt meetings are not subject to the open meetings law and need not comply with the notice, minutes or other requirements of that law. However, each exempt meeting has its own specific procedures with which boards must comply. There are only four purposes for which a board can hold an exempt meeting:

- termination hearings of licensed employees;
- administrator termination hearings;
- bargaining strategy and negotiations sessions for union employees; and,
- strategy sessions for non-union employees.

Termination of a Licensed Employee's Contract

Teacher termination hearings under chapter 279 are private hearings exempt from the open meetings law. IOWA CODE § 279.15. Following the private hearing, the vote on the action to be taken by the board based on the private hearing must take place at an open meeting. For more details, *see http://www.ia-sb.org/WorkArea/showcontent.aspx?id=9544*, Chapter I, contract termination procedures for teachers (2007).

Termination of an Administrator's Contract

The administrator termination process begins when the board votes to consider termination of an administrator's contract. The administrator has the right to request a hearing before an administrative law judge (ALJ). The hearing before the ALJ is a public hearing. IOWA CODE chs. 17A; 279.24. If the administrator or the board appeals the ALJ's decision, a private hearing is held before the board. This hearing before the board is exempt from the open meetings law and is a private hearing even if the administrator does not request the hearing to be private. The board must vote at an open meeting whether to terminate the administrator's contract. For more details, *see IASB's Licensed Employee Contract Termination Procedures Manual*, Chapter II, section on terminating administrator and superintendent contracts (2007).

Collective Bargaining or Strategy Sessions

Bargaining sessions, strategy sessions of boards or employee organizations, mediation and the deliberative process of arbitrators in a collective bargaining process are exempt from the open meetings law. IOWA CODE § 20.17(3). *Burlington Community School District v. Public Employment Relations Board*. 268 N.W.2d 517, 524 (Iowa 1978). This exemption from the open meetings law applies to all sessions in the collective bargaining process except the first two bargaining sessions with employee organizations. At these two sessions the board and the union present their initial proposals in an open meeting, and the presentation of their proposals should be a board agenda item. This requirement does not prohibit a board from having exempt strategy sessions prior to the two open meetings. It is logical that a board would have to hold exempt strategy sessions to develop its initial proposal.

The Iowa attorney general has discussed the scope of discussion permitted at either a bargaining session or strategy session. The question was raised whether board members could discuss such matters as the budget, staffing, program changes or school closings in the context of bargaining strategy. The attorney general said:

> . . . § 20.17(3) expresses a legislative recognition of the need for a reasonable amount of flexibility and discretion during a negotiating session or strategy meeting. During a strategy meeting, for example, a school board may need to explore the general fiscal implications and/or consequences of a proposed collective bargaining agreement in order to make a knowledgeable decision on whether to approve the agreement. Such matters that are closely related to overall strategy in the collective bargaining process appear to be included within the exemption set forth in § 20.17(3). In our view, however, the exemption does not extend to deliberation or action upon particular policy-making duties, such as the necessity for termination of a specific teacher or closing of a specific school. Such matters are properly discussed within the parameters of chapter 21.

1982 O.A.G. 162.

Advance notice of the strategy session need not be given, detailed minutes need not be kept, nor do recordings need to be made. However, it is recommended some record be kept of the general subject matter such as when

strategy sessions are held, the time they begin, the time they end and who is present. A common misunderstanding of an exempt strategy session is that the board must first hold an open meeting to go into a closed session to discuss bargaining strategy. This is not necessary since the strategy session is exempt from the requirements of the open meetings law, and therefore, not technically a closed session. The board can schedule and hold strategy sessions without any public notice.

It is recommended the exempt strategy session be held either at a time separate from the board meeting or just before or after the regular meeting rather than in the middle of the meeting. This enables the public or the news media to plan around the strategy session.

Boards may, if they desire, inform the news media and the public that a strategy or bargaining session will be held. This informs the public in advance why the board is meeting. Boards which prefer to hold strategy sessions in conjunction with a regular meeting may proceed in one of two ways – either recess or adjourn the regular meeting. Even though public notice is not required for a strategy session held during the course of a meeting, it is recommended that it be included on the agenda so the public and news media understand the board's activities.

Generally, it is recommended, prior to adjournment that the board president announce the board, will meet as provided in IOWA CODE § 20.17(3) for a collective bargaining strategy session following adjournment. Such an announcement will let the audience know what is taking place and the legal authority for the strategy session. Using this procedure will allow the board to complete its agenda and let the people attending the meeting know that no further action or discussion will take place at the meeting.

While bargaining and strategy sessions are exempt from the law, boards need to remember the limitations of those exemptions. Questions as to whether the meeting is an exempt bargaining or strategy session should be addressed to the school attorney.

Strategy Sessions Regarding Non-Union Employees

Boards can meet "to discuss strategy in matters relating to employment conditions of employees . . . who are not covered by a collective bargaining agreement under chapter 20 . . ." and these strategy sessions are exempt from the open meetings law. IOWA CODE § 21.9. A board has the same right to use an exempt strategy session in the development of salaries and other employment conditions for non-union employees, including administrators, as it does in formal bargaining with employees organized under the collective bargaining law. "Employment conditions" include wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, inservice training and other matters mutually agreed upon. IOWA CODE § 20.9. The procedures for holding exempt strategy sessions for non-union employees are the same as for union employees. See the previous section for this discussion.

It is important to distinguish between strategy sessions and bargaining sessions. While strategy sessions are exempt, meet-and-confer bargaining sessions with non-union employees attended by a majority of the board may be found to be open meetings and, therefore, subject to the procedures and requirements of the open meetings law. Meet-and-confer sessions are those generally held between the board and non-union employees which do not result in a formal agreement recognized by law. For purposes of meet-and-confer discussions in this manual, the term "non-union employees" means those employees eligible to organize but who do not. Bargaining sessions between the board and administrators are also considered open meetings.

Chapter IV

MEETING NOTICE

The board or any of its advisory committees which have policy-making authority must give notice of the time, date, place and tentative agenda of their meetings. IOWA CODE § 21.4(1). This notice must be given at least 24 hours prior to the meeting. IOWA CODE § 21.4(2). The notice must be posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the board or, if no such office exists, at the building in which the meeting is to be held. IOWA CODE § 21.4(1). The 24-hour notice is a minimum requirement. It is recommended that as much notice as possible be given. *See Exhibit 4*.

Notice

- Listing
  - Time
  - Date
  - Place
  - Tentative agenda
- At least 24 hours prior to the meeting unless for a good cause
- Posting in prominent place or bulletin board
  - Easily accessible to the public
  - Spot clearly designated for this specific purpose
  - At principal office of the governmental body or, if one doesn't exist, at the building where the meeting is to be held
- Given to members of the news media who request it

Questions have been raised about the method used to give notice and the costs incurred. The Iowa attorney general has emphasized that the purpose of the law is to permit the public to be present. The board cannot simply tell a news media representative who inquires about a board meeting schedule that notification of meetings will be carried on a specific program of a radio station. The board needs to do more. The attorney general said:

> To satisfy the statutory requirements, a governmental body must see that the public at-large is notified through the posting of notice and notification to news media. If such measures have been taken, an agency or other governmental body is free to select additional means "reasonably calculated to apprise the public" of a pending meeting. . . . In our view, notification of the time, place, date and tentative agenda via a radio broadcast is an appropriate, additional means of informing the public of a pending meeting.

1988 O.A.G. 73.

News media which have filed a request for notice must be notified at least 24 hours in advance. The open meetings law does not require the news media to publish or broadcast the notice. It is recommended boards adopt a policy requiring all news media requesting notice of meetings to file such a request annually in writing with the board secretary. IOWA CODE Ch. 21. *See Exhibit 4*. There should be alternate telephone, and or email addresses for after-hours or emergency notice. A suggested form is included in *Appendix A, Form 1*. These requirements must be followed or the meeting violates the law and action taken at that meeting may be nullified by a court.

The Iowa attorney general further noted the open meetings law does not require a board to notify all news media. It is the news media's responsibility to request notice of meetings. However, a board may provide notice to any news media beyond the minimum requirements in the law. 1980 O.A.G. 88. The form, "Request of News Media

for Notice of Meeting," should meet legal requirements and provide the necessary information for the board to give notice of meetings. *See Appendix A, Form 2*.

The open meetings law makes no provision for charging postage or other costs related to notification; therefore, a governmental body cannot charge the news media or an individual for such costs. Because there is no geographical limit, any news media which requests notice of meetings must be provided with the notice 24 hours prior to the meeting. The open meetings law does not require the meeting notice be sent to an individual. However, the Iowa attorney general has stated that preferable procedure is to inform members of the general public of the time, date, place and tentative agenda of a meeting upon request, even though posting of a notice complies with the minimum requirements of the law. 1980 O.A.G. 88.

Where specific notice is set forth in the law in some manner other than 24 hours notice, that notice will satisfy the requirements of the open meetings law. For instance, if the board plans to receive bids and hold a hearing on the building plans, specifications, form of contract and cost of constructing a new high school, the notice of hearing and awarding will serve as the notice of that meeting. Similarly, if the board publishes notice to sell bonds, that will suffice as the notice for the meeting. These types of meetings are special meetings of the board and require an agenda to be posted.

An exception to the notice requirement involves "formally constituted subunits of a governmental body." The statute provides:

> A formally constituted subunit of a parent governmental body may conduct a meeting without notice . . . during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

IOWA CODE § 21.4(3).

This exception could apply when board members are appointed as a committee of the board and hold a conference during a regular meeting or when a committee meets during or immediately after a meeting. The "sub-unit's" meeting must correspond with the business being conducted at the regular meeting.

EMERGENCY MEETINGS - NOTICE

Notice of at least 24 hours must be given for meetings unless, for good cause, it is impossible or impractical to do so; then as much notice as is reasonably possible shall be given. 1982 O.A.G. 162. When meeting on an emergency basis, the board should notify the news media which have requested notice and post notice of the meeting even though there is less than 24 hours notice. A significant effort should be made to notify the news media as soon as the emergency meeting is called including calling representatives of the news media at home. If news media representatives cannot be notified of an emergency meeting, it would be prudent to telephone them the next morning at the beginning of the business day to inform them the meeting was held, an attempt was made to notify them and give them a report of any action occurring. Action taken at the emergency meeting should be strictly limited to the item for which the meeting was called. Other items should be deferred to another meeting. In addition, the reason, or good cause, for failing to give 24 hours notice must be stated in the minutes.

Chapter V

TIME & PLACE—"ACCESSIBLE"

Meetings must be held at a place "reasonably accessible" to the public and at a time reasonably convenient to the public unless it is impossible or impractical. If it is impossible or impractical, the minutes must state the reason why the meeting could not be held at a reasonable time and place.

The Iowa attorney general ruled that a meeting of a county board of supervisors outside of the county violated the "reasonably accessible" requirement of the open meetings law. The attorney general stated:

> . . .[because residents are interested in the deliberations,] . . . it seems reasonable, or rational and fair, to expect that a governmental body will hold a meeting at a place that is as centrally located as possible to the members of the public served by the [governmental] body. . . . In our opinion, this reasonableness requirement is met when the board meets at places located within the county.

1982 O.A.G. 189.

Boards should hold their meetings, including work sessions, within the school district unless it is impractical to do so. If they do find it necessary to meet outside the school district, the board should still find a place easily accessible to the public and news media. In certain instances, it may be appropriate and necessary for a board to meet outside the school district. The most common example is when two or more boards meet to discuss sharing or reorganization. In this situation, it is impossible for all boards to meet in their respective school districts. Boards encountering this situation should make special mention of their meeting site to notify the public that there is a change in regular board practice. It is recommended boards planning to hold multiple joint meetings alternate meeting sites so not all of one board's meetings are held outside its school district.

Accessibility not only refers to time and place but also means physical access to the meeting. Boards who make a change to the location should also post it so latecomers know where to go. A site can be changed on the day of the meeting, but the board secretary should notify the news media so the new site for the meeting can be publicized, as well as posted at the original site.

Individuals with disabilities have the same access rights to board meetings as persons without disabilities. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act both require public functions to be accessible. 29 U.S.C. § 794 (2010), 42 U.S.C. §12101, et seq. (2010). *"Access"* includes access for people with physical disabilities ***and*** the hearing-impaired and blind, so they may attend and participate in a manner similar to individuals without disabilities.

For example, a board having notice that a hearing-impaired person is attending the meeting may need to provide, upon request and at board expense, an interpreter for the hearing-impaired person. The board need not translate its agenda and supplementary materials into Braille for a blind person, but it should provide a reader to assist the person. When encountering situations such as these, it is best to ask the requesting individual what type of assistance is needed.

To summarize, the time of day and location of the regular meetings should be consistent from month to month. The meeting area should provide comfortable seating, ample work space and ease of access to needed data for the board members, board secretary and superintendent. The facility should have seating to accommodate the news media and public and be easily accessible to individuals with and without disabilities.

Chapter VI

AGENDA

The open meetings law requires a tentative agenda be included in the public notice posted 24 hours prior to the meeting. Since the tentative agenda is usually the final agenda, the tentative agenda should include most, if not all, of the items that will be addressed at the meeting. An agenda which merely states approval of minutes, old business and new business is not specific enough to comply with the open meetings law. When drafting a tentative or final agenda, it is a common practice of school districts to make a distinction between discussion items and action items on the tentative agenda. There is no legal requirement to make this distinction, and doing so may limit the board's power to act on certain items.

The tentative agenda must be provided in a manner reasonably calculated to apprise the public of the meeting. 1980 O.A.G. 269. The attorney general has concluded that the term "tentative" indicates that an agenda may be amended after publication. *Id.* However, it is recommended action on items added to the agenda or discussed under new business should be deferred to a future meeting unless it is vital that an item be acted upon at that meeting. In the event immediate action is necessary on items added to the agenda for good cause, it is important to note the reason in the minutes.

Supporting documents for agenda items do not need to be part of the public notice, but they are public records and should be available from the board secretary prior to the meeting for the news media or anyone who wishes to review them. However, if the news media requests a copy of the board packet in their request for meeting notice, it is recommended the board secretary comply with this request.

Copies of the agenda and the documents distributed to the board, including the superintendent's recommendations, staff studies or other informational items which are not confidential, must be made available to the news media and to the public who attend the meeting. This information is often referred to as the board packet. In a question concerning an informal packet of materials prepared by staff for city council members, the Iowa attorney general concluded that any "document" or "record" in the possession of a public body must be available to the public but stopped short of saying that "every writing and piece of paper in the possession of a public official necessarily constitutes a record or a document." 1982 O.A.G. 215. The board packet is not necessarily a public record in the hand of the board members. Individuals wanting to view the board packet should contact the board secretary, and copies of it should be treated like copies of the school district's public records.

If the board anticipates holding a closed session during a meeting, it is recommended a reference to the closed session be included in the tentative agenda. For instance, if the board has to discuss a potential real estate transaction, the tentative agenda should include a reference to real estate considerations as a closed session. *See Exhibit 6.*.

AMENDMENTS TO THE AGENDA

The Iowa attorney general has concluded that any amendments to a posted agenda require 24 hours notice prior to a meeting, unless for good cause such notice is impossible or impractical. Because of this, the tentative agenda cannot be amended within 24 hours of the meeting without good cause, and additional matters must be scheduled for future meetings so that the public may receive the 24 hours notice prescribed by law. The good cause standard is flexible and must be judged in the context of the facts on a case-by-case basis. However, the attorney general has stated emphatically:

> . . . it is apparent that the mere desire of the body members to take up a matter "at the last minute," standing alone, will not be sufficient. More is required. There must be genuine reasons or circumstances making it necessary to meet and discuss a matter on less than twenty-four hours notice to constitute "good cause."

1980 O.A.G. 269.

However, the attorney general also noted:

> If good cause exists, then subsection two provides that "as much notice as is reasonably possible shall be given." In terms of the timing of the public's notice, this means that less than 24 hours notice will suffice if given within a reasonable time after the discovery of the necessity to conduct a meeting on "short notice."

Id.

The Iowa attorney general offered this example:

> If . . . it is discovered at 2:00 p.m. that a matter must be resolved by 5:00 p.m. on the same day, notice, conforming as closely as is possible with the requirements of IOWA CODE section 21.4(1), should be made within a reasonable time after discovery of the matter, advising the public and news agencies of the meeting to be held prior to 5:00 p.m. In such circumstances, the body members have complied with the "good cause" requirements of subsection two and may proceed to conduct the business requiring expeditious discussion or action.

Id.

In conclusion, the attorney general suggested that boards should not amend their agenda without good cause. Therefore, if items must be added to the agenda, the good cause requiring immediate action should be stated in the minutes. If the items are known more than 24 hours in advance, the tentative agenda can be amended and redistributed, if necessary. The statement should include the finding by the board that the item must be considered immediately, it was impossible or impractical to know that the matter would be called before the board at the time the public notice was given, and it is impossible and impractical to meet at another time 24 hours later to take action on the matter. School boards are encouraged to make reasonable procedural rules for the conduct of their meetings, and the rules require that items be placed on the agenda within a reasonable period before the public notice of the meeting is prepared.

Chapter VII

MINUTES

MEETINGS

Each board is required to keep minutes of its meetings showing the date, time and place, board members present, and action taken at each meeting. The minutes are public records open to public inspection. The minutes must show the results of each vote taken and indicate how each board member voted. It is not necessary to list how each board member voted individually as long as each board member's vote can be determined. For example, it is sufficient to state, "The motion passed on a vote of 4-1 with Smith voting no." IOWA CODE § 21.3.

Under the law, the minutes need only show the action taken and not the discussion. Some boards have a practice of including excerpts of discussion as part of the minutes. This practice is consistent with the spirit of the law requiring the basis and rationale of decisions, as well as the decisions themselves to be part of the record. However, the law does not appear to require that the discussion be included in the official minutes of the board.

There is no requirement that open meetings be recorded. The board may choose to record an open meeting from time to time; for example, a particular public hearing or some other exceptional circumstance. Many boards broadcast meetings on cable television, either live or on taped delay. These recordings are a "public record" which, if retained by the school district, must be made available to the public.

It may be necessary for a board to hold a meeting on less than 24 hours notice, to change the tentative agenda, or to meet at a place that is not reasonably accessible to the public or at a time that is not reasonably convenient to the public. In that event, the minutes must state the board's finding to consider the item immediately, and that it is impossible or impractical to meet at another time to take action on the item. It is suggested a copy of the notice of the meeting be attached to and made a part of the minutes. It is also suggested the minutes reflect how notice was given under these circumstances. This way, the minutes will reflect that notice of the time, date and place of the meeting, that the tentative agenda was given, and the matters discussed and decided at the meeting coincided with those on the tentative agenda.

Minutes are public records to which the public has access and the right to copies. In response to a question concerning the cost of providing copies of minutes to people who make such a request, the Iowa attorney general stated that a reasonable number of copies must be provided to anyone upon payment of a fee. The open meetings and public records laws combine to make board meeting minutes a public record giving the public the right to examine and copy them. A board can require that all reasonable expenses of providing copies, including labor costs, be paid by the person making the request. The copying fee "shall not exceed the cost of providing the service." 1980 O.A.G. 88. *See Exhibits 7, 11 and 12.*

MINUTES OF CLOSED SESSIONS

In addition to the detailed minutes taken by the board secretary, closed sessions must be recorded. Upon entering the closed session, it is recommended the board secretary start the recording, take a roll call of all present, re-state the motion to enter the closed session and the outcome of the vote from the open meeting. During the closed session, board members should identify themselves before speaking. *See SF289, section 6.*

If there is a power failure or it is impossible to record, the closed session should be terminated. If there is a recess or some other interlude, either prior, during or after the closed session, the length of that recess should also be noted in the minutes of the regular meeting, as well as in the detailed minutes of the closed session.

