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# PR & THE LAW (HOW TO WORK TOGETHER!)

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DIFFERENT  
BY DESIGN

# SUNSHINE LAW

# Missouri Sunshine Law

- Also known as Open Meetings Act
- Introduced in 1973, seven years after the Freedom of Information Act was passed in Congress
  - Same year that the United States Senate Watergate Committee conducted its hearings
- Purpose is to encourage openness in government

# Key Definitions

- **“Public Record”** –RSMo. § 610.010(6): ***any record***, whether written or electronically stored, ***retained by*** or of any public governmental body . . . or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds. . . ; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents . . . and the student if the student is over the age of eighteen years.

# Open v. Closed

- RSMo § 610.021. Closed meetings and closed records authorized when, exceptions.
  - Except to the extent disclosure is otherwise required by law, a public governmental body **is authorized to** close meetings, records and votes, to the extent they relate to the following:

# Open v. Closed

- A “**closed record**,” is defined as “any meeting, record, or vote closed to the public.” RSMo. § 610.010(1)



# Closed Records - examples

- RSMo § 610.021
  - ✓ Legal actions and privileged and confidential communications with attorneys
  - ✓ Leasing, purchase, or sale of real estate
  - ✓ Hiring, firing, disciplining, or promotion of particular employees
  - ✓ Student matters
  - ✓ Preparation for and discussions concerning negotiations with employee groups
  - ✓ Individually identifiable personnel records or records pertaining to employees

RSMo. § 610.021

# Records Requests

- What do requests for access to public records need to look like to be valid?
  - Almost anything! (FUN!)
- Do **not** need to be in writing (but it is recommended they should be for record keeping purposes)
- Anyone may make a request
- Entitled to inspect or copy documents (**not information**)



# What to do when you receive a records request

- Consider the type of request
  - FERPA?
  - Sunshine Act?
  - Subpoena?
  - Authorization for release of records?

# Responding to Requests

- Respond in three (3) business days
- If access is not immediately granted, the Custodian of Records must **explain why the records cannot be produced** without delay and **give the time and place the record will be made available**
- If access is denied, the Custodian of Records should provide, upon request, a written statement of the **reasons for the denial, including the statute that authorizes the denial**
- If a public record contains material which is exempt and non-exempt, the District shall separate it and make the non-exempt material available for examination

# Can you charge fees?

- Not to exceed 10 cents per page, plus cost of clerical staff who make copies (**not to exceed average hourly rate of pay for clerical staff**)
- If employee time is required in responding to a request for records, may charge at the **actual cost** of each search and copying time.
  - Research?
- Payment of **copy charges** may be required prior to the making of copies
  - May NOT require payment of **research fees** prior to providing
- Copies may be furnished without charge or at a reduced charge if in the public interest

# Responding to Requests

- Current Rules

- **Cannot** charge for attorney time searching for/reviewing the responsive documents.
- **Can** charge for staff time to search what is responsive.
- **Cannot** require payment in advance for research, but **can** for copying costs.
- **Must** give a date you anticipate the documents will be ready when sending the 3-day letter if you are not providing all requested documents or communicating they are closed.
  - It is probably still enough to say that you are researching to determine what exists, but provide a date you believe gives enough time to do so.

# How can a lawyer help?

- Interpretation of request
- Request unique to your district?
- Identification of closed v. open records
- Redaction and citation
- Narrowing search terms
- Law firm e-discovery software!

# Best Practices

- Review policies
  - Take advantage of all closed categories
  - Establish procedure for responding to Sunshine Act requests
  - Establish custodian of records and appointees
- Train building administrators on what to do if they receive a request for records
- Consider whether you will charge or waive fees
- Consult legal counsel when in doubt!

# PERSONNEL / STUDENT ISSUES

# Law & Policy

- FERPA
- IDEA
- Sunshine Law
- Nondiscrimination, Antiharassment laws
- Board policies



# Making Statements

- Purpose:
  - Inform the public
  - Reassure the public
  - Control the narrative
  - Transparency
  - Obtain information?

PR interest v. Lawyer interest

# Making Statements

- Legal Pitfalls
  - Confidentiality
  - Claims of retaliation, discrimination, harassment
  - Due process rights
  - Defamation

Can we say SORRY?!?!

