Welcome to the Year of the Student Journalist

Hiring administrators is becoming less open and harder to cover
INSIDE THIS ISSUE

4 YEAR OF THE STUDENT JOURNALIST
SPLC, the Freedom Forum Institute and the Newseum are spearheading a year of events to highlight the struggles and crucial work of student journalists.

6 PRIVACY > SAFETY
SPLC Senior Legal Fellow Frank LoMonte on the misuse of FERPA.

8 NEW VOICES
A record number of states introduced New Voices legislation this term.

10 CHEAT SHEET: RESPONDING TO CENSORSHIP
Your handy reference guide to responding to censorship.

11 QUIZ: CYBERLAW
How well do you understand cyberlaw? Take our quiz and find out.

12 IN BRIEF
SPLC joined press freedom and open government organizations in signing on to four amicus briefs in the beginning of 2019.

13 FREE INQUIRY
Why SPLC is concerned by the Trump administration’s executive order on free speech.

COVER STORY:
14 SEARCHING IN SECRET Hiring administrators is becoming less open and harder for student journalists to cover.

FIND MORE ONLINE:
Don’t forget that much more SPLC content is available at splc.org, including:
- Monthly podcasts
- News stories about censorship, newspaper thefts and other trends
- New Voices updates
A note from SPLC’s Executive Director

As you may know by now, we have proudly declared 2019 to be the Year of the Student Journalist. There is no better time to draw attention to the accomplishments and contributions of student journalists, the challenges they and their advisers face, and the role journalism education plays in promoting robust civic engagement. Spearheaded by the Student Press Law Center and the Freedom Forum Institute/Newseum, the Year of the Student Journalist is a time for you to show your stuff – plan an event, launch a creative campaign on social media, or join the more than 60 student news organizations across the country that have already published editorials about what #StudentPressFreedom means to them. SPLC will be hosting a variety of events throughout the year and we hope you will too! You can find resources, including the official logo and swag, at splc.org. Please let us know what you do so we can help amplify it, and can continue to celebrate the great work done by our partners.

The Year of the Student Journalist is part of broader innovations at the Student Press Law Center. We are working proactively to spread the word about the importance of student journalism and shape new legal realities on the ground. We take our core mission – to support, promote and defend the First Amendment rights of student journalists and their advisers, free of censorship or retaliation – very seriously. We will always continue SPLC’s core work: our free legal hotline. We have expanded our capacity on the legal hotline by adding Staff Attorney Sommer Ingram Dean to our team. Sommer joins longtime Senior Legal Counsel Mike Hiestand to answer all of your legal questions. It’s now easier than ever to access our legal hotline through our newly re-launched website. We are also excited to be expanding the scope of our Attorney Referral Network, a stalwart band of more than 200 top media lawyers across the country who are standing by to take on cases pro bono where situations get confrontational or require legal representation.

We are also deepening our strategic support for the New Voices movement. This year, a record number of New Voices bills have been introduced to create state-based legislative protections for student journalists and their advisers. This nonpartisan, grassroots, student-driven movement continues to evolve and grow. We continue to work closely with groups on the ground and help connect advocates in different states. Special thanks to SPLC Senior Legal Fellow Frank LoMonte for his continued strategic support. Congratulations to Steve Listopad and the Arkansas folks for the first wins of the year — they passed two bills which expanded existing New Voices protections to include public college students and non-traditional student media outlets like blogs and podcasts. In October, we will be sponsoring the first stand-alone New Voices Summit in Washington, D.C. For more information, contact SPLC Director of Engagement Diana Mitsu Klos at dmk@splc.org.

The SPLC continues to conduct trainings and workshops (more than 60 last year) – in person and online – to ensure that students and advisers stay up-to-date on legal developments and know how to report responsibly on issues like #MeToo or FOIA. We are launching a new outreach program: “Meet You in Your Newsroom” to enable SPLC to conduct training for your staff via Zoom or Skype. Get in touch with new SPLC Outreach and Operations Associate Alexis Mason at amason@splc.org to set up a virtual “visit” by SPLC.

And finally, we have been busy thinking about ways in which The Report magazine can serve our community more effectively. Thanks to the hard work of SPLC Outreach Fellow Danielle Dieterich, we have reconceptualized The Report, bringing you more updates on SPLC as an organization, pressing legal concerns facing student journalists today, and ways you can get involved. If you have feedback or ideas about how The Report can better serve you, please email Danielle at ddieterich@splc.org.

