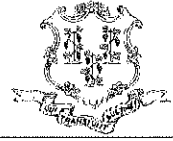


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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Linda Congdon-Marr,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-467

Mae Ellen Lyons, Chairperson, Board of Education,  
Brooklyn Public Schools; Robert Rossi, Sheila Johnson,  
John Donfrancisco, Amy Majek, as Members, Brooklyn  
Board of Education, Brooklyn Public Schools; and Board  
of Education, Brooklyn Public Schools,  
Respondent(s)

April 19, 2016

## Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 11, 2016**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE April 29, 2016**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE April 29, 2016**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE April 29, 2016**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission

W. Paradis  
Acting Clerk of the Commission

Notice to: Linda Congdon-Marr  
Attorney Anne Littlefield  
Attorney Kevin M. Roy

2016-04-19/FIC# 2015-467/Trans/wrbp/VB/TAH

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Linda Congdon-Marr,

Complainant

against

Docket #FIC 2015-467

Mary Ellen Lyons, Chairperson, Board of Education, Brooklyn Public Schools; Robert Rossi, as member, Brooklyn Board of Education, Brooklyn Public Schools; Sheila Johnson, as member, Brooklyn Board of Education, Brooklyn Public Schools; John Donfrancisco, as member, Brooklyn Board of Education, Brooklyn Public Schools; Amy Majek, member, Brooklyn Board of Education, Brooklyn Public Schools; and Board of Education, Brooklyn Public Schools,

Respondents

April 18, 2016

The above-captioned matter was heard as a contested case on November 6, 2015, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. By letter of complaint dated and filed on July 20, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act during the Brooklyn Board of Education (the "Board") special meeting held on July 1, 2015 by: (a) failing to state the reason for the executive session prior to convening in executive session; (b) convening in executive session for an impermissible purpose; (c) failing to provide proper notice to certain teachers who were the subject of such executive session; and (d) voting in executive session. The complainant requests that the Commission impose sanctions against the respondents and declare the July 1, 2015 special meeting null and void.

3. Section 1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.”

4. Section 1-200(6), G.S., provides, in relevant part, that:

‘Executive sessions’ means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting . . .

5. Section 1-225(f), G.S., provides that “[a] public agency may hold an executive session as defined in subsection (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.”

6. Section 1-225(d), G.S., provides in relevant part, that: “[n]otice of each special meeting . . . shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered as such meetings by such public agency.

7. With respect to the allegations described in paragraph 2(a), above, at the hearing in this matter, the respondents contended that for purposes of convening in executive session, they provided an adequate statement of the matters to be discussed.

8. It is found that the Board issued an agenda indicating that it planned to hold a special meeting on July 1, 2015 at 7:00 p.m. It is further found that the agenda stated that the Board planned to meet to address “Executive Session on Personnel Matters related to teacher reassignments for 2015-16 school year” and “Possible action on Personnel Matters related to teacher reassignments for 2015-16 school year.”<sup>1</sup>

9. It is found that the Board convened in public session on July 1, 2015, and then moved the meeting into executive session immediately following comments made by the public during the “public comments” portion of the special meeting. It is further found that prior to convening in executive session, the respondents stated that the reason for the executive session was to discuss “personnel issues” and the “issue of teacher reassignments.”

10. The Commission has determined that “all matters on an agency’s agenda must be sufficiently specific so that the public is fairly apprised of the matters to be considered at the meeting in question.” Sherry Disbury and the Terryville/Plymouth Community News v. Police Commission, Town of Plymouth, Docket #FIC 2004-091 (Sept. 8, 2004); Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Judicial District of New

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<sup>1</sup>The Commission notes that the complainant did not include in her complaint, or articulate at the hearing in this matter, a claim regarding the specificity of the agenda in this matter, and so the Commission declines to make any factual findings with respect to that agenda.

Britain, Docket No. 99-0497917-S (May 3, 2000, *Satter, J.*), reversed on other grounds, 66 Conn. App. 279 (2001) (the purpose of a meeting agenda “is that the public and interested parties be apprised of matters taken up at the meeting in order to properly prepare and be present to express their views” and that “[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing”).

11. While a generic statement is not adequate for purposes of the agenda and fails to adequately apprise the public of the business that will be conducted in executive session, making such a generic statement as to the reason for the executive session prior to convening in executive session is adequate. As this Commission has acknowledged, “§1-225(f), G.S., requires an agency only to state the reason for the executive session within the meaning of §1-200(6), G.S. This requirement is separate from an agency’s obligation under §1-225(d), G.S., to apprise the public of the business to be transacted, a more specific requirement than that of §1-225(f), G.S.” David A. LeBlanc v. Elaine Adams, Chairman, Town Council, Town of Watertown, et al., Docket #FIC 2009-038 (December 16, 2009) (“respondents adequately apprised the public that the reason for its executive session was to discuss the ‘employment, performance, evaluation, health or dismissal of a public officer or employee,’ by stating before the executive session that the reason for the executive session was a personnel matter”).

12. It is found that “personnel issues” and the “issue of teacher reassignments” as the reason for executive session stated by the respondents prior to convening in executive session satisfied the requirements in §1-225(f), G.S. Accordingly, it is concluded that the respondents did not violate such provision as alleged in the complaint.

