

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Russell Oost-Lievense,

Complainant

against

Docket #FIC 2025-0453

Board of Education, Westport Public
Schools; and Westport Public Schools,

Respondents

May 27, 2026

The above-captioned matter was heard as a contested case on December 5, 2025 and February 13, 2026, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

After the hearing, pursuant to an order of the hearing officer, the complainant submitted an after-filed exhibit, which has been admitted into evidence, without objection from the respondents, and marked as follows: Complainant's Exhibit C-1 (after-filed): Full Transcript of May 12, 2025 Special Meeting (Open Session).

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 complaint received and filed on June 11, 2025, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act during their May 12, 2025 special meeting, by convening in executive session to deliberate on his contract renewal despite his request that all such discussions be conducted in open session pursuant to §1-200(6)(A), G.S.¹

¹ With respect to the complaint filed with the Commission in this matter, it is found such complaint is written as a narrative which broadly details the events of the respondents' May 12, 2025 special meeting. At the hearings and in his post-hearing brief, however, the complainant focused on the 9:23 p.m. executive session described in paragraph 18, below. Accordingly, the Commission's review of the complaint in this matter is limited to the propriety of the respondents' 9:23 p.m. executive session.

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

4. Pursuant to §1-200(6), G.S., a public agency may exclude the public from a meeting for 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 . . .*; and (E) *discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.*

(Emphasis added).

5. Section 1-225(f), G.S., further provides that “[a] public agency may hold an executive session, as defined in subdivision (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.”

**Respondents’ May 12, 2025 Special Meeting Regarding the
Complainant’s Contract Renewal Hearing**

6. It is found that in December 2024, the superintendent for the respondent Board of Education (“BOE”) informed the complainant of his recommendation not to renew the complainant’s employment contract as a head coach for a soccer program within the respondents’ school district.

7. Pursuant to §10-222e, G.S., athletic coaches employed by public schools have the right to appeal a decision to terminate or not renew a coaching contract to the board of education under certain circumstances.

8. It is found that in January 2025, the complainant exercised his right to appeal the superintendent’s decision not to renew his employment contract. It is further found that pursuant to §10-222e, G.S., and the respondents’ policies, the respondents scheduled an evidentiary hearing to consider the complainant’s contract renewal for May 12, 2025.

9. It is found that the complainant’s contract renewal hearing described in paragraph 8, above, was scheduled by the respondents as a special meeting solely for the purpose of “Discussion and Possible Action Regarding Coach’s Request for a Hearing on Non-Renewal Pursuant to Connecticut General Statutes 10-222e.” The notice for the May 12, 2025 meeting also indicated that “[t]he Board may conduct this matter or parts of this matter in executive session. Upon exiting the executive session, the Board may take action.”

10. It is found that on March 31, 2025, the parties² to the complainant's contract renewal hearing convened for a prehearing conference to discuss aspects of the May 12, 2025 special meeting. It is found that during the prehearing conference the attorney acting as the respondents' procedural advisor for the May 12, 2025 hearing (the respondents' "advising counsel"), directed the parties to submit position statements as to the procedure of the hearing, including whether the hearing would be conducted in executive session or public session.

11. It is found that in his position statement, dated April 9, 2025, the complainant, via counsel, requested that, pursuant to §1-200(6)(A), G.S., the respondents discuss his contract renewal during the public session of the May 12, 2025 special meeting.

12. It is found that in their position statement, counsel for the Westport Public School Administration (the "Administration") requested that the entire hearing be held in executive session due to concerns related to the Family Educational Rights and Privacy Act ("FERPA") as well as Board Policy 5125, governing confidentiality of student records.

13. It is found that on May 6, 2025, the respondents' advising counsel issued a ruling regarding the use of executive session for the May 12, 2025 special meeting, in response to the parties' statements described in paragraphs 11 and 12, above. In such ruling the respondents' advising counsel opined that:

Counsel [for the complainant] would be correct [that the respondent BOE was required to discuss his contract renewal in public session] if the only reason for entering executive session was to discuss the coaches'^[3] employment, performance, evaluation or dismissal See, C.G.S. §1-200(6). In this instance, however, there is an additional justification – and a legal obligation – to go into executive session, specifically, to protect the confidentiality of student records under [FERPA]. C.G.S. §1-200(6)(E); C.G.S. §1-210(b)(11). See also, Board Policy 5125.

At issue in these cases is the response of the coaches to a confrontation between a student and an assistant coach.^[4] This issue is outlined in an investigation report and the student involved in the underlying matter addressed the Board in a public session. There is essentially no way to protect the identity of the student in this hearing other than to go into executive session.

² In this context, the term "parties" refers to the complainant and the Westport Public School Administration as opposing participants in the adversarial proceedings described in paragraph 14, below. It is found that the respondent BOE was not a "party" to such adversarial proceedings but instead acted as the adjudicative authority.

³ The respondent BOE was also considering the contract renewal of another coach who is not a complainant in this matter.

⁴ The procedural ruling in paragraph 13, above, was also in connection with the contract renewal hearing of another coach present during the incident with the assistant coach and the student but was who not directly involved with that incident.

While it is appropriate and lawful to enter executive session to protect student confidentiality, it is not anticipated that all the offered testimony will involve the student educational records. As such, all portions of the executive session that address information contained in student educational records shall be held in executive session. All other portions of the hearing will be held in open session unless there are other grounds to go into executive session.

