Three Notes about the Open Meetings Law (Iowa Code Chapter 21)

1. Applicability of Open Meetings Law to Advisory Committees

In 1993, Iowa Code section 21.2(1)(h) expanded the definition of "governmental body," for purposes of the Open Meetings Law, to include "[a]n advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues." The Attorney General's office has always maintained – and the DE agrees – that "advisory bodies created by school boards … to develop and make recommendations on public policy issues are included within the expanded definition of government bodies subject to the Open Meetings Law."

The Iowa Attorney General's office was recently asked whether its opinion remains valid in light of the Iowa Supreme Court decision in a recent case involving a negotiating committee of the Vision Iowa Board, Mason v. Vision Iowa Board, 700 N.W.2d 34-9 (Iowa *2005),* which held that the negotiating committee to Vision Iowa was not subject to Chapter 21. The Attorney General's office concluded that the Vision Iowa decision does not alter its analysis. Therefore, committees created by action of a local school board are subject to the requirements of Chapter 21, even though they lack decision-making authority.

2. When to Hold a Closed Session regarding a Personnel Matter

Iowa's Open Meetings Law permits a public school board to go into closed session to "evaluate the professional competency" of an individual under certain conditions. Evaluation of an individual's professional competency includes hiring decisions, performance evaluations, and disciplinary matters. The conditions required to go into closed session are as follows:

- The individual must request the closed session.
- The closed session must be limited to employment decisions, performance evaluation, or discipline. The closed session must be necessary to prevent needless and irreparable injury to the reputation of the individual.

Once properly in closed session, a board MAY NOT discuss any individual other than the person who requested the closed session unless such discussion is merely incidental and necessary to a full discussion of the primary individual's professional competency.

3. When the Above does Not Apply

Student discipline hearings sometimes devolve into a discussion of whether a school employee properly interacted with a student. The Iowa Supreme Court heard one such case about eight years ago. A student appealed his one-day suspension to the local school board and, as is the student's right, requested an *open* hearing. The student's suspension arose from an incident between the student and a teacher's aide, the student being suspended for calling the aide a vulgar name. The aide, who was disciplined also but less harshly, feared that the family would use the open meeting to question the way she handled the incident. She asked for a closed meeting. The board, relying on advice of legal counsel, voted to go into closed session.

The Iowa Supreme Court said that the local board was wrong to go into closed session. The issue before the local board was what to do about the student, not the aide. The meeting was not to evaluate the aide's professional competency nor was it to decide issues of her appointment, hiring, performance or discharge. The local board was wrong to override the student's request for openness. [Schumacher v. Lisbon School Board, 582 N.W.2d 183 (Iowa 1998).]

To avoid an instance where the issues before a local board are truly dual (which was not the case before the Supreme Court), schedule separate hearings for the discipline of a student and the performance of an employee.