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Loudoun County School Board, Joint Committee on Collective Bargaining, Wednesday, March 20, 2024

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- Official meeting video (Vimeo / LCPS-TV): <https://player.vimeo.com/video/925696795?rel=0>
- BoardDocs (School Board): <https://go.boarddocs.com/vsba/loudoun/Board.nsf/Public>

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[00:00:00] Good evening, everyone. This is Ann Donahue calling to order the inaugural meeting of the Loudoun County School Board Joint Committee on Collective Bargaining meeting for March 20th. We will begin with, so we have the call to order as our first item, and item 1.01 is attendance.

[00:00:23] I have been advised that due to an unforeseen circumstance, Ms. Willoughby is not able to join us today, but we anticipate that she will in the future. and everyone else is here. We do not have any minutes to review since this is our first meeting, but I would like to thank all of you for agreeing to participate in this group because we have some very important work to do, and I'm very happy that we have a variety of voices representing different interests to be part of this discussion.

[00:00:56] This meeting is being audio recorded, it is not being video recorded, and it is not being live streamed on either cable TV or the internet, as that is the standard practice for LCPS committee meetings. But it will be available for people to go to the website and access the audio recording to listen to later.

[00:01:19] Just please keep in mind you do have to turn your mic on before you talk if you want to be heard and particularly to be recorded. So we are going to start with Item 3.01, which is purpose.

[00:01:41] Thank you, Dr. Rasheed. The purpose of this nine-member joint committee as specified in the approved motion from the Legislative Audit and Policy Committee is to consider the eight items of

concern raised by the Loudoun Education Association regarding the draft proposed resolution put together by staff in the fall.

[00:02:06] Those concerns were outlined by the LEA in an open letter dated December 7th, 2023, which all of you should have in the packet in front of you. So this is the defined purpose of this committee, it is going to be over time in our upcoming meetings to go through these considerations and discuss the concerns.

[00:02:32] The previous school board adopted a resolution of the Loudoun County School Board considering whether to establish collective bargaining between the school board and certain school board employees at its March 28, 2023 meeting, which directed the Legislative and Policy Committee to draft a collective bargaining resolution, which the school board was to vote to adopt or reject by December 31, 2023.

[00:02:53] At the December 12, 2023 school board meeting, the school board voted to amend the board's March 28, 2023 resolution to remove the self-imposed deadline of December 31, 2023 indefinitely for making a determination to adopt or reject a collective bargaining resolution and to refer the proposed LCPS collective bargaining resolution to the LNP committee with the recommendation that it establish a joint committee to consider the eight items that we just discussed, wherein such joint committee would be composed of two designated board members, representatives from LCPS Human Resources and Talent Development,

[00:03:31] an LCPS Department of Business and Financial Services, and representatives from LEA. At the January 25th, 2024 meeting of the Legislative Audit and Policy Committee, the committee voted to adopt the school board's December 12th, 2023 recommendation for what was then the LNP committee and is now the LAP committee to establish this joint committee to consider the eight items LEA raised in its December 7th communication to the school board, wherein such joint committee would be composed of two designated school board members appointed by Ms.

[00:03:51] Chandler, who is the chair of the LAP committee, an LCPS HRTD representative to be appointed by Dr. Spence, an LCPS business and finance representative to be appointed by Dr. Spence, a principal to be appointed by Dr. Spence, a licensed school representative appointed by Dr. Spence, two LEA board members to be appointed by LEA President Sandy Sullivan, one LEA association representative who is

[00:04:30] a licensed teacher and LCPS employee to be appointed by LEA President Sandy Sullivan, and that such joint committee shall be facilitated by an independent third-party facilitator whom the LCPS Chief of Staff and or Division Council shall assist in securing.

[00:04:47] We will talk more about how that might work with our committee later in this meeting. The names for each of the members of the joint committee were shared by Ms. Chandler at the February 15th and February 22nd, 2024 meetings of the Legislative Audit and Policy Committee.

[00:05:04] The committee voted to appoint each of our nine members to the joint committee, eight of whom who are here with us today, and Ms. Willoughby. So with this background in mind, to understand how we have gotten to where we are, the purpose of this committee, the LAP, Legislation Audit and Policy Committee, specifically appointed this joint committee to consider these eight items raised by the LEA in its December 7, 2023 communication to the school board.

[00:05:34] Are there any questions from the committee about the background and how we are, where we are? Then we will move on to item 3.02 on our agenda, norms and protocols.

[00:05:54] This committee will operate with certain norms and protocols. For starters, we will be following Robert's Rules of Order, which are the rules that govern the conduct of the regular school board meetings and the committee meetings as far as making motions, having seconds, occasionally needing to suspend rules or amend motions.

[00:06:16] While we do not anticipate action items necessarily because we will be seeking consensus as we work through our substantive issues and topics, we will utilize Robert's Rules for procedural purposes.

[00:06:31] Norms governing the behaviors of the members on the committee to set expectations for the group, encourage risk-taking and participation, and to establish accountability. Norms ensure commitment and trust, protect committee members, and strengthen outcomes. Ultimately, norms will help us to achieve our shared goals and are an essential step of the process.