As we grow, we are trying to diversify the face of SPLC. You may see different team members in different places, and different kinds of events and outreach, but know that the SPLC is here for you. We look forward to working with you throughout the Year of the Student Journalist and beyond to support, promote and defend student journalism.

Hadar Harris

Spring 2019 • REPORT 3
The Year of the Student Journalist consists of high-profile national programming and local student-led events designed to raise awareness about the important role of student journalists, the struggles they face, the need for state-based legislation to protect the First Amendment rights of student journalists and their advisers (New Voices), and to validate the importance of journalism education. Visit our website for more information and to join in!

**Student Front Pages Project**
The Newseum is featuring student newspaper front pages all year long in front of the museum as well as on the Today’s Front Pages app.

**Write an op-ed**
Join the more than 60 student publications to write op-eds advocating for student press freedom.

**Share on social**
Join the conversation using #StudentPressFreedom, and be sure to tag @splc on Twitter, and @studentpresslawcenter on Instagram.

**Get your swag**

**Be creative!**
Design your own way to celebrate Year of the Student Journalist. Throw an event, host a speaker, make a video — just don’t forget to tell us about it!

#StudentPressFreedom

Photos by: Danielle Dieterich, Chance Parker, and Natalie Hanson
When 7-year-old Zach Moore was airlifted to a Little Rock, Ark., hospital after a life-threatening playground accident, doctors asked his parents for help figuring out how Zach had gotten injured. The Moores contacted Zach's elementary school to get copies of the footage from surveillance cameras, which might help his doctors administer treatment.

Sorry, the school told them. The videos might show the faces of other children besides Zach, which makes them confidential "education records" under federal privacy law. If you want the footage, the school responded, you'll have to sue us.

The parents got legal representation and, days later, the school relented. Zach rallied and survived.

The law that got in the way of the Moore family's plea for help is the Family Educational Rights and Privacy Act, the bane of any journalist assigned to cover schools or colleges. Because FERPA is understood to provide educational institutions with an excuse to withhold otherwise-public documents, it's regularly cited when journalists need access to records — including videos — essential for news coverage.

While Zach Moore's case seems extreme, schools and colleges have a long history of putting compliance with FERPA ahead of safety.

"Schools and colleges have a long history of putting compliance with FERPA ahead of safety."

Currently, the University of North Carolina-Chapel Hill is being sued over its refusal to recognize an exception to FERPA that entitles the public to know the outcome of disciplinary cases where a perpetrator is found liable for violent criminal behavior. A state appeals court ordered UNC to release the records to the Daily Tar Heel student newspaper, but the release has been stayed while the case is before the state Supreme Court.

FERPA invites abuse because Congress clumsily drafted the definition of what qualifies as a confidential "education record." Taking advantage of the confusing law, educational institutions have stretched the definition of "education record" to withhold even obviously non-confidential records, including scores of swim meets.

Journalists should go into any conversation about FERPA armed with a few ironclad facts. It is a fact that no school or college has ever, in the 45-year history of FERPA, been fined one nickel for being a violator. And it is a fact that FERPA applies only to the contents of records directly referring to a specific student maintained in files that correspond to that student. FERPA does not apply to personal observations, so the U.S. Department of Education says school employees are free to share their...
impressions about students. While that much is certain, videos like the one sought by the Moore family fall into an unsettled gray area.

Judges in Louisiana, New York and Washington have rejected schools’ attempts to withhold surveillance footage from public disclosure on FERPA grounds. But Utah state courts have reached the opposite conclusion, as did a Virginia state freedom-of-information commission.

In a December 2017 memorandum, the Department of Education advises that videos showing recognizable students should not be released unless the faces can be obscured (except for videos maintained by police, because law enforcement records are beyond the scope of FERPA).

A federal judge in Minnesota punted on a chance to clarify whether FERPA applies to videos capturing activity in school hallways.

In a case brought by high-school journalists in St. Louis Park, Minn., a U.S. district judge ruled in August 2018 that school surveillance video is exempt from disclosure under the Minnesota public-records act. Because the state law does not extend to school videos, the court did not address whether FERPA might also apply. As a result, the community is left with no answers to the underlying case: A student’s claim that a football player yanked off her hijab in the hallway, but escaped discipline because his coach intervened.

