

Weston Board of Education Workshop

Monday, November 28, 2022 9:00 AM

Google Meet and Central Office Conference Room, 24 School Road, Weston, CT
06883-1623

I. Board of Education Service: Laws, Insights, and Practical Tips



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Board of Education Service: Laws, Insights, and Practical Tips

Presented by Jessica Richman Smith

Weston Board of Education

November 28, 2022

Agenda

Topics to be discussed



- Board Roles and Responsibilities
- Role of the Superintendent
- Freedom of Information Act
- Board Meeting Essentials
- Executive Session
- Conducting a Meeting
- Records and Electronic Communications
- Communication and Information-Sharing
- Best Practices

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Board Roles and Responsibilities

Responsibilities of the Board



- Implement State's educational interests as agent of the State
- Employ and act through Superintendent, who serves as "chief executive officer"
- Employ school staff
- Establish policies
- Establish budget and allocate resources

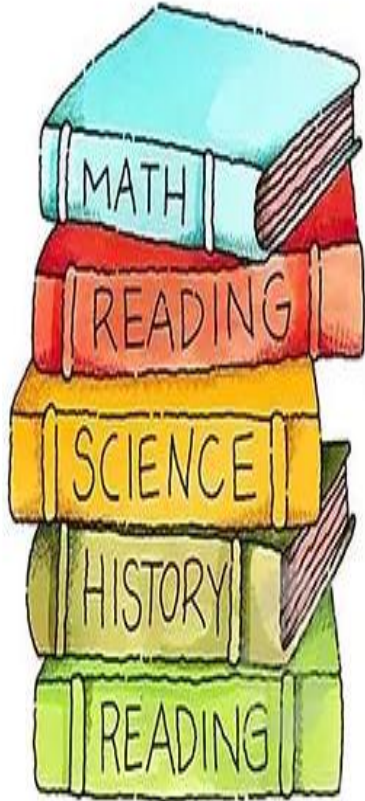
Responsibilities of the Board (cont.)



- Adjudication (“quasi-judicial” function)
- Negotiations
- Strategic planning
- Facilities review
- Community relations
- Curriculum review
- Self-appraisal

Curriculum Review

Curriculum



1. Program of instruction set by statute
2. Board required to establish “school district curriculum committee” to recommend, develop, review, and approve curriculum
3. Textbooks

Quasi-Judicial Function



1. Due Process

- Expulsion hearings
- School accommodations (residency, transportation) hearings
- Teacher tenure hearings

2. Grievance hearings

3. Public complaint hearings

Scenario 1

Yesterday, the local paper published a front-page story about a teacher employed by the District who was arrested for drunk driving. The article identifies the teacher by name and school. Parents from that school come to the next Board meeting, and during public comment, several of them address the Board to express concern that this teacher must be fired immediately. A fourth parent who comes up to speak attacks the Board for sitting there silently “like bumps on a log,” and asks the Board members what they are going to do about this bad teacher.

- **Should the Board members just sit there like bumps on a log?**
- **Can a Board member reassure the public that the Board will fire this teacher if she is guilty as charged?**
- **What can the Superintendent tell you about the situation?**

Scenario 2

As a Board member, you hear a lot from parents and others in the community. A parent has been a reliable source in the past, and he tells you that a teacher at Weston High School was reported to have been using inappropriate language with racist undertones in class. You check in with the Superintendent, who tells you that she has dealt with the situation. A week later, the parent contacts you again and tells you that the teacher is still teaching, expressing concern that the teacher may still be saying inappropriate things in class.

- **How do you reconcile this conflicting information?**
- **How should you investigate on your own?**
- **How detailed should the information from the Superintendent be, and how often should she report back to you?**

Role of Individual Board Members



- Authority at meetings only
- Otherwise same rights as other citizens
- One member of a team

Responsibilities of Individual Board Members



- Participate and prepare
- Follow communication norms
- Act ethically
 - Maintain confidentiality
 - Follow laws and policies
 - Avoid conflicts of interest
 - Act fairly and impartially
 - Do not purport to speak on behalf of the Board

Role of the Chairperson



- Preside over meetings
- Represent the Board
- Organize committees
- Liaise with Superintendent
- Perform other duties so delegated
- Not responsible for managing Superintendent or solving problems

Scenario 3

Recently, three Board members have become very concerned about the new reading curriculum that the State is requiring and wrote a letter to the Commissioner of Education “as members of the Weston Board of Education” to lodge a complaint. Some of the other Board members do not agree and like the new curriculum. These Board members heard about this letter and were outraged that the three Board members did not let them know about the letter in advance.