[00:06:52] Some of the questions that we might wish to discuss with regard to the norms of our committee will be, how will we communicate? Are we working together to reach our goal? Do we need to eliminate, revise, or add any norms?

[00:07:07] If we have suggestions for norms, we can discuss them today. Norms would normally be written as commitments or promises. For instance, when the school board worked through a set of norms at our retreat earlier this year and we came up with a list that we all agreed on in the form of statements such as we will do X or we will commit to doing X or Y.

[00:07:29] We promise to do X or Y. Protocols are an agreed upon set of steps or actions that govern conversations based on previously established norms. They are a vehicle for collaboration and ensure that the conversation is centered in meaningful learning. Protocols are the structure of deeper conversations and a guarantee that substantive, collaborative work can be accomplished.

[00:07:50] There are many benefits to the use of a protocol when facilitating team dialogue. For instance, protocols ensure a safe, equitable, and trusting environment in which team members are safe to ask questions of one another, ensure meaningful and sustained dialogue, the time during our meetings, provide built-in time to think and time to listen without the need for team members to continually respond, promote reflection by individuals and teams, help members gain differing perspectives and insights, focus the team's work on the issues at hand, prevent off-topic conversations, and prevent individual team members from dominating conversations.

[00:08:27] Each of our meetings is open to the public and, as I said earlier, audio recorded. The meeting agendas will be available to the committee and the public at the same time at least two days prior to the meeting. Some protocols that we follow on the school board and I would like to follow here are, for example, taking a straw poll or temperature check on ideas, not necessarily a vote per se, but getting everyone's initial reaction, waiting to be recognized by the chair before speaking, and making sure to turn on your microphone when you are speaking.

[00:09:05] Are there questions or thoughts or suggestions from the committee regarding norms and protocols. The next item is 3.03, Third-Party Facilitator and Mediator.

[00:09:27] Helping me go through this part of our agenda will be Mr. Wes Allen, Division Counsel. Per the approved motion of the LAP Committee on January 25, 2024, and as previously explained earlier today, the Joint Committee will be facilitated by an independent third-party facilitator whom the LCPS Chief of Staff and/or Division Counsel shall assist in securing.

[00:09:52] Mr. Allen, can you please speak to us on facilitator, mediator involvement and status? Thank you, Madam Chair. I'd be glad to provide the opportunity to offer greater clarity here. So while the Board's December 12, 24 motion didn't contemplate a facilitator, as you shared earlier, at the January 25th LAMP committee meeting, when this matter was taken up as an information item, the LAMP committee provided the following direction, that such joint committee shall be facilitated by an independent third-party facilitator who the LCPS chief of staff and/or division counsel

[00:10:31] shall assist in securing. After that meeting, staff executed on that direction and believed it had potentially secured a lead that would come at no cost to the school board and school division with the federal mediation and conciliation services, which I'll refer to as FMCS.

[00:10:50] FMCS services are free of charge, but have two stipulations. They are only provided when there is an agreement of all parties, for example, management and labor, and they are only provided when there are matters where there is a disagreement, where parties have solidified or crystallized positions.

[00:11:09] If those two criteria are met, then FMCS provides services, again free of charge, to help stakeholders move forward to a consensus. What FMCS representatives do not do or guide through the assembly through various issues.

[00:11:28] The committee could engage them when they identify issues and respective positions on those issues. FMCS does have a busy schedule, so we'd need to work around their schedules if those two criteria are met. The FMCS representative we had reached out to is holding two dates in April if needed.

[00:11:50] That said, if this joint committee or the chair at her discretion believes it would benefit the assembly's discussion going forward, it would be appropriate to direct LCPS's procurement team to secure a third party facilitator for such purposes.

[00:12:06] And what that facilitator's role would look like is keeping the conversation going, keeping this assembly on track to go through each of the eight items. That is part of the motion. attempting to come to a consensus and or solidify folks' positions on various issues to then be presented for an FMCS representative to help work through. Again, if there's not a general consensus and folks have solidified positions on a matter, that is when the FMCS representative could offer

[00:12:41] their services here. Happy to entertain any questions. Thank you, Mr. Allen. Does anyone have any questions. Mr. Hansen. Thank you, Mr. Allen. Once we've met, and hopefully we don't, those two criteria, how long does it typically take for someone from FMCS to actually become available?

[00:13:13] Thank you, Mr. Hansen. We do have two dates on hold with one of their mediators in April. So So one is early April, one is mid-April, and if need be, staff can work with the committee to secure one of those dates, but those are on hold.

[00:13:34] We can certainly reach out and get dates in May as well, just to put on hold as well. But I think at this point, based on their scheduling, that's probably the best approach to make sure we have tentative dates if needed. Mr. Allen, what are the two tentative dates in April?

[00:13:55] Currently, they are April 8 and April 18. Other questions from committee members? Then we will move on to Agenda Item 3.04, Meeting Cadence.

