

Training for Members of School District Appointed Committees, Councils, and Task Forces



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**Florida's Government-in-the-Sunshine Law:
Frequently Asked Questions from Members of Advisory Bodies**

- 1. Are advisory bodies subject to the Sunshine Law?**
- 2. What steps must advisory bodies take to comply with the Sunshine Law?**
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- 4. What limits are there regarding communications between advisory body members?**
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- 8. What penalties may be imposed for a violation of the Sunshine Law?**

**Florida’s Government-in-the-Sunshine Law:
Frequently Asked Questions from Members of Advisory Bodies**

1. **Are advisory bodies subject to the Sunshine Law?**

In general, yes. Advisory bodies created by law, school district policy, or ones that are otherwise established by The School Board are subject to the Sunshine Law, even though their recommendations are not binding. The Sunshine Law applies to advisory committees appointed by a single public official as well as those appointed by the entire School Board. The entire decision-making process must be open to the public. If your advisory body’s function is to consider various alternatives available to The School Board and make a recommendation upon those alternatives, the role of the advisory group falls within the Sunshine Law. In addition, an advisory body is probably subject to the Sunshine Law if its membership includes persons other than district staff members. However, the Sunshine Law may apply to an advisory body that is comprised entirely of district staff members. Whether the Sunshine Law is applicable to a particular advisory committee is determined by the work being performed by the committee – not by the composition of its membership. The Office of the General Counsel should be consulted by district staff to determine whether the work performed by a particular advisory body falls under the Sunshine Law or within a limited exception that exists for the activities of fact-finding committees.

2. **What steps must advisory bodies take to comply with the Sunshine Law?**

All advisory bodies must allow for public access to their meetings. This requires reasonable advance public notice of its meetings and the keeping of official minutes of each meeting. For a district-wide advisory body, the notice should either be published in a newspaper of general circulation throughout Broward County or through another alternate means that has been approved by law. The laws in this area were changed during the 2022 Legislative Session and the Office of the General Counsel should be consulted before issuing meeting notices through a means other than newspaper publication. For an advisory body serving a single school, the notice should be published in ways that are calculated to reach those persons interested in that particular school community. If the advisory body is conducting business that is part of the development of a school board policy or rule, notice of meetings should also be (a) posted in appropriate places so that those particular classes of persons to whom the proposed rule or policy is directed may be notified and (b) must also be furnished by mail to all persons who have made requests to The School Board for notices of its rulemaking proceedings and also be

provided to organizations representing persons affected by a particular proposed rule or policy.

All advisory committee meetings should be held in places that are easily accessible to all members of the public who may wish to attend.

The decision-making process during an advisory committee meeting must be conducted in an open manner [i.e., not by secret ballot]. The entire decision-making process of the advisory body must be conducted openly before the public, not merely the final decision, to enable the public to fully observe the decision-making process.

Minutes of all meetings reflecting the events or actions taken at the meeting must be promptly recorded and be open to public inspection. (The law does not require *verbatim transcripts*.) In addition, members of the public must be allowed to make audio recordings of any public meetings.

3. **Are there any limitations upon the conduct of persons attending the meetings?**

Reasonable rules of orderly conduct may be adopted by the advisory bodies to require orderly behavior on the part of those attending a public meeting. It is not required that public comment be received at an advisory committee meeting. While Section 286.0114, Florida Statutes, provides an opportunity for public comment upon a matter, that law is satisfied if public comment is later received by The School Board before it acts upon a matter that had earlier been considered by its advisory committee.

4. **What limits are there regarding communications between advisory body members?**

Members of an advisory body are prohibited from discussing with each other any subject matter that may come before the advisory body unless that discussion occurs during a publicly noticed meeting. If one member of an advisory body is in the presence of another member of that advisory body and they are not at a publicly noticed meeting, no conversation (in person, by telephone, text, e-mail, blogs, or by any other type of electronic means) may be conducted upon “any matter which will foreseeably come before” the advisory body for its consideration. Discussions precluded by the Sunshine Law can be as informal as a telephone conversation or remarks made while riding an elevator with another advisory body member. If your advisory body conducts a publicly noticed meeting and a quorum of the members are not present, the members present at the meeting can discuss the items listed in the noticed agenda. However, they can take no action regarding the items on the meeting agenda and may not discuss other items that were not listed in the noticed agenda. In such instances, those members who are present should

attempt to identify a subsequent date at which the advisory body will attempt to meet with a quorum present.