- **Did the three Board members do anything wrong?**
- **Should the three Board members have conferred with the other Board members before sending the letter?**
- **Can the Board Chairperson write such letters on behalf of the Board?**

Scenario 4

You run into an acquaintance at the grocery store, and she complains that her son's fourth grade teacher has not returned homework to her students in two months. Of course, you want to help her, but after reviewing Board policies, you determine that there is no Board policy on whether and when teachers must return homework to students. You check with other Board members on whether they have received similar complaints about this teacher, and they have not. You are personally invested in this issue because your own daughter is a fourth grader and has faced similar problems with timeliness of homework return.

- Do you share this information with the Superintendent? With the principal of the school?
- What can the Superintendent/principal tell you?
- When and how should you report back to the parent who raised the complaint?
- Can you even be involved in this given your personal interest in the outcome?
- Should the Board adopt a policy on grading homework?

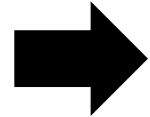
Scenario 5

A Board member, Mal Content, had been causing issues for the Board. During meetings he would often verbally attack the motives of other members and staff, and it was suspected that he leaked information from an executive session. He would visit school buildings unannounced, demanding to be able to visit classrooms to “check on underperforming teachers.” But the last straw for the Board was when he voted to approve the new teachers’ contract, even though his wife was a teacher in the district. In a special meeting, where Mal was not in attendance, they voted 6-0 to oust him from the Board.

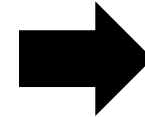
- Any problems here?
- Any conflicts of interest?
- Can the Board vote to remove a member from the Board?

Removal v. Censure

Board members cannot be removed from their elected position on the Board by a vote of the Board



Board officers can be removed from their office by a vote of the Board



The Board can vote to “censure” a Board member

Conflicts of Interest



Board members cannot be employed by the school district



No statutory provision against a relative being employed by the school district



Board member actions may be governed by Board policies or ethics provision in local charter



Board members may need to recuse themselves

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Role of the Superintendent

Scenario 6

In October, the Superintendent learned that she would need to update the technology in certain classrooms at a cost of \$35,000. The Superintendent sought Board approval for this expenditure and the Board decided it did not need to take action because this was an instructional issue and therefore within the purview of the Superintendent.

- **Was the Board right?**
- **Why might the Board need to take action on this?
Why might it not?**
- **Would it make a difference if the technology was donated?**

Scenario 7

You hear through the grapevine that a paraprofessional has threatened to sue the Board for sexual harassment, hostile work environment, and discrimination. You are irate that the Superintendent did not bring this to your attention and that you are hearing it first from members of the community. Before you have a chance to call the Superintendent and ask her to explain herself, you receive an email from the Superintendent notifying the Board that a lawsuit has just been filed and suggesting an executive session with counsel to discuss next steps.

- **Should the Superintendent have informed the Board sooner?**
- **What is the Board's role in this matter?**
- **Can the Superintendent settle the claim without Board approval? Should she?**

Role of the Superintendent



- Chief Executive Officer
- Enforces laws, regulations, rules, policies
- Makes recommendations to the Board
- Carries out Board's mission
- Appoints certain staff

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The Freedom of Information Act

Connecticut Freedom of Information Act

- State law that applies to public agencies
- Prescribes rules for meetings
- Provides that records maintained by public agencies are
 - public unless exempt
 - Subject to *prompt* inspection upon request

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Board Meeting Essentials

Importance of Meetings



Board is a collective body that only has authority to take action when gathered at a meeting



Individual members, unless expressly authorized by the Board, do not have authority to act on behalf of the Board



The meeting is the most visible aspect of the Board's communication with the public and its staff, as well as between its members

“Meeting”






What is a meeting under FOIA?



- ...Any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control jurisdiction or advisory power.



