

FAYETTEVILLE STATE UNIVERSITY

OPEN MEETINGS

Authority:	North Carolina General Assembly University of North Carolina Board of Governors
Category:	General University Policies
Applies to:	●Administrators ●Faculty ●Staff ●Students
History:	Last Revised – October, 2007 First Issued – September, 1996
Related Policies:	North Carolina General Statutes (N.C.G.S.), Article 33C, Chapter 143 <i>Guidelines on Defining “Public Body” within the Meaning of the Open Meetings Act</i> [UNC Policy #1300.4[G]]
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I. PURPOSE

The State of North Carolina’s Open Meetings Act requires all official meetings of public bodies to be opened to the public. The UNC Board of Governors requires university-wide "authorities, boards, commissions, committees, councils or other multi-person bodies" (hereinafter referred to as "Committees") of the University that meet the requirements set forth in Section II.B. below to operate in accordance with the Open Meetings Act.

II. DEFINITIONS

A. **Official Meeting** (*N.C.G.S. 143-318.10*)

An official meeting is defined as any meeting, assembly, or gathering together at any time or place, including the simultaneous communication by conference telephone or other electronic means of a majority of the members of the Committee for the purpose of conducting hearings, participating in deliberation, or voting upon or otherwise transacting the public’s business.

1. **Regular meetings**

If a Committee conducts annual or semiannual meetings, the meetings are defined as “regular” meetings and a single posting at the first of the year or semester will suffice.

2. Special Meeting

“Special meetings” are held by a Committee that does not have a regular meeting schedule. Additionally, if a Committee meets outside of its regular schedule, its meetings are considered special.

3. Emergency Meeting

An "emergency" meeting is defined as a meeting that is called because of generally unexpected circumstances that require immediate consideration by the Committee. Only business connected with the emergency shall be considered at a meeting to which notice is given pursuant to this paragraph.

4. Electronic Meeting

If an official meeting is held by use of a conference telephone or other electronic means, the Committee must provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting must specify the location.

B. Public Body

In accordance with UNC Board of Governors’ Policy 1300.4[G], a Committee is defined as an authority, board, commission, committee, council or other multi-person body that meets the following criteria:

1. It is established by or at the direction of the Chancellor and/or Vice Chancellor;
2. It does not consist exclusively of administrative officers of the university;
3. its designated function or subject matter jurisdiction is university wide;
4. It is composed of two or more members;
5. It is expressly authorized or directed to:
 - a. to legislate, make policy, adjudicate, or take administrative action:
or
 - b. to make findings concerning or to recommend legislative, policy-making, quasi-judicial, or administrative action.

III. MEETING PROCEDURES

A. Notice (N.C.G.S. 143-318.12)

Public bodies must give notice of their meetings. The Chair or Secretary of the Committee shall provide notice of the Committee’s regular schedule, revised

schedule, or special or emergency meetings .to the Office of Public Relations (Public Relations). Notice is required even if the Committee is meeting solely to review matters authorized for consideration in a closed session.

1. Regular Meetings

Such meetings shall be posted on the bulletin board outside of the Chancellor's Conference Room of the C.J. Barber Administrative Building **at least seven (7) calendar days** prior to the Committee's first meeting. (Please notify the Chancellor's Office prior to posting schedules on the bulletin board.) A copy of the schedule shall also be submitted to Public Relations **at least ten (10) calendar days** prior to the first meeting.

If the Committee changes its schedule, the changed schedule shall be posted on the bulletin board **at least seven (7) calendar days** before the meeting being held pursuant to the changed schedule. A copy of the changed schedule shall also be submitted to Public Relations at least **at least ten (10) calendar days** prior to the changed schedule first meeting.

2. Special Meetings

- a. **Recessed Meeting.** If a Committee recesses a special or emergency meeting, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.
- b. **Unscheduled Meeting.** An unscheduled meeting is any meeting that is not on the Committee's schedule of regular meetings and is not an emergency meeting. Notice of an unscheduled meeting shall be posted on the bulletin board outside of the Chancellor's Conference Room of the C.J. Barber Administrative Building **at least 48 hours** in advance of the meeting. Notice shall also be provided to Public Relations who shall notify the media and individuals who have requested such notification of an unscheduled meeting **at least 48 hours** in advance of the meeting.

3. Emergency Meeting (*N.C.G.S. 143-318.13*)

Notice shall be given to Public Relations immediately after the notice has been given to committee members.

B. Minutes (*N.C.G.S. 143-318.10*)

Any committee subject to these guidelines must keep minutes, including minutes of closed sessions. Minutes of a closed session **may** be withheld from public inspection, but minutes of open sessions are public records. The Office of Legal

Affairs shall be consulted prior to responding to any request for meeting minutes.

