

OPEN MEETINGS ADVISORY OPINION NO. 2005-04

Issued On March 3, 2005 By The

**WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

OPINION SOUGHT

The Jefferson County Board of Education asks if student expulsion proceedings are subject to the requirements of the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

From time to time the Board of Education meets to consider a recommendation from the Superintendent for expulsion of a student. These meetings are noticed three days before the meeting and the proceedings are conducted in executive session. The proceedings are conducted in accordance with W. Va. Code § 18A-5-1 and local rules adopted by each county board.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2. Definitions.

As used in this article:

(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding

W. Va. Code § 6-9A-4. Exceptions.

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(3) To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting

ADVISORY OPINION

In Open Meetings Advisory Opinion 99-05 this Committee found that student disciplinary matters may be considered and decided in executive session. However, the Committee further concluded that student disciplinary matters are not exempt from the requirements of the Open Meetings Act, notwithstanding the quasi-judicial nature of such proceedings. This conclusion was based upon the Legislature's specific inclusion of student disciplinary decisions in the exceptions authorized for consideration in executive session. The Committee held, in accordance with standard principles of statutory construction, the more specific language of the provision took precedence over the more general language which excludes adjudicatory decisions from the definition of "meeting." There is no clear and convincing reason to depart from that precedent.

Because student disciplinary issues may arise between regular meetings of the school board, a meeting called specially to address one or more student disciplinary issues would be a special meeting. This Committee has previously determined that two business days' notice of a special meeting, not counting Saturdays, Sundays, legal holidays or the day of the meeting, provides reasonable notice of a special meeting by a county board of education. In addition, the agenda for a regular meeting may be amended up to two business days before a meeting to add a student disciplinary matter for consideration.

The Act also permits governing bodies of public agencies to hold emergency meetings "in the event of an emergency requiring immediate official action." For example, if a student poses an immediate threat to the safety of other students and school staff, expulsion proceedings may be scheduled on minimal notice and added to the agenda of a previously scheduled regular or special meeting, or provide the topic of an emergency meeting. Such emergency meetings may be held with little or no advance notice. However, the meeting notice and meeting minutes must fully explain the purpose of the meeting and the facts and circumstances justifying an emergency meeting.



Chairman