

Beyond the Basics: Sunshine Law and Public Records Challenges for Schools

Welcome and Introduction

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www.charterschooltraining.com

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Agenda

- Summary of Sunshine Law scope, requirements and penalties
- Sunshine Law in the news
- Public Records law basics
- Public records—beyond the basics

Sunshine Law Scope

- Applies to any gathering of two or more board members to discuss a matter when it is foreseeable that matter will come before the board for action
- Advisory committees are subject to the Sunshine Law. Limited exception if the committee function is purely fact finding; exception only applies to advisory committees, not the governing board
- Applies to electronic communications, including emails, text messages, faxes, social media posts

Penalties

- Action taken at a meeting which violates the Sunshine Law is void and unenforceable
- Any person who knowingly violates the Sunshine Law is guilty of a misdemeanor of a second degree, punishable by a fine not exceeding \$500 or a term of imprisonment not exceeding 60 days
- Any person who unknowingly violates the Sunshine Law is subject to a fine not exceeding \$500

In the News

LOCAL NEWS

3 St. Johns County Airport Authority Board members resign after being accused of multiple Sunshine Law violations

Jenese Harris, Anchor/Meteorologist

Marcela Camargo, Digital Producer, Jacksonville

Published: August 5, 2025 at 1:51 PM

Updated: August 5, 2025 at 4:06 PM

Tags: St. Johns County Airport, St. Johns County, Florida, Sunshine Law



(From left to right) St. Johns County Airport Authority Board members Len Tucker, Dennis Clarke and Reba Ludlow. (Copyright 2025 by WJXT News4JAX - All rights reserved.)



Procedural Requirements

- Reasonable notice
- Minutes
- Location
- Public participation
- Reasonable rules

Public Participation

- The law requires boards to allow the public reasonable opportunity to be heard on a proposition before a board or commission (Sec. 286.0114(2), F.S.)
- Boards may maintain orderly conduct and proper decorum
- The opportunity to be heard is subject to rules or policies adopted by the board (Sec. 286.0114(2), F.S.)

Section 286.0114(2), F.S.:

- The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action
- This section does not prohibit a board or commission from **maintaining orderly conduct or proper decorum** in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4) (emphasis added)

Section 286.0114(3), F.S.:

There are circumstances where a board is not required to give members of the public a reasonable opportunity to be heard:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
- An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
- A meeting that is exempt from the Sunshine Law; or
- A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

Section 286.0114(4), F.S.:

Rules or policies which govern the opportunity to be heard are limited to those that:

- Provide guidelines regarding the **amount of time** an individual has to address the board or commission;
- Prescribe procedures for **allowing representatives of groups** or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
- Prescribe **procedures or forms for an individual to use** in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
- Designate a **specified period of time** for public comment.

Orderly Conduct or Decorum

- A board or commission may maintain orderly conduct or proper decorum (Sec. 286.0114(2), F.S.)
- Courts have held that local governments can limit comment to advance their significant interests in productive and efficient public meetings
- *Moms for Liberty – Brevard County, FL v. Brevard Public Schools*, 118 F.4th 1324 (11th Cir. 2024)
- *Peltier v. Charter Day School, Inc.* 37 F. 4th 104 (4th Cir. 2022) (en banc)

Moms for Liberty case

- Plaintiffs argued that School Board's public comment rules were unconstitutional, both by their own terms and as applied
- A policy is unreasonable if it fails to define key terms, lacks official guidance, and vests too much discretion in those charged with its application
- Court found that the School Board's enforcement was arbitrary, haphazard and so inconsistent that it was impossible to discern the standard used to assess which speech was permitted at any given meeting

Public Comment Rules

- Section 286.0114, Florida Statutes
- Reasonable and viewpoint neutral
- Clearly defined and applied consistently

In the news

EDUCATION

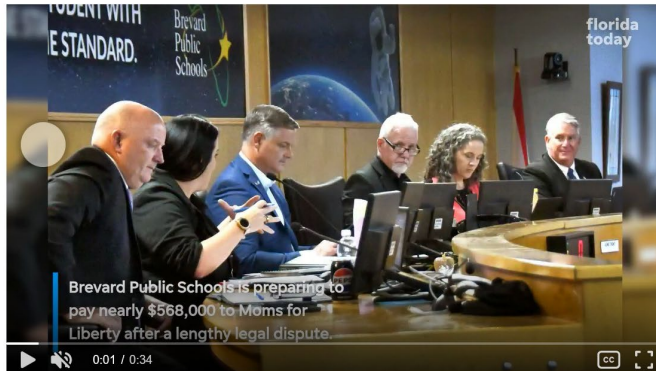
Brevard Public Schools to pay nearly \$568,000 in settlement with Moms for Liberty



