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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866) 374-3617 Tel: (860) 566-5682 Fax: (860) 566-6474 • www.ct.gov/foi • email: foi@ct.gov

Patricia Mechare

Complainant(s)

against

Andrea Downs, Chairman, Board of Education, Regional School District 1; Board of Education, Regional School District 1; Electra Tortorella, Chairman, ABC Committee, Regional School District 1; and ABC Committee, Regional School District 1

Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2015-534

April 19, 2016

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, April 27, 2016 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, May 11, 2016.**

Any brief, memorandum of law or request for additional time, as referenced in the April 4, 2016 Transmittal of Proposed Final Decision, should be received by the Commission on or before April 29, 2016.

By Order of the Freedom of Information Commission

W. Paradis,
Acting Clerk of the Commission

Notice to:

Attorney Daniel P. Murphy
Attorney Gary R. Brochu

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Patricia Mechare,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-534

Andrea Downs, Chairman, Board of Education, Regional School District 1; Board of Education, Regional School District 1; Electra Tortorella, Chairman, ABC Committee, Regional School District 1; and ABC Committee, Regional School District 1,

Respondent(s)

April 4, 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, April 27, 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 15, 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 15, 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 15, 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: Attorney Daniel P. Murphy
Attorney Gary R. Brochu

2016-04-04/FIC# 2015-534/Trans/wrbp/TCB//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Patricia Mechare,

Complainant

against

Docket #FIC 2015-534

Andrea Downs, Chairman, Board
of Education, Regional School
District 1; Board of Education,
Regional School District 1; Electra
Tortorella, Chairman, ABC Committee,
Regional School District 1; and
ABC Committee, Regional School
District 1,

Respondents

March 29, 2016

The above-captioned matter was heard as a contested case on November 16, 2015, at which time the complainant and the 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. It is found that the respondents, the Board of Education, Regional School District 1 (hereinafter "the respondent Region One Board") and the respondent All Boards Chairs Committee, Regional School District 1 (hereinafter "the respondent ABC Committee"), held a combined meeting on July 22, 2015. The posted notices and agendas for that combined meeting were printed on a single document. It is found that the respondent Regional School District 1 Board noticed the meeting as a special meeting and that the respondent ABC Committee noticed the meeting as a regular meeting.
3. It is found that, at the July 22, 2015 combined meeting, the respondents jointly discussed the one item of business that appeared on both agendas which item was described as "Anticipated Executive Session for Purpose of Superintendent Evaluation and Contract."

4. By letter dated and filed on August 20, 2015, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by:

- a. failing to indicate on the notice and agenda for the meetings that the meetings would be conducted jointly;
- b. failing to specify on the agenda that action would be taken on any of the agenda items;
- c. failing to fairly or sufficiently apprise the public of the action proposed or the business to be conducted, precluding intelligent preparation for participation;
- d. by adding a non-contractual health insurance and stipend discussion to the agenda of the respondent Regional One Board of Education special meeting;
- e. by adding to the agenda of the respondent ABC Committee's special meeting or, in the alternative, failing to vote to add that discussion to the agenda if the meeting was a regular meeting;
- f. failing to reduce the members' votes to writing or make such votes available to the public within 48 hours;
- g. failing to prepare and post the minutes of the meetings within seven days of the July 22, 2015 meeting;
- h. failing to post the meeting minutes on the website within seven days of the July 22, 2015 meeting;
- i. failing to reference on the agenda the first and second motions taken at the meetings;
- j. failing to formally invite each other into their respective executive sessions in violation of §1-231, G.S.; and
- k. taking votes that were in conflict with each other.

The complainant requested that this Commission declare null and void the meeting, the votes and/or the actions taken by the respondents at the July 22, 2015 combined meeting. The complainant also requested the imposition of a civil penalty against the individually named respondents.

5. With respect to the complainant's allegations regarding the agenda, described in paragraphs 4(a) through 4(f), above, §1-225, G.S., provides in relevant part that:

(c) The agenda of the regular meetings of every public agency . . . shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business. . . Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

(d) Notice of each special meeting of every public agency . . . shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof . . . in the office of the clerk of each municipal member for any multitown district or agency. . . The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency.