# Best Practices

- Notices of administrative leave/termination
  - Consider the audience
  - Consider the purpose
  - What information is public?
  - Pivot to plan moving forward

# Best Practices

- Statements re: School Incidents
  - Remember privacy rights
  - What information is public?
  - Consider audience / purpose
  - Direct people with any information to appropriate person
  - Reference board policies
  - Emphasize cooperation with law enforcement/  
Children's Division
  - Pivot to plan moving forward

# SOCIAL MEDIA

# Law & Policy

- Sunshine Law
- FERPA (Media exclusions!)
- IDEA confidentiality
- Nondiscrimination, antiharassment laws
- First Amendment

# Law & Policy – District Pages

## First Amendment Principles:

- Type of Forum:
  - Closed Forum
  - Limited Public Forum
  - Open Forum
  
- Content Restrictions
  
- Viewpoint Neutrality
  
- Unprotected Speech

# Best Practices

- Think through forum first!
- Control who can make official posts on your page
- Consider purpose & audience for each page
- Have clear policy for classrooms, clubs, sports, etc
- Be careful as to who uses the district's name



# Law & Policy – Employee Speech

## Concepts:

- Local school board has broad power to adopt curriculum.
- The speech of teachers at school usually bears the school's imprimatur
- A teacher's speech as part of his/her official duties is typically not protected by the First Amendment.
- The above factors shape the school's authority to regulate the speech of its employees.

# Law & Policy – Employee Speech

*Pickering v. Board of Education*, 391 U.S. 563 (1968)

- Public employees have a First Amendment right to speak on **matters of “public concern”**
- Balancing test

*Connick v. Myers*, 461 U.S. 138 (1983)

- To determine whether an employee’s speech is a matter of public concern, courts examine the **“content, form, and context”** of a given statement

# Law & Policy – Employee Speech

## 1.) Is the employee speaking as a citizen or pursuant to official duties?

- For employee to be speaking as a private citizen, speech itself cannot have been made in the course of the employee's ordinary duties
- Does the speech relate to the employee's job duties?
- Was the speech made while on or off duty?
- "Chain of command speech," speech made by an employee to his superiors, is typically "employee" speech

# Law & Policy – Employee Speech

**2.) Is the speech related to an issue of public concern based on content, form, and context? Or, is the speech related to the employee's private concern?**

- “Public concern” =
  - political
  - social
  - other concern in the community
  - of legitimate news interest
- Personal issues and grievances do not typically constitute issues of public concern

# Law & Policy – Employee Speech

## 3.) If the speech is “protected,” balance the employee’s interests against those of the school.

- Do the interests of the employee as a private citizen in commenting on matters of public concern outweigh the interests of the public employer in promoting the efficiency of the public services it performs?

# Law & Policy – Employee Speech

- Considerations:
  - Need for harmony in the workplace;
  - Whether the government’s responsibilities require a close working relationship to exist between the employee and co-workers when the speech in question has caused or could cause the relationship to deteriorate;
  - Time, manner, and place of the speech;
  - Context in which the speech arose;
  - Degree of public interest in the speech;
  - Whether the speech impeded the employee’s ability to perform his or her duties

# Law & Policy – Student Speech

Mahanoy Area Sch. Dist. V. B.L. → Reaffirmed concepts from *Tinker*, *Fraser*, etc.

- Students do not shed their constitutional rights to freedom of speech at the schoolhouse gate.
- Courts must apply the First Amendment “in light of the special characteristics of the school environment.”
- Schools at times stand *in loco parentis*.
- Schools have a special interest in regulating speech that materially disrupts classwork or involves substantial disorder or invasion of the rights of others.

# Law & Policy – Student Speech

- Supreme Court held that school’s regulatory interests remain significant in some off-campus circumstances.
- Circumstances where schools **may** regulate off-campus student speech:
  - Serious or severe bullying or harassment targeting particular students or staff
  - Threats aimed at teachers or other students
  - Failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities
  - Breaches of school security devices



# Law & Policy – Student Speech

Three features of off-campus speech that distinguish schools' efforts to regulate it from efforts to regulate on-campus speech:

1. Schools rarely stand *in loco parentis* when children are off-campus. Discipline would fall to the parents.
2. Regulation of off-campus speech in addition to on-campus speech means all speech uttered in a 24-hour period would be regulated by school. Result would be student not engaging in that kind of speech at all. (Think of religious/political speech!)
3. School has an interest in protecting a student's unpopular expression.

# Law & Policy – Student Speech

## Observations and Takeaways:

- Most off-campus speech is going to be outside the school’s jurisdiction (especially religious/political).
- Schools may still have **some** authority to regulate off-campus speech, depending on the circumstances.
- Schools may look for “teachable moments” (rather than discipline) to react to concerning off-campus speech.
- More emphasis on “rights of others” prong?
- Be viewpoint neutral

# Best Practices

- CAUTION about taking responsibility for what happens outside of campus/district activities
- Remember employee & student First Amendment rights when speaking outside school context
- Don't forget lawyer in crisis communications

# Media Presence

- Board meetings?
- District property
  - School day
  - Before / After school

Reasonable Time, Place & Manner Restrictions

# QUESTIONS?