Meeting Does NOT Include:

-  A meeting of a **personnel search committee** for an executive level candidate search (Board may appoint itself)
-  Any **chance meeting, or a social meeting**
-  Strategy or negotiations with respect to **collective bargaining**
-  A **caucus of members of a single political party**
-  Communications limited to **notice of meetings of a public agency or their agendas**

Meeting Does NOT Include (cont.):



An administrative or staff meeting of a **single-member public agency**

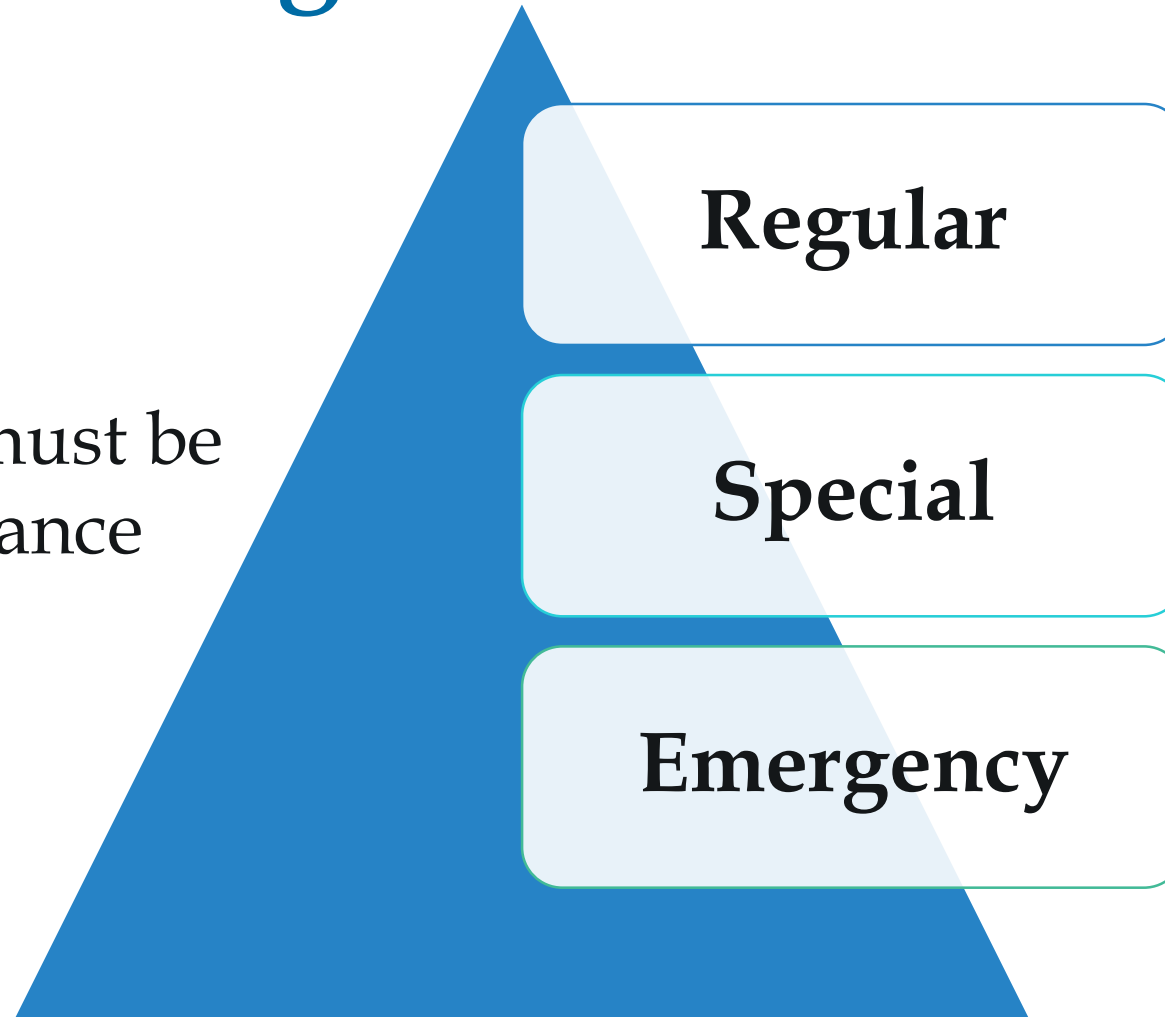


A quorum of the members of a public agency who are present at any event **which has been noticed and conducted as a meeting of another public agency under the provisions of the FOIA** shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.

