

## Tips for Student Expulsion Hearings

March 5, 2012 by [Jason Long](#)

Last week I attended a student expulsion hearing and it reminded me that now might be a good time to provide some tips to county boards of education on these hearings. As we all know, [W. Va. Code 18A-5-1a](#) and [State Policy 4373](#) require that a student be afforded a hearing before the county board of education prior to being expelled. Specifically, [W. Va. Code 18A-5-1a](#) in relevant part provides that:

The county board shall hold the scheduled hearing to determine if the pupil should be reinstated or should or, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it also may determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the pupil may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross-examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means unless recorded by a certified court reporter. At the conclusion of the hearing the county board shall either: (1) Order the pupil reinstated immediately at the end of his or her initial suspension; (2) suspend the pupil for a further designated number of days; or (3) expel the pupil from the public schools of the county.

These student expulsion hearings are sometimes held at a regularly scheduled board meeting, but more often at a special meeting.<sup>1</sup> An issue that often comes up at these meetings relates to the [West Virginia Open Governmental Proceedings Act](#). Specifically, the issue often relates to whether the student expulsion hearing is to be conducted in **open session**, **closed session** or **executive session**.

[W. Va. Code 6-9A-4\(B\)\(3\)](#) provides that **student hearings shall be held in executive session**, unless the student requests otherwise,<sup>2</sup> and recorded. Another issue often comes up as to whether the board of education can vote on the Superintendent's disciplinary recommendation in **open session**, **closed session** or **in executive session**. [W. Va. Code 6-9A-4\(B\)\(3\)](#) and the [West Virginia Ethics Commission](#) both provide that student disciplinary matters **may be decided in executive sessions**.

A helpful outline for county board of education presidents for conducting student expulsions hearings can be found [here](#). Additional information relating to certain expulsion mandates can be found at [State Board Policy 4373 Leaves Little "Wiggle Room" for Student Discipline](#).

Should you have any questions on this issue or any issues please feel free to contact a member of [Dinsmore's Education Law Practice Group](#).

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(1) For special meetings, remember 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.

(2) Student hearings are adjudicatory proceedings and the vote on whether or not to discipline the student may be taken in executive session. If parents insist that a student disciplinary hearing be held in open session, the board must devise a procedure to ensure that the Federal Education Rights and Privacy Act (“FERPA”) is not violated.