[00:14:19] We need to establish how often our committee will be meeting. Generally, most committees of the Loudoun County School Board meet once a month, although some meet more and some meet less frequently. If a special meeting is needed between regularly scheduled meetings, the chair may determine a time and date to schedule an interim meeting in between regularly scheduled meetings as we decide how often this committee is going to meet on a regular basis i would like for dr smith to explain some of the considerations around committee

[00:14:55] meetings scheduling and timing dr smith thank you madam chair so a couple of things that i would suggest that you consider in terms of meeting cadence is just to take a look at one you want to make sure you know as much as many people on the committee are available obviously and so trying to coordinate nine schedules can be challenging but try to coordinate when when you can have everyone be there in terms of when we look at the frequency it does take us a minimum of we would say two weeks to get a meeting set in terms of board docs we are using board docs this is an open meeting we do have meeting notice requirements so there's some pieces of those types of things

[00:15:33] that need to take place which is really a minimum of two weeks most committees meet on a monthly basis um and so once we can get some dates on the calendar we can look at room availability typically we've used this room and the large room those are the ones that have the recording capability so that's why we keep our committee meetings in these two rooms to have that audio audio recording capability um and so i would say those are the couple of things that i would just ask you to consider as you think about the best time the best date in order to make that happen and how we're flexible in terms of however far you want to schedule those out depending on how how many meetings you think you might need or if you want to schedule more

[00:16:11] happy to put those on the calendar and then if you may not need them it's already always fine to cancel those and we can cancel the room arrangements and and the like so just looking to see if we can get as many folks as we can that are available and so that we can also reserve the room and we get the right staff here to support committee meetings such as this thank you dr. Smith and how much time to staff need to prepare typically for a scheduled meeting we would prefer to have them every month to have a month to prepare two weeks would

[00:16:44] be minimum turnaround time thank you questions or discussion from committee members yes miss Brene thank you um we have kind of looked at everything already there's only eight issues and I think it would be pretty easy to knock this out other divisions have done it in like long day like all-day sessions I think two all-day sessions maybe the second one isn't even needed to be an

[00:17:17] all day but like two long meetings and I think we'd be I think we'd wrap this up I could see it being done by the end of April I like your optimism is is that is that something that other committee members would be willing to consider is committing to one or more full day meetings dr. Rashid I just was curious the two long full days any how much of a gap everyone would consider in between the

[00:17:56] long full days or do they have to be consecutive or anything of that matter ms sullivan i would suggest two weeks apart between the two meetings giving the amount of time that staff says they need and i would suggest potentially putting at least one other date in may so there can be a room reserved if

needed so we're not scrambling if another day is needed other comments questions mr hanson go um i would support that i think that i moved to loudon three years ago we've been at

[00:18:36] this for three years. We've got a very limited scope of things to discuss and I can tell you that I've got a lot of colleagues who are going to be very disappointed if we're still talking about this in August. Thank you. Ms. German and Ms. Chaudhry, how would you feel about full-day meetings? I'm fine with them either way. Thank you. Ms. German. I'm fine with that as well. Ms. Mullan. Thank you. I would

[00:19:14] just ask, I think I appreciate actually the full-day sessions. I think once we get into the work it's important to be able to keep momentum so I actually appreciate that suggestion I would just ask for as much notice as possible calendars get extremely full it's very difficult this time of year so I would just ask for as much time as possible thank you dr. Smith can you speak to if you have any idea if miss Willoughby would have thoughts on a potential full day meeting whether that would work for her and whether it is feasible to do

[00:19:50] Sure. I can't speak for Ms. Willoughby specifically, but I would probably share the same comments that Ms. Boland shared. I know her calendar is incredibly busy, and so trying to find some of those dates that are already not taken up could be a challenge.

[00:20:07] So as much lead notice, kind of schedule them out a little bit, would be most helpful. I'll just add to that that, you know, my schedule as a high school principal is completely full every day. So as much notice as I can get that would be greatly appreciated because regardless of the day I'll have to clear my calendar. Thank you. I was going to move to asking about time But if we're talking about full-day meetings rather than afternoon or evening meetings, then we may not need to

[00:20:48] Okay, so I will I will check with ms. Willoughby to see if she is if that could be workable for her to do full-day meetings and And if she is agreeable, then I will, well, Dr. Smith will reach out to all of you to try and set up scheduling.

[00:21:12] Ms. Sullivan. I just ask, could we have a takeaway today that we have potential two dates on the calendar and then check specifically with Ms. Willoughby about that and then cycle back if we have to pick different dates? We're happy to support you any way we can.

[00:21:34] I don't know that we're going to be able to check room availability and kind of work through some of those pieces that we normally go through in terms of operations pieces, but happy to check on any dates that the committee would like and try to support you any way that we can. That was my concern, Dr. Smith, was I'm certainly not opposed to us, the eight of us, discussing our calendars and availability right now, but we may or may not be able to ensure an available room even if we agree on dates.

[00:22:03] Mr. Hansen. We've got FMCS potentially available on April 18th. Maybe one takeaway, Ms. Sullivan, would be to check our calendars after this meeting is done for April 18th to see if that would work so that we've got something.