The Iowa Supreme Court has held that a tape-recording of a closed session is not included in the definition of "public records open to public inspection." *Telegraph Herald Inc. v. City of Dubuque*, 297 N.W.2d 529, 532 (Iowa 1980). In this case, the court determined that a closed session was held illegally but upheld the district court's decision that a tape-recording of the illegally closed session should not be open to public inspection be-

cause such a penalty is not included in the open meetings law and because the action of the board following the illegally closed session was not challenged. *Id.* at 535.

In another case, however, the Iowa Supreme Court authorized providing a recording to an employee who sued the city council. *Dillon v. City of Davenport*, 366 N.W. 2d 918 (1985). In that case, the city council held a closed session with an attorney to authorize the attorney to negotiate a workers' compensation settlement and to establish the parameters for the settlement. The city council did not take final action in an open meeting for this authorization. When presented with a settlement, the city council rejected it, arguing that the attorney was not officially authorized to make the settlement. The employee sought a copy of the tape-recording of the closed session. While the court recognized its *Telegraph Herald* decision stating a tape-recording is not a public record, the court held the "need for secrecy . . . no longer exists . . . when the parties' attorneys consummated a settlement" or "when settlement negotiations end with a settlement which is rejected and new litigation . . . erupts." *Id.* at 922. The court allowed the tape-recording to be made available because the issue of attorney's authorization had been raised in subsequent litigation. (The court did not consider the question of confidentiality of attorney-client communications.) *Id.*

A recent Iowa Attorney General's opinion has stated that board members not present at a closed session may listen to recordings of the closed session. The opinion did not address others, such as the superintendent or board secretary, so it is presumed they are still prohibited from listening to a closed session recording. O.A.G. 01-11-1.

ELECTRONIC MEETINGS

The open meetings law specifies that minutes must be kept of an electronic meeting in the same manner as meetings in person. In addition, these minutes must explain why a meeting in person was impossible or impractical. IOWA CODE § 21.8(1).

RECORDKEEPING

Minutes of all open meetings are public records, subject to examination under the public records law. IOWA CODE ch. 22. However, detailed minutes and recordings of closed sessions are not public records open to public inspection and must be sealed except as provided by Iowa Department of Education (DE) for student discipline hearings, or as may be ordered by a court if a closed session is challenged. It is suggested the school district obtain a secure cabinet, lock box or vault to store recordings and detailed minutes of closed sessions.

Detailed minutes and recordings of closed sessions must be kept for at least one year from the date of the meeting. After one year, the board can erase or dispose of the recording and dispose of the minutes. It is suggested the board adopt a record retention policy which names the board secretary as the person responsible for maintaining recordings and detailed minutes of closed sessions, as well as minutes of all other meetings of the board and its advisory committees. *See Exhibit 11*. The policy should further authorize the board secretary to routinely destroy detailed minutes and erase recordings of all closed sessions after one year.

Detailed minutes and the recording of a closed session to discuss the purchase or sale of particular real estate must be made available for public examination when the transaction is completed. For this reason, it is suggested that a separate detailed minutes book be kept for closed sessions relating to the purchase or sale of real estate and that recordings of closed sessions under this exception be kept separately for each meeting. This added procedure is meant to avoid problems that might arise by having to make a part of a recording or a portion of detailed minutes available.

If several parcels of real estate are considered at the same meeting, it may be desirable to segregate the discussion as it relates to each parcel. For example, if four or five parcels are being considered at the same time and only one transaction is going to be immediately completed, there could be premature disclosure of the other parcels when the recording and detailed minutes are disclosed for the first complete transaction. As with other detailed minutes and recordings of closed sessions, these records need to be kept only one year and then may be destroyed under a school district's record retention policy. However, when the real estate transaction is completed, the minutes and recording become available for public examination and are maintained like other school district records.

Chapter VIII

ENFORCEMENT AND PENALTIES FOR VIOLATION OF OPEN MEETING LAW

Every board member, administrator and board secretary should become familiar with the requirements of the open meetings law because the penalties for violations can be severe. Upon a finding of a violation of the open meetings law, each board member or committee member who participated in the violation can be fined at least $100 and not more than $2,500, and may also be required to pay the costs of the action and the attorney's fees of the individual challenging the board action. It should be noted that most open meetings cases involve multiple allegations, so the $100-$2,500 fine can be multiplied by the number of allegations. The fine may be levied against individual board or committee members. The fine is up to $500 for a violation but can be up to $1,000-$2,500 if a board member knowingly violated the open meeting law. Action taken at a session which was closed in violation of the open meetings law may be voided. If a board member is found to have engaged in one prior violation of the open meetings law for which penalties were imposed against the member during his or her term, that person may also be removed from office. In addition, mandatory injunctions are available to require future compliance with the law. If an injunctive order is violated, the violators may suffer further penalties for contempt of court. This could include a jail sentence or a fine. *See SF 289, sections 7, 11.*

The Iowa attorney general has noted the burden of proof is on the complaining party to show that a violation occurred. A board member or committee member who can prove he or she voted against holding a closed session is not liable for penalties if it is determined the closed session violated the law. A member who "had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of the open meetings law" or "reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body" is not subject to an assessment for damages. 1980 O.A.G. 430. Iowa law states especially that if the board member relied upon a court decision, formal opinion of I.A.G., informal opinion of the Iowa Attorney General., if reduced to writing, or attorney of the school district if in writing or memorialized in the minutes of the meeting at which formal oral opinion was given.

When there is doubt about holding a closed session for a particular purpose, the board may, also seek a formal opinion from the Iowa attorney general or school attorney before proceeding into closed session.

The Iowa Supreme Court has ruled that costs and attorney's fees awarded to the individual challenging the board action should be restricted to those incurred in successfully establishing a violation of the open meetings law. When a party is unsuccessful in establishing other alleged violations, the costs and attorney's fees must be prorated. The court denied the allowance of fees for the appeal because there is no statutory authority to assign attorney's fees for appellate legal services. *Schumacher v. Lisbon School Board*, 582 N.W. 2d 183. (Iowa 1998).

In the *Telegraph Herald* case the court affirmed the trial court's finding that there was no intent to violate the open meetings law and concluded that all city council members were at all times acting reasonably on their corporate counsel's advice. The court recognized good faith reliance on corporate counsel's opinion, specifically noting the provisions of section [21.6(3)(a)(3)]. Costs were not assessed against the council members but only against the city because the trial court found the individual city council members were, "at all times acting reasonably on corporation counsel's advice."

In another case, a superintendent sought to void his termination because three board members held a telephone discussion about contacting an attorney for advice. The Iowa Supreme Court stated that "voiding of action taken at a secret meeting is not automatic," and that the vote to terminate "was open to the public and should not be voided simply because on a prior occasion there was a possible violation of the open meetings law." *Wedergren v. Board of Directors*, 307 N.W.2d 12, 19 (Iowa 1981).

It cannot be emphasized too strongly that openness is the basis for the open meetings law. The intent section of the law provides that "ambiguity in the construction or application of this chapter should be resolved in favor of openness." IOWA CODE § 21.1.

The reasons for holding a closed session are specific and limited. If a board member is uncertain or unclear on procedures or limitations, the failure to ask questions to develop an understanding is an invitation to litigation. The open meetings law specifically states that ignorance (or failure to ask questions) ***is not*** a defense. IOWA CODE § 21.6(4). Developing an understanding of the requirements of the open meetings law and using this understanding is recognized by courts as good faith compliance, even if errors are made or advice was not accurate.

Boards need to recognize that violation of the open meetings law will be felt by them personally, not just the school district. The law states that the violations are individual violations, not the school district violations. It is, therefore, imperative board members understand the repercussions of their actions upon not only the school district but themselves.

Board members who violate the open meetings law, whether intentional or not, expose themselves personally to a lawsuit, penalties (up to $2,500 per count) court costs, attorney fees for not only themselves but the opposing party. A county official was responsible for upwards of $20,000 in costs, fees and penalties when he was found to have violated the open meetings law. So, while it's not only good policy to comply with the open meetings law, it is also good practice in order to protect one's own assets.

While it's not addressed specifically in this chapter, the penalties for violation of the public records law are comparable to the open meetings law.

Chapter IX

THE ROLE OF LEGAL COUNSEL

The enforcement section of the open meetings law states that a board member who is found to have violated the law shall not be assessed damages if that member proves that he or she reasonably relied upon a decision of a court or a formal opinion of the Iowa attorney general or the attorney for the school district either written or memorialized in the meeting minutes. *See SF 289 sections 7, 11*. IOWA CODE § 21.6(3)(a)(3).

If the superintendent, board president, board member or board secretary contemplates that it may be necessary to hold a closed session on a topic and is not familiar with the mechanics and the interpretations of the open meetings law, the school attorney should be contacted before the meeting to determine whether a closed session is appropriate and a written opinion should be issued. Because the open meetings law specifically states that board and committee members can rely on advice of the Iowa attorney general or the school attorney, assistance provided by others such as DE, School Administrators of Iowa (SAI), IASB, etc., will not suffice.

Chapter X

PUBLIC RECORDS

Iowa's public records law, IOWA CODE, chapter 22, is the other half of the "government in the sunshine" laws. The public records law gives the public the right to access, read and copy records of governmental bodies including school districts, area education agencies and community colleges. Public records are defined as "all records, documents, tape or other information, stored or preserved in any medium, of or belonging to" governmental entities. IOWA CODE § 22.1. Public records also include "all records relating to the investment of public funds including, but not limited to, investment policies, instructions, trading orders, or contracts, whether in the custody of the public body responsible for the public funds or a fiduciary or other third party." *Id.* Only if there is a specific exception in state or federal law, can a record of a school district be confidential. Common confidential records for school districts are student records and some employee personnel records. For a discussion of penalties for violating the public records law, see *Chapter 8* as the penalties are comparable for violations of the open meetings and public records law.

CONFIDENTIAL RECORDS

All records in possession of a board are open to the public unless they qualify for one of the exceptions in state or federal law listed below. Even though the public records law provides over 60 exemptions from public disclosure, only those affecting school districts are listed below. The following records are considered confidential:

- Personal information of a prospective, current or former student maintained, created, collected or assembled by the school district;

IOWA CODE § 22.7(1).

- Records representing the work product of an attorney related to litigation or claim made by or against the school district. It is recommended that school districts maintain a separate litigation file. Documents that may be subject to attorney-client privilege should be protected and not be treated as a public record;

IOWA CODE § 22.7(4).

- Appraisal information, prior to a contract for sale or submission of, about real or personal property purchased or sold;

See SF289, section 8. IOWA CODE § 22.7(7).

- Personal information in confidential personnel records;

See SF289, section 10. IOWA CODE § 22.7(11).

However, Iowa law states the following are records that are public and available when requested:

- The name and compensation of the individual including any written agreement establishing compensation or any other terms of employment except for that information that is otherwise protected. "Compensation" includes the value of benefits conferred including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacation, holiday, and sick leave, severance payments, retirement benefits, and deferred compensation.

- The dates the individual was employed by the government body.

- The positions the individual holds or has held with the government body.

- The educational institutions attended by the individual, including any diplomas and degrees earned, and the names of the individual's previous employers, positions previously held, and dates of previous employment.

- The fact that the individual was discharged as the result of a final disciplinary action upon the exhaustion of all applicable contractual, legal, and statutory remedies.

- Personal information in confidential personnel records of government bodies relating to student employees shall only be released pursuant to the Family Educational Privacy Rights Act (FERPA.

- Library records that would reveal the identity of the individual checking out or requesting an item or information from the library;

IOWA CODE § 22.7(1)(13).

- Some communications made to the school district by people outside government to the extent that the school district receiving those communications from those people could reasonably believe that those persons would be discouraged from making them if the people knew they were available for general public examination, except that:

  (a) The individual making the communication consents to its treatment as a public record;

  (b) The information in the communication is treated as a public record to the extent it can be disclosed without directly or indirectly indicating the identity of the individual making the communication; and,

  (c) The information in the communication regarding a crime or other illegal act is treated as public information unless it would "plainly and seriously" jeopardize the investigation or present a "clear and present danger" to any individual.

  IOWA CODE § 22.7(18).

- Information concerning security or emergency preparedness procedures or information if released could jeopardize the safety of students, staff, visitors or property. The board must have a policy outlining the types of records to be protected.
  IOWA CODE § 22.7(50).

- "Examinations . . . to the extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered." IOWA CODE § 22.7(19). The Iowa Supreme Court had the opportunity to review this exception in the *Gabrilson* case. *Gabrilson v. Flynn* 554 N.W. 2d 267 (Iowa 1996). *Gabrilson*, a Davenport school board member, challenged the school district's refusal to make public a performance assessment test which the school district had given to its students. *Gabrilson* argued that since the assessment had already been field tested, there was no reasonable expectation on behalf of the school district that the release would be detrimental to the assessment's objectives. The court disagreed, stating that Flynn, the superintendent, had a reasonable belief that if students' knew questions and answers beforehand, the assessment would not adequately measure the students' problem-solving abilities. The court went on to state the field testing prior to the test administration did not remove it from the exception.

- Settlement Agreements - The law makes settlements between governmental bodies and others a public record when the governmental body reaches a final, binding, written settlement agreement resolving a legal dispute claiming monetary damages, other relief or a violation of the law. Upon request for the settlement agreement, the governmental body must prepare a brief summary of the agreement, which is also a public record, including specific information, unless the settlement agreement already includes the information;

  a) Identities of the parties
  b) Nature of the dispute
  c) Terms of the settlement including payments made
  d) Actions to be taken by the governmental body

If, however, the information is confidential such as the identification of a student, that information can still be withheld.
IOWA CODE § 22.13

STUDENT RECORDS

The confidentiality of student records is addressed in both state and federal law, with the bulk of the law and interpretive case law based upon the federal law. The Family Educational Rights and Privacy Act (FERPA), addresses the records of all students from pre-kindergarten through post-secondary, both general education students and students receiving special education services. 20 U.S.C. 1232g (2010), 34 C.F.R. Pt. 99 (2010). Iowa law states that student records are confidential records. IOWA CODE § 22.7(1). In analyzing the confidentiality of student records, FERPA is usually relied upon.

The federal law on access to student records is very detailed and must be strictly followed. Confidential student records are those which contain personally identifiable information. 34 C.F.R. Pt. 99.3 (2010) Student records containing personally identifiable information on a student receiving special education services must be kept confidential at the collection, storage, disclosure and destruction stages. 34 C.F.R. Pt. 300.561 (2010). Personally identifiable information includes, but is not limited to:

- the student's name;
- the name of the student's parent or other family member;
- the address of the student or student's family;
- a personal identifier, such as a social security number or other student number; and,
- other information that would make the student's identity traceable.

34 C.F.R. Pt. 99.3.

Only the parents of the student, an eligible student and certain listed public officials may view student records without a court order or parental or eligible student's permission. An eligible student is a student who has reached age 18 or is attending an institution of postsecondary education. *Id.* For purposes of FERPA, enrollment in a postsecondary institution as a high school student does not qualify a student as an eligible student, unless the student is also 18 years of age. Parents of an eligible student may access the student's records only with the written permission of the eligible student unless the eligible student is a dependent for tax purposes. Parents may be denied access to a student's records if the school district has a court order stating that the parents may not access the student records or the parental rights have been terminated. 34 C.F.R. Pt. 99.4.

Parents and eligible students must have access to the student's records during the regular business hours of the school district. 34 C.F.R. Pt. 99.10. If the record is not immediately available, however, the school district must provide it within 45 days of the request. *Id.* Copies of student records will only be provided if failure to do so would effectively prevent the parents or student from exercising the right to access the student records. 34 C.F.R. Pt 99.11. Fees for copies of the records must be waived if it would prevent the parents or student from accessing the records. *Id.* A fee may not be charged to search or retrieve information from student records. *Id.*

If the parents or an eligible student believe information in the student records is inaccurate, misleading or violates the privacy rights of the student, the parents or an eligible student may request an amendment to the record. 34 C.F.R. Pt. 99.20. If the school district determines an amendment should be made, the amendment must be made and the parents or the eligible student must be informed of the decision in writing.

If the school district refuses to amend the student record, the parents or eligible student may ask for a hearing before the school district. The hearing is generally before employees, not the board. 34 C.F.R. Pt. 99.21. If the request to amend the student record is further denied, the parents or the eligible student may place an explanatory letter in the student record commenting on the school district's decision and describing their disagreement. *Id.* Amendments and the explanatory letter become part of the student's record and must be maintained and disclosed like other student records. *Id.*

Student records may be disclosed in limited circumstances without parental or an eligible student's written permission if the student record is not disclosed to a third party. 34 C.F.R. Pt. 99.31. This disclosure may be made:

- to officials in the school district whom the school district has determined have a legitimate educational interest;
- to officials of another school district in which the student wishes to enroll, provided the sending school district notifies the parents the student records are being sent and the parents have an opportunity to receive a copy of the records and challenge their contents;
- to the U.S. Comptroller General, the U.S. Attorney General, the U.S. Secretary of Education or state and local educational authorities;
- in connection with financial aid for which the student has applied or which the student has received if the information is necessary to receive the financial aid;
- to organizations conducting educational studies and the study does not release personally identifiable information;
- to accrediting organizations;
- to parents of a dependent student as defined in the Internal Revenue Code;
- to comply with a court order or judicially issued subpoena (a reasonable effort must be made to contact the parents or an eligible student prior to release);
- in connection with a health or safety emergency; or,
- as directory information.

Id.

Permanent student records, including a student's name, address, phone number, grades, attendance record, classes attended, grade level completed and year completed should be maintained indefinitely in a fire-safe vault. 281 I.A.C. 12.3(6).

The school district must annually inform employees about parents' and eligible students' rights regarding student records. Employees should also be informed about the procedures for carrying out this law. The school district must annually notify parents and eligible students of their rights to access student records under federal law. 34 C.F.R. Pt. 99.7. The notice must be given in a parents' or eligible student's native language. *Id. See sample notice, Exhibit 9.*

A commonly asked question is whether non-custodial parents have a right to view a student's records. All parents have a right to view a student's records unless that parent's rights have been terminated by the court or a court order is on file denying them the right to view the records. 34 C.F.R. pt. 99.4.

Annual Notice

The school district must annually notify parents and eligible students of their rights to access student records under federal law. 34 C.F.R. Pt. 99.7. The notice must be given in a parents' or eligible student's native language. *Id.* The content of the notice is one of the new amendments to FERPA, which no longer requires school districts to have student records policies as all of the information previously required in the policy needs to be in the notice. However, Iowa law still requires school districts to have a student records policy. The notice must inform parents that they have a right to:

- inspect and review the records;
- request that the school district amend the records,
- consent to disclosure of contents of student records; and,
- file a complaint with U.S. Department of Education (USDE) alleging the school district's noncompliance with FERPA.

The notice must include:

- procedures for inspecting and reviewing records;
- procedure for requesting amendments to student records; and,
- definition of what constitutes a school official.