C. **Closed Sessions** (N.C.G.S. 143-318.11)

1. **Permitted Purposes**

An FSU Committee may go into closed session and exclude the public only when a closed session is required:

a. **To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States**

The following are examples of state and federal laws requiring confidentiality:

- i. **The Privacy of State Employees' Personnel Records Act** (N.C.G.S. 126-22 et seq.). This law protects from public inspection all but statutorily identified elements of a state employee's "personnel file" and prescribes the conditions under which protected elements of the file may be disclosed to one or another statutorily protected party. This part of the State Personnel Act applies to both EPA and SPA personnel.
- ii. **The Family Educational Rights and Privacy Act of 1974** (P.L. 93-380, amended by P.L. 93-568, the Buckley Amendment). This law protects a student's education records by excluding them from public view except in prescribed contexts. It assures a student access to most of his or her own records, in part to allow the student to ascertain that the contents are appropriately part of the records.
- iii. **The Privacy Act of 1974** (P.L. 93-579, amended by P.L. 94-455). This law protects from involuntary disclosure (except for specified purposes) an individual's social security number.

b. **To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.**

A committee may convene in closed session to identify candidates for, assess the candidates' worthiness for, and choose the recipients of honors, awards, honorary degrees, or citations. This authorizes a closed session to select recipients of awards, for example, for teaching excellence, distinguished alumni, and student achievement in academic and nonacademic matters.

- c. **To consult with an attorney employed or retained by the Committee in order to preserve the attorney-client privilege between the attorney and the Committee.**

General policy matters that would otherwise be subject to discussion in open session may not be discussed in closed session merely because an attorney is a participant in the discussion. A closed session may only be held to receive legal advice from the attorney which advice would be subject to the attorney client privilege.

- d. **To establish, or to instruct the Committee's staff or negotiating agents concerning the position to be taken by or on behalf of the Committee 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.**

A committee may convene in closed session to consider negotiations of (a) 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 (b) the amount of compensation and other material terms of an employment contract or proposed employment contract. The acquisition of real property by gift or bequest and the acquisition of personal property by any means must be conducted in open session. The disposition of real property by any means must be conducted in open session.

- e. **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 Committee may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the Committee or another body and may not consider or fill a vacancy among its own membership except in an open meeting.**

There is no general exemption of personnel matters from the open-meetings requirements. However, certain specified aspects of personnel matters may be the subject of closed sessions.

- i. A committee in closed session may consider "the qualifications, competence, performance, character, fitness, conditions or appointment, or conditions of initial employment" of either an incumbent public officer or employee or a prospective public officer or employee.
- ii. A committee having "final authority" to appoint, discharge, or remove a public officer or employee may not exercise that authority except in open session. Thus, a clear distinction is to be made between consideration and exercise of such final authority, with the latter to be accomplished only in public session.
- iii. A committee in closed session may "hear or investigate a complaint, charge, or grievance by or against a public officer or employee."
- iv. A committee may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the Committee and may not consider or fill a vacancy among its own membership except in an open meeting.

2. Procedures for Going into a Closed Session

Every motion to close an open meeting must cite, specifically, one or more of the permissible purposes listed above. Furthermore, the motion must state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion form is attached as Appendix A. The motion form must be properly completed and the motion made prior to going into closed session. At the conclusion of the closed session, there must be a motion to go back into open session prior to adjournment of the meeting.

D. Written Ballots (N.C.G.S. 143-318.13)

Public bodies may act or vote by written ballots only if the ballots are signed by the individual voter, the minutes of the meeting record the individually-cast votes, and the ballots are available for public inspection immediately following the meeting at which the vote took place.

E. Acting by Reference (N.C.G.S. 143-318.13)

The members of a Committee shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the Committee to understand what is being deliberated, voted, or acted upon

F. Broadcasting or Recording Meetings *(N.C.G.S. 143-318.14)*

Any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open. The Committee may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting.

G. Disruption of Official Meeting

If a person willfully interrupts or disturbs an official meeting and refuses to leave after being directed to leave by the presiding officer, University Police should be called. The meeting may be adjourned. **The law does not give any member of the public or media the right to speak at a meeting.**

IV. REMEDIES FOR VIOLATION OF THE OPEN MEETINGS ACT

The law provides various remedies for violations of the Open Meetings Act, including a provision that the Committee may be liable for payment of the attorney fees of any plaintiff who successfully prosecutes a lawsuit alleging that the Committee acted in violation of the Open Meetings Act. The court may also order that all or part of the fee be paid **personally** by any individual member of the Committee found to have knowingly violated the Act.

However, no assessment against any individual will be made where the Committee or the individual sought and relied upon “the advice of an attorney.” Thus, in any instance in which there is a question about the requirements of the Open Meetings Act, the chairman of the Committee or a staff representative of the Committee should seek the advice of an attorney authorized to provide legal advice to the Committee.

The Office of Legal Affairs is available to assist you in order to ensure compliance with the law and these guidelines.

APPENDIX A

CLOSED SESSION MOTIONS

I move that we go into closed session pursuant to North Carolina General Statute(s):

143-318.11(a)(1) To prevent the disclosure of information that is **privileged or confidential pursuant to the law of this State or of the United States**. Such information being:

The Privacy of State Employees' Personnel Records Act (N.C.G.S. 126-22 et seq.); **or**

The Family Educational Rights and Privacy Act of 1974 (P.L. 93-380, amended by P.L. 93-568, the Buckley Amendment)

or to prevent the disclosure of information that is not considered a public record within the meaning of Chapter 132 of the General Statutes.

143-318.11(a)(2) To prevent the **premature disclosure of an honorary degree, scholarship, prize, or similar award**.

143-318.11(a) (3) To consult with an attorney employed or retained by the public body in order to preserve the **attorney-client privilege**.

143-318.11(a) (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**.

143-318.11(a) (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**.