An ongoing Pennsylvania case, in which the SPLC has filed a supporting brief, offers a chance for clarification. The Pennsylvania Supreme Court is hearing the appeal of a school district that claims FERPA justifies withholding footage from a school bus camera that might shed light on a disputed altercation between a student-athlete and a parent volunteer that became newsworthy in the community.

After decades of inaction, Congress may finally be compelled to address the misapplication of FERPA because of the tragic shooting deaths at Florida’s Marjorie Stoneman Douglas High School in February 2018. Two different investigations — one by Florida officials and one commissioned by the White House — each concluded that FERPA is needlessly confusing and needs to be modernized, so that school authorities do not keep their suspicions about potentially dangerous students to themselves.

DID YOU HEAR THE NEWS?

You don’t have to wait for the next issue of the Report to get quality news about the state of student media. Visit SPLC.org, and check out our:

**NEWSLETTER**

Get regular email updates about the latest in student press rights, including:
- News stories about censorship
- Trends in student media
- Updates about SPLC’s initiatives

**SOCIAL MEDIA**

- Student Press Law Center
- @splc
- @studentpresslawcenter

SPLC.ORG/NEWSLETTER
Eleven states, a record number, have introduced New Voices bills this year to protect student press freedom

By Cory Dawson

More bills protecting the First Amendment rights of student journalists are moving through statehouses than ever before, according to a Student Press Law Center tally.

New state bills have been introduced as part of a nationwide effort to pass “New Voices” legislation, which counteracts and clarifies the limits of the 1988 Hazelwood School District v. Kuhlmeier Supreme Court decision. The Hazelwood decision greatly expanded the ability of public school administrators to control the content of student media.

Fourteen states already have New Voices laws on their books. As of April 2019, bills have been introduced in 11 states, although two have already failed to pass out of the committee stages.

Grassroots nonpartisan coalitions of students and other volunteers in 2015-16 started a push for New Voices legislation, first in North Dakota and then several other states around the country. These state laws aim to protect the First Amendment press rights of student journalists at the high school and college level and prevent retaliation against their advisers and teachers.

Arkansas has had two New Voices wins in 2019. First HB1231, which passed unanimously, expanded the 1995 Arkansas Student Publications Act to apply to public college students (before it was aimed exclusively at high school students). Next, HB1432 amended the act further to include protections for non-traditional student media outlets like blogs, radio stations or podcasts.

Missouri (HB743), Nebraska (LB206), New York (A03079), Texas (SB514), Indiana (HB1213) and New Jersey (A328) already have bills moving through the legislature. Bills in Minnesota and
Pennsylvania are undergoing language refinements. Virginia and Hawaii’s bills have already been killed. After Virginia’s New Voices effort failed to pass out of committee on a tie vote, bill sponsor Del. Chris Hurst said supporters shouldn’t look at the bill’s failure this year as strictly negative.

“I wouldn’t look at what we experienced just now as a defeat, because this is the first time any legislation like this has ever been introduced in Virginia,” said Hurst, a former journalist.

Other states are much more familiar with New Voices. Missouri, Nebraska, New York, Texas, Indiana, Minnesota and New Jersey have all had earlier iterations of the bill before lawmakers in previous sessions.

Mike Simons, a high school yearbook adviser at Corning-Painted Post High School, is among those spearheading New Voices efforts in New York. He said they’ve worked hard to develop a more strategic network of advocates for the bill, which was lacking in 2017 and 2018. They also made changes to the bill itself.

“This year’s bill doesn’t include protections for college journalists after some pressure from the State University of New York system,” Simons said.

In 2018, measures were introduced in eight states; the decade-plus effort in Washington state passed and was signed into law.

Advocates in several states say these efforts take time and their past stumbles were key in building the experience and wherewithal to successfully lobby their state lawmakers to get laws adopted.

SPLC.ORG/NEW-VOICES

- How to get involved in your state
- Sample talking points
- Model legislation
- Testimony from advocates
- Timeline of legislation
- List of national endorsers
- Recent news
- State pages
Responding to Censorship

PRACTICE SOUND JOURNALISM
Do not give censors an easy target. Carefully check all facts, confirm quotes and make sure you have talked to all sides. Ask yourself, “Does it make sense? Is it fair?” Have multiple sets of eyes review it for grammar, spelling, punctuation and editorial errors. Be a good journalist.