34 C.F.R. Pt. 99.7. *See sample notice at Exhibit 9.*

Sharing of Information

There are three explicit provisions in Iowa law which mandate the sharing of information contained in student records. Two of the provisions are not consistent with FERPA. The third provision requires school districts to have interagency agreements with juvenile justice agencies, law enforcement agencies and the Department of Human Services (DHS) in order to comply with FERPA. *A sample interagency agreement is included in Exhibit 9.*

FERPA is very specific about disclosure of student records without parental consent or a court order. The instances when this disclosure is allowed are very limited. With regards to law enforcement, school officials can release student records only "if reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released . . ." 34 C.F.R. Pt. 99.38. The recipients of the records must certify in writing to the school district that the information will not be re-disclosed to any other party, except as provided by state law, without parental consent.

IOWA CODE § 279.9B states:

> The rules adopted under section 279.8 shall require, once school officials have been notified by a juvenile court officer that a student attending the school is under supervision or has been placed on probation, that school officials shall notify the juvenile court of each unexcused absence or suspension or expulsion of the student.

This section poses problems as school districts have no authority under FERPA to release this information without parental consent, court order or an interagency agreement. Furthermore, the interagency agreement can only be used when the release is prior to adjudication.

Many juveniles are on "informal" probation, which occurs prior to adjudication. Therefore, if a school district has the appropriate interagency agreement in place, school officials can release the information for students being placed on informal probation. *See Exhibit 9.*

For students who are adjudicated and placed on formal probation, school districts need either parental consent or a court order to release the required information. It appears unlikely that juvenile court officers will be able to regularly get parental consent. Therefore, it has been recommended to the Iowa Supreme Court that when a court orders a juvenile to formal probation, as part of that order the court will require the school district to release the information required by the law (unexcused absences, suspensions and expulsions).

School districts receiving the court order must follow specific FERPA regulations regarding compliance with court orders. School districts must make a reasonable effort to notify the parents of the receipt of the court order prior to compliance with the court order. This notice is to enable the parent to seek protective action. School districts, however, do not have to notify the parents if the court order is pursuant to a federal grand jury subpoena or subpoena issued for law enforcement purposes and the court or other issuing agency has ordered that the contents of the subpoena or information requested will not be disclosed. 34 C.F.R. Pt.99.31(a)(9).

IOWA CODE § 280.24 requires school officials to notify law enforcement when a student uses or possesses alcohol or controlled substances. The law further states "the procedure may include a provision which does not require a report when the school officials have determined that a school at-risk or other student assistance program would be jeopardized if the student self reports." IOWA CODE § 280.24.

This section also has raised concerns because the contents of the notification, the use or possession of alcohol or controlled substances, is arguably a confidential student record. Questions about this section were referred to the Family Compliance Office (FCO), U.S. Department of Education, the agency charged with FERPA oversight. The FCO stated that a school official can notify law enforcement of the use or possession if the school official has not yet recorded the use or possession in record form. If the school official has recorded the information, the school

official cannot disclose the information without parental consent or a court order, unless pursuant to an interagency agreement as discussed below.

There is a difference between this law and the federal gun-free schools law which requires school officials to notify law enforcement when students bring a firearm to school. The difference is that FERPA and the gun-free schools law are both federal laws. The gun-free schools law is a more specific law and was passed after FERPA. Therefore, the gun-free schools law pre-empts FERPA. Iowa law does not have the ability to pre-empt federal law. Therefore, a recorded weapons violation must be reported but a record of a student selling drugs cannot be turned over.

The last sentence of this section references the school district's at-risk or student assistance program. School districts can add a provision to the program stating that students will not be referred to law enforcement if a student self-reports and the referral to law enforcement would be detrimental to the programs. Presumably, "detrimental to the programs" means detrimental to the goals of the programs of assisting students.

IOWA CODE § 280.25 allows school districts to share information contained in students' permanent records. The information can only be shared prior to adjudication and to assist in effectively serving the student.

The policy is a mandate but boards can determine whether and to what extent they want to share information. The needed policy language is in the general student records access policy and is optional language. *A sample interagency agreement is included at Exhibit 9.*

The parties with whom information may be shared will differ from school district to school district. The contents of the interagency agreement should include:

- the name of the school district;
- the names of the agencies;
- a confidentiality notice;
- transmission of records procedures;
- permitted use of information;
- a statement that the school district can add agencies as needed; and,
- prohibited use of the information.

The confidentiality notice must include an agreement by all signed that the confidential information shared must remain confidential and cannot be re-released unless otherwise allowed by law. The permitted use of the information is very limited and agencies cannot use it for purposes other than those listed. The permitted uses are as follows:

information shared under the agreement shall be used solely for determining the programs and services appropriate to the needs of the juvenile or the juvenile's family, or coordinating the delivery of programs and services to the juvenile or juvenile's family. IOWA CODE § 280.25, 34 C.F.R. Pt.99.38 (2010).

The blank section of the sample interagency agreement is the listing of agencies. School districts should list agencies within the school district that are directly involved with or provide services to juveniles going through the juvenile justice system. The agencies must be government agencies not private or not-for-profit providers. For example:

- county attorney;
- police department;
- sheriff's department;
- Iowa Department of Human Services;
- juvenile court officers; and,
- area education agency - this addition is necessary as the law only addresses permanent records and these will most likely not include records kept by the AEA including special education records.

The sample agreement also includes a statement that school districts can add agencies as needed. There does not appear to be a need for an opt-out clause as it is recommended the agreements be for no more than one year.

Annual renewal is recommended to allow all parties, school district included, to revisit the issue annually. This is the time to train new employees and notify parents. IASB recommends an agreement termination date of Sept. 1 to allow transition into the new school year.

Directory Information

School districts can regularly release directory information without parental or an eligible student's permission. 34 C.F.R. Pt. 99.37. Directory information is specifically defined in the law. 34 C.F.R. Pt. 99.3. Directory information is that information generally considered public record on a student and disclosure of which is not generally considered harmful or an invasion of privacy. *Id.* Directory information is available to anyone who asks for it. They do not have to give a reason or explanation as to why they want the information.

Directory information includes, but is not limited to:

> the student's name, address, telephone number, date and place of birth, e-mail address, grade level, enrollment status, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, student ID number, user ID or other unique personal identifier, photograph and other likeness, and other similar information. *Id.*

A board can limit the types of information it wants to consider as directory information. For example, it is not uncommon for school districts to determine they will not consider address and telephone number as directory information. This allows the school district to refuse to distribute lists of students' names and addresses to anyone who asks.

A school district must notify parents what information is included as directory information. 34 C.F.R. Pt. 99.37. This notice must be given each year. After receiving notice, the parents or eligible students have the right and responsibility to tell the school district they do not want directory information to be released without permission. The school district notice may be distributed in a letter, in a student or parent handbook or by another means that will reach the parent. *For a sample notice, see Exhibit 10.*

Transfer Students

In transferring student records, generally school districts automatically transfer a student's records to a new school district upon receipt of a written request from the new school district for the student's records. Parents must be notified that the student's records have been sent, given an opportunity to view the student's records that were sent. Parents have a right to a hearing to challenge the content of the student's records that were sent unless the school district's annual notice contains a provision that the school district automatically forwards records to new school districts. 34 C.F.R Pt. 99.34. The sample annual notice at *Exhibit 9* contains such a provision. Parental consent is not necessary to forward a student's records to a student's new school district or for the school district to request them from a student's previous school district.

Iowa law does contain one provision that states school districts must share suspension or expulsion information, confidential student records, about students transferring to a new school district with the new school district. IOWA CODE § 279.9A. According to the law, the new school district can disclose the confidential information to employees "whose duties require them to be involved with the student." It is unclear whether this language complies with federal law regarding the confidentiality of student records. The standard under federal law is that confidential student records can only be disclosed to employees with a "legitimate educational interest."

Another provision of Iowa law states that the records of students involved in IOWA CODE § 280.19A programs, alternative programs for at-risk students, be provided by the former school district to a student's new school district. These are also confidential student records. In the new school district this information can be disclosed to employees "whose duties require them to be involved with the student." This language is unclear and may be in-

consistent with FERPA. Also, under FERPA a student's former school district can send the student's records to the new school district without parental permission.

EMPLOYEE RECORDS

School districts compile and maintain comprehensive personnel files regarding their employees. These files are necessary for the daily administration of the school district including implementing salary and other personnel policies, preparing the budget and other financial documents, recording employee work performance and meeting certain federal and state reporting requirements. *See Exhibit 8.*

Personnel files typically contain information about the professional and private lives of employees. Iowa law and recent court decisions have begun to focus more closely on employee records and impose restrictions concerning when and how employees may access their own personnel records, the circumstances under which personnel records will be disclosed to third parties and the length of time employers are required to retain such records. As the governing body of the school district, board members have the right to review, examine and inspect personnel records. Board members are strongly advised not to exercise this right except in extreme circumstances because they must retain their impartiality when it comes to personnel issues. *Fairfield Community School District v. Justmann*, 476 N.W.2d 335, 340 (Iowa 1991). IASB recommends board members review, examine and inspect personnel records only when deciding matters before the board such as a termination hearing.

Personnel files contain a wide variety of information about employees. Some of the information contained in the personnel file is confidential and should not be released absent a court order, to anyone other than the employee, the employee's immediate supervisor and other administrators who have a distinct reason to know the confidential information. Among other records, personnel files typically contain the following documents:

- Personal information about the employee including, but not limited to, records listing the employee's name, address, telephone number, emergency numbers, date of birth and spouse's name;
- The employee's individual employment contract;
- Evaluations;
- Records of disciplinary matters;
- Application, resume and references;
- Salary information;
- A copy of the employee's license or certificate, if needed for the position;
- Educational transcripts; and,
- Documents pertaining to the employee's work assignment including transfer and promotion requests.

Personal Information Contained in Confidential Personnel Files

Iowa's public records law grants to every person "the right to examine and copy public records." IOWA CODE § 22.2(1). The term "public records" is broadly defined to include "all records, documents, tapes or other information, stored or preserved in any medium, of or belonging to this state or any . . . school corporation." IOWA CODE § 22.1(3). Written documents of a school district are considered public records and must be disclosed to the general public upon request.

Iowa's public records law, however, exempts over 60 types of public records from disclosure and requires public employers to keep such records confidential. IOWA CODE § 22.7. According to this section, public bodies like school districts cannot disclose the exempted records to third parties "unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information." One category of records exempted from the definition of public records includes documents defined as "personal information in confidential personnel records of public bodies including, but not limited to, cities, boards of supervisors and school districts." IOWA CODE § 22.7(11). As is discussed below, this provision exempts most documents contained in personnel files from public disclosure. Iowa law, however, states the following are not confidential records but, rather public records:

- The name and compensation of the individual including any written agreement establishing compensation or any other terms of employment except for that information that is otherwise protected. "Compensation" includes the value of benefits conferred including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacation, holiday, and sick leave, severance payments, retirement benefits, and deferred compensation.

- The dates the individual was employed by the government body.

- The positions the individual holds or has held with the government body.

- The educational institutions attended by the individual, including any diplomas and degrees earned, and the names of the individual's previous employers, positions previously held, and dates of previous employment.

- The fact that the individual was discharged as the result of a final disciplinary action upon the exhaustion of all applicable contractual, legal, and statutory remedies.

- Personal information in confidential personnel records of government bodies relating to student employees shall only be released pursuant to the Family Educational Privacy Rights Act (FERPA.) *See SF289, section 10.*

The Fourteenth Amendment to the United States Constitution is also interpreted as preventing governmental bodies from disclosing private facts about an individual. U.S. Const. 14th amend. See *Head v. Colloton,* 331 N.W.2d 870, 876 (Iowa 1983). ("An individual's interest in avoiding disclosure of personal matters is constitutionally based.") See also *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). ("The cases sometimes characterized as protecting `privacy' have in fact involved at least two different kinds of interests. One is the individual interest in avoiding disclosure of personal matters. . .") This privacy interest is, however, limited in nature and is less expansive than the privacy protection afforded public employees by the personnel file exemption.

There is no clear definition of what records constitute personal information contained in confidential personnel files. Examples of other records within the scope of the personnel file exemption include performance evaluations, classroom observations, disciplinary warnings or similar documents concerning employee misconduct or nonperformance, written complaints sent by third parties, memos, notes or other records describing or summarizing such complaints.

While the court has not dealt with the issue directly, case law suggests that other documents containing private information about an employee must be kept confidential even if the information does not pertain to the employee's work performance. Examples of such records include documents containing medical information, completed application forms, references from other employers and similar documents.

Employment contracts and payroll records, time cards and other records that merely serve accounting or bookkeeping functions and do not include private information about the employee are not confidential and must be disclosed upon request.

The limitations concerning what documents can or must be disclosed to third-parties isn't clear. In light of this uncertainty, it is recommended school districts err on the side of nondisclosure and ***not*** release any personnel records containing information that is arguably personal in nature, except for the list outlined earlier in this chapter. Information concerning aspects of the employee's family life, no matter how innocuous, should not be disclosed. Records that indicate where the employee lives, the name of his or her spouse or children, the employee's telephone number and other related information should not be released absent written authorization from the employee or a court order compelling the release of such information. Prior to publication and release of a school district's employee directory, the school district should obtain employees' approval. School districts that have e-mail addresses for their employees must release the addresses when requested as they are a public record.

Iowa's public records law contains another exemption that can, in some cases, be construed to protect documents a school district receives from third parties concerning its existing employees or documents sent by job applicants. The exemption classifies as a confidential record not subject to disclosure any communication "not required by law, rule or procedure" that is submitted to the governmental body by an "outside party" provided the governmental body "could reasonably believe that those persons would be discouraged from making them to that governmental body if they were available for general public examination." IOWA CODE § 22.7(18). That exemption has been interpreted to include employment applications where the applicant did not consent to public disclosure of the application. *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895 (Iowa 1988). In its decision, the Iowa Supreme Court noted the legislature's "goal" when enacting the exemption was "to permit public agencies to keep confidential a broad category of useful incoming communications which might not be forthcoming if subject to public disclosure."

Employee Medical Information

Iowa law exempts from public disclosure "[h]ospital records, medical records and professional counselor records of the condition, diagnosis, care or treatment of a patient or former patient or a counselee or former counselee, including outpatient." IOWA CODE § 22.7(2). This medical records exemption typically applies to public hospitals and clinics. However, its presence demonstrates the legislature intended public bodies, including school districts, to keep such information private. This further supports the argument that employee medical records are "personal information" within the meaning of IOWA CODE § 22.7(11).

Personnel files may also contain medical information about an employee. School districts, like other employers, compile such information to monitor the health of employees and to prepare for medical emergencies. School districts, like other employers, may also receive doctor's reports and other medical records when an employee leaves work due to a work-related injury or when an employee attempts to return to work after a medical leave.

While the Iowa Supreme Court has not determined whether employee medical records constitute "personal information in confidential personnel records," the court's other decisions on the confidentiality of personnel records strongly suggest the personnel records exemption includes such sensitive and personal information.

The Americans with Disabilities Act (ADA) also requires all employers, including school districts, to treat information concerning the medical condition or history of an employee or applicant as a confidential medical record. 29 C.F.R. Pt.1630.14(b)(1) (2010). Consistent with that requirement, school districts are prohibited from disclosing such information to third parties and must collect and maintain such records on separate forms and in separate medical files. *Id.*

In addition to prohibiting the disclosure of medical information to third parties, the ADA also restricts who, within the school district, may have access to employee medical files. The ADA and the Equal Employment Opportunity Commission's (EEOC) regulations interpreting the ADA limit disclosure to specific types of employees on what amounts to "a need to know only" basis. The EEOC's regulations provide that a school district may release medical information to the employee's manager or supervisor "regarding necessary restrictions on the work or duties of the employee and necessary accommodations," to first aid and safety personnel "when appropriate" if a disabling condition "might require emergency treatment," and to government officials investigating the school district's compliance with the ADA's confidentiality requirements. 29 C.F.R. Pt. 1630.14(b)(1)(i)(iii)(c)(1) (i)-(iii).

Personnel Record Disclosure to Employees

Confidentiality concerns do not arise when an employee requests information from the employee's own personnel file. Employee requests to see their own files do, however, raise other concerns.

Iowa law grants employees access to and the right to copy the contents of the employee's "personnel file." The law provides that "the employer and employee shall agree on the time the employee may have access to the employee's personnel file, and a representative of the employer may be present." IOWA CODE § 91B.1(1). The representative of the school district may observe the review to be certain that file information is not altered or destroyed. Also, the school district is permitted to "charge a reasonable fee" for photocopies of records in the employee's. IOWA CODE § 91B.1(1). A personnel file is broadly defined to include, without limitation, "performance

evaluations, disciplinary records, and other information concerning employer-employee relations." IOWA CODE § 91B.1. The term "personnel file," however, does not include "employment references written for the employee." IOWA CODE § 91B.1(2). For example, an employee could see or get copies of the employee's evaluation but not the content of the references submitted when the employee was hired.

The Iowa Supreme Court has not yet interpreted what records constitute an employee's personnel file. The broad definition of personnel file and, in particular, the reference to "other information concerning employer-employee relations," suggests the law guarantees employees access to a wide variety of written documents maintained or compiled during their employment. IOWA CODE § 91B.1.

Notes and other work materials compiled by the administration as part of the evaluation process need not be disclosed if the material is used to prepare the final evaluation or a classroom observation. If the notes do not serve as merely background information or as work papers, they should be produced upon the employee's request. This is particularly necessary if the administrator plans to use the information contained in the notes as the basis for some personnel action against the employee.

Complaints about employees raise perplexing questions if the employee involved requests a copy of the complaint. A complaint about an employee arguably falls within the statutory definition of a personnel file. IOWA CODE ch. 91B. Yet, a complaint about an employee can also be interpreted to fall within the "outside-parties" exemption contained in the public records law. IOWA CODE § 22.7(18). *See page 33*. If the complaint falls within the exemption, then the school district need not release the complaint to the employee without the complaining party's consent. IOWA CODE § 22.7(18)(a). This is especially important if the complaining party has specifically requested anonymity.

While the issue remains unresolved, it is suggested school districts not include a complaint in an employee's personnel file until after the administration has fully investigated the complaint and concluded the complaint has merit. Complaints that are neither investigated nor substantiated should not be used to evaluate employees and, therefore, should not be included in their personnel file.

Before a complaint is placed in a personnel file, the administrator should obtain the complaining party's consent to disclose the complaint to the affected employee and delete the name of the complaining party or otherwise modify the document so the individual's identity is not disclosed. Iowa law permits governmental bodies to disclose communications submitted by outside third parties if the communication "can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person." IOWA CODE § 22.7(18)(b).

Many collective bargaining agreements contain specific provisions guaranteeing employees covered by the agreement access to their personnel files and also prohibit the school district from placing any document in an employee's file without first showing the document to the employee and permitting the employee an opportunity to respond in writing. Nothing in the law supersedes such provisions. School districts must, therefore, follow the law as well as the terms of their collective bargaining agreements relating to restrictions that may exist regarding employee personnel files.