5. **Does the Sunshine Law apply to written and electronic communications?**

Yes. The Sunshine Law prohibits advisory body members from having any discussions that concern matters which will foreseeably come before their advisory board for action between themselves except during a publicly noticed meeting. In addition to face-to-face communications, this prohibition applies to exchanges or discussions conducted through written correspondence, telephone calls, e-mail messages, use of social media sites such as Facebook and Twitter, and use of web blogs and chat rooms. A Sunshine Law violation can arise by simply “liking” the Facebook comment of a fellow advisory body member. Although it is permissible for one advisory body member to distribute informational material or a position paper to other members, a Sunshine Law violation will arise if another advisory body member responds or replies to that material or paper.

6. **May I discuss social matters or attend social events with fellow advisory body members?**

Yes. You are free to discuss personal or social matters with your colleagues and attend social events with them as those are not matters that would foreseeably come before your advisory body for action.

7. **May I exchange information with fellow advisory body members through an intermediary?**

No. The Sunshine Law precludes use of any other person – a non-advisory body member – as an intermediary to facilitate a communication between two advisory body members, which if done directly would constitute a violation of the law. For example, while an individual member is not prohibited from discussing board business with staff, these individuals may not be used as a liaison to communicate information between the members. In sum, an advisory body member cannot indirectly do that which cannot be done directly.

8. **What penalties may be imposed for a violation of the Sunshine Law?**

Any decision made by an advisory body in violation of the Sunshine Law is null and void *ab initio* (from the beginning). In addition, a violation of the Sunshine Law can subject an advisory body member to charges for a noncriminal infraction which is punishable by a fine not exceeding \$500 and would make the advisory committee member subject to removal from office. If an advisory body member knowingly violates the Sunshine Law, the

member is subject to charges for a second degree misdemeanor which is punishable by a fine not exceeding \$500.00 or by imprisonment not exceeding 60 days, or both. In the event of a Sunshine Law violation, attorney's fees may also be assessed against the advisory body member except where the advisory body sought and followed the advice of her/his attorney.

For additional information, the *Government-in-the-Sunshine Manual* is available online at <http://myfloridalegal.com/sun.nsf/manual>.

If your advisory body requires information regarding a specific issue under the Sunshine Law, please contact your advisory body's district liaison or district facilitator.

Florida's Public Records Law:
Frequently Asked Questions from Members of Advisory Bodies

- 1. Are advisory bodies subject to the Public Records Law?**
- 2. What records must advisory bodies preserve?**
- 3. Are e-mail messages, text messages, blog comments, and communications using social media subject to public inspection?**
- 4. Are any public records confidential or exempt from public disclosure?**
- 5. What steps must I take to comply with the Public Records Law?**
- 6. When can a public record be destroyed or discarded?**
- 7. What penalties may be applied for a violation of the Public Records Law?**

Florida's Public Records Law: **Frequently Asked Questions from Members of Advisory Bodies**

The State of Florida has a policy that “all state, county, and municipal records are open for personal inspection and copying by any person.” The purpose of this policy is to promote transparency in government. This policy imposes obligations for the maintenance and storage of public records and their provision for inspection and copying when requested, subject only to certain limited statutory exemptions. Fla. Stat. Ch. 119.

1. Are advisory bodies subject to the Public Records Law?

Yes. The records of an advisory body established to make recommendations to The School Board are subject to the Florida Open Public Records Law (“Public Records Law”). The Public Records Law applies to any person, body, officer, employee, or entity acting on behalf of any public agency.

2. What records must advisory bodies preserve?

The Public Records Law defines “public records” to include: “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, (includes electronic communications like text messages and e-mails) made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” So when this outline refers to a “document”, you should be thinking of both physical documents as well as those that only exist in an electronic or digital format.

If the purpose of a document prepared in connection with a public agency’s official business is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of the agency. If any document, even one that is only in draft form, is circulated for review between any advisory body members or among any members of district staff, it is a public record that must be maintained, stored, and made available for public inspection and copying. “Personal notes” can constitute public records if they are intended to communicate, perpetuate, or formalize knowledge of some type. However, notes taken by an advisory body member that are only for that member’s own *personal use* in remembering certain things do not fall within the definition of a public record. If you have a question about whether a particular document is a public record, please contact your advisory body’s district liaison or district facilitator.

3. **Are e-mail messages, text messages, instant messaging, blog comments, and communications using social media subject to public inspection and copying?**

Yes, the Public Records Law applies when any form of electronic media is utilized by advisory body members to send or receive communications regarding your work as an advisory member. Such electronic communications must be maintained and preserved, and are subject to public inspection unless a statutory exemption is applicable.