Finch Walker

Florida Today

Updated Oct. 6, 2025, 3:29 p.m. ET



Brevard County, Florida, public schools settles lawsuit with Moms For Liberty

Brevard Public Schools is preparing to pay nearly \$568,000 to Moms for Liberty after a lengthy legal dispute.

Key Points AI-assisted summary

- Brevard Public Schools is set to pay nearly \$568,000 to settle a lawsuit with members of Moms for Liberty.
- The lawsuit alleged the school board's public comment policies violated First Amendment rights by stifling criticism.
- A federal court previously ruled the board's policy banning "abusive" speech was unconstitutional.

After an almost four-year-long legal battle, Brevard Public Schools is

In the News

FLORIDA | *News*

Pastor booted from Manatee School Board hearing prevails on appeal

CIVIL RIGHTS, EDUCATION, GOV & POLITICS | Aug 15, 2025 | 5:08 pm ET | By Michael Moline

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Elbert P. Tuttle Courthouse in downtown Atlanta, home of the U.S. Court of Appeals for the Eleventh Circuit. (Photo by John McCosh/Georgia Recorder)

In the News



Public Records Act, Ch. 119, F.S.

- Section 1002.33(16)(b)2., F.S. provides that charter schools are subject to the Public Records Act.
- Charter contracts also specifically require compliance with the Public Records Act.
- The records and meetings of an entity granted charter school status are subject to the Public Records Act, even though the charter school has not opened its doors to students. AGO 01-23.

Florida's Public Records Act

- If a document is a “public record,” the Act requires:
 - That the record be open to inspection and copying by the public
 - Maintenance of the record for certain time periods; and
 - The record may only be destroyed as specified in the Act.
- Limited Exceptions

What is a Public Record?

- **Formally**, Section 119.011(12), F.S., and Fla. Sup. Ct., define public records as all materials, regardless of form, that are made or received in connection with the transaction of official business by or on behalf of an agency, which are used to perpetuate, formalize, or communicate knowledge.

What is a Public Record?

- **Practically**, anything that is capable of reproduction has the ability to be a public record.
- For example, public records could include:
 - E-mails and text messages
 - Social Media comments or posts
 - AI transcription of a meeting
 - Electronic Files
 - Papers and letters
 - Maps
 - Books
 - Photos, videos, tapes, films, recordings

Typical Requests to Charter Schools

- Student enrollment
- Lottery procedures and/or waiting lists
- Lease agreements
- Employees lists, including salaries
- Employment agreements, evaluations
- Emails (teachers, other staff, board members)
- Budgets
- Management agreements
- Security video

Consequence of Violating the Public Records Act

- Attorney Fees.
 - A charter school that does reply at all or purposefully withholds records will likely have to pay the requester's attorney's fees.
- However, if the requester is requesting records for an "improper purpose," then the school can get attorney's fees.
 - Improper purpose means "a request to inspect or copy a public record or participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose." *Vitale v. Palmetto Charter School, Inc.*, 378 So. 3d 680 (Fla. 2d DCA 2024).
- Other negative consequences such as:
 - Lawsuit against school, negative publicity, fines, criminal charges, court costs, charter non-compliance.

Contracts with Third Parties

- Third parties that act on behalf of a charter school may be subject to the Act. 119.011(2), F.S.
 - Important: A charter school cannot circumvent the Public Records Act by allowing another entity to maintain records.
- Section 119.0701, F.S., requires that a contract for services between a charter school and a third-party entity include specific language.
- The contractor must acknowledge its duty to comply with the Public Records Act.
- Consult with your attorney before entering a contract with a third-party.

Electronic and computer records

- Information stored in a charter school's computer is considered a public record just as a written page in a book or stored in a filing cabinet.
- E-mail messages made or received by school employees or board members in connection with official business are public records and are subject to disclosure.