Given Iowa law's broad definition of what constitutes a personnel file, school districts are advised to provide, upon request, the employee access to records pertaining to his or her employment no matter where the information is stored except for closed references or an administrator's personal notes. Information protected by a recognized privilege, such as the privilege protecting communications between administrators and the school district's attorney, should not be produced. Administrators are advised to thoroughly review a personnel file before granting the employee access to make sure all protected communications and other inappropriate documents are removed. Administrators should exercise caution when placing protected communications and other inappropriate documents in an employee's personnel file. It is suggested an administrator maintain a file separately from the personnel file for these items.

Retention of Employee Personnel Files and Other Records

Retaining employee records for an extended period can be a blessing or a curse depending upon the quality and type of records retained. Properly kept records can establish the school district has uniformly followed certain employment practices without discrimination, and such proof can be vital in employment discrimination cases or in arbitration cases involving contract interpretation or in establishing an existing past practice. Employee records can, however, devastate an employment discrimination case if they establish the opposite – that the school district has inconsistently applied its employment policies or practices, thus creating the perception that it has acted in an arbitrary or capricious manner or, worse yet, discriminated against an employee because of the employee's race, sex, national origin, religion, age or disability.

Neither Iowa nor federal law provides uniform record-keeping standards. School districts, like other employers, should devise a uniform retention policy regarding the personnel, payroll and other employment records they maintain. The policy must be broad enough to comply with all state and federal requirements. The policy should also take into account the crucial role employment records can play in litigation if the records are properly compiled and maintained.

Based on those factors, it is recommended school districts retain all records contained in the employee's personnel file for the duration of an employee's employment and then for at least one year after the employee leaves employment. Retaining personnel records for this length of time meets all state and federal requirements and also permits most of the applicable statutes of limitations to run out before the records are destroyed. School districts need only retain payroll records for three years after payment as required by the U.S. Department of Labor regulations. School districts may, of course, adopt a conservative approach and retain all employment-related records for an indefinite period. Nothing contained in state or federal regulations requires school districts to destroy employment records after a given time has elapsed. School districts with excess records may file them by using an alternative method such as putting them on microfiche or CD-Rom. *See Exhibits 8 and 11.*

EMERGENCY PREPAREDNESS RECORDS

Another exception to the public records law is that information containing security or emergency preparedness information that, if released, would endanger lives or property. Boards that want to protect this information must adopt a board policy outlining that information which the board will consider to be confidential records. What boards and administrators need to do when amending their policy is to determine what specific school district information should be protected for safety reasons.

For example:

- Bomb threat procedures;
- Intruder procedures;
- Evacuation procedures;
- Security procedures;
- Security codes and passwords; and,
- Emergency preparedness procedures.

Boards can add to or subtract from this list as they see fit as long as the items are covered in the law. *A sample policy is included as Exhibit 12.*

E-MAILS

As addressed above, public records are those stored or preserved by a school corporation. But, the law is silent as to whether e-mails on a board member's individual computer are a public record. Arguably, they aren't a public record since they are being kept by an individual board member on his or her personal computer and are not "of or belonging to" the school district. That's not to say an attorney couldn't get copies of those through a discovery process if a lawsuit is brought. All the attorney has to do is to make a public records request. It's then the school district's burden to prove the e-mails on an individual board member's computer aren't a public record. Board members need to recognize a clever attorney could make an argument that board members are public officials

conducting official business via e-mail so therefore, the e-mails are public even though written and stored on a personal computer.

The e-mails sitting in the superintendent's computer are a different story. If the superintendent has a practice of regularly deleting e-mails, then the e-mails won't be "stored" on his or her computer. That's not to say they don't exist, however, as they are probably still stored on the main system. Unless the school district has the practice of regularly purging e-mails off the main computer, the e-mails probably still exist at the school district and must be made accessible to anyone who asks for them since they would still be considered a public record. Also, even though the system may regularly purge e-mails, if an employee has stored e-mails in a separate system or file, they will not be purged and still accessible.

Employees need to be notified that their e-mails, and other documents on the school district's computer, are considered public records unless one of the narrow exceptions apply. There should be no expectation of privacy by employees with regards to their school district computers and their e-mail. Also, employees e-mail addresses are public records subject to disclosure when requested.

Settlement Agreements

The law makes settlements between governmental bodies and others a public record when the governmental body reaches a final, binding, written settlement agreement resolving a legal dispute claiming monetary damages, other relief or a violation of the law. Upon request for the settlement agreement, the governmental body must prepare a brief summary of the agreement, which is also a public record, including specific information, unless the settlement agreement already includes the information;

a) Identities of the parties
b) Nature of the dispute
c) Terms of the settlement including payments made
d) Actions to be taken by the governmental body

If, however, the information is confidential such as the identification of a student, that information can still be withheld.

Chapter XI

EXAMINATION & COPYING OF PUBLIC RECORDS

The right to access public records covers not only access to, but examination and copying of, public records. The public has the right to examine and copy public records and disseminate the information contained in those records. This right is not limited to citizens of the school district or even the state. School districts cannot prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions. The right to access, examine and copy public records does not extend to using a school district's computer system unless agreed to by the school district.

Access to, examination and copying of public records must be done under the supervision of the custodian of the records. By law, the board secretary is the custodian of school district records. IOWA CODE § 291.6(1). However, in many school districts this duty is delegated to another individual. The school district can adopt reasonable rules and regulations governing access, examination and copying to prevent damage or disorganization of the records. It is recommended school districts have a policy outlining these issues, noting the time of regular office hours when individuals can examine and copy the records. School districts may charge a reasonable fee for the retrieving and copying of records and administrative services with certain exceptions made for student records. Boards can also require requestors to pre-pay for the copying. *See page 26.* *Rathman v. Board of Directors of Davenport Community School District*, 580 NW.2d 773(Iowa 1998). This cost, however, cannot exceed the actual cost. *For IASB's sample policy, see exhibit 12*

In *Rathmann*, the Iowa Supreme Court stated that a school district could not charge board members a fee for retrieving records. The court determined that such a fee would interfere with a board member's ability to discharge the board member's duties. While the court recognized the potential for abuse by board members, it felt most records requests would not place a financial strain on the school district.

The right to examine public records does not include the right to demand a school district generate a record to meet the specific needs of the person requesting the information. For example, it is not uncommon for an individual to want the names, addresses and telephone numbers of parents of students enrolled in the school district. Most school districts, however, keep these types of records by student rather than by parent. Consequently, a school district has no obligation under the public records law to compile a new list. If the list of students is directory information and maintained in a directory by the school district, the individual can obtain the list and use it to contact parents.

School districts concerned about the release of specific public records or a narrowly drawn class of public records may file a petition for an injunction with the district court to prevent the release of information. The injunction will only be issued if the court finds:

- the examination would clearly not be in the public interest; and,
- the examination would substantially and irreparably injure any person or persons.

IOWA CODE § 22.8.

The court will rarely exercise this provision of the law, and the public interest of full disclosure will likely outweigh any inconvenience or embarrassment that public officials may experience.

The school district can delay permitting the examination or copying of a public record. The delay must be a reasonable delay. Generally, a "reasonable delay" should not exceed 20 calendar days or 10 business days. The delay must be made in good faith and be for any of the following purposes:

- to seek an injunction as discussed previously;

- to determine whether the lawful custodian is entitled to seek such an injunction or should seek an injunction;
- to determine whether the government record in question is a public record or a confidential record; or,
- to determine whether a confidential record should be available for inspection and copying.

PENALTIES FOR NONCOMPLIANCE

People who are denied the right to access, examine or copy public records have the right to seek judicial enforcement of the law. IOWA CODE § 22.10. The Iowa attorney general or county attorney also has the right to seek judicial enforcement of the public records law. A school district that doubts the public nature of a record should seek an opinion from the attorney general or from local counsel. A custodian unlawfully denying access may be guilty of a simple misdemeanor; ignorance of the law is not a defense. IOWA CODE §§ 22.6, .10(4). If a court determines the law has been violated, it may impose the following penalties:

- require the school district to comply with the law and order the custodian to refrain from any violations for one year;
- assess a personal fine of $100-$2,500 against the person involved in the violation unless the person involved:
  - voted against violating the law;
  - refused to participate in the violation;
  - engaged in reasonable efforts under the circumstances to resist or prevent the violation;
  - believed in good faith the action complied with the public records law; or
  - reasonably relied on a court decision, board attorney opinion or an Iowa attorney general's opinion.
- require the school district to pay all legal fees of the person bringing the lawsuit; or
- remove the custodian from office for a second violation.

See SF289, sections 7, 11. IOWA CODE § 22.10(3)(b).

The purpose of the public records law is similar to that of the open meeting law — accessibility to boards' records. All board records are considered public records and accessible to the public unless a provision of state or federal law defines those records as confidential records. Board members and administrators need to understand how the public records law works and that a violation could bring legal liability to the individuals involved as well as negative publicity for the school district.

APPENDIX A - Form 1

NOTICE OF PUBLIC MEETING

You are hereby notified that the Board of Directors of the _____ Community School District will meet at _____o'clock _____.m. on the _____ day of _____, 20 _____, at the _____, Iowa.

At that meeting, the tentative agenda* is as follows:

1._____

2. _____

3._____

4._____

5._____

6._____

7._____

8. Adjournment.

Persons wishing to address the board at this meeting should indicate their desire to do so by ***(insert school district's procedure)*** . However, this does not guarantee that the person will have the opportunity to address the board.

_____School District

_____
(Street Address)

_____
(City) (State) (Zip)

Telephone:_____

Email _____

By_____
Secretary, Board of Directors

*See suggested form of agenda in the manual, *IASB School Board Member Handbook*.

APPENDIX A - Form 2

REQUEST OF NEWS MEDIA FOR NOTICE OF MEETING

To the Secretary:

_____ Community School District
_____ IA.

You are hereby requested to provide the undersigned with notice of meetings of the board of directors of the _____Community School District or of any advisory committees. Such notice may be given orally, in person, by telephone, electronically, or by written notice to:

_____
(Name of News Media)

_____
(Name of Individual)

_____

_____
(Address)

_____
(Telephone number)

_____
(FAX Number)

_____
(E-Mail Address)

Alternate persons to contact for special or emergency meetings after business hours if primary contact cannot be reached:

Name Telephone

_____

_____

_____

APPENDIX B

MOTIONS TO ENTER A CLOSED SESSION

Vote Required for Closed Session

In order to go into closed session, either two-thirds of the members of the board must vote to go into closed session, or all of the members present must vote for closing the session—assuming a quorum is present.

For example, if all members of a five-member board are present, at least four must vote in favor of going into the closed session. If less than five members are present, then all members present must vote in favor of going into closed session.

On a seven-member board, if six or seven members are present, at least five must vote to go into a closed session. If four or five members are present, then all members present must vote in favor of going into a closed session.

On a nine-member board, if seven to nine members are present, six must vote in favor or going into the closed session. If five or six members are present, all of the members present must vote in favor of going into a closed session.

Sample Motions for Closed Meeting

Under IOWA CODE, chapter 21, the reason for holding a closed session must be announced and entered in the minutes. The reason must be for one of the reasons specified in the law. A roll call vote must be taken, and the minutes must show how each member voted on closing the session.

The following are sample motions for having a closed session:

(1) "I move that we hold a closed session as authorized by section 21.5(1)(a) of the open meetings law to review or discuss records which are required or authorized to be kept confidential."

(2) "I move that we hold a closed session as provided in section 21.5(1)(c) of the open meetings law to discuss strategy with counsel in matters that are presently in litigation."

(3) "I move that we hold a closed session as provided in section 21.5(1)(c) of the open meetings law to discuss strategy with counsel in matters where litigation is imminent and where its disclosure would be likely to prejudice or disadvantage the position of this school district in that litigation."

(4) "I move that we hold a closed session as provided in section 21.5(1)(e) of the open meetings law to discuss whether to conduct a hearing to determine whether to suspend or expel a student."

(5) "I move that we hold a closed session as provided in section 21.5(1)(e) of the open meetings law to conduct a hearing to determine whether to suspend or expel a student."

(6) "I move that we hold a closed session as provided in section 21.5(1)(i) of the open meetings law to evaluate the professional competency of an individual whose appointment is being considered to prevent needless and irreparable injury to that individual's reputation, as that individual has requested a closed session."

APPENDIX B
Page 2 of 2

(7) "I move that we hold a closed session as provided in section 21.5(1)(i) of the open meetings law to evaluate the professional competency of an individual whose hiring is being considered to prevent needless and irreparable injury to that individual's reputation, as that individual has requested a closed session."

(8) "I move that we hold a closed session as provided in section 21.5(1)(i) of the open meetings law to evaluate the professional competency of an individual whose performance is being considered to prevent needless and irreparable injury to that individual's reputation, as that individual has requested a closed session."

(9) "I move that we hold a closed session as provided in section 21.5(1)(i) of the open meetings law to evaluate the professional competency of an individual whose discharge is being considered to prevent needless and irreparable injury to that individual's reputation, as that individual has requested a closed session."

(10) "I move that we hold a closed session as provided in section 21.5(1)(j) of the open meetings law to discuss the purchase or sale of particular real estate where premature disclosure could be reasonably expected to increase the price the school district would have to pay or lower the price the board would receive for that property."

APPENDIX C - Form 1

STUDENT EXPULSION HEARING NOTICE

(date)

(Name of parent(s) and student Address

Dear_____:

This is to inform you that under the Iowa open meetings law student suspension or expulsion hearings are automatically held in a closed session. Upon your request, however, the hearing can be held in the open. If the meeting is an open meeting, then any person from the public sector, including the news media, will be permitted to attend. The student's records that ordinarily are held in strict confidence by the school would be considered open to the public and the evidence in the hearing could be subject to publicity by the news media.

If the meeting is a closed session, only the board, authorized school employees, you, the student, the student's parents and any representatives you may choose to represent you, such as an attorney or minister, would be present in the meeting. All school records and evidence used in the expulsion hearing would be confidential and would remain confidential.

If you prefer to have the hearing held in the open, please initial the line next to "Open hearing" and return the form to me prior to the meeting. If you want to stay with a closed hearing, there is no need to return the form.

_____Open hearing

By _____
Parent

By _____
Student (if over 18 years of age)

Sincerely,

(Administrator)

APPENDIX C - Form 2

WAIVER OF EXPULSION HEARING

I/we_____(student) and _____(parent(s) or guardian) have read the alleged violations of the rules and regulations of the _____ Community School District as set forth in the notice which is attached hereto.

We acknowledge that while the rules and regulations of the school district provide for a hearing before the board of directors at which we may appear to hear the evidence and recommendations of the administration and at which we may be represented by counsel or another representative, may cross-examine witnesses and present evidence in our own behalf, we hereby waive such a hearing and consent that the notice with supporting documents be submitted to the board of directors for its consideration and action upon the recommended expulsion.

Signed this _____ day of_____ 20 _____.

_____
Student

_____
Parent or Guardian

_____
Parent or Guardian

APPENDIX D

COMMONLY ASKED QUESTIONS ABOUT THE OPEN MEETINGS LAW

Can the board go into closed session to discuss reorganization, whole grade sharing or open enrollment?

No. There is no exception to the open meetings law to allow for these discussions to take place in a closed session. If the discussion however, is about which superintendent to hire for the new district, that discussion may be held in closed session under IOWA CODE § 21.5(1)(i) exception. *See page 14* for a complete discussion of the hiring of a superintendent.

Can the board act on an item on the "Discussion" section of the agenda?

The board should probably not take action on "discussion items" unless there is urgency to do so and that urgency is documented in the minutes. It is recommended that boards not write their agendas to make a distinction between "discussion" and "action" items so as to provide the flexibility necessary.

Under the exception to the open meetings law regarding imminent litigation, must the school attorney be present?

Yes, the exception states to "discuss strategy with counsel" so the attorney must be present. However, the attorney may be present telephonically.

Who must be present at a closed session?

It is the board's meeting so it can determine who needs to be present at a closed session. As discussed above, the board attorney needs to be present if that specific exception is the one being used. However, for the other exceptions, the board determines who may or may not be present for all or part of a closed session.

If the board secretary is not present for the closed session, the superintendent, if present, or a board member should be appointed to perform the board secretary's duties.

Can the board go into closed session to discuss the salaries or benefits of employees, including administrators, not in the collective bargaining unit?

Yes, under IOWA CODE § 21.9, the law states that strategy sessions regarding employment conditions of employees not covered by a collective bargaining unit are exemptions to the open meetings law. Technically, the board does not need to go into a closed session since it is an exemption. The strategy session is only amongst the board not with the employees.

This exemption can be used to discuss classified employees as well as administrators. The employment conditions that can be addressed in this exempt meeting are the same as those which are the subject of bargaining with the organized employees.

APPENDIX D

What should the board do if it goes into closed session to evaluate one employee and ends up evaluating another?

Unless the board has permission to be in closed session under that specific exception from both employees, the board should either stop discussion of the employee who did not give permission or return to an open meeting. The board states specifically in the motion the reason for the closed session and this exception must be closely adhered to.

Can the board amend the tentative agenda and act on that item at the board meeting?

Yes, provided the board has good cause to add agenda items. If it is an item that can wait 24 hours for a special meeting to be called the board should wait. If the issue can't wait, the minutes should reflect why the board acted without waiting 24 hours.

What is the difference between a "special" board meeting and an "emergency" board meeting?

Emergency board meetings are held without 24-hour public notice. Special meetings have at least 24 hours notice prior to the meeting. Emergency meetings are, and should be, rare. Only in extreme circumstances will the board need to meet and act upon an item without giving 24 hours notice. Perhaps the best example of an emergency meeting is when the board has a bid on a piece of property and there is a counter bid which the board must act on within a certain period of hours. In this case, the board may need to meet to place another bid. The minutes of the emergency meeting should state why the meeting was held without the required 24 hours notice. *See Exhibit 2*. For more details, *see the section on emergency meetings, page 9.*

When the board makes a motion in the open meeting to expel or suspend a student, based upon a hearing in closed session, how should that motion be phrased?

The best practice is to protect the identity of the student and this can be done in one of two ways. The first is to state that "I move the board expel the student who was the subject of the previous hearing." The second is to use initials and state that "I move that the board expel J.D."

Can the board vote for board president by secret ballot?

No. According to the open meetings law, the minutes must be written so that someone reading the minutes can determine how each member voted on every issue no matter the motion.

Can the board go into closed session at the request of a (parent, teacher, employee) to discuss a "personal" matter?

No, unless one of the specific exceptions apply. If the board is approached, by a parent, for example, the board should ask the parent to work through the proper communication channels prior to presentation before the board.

If the parents ask for a student's permanent record because they are moving to a new school district, should the school district give the permanent records to the parents to transport?

No. The parents do not have a right to the permanent record, only copies. The school should be the party responsible for forwarding the permanent records to the new school district to prevent loss or alteration.

APPENDIX E - Form 1 – Applicant

COMMUNITY SCHOOL DISTRICT OPEN MEETINGS LAW WAIVER AND CONSENT *

As an applicant for employment with the school district, I have submitted to the board an employment application form and related materials. It is my understanding that my employment application form and related materials are protected from public disclosure by virtue of IOWA CODE § 22.7(18) and the ruling of the Iowa Supreme Court in the case of *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W. 2d 895 (Iowa 1988), and that these documents may be reviewed by the board in closed session as provided by IOWA CODE § 21.5(1)(a).