DO YOUR HOMEWORK
The law related to free expression in school can be complex — take the time to understand your rights. Sadly, few administrators know — or sometimes, even care about — the law related to student free speech rights. Too often, they act without taking the time to figure out what they lawfully can and cannot do. You may need to help educate them. Contact SPLC to help analyze the situation.

PICK YOUR BATTLES WISELY
The truth is, some censorship fights are worthier than others. Do you really want to go to battle over the right to use a four-letter word? Or the right to publish a raunchy, rumor-filled gossip column? There are no hard rules for determining when a fight is worth the time and effort involved, but the question should always be asked.

MEET WITH THE CENSORS
As soon as the threat of censorship emerges, try to set up a meeting with the censor and a few student editors. It’s often best not to have the adviser join, because they are a school employee. The purpose of this meeting is to air all sides’ concerns and to resolve the situation before it heats up. Confront the threat, but avoid being confrontational. Take good, accurate notes of what is said and by whom. If meeting with the principal doesn’t work, take your case to the superintendent, then the school board. Make it clear that you hope to avoid a fight, but leave no doubt you are prepared to take a stand.

USE THE COURT OF PUBLIC OPINION
Public pressure can be very effective. Draft a press release about the censorship. SPLC can help. Send the press release to your local news media and follow up with a phone call to the editor or news director. Also send your release to civil rights groups, your state press associations and to alumni, parent and civic groups. You can also consider peaceful protest, letters to the editor and posts on social media to help spread the word.

CONSIDER ALTERNATIVE MEDIA
If your school administrators consistently censor your school-sponsored student media and refuse to even consider allowing more editorial freedom, you may — in addition to fighting the censorship — want to consider an alternative means of getting your message out. That could be on social media, in a community newspaper, or on a separate non-school sponsored website.

CONSIDER YOUR LEGAL OPTIONS
If none of this works, your next step may be a court of law. Unfortunately, cases that are worth challenging administratively and publicly may not be appropriate for a legal challenge. The facts of a case, the quality of evidence, the availability of witnesses and the history of court cases in a particular jurisdiction all have to be considered. If it comes to this, please contact SPLC’s legal hotline:

SPLC.ORG/LEGALHELP
How well do you know cyberlaw?

Key at the bottom. For explanations of answers, go to splc.org/quizzes.

1. An article that is not libelous in a print publication can nevertheless become libelous if published online.
   - True
   - False

2. It is against the law for student-edited media to publish online the full names or photographs of minors without parental permission.
   - True
   - False

3. Works published online have less copyright protection than works published in print-based media.
   - True
   - False

4. The First Amendment significantly restricts the authority of public school officials to punish students who publish private, off-campus websites from their homes even if they harshly or unfairly criticize school district policies or administrators.
   - True
   - False

5. The federal Communications Decency Act makes it illegal to publish “indecent” material on the internet.
   - True
   - False

6. Public school officials have unlimited authority to restrict access to websites and other internet-based resources from school computers.
   - True
   - False

7. Because they quickly disappear, Snapchats and direct messages cannot be defamatory.
   - True
   - False

8. School officials always have more control over online student media than print-based media.
   - True
   - False

9. Websites and other internet-based information resources are inherently unreliable and should generally not be used as sources for news reporting.
   - True
   - False

10. It is generally not necessary to obtain permission from a website owner before adding a link to their website from yours.
    - True
    - False

Welp.
We won’t confiscate your pen or keyboard, but you might want to do some reading about cyberlaw.

Not bad...
... but not great either. You’ve got some of the basics, but make sure to keep SPLC.org bookmarked for all your legal questions.

Outstanding!
You have an excellent grasp of the legal issues most likely to confront student media. Keep it up!
In Brief

In the first four months of 2019, the Student Press Law Center signed on to four amicus briefs in partnership with the Brechner Center for Freedom of Information at the University of Florida and other press freedom organizations. Read the full briefs at splc.org/amicus-briefs

Daily Tar Heel v. Carol L. Folt, Chancellor of the University of North Carolina-Chapel Hill, and Gavin Young, Senior Director of Public Records

Public universities should release records showing how they punish students found liable for committing serious crimes on campus, a coalition of open-government advocates argues in a amicus brief filed with the North Carolina Supreme Court. The January 2019 brief supports the right of college journalists at the University of North Carolina-Chapel Hill to obtain records of disciplinary outcomes that UNC is withholding.