14. It is found that the respondents' May 12, 2025 special meeting was split into two phases: (i) an evidentiary hearing wherein, the parties to the complainant's contract renewal hearing could present evidence and testimony as to the respective positions on the complainant's contract renewal (i.e., the "complainant's contract renewal hearing"); and (ii) the respondents' deliberations on the evidence and testimony received during the complainant's contract renewal hearing (i.e., the "respondents' deliberations").

15. It is found that the respondents' May 12, 2025 special meeting, commenced at 9:26 a.m., with the parties' opening statements and a portion of witness testimony, all of which occurred in open session. It is found, however, that at 10:31 a.m., the respondent BOE voted (4-2) to enter executive session to "discuss FERPA-protected information in connection with Coach's Request for a Hearing on Non-Renewal Pursuant to Connecticut General Statutes 10-222e" (the "10:31 a.m. executive session").

16. It is found that in addition to the members of the respondent BOE, the following individuals attended the 10:31 a.m. executive session described in paragraph 15, above, "at the invitation of the [respondent BOE]": VJ Sarullo, Athletics Director, Staples High School; Thomas Scarice, Superintendent of Schools; Russell Oost-Lievens (i.e., the complainant) (with counsel); counsel for the Administration; and respondents' advising counsel.

17. It is found that the 10:31 a.m. executive session described in paragraph 15, above, adjourned at 12:03 p.m., and the respondents reconvened the complainant's contract renewal hearing in open session at 12:12 p.m.

18. It is found that the respondents stayed in open session for the remainder of the complainant's contract renewal hearing, until 9:23 p.m., at which time the respondent BOE again entered executive session. Whether the respondents voted prior to entering executive session, as required by §1-225(f), G.S., is discussed in paragraphs 76 through 86, below.

19. It is found that the meeting minutes for the respondents' May 12, 2025 special meeting do not state a reason for the respondents' 9:23 p.m. executive session. It is found, however, that just prior to entering that 9:23 p.m. executive session, the respondents' advising counsel stated:

That concludes our hearing. And the board will take all of this information into consideration. They will have a meeting to consider this and come up with a decision as to whether or not there was an arbitrary and capricious decision made here. If they do feel it was arbitrary and capricious, then the individual will be

reinstated. If they don't, then the individual will no longer be employed. So those are the two options. Okay? And that's the way its going to go down.

(Emphasis added).

20. It is found, therefore, that the purpose of the 9:23 p.m. executive session was for the respondents to deliberate on the evidence and testimony received during the complainant's contract renewal hearing, after which time the respondents would render a determination on the complainant's appeal (i.e., to uphold or rescind the superintendent's decision not to renew the complainant's contract).

21. It is found that after their 9:23 p.m. executive session, the respondents reconvened in public session and voted on the following resolution:

Be it resolved, the Board of Education moves to rescind the Superintendent's Decision of Non-Renewal of Coach Russell Oost-Lievense.

22. It is found that the respondents voted on the resolution described in paragraph 21, above, which vote failed (1-5). Accordingly, it is found that the superintendent's decision not to renew the complainant's employment contract remained intact.

23. It is found that the respondents adjourned their May 12, 2025 special meeting, at 11:15 p.m.

24. It is found that on July 2, 2025, the respondent BOE issued their "Final Decision" as to the complainant's non-renewal appeal, "[a]s authorized by the [respondent BOE] by its vote on May 12, 2025."

25. The parties in the instant matter do not dispute that: (i) the May 12, 2025 special meeting was convened for the express purpose of considering the complainant's contract renewal; (ii) such meeting would constitute a "discussion concerning appointment, employment, performance, evaluation, health or dismissal of a public officer or employee" pursuant to §1-200(6)(A), G.S.; and (iii) the complainant requested that such discussion be held during open session.

26. The respondents acknowledge the complainant's right under §1-200(6)(A), G.S., to require discussion pertaining to his appointment, employment, performance, evaluation, health or dismissal (generally "personnel matters") be discussed in public session. Nevertheless, the respondents maintain that they did not violate the FOI Act when they deliberated on the complainant's contract renewal *entirely in executive session* because: (i) *any* discussion in open session would reveal the identity of a student; (ii) the complainant's personnel matter was intrinsically intertwined with an incident involving a student; (iii) the discussion of student information was a legitimate "alternate basis" to deliberate on the complainant's contract renewal entirely in executive session, notwithstanding the complainant's rights under §1-200(6)(A), G.S.; (iv) §1-200(6)(A), G.S., cannot be read as superseding other reasons for entering executive session; and (v) the FOI Act does not require the respondents to "micro divide" their

deliberations to only include those matters that required disclosure of student personally identifiable information (“PII”), as doing so would be impractical. Each contention will be addressed, in turn.

**Respondents’ Submission of In Camera Records
Pertaining to the 9:23 P.M. Executive Session**

27. In support of their contention that their 9:23 p.m. executive session was proper, the respondents, on February 10, 2026, filed a Motion for In Camera Inspection requesting the Hearing Officer review certain “records that were brought into, considered in and/or discussed in the [9:23 p.m.] executive session.”

28. On April 24, 2026, the respondents submitted to the Commission, for in camera inspection, an unredacted copy of an investigation report that allegedly justified their 9:23 p.m. executive session during the May 12, 2025 special meeting (the “investigation report”). The investigation report consists of four pages: IC-2025-0453-1 through IC-2025-0453-4.⁵

29. Upon careful in camera inspection, it is found that the investigation report was created as part of the superintendent’s decision not to renew the complainant’s employment contract. The report generally describes an incident between a student and another coach but largely pertains to the actions of several employees during and after the incident, including the complainant’s response to the incident as a head coach. The investigation report contains a brief description of the incident and identifies two students by name.⁶

30. It is found that the investigation report also refers to matters that pertain solely to the actions and conduct of certain employees (including the complainant) that are virtually unrelated to either of the two students identified earlier therein.