4. **Are any public records confidential or exempt from public disclosure?**

Yes. The Legislature has created numerous exemptions from public inspection and has identified certain records that must be kept confidential. However, these exemptions are narrowly interpreted by the courts and are limited to the specific purpose for which they were enacted. The most commonly applied exemptions are ones concerning student records and certain personnel records. Student records are made confidential by both federal and state law and cannot be disclosed except as specifically provided by law. If you receive a request for a public record, please ask for guidance through your advisory body's district's liaison or district facilitator.

5. **What steps must I take to comply with the Public Records Law?**

You should make certain that any and all documents and electronic records and communications pertaining to your work as an advisory body member are kept, preserved, and made available for public inspection and copying in accordance with District procedures. You should also work cooperatively with your advisory body's district liaison or district facilitator to ensure that such public records are preserved and that appropriate steps are taken to protect exempt and confidential information are taken when a public records request has been made.

6. **When can a public record be destroyed or discarded?**

The official or "record" copy of a public record must be preserved and can be disposed of only in accordance with the Record Retention Schedules that have been approved by the Florida State Department – Division of Library and Information Services. The applicable retention schedules are available online

at <http://dhis.dos.state.fl.us/RecordsManagers>. Duplicate copies of an agency's record copy can be discarded after they are no longer of use.

7. **What penalties may be applied for a violation of the Public Records Law?**

Civil Penalties. An aggrieved person may file a civil lawsuit to enforce the provisions of the Public Records Law when any provision of the Public Records Law is violated. The court may assess reasonable costs and attorney's fees against the agency if the court determines that the agency unlawfully refused to permit public inspection and copying.

Criminal Penalties: Criminal penalties may also be imposed depending on the nature of the violation.

- Any public officer (including an advisory body member) who violates this law commits a noncriminal infraction punishable by a fine not to exceed \$500.
- Any public officer (including an advisory body member) who *knowingly* violates this law commits a first-degree misdemeanor and may be suspended, removed, or impeached. A first-degree misdemeanor is punishable by imprisonment for a term not to exceed one year, or a fine not to exceed \$1,000, or both.
- Any *person* (including an advisory body member) who *willfully and knowingly* violates the law by disclosure of confidential information related to victims of crimes or accidents, for purposes of solicitation of the victims or their relatives, commits a third-degree felony. A third-degree felony is punishable by a fine not to exceed \$5,000, or by imprisonment for a term not to exceed 5 years, or both.

If your advisory body requires further information regarding a specific issue under the Public Records Law, please contact your advisory body's the district liaison or district facilitator.

**Code of Ethics for Public Officers and Employees:
Frequently Asked Questions from Members of Advisory Bodies**

- 1. Am I subject to the Code of Ethics for Public Officers and Employees?**
- 2. Are there any limitations on my ability to request or accept a gift?**
- 3. Are there any restrictions on any compensation that I may accept?**
- 4. Are there any restrictions on how I may use my position on the advisory body?**
- 5. Are there any limitations on my use of School District information?**
- 6. Can I do business with the School District while serving on an advisory body?**
- 7. Can I be employed by a company that is doing business with the School District?**
- 8. Can I vote on issues involving my salary and expenses?**
- 9. Do I have to file a financial disclosure form?**
- 10. What circumstances would present a voting conflict for me?**
- 11. What should I do if I have a voting conflict?**
- 12. What penalties may be applied for a violation of the Code of Ethics?**

**Code of Ethics for Public Officers and Employees:
Frequently Asked Questions from Members of Advisory Bodies**

1. Am I subject to the Code of Ethics for Public Officers and Employees?

Yes. You have been appointed to an “advisory body” as defined by the Code of Ethics for Public Officers and Employees (“Code of Ethics”). Members of advisory bodies are considered to be “public officers” as defined in the Code of Ethics and are subject to its standards of conduct and voting conflict provisions. Persons serving on an advisory body are subject to the Code of Ethics’ restrictions regarding the solicitation or acceptance of gifts, doing business with one’s agency, unauthorized compensation, misuse of public office, conflicting employment or contractual relationships, and disclosure or use of certain information. A copy of Section 112.313, Florida Statutes – Standards of Conduct for Public Officers, is attached to this handout.

2. Are there any limitations on my ability to request or accept a gift?

Yes. The Code of Ethics prohibits an advisory body member from soliciting or accepting anything of value to the member, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the advisory body member would be influenced thereby.