[00:22:22] Ms. Bernay. I don't know how Ms. German feels, but I know Mr. Hansen is concerned about being outside of the classroom, and April 5th happens to be a teacher work day.

[00:22:38] Maybe you need that teacher work day exactly, but it would be one day where you wouldn't need a sub. I'm throwing that date out there for those of us that are in the classroom. Great idea.

[00:22:54] To the extent – I'm sorry, Mr. I might be wrong on this, but that's a grading and planning day, and I don't believe that we can call teachers to any kind of a meeting that day. Dr. Smith and or Mr. Allen? I don't know about committee meetings. I just know at a school level there are no meetings on those days.

[00:23:14] I have not looked at the calendar in terms of that day, but happy to look at that and get back with you on that. If it is possible, without violating anyone's contracts or otherwise causing problems, would April 5th be a workable date for this group, Ms. Mullen?

[00:23:48] Too soon? MS. So it's not at the moment, but if that is the consensus, I will make it work. MS. So I believe April 10th is also at least a no student day.

[00:24:03] Dr. Roushid. I have another job, so April 5th is a little hard. Fridays are usually hard for me, but I can try to work around.

[00:24:20] But 5th is a little too soon for that specific Friday, but I can work around other Fridays except for the week of April 10th. If the 5th is not available for you and the 10th is a holiday, which I did not recall, and I apologize for that, we could, as Mr. Hanson suggested, go back to looking at April 18th, which is one of the days that a mediator could be available although I had wondered if it was worth having some discussions before we have the involvement of a facilitator mediator to see if how to see the extent of our need for one do you have thoughts mr. Allen

[00:25:00] thank you madam chair yeah as a point of clarification the mediator would only come in if there are crystallized positions so that presumes that a meeting would be had before then to get to that point. Thank you. So we're back to we could do the 18th but not planning on a mediator for that day. Ms. Sullivan.

[00:25:29] So just to make sure I didn't miss anything have we considered April 8th we know that's a day the mediator would be available that we wouldn't need them but would the committee as a whole be able to meet on April 8th? That's a Monday. Ms. Chaudry.

[00:25:49] So that's the first day of the last quarter. I don't know if you guys want to be out of your class. I'm always looking out for what the teachers need. So for me, that's not a good day, but if it has to be, then it's fine.

[00:26:13] And if there are, we can look at other dates as well. We were discussing April 8th and 18th because of the availability of a mediator, but if we will need to have at least our first substantive meeting without a mediator, we're certainly not beholden to those dates.

[00:26:31] We could look at other dates in April prior to the 18th if a different day would work better for this group, or I am fine with the 8th? Ms. Bullen. So I hate to be the difficult one, but April 8th is very soon.

[00:26:48] So I do have things that I could ask Dr. Smith to sit in for me on or other members. But if we can look at other dates, that would be extremely helpful. I would anticipate that Ms. Willoughby may have a difficult time with something so close also.

[00:27:09] So April 18th is available. I can move all of those things around, but I know we might want to meet before then, or maybe we meet on April 18th and then ask Mr. Allen to go back to the mediator and secure tentative dates in May.

[00:27:28] Ms. Chaudry? I think April 18th is a good date for me, too. Dr. Rasheed? Me. Ms. Bernay? Me, too. Okay.

[00:27:43] I cannot do the 18th. You are not able to do the 18th, Ms. Bernay. Other days that week or should we look into the following week miss Renee this phone?

[00:28:08] What's the earliest that you think you could it would work for you? So if we look at the week of April 8th, I could do the 9th I could even well the 10th is a holiday. I could even do the 12th I could do the 9th and the 12th of that week. I could go further out So there Ms. Bullen there is a school full school board meeting scheduled for the 9th. I would prefer Sorry, I only looked it during the day

[00:29:06] So can I just go to the next week then so April 15 Is a Monday we typically have cabinet, but I'm sure we could be excused so both miss Willoughby and I would have that whole day blocked already And and could potentially participate I also have April 16th available April 15th or 16th do those dates work for the rest of this group thumbs up April 15 doesn't work 16 works

[00:29:41] April 16 works, but 15 does not work. Okay, April 16th

[00:30:03] The long session that we're planning what time to what time I'm assuming 8:00 to 5:00 or is this is this 9:00 9:00

[00:30:18] So April 16th work dr. Smith just we're trying to look at building use just so you know We do I did look like the 18th did work so we can't have this room on the 18th The 16th is a principal meeting day in which we have all of our principals in the building here And so usually So it's not available right now We could work to see if we can't move some things around but principal meeting days are very tough because we have all hundred of our principals here and With a lot of things going on so just want to share that but the 18th is available in that week

[00:30:58] Back to the 18th to see the 18th. Oh, no, Miss Bernay. You can't do the 18th. Okay. Okay So Dr. Rashid cannot do the 15th. Ms. Bernay cannot do the 18th. Does the 17th work for anyone or is that universally bad?

[00:31:20] These small, I have these small, like it's the MSAC Symposium. It's like four tours. Let me think of it.