31. It is found that the investigation report, in and of itself, did not serve as the basis for the disputed executive session. Rather, the report summarizes an incident that, in part, led to the superintendent’s decision not to renew the complainant’s employment contract. As found in paragraphs 19 and 20, above, the purpose of the disputed executive session was to deliberate on *all* of the evidence and testimony the respondent BOE received during the complainant’s contract renewal hearing. The investigation report submitted for in camera inspection was one of approximately twenty exhibits considered by the respondent BOE during the complainant’s contract renewal hearing, and in their subsequent deliberations in the disputed executive session.

⁵ At the February 13, 2026 continued hearing in this matter, the hearing officer denied the respondents’ motion described in paragraph 27, above, on the grounds that the respondents’ witness could provide evidence as to the nature of any such records discussed in executive session. Upon further consideration, however, the hearing officer, on April 16, 2026, ordered the respondents to submit for in camera inspection “an unredacted copy of the records identified in their February 10, 2026 Motion for In Camera Inspection.”

⁶ One student was directly involved in the incident, and the other student was a bystander.

I. Whether the disputed 9:23 p.m. executive session was necessary to protect student personally identifiable information.

32. The respondents first assert that they could not deliberate on the complainant's contract renewal in open session because *any* such discussion would reveal student personally identifiable information contained in an education record. Accordingly, the respondents contend that the disputed executive session was permissible under §§1-200(6)(E), 1-210(b)(11), and 1-210(b)(17), G.S.

33. As explained in paragraph 4, above, §1-200(6)(E), G.S., permits a public agency to enter executive session to discuss "any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210."

34. Section 1-210(b), G.S., provides in relevant part that "[n]othing in the [FOI] Act shall be construed to require disclosure of:

...

(11) [n]ames or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed

...

(17) [e]ducation records which are not subject to disclosure under the Family Educational Rights and Privacy Act ["FERPA"], 20 USC 1232g, revised to January 3, 2012;

35. Under FERPA:

No funds shall be made available under any applicable program to any education agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization. . . .

20 USC §1232g(b)(2).

36. "Education Records" are defined at 20 USC §1232g(a)(4)(A) as those records, files, documents and other material which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. Further, Title 34, §99.3 of the Code of Federal Regulations provides that the term "personally identifiable information" (hereinafter "PII") includes, but is not limited to:

(a) The student's name;

- (b) The name of the student's parent or family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) ***Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty;*** or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(Emphasis added).

37. Although the investigation report submitted for in camera inspection was created in the context of a personnel matter (i.e., the decision not to renew the complainant's contract), the respondents argue that the report is an education record under FERPA, because it described an incident involving a student. The respondents allege that *any* discussion on the incident involving the student would reveal student PII, even if the student's name was not used, because "a reasonable person in the school community" would be able to identify the student.

38. For the purposes of this decision, the Commission will assume, *arguendo* (and without deciding), that the investigation report *could* constitute a student's education record.⁷

39. It is well established, however, that an education record may be disclosed if a student's personally identifiable information can be sufficiently protected by removing it from the record, either by redaction or de-identification. See Letter to Wachter, U.S. DEP'T OF EDUC. (December 7, 2017) ("Thus, if it is possible for the District to redact the witness statements or disclose only a portion of the witness statements in a way that would fully depict the student's involvement in the . . . incident, then such redaction or segregation about other students would be required."); see also, U.S. v. Miami University, 294 F.3d 797, 824 (6th Cir. 2002) ("Nothing in FERPA would prevent the Universities from releasing properly redacted records."); see also Easton Area School Dist. v. Miller, 232 A.3d. 716, 730 (2020) ("as is clear from the regulations promulgated pursuant to FERPA, even an education record ordinarily protected from disclosure to all but an eligible student or her parent may be disclosed without consent if the student's

⁷ Because the Commission in the instant matter assumes, *arguendo*, that the investigation report is an education record under FERPA, it need not separately consider the applicability of §1-210(b)(11), G.S., because the protections under FERPA and §1-210(b)(17), G.S., (i.e., student PII in an education record) also encompass the student's name and address.

personally identifiable information has been removed.”); see also, Laps v. Leland Stanford Junior Univ., 2025 WL 3204730 (N.D. Cal.) (November 17, 2025) (“The Court will allow redactions and use of pseudonyms [to protect the identity of the undergraduate mentioned in the report].”; see also, Ragusa v. Malverne Union Free School Dist., 549 F.Supp.2d.288, 293 (E.D.N.Y 2008) (“[The] conclusion [that the requested documents are education records], however, does not end the analysis. . .there is nothing in FERPA that would prohibit the Defendants from releasing education records that had all ‘personally identifiable information’ redacted.”)

40. As noted in paragraph 35, above, FERPA (and by extension §1-210(b)(17), G.S.) applies to the “release of education records (or personally identifiable information contained therein. . . .”) In their February 10, 2026 motion described in paragraph 27, above, the respondents concede that the instant matter does not involve the disclosure of records. The Commission must, therefore, consider whether and to what extent the respondents could discuss the incident in the investigation report without revealing student PII as defined in 34 CFR §99.3.