13. With respect to the complainant’s allegation described in paragraph 2(b), above, that the respondents convened in executive session during its July 1, 2015 special meeting without a permissible purpose, it is found that the respondents’ July 1, 2015 executive session included the discussion of performance, evaluation and certain medical issues associated with specific teacher reassignments, which discussion comes within the purview of §1-200(6)(A), G.S.

14. The discussion described in paragraph 13, above, is unlike discussions of the general reassignment of certain employees or the policy of such reassignments in executive session; see Angelo J. DeLeon and Fairfield Police Union, IBPO Local 530 v. Fairfield Board of Police Commissioners, Docket #FIC 92-272 (April 14, 1993) (discussion of general reassignment of seven police detectives was not a proper purpose for executive session); Kathleen Edgecomb and The Day v. Groton Board of Education, Docket #FIC 88-264 (November 30, 1988) (discussion of the policy of reassignment of principals was not a proper purpose for an executive session).

15. It is found, therefore, that the July 1, 2015 executive session was a proper purpose for an executive session within the meaning of §1-200(6)(A), G.S.

16. Based on the foregoing, it is concluded that the respondents did not violate the provisions of §§1-225(a) and 1-200(6), G.S., as alleged in paragraph 2(a) and (b), above.

17. With respect to the complainant's allegation described in paragraph 2(c), above, that the teachers who were discussed during the executive session were not given notice in accordance with §1-200(6)(A), G.S., it is found that the complainant was not one of those teachers discussed. As this Commission has previously stated, "the right to prior notification and the right to request that an executive session discussion pursuant to §1-200(6)(A), G.S., be conducted as part of an open meeting is the right of the individual who is slated for discussion during executive session." Ellen Andrews v. Director, State of Connecticut, Office of the Healthcare Advocate; and State of Connecticut Office of the Healthcare Advocate, Docket #FIC 2014-791 (August 18, 2015). Consequently, it is concluded that the complainant does not have standing to file a complaint alleging a violation of other individuals' rights under the Freedom of Information Act.<sup>2</sup>

18. With respect to complainant's allegations described in paragraph 2(d), above, concerning an improper vote in executive session, it is found that the superintendent of schools had the sole decision making authority concerning the reassignment of teaching staff, but the respondents did have the authority to overturn that decision. Based on the credible testimony of respondent Chairperson of the Board, Mary Ellen Lyons, it is further found that while the respondents took no formal action during the executive session or after coming out of executive session, they did deliberate and then reach a consensus not to overturn the superintendent's decision with respect to the teacher reassignments during the executive session.<sup>3</sup>

19. Section 1-200(6), G.S., only permits "discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee . . . ." (emphasis added)

20. It is found that the act of reaching a consensus not to overturn the superintendent's decision with respect to the teacher reassignments went beyond the permissible use of executive session, which is limited to discussion and deliberations in accordance with §1-200(6), G.S. See Clarence Jennings v. Board of Selectmen, Town of Easton, Docket #FIC 2004-376 (August 10, 2005)("act of reaching the decision not to refer the personnel matter to the Board of Ethics went beyond the permissible use of executive session"); Norbut v. New Britain Board of Public Works, Docket #FIC 90-169 (April 24, 1991) ("consensus of the respondent was equivalent to a vote"); The Bristol Press v. Board of Education of the City and Town of Bristol, Docket #FIC 78-50 (May 23, 1978)(consensus in executive session violated provisions of Freedom of Information Act).

21. Consequently, it is concluded that the respondents violated §§1-225(a) and 1-200(6), G.S., by reaching that consensus not to override the superintendent's decision concerning reassignments in executive session.

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<sup>2</sup>Because the respondents did not violate any of the complainant's rights under the Freedom of Information Act with respect to providing notice to those reassigned teachers, the Commission declines to make any findings with respect to whether those teachers were properly notified as alleged in paragraph 2(c), above.

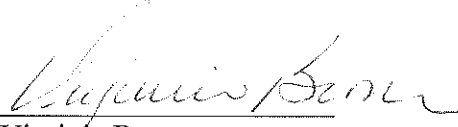
<sup>3</sup>The Commission notes that the respondents' post hearing brief contends that "teacher assignments and transfers are the responsibility of the Superintendent, and the Board does not approve or reject the Superintendent's reassignments decision." However, that contention is contradicted by testimony provided by the respondents' own witness, the Chairperson of the Board.

22. The complainant requests that the Commission impose appropriate sanctions against the respondents and to declare the July 1, 2015 special meeting null and void.

23. In light of the fact that the respondents took no action to override the reassignments at its July 1, 2015 meeting, this Commission in its discretion declines to declare null and void a meeting that was substantially in compliance with the Freedom of Information procedural requirements. With respect to the complainant's request for sanctions, it is found that the violation at issue stems from a misunderstanding of the provisions of the Freedom of Information Act, and that therefore, the request for the imposition of civil penalties is denied.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondents shall strictly comply with the provisions of §§1-225(a) and 1-200(6), G.S.

  
Virginia Brown  
as Hearing Officer