[00:31:38] Or there is the Friday the 19th. No, Ms. German. I mean, if we knew it was finished at 2.45, I lead an after-school activity on Fridays.

[00:31:56] I'm not seeing overwhelming support for a Friday. I'm happy to follow up after this meeting, send out a doodle poll or something so everybody can put in their dates and you can find what's agreeable for most if you'd like, if that's helpful.

[00:32:13] I know you want to try to get a date, but I just wanted to offer that. Either way, I can put out something to the group to try to find other dates that might work as well. Mr. Hanson. I would just suggest, rather than trying to get hung up on a whole day, if we find that there's nothing that works for all of us for a whole day in April.

[00:32:36] I'd rather get another hour, hour and a half meeting in on an evening rather than wait until May to meet again. That would be my suggestion. I agree. Or potentially even a half day if that would work. So Dr. Rashid, you had said you cannot do the 15th? Is that all day? Or if we did a half day, could you do a half day? The morning of the 15th work? Pending Ms. Willoughby's

[00:33:15] availability. Thoughts, Dr. Smith? Oh, Ms. Boland. We have cabinet on Mondays, so that would already be blocked on her calendar unless she had planned not to attend. It is good news. Thank you. So if

we can get a room, that might work. No pressure, though. Madam Chair, we might have to move someone, but we can work to try to make that work on the morning of the 15th. So we'll tentatively say

[00:33:52] April 15th. Can we do nine to one? Does that work? No. You, Dr. Rasheed? 830 to 1230? April 15th 8:45 to 12:45 9:1. Okay, it's also tax day. Don't forget. So I

[00:34:29] expect that we'll be meeting here assuming that we are able to work something out here in this building not necessarily this room but here in this building 9:1 on April 15th. Okay any other discussion comments questions about next meeting Ms. Sullivan. Not to belabor the point and continue this too much longer but I feel more comfortable if we walked out with two dates on account or two potential dates on a calendar meeting after April so if we go along

[00:35:07] with the thought of at least two weeks in between we would be looking at early May which I'm certainly open to trying to put something on the calendar although at this point I don't believe we know facilitator availability for May if we have need of it. If we are doing half days, it's also probably not a bad idea to schedule a second session for us to talk together without the mediator. Ms. Bernay. April 29th, two weeks after

[00:35:44] the first meeting, the Monday. Ms. Bullend, am I going to get in trouble with Dr. Spence if I keep pulling you and Ms. Willoughby out of cabinet meetings? I think he'll make an exception. Can't the afternoon so Monday morning April 29th is is that an agreeable date nine to one this group

[00:36:22] ms brene so all day is not an option we're just thinking about half days right now i'm sorry yes in which direction ms chaudhry it's only only half day or should we consider a full day we we looked at half day because of the lack of being able to reconcile schedules for the earlier meeting and specifically for the 15th because dr rasheed had a conflict in the afternoon So we didn't I guess we didn't discuss whether this would be a full day or half day.

[00:36:51] Ms. Boland? Ms. If we do April 29th, I can't do it after 1:00. Okay. 9:00 to 1:00. 9:00 to 1:00 April 29th.

[00:37:11] And perhaps Mr. Allen can find out mediator availability, mediator or/facilitator availability for May so that we can have that information for our next meeting in case we need to reconcile our schedules with a mediator.

[00:37:28] Ms. Chaudry? very sorry but I am out of town good for you missile 29 the whole week miss Chaudry or are there any days that work for you until after Wednesday that week

[00:37:53] May 2nd or 3rd for full day it's also LEF mr. Hanson did you I can't do May 3rd that Friday but Thursday can't do it in the morning be the afternoon okay okay ms bernet that's what i was going to suggest the afternoon of that day Thursday afternoon May 10th may excuse

[00:38:27] me May 2nd we are crossing off the 29th 12 to 4 1 to 5 12 to 4 does that work for everyone

[00:38:48] Thursday May 2nd 12 to 4 so we have two half-day sessions scheduled uh which i think is a good start and by the time of our next meeting we'll know facilitator availability so we can work around that schedule to plan the next meeting we need

[00:39:20] that anything else about scheduling the final item on our agenda is FOIA training Mr. Allen thank you Madam Chair we're working through some technical difficulties right now but if you bear with us momentarily we'll be able to project missile I do have a question while that's getting ready I probably

should have brought this up during protocols I have two quick questions that I don't know if they have to be determined today but I want to get them

[00:40:00] out on the table what space is there for caucusing among people on the board on this committee when decisions are being made like if LEA members wanted to have a discussion as part of the meeting to the side and then come back is there space for that to occur that's my first question mr. Allen yes I've incorporated that into the FOIA discussion today.

[00:40:25] And I'm happy that we can talk after as well. Then just a secondary question is, is there a space for support from council from members for this committee for whether we have a VEA attorney present or be able to caucus with them by phone as well as members here to caucus with LCPS council?

[00:40:50] So I guess as getting into the response to the first question leads to the second question. So, and you'll see the definition up here of a public body, but three or more, this committee does constitute a public body.