41. As noted in paragraph 26, above, the respondents contend that any discussion of the incident involving the student would reveal student PII, even if the name of the student was not used. The respondents contend further that the incident described in the investigation report garnered a high degree of notoriety in the school community because several months prior to the May 12, 2025 special meeting, the student at issue read a statement about the incident during the public comment period of a meeting of the respondent BOE (the “student’s public statement”). Specifically, in their brief, the respondents argue that:

[s]imply referring to a student in public by an initial or some other protective identifier would not have sufficed, since any discussion regarding the incident at issue would be linked to the student (especially in light of the notoriety and knowledge of a ‘reasonable person in the community’).

Resp. Brief, p. 29.

42. It is found that the respondent BOE (and its individual members) was aware of the students’ public statement and the degree to which such statement described the incident in the investigation report prior to their May 12, 2025 special meeting. As found in paragraph 13, above, the respondents’ advising counsel specifically structured the complainant’s contract renewal hearing to avoid disclosing any student PII as a result of the student’s public statement.

43. It is found, however, that the transcript of the open session portion of the May 12, 2025 special meeting is replete with detailed references to the incident described in the investigation report and the student involved in that incident. It is found that in the Administration’s opening statement *alone*, included the following details about the incident:

- i. The Administration’s conclusion that the complainant exercised “poor judgment in many respects in handling and failing to report ***a confrontation between an assistant coach and a student athlete that involved anger and vulgarity.***” (Emphasis added).

- ii. The Administration's conclusion that the complainant "did not formally report the incident to the *student's parents*." (Emphasis added).
- iii. That the complainant "*either directed or permitted the assistant coach and the student who were involved in this angry confrontation to go off alone in a golf cart and talk it over*." (Emphasis added).
- iv. The Administration's conclusion that the incident was one in which the assistant coach "*clearly lost his temper and engaged in a confrontation with a student athlete . . . [and] resulted in the assistant coach being placed on administrative leave while his misconduct was under investigation*." (Emphasis added).

44. It is further found that the detail included in the Administration's opening statement set forth in paragraph 43, above, was not unique in the respondents' discussion of the matter in open session. It is found that counsel representing the complainant during the May 12, 2025 special meeting gave a similarly detailed opening statement. The only objection to the complainant's opening statement came from counsel for the Administration for "arguing facts not in evidence."

45. As found in paragraph 15, above, the respondents entered their 10:31 a.m. executive session for the purpose of hearing limited testimony allegedly involving student PII. It is found that such testimony was that of the respondents' athletic director. It is found, however, that a significant portion of the athletic director's testimony was taken during open session, and included a number of details from the investigation report such as when and where the incident occurred, the fact that there was an altercation between a student athlete and a coach, and the fact that the student athlete was subsequently interviewed by the athletic director.

46. It is further found that the respondents only entered executive session at 10:31 a.m. to take limited testimony from the athletic director *concerning his interview with the student*. As found in paragraph 17, above, the respondents reentered open session for the remaining portion of the evidentiary hearing on the complainant's contract renewal at 12:12 p.m. It is found that examination of the athletic director continued in open session, and the respondents did not enter executive session again until the disputed executive session for deliberations, at 9:23 p.m.

47. Moreover, it is found that the respondents permitted a significant degree of detail regarding the incident and the student during the examination of the complainant during the open session of the May 12, 2025 special meeting, including:

- i. The fact that the complainant had been the coach of the student involved in the incident for three years.
- ii. The fact that the complainant "*witnessed an incident between Coach Harry [i.e., the assistant coach] and the student at the soccer retreat[.]*" (Emphasis added).

- iii. The complainant's testimony that the student had used inappropriate language "***which antagonized the coach to react after many comments were made the day prior.***" (Emphasis added).
- iv. The complainant's observation that the incident between the coach and the student was not physical.
- v. The complainant's observation that the student involved in the incident did not seem frightened, but rather "***was laughing and saying further comments to antagonize***" the assistant coach. (Emphasis added).
- vi. The complainant's testimony as to the actions of the parties to the incident including that: (i) the student and the assistant coach were separated; (ii) the complainant told the assistant coach that "it was not appropriate the way he had spoken to the student;" and (iii) the assistant coach sought the complainant's approval to speak with the student.
- vii. The complainant's testimony that the assistant coach knew the student from prior coaching positions and the assistant coach "***was recommended specifically from that player's family. . . .***" (Emphasis added).
- viii. The complainant's testimony that the student "***is very outspoken and usually makes it abundantly clear if there is something he's not happy with. . . .***" (Emphasis added).

48. It is found that, despite the degree of detail to which all parties referred to the student and the incident in the investigation report in open session, little concern, if any, was raised that such details would permit a "reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty."

49. Rather, it is found that the overarching concern for the respondents during the complainant's contract renewal was with respect to the disclosure of student names. For instance:

- i. As found in paragraph 45, above, the only time the respondents went into executive session during the complainant's contract renewal hearing was to hear a portion of testimony directly pertaining to the athletic director's interview with the student involved in the incident.
- ii. A board member noted they may have to enter executive session because they had a question "***about discipline as it pertains to students, and it would require naming one or more by name. . . .***" (Emphasis added). Complainant's Exhibit C-1, p. 82.

- iii. When asked a question by a member of the respondent BOE about consequences for the student's ongoing behavior, the complainant noted only that "[w]e can't say the student's name. . ." and then described, in detail, the remedial measures taken to address the student's behavior. (Emphasis added). Complainant's Exhibit C-1, p. 288.