UNC lawyers have argued that Family Educational Rights and Privacy Act (“FERPA”) gives them the option whether to honor or reject journalists’ requests for records involving student discipline. The North Carolina Court of Appeals rejected that argument in an April 2018 ruling, ordering the university to produce the requested documents. UNC is now appealing.

Masters v. Commonwealth of Kentucky

The case centers on the Kentucky Law on School Disruption, which makes speaking to a school employee in a way that “interferes with” school functions a punishable crime that could include jail time.

In a brief, the Supreme Court was asked to accept the First Amendment case of Johnathan Masters, who was prosecuted and fined $500 for arguing with a high school principal in Cloverport, Ky., in 2014. The case challenged whether states may criminalize speech that “disrupts” or “interferes with” the activities of a public school, without showing that the disruption was intentional or of substantial magnitude or duration. The brief argued that the law is so broad that it may be abused to silence whistleblowers and government critics.

In February 2019 the Supreme Court declined to hear this case.

Transparent GMU and Augustus Thompson v. George Mason University and George Mason University Foundation, Inc.

A string of mismanagement scandals at university foundations across the country demonstrates the urgency of opening foundations’ financial records to public scrutiny, open-government advocates told the Virginia Supreme Court in a brief filed in April.

A coalition of government-transparency organizations is supporting student activists at George Mason University who want access to records that would show whether big donors are attaching contractual “strings” to their contributions. “This is the reality of how foundations operate: Their finances are inextricably intertwined with those of their host institutions, and when the foundation’s management is corrupt or incompetent, it detrimentally affects the public’s interests just as if the wrongdoing took place at the university itself,” states the brief, prepared and filed in April 2019 with the assistance of media lawyer Leslie Paul Machado of LeClairRyan in Alexandria, Va.

Paul Hunt vs. Board of Regents of the University System of New Mexico et al.

The Tenth Circuit is being asked to decide whether the University of New Mexico overstepped the First Amendment in disciplining 24-year-old medical student Paul Hunt over a vitriolic post on his personal Facebook wall denouncing the abortion-rights movement. The November 2012 post used strong profanity in comparing supporters of legal abortion to Nazis. Although the post did not name any individuals or mention the University or Hunt’s affiliation with it, Hunt was brought up on student conduct charges after UNM received complaints that his speech was uncivil.

The February 2019 amicus brief emphasizes the potential of the district court’s ruling to inhibit political debate — the most protected form of speech — on the campus of a public university, where the free exchange of even extreme and unpopular ideas is supposed to be most welcome.
The Student Press Law Center is concerned by the attempt by government to insert itself into “free inquiry” and the debates around free speech on campus at both the federal and state level.

On March 21, President Trump issued an Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities which, while affirming existing law, also gives us pause regarding its implementation.

We welcome the President’s statement that, “Free inquiry is an essential feature of our Nation’s democracy, and it promotes learning, scientific discovery, and economic prosperity.” At its core, the executive order affirms the administration’s commitment to “encourage institutions to foster environments that promote open, intellectually engaging and diverse debate…” It goes on, however, to state that “the heads of covered agencies shall…take appropriate steps, in a manner consistent with applicable law, including the First Amendment, to ensure institutions that receive Federal research or education grants promote free inquiry, including through compliance with all applicable Federal laws, regulations, and policies.” This raises significant concerns regarding how this review will be implemented and which standards will apply. Statements by administration officials have noted that grant-making officials will work with the Office of Management and Budget to ensure that free speech laws are being implemented. How that will happen, under what criteria, by whom and when, are all unclear.

On one hand, the order is directing schools to do what they are already obligated by law to do. On the other hand, we are concerned that the order does not sufficiently define “free inquiry” nor does it provide any clear process for evaluating fair implementation. Such lack of definition could lead to administrative standards being developed or arbitrarily implemented which chill free speech or inquiry, or which might be used to advance specific political agendas. On its face, a government promise to encourage schools to protect and affirm freedom of speech is worthwhile, but it becomes problematic if it is, in reality, meant to advance specific political agendas.