Social media

- A school's Facebook page presumably would be created in connection with the transaction of official business, so it would be a public record. AGO 2009-19.
- Messages on a county commissioner's privately owned and maintained social media accounts, which involved his interactions with the public on matters of county concern and which involved his duties as a commissioner, were public records.

In the News

Herald-Tribune

Judge rules against city of North Port in three-year-old public records lawsuit

Earle Kimel, Sarasota Herald-Tribune

Thu, January 4, 2024 at 4:03 AM EST

2 min read

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The city of North Port must give resident Stephanie Gibson access to social media posts made by former City Commissioner Chris Hanks, following a ruling by Circuit Judge Hunter Carroll. The city spent \$9,524 in legal fees, rather...[More](#)

NORTH PORT – A circuit court judge has ordered North Port to produce social media posts from former North Port City Commissioner Chris Hanks in [a three-year-old public records battle](#).

To date, the city of North Port has spent \$9,524 in legal fees, [rather than fulfill a public records request](#) from resident Stephanie Gibson to see the contents of Hanks' Facebook page, as well as his Facebook messages.

Text and Email Messages

- A governing board member's or employee's use of a private cell phone or email to conduct public business via text or email messaging can be a public record subject to disclosure if the text message or email is prepared, owned, used, or retained within the scope of his or her employment or agency.

In the News



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Manatee County settles public records lawsuit for \$75,000

By **Lesley Dwyer** | 5:00 a.m. September 25, 2024



Manatee County acknowledges not being in compliance with Florida's Public Records Act.
Courtesy image

EAST COUNTY NEWS

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The modern convenience of cell phones has become a costly complication for Manatee County in recent years because of lawsuits stemming from both alleged and acknowledged violations of Florida's Public Records Act.

Most recently, commissioners agreed to pay the Florida Center for Government Accountability \$75,000 on Sept. 10 to settle a lawsuit after Manatee County acknowledged that it had not been in compliance with the law, which requires public records be available to citizens in a timely manner.

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Litigation Records

- There is NO attorney-client privilege for information exchanged between a charter school and its attorney.
 - Attorney-client privilege generally protects against disclosure of such information, but not the case here.
 - Emails, recordings, AI transcriptions, bills, payments, contracts, or other communications between the charter school and its attorney are not protected.
 - If you do not want the information disseminated, pick up the phone and call. Turn off the transcription function.
- There is a narrow temporary exemption for certain work product of an attorney or a person acting under the direction of an attorney.
 - Applies to records prepared in anticipation of *imminent* civil or criminal litigation or adversarial administrative proceedings.
 - Must reflect mental impressions, conclusions, litigation strategy, or legal theory.

Exemptions to the Public Records Act

- Photos, videos (security cameras), or audio recordings of any minor being killed (including suicide) or a mass casualty event are exempt from the Act.
 - However, if a judge finds “good cause,” the video can be released to the public.
- Video footage from surveillance cameras at a high school “relates directly” to the security system at the school. . . and is thus confidential and exempt from disclosures. *State Attorney’s Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205 (Fla. 4th DCA 2018).

Exemptions to the Public Records Act

- Education records: The Family Education Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that does two things:
 - Protects the privacy of student education records, particularly personally identifiable information.
 - Allows parents/guardians or eligible students to inspect and review the student's education records, and their consent must be obtained before such records may be released to a third-party.
- What are education records?
 - Includes grades, transcripts, class lists, health records, financial information, student discipline files, etc.
 - Does not include directory information, such as name, address, date and place of birth, participation in officially recognized activities and sports, and dates of attendance.
- FERPA is complex, and this is not intended to be an exhaustive list.

Exemptions to the Public Records Act

- Personal notes or drafts are generally not considered public records.
 - However, personal notes can transform into public records if the note is intended to or prepared to “perpetuate, communicate, or formalize knowledge,” then the personal note turns into a public record subject to disclosure and maintenance requirements. AGO 05-23.
 - Drafts or notes become public records if they are circulated beyond the author or are not intended for personal use.
 - Drafts and notes that may be considered public records include:
 - Intra- or inter-office memos
 - Preliminary or working drafts of documents
 - Proposals submitted for review

Disclaimer

This material is for informational purposes only and does not constitute professional advice. This information is neither intended nor designed to provide legal or other advice or create a lawyer-client relationship. If you have questions pertaining to your school please consult your school's attorney.

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