3. Are there any restrictions on any compensation that I may accept?

Yes. The Code of Ethics prohibits a member of an advisory body, or his or her spouse or minor child, at any time, from accepting any compensation, payment or thing of value when the advisory body member knows, or with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the advisory body member was expected to participate in her or his official capacity.

4. Are there any restrictions on how I may use my position on the advisory body?

Yes. The Code of Ethics prohibits an advisory body member from corruptly using or attempting to use her or his official position or any property or resource which may be within her or his trust, or perform her or his official

duties, to secure a special privilege, benefit or exemption for herself, himself, or others.

5. Are there any limitations on my use of School District information?

Yes. The Code of Ethics prohibits an advisory body member from disclosing or using information not available to members of the general public and that were gained by reason of her or his official position, except for information relating exclusively to governmental practices, for her or his personal gain or benefit or for the personal gain or benefit of any other person or business entity.

6. Can I do business with the School District while serving on an advisory body?

In general, you may not. The Code of Ethics prohibits an advisory body member, when acting in a private capacity, from purchasing, renting, leasing, or selling any realty, goods, or services to the District. The law contains a procedure whereby an advisory body member may ask The School Board to waive this limitation. However, such a waiver requires action by The School Board at a public meeting and cannot be granted administratively. If further guidance is necessary, please contact your advisory body's district liaison or district facilitator.

7. Can I be employed by a company that is doing business with the School District?

In general, you may not. The Code of Ethics prohibits an advisory committee member from having or holding any employment or contractual relationship with any business entity or any agency which is subject to the regulation of the school district or is doing business with the school district. Members of advisory bodies are also precluded from having or holding any employment or contractual relationship that will create a continuing or frequently recurring conflict between her or his private interests and the performance of her or his public duties or that would impede the full and faithful discharge of her or his public duties. If a question arises as to whether a member has or is considering conflicting employment or a conflicting contractual relationship, please seek guidance through your advisory body's district liaison or district facilitator. In addition, the Code of Ethics provides a procedure whereby an advisory body member may ask The School Board to

waive these limitations. However, such a waiver requires action by The School Board at a public meeting and cannot be granted administratively. If further guidance is necessary, please contact your advisory body's the district liaison or district facilitator.

8. Can I vote on issues involving my salary and expenses?

No. While it is unlikely that the business of your advisory body will involve such issues, the Code of Ethics prohibits an advisory body member from voting upon a matter affecting her or his salary, expenses, or other compensation as a public officer, as provided by law.

9. Do I have to file a financial disclosure form?

No. The Code of Ethics does not require members of an advisory body to file a financial disclosure form.

10. What circumstances would present a voting conflict for me?

The Code of Ethics prohibits an advisory body member from voting on any measure (1) which inures to the member's special private gain or loss; (2) which the member knows would inure to the special private gain or loss of any principal or parent organization or subsidiary of a corporate principal (other than a public agency) by whom he/she is retained; or (3) which the member knows would inure to the special private gain or loss of a relative or business associate of the member. A "relative" is defined under the Code of Ethics as a father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. As soon as a potential conflict first becomes known to an advisory body member, the member should bring this issue to the immediate attention of the advisory body's district liaison or district facilitator.

11. What should I do if I have a voting conflict?

If an advisory body member of has a voting conflict, the member must orally disclose the nature of conflicting interest and abstain from voting upon the measure appearing before the advisory body. Although he or she cannot vote due to the conflict, the member is permitted to discuss the matter at the meeting. In addition, the advisory body member must file a voting conflict disclosure form within fifteen (15) calendar days after the vote occurs with the person keeping minutes of the advisory body's meetings. That form will

be incorporated in the advisory body's meeting minutes. Copies of the form must be provided immediately to the other members of the advisory body and the form must be read publicly at the next advisory body meeting conducted after it is filed. A copy of the form [Form 8B – Memorandum of Voting Conflict for County, Municipal and Other Local Public Officers] is attached to this handout. A copy of the form and instructions for its completion and filing can be found at www.ethics.state.fl.us. If any questions arise regarding a potential vote abstention during your service on the advisory body, please seek guidance through your advisory body's district liaison or district facilitator.

12. What penalties may be applied for a violation of the Code of Ethics?

Public officers can be suspended or removed from office for a violation of the Code of Ethics. In addition to any other civil or criminal penalty that may apply, a public officer can also be required to make restitution for any benefits received due to the violation and pay a civil penalty up to \$10,000.

If you require further information regarding a specific issue under the Code of Ethics, please notify your advisory body's district liaison or district facilitator.

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