At the same time that this executive order was issued, free inquiry is under threat at the state level as well. The Student Press Law Center is deeply concerned about HB 839 which is currently pending in Florida. The bill “requir[es] the Board of Governors to require state universities to conduct an annual assessment related to intellectual freedom and viewpoint diversity at each state university.” The survey is meant to “consider the extent to which competing ideas and perspectives are presented and members of the university community feel free to express their beliefs and viewpoints on campus and in the classroom.” The bill does not provide protections for privacy or anonymity, nor does it offer any specific information about how such data can — or cannot — be used. Such state-sponsored monitoring of viewpoints and belief is a dangerous precedent which, while purporting to advance free expression, in fact, may result in litmus tests and chilled inquiry.

If federal or state governments truly want to take effective action to protect the First Amendment, they should take steps to address the issues that free speech and student advocates have been fighting for decades. This includes defunding of student news organizations, retaliation against and intimidation of employees for speech damaging to their institutions’ public relations interests, schools’ disciplinary overreach into student speech off-campus or on social media, and the rampant misuse of FERPA as a tool for suppressing discussion of institutional misconduct.
Hiring administrators is becoming less open and harder for student journalists to cover.

by: Monica Kast

When universities and colleges begin the process of hiring a new administrator, they often keep the names of candidates confidential until the very end. Universities say keeping the search closed protects the current jobs of candidates, which makes qualified candidates more likely to apply. These closed searches are often met with backlash from the campus communities, who say they want to know more about who is applying and who is selected to lead their institution. Searches for high school administrators are often closed for similar reasons — administrators from surrounding districts are more likely to apply if they know their name will be kept secret.

Frank LoMonte, director of the Brechner Center for Freedom of Information and senior legal fellow at the Student Press Law Center, said closed searches are “definitely becoming more common.” LoMonte said he’s seen states that used to be more open with their searches “close off that access in recent years.”

“I think the obsession with secrecy makes it almost impossible to meaningfully cover a search,” LoMonte said. “What the journalists end up getting is just press releases from the trustees telling people what great progress they’re making.”

In 2015, the American Association of University Professors released a statement condemning closed searches. The statement says, “the rationale for such secrecy is that open meetings discourage applications from highly qualified candidates, although no evidence has ever been offered to suggest that this is in fact the case.”

The statement ends with, “The AAUP thus calls upon colleges and universities to resist calls for closed, secretive searches and reaffirm their commitment to transparency and active faculty engagement in the hiring of higher administrative officers.”
A saga at Kennesaw State

In the space of just two years, Kennesaw State University, a public institution in Georgia, has rotated through five presidents, including two interim presidents. In May of 2016, Dan Papp resigned after 10 years as president and an interim president was named. Then, in October 2016, Georgia Attorney General Sam Olens was named the next president of Kennesaw State University.

Olens’ appointment was met with outcry across campus. University faculty and students were upset that there was no official search for the position, and filed a restraining order against Olens for the day that he was to become president.

Olens was still named president, but later faced criticism and protests for how he handled the university’s cheerleaders protesting during the national anthem at a football game.

He announced his plans to resign in 2017, a little over one year after being named president. Another interim president was named and a search committee was formed. After several months of a closed search, Pamela Whitten was named the sole finalist and the next president. No other candidates were named throughout the process.

Reporting on closed searches

Cory Hancock, the former editor-in-chief of The Sentinel at KSU, and Sabrina Kerns, the news editor, were on staff throughout the “crazy” transition from Papp to Whitten.

Hancock and Kerns said the search for the current president was an improvement from that of Olens because there was an official search and more transparency about the process. Still, students, faculty and staff were reeling from Olens’ appointment and resignation, and were upset the search for Whitten was again secret, they said.

“That’s where all of the upset really came from, because they felt like this was a time at KSU where they really needed more transparency in what they were doing within the administration,” Kerns said.

Hancock agreed, saying the closed search hurt the already damaged trust between the administration and the rest of campus.

The AAUP chapter at KSU released a statement in February 2018 saying “We disagree, vigorously,” with the decision to host a closed search and the rationale behind closing the search.

Hancock and Kerns said they struggled to get information about the search process since so little was made public prior to Whitten’s selection. They were regularly in contact with the search and screening committee, asking for more information, they said.

“They let us know over and over again, ‘This is a confidential search, we can’t give out any names of candidates or finalists, you can’t come to our meetings

Timeline of Kennesaw State University Presidents:

Feb. 1, 2018
Search committee formed for next president

June 5, 2018
Pamela Whitten named only finalist

June 12, 2018
Pamela Whitten named next president

Dec. 14, 2017
Olens announces resignation Ken Harmon named interim president

Oct. 12, 2016
Sam Olens named next president

May 11, 2016
Dan Papp announces retirement

May 26, 2016
Houston Davis named interim president
because we’ll be discussing names of candidates,’ and things like that,” Kerns said.