[00:41:06] And so under the Virginia Freedom of Information Act, when three members of this body are more convened to discuss the business of this committee, then it is considered a public meeting. And so I realize that presents somewhat of a challenge for the three members of LEA on this committee.

[00:41:25] My advisement there in order to cut square corners with the Virginia Freedom of Information Act would be two at a time So you're certainly welcome if we if the committee does take a break to Step out and talk to your counsel, but it would have to be two or fewer. Thank you. Mr. Allen still working on our technical Well, I could ask then

[00:42:03] Since we have agreed to meet in half days for our blocks of time Do you all have thoughts about what is a reasonable, realistic agenda to put together as far as how much we can get through in a four-hour block of time?

[00:42:27] Item an hour? Item a day? I mean, hopefully not an item a day. Ms. Boland? I think it may be difficult for us to predetermine how quickly we are able to move through items before we have an initial meeting to start.

[00:42:53] I think we're all going to have to learn how each other works together, how each other feels about certain topics, what questions or topics are going to require more time. So I would be open to essentially leaving all the items on the agenda with an opportunity for us to add specifics underneath them and then move along as we get through them as to not stall momentum.

[00:43:21] I'd hate to only have one item on the agenda and be able to move quickly through that item and not have anything else post it publicly and have to just adjourn. That is a concern and a good thought. Thank you. Other thoughts?

[00:43:38] And Dr. Smith, Mr. Allen, that's acceptable, isn't it? If we have the agenda as all eight items and if we don't get through it in one sitting, that's fine. We move it on to the next meeting. Yes, that's correct, Madam Chair.

[00:43:53] Thank you. Well, if you're ready, Mr. Allen. - Without further ado, thank you. It's a pleasure to be here to speak to you all about a very important topic, which is the Virginia Freedom of Information Act.

[00:44:10] Given that its body constitutes a public body under Virginia law, the committee will be governed by open meeting requirements of the Virginia Freedom of Information Act. Before you is a quote

coming from the Supreme Court of the United States, giving an overview of the importance of the Federal Freedom of Information Act.

[00:44:34] And it's a bit of history. The Federal Freedom of Information Act was enacted in 1966 and went into effect 1967. In 1968, Virginia, through its General Assembly, established and enacted the Virginia Freedom of Information Act.

[00:44:50] And I'll be referring to that as VFOIA or FOIA moving forward. So VFOIA aims to ensure the people of the Commonwealth Virginia and representatives of the media with two things: free entry to meetings of public bodies, wherein public business is being transacted or conducted, and ready access to records held by public bodies, officials, and employees. So the guiding principle of FOIA is openness. It essentially allows for a light to be shed on a public's entity performance of its statutory duties. So simply put, FOIA attempts to ensure that Virginia citizens have the

[00:45:28] ability to observe how their elected public officials are conducting public business. So what is a public body? You will see that a public body includes any entity designated of the public body created to advise the public body, and it shall not exclude any such committee, subcommittee, or entity because it has private sector or citizen members.

[00:45:54] So I think you can see that this joint committee meets that definition and constitutes a public body under the Virginia Freedom of Information Act. So today I'll give a brief overview of the following topics and again this is very high level but you'll see by the end of today's discussion that FOIA training is required for public officials.

[00:46:19] You'll have an understanding of the FOIA requirements for meetings to ensure the public has a right to observe these meetings that are being conducted. You'll also have learned that FOIA regulates the public's right to access local government and public bodies records.

[00:46:36] You'll gain a general awareness that public bodies can assess costs for requests for records, and you'll be cognizant of the associated penalties for FOIA violations. So moving on to the required trainings, local public officials are required to read and familiarize themselves with the law.

[00:46:57] And I believe Ms. Donahue previously circulated copies of the Virginia Freedom of Information Act to you all via email. So it's my duty to remind you to please read and familiarize yourselves with those FOIA open meeting and records requirements. I want to stop here before the next slide, just to discuss what constitutes a public meeting under FOIA.

[00:47:23] The definition of meeting is broadly construed under Virginia law. Essentially, the definition of meeting intends to capture any meeting where public business is transacted or discussed. For you, that public business relates to the collective bargaining resolution for the Loudoun County School Board.

[00:47:42] The Supreme Court of Virginia just last year recently clarified that the discussion of any topic that is either pending before the public body at the time of its discussion or is likely to come before it in the future constitutes public business such that if three or more members of that public body were to discuss that topic, That would constitute a public meeting that is subject to FOIA rules about public notice, record-keeping, and other open government requirements.

[00:48:16] Pursuant to Virginia law, all meetings of public bodies, again, shall be open unless provided by law. And there are exceptions for closed meetings authorized for limited purposes. I don't foresee that

would be applicable to this joint committee, but I will discuss those later in this presentation.

[00:48:36] All public meetings are presumed to be open. The purpose, again, is to promote an increased awareness by all persons and afford citizens the opportunity to witness the operations of government. Open meeting requirements apply whenever a public body holds or participates in a meeting.

