

OPEN MEETINGS ADVISORY OPINION NO. 99-05

Issued On August 5, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Lawyer Gregory W. Bailey on behalf of the Cabell County Board of Education.

OPINION SOUGHT

May a Board of Education make a final decision in a student disciplinary matter in executive session?

FACTS RELIED UPON BY THE COMMITTEE

The Requester has posed a question in the abstract: The Open Governmental Proceedings Act states generally that no decisions may be made by a governing body in executive session. Yet the Act lists as one of the actions which may be taken in a closed executive session "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." The Requester also pointed out that the term "meeting" under the Act excludes any "meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding."

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

§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;

§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;

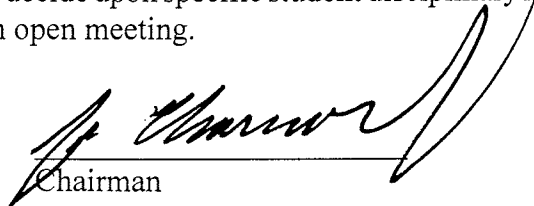
ADVISORY OPINION

To resolve this question, the Committee has considered the purposes of the Open Governmental Proceedings Act and the principle of statutory construction which holds that specific language in a statute takes precedence over more general language.¹

The Requester suggests that deliberations in a student disciplinary proceeding may not be a “meeting” within the meaning of the Act, because the definition excludes “[a]ny meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding.” The Committee finds the more specific language in Section 6-9A-4(b)(3) contemplates that disciplinary matters in front of a Board of Education are meetings for which the Board may go into executive session unless the student requests an open meeting.

For the same reason, the Committee is of the opinion that the more specific section which permits a governing body to “decide upon disciplining. . .any student” in executive session unless the student requests an open meeting should control over the more general language of Section 6-9A-4 of the Act which states that “no decision may be made in the executive session.”

Therefore, a Board of Education may deliberate and decide upon specific student disciplinary matters in executive session unless the student requests an open meeting.


Chairman

¹ *In re Hill*, 190 W. Va. 165, 437 S.E.2d 738 (1993)