

Do Disciplined Employees Have to be Announced in Open Session?

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[Jason S. Long](#), [Jennifer S. Caradine](#)

[West Virginia Code 6-9A-3](#) of the Open Governmental Proceedings Act provides that "governing bodies" such as a county board of education shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available. The meetings are to be made in advance to the public and news media, except in the event of an emergency requiring immediate official action.

Also, we all know the general principle that, as the West Virginia Ethics Commission has determined, that governing bodies like a county of education must issue a meeting notice stating the time and place of a meeting and a "meeting agenda" which lists "the particular matters which will be dealt with" during a meeting. [Open Meetings Advisory Opinion No. 2006-15 \(January 4, 2007\)](#).

So what is meant by list "the particular matters which will be dealt with"? A common question we often get from a county board of education as it relates to the Open Governmental Proceedings Act, and the issue of having to list "the particular matters which will be dealt with" is:

What should be stated on the board's agenda¹ for the upcoming employee's statutory suspension, termination or other disciplinary hearing, and when the board comes out of closed session² to vote on the superintendent's recommendation, or otherwise,, what right does the public have to know of who the subject employee is that the board will be taking action on?³

[The West Virginia Ethics Commission](#) has determined that the name of a person being disciplined *must* be announced in open session after the action is taken. The West Virginia Ethics Commission has specifically stated:

In the case of a disciplinary matter, such a dismissal or suspension for cause which may be discussed in executive session as provided in W.Va. Code §6-9A-4(b), the meeting agenda provided the public may exclude the person's name ... unless the employee requests an open meeting. The Open Meetings Act requires that, following any discussion in executive session, the name of the person being considered for discipline must be announced in open session before the board takes action to impose discipline.

[Open Meeting Advisory Opinion No. 2000-12 \(September 7, 2000\)](#).

In sum, prior to a board of education voting on the employee's disciplinary action, it must announce the employee's name in open session, although the agenda may be silent of the employee's name. Also, the board of education minutes should reflect the same, and specifically provide the employee's name.⁴

Should you need any assistance any education related issues please feel free to contact a member of [Dinsmore & Shohl's Education Law Practice Group](#).

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- (1) List the employee's name?
 - (2) This is assuming the employee has elected a closed hearing on the disciplinary hearing before the county board of education.
 - (3) Often the local newspapers or other media will contact a superintendent asking for the name of the employee that was the subject of discipline at the upcoming or prior board of education meeting.
 - (4) Often the best course of action for a county to respond to the local newspapers or others media requests as to employee discipline is to provide a copy of the board minutes which will speak for itself by including the employee's name.