Hancock said he reached out to the committee multiple times each week throughout the semester to “figure out if we could get anything, but they were not budging at all.”

Hancock and Kerns were able to get information from other places on campus, though. Kerns began regularly going to faculty senate meetings and talking with faculty members who expressed concern about the closed search. She also attended forums held on campus about the search.

“It can be really easy to just kind of let go and be resigned to the fact that nothing is going to be given to you until they announce names, but that doesn’t mean that things aren’t developing,” Hancock said.

The decision to have a closed search was made by the search committee at KSU — 14 faculty members, students and community members.

Charles Sutlive, Vice Chancellor for Communications and Governmental Affairs for the University System of Georgia, said the search committee did agree to bring the finalists to campus to meet with students, faculty and staff after the faculty senate asked them to do so. The committee only named one finalist: Whitten. She was brought to campus for an open forum several days after being named the sole finalist.

Sutlive said the University System of Georgia may find future top administrators through similar closed searches or board appointments, adding, “it depends on the institution and what the needs are.”

Head hunting

LoMonte said the increase in closed searches is due in part to the influence of search firms that many universities and colleges use when looking for their next administrator.

“These executive search firms have completely hijacked the process and they’ve convinced university trustees that they will not get good candidates unless they do the entire search secretly,” LoMonte said. “That’s nonsense, and history proves that’s a lie, but the trustees are easily convinced because they’re not usually dedicated advocates for open government either.”

LoMonte later added, “everybody involved in the process, the people voting on the hire and the people advising on the hire, benefit from closure. They have everything to lose and nothing to gain by letting the public have input.”

If names are made public, LoMonte said it becomes difficult for search firms to reuse that same candidate for another search. This causes search firms to advocate for closed searches, and boards will often take their advice.

“It’s not about choosing a good president, it’s not about choosing a president who’s a good fit for the college, the entire driving force behind the way this process is designed is to protect the profits of head hunting firms,” he said.

Michael Baer, a partner at the national search firm Isaacson, Miller, disagreed. He said the ultimate decision lies with the governing board and what they think is best for the university.

“We try to work as partners with the university, with the committee that we’re working with or with the board,” Baer said. “We share everything that we learn about the people we talk to with them and we hope they share their thoughts and opinions … we see the board or the search committee as the decision maker.”

Baer said their process for finding candidates involves a lot of research and reading “to get a real feel for the institution.” Following initial research and meetings, Isaacson, Miller will begin narrowing its search to finalists and conducting in-depth interviews, as well as doing “extensive referencing and background checks.”

LoMonte recommended reporters check the contract
with the search firm, which may not guarantee background checks or a vetting process. “At that stage, it varies,” Baer said. “More institutions than not, now move forward to the board with one or two people that the board might want to meet and narrow it down and make a decision. There are some institutions that will bring some of these candidates back to campus for meetings with people on campus.”

State Laws

Laws on disclosing the names of finalists vary from state to state, and have shifted away from transparency in recent years.

A 2004 study done by the American Association of State Colleges and Universities found that 22 states allowed confidentiality in these searches at public colleges and universities, while 28 states did not. Many state laws now leave the decision to hold an open or closed search to the university’s governing body — which typically chooses confidentiality over transparency. Some states that required open searches in 2004 have since repealed those laws.

In 2012, the law in Tennessee was changed from requiring the names of all finalists to be public, to “no less than three” names being made public. In April of 2018, the law was changed again, allowing the university’s governing board to name between one and three finalists. Deborah Fisher, executive director of the Tennessee Coalition for Open Government, advocated for more transparency with this law. Fisher said the current law will be in effect for three years. After that, the law has to be renewed or repealed, and a report will be written looking at the impact of the law.

Fisher said while she understands that protecting the names of candidates “may be a legitimate need,” she also has concerns about transparency in the process of selecting the finalist.

“My understanding in other states where this has occurred, that when there’s just one finalist announced … is that it’s somewhat of a done deal at that point, or it feels at least like a done deal,” Fisher said. “… That’s what some of these candidates want. They want it to be more of a sure thing before their name becomes public.” She is also concerned if only one finalist is named, there won’t be time to vet them or the opportunity to compare them to the full pool of candidates.