As an applicant for employment, I also understand that the board will hold a full and frank discussion of my candidacy including, but not limited to, a discussions of:

- Any negative performance evaluations which I may have received.
- Any employment relationships to which I may have been a party which were terminated by the employer.
- Any employment relationships to which I may have been a party which were terminated by me at the request or suggestion of the employer.
- Any disciplinary action (including warnings, reprimands, suspensions, demotions, or letters of corrective action) which may have been taken against me by an employer.
- Any negative, adverse, or unfavorable report or reference which the board has received regarding me from any and all sources.
- I understand that public discussion of the categories of information set forth above may cause needless and irreparable injury to my reputation and that, with regard to its consideration of whether to hire me, the board may hold its discussion or conduct its evaluation of my professional competence in closed session as provided by IOWA CODE § 21.5(1)(i), if I request such a closed session.
- I hereby waive my right to request that the board discuss my application form and related materials and my candidacy for employment in a closed session, and I consent to a discussion of my application form and related materials and my candidacy for employment in an open session. I hereby release and discharge the board and all participants in the meeting from any and all claims and liability which I may have or ever claim to have as a result of any statements made in the discussion of my application form and related materials and my candidacy for employment in open session.

Signature _____ Date _____

* *Note*: This waiver does not apply to the candidates' closed file credentials.

APPENDIX E - Form 2 – Employee

COMMUNITY SCHOOL DISTRICT OPEN MEETINGS LAW WAIVER AND CONSENT

As an employee of the school district, I understand that my performance has been evaluated, that evaluation materials regarding my performance are protected from disclosure by virtue of IOWA CODE § 22.7(11) and the ruling of the Iowa Supreme Court in the case of *Des Moines Independent School District v. Des Moines Register & Tribune Company*, 487 N.W. 2d 666 (Iowa 1992), and that these documents may be reviewed by the board in closed session as provided by IOWA CODE § 21.5(1)(a).

As an employee whose performance is subject to evaluation, I also understand that the board will discuss my performance in a thorough and frank manner and that this discussion may include:

- Negative evaluations of my performance.
- Disciplinary action (including warnings, reprimands, suspensions, demotions, or letters of corrective action) which either has been or which may be taken against me.
- Information gathered as part of any investigation of my conduct.
- Negative, adverse, or unfavorable reports or references which the board has received regarding me from any and all sources.
- I understand that public discussion of the categories of information set forth above may cause needless and irreparable injury to my reputation and that, with regard to its evaluation of my performance, the board may hold its discussion or conduct its evaluation of my professional competence in closed session as provided by IOWA CODE § 21.5(1)(i), if I request such a closed session.
- I hereby waive my right to request that the board discuss evaluation materials pertaining to me and that the board discuss its evaluation of my performance in a closed session, and I consent to a discussion, in open session of evaluation materials pertaining to me and the board's evaluation of my performance. I hereby release and discharge the board and all participants in the meeting from any and all claims and liability which I may have or ever claim to have as a result of any statements made in the discussion, in open session, of evaluation materials pertaining to me and the board's evaluation of my performance.

Signature _____ Date _____

APPENDIX F

IOWA CODE CHAPTER 21

OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS)

21.1 Intent — declaration of policy.
This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness. [C79, 81, §28A.1] C85, §21.1

21.2 Definitions. As used in this chapter:

1. "Governmental body" means:
   a. A board council, commission, or other governing body expressly created by the statutes of this state or by executive order.
   b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.
   c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs "a" and "b" of this subsection.
   d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.
   e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.
   f. A nonprofit corporation other than a fair conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.
   g. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.
   h An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.
   i. The governing body of a drainage or levee district as provided in chapter 468, including a board as defined in section 468.3, regardless of how the district is organized.
   j. An advisory board, advisory commission, advisory committee, task force, or other body created by an entity organized under chapter 28E, or by the administrator or joint board specified in a chapter 28E agreement, to develop and make recommendations on public policy issues.

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

3. "Open session" means a meeting to which all members of the public have access. [C71, 73, 75, 77, §28A.1; C79, 81, §28A.2] C85, §21.2 89 Acts, ch 73, §1; 90 Acts, ch 1175, §1; 90 Acts, ch 1271, §701; 91 Acts, ch 258, §26; 93 Acts, ch 25, §1; 2004 Acts, ch 1019, §1; 2009 Acts, ch 132, §1; 2009 Acts, ch 179, §31

21.3 Meetings of governmental bodies.
Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection. [C71, 73,75, 77, §28A.1, 28A.5; C79, 81, §28A.3] C85, §21.393 Acts, ch 25, §2

21.4 Public notice.
1. Except as provided in subsection 3, governmental body, shall give notice of the time, date, and place of each meeting, including a reconvened meeting of the governmental body, and the tentative agenda, of the meeting in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. a. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities.
b. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

3. Subsection 1 does not apply to any of the following:
a. A meeting reconvened within four hours of the start of its recess, where an announcement of the time, date, and place of the reconvened meeting is made at the original meeting in open session and recorded in the minutes of the meeting and there is no change in the agenda.
b. A meeting held by a formally constituted subunit of a parent governmental body during a lawful meeting of the parent governmental body or during a recess in that meeting of up to four hours, or a meeting of that subunit immediately following the meeting of the parent governmental body, if the meeting of that subunit is publicly announced in open session at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section. C71, 73, 75, 77, 79, 81, §28A.4] C85, §21.4 96 Acts, ch 1129, §113; 2008 Acts, ch 1032, §201

21.5 Closed session.
1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

a. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.
b. To discuss application for letters patent.
c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.
d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.
e. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.
f. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.
g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.
h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution, or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.
i. To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.
j. To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.
k. To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50.
l. To discuss patient care quality and process improvement initiatives in a meeting of a public hospital or to discuss marketing and pricing strategies or similar proprietary information in a meeting of a public hospital, where public disclosure of such information would harm such a hospital's competitive position when no public purpose would be served by public disclosure. The minutes and the audio recording of a closed session under this paragraph shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position. For purposes of this paragraph, "public hospital" means the same as defined in section 249J.3. This paragraph does not apply to the information required to be disclosed pursuant to section 347.13, subsection 11, or to any discussions relating to terms or conditions of employment, including but not limited to compensation of an officer or employee or group of officers or employees.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does no directly relate to the specific reason announced as justification for the closed session.

3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also audio record all of the closed session. The detailed minutes and audio recording of a closed session shall be sealed and shall not b public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and tape recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes

should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and audio recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and audio recording of any closed session for a period of at least one year from the date of that meeting, except as otherwise required by law.

5. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter. [C71, 73, 75, 77, §28A.3; C79, 81, §28A.5] C85, §21.5
2002 Acts, ch 1076, §1; 2007 Acts, ch 63, §1, 2; 2008 Acts, ch 1191, §33, 99; 2009 Acts, ch110, §1[SP] Subsection 1, paragraph "l" does not apply to litigation before any court that was filed prior to July 1, 2008; 2008 Acts, ch 1191, §99

21.6 Enforcement.
1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a member of a governmental body knowingly participated in such a violations, damages hall be in the amount of not more than two thousand, five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:
   (1) Voted against the closed session.
   (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.
   (3) Reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the attorney general or the attorney for the governmental body, given in writing

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a". If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an

action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in a prior violation of this chapter for which damages were assessed against the member during the member's term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body. [C71, 73, 75, 77, §28A.7, 28A.8; C79, 81, §28A.6] C85, §21.699 Acts, ch 9, §1; 2005 Acts, ch 99, §1

21.7 Rules of conduct at meetings.

The public may use cameras or recording devices at any open session. Nothing in this chapter shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators. [C79, 81, §28A.7] C85, §21.7

21.8 Electronic meetings.

1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.

b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.

c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.

3. A meeting by electronic means may be conducted without complying with paragraph "a" of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5. [C79, 81, §28A.8] C85, §21.8 2007 Acts, ch 22, §11

21.9 Employment conditions discussed.

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, "employment conditions" mean areas included in the scope of negotiations listed in section 20.9. [81 Acts, ch 30, §1] C83, §28A.9 C85, §21.9

21.10 Information to be provided.

The authority which appoints members of governmental bodies shall provide the members with information about this chapter and chapter 22. The appropriate commissioner of elections shall provide that information to members of elected governmental bodies. 89 Acts, ch 73, §2

21.11 Applicability to nonprofit corporations.

This chapter applies to nonprofit corporations which are defined as governmental bodies subject to section 21.2, subsection 1, paragraph "f ", only when the meetings conducted by the nonprofit corporations relate to the conduct of pari-mutuel racing and wagering pursuant to chapter 99D. 90 Acts, ch 1175, §2

APPENDIX G

IOWA CODE CHAPTER 22

EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS),

22.1 Definitions.

1. The term "government body" means this state, or any county, city, township, school corporation, political subdivision, tax-supported district, nonprofit corporation other than a fair conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D; the governing body of a drainage or levee district as provided in chapter 468, including a board as defined in section 468.3, regardless of how the district is organized; or other entity of this state, or any branch, department, board, bureau, commission, council, committee, official, or officer of any of the foregoing or any employee delegated the responsibility for implementing the requirements of this chapter.

2. The term "lawful custodian" means the government body currently in physical possession of the public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record. The records relating to the investment of public funds are the property of the public body responsible for the public funds. Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. "Lawful custodian" does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.

3. a. As used in this chapter, "public records" includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, nonprofit corporation other than a fair conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

   b. "Public records" also includes all records relating to the investment of public funds including but not limited to investment policies, instructions, trading orders, or contracts, whether in the custody of the public body responsible for the public funds or a fiduciary or other third party. [C71, 73, 75, 77, 79, 81, §68A.1] 84 Acts, ch 1145, §1; 84 Acts, ch 1185, §1 C85, §22.1 90 Acts, ch 1271, §702; 91 Acts, ch 258, §27; 92 Acts, ch 1156, §6, 7; 2004 Acts, ch 1019, §2; 2005 Acts, ch 19, §15, 126; 2009 Acts, ch 132, §2; 2009 Acts, ch 179, §32; 2010 Acts, ch 1061, §180 [T] Subsection 3 internally redesignated pursuant to Code editor directive

22.2 Right to examine public records — exceptions.
1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under section 622.46.

2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions. 3. However, notwithstanding subsections 1 and 2, a government body is not required to permit access to or use of the following:

a. A geographic computer database by any person except upon terms and conditions acceptable to the governing body. The governing body shall establish reasonable rates and procedures for the retrieval of specified records, which are not confidential records, stored in the database upon the request of any person.
b. Data processing software developed by the government body, as provided in section 22.3A. [C71, 73, 75, 77, 79, 81, §68A.2]84 Acts, ch 1185, §2C85, §22.2 89 Acts, ch 189, §1; 96 Acts, ch 1099, §14; 98 Acts, ch 1224, §17

22.3 Supervision — fees.
1. The examination and copying of public records shall be done under the supervision of the lawful custodian of the records or the custodian's authorized designee. The lawful custodian shall not require the physical presence of a person requesting or receiving a copy of a public record and shall fulfill requests for a copy of a public record received in writing, by telephone, or by electronic means. Fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of expenses to be incurred in fulfilling the request and such estimated expenses shall be communicated to the requester upon receipt of the request.

The lawful custodian may adopt and enforce reasonable rules regarding the examination and copying of the records and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for the examination and copying of the records, but if it is impracticable to do the examination and copying of the records in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for the examination and copying.

2. All expenses of the examination and copying shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian's authorized designee in supervising the examination and copying of the records. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the actual cost of providing the service. Actual costs shall include only those expenses directly attributable to supervising the examination of and making and providing copies of public records. Actual costs shall not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian. [C71, 73, 75, 77, 79, 81, §68A.3]
C85, §22.3 2001 Acts, ch 44, §2; 2005 Acts, ch 103, §1; 2006 Acts, ch 1010, §14

22.3A Access to data processing software.
1. As used in this section:

a. "Access" means the instruction of, communication with, storage of data in, or retrieval of data from a computer.
b. "Computer" means an electronic device which performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer including a computer network. As used in this paragraph, "computer" includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment

such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. "Computer network" means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

d. "Data" means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer.

e. "Data processing software" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph "data processing software" includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, or computer networking program.

2. A government body may provide, restrict, or prohibit access to data processing software developed by the government body, regardless of whether the data processing software is separated or combined with a public record. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body's ability to permit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or database management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2.

The payment amount shall be calculated as follows:

a. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph 22 (1) §22.3A, shall not apply to any publication for which a price has been established pursuant to another section, including section 2A.5.

b. If access to the data processing software is provided to a person for a purpose other than provided in paragraph "a", the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body.

3. A government body is granted and may apply for and receive any legal protection necessary to secure a right to or an interest in data processing software developed by the government body, including but not limited to federal copyright, patent, and trademark protections, and any trade secret protection available under chapter 550. The government body may enter into agreements for the sale or distribution of its data pro-

cessing software, including marketing and licensing agreements. The government body may impose conditions upon the use of the data processing software that is otherwise consistent with state and federal law. 96 Acts, ch 1099, §15; 98 Acts, ch 1224, §18; 99 Acts, ch 207, §12; 2003 Acts, ch 35, §38, 49

22.4. Hours when available. The rights of persons under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m. Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time. [C71, 73, 75, 77, 79, 81, §68A.4] 84 Acts, ch 1185, §3 C85, §22.4.

22.5. Enforcement of rights. The provisions of this chapter and all rights of persons under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, chapter 17A, if the records involved are records of an "agency" as defined in that Act. [C71, 73, 75, 77, 79, 81, §68A.5] 84 Acts, ch 1185, §4 C85, §22.5 2003 Acts, ch 44, §114.

22.6 Penalty. It shall be unlawful for any person to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor. [C71, 73, 75, 77, 79, 81, §68A.6] C85, §22.6 [P] Penalty applicable to violations under §455K.4

22.7 Confidential records. The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records. This subsection shall not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or 22 (1) 5. §22.7 policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student's education records.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual's confidentiality.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers' investigative reports, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously

jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the sale or purchase of real or personal property for public purposes, prior to the execution of any contract for such sale or the submission of the appraisal to the property owner or other interest holders as provided in section 6B.45.

8. Iowa department of economic development information on an industrial prospect with which the department is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests and criminal history data shall be public records.

10. *a.* Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies. However, the following information relating to such individuals contained in personnel records shall be public records:
    (1) The name and compensation of the individual including any written agreement establishing compensation or any other terms of employment excluding any information otherwise excludable from public information pursuant to this section or any other applicable provision of law. For purposes of this paragraph, "*compensation*" means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an official, officer, or employee plus the value of benefits conferred including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacation, holiday, and sick leave, severance payments, retirement benefits, and deferred compensation.
    (2) The dates the individual was employed by the government body.
    (3) The positions the individual holds or has held with the government body.
    (4) The educational institutions attended by the individual, including any diplomas and degrees earned, and the names of the individual's previous employers, positions previously held, and dates of previous employment.
    (5) The fact that the individual was discharged as the result of a final disciplinary action upon the exhaustion of all applicable contractual, legal, and statutory remedies.

    b. Personal information in confidential personnel records of government bodies relating to student employees shall only be released pursuant to 20 U.S.C. § 1232g.

11. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

12. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

13. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

14. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under section 17A.3. As used in this subsection disturbance means a riot or a condition that can reasonably be expected to cause a riot.

15. Information in a report to the Iowa department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

16. Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

17. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, "persons outside of government" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:
    a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.
    b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.
    c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

18. Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a governmental body, to the extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered.

19. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historic preservation officer pertaining to access, disclosure, and use of archaeological site records.

20. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources

and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

21. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to section 515B.10, subsection 1, paragraph "a", subparagraph (2).

22. Information or reports collected or submitted pursuant to section 508C.12, subsections 3 and 5, and section 508C.13, subsection 2, except to the extent that release is permitted under those sections.

23. Records of purchases of alcoholic liquor from the alcoholic beverages division of the department of commerce which would reveal purchases made by an individual class "E" liquor control licensee. However, the records may be revealed for law enforcement purposes or for the collection of payments due the division pursuant to section 123.2422 (1) 7 §22.7

24. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

25. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

26. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities.

27. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G.

28. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to section 68B.31A. Information that is disclosed to a legislative ethics committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 is not a confidential record unless otherwise provided by law.

29. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A.

30. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.

31. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 556.2C, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of administrative services for the purpose of documenting and tracking outdated warrants pursuant to section 556.2C.

32. Data processing software, as defined in section 22.3A, which is developed by a government body.

33. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

34. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

35. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver's license under section 321.189A.

36. Mediation communications as defined in section 679C.102, except written mediation agreements that resulted from a mediation, which are signed on behalf of a governing body. However, confidentiality of mediation communications resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

37. a. Records containing information that would disclose, or might lead to the disclosure of, private keys used in an electronic signature or other similar technologies as provided in chapter 554D.
    b. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.

38. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2.

39. The portion of a record request that contains an internet protocol number which identifies the computer from which a person requests a record, whether the person using such computer makes the request through the Iowa Access network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.

40. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports. However, medical examiner records and reports shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency, and autopsy reports shall be released to the decedent's immediate next of kin upon the request of the decedent's immediate next of kin unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

41. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 523C.23.

42. Information obtained by the commissioner of insurance pursuant to section 502.607.

43. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 7; or section 815.10, subsection 5.

44. The critical asset protection plan or any part of the plan prepared pursuant to section 29C.8 and any information held by the homeland security and emergency management division that was supplied to the division by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of government and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The homeland security and emergency management division may provide all or part

of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not redisseminate the information without prior approval of the administrator.

45. Military personnel records recorded by the county recorder pursuant to section 331.608.

46. A report regarding interest held in agricultural land required to be filed pursuant to chapter 10B.48. Sex offender registry records under chapter 692A, except as provided in section 692A.121.

47. Confidential information, as defined in section 86.45, subsection 1, filed with the workers' compensation commissioner.

48. Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property.
    a. Such information includes but is not limited to information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack.
    b. This subsection shall only apply to information held by a government body that has adopted a rule or policy identifying the specific records or class of records to which this subsection applies and which is contained in such a record.

49. The information contained in the information program established in section 124.551, except to the extent that disclosure is authorized pursuant to section 124.553. 52.
    a. The following records relating to a charitable donation made to a foundation acting solely for the support of an institution governed by the state board of regents, to a foundation acting solely for the support of an institution governed by chapter 260C, to a private foundation as defined in section 509 of the Internal Revenue Code organized for the support of a government body, or to an endow Iowa qualified community foundation, as defined in section 15E.303, organized for the support of a government body:
        (1) Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning, or gift planning matters.
        (2) Records received from a donor or prospective donor regarding such donor's prospective gift or pledge.
        (3) Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge.
        (4) Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor.
        (5) Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This subparagraph does not apply to a gift or pledge from a publicly held business corporation.
    b. The confidential records described in paragraph "a", subparagraphs (1) through (5), shall not be construed to make confidential those portions of records disclosing any of the following:
        (1) The amount and date of the donation.
        (2) Any donor-designated use or purpose of the donation.
        (3) Any other donor-imposed restrictions on the use of the donation.