[00:48:57] All committees and subcommittees are included irrespective of whether any members of the local governing body serve on that committee. That is, whether the committee is a standing or ad hoc committee or this joint committee, they're subject to the Virginia Freedom of Information Act.

[00:49:14] FOIA applies to board gatherings or committee gatherings irrespective of the meeting's location. It doesn't matter if it's in this room or elsewhere. A work session is deemed as a meeting or as is any other informal assemblage of three or more members of this joint committee where there is discussion regarding, particularly here, the collective bargaining resolution.

[00:49:39] To be sure, a gathering does not create a meeting if public business is not discussed or carried out and the gathering was not called for the purpose of doing public business. So, for instance, if you were out to dinner or at a graduation and you're not discussing the collective bargaining resolution, that would not constitute a public meeting.

[00:50:00] Same goes for an LEA meeting where the three members of this joint committee are gathered where there's not discussion about collective bargaining resolutions. To recap, it's not a meeting when the discussion or transaction of any public business is not the purpose or part of the gathering or attendance and that the gathering was not prearranged for the purpose of public business.

[00:50:26] The last bullet point there you'll see are tips to avoid missteps from inadvertently holding a public meeting. So with respect to emailing each other, if you hit reply all and there's a simultaneous response between and among you, that could constitute a public meeting.

[00:50:46] So if you think back to memos, if Madam Chair provides an email that provides some information, that's one thing. It's the reply all and the engagement of conversation in response to that memo that would constitute potentially a public meeting.

[00:51:05] So to avoid any missteps, the recommendation is to try to keep all communications one-to-one, written and oral, and avoid before or after meeting gatherings where conversations that you're having in here could spill over afterwards.

[00:51:21] So per Virginia law, notice of public meetings should be posted at least three working days prior to the meeting. You'll have noticed that that was done here where staff posted the notice of the public meeting three days before on board docs to ensure compliance with the Virginia Freedom of Information Act.

[00:51:45] FOIA also requires agendas to be posted and specifically at least one copy of all agenda packets unless exempt are materials furnished and materials furnished to members of the public body shall be made available for public inspection At the same time, they're furnished to members of the public body.

[00:52:07] And so, for example, exempt items, if there's any personnel records or scholastic records that are not public records under FOIA or there's an exemption, those would not need to be posted. Just a quick overview of closed meetings.

[00:52:25] Again, I don't anticipate this joint committee would need to make use of a closed meeting, but there are 54 reasons a public body could have a closed meeting or session. Those are outlined in Virginia Code Section 2.2-3711. The important things to remember here are that there has to be a motion to go into a closed meeting.

[00:52:47] You have to identify the subject matter, what's going to be discussed, and the purpose. And the subject matter and purpose has to be one of those 54 reasons outlined in Virginia law. And I've cited a couple examples up here.

[00:53:02] If there's consultation with counsel about pending litigation, if there's discussion of personnel matters, if there's specific student matters that are being discussed, those are all items that are properly had in closed meetings. During the closed meeting, there can't be any votes taken, any formal votes.

[00:53:23] There could be a straw poll. And during the closed meeting, only the matter that was cited to go into the closed meeting can be discussed. When the public body comes out of the closed meeting, they need to take two motions or two votes. One is to come out of the closed session. The second is to certify that they only discussed the matter that was cited for the closed meeting. If there's any motion or vote that needs to be taken after, based on the discussion of the closed meeting, they can take and vote thereafter.

[00:54:00] The Virginia Code and school board policy does allow for remote participation. However, a physical quorum is needed to conduct business. If no physical quorum is assembled, a meeting cannot be held. That said, School Board Policy 2420D, which tracks Virginia Code 2.2-3708.3, does provide for remote participation if there are specific personnel matters or a temporary permanent medical condition or disability or to provide care for a family member. That sets forth

[00:54:39] that you could remotely participate to a meeting at least two times per calendar year. And given the unknown quantity of how many times this public joint committee will meet, I would bank on that you have two times you could do that for this point.

[00:54:58] However, if you have more than eight meetings, potentially, you could have more personnel exemptions, personal exemptions you could use. there is an unlimited use for the exemption of temporary or permanent medical condition or disability.

[00:55:16] Now we'll move on to the second prong of FOIA. Again, that's aside from the right to observe public meetings, Virginia citizens have a right to request public records. So what are public records?

[00:55:32] They're all writings and recordings set down by handwriting, typewriting, printing, or electronic recording, prepared or owned by or in possession of a public body or its officers, employees, or agents, and end the transaction of public business.

[00:55:49] This means that all records, no matter the format, to include emails, text messages, other recordings on your personal devices that discuss the business of this joint committee, are potentially subject to disclosure to the public, unless an exemption applies.

[00:56:07] So there's two clarifications I'd like to point out. One, if there's a request and there's no record in existence, there's no obligation to create a record where a record doesn't already exist. And FOIA governs requests for records, not information.