6. With respect to the complainant's allegation described in paragraph 4(a), above, it is found that it is apparent from the notice and agenda for the respondents' July 22, 2015 combined meeting that they intended to hold a joint meeting. Even if this was not apparent, it is concluded that there is nothing in the FOI Act that requires that the notice or the agenda specify that the meetings will be held jointly.

7. Consequently, the complainant has not alleged a violation of the FOI Act and therefore, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant in paragraph 4(a), above.

8. With respect to the complainant's allegation described in paragraph 4(b), above, it is concluded that it is inherent in the meeting agenda that the business included therein might be considered *and* acted upon, including by way of a vote, at the meeting.

9. Consequently, it is concluded, based on the facts and circumstances of this case, that the respondents did not violate the FOI Act as alleged by the complainant in paragraph 4(b), above.

10. With respect to the complainant's allegation described in paragraph 4(c), above, contested case Docket #FIC 1990-048; Trenton E. Wright, Jr. v. First Selectman, Town of Windham, is informative. In that case, the Commission found that the phrase "executive session - personnel matters" was too vague to communicate to the public the

business to be transacted. Also, in Durham Middlefield Interlocal Agreement Advisory Board v. FOIC et al., Superior Court, Docket No. CV 96 0080435, Judicial District of Middletown, Memorandum of Decision dated August 12, 1997 (McWeeny, J.), the court concluded that it was reasonable for the Commission to require something more detailed than “Executive Session Re: Possible Litigation” in a special meeting notice. Finally, in Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC et al., Superior Court, Docket No. CV 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279 (2001), the court observed that one purpose of a meeting agenda “is that the public and interested parties be apprised of matters to be 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. It is found that the respondents’ discussions and actions during the July 22, 2015 combined meeting fell within the scope of the agenda item described in paragraph 3, above, and further, that the discussions and actions, including the votes, were consistent with the respondents’ past practice (a practice with which the complainant is familiar) and did not come as a surprise to the public.

12. It is found, therefore, that the respondents’ agenda fairly and sufficiently apprised the public of the business to be conducted at their July 22, 2015 combined meeting and it is concluded that the respondents did not violate the FOI Act as alleged by the complainant in paragraph 4(c), above.

13. With respect to the complainant’s allegation described in paragraphs 4(d) and 4(e), above, it is found that the respondents’ discussion of a non-contractual health insurance and stipend discussion was within the scope of the agenda item “Anticipated Executive Session for Purpose of Superintendent Evaluation and Contract” because the discussion involved the terms of the superintendent’s contract by way of a modification to include an additional benefit.

14. Consequently, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant in paragraphs 4(d) and 4(e), above.

15. With respect to the complainant’s allegations described in paragraphs 4(f), 4(g), and 4(h), above, §1-225(a), G.S., provides in relevant part that:

The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if

available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

16. It is found that the complainant did not seek access to, or a make a request for, the votes taken at the July 22, 2015 meeting within forty-eight hours, or for the minutes within seven days of that meeting. Rather, the complainant sent an email to the respondents on the eighth day after the meeting inquiring about the votes and minutes being posted on the respondents' web site.

17. At the hearing on this matter, counsel for the respondents represented that the votes and minutes were available for public inspection within the appropriate time periods.

18. Furthermore, it is found that the respondents are public agencies of a political subdivision of the state and therefore are not required to post the minutes of their meetings on an Internet web site under §1-225(a), G.S.

19. Consequently, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant in paragraphs 4(f), 4(g), or 4(h), above.


20. With respect to the complainant's allegations described in paragraphs 4(i), 4(j) and 4(k), above, it is found that the complainant has not alleged a violation of the FOI Act.

21. Based on the findings and conclusions above, there is no basis to declare null and void the actions taken by the respondents at the July 22, 2015 meeting.

22. Finally, there is no basis to impose civil penalties in this matter.

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

1. The complaint is hereby dismissed.



Attorney Tracie C. Brown
as Hearing Officer