(4) When a pledge or donation is made expressly conditioned on receipt by the donor, or any person related to the donor by blood or marriage within the third degree of consanguinity, of any privilege, benefit, employment, program admission, or other special consideration from the government body, a description of any and all such consideration offered or given in exchange for the pledge or donation.

c. Except as provided in paragraphs "a" and "b", portions of records relating to the receipt, holding, and disbursement of gifts made for the benefit of regents institutions and made through foundations established for support of regents institutions, including but not limited to written fund-raising policies and documents evidencing fund-raising practices, shall be subject to this chapter.

d. This subsection does not apply to a report filed with the ethics and campaign disclosure board pursuant to section 8.7.

50. Information obtained and prepared by the commissioner of insurance pursuant to section 507.14.

51. Information obtained and prepared by the commissioner of insurance pursuant to section 507E.5.

52. An intelligence assessment and intelligence data under chapter 692, except as provided in section 692.8A.

53. Individually identifiable client information contained in the records of the state database created as a homeless management information system pursuant to standards developed by the United States department of housing and urban development and utilized by the Iowa department of economic development.

54. The following information contained in the records of any governmental body relating to any form of housing assistance:

a. An applicant's social security number.

b. An applicant's personal financial history.

c. An applicant's personal medical history or records.

d. An applicant's current residential address when the applicant has been granted or has made application for a civil or criminal restraining order for the personal protection of the applicant or a member of the applicant's household.

55. Information filed with the commissioner of insurance pursuant to sections 523A.204 and 523A.502A.

56. The information provided in any report, record, claim, or other document submitted to the treasurer of state pursuant to chapter 556 concerning unclaimed or abandoned property, except the name and last known address of each person appearing to be entitled to unclaimed or abandoned property paid or delivered to the treasurer of state pursuant to that chapter.

57. Information possessed by the office of energy independence, the Iowa power fund board, or the due diligence committee associated with the office and the board, relating to a prospective applicant with which the office, board, or committee is currently negotiating, or an award recipient, shall only be released as provided in section 469.6, subsection 6.

58. Information in a record that would permit a governmental body subject to chapter 21 to hold a closed session pursuant to section 21.5 in order to avoid public disclosure of that information, until such time as final action is taken on the subject matter of that information. Any portion of such a record not subject to this subsection, or not otherwise confidential, shall be made available to the public. After the governmental body has taken final action on the subject matter pertaining to the information in that record, this subsection shall no longer apply. This subsection shall not apply more than ninety days after a record is known to exist by the governmental body, unless it is not possible for the governmental body to take final action within ninety days. The burden shall be on the governmental body to prove that final action was not possible within the ninety-day period.

59. Records of the department on aging pertaining to clients served by the office of substitute decision maker.

60. Records of the department on aging pertaining to clients served by the elder abuse prevention initiative.

61. Information obtained by the superintendent of credit unions in connection with a complaint response process as provided in section 533.501, subsection 3.

62. Information obtained by the commissioner of insurance in the course of an examination of a cemetery as provided in section 523I.213A, subsection 7.

22.8 Injunction to restrain examination.

1. The district court may grant an injunction restraining the examination, including copying, of a specific public record or a narrowly drawn class of public records. A hearing shall be held on a request for injunction upon reasonable notice as determined by the court to persons requesting access to the record which is the subject of the request for injunction.

It shall be the duty of the lawful custodian and any other person seeking an injunction to ensure compliance with the notice requirement. Such an injunction may be issued only if the petition supported by affidavit shows and if the court finds both of the following:

a. That the examination would clearly not be in the public interest.
b. That the examination would substantially and irreparably injure any person or persons.

2. An injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond.

3. In actions brought under this section the district court shall take into account the policy of this chapter that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others. A court may issue an injunction restraining examination of a public record or a narrowly drawn class of such records, only if the person seeking the injunction demonstrates by clear and convincing evidence that this section authorizes its issuance. An injunction restraining the examination of a narrowly drawn class of public records may be issued only if such an injunction would be justified under this section for every member within the class of records involved if each of those members were considered separately.

4. Good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter if the purpose of the delay is any of the following:

a. To seek an injunction under this section.
b. To determine whether the lawful custodian is entitled to seek such an injunction or should seek such an injunction.
c. To determine whether the government record in question is a public record, or confidential record.
d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days.
e. Actions for injunctions under this section may be brought by the lawful custodian of a government record, or by another government body or person who would be aggrieved or adversely affected by the examination or copying of such a record.
f. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19.

[C71, 73, 75, 77, 79, 81, §68A.8] 84 Acts, ch 1185, §7C85, §22.8

22.9 Denial of federal funds — rules.

If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent de-

nial of such funds, services, or essential information. An agency within the meaning of section 17A.2, subsection 1, shall adopt as a rule, in each situation where this section is believed applicable, its determination identifying those particular provisions of this chapter that must be waived in the circumstances to prevent the denial of federal funds, services, or information.
[C71, 73, 75, 77, 79, 81, §68A.9]84 Acts, ch 1185, §8 C85, §22.9

22.10 Civil enforcement.
1. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations of this chapter.
b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a person knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person did any of the following:
   (1) Voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter;
   (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of this chapter;
   (3) Reasonably relied upon a decision of a court a formal opinion of the attorney general or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the attorney general or the attorney for the government body, given in writing.

c. Shall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph "b" of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.
d. Shall issue an order removing a person from office if that person has engaged in a prior violation of this chapter for which damages were assessed against the person during the person's term.

4. Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under this section. A lawful custodian or its designee in doubt about the legality of allowing the examination

or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian's principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action.

5. Judicial enforcement under this section does not preclude a criminal prosecution under section 22.6 or any other applicable criminal provision. 84 Acts, ch 1185, §9; 2005 Acts, ch 99, §2

22.11 Fair information practices.
This section may be cited as the "Iowa Fair Information Practices Act". It is the intent of this section to require that the information policies of state agencies are clearly defined and subject to public review and comment.

1. Each state agency as defined in chapter 17A shall adopt rules which provide the following:
   a. The nature and extent of the personally identifiable information collected by the agency, the legal authority for the collection of that information, and a description of the means of storage.
   b. A description of which of its records are public records, which are confidential records, and which are partially public and partially confidential records and the legal authority for the confidentiality of the records. The description shall indicate whether the records contain personally identifiable information.
   c. The procedure for providing the public with access to public records.
   d. The procedures for allowing a person to review a government record about that person and have additions, dissents, or objections entered in that record unless the review is prohibited by statute.
   e. The procedures by which the subject of a confidential record may have a copy of that record released to a named third party.
   f. The procedures by which the agency shall notify persons supplying information requested by the agency of the use that will be made of the information, which persons outside of the agency might routinely be provided this information, which parts of the information requested are required and which are optional and the consequences of failing to provide the information requested.
   g. Whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

2. A state agency shall not use any personally identifiable information after July 1, 1988, unless it is in a record system described by the rules required by this section. 84 Acts, ch 1185, §10

22.12 Political subdivisions.
A political subdivision or public body which is not a state agency as defined in chapter 17A is not required to adopt policies to implement section 22.11. However, if a public body chooses to adopt policies to implement section 22.11 the policies must be adopted by the elected governing body of the political subdivision of which the public body is a part. The elected governing body must give reasonable notice, make the proposed policy available for public inspection and allow full opportunity for the public to comment before adopting the policy. If the public body is established pursuant to an agreement under chapter 28E, the policy must be adopted by a majority of the public agencies party to the agreement. These policies shall be kept in the office of the county auditor if adopted by the board of supervisors, the city clerk if adopted by a city, and the chief administrative officer of the public body if adopted by some other elected governing body. 84 Acts, ch 1185, §11

22.13 Settlements — governmental bodies.
A written summary of the terms of settlement, including amounts of payments made to or through a claimant, or other disposition of any claim for damages made against a governmental body or against an employee, officer, or agent of a governmental body, by an insurer pursuant to a contract of liability insurance issued to the governmental body, shall be filed with the governmental body and shall be a public record. 91 Acts, ch 96, §1

22.14 Public funds investment records in custody of third parties.

1. The records of investment transactions made by or on behalf of a public body are public records and are the property of the public body whether in the custody of the public body or in the custody of a fiduciary or other third party.

2. If such records of public investment transactions are in the custody of a fiduciary or other third party, the public body shall obtain from the fiduciary or other third party records requested pursuant to section 22.2.

3. If a fiduciary or other third party with custody of public investment transactions records fails to produce public records within a reasonable period of time as requested by the public body, the public body shall make no new investments with or through the fiduciary or other third party and shall not renew existing investments upon their maturity with or through the fiduciary or other third party. The fiduciary or other third party shall be liable for the penalties imposed under statute, common law, or contract due to the acts or omissions of the fiduciary or other third party.

Exhibit 1
Code No. 210.2

REGULAR MEETING

The regular meeting time and date will be set by the board at its organizational meeting. The regular meetings of the board will be held on the _____of each month.

Meetings will begin promptly at ___ p.m. The board will adhere to this meeting date and time unless the board requires additional meetings or, due to circumstances beyond the board's control, the meeting cannot be held on the regular meeting date, and the meeting will be re-scheduled at the board's convenience. Public notice of the meetings will be given.

Legal Reference: Iowa Code §§ 21.3, .4; 279.1 (2011).
1980 Op. Att'y Gen. 148.

Cross Reference: 200.1 Organization of the Board of Directors
210 Board of Directors' Meetings

Approved _____ Reviewed _____ Revised _____

Exhibit 2
Code No. 210.3

SPECIAL MEETING

It may be necessary for the board to conduct a special meeting in addition to the regularly scheduled board meeting. Special meetings may be called by the president of the board or by the board secretary at the request of a majority of the board. Should a special meeting be called, public notice will be given.

If the special meeting called is an emergency meeting and the board cannot give public notice in its usual manner, the board will give public notice of the meeting as soon as practical and possible in light of the situation. Emergency meetings will only be held when an issue cannot wait twenty-four hours necessary for a special meeting. The reason for the emergency meeting and why notice in its usual manner could not be given will be stated in the minutes.

Only the purpose or issue for which the special meeting was called may be discussed and decided in the special meeting. The board will strictly adhere to the agenda for the special meeting and action on other issues will be reserved for the next regular or special board meeting.

Legal Reference: Iowa Code §§ 21.3, .4; 279.2 (2011).
1980 Op. Att'y Gen. 148.

Cross Reference: 200.1 Organization of the Board of Directors
210 Board of Directors' Meetings

Approved _____ Reviewed _____ Revised _____

Exhibit 3

Code No. 210.4

WORK SESSIONS

The board, as a decision making body, is confronted with a continuing flow of problems, issues and needs which require action. While the board is determined to expedite its business, it is also mindful of the importance of planning, brainstorming and thoughtful discussion without action. Therefore, the board may schedule work sessions and retreats in order to provide its members and the administration with such opportunities. The board has the authority to hire an outside facilitator to assist them in work sessions.

Topics for discussion and study will be announced publicly, and work sessions and retreats will be conducted in open session. No board action will take place at the work session.

NOTE: Work sessions are considered open board meetings for which all of the requirements of the open meetings law apply including the requirement that board minutes be published.

Legal Reference: Iowa Code §§ 21; 279.8 (2011).
1982 Op. Att'y Gen. 162.
1980 Op. Att'y Gen. 167.
1976 Op. Att'y Gen. 384, 514, 765.
1972 Op. Att'y Gen. 158.
1970 Op. Att'y Gen. 287.

Cross Reference: 210 Board of Directors' Meetings
211 Open Meetings

Approved _____ Reviewed _____ Revised _____

Exhibit 4
Code No. 210.5

MEETING NOTICE

Public notice will be given for meetings and work sessions held by the board. Public notice will indicate the time, place, date and tentative agenda of board meetings. The public notice will be posted on the bulletin board in the central administration office at least ____days before it is scheduled, but, at the minimum, twenty-four hours notice needs to be given.

A copy of the public notice will be provided to those who have filed a request for notice with the secretary. These requests for notice must be in writing. A copy of the public notice will also be accessible to employees and students.

In the case of special meetings, public notice will be given in the same manner as for a regular meeting unless it is an emergency meeting. In that case, public notice of the meeting will be given as soon as practical and possible in light of the situation. The media and others who have requested notice will be notified of the emergency meeting. Attendance at a special meeting or emergency meeting by the media or board members will constitute a waiver of notice.

It is the responsibility of the board secretary to give public notice of board meetings and work sessions.

NOTE: This policy states that the notice will be posted in the central administration office which is a legal requirement. If an additional procedure is used, the board may want to include that procedure.

Legal Reference: Dobrovolny v. Reinhardt, 173 N.W.2d 837 (Iowa 1970).
Iowa Code §§ 21.2-.4; 279.1, .2 (2011).
1952 Op. Att'y Gen. 133.

Cross Reference: 210 Board of Directors' Meetings
210.8 Board of Directors' Meeting Agenda

Approved _____ Reviewed _____ Revised _____

Exhibit 5

Code No. 212

CLOSED SESSIONS

Generally, board meetings will be open meetings, unless a closed session or exempt meeting is provided for by law. The board will hold a closed session or exempt meeting in the situations stated below.

Exceptions to the Open Meetings Law

Closed sessions take place as part of an open meeting. The item for discussion in the closed session will be listed as part of the tentative agenda on the public notice. The motion for a closed session, stating the purpose for the closed session, will be made and seconded during the open meeting. A minimum of two-thirds of the board, or all of the board members present, must vote in favor of the motion on a roll call vote. Closed sessions will be recorded and have detailed minutes kept by the board secretary. Final action on matters discussed in the closed session will be taken in an open meeting.

The minutes and the recording will restate the motion made in the open meeting, the roll call vote, the members present, and the time the closed session began and ended. The recordings and the written minutes will be kept for one year from the date of the meeting. Real estate related minutes and recordings will be made public after the real estate transaction is completed.

The detailed minutes and recording will be sealed and will not be public records open to public inspection. The minutes and recording will only be available to board members or opened upon court order in an action to enforce the requirements of the open meetings law. The board has complete discretion as to whom may be present at a closed session.

Reasons for the board entering into a closed session from an open meeting include, but are not limited to, the following:

1. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for the board's possession or receipt of federal funds.
2. To discuss strategy with legal counsel in matters presently in litigation, or where litigation is imminent, if disclosure would be likely to prejudice or disadvantage the board.
3. To discuss whether to conduct a hearing, or conduct a hearing for suspension or expulsion of a student, unless an open meeting is requested by the student or the parent of the student.
4. To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when a closed session is necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.
5. To discuss the purchase or sale of particular real estate, but only when premature disclosure could be reasonably expected to increase the price the board would have to pay for the property, or in case of a sale, reduce the price the board could receive for the property.

Approved _____ Reviewed _____ Revised _____

Exhibit 5
Code No. 212
Page 2 of 2

CLOSED SESSIONS

Exemptions to the Open Meetings Law

Board meetings at which a quorum is not present, or gatherings of the board for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of the open meetings law, are exempt from the open meetings law requirements. Since gatherings of this type are exempt from the open meetings requirements, they can be held without public notice, be separate from an open meeting, be held without taping the gathering or taking minutes, and be held without a vote or motion. The board may also hold an exempt session for the following:

1. negotiating sessions, strategy meetings of public employers or employee organizations, mediation and the deliberative process of arbitration;
2. to discuss strategy in matters relating to employment conditions of employees not covered by the collective bargaining law;
3. to conduct a private hearing relating to the recommended termination of a teacher's contract. The private hearing however, in the teacher's contract termination will be recorded verbatim by a court reporter; and
4. to conduct a private hearing relating to the termination of a probationary administrator's contract or to review the proposed decision of the administrative law judge regarding the termination of an administrator's contract.

NOTE: This policy reflects the exceptions and exemptions to the open meeting law. Any deviation from this policy should be addressed to legal counsel prior to action.

Legal Reference: Iowa Code §§ 20.17; 22.7; 279.15, .16, .24 (2011).
1982 Op. Att'y Gen. 162.
1980 Op. Att'y Gen. 167.
1976 Op. Att'y Gen. 384, 514, 765.
1972 Op. Att'y Gen. 158.
1970 Op. Att'y Gen. 287.

Cross Reference: 208 Ad Hoc Committees
211 Open Meetings

Exhibit 6
Code No. 210.8

BOARD MEETING AGENDA

The tentative agenda for each board meeting will state the topics for discussion and action at the board meeting. The agenda is part of the public notice of the board meeting and will be posted and distributed.

Persons requesting to place an item on the agenda must make a request to the superintendent prior to the drafting of the tentative agenda. The person making the request must state the person's name, address, purpose of the presentation, action desired and pertinent background information. Requests from the public may be added to the tentative agenda at the discretion of the superintendent after consultation with the board president. Requests received after the deadline may only be added to the agenda for good cause.

The tentative agenda and supporting documents will be sent to the board members _days prior to the scheduled board meeting. These documents are the private property of the board member. Persons wishing to view the tentative agenda and supporting documents may do so at the central administration office.

The board will take action only on the items listed on the tentative agenda posted with the public notice. Items added to the agenda may be discussed or taken under advisement by the board. If an added item is acted upon, the minutes of the board meeting will state the reason justifying the immediate action.

It is the responsibility of the board president and superintendent to develop the agenda for each board meeting.

NOTE: There is no legal requirement for the method used in developing the board agenda. This policy states the common procedure for drafting the board agenda. If a board uses another procedure, it should be reflected in this policy.

Legal Reference: Iowa Code §§ 21; 279.8 (2011).
1980 Op. Att'y Gen. 269.

Cross Reference:
210 Board of Directors' Meetings
211 Open Meetings
213 Public Participation in Board Meetings
215 Board of Directors' Records
402.5 Public Complaints About Employees
502.4 Student Complaints and Grievances

Approved _____ Reviewed _____ Revised _____

Exhibit 7
Code No. 215

BOARD OF DIRECTORS' RECORDS

The board will keep and maintain permanent records of the board including, but not limited to, records of the minutes of board meetings and other required records of the board.

It is the responsibility of the board secretary to keep the minutes of the board meetings. The minutes of each board meeting will include, at a minimum, the following items: a record of the date, time, place, members present, action taken and the vote of each member, and the schedule of bills allowed will be attached. This information will be available within two weeks of the board meeting and forwarded to the newspaper designated as the official newspaper for publication. The information does not need to be published within two weeks. The schedule of bills allowed may be published on a once monthly basis in lieu of publication with the minutes. The permanent records of the board minutes may include more detail than is required for the publication of the minutes.

Minutes waiting approval at the next board meeting will be available for inspection at the central administration office after the board secretary transcribes the notes into typewritten material which has been proofread for errors and retyped.

NOTE: This is a mandatory policy. The requirements in the second paragraph are all legal requirements.

Legal Reference: Iowa Code §§ 21; 22; 279.8, .35, .36; 291.6, .7; 618.3 (2011).
281 I.A.C. 12.3(1).
1982 Op. Att'y Gen. 215.
1974 Op. Att'y Gen. 403.
1952 Op. Att'y Gen. 133.