50. Moreover, with respect to the documentary evidence considered by the respondents, the concern was similarly focused on withholding the student names. For instance, before the 10:31 a.m. executive session the respondents' advising counsel noted that some exhibits would be "confidential" and "[t]he names will be blacked out and you won't be able to see anything of the information that's personally identifiable to the student." (Emphasis added). Complainant's Exhibit C-1, p. 40. In fact, board members were even permitted to reference content in the investigation report when questioning witnesses. See Complainant's Exhibit C-1, p. 292-93 ("And in . . . this [investigation] report it says, under your interview portion, that the coach may have provoked the student by making a comment to him. Do you believe that to be true?")

51. It is found that, even in light of the public interest surrounding the complainant's contract renewal, *and* the student's prior public statement, the respondents determined that the vast majority of the May 12, 2025 special meeting, could be conducted in open session by: (i) not using the student's name; (ii) omitting certain details when discussing the incident; (iii) using limited redactions to versions of exhibits in the "board's record"; and (iv) using executive session for the limited purpose of discussing the student's interview.⁸ It is found that the respondents' argument and testimony that such measures could not be employed to similar effect for their deliberations is not credible.⁹

52. It is found, therefore, that even assuming, *arguendo*, that §§1-210(b)(11) and 1-210(b)(17), G.S., are applicable to the investigation report in the instant matter, the respondents failed to prove that such provisions necessitated that their entire deliberations be conducted in executive session despite the complainant's request under §1-200(6)(A), G.S.

II. Whether the incident in the investigation report involving the student was so intertwined with the complainant's contract renewal as to preclude any deliberation in open session.

53. The respondents next argue that "[i]t would have been impossible to separate discussion/comments from Board members that may have concerned the [c]omplainant in the context for the decision on his appeal of non-renewal from the discussion regarding the student records/information themselves." Such argument is also unavailing.

⁸ Whether the 10:31 a.m. executive session was proper pursuant to the FOI Act is not before the Commission in the instant matter. Nevertheless, the respondents are reminded that all executive sessions *must* comply with the requirements outlined in the FOI Act.

⁹ The Commission has no doubt that the respondents' witness testified truthfully and to the best of his ability as to his recollection of the May 12, 2025 special meeting. Nevertheless, the Commission weighs more heavily Complainant's Exhibit C-1, the full transcript of the open session portion of the May 12, 2025 special meeting, which directly evidences the degree of detail the student and the incident could be discussed in open session.

54. As noted in paragraph 13, above, the May 12, 2025, special meeting was specifically designed in a manner such that “[a]ll portions of the executive session that address information contained in student educational records shall be held in executive session. . . .” It is found that any discussion of the student’s identity was clearly severable from the alleged actions and conduct of the complainant which, as found in paragraphs 42 through 52, above, were discussed at length and in detail during the open session of the May 12, 2025 special meeting.

55. It is found that while the disputed executive session may have allowed the respondents to refer to the student by name or with more particularity than they could in public, the respondents failed to prove that the *identity* of the student was material (or even relevant) to their deliberations or the complainant’s contract renewal more generally. This is confirmed in the respondents’ written “Final Decision,” detailing the respondents’ findings of fact and conclusions of law for their “decision not to renew [the complainant’s] employment as an athletic coach in the Westport School District.” In fact, such final decision clearly states:

Given that [the complainant] admitted in his testimony before the Board that he was ‘not proud’ of his yelling and swearing at players in 2022. . . he can hardly claim a legitimate lack of knowledge that the behavior of his coaching staff during the 2024 Incident [i.e., the incident in the investigation report] was unprofessional and did not serve as an appropriate role model for their players. ***Under these circumstances, the Administration’s decision [not to renew] the contract of Mr. Oost-Lievense as an athletic coach for the Westport Board of Education based on his failure to provide Administration with notice of the inappropriate actions of the coaches during the 2024 incident, or to take any action against the coach or the player directly involved in the incident, cannot be considered by the Board as arbitrary and capricious and, therefore, represent valid grounds for the nonrenewal.***

(Emphasis added). Complainant’s Exhibit F, pp. 9-10. Nothing in the respondents’ final decision suggests that any portion of their reasoning was excluded therefrom to protect student PII.

56. It is also found that even though the incident in the investigation report does pertain to a particular student, that incident was not the *sole* reason for the respondents’ decision not to renew the complainant’s contract. It is further found that where the incident was relevant to their deliberations, the respondents could consider the portions relevant to the complainant’s contract renewal (i.e., the complainant’s response and actions thereto) without identifying the student.¹⁰

57. It is found, therefore, that the respondents failed to prove that their deliberations on the complainant’s contract renewal were so intrinsically intertwined with the student’s identity as to make *any* deliberation on the matter in public session impossible. To the contrary, as found in

¹⁰ For the same reasons as stated in paragraphs 55 and 56, above, the respondents’ argument that the entirety of their deliberations necessitated an executive session because they engaged in “back-and-forth discussion . . . (during which student information was being discussed throughout) . . .” is unavailing.

paragraphs 42 through 52, above, the respondents could have deliberated mostly, *if not entirely*, in open session without revealing student PII.

III. Whether the discussion of student information was a legitimate “alternate basis” to deliberate on the complainant’s contract renewal entirely in executive session, notwithstanding the complainant’s rights under §1-200(6)(A), G.S.