Fisher said she anticipates at least one search for a university president to happen in the next three years in Tennessee, which will play into the final report.

Florida state law requires the names of all public college presidential candidates to be public. LoMonte said he did not know of any other state where the names of all candidates are required to be made public.

In early 2018, the University of Central Florida conducted a search for the next president. The names of four finalists were public and each finalist held forums on campus. Ultimately, Dale Whittaker was named as the next president following the open search.

Most other states leave the decision up to the governing board of the college or university. In Georgia, home of Kennesaw State University, state law allows but does not require confidentiality.

High school searches

Searches for high school principals and superintendents are often closed as well.

Central Unified School District in California conducted a closed search for its next superintendent earlier this year. After the former superintendent was removed by the school board, the board began searching internally, said Cesar Granda, CUSD Board of Trustees president.

Granda said the board met with human resources throughout the process, hosted meetings with the community and surveyed the community on what they wanted in the next superintendent. After interviewing and selecting their finalist, the board began contract negotiations. Granda said the contract was finalized before the new superintendent, Andrew Alvarado, was announced publicly.

The reasoning for having a closed search for a superintendent is similar to college presidents.

“Our superintendent was currently working at the neighboring school, so you had to keep a lot of privacy,”
Granda said.
Granda said this is generally the way their district hires administrators, either going through human resources to conduct an internal search or using a search firm to hire someone from outside the district.

After the search
LoMonte encouraged journalists to continue asking questions and reporting on the search process even after it has ended.
“[Students] should get the new president on the record saying how many times did you visit this campus before you were hired? How much time did you spend in this town and on this campus before you took the job?” LoMonte said.
Hancock said under a new president, “it’s easy to get distracted,” but the standard for their paper is to “cover all our bases.”
“I think when you’re reporting on a new president that’s just coming into office, everybody’s going to be really gung-ho and excited to see what they do, but I don’t think that changes the method or the style of reporting that we’re doing and I think we’ll continue to do good work,” Hancock said.

Report on the secrecy.
Frank LoMonte, director of the Brechner Center for Freedom of Information and senior legal fellow at the Student Press Law Center, said in addition to interviewing people on campus, opinion writers should “use the editorial page loud and clear to let the trustees know that secrecy is not an acceptable way to hire a president ... The secrecy itself is a big story and it deserves to be written about frequently throughout the process,” LoMonte said.

Regularly interview faculty and other stakeholders.
Sabrina Kerns, news editor of The Sentinel at KSU, said she developed sources who came to her with new information by talking to faculty around campus and regularly going to faculty senate meetings.
LoMonte said student journalists should also look off campus and interview other people who have a stake in the final selection, like trustees and state legislators.

Don’t grow complacent — keep reporting.
“It’s really important just to remain persistent in getting the information that you want because they will tell you over and over and over again, ‘like I said before, it’s a closed search, we’re not going to tell you anything,’” Kerns said.

Report on the search firm and vetting process.
LoMonte pointed out that many schools use search firms when hiring administrators.
“At a public university, the contracts and terms with the head-hunting firm are a matter of public record and that should be written about,” LoMonte said.

Keep reporting after the search is over.
LoMonte encouraged journalists to ask the finalist specifics about the selection process because if they have spent little or no time on the campus before accepting the job, it’s a red flag about why they accepted the position.
Q: The subject of an online news story contacted our newspaper and wants us to remove a story they claim is embarrassing or hurting their chances of a new job. Are we legally obligated to take the story down? What if it is the author of an article rather than the subject?

A: It depends. First of all, it is a good idea for your publication to have a policy on takedown demands or retractions. Many publications have a policy that is some variation of stating that there will be no takedowns or retractions unless something in the article is false.

It is important to keep in mind that information that was lawful when it was published does not suddenly become improper just because of the passage of time. If the information was factual when you published it, you have no legal duty to change it now because a subject is embarrassed or otherwise offended.

If you’re dealing with the author of a piece (for instance, a former staffer or contributor who wrote a controversial column and now does not wish to have that opinion out in the world so publicly, who wants what they wrote to be removed), you must take into account copyright laws. Generally, when a student creates a work, that student retains the copyright and can exercise all the rights of a copyright owner, including how it may and may not be used. An exception to this is if there is a work-for-hire relationship between the student and the publication. This type of relationship hardly ever exists for a high school or college newspaper.
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