Cross Reference:

206.3	Secretary
206.4	Treasurer
208	Ad Hoc Committees
210.8	Board Meeting Agenda
708	Care, Maintenance and Disposal of School District Records
901	Public Examination of School District Records

Approved _____ Reviewed _____ Revised _____

Exhibit 7
Code No. 215.1E1

BOARD MEETING MINUTES

Since the official minutes of the board are the only legal record, it is important that they be recorded with extreme care and completeness. The board secretary will follow the following guidelines in writing board minutes:

With respect to content, the minutes should show the following:

1. The place, date, and time of each meeting.
2. The type of meeting--regular, special, emergency, work session.
3. Members present and members absent, by name.
4. The call to order and adjournment.
5. The departure of members by name before adjournment.
6. The late arrival of members, by name.
7. The time and place of the next meeting.
8. Approval, or amendment and approval, of the minutes of the preceding meeting.
9. Complete information as to each subject of the board's deliberation and the action taken.
10. The maker and seconder of the motion, what action was taken, and the vote on the motion detailed enough to attribute a vote to each member present.
11. Complete text of all board resolutions, numbered consecutively for each fiscal year.
12. A record of all contracts entered into, with the contract documents kept in a separate file.
13. A record of all change orders on construction contracts.
14. All employment changes, including resignations or terminations.
15. A record, by number, of the bills of account approved by the board for payment.
16. A record of all calls for bids, bids received, and action taken thereon.
17. Approval of all transfers of funds from one budgetary fund to another.
18. Important documents forming a part of a motion should be made a part of the minutes by exhibit and placed in the minute book along with the minutes.
19. Board policy and administrative guides should be made a part of the minutes by exhibit.
20. Adoption of textbooks and establishment of bus routes by the board for the school year as well as the school calendar should become a part of the minutes.

Exhibit 7
Code No. 215.1E1

BOARD MEETING MINUTES

21. Approval or disapproval of open enrollment requests with justification for disapproval or approval after the deadline.
22. A record of all delegations appearing before the board and a record of all petitions.
23. At the annual meeting each year the record should indicate that the books of the treasurer and secretary and the Certified Annual Report have been examined and approved subject to audit.
24. The election or appointment of board officers.
25. The appointment of auditors to examine the books.

At the organizational meeting in September/October, the minutes should reflect the following:

26. Appointment of a temporary chairperson if not specified in policy.
27. Oath of office administered to newly elected board members.
28. Nominations taken for the office of president and vice-president.
29. Election of the president and vice-president, the votes and the oath of office administered to the president and vice-president.
30. The resolution to pay bills when the board is not in session.
31. A resolution to automatically disburse payroll along with a roster of all employees under contract.
32. A resolution naming depositories along with the maximum deposit for each depository.
33. Resolution authorizing the use of a check protector and signer and the proper control of the signer.
34. Motion designating a member or a committee to examine the bills of account for a designated period of time on a rotation basis if desired for the balance of the school year.

NOTE: There are no legal requirements for the contents of board minutes other than those stated in the policy. The contents of this exhibit are suggestions and may be amended, altered or deleted.

Exhibit 8

EMPLOYEE RECORDS

The school district will maintain personnel records on employees. The records are important for the daily administration of the educational program, for implementing board policy, for budget and financial planning, and for meeting state and federal requirements.

The records will include, but not be limited to, records necessary for the daily administration of the school district, salary records, evaluations, application for employment, references, and other items needed to carry out board policy. Employee personnel files are school district records and are considered confidential records and therefore are not generally open to public inspection or accessibility. Only in certain limited instances, when the employee has given a signed consent, will employee personnel records be accessible to individuals other than the employee or authorized school officials.

Employees may have access to their personnel files, with the exception of letters of reference, and copy items from their personnel files at a time mutually agreed upon between the superintendent and the employee. The school district may charge a reasonable fee for each copy made. However, employees will not be allowed access to the employment references written on behalf of the employee. Board members will generally only have access to an employee's file when it is necessary because of an employee related matter before the board.

It is the responsibility of the superintendent to keep employees' personnel files current. The board secretary is the custodian of employee records.

It is the responsibility of the superintendent to develop administrative regulations for the implementation of this policy.

NOTE: This is not a mandatory policy but is a recommended one. It reflects current state and federal laws protecting the confidentiality and retention of employee records. Separate medical files are a requirement of the American with Disabilities Act.

Legal Reference: Iowa Code chs. 20; 21; 22; 91B (2011).

Cross Reference:
- 402.1 Release of Credit Information
- 403 Employees' Health and Well-Being
- 708 Care, Maintenance and Disposal of School District Records

Approved _____ Reviewed _____ Revised _____

Exhibit 8
Code No. 401.5R1

EMPLOYEE RECORDS REGULATION

Employee Personnel Records Content

1. Employee personnel records may contain the following information:

   - Personal information including, but not limited to, name, address, telephone number, emergency numbers, birth date and spouse.
   - Individual employment contract.
   - Evaluations.
   - Application, resume and references.
   - Salary information.
   - Copy of the employee's license or certificate, if needed for the position.
   - Educational transcripts.
   - Assignment.
   - Records of disciplinary matters.

2. Employee health and medical records are kept in a file separate from the employee's personnel records. Health and medical records may contain, but are not limited to:

   - Medical professional signed physical form.
   - Sick or long-term disability leave days.
   - Worker's compensation claims.
   - Reasonable accommodation made by the school district to accommodate the employee's disability.
   - Employee's medical history.
   - Employee emergency names and numbers.
   - Family and medical leave request forms.

Applicant File Records Content

Records on applicants for positions with the school district are maintained in the central administration office. The records will include, but not be limited to:

- Application for employment.
- Resume.
- References.
- Evidence of appropriate license or certificate, if necessary for the position for which the individual applied.
- Affirmative action form, if submitted.

Exhibit 8
Code No. 401.5R1
Page 3 of 3

EMPLOYEE RECORDS REGULATION

Record Access

Only authorized school officials will have access to an employee's records without the written consent of the employee. Authorized school officials may include, but not be limited to, the superintendent, building principal, or board secretary. In the case of a medical emergency, the school nurse or other first aid or safety personnel may have access to the employee's health or medical file without the consent of the employee. Board members will generally only have access to an employee's personnel file without the consent of the employee when necessary for the conducting of board business.

Employee Record Retention

All employee records, except payroll and salary records, are maintained for a minimum of one year after termination of employment with the district. Applicant records are maintained for a minimum of one year after the position was filled. Payroll and salary records are maintained for a minimum of three years after payment.

Exhibit 9

Code No. 506.1
Page 1 of 14

STUDENT RECORDS ACCESS

The board recognizes the importance of maintaining student records and preserving their confidentiality. Student records containing personally identifiable information are kept confidential at collection, storage, disclosure and destruction stages. The board secretary is the custodian of student records. Student records may be maintained in the central administration office or administrative office of the student's attendance center.

Parents and eligible students will have access to the student's records during the regular business hours of the school district. An eligible student is a student who has reached eighteen years of age or is attending an institution of postsecondary education at the post high school level. Parents of an eligible student are provided access to the student records only with the written permission of the eligible student unless the eligible student is defined as a dependent by the Internal Revenue Code. In that case, the parents may be provided access without the written permission of the student. A representative of the parents or eligible student, who has received written permission from the parents or eligible student, may inspect and review a special education student's records. Parents, other than parents of an eligible student, may be denied access to a student's records if the school district has a court order stating such or when the district has been advised under the appropriate laws that the parents may not access the student records. Parents may inspect an instrument used for the purpose of collection of student personal information prior to the instrument’s use.

A student record may contain information on more than one student. Parents will have the right to access the information relating to their student or to be informed of the information. Eligible students will also have the right to access the information relating to them selves, or be informed of the information.

Parents and eligible students will have a right to access the student's records upon request without unnecessary delay and in no instance more than forty-five calendar days after the request is made. Parents, an eligible student or an authorized representative of the parents will have the right to access the student's records prior to an Individualized Education Program (IEP) meeting or hearing.

Copies of student records will be provided if failure to do so would effectively prevent the parents or student from exercising the right to access the student records. Fees for copies of the records are waived if it would prevent the parents or student from accessing the records. A fee may not be charged to search or retrieve information from student records.

Upon the request of parents or an eligible student, the school district will provide an explanation and interpretation of the student records and a list of the types and locations of education records collected, maintained or used by the school district.

Approved Reviewed ___ Revised ___

STUDENT RECORDS ACCESS

If the parents or an eligible student believes the information in the student records is inaccurate, misleading or violates the privacy or other rights of the student, the parents or an eligible student may request that the school district amend the student records. The school district will decide whether to amend the student records within a reasonable time after receipt of the request. If the school district determines an amendment is made to the student record, the school district will make the amendment and inform the parents or the eligible student of the decision in writing.

If the school district determines that amendment of the student's record is not appropriate, it will inform the parents or the eligible student of their right to a hearing before the hearing officer provided by the school district.

If the parents' and the eligible student's request to amend the student record is further denied following the hearing, the parents or the eligible student are informed that they have a right to place an explanatory letter in the student record commenting on the school district's decision or setting forth the reasoning for disagreeing with the school district. Additions to the student's records will become a part of the student record and be maintained like other student records. If the school district discloses the student records, the explanation by the parents will also be disclosed.

Student records may be disclosed in limited circumstances without parental or eligible student's written permission. This disclosure is made on the condition that the student record will not be disclosed to a third party without the written permission of the parents or the eligible student. This disclosure may be made to the following individuals or under the following circumstances:

- to school officials within the school district and AEA personnel whom the superintendent has determined to have a legitimate educational interest, including, but not limited to, board members, employees, school attorney, auditor, health professionals, and individuals serving on official school committees;
- to officials of another school district in which the student wishes to enroll, provided the other school district notifies the parents the student records are being sent and the parents have an opportunity to receive a copy of the records and challenge the contents of the records unless the annual notification includes a provision that records will automatically be transferred to new school districts;
- to the U.S. Comptroller General, the U.S. Attorney General, the U.S. Secretary of Education or state and local educational authorities;
- in connection with financial aid for which the student has applied or which the student has received if the information is necessary to receive the financial aid;
- to organizations conducting educational studies and the study does not release personally identifiable information;
- to accrediting organizations;
- to parents of a dependent student as defined in the Internal Revenue Code;
- to comply with a court order or judicially issued subpoena;
- *[consistent with an interagency agreement between the school district and juvenile justice agencies]*
- in connection with a health or safety emergency; or,
- as directory information.

Exhibit 9
Code No. 506.1
Page 3 of 14

STUDENT RECORDS ACCESS

The superintendent will keep a list of the individuals and their positions who are authorized to view a special education student's records without the permission of the parents or the eligible student. Individuals not listed are not allowed access without parental or an eligible student's written permission. This list must be current and available for public inspection and updated as changes occur.

The superintendent will also keep a list of individuals, agencies and organizations which have requested or obtained access to a student's records, the date access was given and their legitimate educational interest or purpose for which they were authorized to view the records. The superintendent, however, does not need to keep a list of the parents, authorized educational employees, officers and agencies of the school district who have accessed the student's records. This list for a student record may be accessed by the parents, the eligible student and the custodian of student records.

Permanent student records, including a student's name, address, phone number, grades, attendance record, lasses attended, grade level completed and year completed may be maintained without time limitation. Permanent student records will be kept in a fire-safe vault.

When personally identifiable information, other than permanent student records, no longer needs to be maintained by the school district to provide educational services to a special education student, the parents or eligible student are notified. This notice is normally given after a student graduates or otherwise leaves the school district. If the parents or eligible student request that the personally identifiable information be destroyed, the school district will destroy the records. Prior to the destruction of the records, the school district must inform the parents or eligible student the records may be needed by the parents or eligible student for social security benefits or other purposes. In the absence of parents or an eligible student's request to destroy the records, the school district must maintain the records for at least three years after an individual is determined to be no longer eligible for special education.

[The school district will cooperate with the juvenile justice system in sharing information contained in permanent student records regarding students who have become involved with the juvenile justice system. The school district will enter into an interagency agreement with the juvenile justice agencies (agencies) involved.

The purpose of the agreement is to allow for the sharing of information prior to a student's adjudication in order to promote and collaborate between the school district and the agencies to improve school safety, reduce alcohol and illegal drug use, reduce truancy, reduce in-school and out-of-school suspensions, and to support alternatives to in-school and out-of-school suspensions and expulsions which provide structured and well supervised educational programs supplemented by coordinated and appropriate services designed to correct behaviors that lead to truancy, suspension, and expulsions and to support students in successfully completing their education.

The school district may share any information with the agencies contained in a student's permanent record, which is directly related to the juvenile justice system's ability to effectively serve the student. Prior to adjudication information contained in the permanent record may be disclosed by the school district to the parties without parental consent or court order. Information contained in a student's permanent record may be disclosed by the school district to the agencies after adjudication only with parental consent or a court order. Information shared pursuant to the agreement is used solely for determining the programs and services appropriate to the needs of the student or student's family or coordinating the delivery of programs and services to the student or student's family.

Exhibit 9
Code No. 506.1
Page 4 of 14

STUDENT RECORDS ACCESS

Information shared under the agreement is not admissible in any court proceedings, which take place prior to a disposition hearing, unless written consent is obtained from a student's parent, guardian, or legal or actual custodian.

Confidential information shared between the school district and the agencies will remain confidential and will not be shared with any other person, unless otherwise provided by law.

Information shared under the agreement is not admissible in any court proceedings, which take place prior to a disposition hearing, unless written consent is obtained from a student's parent, guardian, or legal or actual custodian. The school district may discontinue information sharing with an agency if the school district determines that the agency has violated the intent or letter of the agreement.

Agencies will contact the principal of the attendance center where the student is currently or was enrolled. The principal will then forward copies of the records within 10 business days of the request.]

The school district will provide training or instruction to employees about parents' and eligible students' rights under this policy. Employees will also be informed about the procedures for carrying out this policy.
It is the responsibility of the superintendent to annually notify parents and eligible students of their right to inspect and review the student's records. The notice is given in a parents' or eligible student's native language. Should the school district collect personal information from students for the purposes of marketing or selling that information, the school district will annually notify parents of such activity.

The notice will include a statement that the parents have a right to file a complaint alleging the school district failed to comply with this policy. Complaints are forwarded to Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, Washington, DC. 20202-4605.

NOTE: This is a mandatory policy and includes the information required by state and federal law.

Legal Reference:
No Child Left Behind, Title IX, Sec. 9528, P.L.107-110 (2002).
USA Patriot Act, Sec. 507, P.L. 107-56. (2001).
20 U.S.C. § 1232g, 1415 (2010).
34 C.F.R. Pt. 99, 300.560 - .574 (2010).
Iowa Code §§ 22; 279.9B, 280.24, .25, 622.10 (2011).
281 I.A.C. 12.3(6); 41.20
1980 Op. Att'y Gen. 720, 825.

Cross Reference:

501	Student Attendance
505	Student Scholastic Achievement
506	Student Records
507	Student Health and Well-Being
603.3	Special Education
708	Care, Maintenance and Disposal of School District Records
901	Public Examination of School District Records

Exhibit 9

Code No. 506.1E1
Page 5 of 14

STUDENT RECORDS CHECKLIST

	Copy to Parent Upon Request	Parent Signature Required**	User Must Submit Written Request*	No Parent Signature Required	Parent Notified in Advance	Parent Notified of Release	Req. Made Part of Stud. Records	Scheduled Hearing Following decision with the parent	
Subpoena or Judicial Order				♠	♠				Lawfully Issued
Student Financial Aid				♠					Written Request
School or Staff in Same School System				♠					No Written Request Necessary
Other School System Where Student Plans to Enroll	♠		♠	♠		♠	♠		506.1E2
United States Comptroller General			♠	♠			♠		506.1E2
Dept. of Health, Education and Welfare Secretary			♠	♠			♠		506.1E2
National Institute of Education			♠	♠			♠		506.1E2
Iowa Dept. of Education Official			♠	♠			♠		506.1E2
Parent Inspection of Student Educational Records	♠	♠							506.1E5
Parent Request for Hearing to Challenge Record		♠						♠	506.1E4
Parent Authorization for School to Release Information	♠	♠							5061.E3
Notification of Transfer of Student Records	♠			♠					506.1E6

*Such written request is available for inspection by the parent or student and the school official responsible for record maintenance.

**When a student has attained the age of 18 years or is attending an institution of post-secondary education, the permission or consent required of the rights accorded the parent of the student will thereafter be required of and accorded only to the student.

Exhibit 9
Code No. 506.1E2
Page 6 of 14

REQUEST OF NONPARENT FOR EXAMINATION OR COPIES OF STUDENT RECORDS

The undersigned hereby requests permission to examine the _____Community School District's official student records of:

_____ _____
(Legal Name of Student) (Date of Birth)

The undersigned requests copies of the following official student records of the above student:

_____

The undersigned certifies that they are (check one):

(a) An official of another school system in which the student intends to enroll. ( )

(b) An authorized representative of the Comptroller General of the United States. ( )

(c) An authorized representative of the Secretary of the U.S. Department of Education or U.S. Attorney General ( )

(d) An administrative head of an education agency as defined in Section 408 of the Education Amendments of 1974. ( )

(e) An official of the Iowa Department of Education. ( )

(f) A person connected with the student's application for, or receipt of, financial aid (SPECIFY DETAILS ABOVE.) ( )

[(g) A representative of a juvenile justice agency with which the school district has an interagency agreement.] ( )

The undersigned agrees that the information obtained will only be redisclosed consistent with state or federal law without the written permission of the parents of the student, or the student if the student is of majority age.

_____
(Signature)

_____
(Title)

_____
(Agency)

APPROVED:

Signature: _____
Title: _____
Dated: _____

Date: _____
Address: _____
City: _____
State: _____ ZIP: _____
Phone Number: _____

Exhibit 9

Code No. 506.1E3
Page 7 of 14

AUTHORIZATION FOR RELEASE OF STUDENT RECORDS

The undersigned hereby authorizes _____

School District to release copies of the following official student records:

_____

_____

concerning _____ _____
(Full Legal Name of Student) (Date of Birth)

_____ from 20 __to 20
(Name of Last School Attended) (Year(s) of Attend.)

The reason for this request is: _____

_____

My relationship to the child is: _____

Copies of the records to be released are to be furnished to:

( ) the undersigned
( ) the student
( ) other (please specify) _____

_____
(Signature)

Date: _____
Address: _____
City: _____
State: _____ ZIP _____
Phone Number: _____

Exhibit 9

REQUEST FOR HEARING ON CORRECTION OF STUDENT RECORDS

To: _____ Address: _____
Board Secretary (Custodian)

I believe certain official student records of my child, _____, (full legal name of student), _____(school name), are inaccurate, misleading or in violation of privacy rights of my child.

The official education records which I believe are inaccurate, misleading or in violation of the privacy or other rights of my child are:

_____

_____

_____

The reason I believe such records are inaccurate, misleading or in violation of the privacy or other rights of my child is:

_____

_____

_____

My relationship to the child is: _____

I understand that I will be notified in writing of the time and place of the hearing; that I will be notified in writing of the decision; and I have the right to appeal the decision by so notifying the hearing officer in writing within ten days after my receipt of the decision or a right to place a statement in my child's record stating I disagree with the decision and why.

_____
(Signature)

Date: _____
Address: _____
City: _____
State: _____ ZIP _____
Phone Number: _____

Exhibit 9

Code No. 506.1E5
Page 9 of 14

REQUEST FOR EXAMINATION OF STUDENT RECORDS

To: _____ Address: _____
Board Secretary (Custodian)

The undersigned desires to examine the following official education records.

_____

_____

_____

of _____ , _____
(Full Legal Name of Student) (Date of Birth) (Grade)

_____
(Name of School)

My relationship to the student is: _____

(check one)

_____ I do
_____ I do not

desire a copy of such records. I understand that a reasonable charge may be made for the copies.