[00:56:24] So a public body does not have to provide information or answer to questions, only records under FOIA. To the extent folks email you about business of this joint committee, as a best practice, a

disclaimer that indicates that the email is subject to disclosure under Virginia Freedom of Information Act. So under FOIA, there's five working days from the time that the request comes in to potentially disclose the responsive

[00:56:59] records. And the requests that come in need to be made with a reasonable specificity. You can't simply request all records of the Joint Committee. The FOIA officer would ask for clarification if that were the case. And if the clarification is needed upon receiving the initial request because it is not reasonably specific the five-day requirement does not begin until the clarification is received even if the requester comes back with a modified request of all joint committee members emails discussing the proposed

[00:57:34] collective bargaining resolution from x-date to x-date the public information officer would then need to determine an estimate of time and cost for accessing searching, duplicating, and supplying the records. And in some cases, the requests result in voluminous requests.

[00:57:54] If that's the case, under FOIA, public bodies are allowed to invoke an extension of seven working days. And where very voluminous, FOIA permits the public body and requester to try to reach an agreement on the release of those records or a rolling production schedule.

[00:58:12] FOIA allows redactions for specific exemptions as set forth. Generally, you apply redactions to the exempt portions but leave the non-exempt portions unredacted.

[00:58:29] However, when there's an entire record that's covered by the exemption, if it's a whole personnel record from a personnel file or a whole scholastic record from a student's file or attorney work product or an attorney-client privileged communication, then FOIA does provide that the whole record can be withheld.

[00:58:48] So in terms of your role, if you do receive a request for records, and it doesn't have to say that it's a FOIA request, it doesn't have to use the magic language FOIA, if it's a request for records pertaining to this joint committee, then please notify the public information officer or FOIA officer, one and the same, immediately of those requests.

[00:59:12] That's Dan Adams. He's two folks over to my left at the table with me. And then remember, all emails and messages on your personal devices, to the extent they do pertain to this public business of this joint committee, are also subject to disclosure.

[00:59:29] As I mentioned earlier, FOIA does permit public bodies to assess charges, and those include for searching, accessing, supplying, and duplicating records.

[00:59:45] There are some exemptions or exceptions under FOIA, but that's generally the case. And finally, if someone believes that their FOIA rights have been violated, they may file a petition, either the district court or the circuit court of Loudoun County, and there could be personal liability if a court finds that the violation was willfully and knowingly made.

[01:00:09] And so what are those penalties? A civil penalty of at least \$500, but no more than \$2,000, and any of those payments would go to the Virginia Literacy Fund. And then if there's a second or further violation, the maximum is \$5,000 with a minimum of \$2,000.

[01:00:29] Listed contacts for any questions that you have other than myself or the EA Council on the prior slide. I just wanted to point out on the prior slide that Virginia FOIA Advisory Council, that's a Virginia state agency with expertise to help resolve disputes of the freedom of information issues.

[01:00:52] They have opinions online with a kind of a Google search function, so if any questions arise, that's a good resource to have. And lastly, just the two key takeaways of please avoid conducting, holding inadvertent meetings of three or more discussing the collective bargaining resolution here.

[01:01:16] And then understanding that emails and text and other records are likely to be subject to disclosure in response to a FOIA request. I'm happy to answer any questions. Ms. Brené.

[01:01:33] So if you only have to give three days notice, for example, let's say Ms. Boland wants to talk to me and Ms. German about something that we've been working on. All she has to do is talk to somebody and say, this is going to be a public meeting.

[01:01:53] What would she have to do? So if that were the case and you weren't convening as a joint committee at a meeting, but she wanted to convey something, her comments, to both of you, she couldn't do that at the same time.

[01:02:12] But nothing precludes her from emailing you individually and then Ms. German individually about a matter or calling each of you individually. It's when you three come together that that would constitute a public meeting that you would be required to have had three days notice prior, have an agenda, or to the extent you have an agenda, make that available to the public at the same time.

[01:02:35] Okay, but let's say we want to do that. Like, we don't want to hide anything. We would be public. So you give three days notice to whom? Like, to whom do you give the agenda? How do you go about doing that? Sure.

[01:02:50] So you would want to let staff know that that's your intent, and then we would post that on board docs, like we did for this agenda for this meeting, and then to the extent there were an agenda, we would post it on board docs at the same time that members of this public body were provided with the agenda.

[01:03:13] And the definition of staff, would that be you? Or is that Ms. Donahue? Who would that be? I mean, the chief of staff's office, yeah. Okay, thank you. Other questions? Dr. Rashid. I know you said it was audio recorded, all the meetings, and you said they're not video recorded.

[01:03:34] That is not the current practice. Okay. And what about people from the public that come to the meetings? Can they video record us on their cell phones? I'm just throwing it out there. I'm just curious. Right. I don't believe there is any prohibition that would bar them from doing so.

[01:03:53] is that correct that's correct madam chair public meetings we have no prohibitions on folks from with their devices recording thank you mr. Allen thank you anything else other questions staff anything else for us thank you staff for your support through this process and my thanks again to all of you for your participation in this joint committee and I I feel good I feel like we're off to an excellent start and I'm really looking forward to working

[01:04:30] together so with that the first meeting of the joint committee on collective bargaining is adjourned and I will see you all on April 15th



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