58. The respondents next assert that the FOI Act “does not prohibit a public agency from entering into an executive session for multiple reasons, provided that each (or at least one) reason falls within the permissible purposes set forth in [§1-200(6), G.S.]” Such argument, however, rests on a misreading of the Commission’s decisions in Docket #FIC 2008-041, Dostaler v. Chairperson, Town Council, Town of East Hampton (July 9, 2008) (“Dostaler”) and Docket #FIC 1998-153 Kelly v. Executive Director, Meriden Community Action Agency (September 9, 1998) (“Kelly”).

59. In Dostaler, the Commission considered the propriety of an executive session convened by the Town of East Hampton’s Town Council (“EHTC”) for “[d]iscussion of written legal opinion from Town’s Labor Counsel regarding incoming Town Manager’s contract (anticipated executive session).” Prior to the EHTC entering executive session, the incoming Town Manager requested that any such conversations be held in open session. In response to such request, however, the Town’s labor attorney indicated that “*the purpose of the executive session was not to discuss a personnel matter, but was for the purpose of discussing an opinion of counsel.*” (Emphasis added) Dostaler, ¶ 11.

60. The complainant in Dostaler appealed to the Commission alleging that the EHTC improperly met in executive session to discuss a personnel matter despite the incoming Town Manager’s request that such matter be discussed in public session.

61. The Commission, in Dostaler, found that:

[d]uring the executive session, the members of the respondent Town Council *restricted their discussion to the attorney’s written legal opinion*. However, it is found that *some members made comments regarding, and references to, the St. Clements letter, the prior litigation in which [the incoming Town Manager] had been involved, and [the incoming Town Manager’s] character generally, during the executive session*. However, it is further found that *such comments and references arose out of the discussion of the legal opinion, did not constitute a separate discussion* concerning the appointment, employment, performance, evaluation, health or dismissal of [the incoming Town Manager], and *did not constitute the purpose of the executive session*.

(Emphasis added), ¶ 27.

62. The EHTC in Dostaler expressly disavowed any other purpose for entering their executive session besides the one explicitly stated on their agenda – the discussion of the opinion of the town’s labor counsel. The Commission’s reasoning did not hinge on whether the EHTC

had an “alternate basis” to enter executive session, as the respondents purport. Rather the Commission’s decision clearly rests on the fact that the EHTC’s discussion in that executive session was germane to its stated purpose.

63. It is found that in the instant matter, however, the respondents assert that the discussion of student PII was a *separate* and *independent* basis for entering executive session, *notwithstanding* the complainant’s request that discussion of his personnel matter occur in open session, pursuant to §1-200(6)(A), G.S.

64. Similarly, the respondents misapply the Commission’s holding in Kelly. The issue in Kelly was that the Meriden Community Action Agency (“MCAA”) inadvertently cited the wrong statutory provision when stating their basis for executive session. However, the MCAA explained their reasoning prior to entering executive session (which was reflected in the minutes) and “these reasons, in fact, stated the subject matter of discussion at the executive session.” The Commission’s use of the phrase “another valid legal purpose” was in connection to its finding that the MCAA’s “citation error was harmless.” Nothing in Kelly suggests that a public agency can enter executive session for any reason other than that which was stated.

65. It is found that, unlike in Kelly, the respondents in the instant matter did not simply miscite the reason for entering the disputed executive session. Rather, they sought to utilize §1-200(6)(E), G.S., as a separate and independent justification for their 9:23 p.m. executive session, notwithstanding the complainant’s rights under §1-200(6)(A), G.S.

IV. Whether §1-200(6), G.S., can be interpreted as assigning priority to one of the permissible reasons for entering executive session.

66. The respondents next argue that an individual’s right under §1-200(6)(A), G.S., to require their personnel matters be discussed in open session does not supersede other legitimate reasons for entering executive session provided for under §1-200(6), G.S. Specifically, the respondents argue that construing §1-200(6), G.S. in such a manner would:

require public agencies (and the beneficiaries of these privacy protections, such as students) to lose the ability to enter executive session when they otherwise have a valid reason ***just due to the fact that a matter concerns a public employee*** and thus would render remaining portions of [§1-200(6), G.S.], meaningless.

(Emphasis added). Resp. Brief, p. 5

67. Contrary to the respondents’ claims, §1-200(6)(A), G.S., applies only to “discussion concerning the ***appointment, employment, performance, evaluation, health or dismissal*** of a public officer or employee.” (Emphasis added). Section §1-200(6)(A), G.S., is not implicated simply because a “matter concerns a public employee.” Therefore, a matter may *concern* a public employee without triggering the application of an individual’s rights afforded by §1-200(6)(A), G.S.

68. Dostaler is an apt example of the distinction described in paragraph 67, above. The stated reason for the executive session in Dostaler was to discuss a legal opinion pertaining to the

incoming Town Manager's contract. Such discussion *concerned* the incoming Town Manager, but did not constitute a discussion concerning his appointment, employment, performance, evaluation, health or dismissal. Therefore, §1-200(6)(A), G.S., was not applicable in Dostaler.

69. In the instant matter, however, the specific reason for the May 12, 2025 special meeting (including the 9:23 p.m. executive session) was for the respondents to render a determination on the complainant's contract renewal. The respondents' deliberations on that matter during the 9:23 p.m. executive session did not simply *concern* the complainant, but unambiguously constituted a discussion concerning his appointment, employment, performance, evaluation, health or dismissal. The complainant, the subject of such discussions, could (and did) require that the respondents deliberate in open session pursuant to §1-200(6)(A), G.S.

70. It is found, therefore, that the respondents' statutory construction argument is not relevant as applied to the instant matter.

V. Whether the respondents could deliberate entirely in executive session because entering and exiting executive session would be impractical.

