
Coates' Canons Blog: Formulating Plans for Responding to School Violence in Closed Session: Who Can Attend?

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In response to the latest school shooting, local school boards are reviewing and revising their policies and procedures for responding to incidents of school violence. Responses to these incidents increasingly require coordination among multiple jurisdictions. Discussions about these issues may require input from representatives from cities, counties, state law enforcement, and other resources outside of the school administration. Some of the information exchanged during these discussions must be kept confidential for security reasons. The open meetings law provides authority for closed sessions “[t]o 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.” G.S. 143-318.11(a)(8) (I’ll call this the “school violence provision”). Does this provision only apply to public bodies that are part of the local school unit? I think not. Does that mean the school board could meet in closed session with the board of county commissioners, the town council, the police chief, sheriff, or representatives from the SBI? I think so. And what if the school board created a working group that includes representatives from multiple jurisdictions. Would that public body be able to meet in closed session? I think so. Read on to learn why.

There are at least three legal arguments that support the authority for a closed session meeting among multiple public bodies, public officials, and employees.

1. The school board has authority to meet in closed session under the school violence provision and has authority to invite anyone it deems necessary to participate in the discussion. Some authorized purposes for closed sessions explicitly or implicitly limit who can attend. Closed sessions to preserve the attorney-client privilege, for example, are limited to individuals who are within the privilege. And a closed session to discuss information from an employee’s personnel file is limited to individuals who legally have access to that information. But, by contrast, the school violence provision does not limit who may attend the session. It is up to the school board to determine which individuals and groups they deem appropriate to join the closed session. This means that the school board can invite outsiders, such as law enforcement, consultants, and city or county employees or elected officials to participate in closed session discussions under this provision. What if the school board invites the entire board of county commissioners to attend and a majority do in fact attend? Because that is a meeting of a separate public body, does that public body have to have independent authority to meet in closed session for this purpose? Perhaps so, and the statute appears to provide that authority.

2. The authority to meet in closed session under the school violence provision applies to any public body, not just school boards. The purpose of the school violence provision is to allow the formulation of plans “by a local board of education” or “a school improvement team.” It’s possible that a court would interpret this provision to mean that only those two types of public bodies are authorized to meet in a closed session for this purpose. The plain language of the statute, however, allows an alternative reading. The statute that authorizes closed sessions begins with this phrase: “A public body may hold a closed session and exclude the public only when a closed session is required...” What follows that phrase is the list of authorized purposes in separately numbered paragraphs that complete the sentence. Accordingly, the school violence provision in its complete form reads:

“A public body may hold a closed session and exclude the public only when a closed session is required 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.”

Perhaps the language of the statute requires that the school board or school improvement team, should be present, since the purpose is for those bodies to be formulating the plans. But even so, there is nothing in the statute that limits

participation by other individuals or public bodies if the school board deems it necessary and appropriate. Since the law applies to any public body, it provides authority for other public bodies to meet jointly with the school board in closed session for this purpose, and would also authorize a closed session for a working group – a separate public body – created to develop plans for the school board.

3. One or more public bodies may meet in closed session under G.S. 143-318.11(a)(1) if they are developing security plans that are not public records under G.S. 132-1.7. The public records law allows public agencies to maintain the confidentiality of specific details of public security plans and arrangements or the detailed plans and drawings of public buildings, and plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of any governmental facility, building, structure, or information storage system. The open meetings law (G.S. 143-318.11(a)(1)) allows public bodies to meet in closed to prevent the disclosure of information that is confidential or not a public record. At least some aspects of the discussions about responding to school violence would likely fall within this category.

Logistical Considerations: If multiple public bodies do meet jointly in closed session, there are some logistical issues to consider. Each public body must provide notice of the meeting and each board must create minutes and a general account. It's not likely to be the case, but if there are matters – perhaps, say, tentative agreement on policies or protocols – each public body would have to make separate motions and take separate votes. Finally, there might have to be some coordination about what information, if any, can be released and how to respond if there were to be a request for minutes or other records from the meeting.

Links

- www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_143/gs_143-318.11.html
- www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_132/gs_132-1.7.html