**Q. Are all meetings subject to FOIA?
Policy committee? Administrative or staff? Building committee?**

Types of Meetings

All meetings must be noticed in advance



Meeting Notice Requirements



- All meetings must be noticed in advance with an appropriate agenda
- FOIA requires that an agenda set forth the business to be transacted at the Board meeting
- Agenda should be specific enough to identify for interested members of public what will take place
- The responsibility for developing the agenda is usually specified in the Board bylaws; typically developed by the Board Chair and the Superintendent

Regular Meetings

Contained on the annual schedule of meetings with the Town Clerk by January 31, for the ensuing year

Agenda must be posted at least 24 hours in advance

Minutes must be available for public inspection within seven days of the meeting

New business may be added to the agenda by a two-thirds vote

Special Meetings

Those meeting not included on the list of regular meetings filed with the Town Clerk

Notice of a special meeting must be filed at least **24 hours** before the meeting convenes

Minutes must be available for public inspection **within seven days** of the meeting

Business limited to items on posted agenda
Items cannot be added to the agenda

Emergency Meetings

Emergency special meetings may be called in an emergency **without advance notice**
(Note: “Emergency” will be strictly construed.)

Limited to the matter that requires “**emergency**” attention

Minutes must include a statement setting forth the **nature of the emergency**

Minutes must be filed with the Town Clerk **within 72 hours** of the meeting

Scenario 8

A parent is all over social media after her daughter was suspended for insubordination two days before the prom. The parent calls you and every other Board member with her concerns, complaining about the fact that her daughter has only one prom in her life and will not be able to wear the expensive dress she bought for the occasion. In light of the pressing circumstances, you talk it over with a couple of Board members, and with the agreement of the Chairperson, you all decide by email to convene an emergency meeting for the next morning to review (and possibly rescind) the action by the Administration.

- **Is this legal?**
- **Is it even a good idea?**

Scenario 9

The Policy Committee has been updating certain policies and deleting others. The Policy on Public Complaints has received a lot of public attention because some members of the public are concerned that the Board may eliminate the policy and thus deprive them of their forum for complaining to the Board. Given the public attention, some Board members who are not on the Policy Committee want to attend the meeting of the Policy Committee at which the Public Complaint policy will be discussed.

- **Is it a problem if a quorum of the full Board attends a Policy Committee meeting?**
- **If a quorum of the Board is present, how should the meeting be conducted?**
- **Is the full Board bound by the recommendation of the Policy Committee concerning the possible elimination of the Public Complaint policy?**

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Executive Session

Scenario 10

The Board was in a special budget meeting when it learned of dire economic news that meant significant staffing cuts were necessary. Knowing that the Board would need to discuss and decide the elimination of specific positions, and not wishing to needlessly distress or excite its employees, the Chair added an executive session item to the agenda to discuss “personnel matters.” With a 5-2 vote, the Board entered executive session. After an hour of discussion, the Board members agreed, without a vote, to direct the Superintendent to cut 10 staff positions.

So far, so good?

Which statement is incorrect?

- A. The Board's agenda must state that the Board will go into executive session
- B. A vote to go into executive session must be by two-thirds
- C. Stating that the reason for executive session was for "personnel reasons" is insufficient
- D. The Board cannot add an item to the agenda during a special meeting of the Board

Executive Session

- Two-thirds vote needed to enter executive session
- Motion should be clear as to reason for executive session
- Limited reasons to go into executive session:
 - Personnel matters
 - Pending claims and litigation
 - Security devices and real estate
 - Confidential documents
- Collective bargaining strategy (non-meeting)



Executive Session



Not an agenda item, but a means of dealing with an agenda item



Not open: specify who is invited into executive session



Board cannot take action in executive session



Board members are not to disclose discussion which occurs in executive session



Do not misuse: be respectful of the public when scheduling executive sessions

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Conducting a Meeting

Meeting Procedure: Robert's Rules of Order

Key Concepts of
Robert's
Rules:

One subject
dealt with
at a time

Enforce
decorum

Confine debate to the
merits of a pending
question

Allow for the
airing of opposite or
divergent points
of view

Recognize and record
a negative vote
on a question

Provide
for a final
decision

Scenario 11: Voting

The Board was considering the approval of a turf field, a topic which generated significant buzz around town. When it was time to vote 4 of the members abstained from voting. With only Bob Bombast in opposition, the vote was 2-1 to approve the turf field. But Bob wasn't done, pointing out that the Chairperson was one of the two votes in favor of the turf field, and since "under Robert's Rules the chairperson can't vote," the turf field had not been approved. Penny Pincher added, "Besides, you need at least five votes to approve, or at least a majority of Board members present."