71. As found in paragraphs 42 through 57 above, the respondents' argument that it was impossible for them to deliberate on the complainant's contract renewal in open session without disclosing student PII is unavailing. The respondents, however, also argue that "micro dividing" the portions of their deliberations so that only those portions that required the disclosure of student PII occurred in executive session would be impractical, and is not required by the FOI Act.

72. For the reasons set forth in paragraphs 53 through 57, above, it is found that the respondents significantly overstate the degree to which they were required to discuss the student's identity while deliberating on the complainant's contract renewal.

73. Additionally, such argument is inconsistent with the Supreme Court's decision in Glastonbury Educ. Ass'n v. Freedom of Info. Comm'n, 234 Conn. 704 (1995) ("GEA"). In GEA, the Court concluded that the exclusion of "strategy and negotiations with respect to collective bargaining" in the definition of the word "Meeting" in §1-200(2), G.S., pertained only to actual strategy and negotiation, and not *all* collective bargaining. GEA, at 713. In that decision, the Court opined that:

[i]n [the language now codified in §1-200(6)(B), G.S.], for example, the legislature authorized a public agency to adjourn a meeting into executive session for 'strategy and negotiations with respect to pending claims and litigation' to which the agency itself is a party. ***Pointedly, the legislature did not adopt a more sweeping approach, such as closing the entire meeting, to achieve its purpose of sheltering specified components of the proceedings from public scrutiny.*** Similarly, the legislature has exempted from public disclosure not all documents relating to collective bargaining, but only 'records, reports and statements of strategy and negotiations with respect to collective bargaining.' ***Although the legislature's***

narrowly tailored approach to the FOIA exclusions and exemptions may add a layer of complexity to agency administration, the legislature implicitly has decided that the associated costs are outweighed by the benefits derived from open government.

(Citations omitted; emphasis added) Id., at 713-14

74. Applying GEA to the instant matter, to the extent it was permissible for the respondents to enter executive session during the May 12, 2025 special meeting, they should have done so for the limited purpose and only to the extent necessary to shield student PII from public disclosure. It is found that the respondents failed to prove that the 9:23 p.m. executive session was so limited.

75. Based on all the forgoing, it is concluded that the respondents violated the open meeting provisions of §§ 1-200 and 1-225, G.S., by deliberating on the complainant's contract renewal entirely in the 9:23 p.m. executive session, despite his request that such discussions occur in open session pursuant to §1-200(6)(A), G.S.

**Whether the respondents voted to enter
the 9:23 p.m. executive session during the May 12, 2025 special meeting**

76. As noted in paragraph 5, above, a vote to enter executive session must be "taken at a public meeting." §1-225(f), G.S.

77. It is found that notes taken by a board member during the May 12, 2025 special meeting (i.e., Respondents' Exhibit 5), indicate that the respondents voted (6-0) to enter the 9:23 p.m. executive session. The full transcript of the open session (i.e., Complainant's Exhibit C-1), however, does not reflect that any such vote was taken.

78. The respondents testified that the court stenographer present for most of the hearing had to leave before the end of the hearing, and the respondents relied on a tape recorder from the Administration to produce the remaining portions of the transcript. It is found that, in this regard, the respondents' testimony is consistent with the transcript.

79. It is found, however, that the remaining portion of the transcript appears to be a complete recitation of the events occurring in open session after the court stenographer left. In fact, the transcripts even indicate when the respondent BOE went off the record to recess and when speakers were "unintelligible."

80. It is found that the transcript indicates that immediately after the complainant's closing statement, the respondents' advising counsel indicates that the respondent BOE would enter their 9:23 p.m. executive session; however, no vote was recorded (or even mentioned). It is further found that no break, pause, or gap in the Administration's recording used to transcribe the remainder of the May 12, 2025 special meeting, was noted in the transcript.

81. The respondents explain, in their post-hearing brief, that the use of the Administration's recording "is why the transcript would not reflect the motion to enter into

executive session (*as the School Administration could not have been present when the Board entered into executive session to deliberate*).” (Emphasis added). The respondents’ explanation, however, only further calls into question whether the respondents’ vote to enter the 9:23 p.m. executive session was taken in public, if at all. If the vote to enter executive session was taken in public, as required by §1-225(f), G.S., then the Administration would have been present and such vote would have been captured by their recording.

82. It is found the respondents do not allege that the Administration ended its recording early or otherwise failed to capture the vote in open session. Rather the respondents indicate that the Administration *could not have been present* when the Board entered executive session. Such statement strongly indicates that, if a vote was taken to enter the 9:23 p.m. executive session, it was not done in public.

83. It is further found that no vote to enter the 9:23 p.m. executive session was recorded in the respondents’ meeting minutes. Additionally, while the board member’s notes indicate a vote to enter executive session, it is found that nothing therein indicates that the vote was taken in open session.

84. In light of the findings in paragraphs 76 through 83, the transcript of the open session (i.e., Complainant’s Exhibit C-1) is weighed more heavily than the board member’s notes on the issue of what occurred *at the public meeting*. It is found that the transcript only indicates that the respondents’ advising counsel stated in public session that the respondent BOE would enter executive session to deliberate on the complainant’s contract renewal. Simply indicating that a public agency will enter executive session, however, is insufficient under §1-225(f), G.S. See Docket #FIC 2015-260, Robert Barnes v. Edward Edelson, First Selectman, Town of Southbury et al. (February 24, 2016) (“It is also found that the minutes of the respondents’ . . . special meeting merely indicate that the First Selectman moved to enter executive session and that there were no objections. It is concluded that the respondents violated §1-225(f), G.S., . . . by convening in executive session without an affirmative vote of two-thirds of the members of such body present and voting and stating the reasons for such executive session.”)