_____
(Parent's Signature)

APPROVED:

Signature: _____
Title: _____
Dated: _____

Date: _____
Address: _____
City: _____
State: _____ ZIP _____
Phone Number: _____

Exhibit 9

Code No. 506.1E6
Page 10 of 14

NOTIFICATION OF TRANSFER OF STUDENT RECORDS

To: _____ Date: _____
Parent/or Guardian

Street Address: _____
City/State _____ ZIP: _____

Please be notified that copies of the _____Community School District's official student records concerning _____, (full legal name of student) have been transferred to:

_____ _____
School District Name Address

upon the written statement that the student intends to enroll in said school system.

If you desire a copy of such records furnished, please check here _and return this form to the undersigned. A reasonable charge will be made for the copies.

If you believe such records transferred are inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, you have the right to a hearing to challenge the contents of such records.

_____
(Name)

_____
(Title)

Exhibit 9
Code No. 506.1E8
Page 11 of 14

JUVENILE JUSTICE AGENCY INFORMATION SHARING AGREEMENT

Statement of Purpose: The purpose of this Agreement is to allow for the sharing of information among the School District and the Agencies prior to a student's adjudication in order to promote and collaborate to improve school safety, reduce alcohol and illegal drug use, reduce truancy, reduce in-school and out-of-school suspensions, and to support alternatives to in-school and out-of-school suspensions and expulsions which provide structured and well supervised educational programs supplemented by coordinated and appropriate services designed to correct behaviors that lead to truancy, suspension, and expulsions and to support students in successfully completing their education.

Identification of Agencies: This agreement is between the _____Community School District (hereinafter "School District") and (agencies listed) (hereinafter "Agencies") .

Statutory Authority: This agreement implements Iowa Code § 280.25 and is consistent with 34 C.F.R. Pt.99.38.

Parameters of Information Exchange:

1. The School District may share any information with the Agencies contained in a student's permanent record which is directly related to the juvenile justice system's ability to effectively serve the student.
2. Prior to adjudication information contained in the permanent record may be disclosed by the school district to the Agencies without parental consent or court order.
3. Information contained in a student's permanent record may be disclosed by the School District to the Agencies after adjudication only with parental consent or a court order.
4. Information shared pursuant to the agreement is used solely for determining the programs and services appropriate to the needs of the student or student's family or coordinating the delivery of programs and services to the student or student's family.
5. Information shared under the agreement is not admissible in any court proceedings which take place prior to a disposition hearing, unless written consent is obtained from a student's parent, guardian, or legal or actual custodian.
6. Information obtained by the school from other juvenile justice agencies may not be used as the basis for disciplinary action of the student.
7. This agreement only governs a school district's ability to share information and the purposes for which that information can be used. Other agencies are bound by their own respective confidentiality policies.

Records' Transmission: The individual requesting the information should contact the principal of the building in which the student is currently enrolled or was enrolled. The principal will forward the records within 10 business days of the request.

Confidentiality: Confidential information shared between the Agencies and the school district will remain confidential and will not be shared with any other person, unless otherwise provided by law. Information shared under the agreement is not admissible in any court proceedings which take place prior to a disposition hearing, unless written consent is obtained from a student's parent. Agencies or individuals violating the terms of this agreement subject their entity represented and themselves personally to legal action pursuant to federal and state law.

Exhibit 9
Code No. 506.1E8
Page 12 of 14

JUVENILE JUSTICE AGENCY INFORMATION SHARING AGREEMENT

Amendments: This agreement constitutes the entire agreement among the agencies with respect to information sharing. Agencies may be added to this agreement at the discretion of the school district.

Term: This agreement is effective from (September 1, 20 __ or other date) .

Termination: The School District may discontinue information sharing with an Agency if the School District determines that the Agency has violated the intent or letter of this Agreement.

APPROVED:

Signature: _____ Address: _____
Title: _____ City: _____
Agency: _____ State: _____ ZIP _____
Dated: _____ Phone Number: _____

Signature: _____ Address: _____
Title: _____ City: _____
Agency: _____ State: _____ ZIP _____
Dated: _____ Phone Number: _____

Signature: _____ Address: _____
Title: _____ City: _____
Agency: _____ State: _____ ZIP _____
Dated: _____ Phone Number: _____

Signature: _____ Address: _____
Title: _____ City: _____
Agency: _____ State: _____ ZIP _____
Dated: _____ Phone Number: _____

Note: This agreement is optional and can only be used if the board has adopted a policy approving of its use.

Exhibit 9
Code No. 506.1R1

USE OF STUDENT RECORDS REGULATION

Student records are all official records, files, and data directly related to students, including all material incorporated into each student's cumulative record folder and intended for school use or to be available to parties outside the school or school system specifically including, but not necessarily limited to: dates of attendance; academic work completed; level of achievement (grades, standardized test scores); attendance data; scores on standardized intelligence, aptitude, and psychological tests; interest inventory results; health data; family background information; teacher or counselor ratings and observations; and verified reports of serious or recurrent behavior patterns.

The intent of this regulation is to establish procedures for granting requests from parents for access to their child's records, use of the data, and procedures for its transmittal within forty-five calendar days.

A. Access to Records

1. The parent or legal guardian of a student will have access to these records upon written request to the board secretary.

   The parent or legal guardian will, upon written request to the board secretary, have the opportunity to receive an interpretation of the records, have the right to question the data, and, if a difference of opinion is noted, is permitted to file a letter in the cumulative folder stating the dissenting person's position. If further challenge is made to the record, the normal appeal procedures established by school policy will be followed.

   A student, eighteen years or older, has the right to determine who, outside the school system, has access to the records. Parents of students who are 18 years or older but still dependents for income tax purposes may access the student's records without prior permission of the student.

2. School officials having access to student records are defined as having a legitimate educational interest. A school official is a person employed by the school district as an administrator, supervisor, instructor or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the school board; a person or company with whom the school district has contracted to perform a special task (such as an attorney, auditor, AEA employee, medical consultant, or therapist); or a parent or student serving on an official committee, such as disciplinary or grievance committee or student assistance team, or assisting another school official in performing his or her tasks.

B. Release of Information Outside the School

1. To release student records to other school(s) in which the student intends to enroll, the parents, legal guardian, or eligible student must be notified of the transfer and the kinds of information being released unless the school district annually notifies parents that the records will be sent automatically.

2. Student records may be released to official education and other government agencies only if allowed by state or federal law.

3. To release student records to other persons or agencies, written consent is given by the parent, legal guardian, or a student of majority age. This consent form will state which records are released, to whom they are released, and the reason for the release. A copy of the specific records being released will be made available to the person signing the release form if requested.

4. Before furnishing student records in compliance with judicial orders or pursuant to any lawfully issued subpoena, the school district will make a reasonable attempt to notify the parents, legal guardian, or eligible student are notified in advance.

[5. Student records may be shared with juvenile justice agencies with which the school district has an interagency agreement. This information is shared without prior parental consent. The agreement is a public document available for inspection.]

Hearing Procedures

1. Upon parental request, the school district will hold a hearing regarding the content of a student's records which the parent believes to be inaccurate, misleading, or in violation of the privacy rights of students.

2. The hearing will be held within a reasonable time after receipt of the parent or eligible student's request. The parent or eligible student will receive reasonable advance notice of date, time and place of the hearing.

3. The hearing officer may be an employee of the school district so long as the employee does not have a direct interest in the outcome of the hearing.

4. The parents or eligible student will be given a full and fair opportunity to present evidence relevant to the issues. The parent or eligible student may be represented by an individual at their choice at their own expense.

5. The hearing officer will render a written decision within a reasonable period after the hearing. The decision will be based upon evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.

6. The parents may appeal the hearing officers' decision to the superintendent within __days if the superintendent does not have a direct interest in the outcome of the hearing.

7. The parents may appeal the superintendents' decision, or the hearing officers' decision if the superintendent was unable to hear the appeal, to the board within ____days. It is within the discretion of the board to hear the appeal.

Exhibit 10

Code No. 506.2
Page 1 of 5

STUDENT DIRECTORY INFORMATION

Student directory information is designed to be used internally within the school district. Directory information is defined in the annual notice. It may include the student's name, address, telephone number, date and place of birth, e-mail address, grade level, enrollment status, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, student ID number, user ID or other unique personal identifier, photograph and other likeness, and other similar information.

Prior to developing a student directory or to giving general information to the public, parents will be given notice annually of the intent to develop a directory or to give out general information and have the opportunity to deny the inclusion of their child's information in the directory or in the general information about the students.

It is the responsibility of the superintendent to provide notice and to determine the method of notice that will inform parents.

NOTE: This is a mandatory policy. A school district may limit what it considers to be directory information. If the school district limits the information, it must also make those changes in the school district's annual notice.

Legal Reference:
20 U.S.C. § 1232g (2010).
34 C.F.R. Pt. 99, 300.560 - .574 (2010).
Iowa Code § 22; 622.10 (2011).
281 I.A.C. 12.3(6); 41.20.
1980 Op. Att'y Gen. 720.

Cross Reference:

504	Student Activities
506	Student Records
901	Public Examination of School District Records
902.4	Live Broadcast or videotaping

Approved _____ Reviewed _____ Revised _____

Exhibit 10
Code No. 506.2E1

The _____Community School District has adopted a policy designed to assure parents and students the full implementation, protection and enjoyment of their rights under the Family Educational Rights and Privacy Act of 1974 (FERPA). A copy of the school district's policy is available for review in the office of the principal of all of our schools.

This law requires the school district to designate as "directory information" any personally identifiable information taken from a student's educational records prior to making such information available to the public.

The school district has designated the following information as directory information: student's name, address and telephone number; date and place of birth; email address, grade level, enrollment status, major field of study; participation in officially recognized activities and sports; weight and height of members of athletic teams; dates of attendance; degrees and awards received; the most recent previous educational institution attended by the student; student ID number, user ID or other unique personal identifier, photograph and other likeness, and other similar information. You have the right to refuse the designation of any or all of the categories of personally identifiable information as directory information with respect to your student provided that you notify the school district in writing not later than ___, 20_ of this school year. If you desire to make such a refusal, please complete and return the slip attached to this notice.

If you have no objection to the use of student information, you do not need to take any action.

RETURN THIS FORM

_____ Community School District Parental Directions to Withhold Student/Directory Information for Education Purposes, for 20_- 20_ school year.

Student Name: _____ Date of Birth _____

School: _____ Grade: _____

_____ _____
(Signature of Parent/Legal Guardian/Custodian of Child) (Date)

This form must be returned to your child's school no later than _____, 20__.
Additional forms are available at your child's school.

Exhibit 10
Code No. 506.2E1
Option II

AUTHORIZATION FOR RELEASING STUDENT DIRECTORY INFORMATION

The _____Community School District has adopted a policy designed to assure parents and students the full implementation, protection and enjoyment of their rights under the Family Educational Rights and Privacy Act of 1974. A copy of the school district's policy is available for review in the office of the principal of all of our schools.

This law requires the school district to designate as "directory information" any personally identifiable information taken from a student's educational records prior to making such information available to the public.

Even though student addresses and telephone numbers are not considered directory information, military recruiters and post-secondary educational institutions may legally access this information without prior parental consent. Parents not wanting military recruiters and post-secondary institutions to access the information must ask the school district to withhold the information.

The school district has designated the following information as directory information: (The only items left out of this list are address and telephone numbers. Boards need to amend the form to reflect their practice.) student's name; date and place of birth; email address, grade level, enrollment status, major field of study; participation in officially recognized activities and sports; weight and height of members of athletic teams; dates of attendance; degrees and awards received; and the most recent previous educational institution attended by the student; student ID number, user ID or other unique personal identifier, photograph and other likeness, and other similar information. You have the right to refuse the designation of any or all of the categories of personally identifiable information as directory information with respect to your student provided that you notify the school district in writing not later than ___, 20___of this school year. If you desire to make such a refusal, please complete and return the slip attached to this notice.

If you have no objection to the use of student information, you do not need to take any action.

RETURN THIS FORM

_____ Community School District Parental Directions to

Withhold Student/Directory Information, for 20_- 20_school year.

Student Name: _____ Date of Birth _____

School: _____ Grade: _____

_____ _____
(Signature of Parent/Legal Guardian/Custodian of Child) (Date)

This form must be returned to your child's school no later than _____, 20__. Additional forms are available at your child's school.

Exhibit 10
Code No. 506.2E1
Option II

AUTHORIZATION FOR RELEASING STUDENT DIRECTORY INFORMATION

RETURN THIS FORM

_____ Community School District Parental Directions to Withhold Student Names, Addresses and Phone Numbers from Military Recruiters and Post-Secondary Educational Institutions, for 20__- 20 __ school year.

Student Name: _____ Date of Birth _____

School: _____ Grade: _____

_____ _____
(Signature of Parent/Legal Guardian/Custodian of Child) (Date)

This form must be returned to your child's school no later than _____, 20 _____. Additional forms are available at your child's school.

Exhibit 10
Code No. 506.2R1

USE OF DIRECTORY INFORMATION

The Family Educational Rights and Privacy Act (FERPA), a Federal law, requires that _____ School District, with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child's education records. However, _____School District may disclose appropriately designated "directory information" without written consent, unless you have advised the District to the contrary in accordance with district procedures. The primary purpose of directory information is to allow the _____School District to include this type of information from your child's education records in certain school publications. Examples include:

- A playbill, showing your student's role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs; and,
- Sports activity sheets, such as for wrestling, showing weight and height of team members.

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require local educational agencies (LEAs) receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA) to provide military recruiters, upon request, with the following information – names, addresses and telephone listings – unless parents have advised the LEA that they do not want their student's information disclosed without their prior written consent.

If you do not want the _____School District to disclose directory information from your child's education records without your prior written consent, you must notify the District in writing by _____[insert date]. _____ School District has designated the following information as directory information: [***Note: an LEA may, but does not have to, include all the information listed below.]***

- Student's name
- Address
- Telephone listing
- Electronic mail address
- Photograph
- Date and place of birth
- Major field of study
- Dates of attendance
- Grade level
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended
- Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems that cannot be used to access education records without a PIN, password, etc. (A student's SSN, in whole or in part, cannot be used for this purpose.)

- Electronic mail address
- Photograph
- Date and place of birth
- Major field of study
- Dates of attendance
- Grade level
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended
- Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems that cannot be used to access education records without a PIN, password, etc. (A student's SSN, in whole or in part, cannot be used for this purpose.)

Exhibit 11

Code No. 708
Page 1 of 2

CARE, MAINTENANCE AND DISPOSAL OF SCHOOL DISTRICT RECORDS

School district records are housed in the central administration office of the school district. It is the responsibility of the superintendent to oversee the maintenance and accuracy of the records. The following records are kept and preserved according to the schedule below:

- Secretary's financial records ..... Permanently
- Treasurer's financial records ..... Permanently
- Minutes of the Board of Directors ..... Permanently
- Annual audit reports ..... Permanently
- Annual budget ..... Permanently
- Permanent record of individual pupil ..... Permanently
- Records of payment of judgments against the school district ..... 20 years
- Bonds and bond coupons ..... 10 years
- Written contracts ..... 10 years
- Cancelled warrants, check stubs, bank statements, bills, invoices, and related records ..... 5 years
- Recordings of closed meetings ..... 1 year
- Program grants ..... As determined by the grant
- Nonpayroll personnel records ..... 1 year
- Payroll records ..... 3 years

Employees' records are housed in the central administration office of the school district. The employees' records are maintained by the superintendent, the building administrator, the employee's immediate supervisor, and the board secretary.

An inventory of the furniture, equipment, and other nonconsumable items other than real property of the school district is conducted annually under the supervision of the superintendent. This report is filed with the board secretary.

The permanent and cumulative records of students currently enrolled in the school district are housed in the central administration office of the attendance center where the student attends. Permanent records must be housed in a fireproof vault. The building administrator is responsible for keeping these records current. Records of students who have graduated or are no longer enrolled in the school district are housed in the _____. These records will be maintained by the superintendent.

Approved _____ Reviewed _____ Revised _____

Exhibit 11
Code No. 708

CARE, MAINTENANCE AND DISPOSAL OF SCHOOL DISTRICT RECORDS

The superintendent may microfilm or microfiche school district records and may destroy paper copies of the records if they are more than three years old. A properly authenticated reproduction of a microfilmed record meets the same legal requirements as the original record.

NOTE: Most of the time limits listed in this policy are legal requirements. Where the law is silent, best practice time limits have been developed. Prior to changing any of the time limits listed, it is recommended that local counsel be contacted.

Legal Reference:
City of Sioux City v. Greater Sioux City Press Club, 421 N.W.2d 895 (Iowa 1988).
City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523 (Iowa 1980).
Iowa Code §§ 22.3, .7; 91a.6; 279.8 (2011).
281 I.A.C. 12.3(6).

Cross Reference:

206.3	Secretary [*or Secretary/Treasurer]*
215	Board of Directors' Records
401.5	Employee Records
506	Student Records
901	Public Examination of School District Records

Exhibit 12
Code No. 901
Page 1 of 2

PUBLIC EXAMINATION OF SCHOOL DISTRICT RECORDS

Public records of the school district may be viewed by the public during the regular business hours of the administration offices of the school district. These hours are _____ a.m. to _____p.m. Monday through Friday, except for holidays and recesses.

Persons wishing to view the school district's public records will contact the board secretary and make arrangements for the viewing. The board secretary will make arrangements for viewing the records as soon as practicable, depending on the nature of the request.

Persons may request copies of public records by telephone or in writing, including electronically. The school district may require pre-payment of the costs prior to copy and mailing.

Persons wanting copies may be assessed a fee for the copy. Persons wanting compilation of information may be assessed a fee for the time of the employee to compile the requested information. Printing of materials for the public at the expense of the school district will only occur when the event is sponsored by the school district.

Pursuant to Iowa law, the board has determined certain records need to be confidential as their disclosure could jeopardize the safety of persons or property and include, but are not limited to, the following:

- Security procedures
- Emergency preparedness procedures
- Evacuation procedures
- Security codes and passwords

[List additional items the board wants to ensure are protected.]

It is the responsibility of the board secretary to maintain accurate and current records of the school district. It is the responsibility of the board secretary to respond in a timely manner to requests for viewing and receiving public information of the school district.

NOTE: This policy is consistent with the Iowa public records law regarding access to, copying of and charging for copies of public records. By law, individuals have a right to access public records during the hours of 9:00 a.m. - 12:00 p.m. and 1:00 p.m. - 4:00 p.m. unless the board sets other hours. IASB recommends that the board establish specific hours in board policy, and blanks are provided in the first paragraph for that purpose.

Iowa law requires boards to specify what emergency preparedness items need to be confidential in order to protect the safety of individuals or property. A short list is provided but should be added to by the board, if needed.

Approved ___ Reviewed ___ Revised ___

Exhibit 12
Code No. 901

PUBLIC EXAMINATION OF SCHOOL DISTRICT RECORDS

Legal Reference: Iowa Code §§ 21.4; 22; 291.6 (2011).
1980 Op. Att'y Gen. 88.
1972 Op. Att'y Gen. 158.
1968 Op. Att'y Gen. 656.

Cross Reference:

215	Board of Directors' Records
401.5	Employee Records
506	Student Records
708	Care, Maintenance, and Disposal of School District Records
902.1	News Media Relations

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