Who is right in this case?

Which statement is correct?

- A. Abstentions count as “no” votes
- B. The Chairperson can only vote in the event of a tie
- C. The motion was properly approved by a majority of members present and voting
- D. Motions must be approved by a majority of the members in attendance

Board Member Voting

Members are not required to vote, although Robert's Rules anticipates that each member will vote



Abstentions are not considered as votes for or against the motion



Approval of motions only needs majority of those present and voting, unless policy or statute requires otherwise




The Chairperson can vote and debate on matters before the Board in the same manner as the other members

Board Member Voting

Generally by voice vote or by showing of hands



Chair announces the result of the vote - vote count and whether the vote is adopted/defeated



Members may change their vote prior to the announcement of the vote

Board Debate

Maker of a motion has the right to be heard first on the motion



Generally members are recognized by the Chair before speaking



Robert's Rules calls for a courteous tone when debating, and specifically forbids personal attacks



The Board may vote to end debate, typically by a two-thirds vote (see Board bylaws)

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Records and Electronic Communications

Emails, Text Messages, Voicemails

- Communications about Board business are NOT private communications and may be subject to disclosure under FOIA
- May be retrieved as part of routine monitoring, an investigation, or formal discovery process as part of litigation
- Retention of records is governed by retention laws, Board policy, legal hold obligations
- *Queries:*
 - Is there a limit to what, and how much, someone can request?
 - Will the Board get in trouble for not finding and providing every responsive record?
 - Must Board members turn over their private emails and text messages for searching upon receipt of a FOIA request?
 - Is there anything districts can do to stop a “serial” FOI’er?

Exemptions from Disclosure

- Attorney-client privileged communications
- Records pertaining to strategy and negotiations with respect to pending claims or pending litigation against the school district
- Records pertaining to strategy and negotiations with respect to collective bargaining
- Records pertaining bidding until bid has been awarded
- Teacher evaluation records
- Education records as defined by FERPA

Scenario 12

As a citizen volunteer, a Board member wants to decide when and how to fulfill her Board responsibilities. The district has offered to provide the Board member an email account on the district server, *i.e.*, name@westonps.org. The Board member likes her independence, and she decides to use her personal email to conduct Board business. That way she can decide how long to retain emails, and she can clean out her Inbox and Sent items regularly, as she does at work.

- Is that legal?
- Are there any problems if she cleans out her Inbox and Sent items on a regular schedule?
- If it is legal to use one's personal email to conduct Board business, are there any special concerns the Board member should consider?

Which statement is correct?

- A. It is illegal for Board members to commit support on an issue before the actual meeting
- B. A majority of Board members cannot discuss Board business via e-mail
- C. Electronic communication between Board members is okay as long as it is one-on-one
- D. Board members cannot caucus to discuss Board issues

FOIA and Electronic Messages



E-mails by a quorum of Board members may be an illegal meeting of the Board.

- Caucus is limited to members of the Board
- Communications at Board meetings must be open to the public
- Electronic communications by Board members are subject to disclosure under the FOIA

Electronic Communications



Email communication on Board business (but not discussion) by Board members to each other (or to or from the Superintendent to Board members) **is permissible**

Such emails typically will be subject to public disclosure unless exempt (personally identifiable student info, attorney/client information), even if on personal computer or personal email

Electronic Communications



Where email communication is *unilateral*, it will likely not be considered a “meeting” that would trigger FOIA concerns

Where such a communication generates responses that are shared with a quorum of the Board, it is possible that a “discussion” (and hence a “meeting” in violation of the FOIA) will be found

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Communication and Information-Sharing

Scenario 14

Some Board members are more engaged than others, and they ask the Superintendent for *a lot of* information. Once the Superintendent responds to one Board member's request for information, other Board members hear about it and want the same information for themselves. Some Board members are dissatisfied with the occasional delays in receiving the information from the Superintendent, and they complain to each other over email and sometimes even reach out to staff for information before the Superintendent responds.