85. Accordingly, it is found that the respondents failed to prove that they voted, in public, to enter the 9:23 p.m. executive session, as required by §1-225(f), G.S.

86. It is concluded, therefore, that the respondents violated §1-225(f), G.S., when they entered their 9:23 p.m. executive session without first taking the requisite vote in public session.

Remedy

87. The complainant requests that the Commission declare the May 12, 2025 special meeting, and all actions taken thereat, null and void. The respondents argue that declaring such actions null and void is unwarranted in this matter because: (i) no illegal vote was taken in

executive session; (ii) there is no allegation that the agenda was inadequate; and (iii) the applicability of FERPA to the FOI Act is “still a murky area of the law.”¹¹

88. Section 1-206(b)(2), G.S., provides in relevant part that

[i]n any appeal to the . . . Commission . . . the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the [FOI] Act. ***The commission may declare null and void any action taken at any meeting which a person was denied the right to attend. . . .***

(Emphasis added).

89. As recognized by our Supreme Court in Board of Selectman of Town of Ridgefield v. Freedom of Info. Comm’n, 294 Conn. 438 (2010) (“Ridgefield”), “[i]n deciding whether to nullify the results of [a meeting], the commission historically has looked to the totality of the circumstances, including whether such a remedy would serve the goals of the act or rectify the real effects of the . . . denial. . . .” In that matter, the Court concluded that the Commission acted “well within its discretion” in declaring null and void actions taken at an improper “emergency meeting.” Specifically, the Court noted that the board’s action “not only had a substantial impact on [the defendant] . . . but also presumably would have been a matter of interest to the public. . . .” Id., at. 455.

90. The instant matter involves the complainant’s right under §1-200(6)(A), G.S., to require the respondents to discuss his appointment, employment, performance, evaluation, health or dismissal in open session. It is found that as a result of the respondents’ deliberation on his contract renewal in executive session, the complainant was deprived of that right specifically afforded to him under the FOI Act. Moreover, it is found that the respondents’ consideration of the complainant’s contract renewal was a matter of significant interest to the public.

91. The respondents’ arguments against the Commission declaring the actions taken at their May 12, 2025 special meeting null and void are not persuasive as they fail to recognize that they deprived the complainant of his right under §1-200(6)(A), G.S., to require discussion pertaining to his “appointment, employment, performance, evaluation, health or dismissal” occur during open session. The respondents’ argument regarding ambiguity as to the cross-section of FERPA and the FOI Act’s open meeting requirements are similarly unpersuasive. The administrative record is replete with detailed references to the student and incident described in the investigation report, all occurring in open session, and in any event, the Commission assumed (without deciding) that FERPA was applicable to the instant matter. As set forth in paragraph 20, above, the respondents’ deliberations clearly pertained to the complainant’s contract renewal, the sole reason for the May 12, 2025 special meeting.

¹¹ The respondents also continue to assert that they had a valid reason to enter executive session, however, in light of the Commissions conclusions and findings herein, such reason need not be considered further in regard to the remedy requested.

92. Moreover, the requirement that a public vote be taken to enter executive session is not merely procedural but is a necessary precondition for a public agency to enter executive session under §1-225(f), G.S. By entering the 9:23 p.m. executive session without taking such vote publicly, the respondents improperly denied the public access to that portion of the May 12, 2025 meeting.

93. It is found that the respondents' violations identified in paragraphs 76 and 86, above, are jointly and severally sufficient to declare null and void the respondents' actions with respect to the complainant's employment and/or contract renewal taken at their May 12, 2025 special meeting.

94. It is found that declaring null and void *any* action taken by the respondents at the May 12, 2025 special meeting, with respect to the complainant's employment and/or contract renewal is consistent with "[t]he overarching legislative policy of the [FOI Act to favor] the open conduct of government. . . ." Ridgefield, at 450; see e.g., Docket #FIC 92-266, Paul Carey v. Old Saybrook Zoning Commission (April 28, 1993) ("The actions of the respondent at its July 23, 1992 meeting to terminate the complainant's employment are hereby declared null and void."); see e.g., Docket #FIC 2007-191, Joao Godoy v. Old Mystic Fire District, et al. (November 14, 2007) ("The respondents' actions, concerning any investigation of misconduct and any disciplinary measures imposed against the complainant. . . are hereby declared null and void.") Additionally declaring such actions null and void rectifies the real effects of the denial of the complainant's rights under §1-200(6)(A), G.S., as well as the rights of the public to access meetings of public agencies except under specific and narrow circumstances.

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

1. The respondents' actions, concerning or relating to the complainant's employment and/or the respondents' decision on his contract renewal, at their May 12, 2025 special meeting, are hereby declared null and void.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of May 27, 2026.


Molly Steffes
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

RUSSELL OOST-LIEVENSE, c/o Attorney Daniel M. Young, Wofsey, Rosen, Kweskin & Kuriansky, LLP, 600 Summer Street, 7th Floor, Stamford, CT 06901

BOARD OF EDUCATION, WESTPORT PUBLIC SCHOOLS; AND WESTPORT PUBLIC SCHOOLS, c/o Attorney Mark J. Sommaruga, Pullman & Comley LLC, 90 State House Square, Hartford, CT 06001



Molly Steffes
Acting Clerk of the Commission