

QUICK GUIDANCE – OPEN MEETINGS FOR DISTRICT BOARD SUPERVISORS

The policy of the state of NC is to allow public access to the business of government. District boards are public bodies and must conduct business in public, but can provide for privacy for allowable purposes.

NOTICE REQUIREMENTS

When a quorum gathers to discuss district business this is considered an official meeting and must be noticed as such.

- Regular meetings must be noticed at least seven calendar days in advance – date, time, location
- Special called meetings must be noticed at least 48-hours in advance – date, time, location, purpose – must be delivered to each media outlet and persons who have filed a written request
- Emergency meetings may be called because of generally unexpected circumstances that require immediate consideration – date, time, location, purpose – must be delivered to each media outlet and persons who have filed a written request

MEETING ELECTRONICALLY

Open Meetings Law sets out rules for meeting electronically, but does not explicitly provide authority to do so. It is unclear if local governments can meet electronically but we interpret that it is permissible if needed. Best practice is for a quorum to be physically present. For electronic participation, all votes should be taken by roll call. Also recommend that the district develop written policies for meeting electronically, in cooperation with County attorney.

MEETING LOCATION

Meetings should be scheduled in public facilities. The Division has received guidance from the UNC School of Government that a restaurant is not a suitable location for a public meeting.

MINUTES

Minutes should be taken for all official meetings of the district, including closed sessions. Closed session minutes may be sealed if opening them would frustrate the purpose of the closed session. Minutes must be unsealed when the need to keep them confidential passes; some minutes may never be unsealed. Closed session minutes can also be a “general account” of discussions that are included in regular meeting minutes. Minutes should be approved at the next board meeting, and the final, approved version should be signed so there is no question regarding approval. Signed minutes get uploaded to your district’s SharePoint site. Keep in mind that minutes must be kept in perpetuity using local filing systems (do not rely solely on SharePoint).

SPOT CHECKS

Keep in mind, a quorum conducting cost share spot checks would necessitate Open Meetings requirements (e.g. notice requirements, public access). The best practice for district boards will be to have fewer than a quorum participate in spot check activities, or divide site visits so that a group smaller than a quorum will be simultaneously gathered.

CLOSED SESSION

The law makes provisions for privacy when open session might harm public interests or an individual’s privacy. Public bodies can go into closed session for only certain purposes (G.S. 143-318.11(a)). Actions related to state cost share programs and board appointments should be handled only in open session.

According to G.S. 139-8.2, districts have responsibility to protect information provided by farm owners, animal owners, and agricultural producers related to “the agricultural operation, farming or conservation practices, or the land itself”. Closed session should be called to discuss conservation practice details. The following language should be used to call closed session:

“We have a motion and a second to go into closed session pursuant to General Statute 143-318.11(a)(1) to prevent disclosure of information that is privileged or confidential. The information to be reviewed is protected by Section 1619 of the 2008 Farm Bill and NC General Statute 139-8.2.”

Below are other permitted purposes for closed session:

- (1) To prevent the disclosure of information that is **privileged or confidential**
- (2) To prevent the premature disclosure of an **honorary degree**, scholarship, prize, or similar award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the **attorney-client privilege** between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant.
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of **economic development** incentives that may be offered by the public body in negotiations, or to discuss matters relating to military installation closure or realignment.
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the **acquisition of real property** by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General **personnel** policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.
- (7) To plan, conduct, or hear reports concerning investigations of alleged **criminal misconduct**.
- (8) To formulate plans by a local board of education relating to emergency response to incidents of **school violence** or to formulate and adopt the school safety components of school improvement plans by a local board of education or a school improvement team.
- (9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential **terrorist activity**
- (10) To **view a recording** released pursuant to G.S. 132-1.4A.

PERSONNEL CONSIDERATIONS

Similar to spot checks, a quorum conducting interviews for new staff would necessitate Open Meetings requirements. In this case, the board should ensure the meeting is advertised, as appropriate; call the meeting to order; and then call closed session to discuss personnel topics. The board would call the meeting back to order at the conclusion of the interviews and adjourn. Meeting minutes (a general account) should be prepared to describe these activities.