- What protocol should the Superintendent use for responding to Board member requests for information?
- Should the Chairperson serve as a buffer between the Board members and their requests for information and the Superintendent?
- When is it appropriate for a Board member to reach out to principals directly for information?

Communications with the Superintendent

- Agenda packet
 - Questions addressed to Superintendent and copied to Board
 - Apprise Superintendent of questions and comments in advance of meeting
- Regular updates from Superintendent
 - Apprises the Board of ongoing work
 - Not intended to solicit excessive feedback or questions



Communications with Staff



- Work primarily through Superintendent to address administrative matters
 - Work directly with Administration/staff only as necessary and appropriate
 - Avoid directing Administration/staff to perform any work
 - Information requests that may be burdensome may be considered by Board
- Refrain from private fact-finding or soliciting off-line information from employees
- Superintendent communicates Board's information to staff

Communications with Community



- Fiduciary responsibility to support Board positions once approved
- Avoid “problem-solving” and direct public questions and concerns to follow communication chain
- Maintain confidentiality
 - Executive sessions are privileged
 - Personnel matters are confidential
 - Contested issues require due process
- Share substantive issues with Board and Superintendent as appropriate

Communications with Community



- Chair responds to emails from the public
- Superintendent and Chair respond to media requests
- Use district email for Board business
- Avoid posting about Board business on personal social media accounts
- Avoid engaging directly with speakers during public comment

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Best Practices

Don't...



Don't spend time at Board meetings on administrative matters



Don't single out or criticize individual employees



Don't debate with the public



Don't tolerate rude or inappropriate behavior



Don't discuss or spend time on trivia or unessential matters



Don't make it personal

Do...



Do focus on Board and school priorities



Do come prepared to all meetings



Do keep in mind those in attendance – staff, students, and public



Do bear in mind the symbolic force of your meetings and conduct

Questions?



Thank you for joining us!

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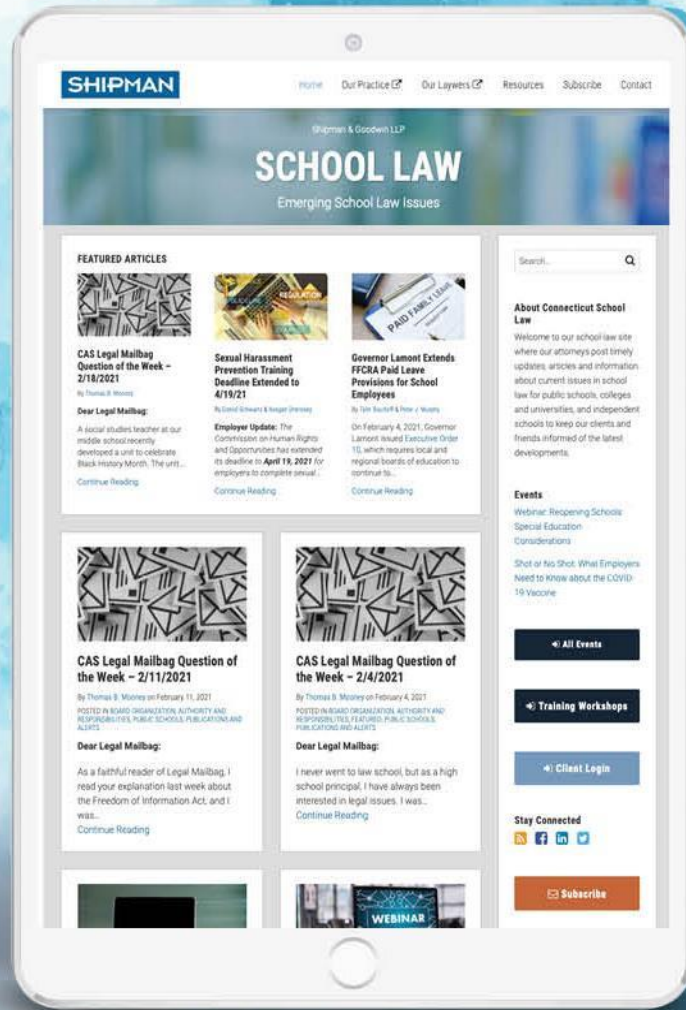


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