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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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Denise Gallucci,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-008

Chairman, Governing Board, Great Path  
Academy at Manchester Community College;  
and Governing Board, Great Path Academy at  
Manchester Community College,

Respondent(s)

September 5, 2012

## 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 Thursday, September 27, 2012**. 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 September 14, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE September 14, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE September 14, 2012**, 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: Thomas B. Mooney, Esq.  
Jane D. Comerford, AAG

9/5/12/FIC# 2012-008/Trans/wrbp/VDH/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Denise Gallucci,

Complainant

against

Docket #FIC 2012-008

Chairman, Governing Board, Great Path  
Academy at Manchester Community;  
and Governing Board, Great Path Academy  
at Manchester Community College,

Respondents

August 29, 2012

The above-captioned matter was heard as a contested case on June 5, 2012, 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. By letter dated January 4, 2012 and filed January 5, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by convening an executive session through the use of improper procedures and for improper purposes, and by wrongfully excluding the complainant from said session. The complainant alleged that the violations in this case were willful, and, as a result, requested that the Commission impose a civil penalty against the respondent chairwoman, order the chairwoman to attend training, declare null and void any action taken by the respondents that lead to the rejection of the Capital Region Education Council's ("CREC") proposal to continue as the operator of Great Path Academy ("GPA"), and order that the respondents undertake a new RFP process.
3. Section 1-200(6), G.S., provides, in relevant part, as follows:

“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. . . 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.

4. Section 1-210(b)(24), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of :

Responses to any request for proposal or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file.

5. Section 1-225(a), G.S., provides, in relevant part, as follows:

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. 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. . . .

6. Section 1-225(d), G.S., provides, in relevant part, as follows:

Notice of each special meeting of every public agency . . . shall be . . . 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 Secretary of State for any such public agency of the state . . . . The notice shall specify . . . the business to be transacted.

7. Section 1-225(f), G.S., provides as follows:

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.

8. Section 1-231(a), G.S., provides as follows:

At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

9. It is found that the complainant is the Deputy Executive Director of CREC and also serves as the Superintendent of CREC Schools.

10. It is found that the respondent chairwoman is the President of Manchester Community College.

11. It is found that GPA is a magnet, "middle college high school," located on the campus of Manchester Community College, which operates under the auspices of the Board of Trustees of Community Colleges.

12. It is found that GPA has been managed by CREC since 2004, and, that during such time, all of the teachers and administrative personnel, other than the security officers, at GPA have been CREC employees.

13. It is found that GPA has a Governing Board whose members are superintendents and board of education members from participating school districts—that is, boards of education from other districts who chose to send children to GPA when the school was established. It is found that the Governing Board serves as a vehicle to assist in the planning and operation of GPA. It is further found that the respondent chairwoman is also the chairwoman of the Governing Board.

14. It is found that the complainant is not a member of GPA's Governing Board. In addition, despite the allegation in the complaint to the contrary, it is found that there is no evidence in the record which tends to show that the complainant serves or has served as an ex officio member of the Governing Board. However, it is found that the complainant has been attending the meetings of the Governing Board since 2007, when she assumed her

responsibilities with CREC.

15. It is found that, on or about August 31, 2011, Manchester Community College made a decision to develop and execute a Personal Services Agreement (“PSA”) for the management of GPA beginning in the academic year 2012-13. It is found that it was decided that the award of the PSA to a management company would be achieved through an open and competitive request for proposal (“RFP”) process.

16. It is found that, in the fall of 2011, Manchester Community College issued the RFP. It is found that two proposals were submitted in response to the RFP: one by CREC to continue as the management entity for GPA, and the other by the Hartford Public Schools to become the new management entity for GPA.

17. It is found that, on December 7, 2011, GPA’s Governing Board held a special public meeting. It is found that the agenda for this meeting indicated that the Governing Board planned to hold an executive session. It is found that the agenda items for the executive session discussion were described as follows: 1) Discussion of RFP process and recommendation; 2) GPA By-laws and 3) Personnel.

18. It is found that, on or about December 6, 2011, the complainant spoke with the respondent chairwoman about the agenda items referred to in paragraph 17, above. It is found that the complainant indicated that she was concerned that the “Personnel” item slated for discussion was insufficient to inform the public whether particular individuals would be discussed or whether the Governing Board sought to discuss all of CREC’s employees. It is found that, in response, the respondent chairwoman indicated that she did not anticipate that personnel would be discussed. Rather, it is found that the respondent chairwoman indicated that she believed the focus of the executive session would be RFP process itself. It is found that, subsequent to this conversation, the agenda was not amended.

19. It is found that, subsequent to the public portion of the December 7, 2011 meeting, the Governing Board adjourned the meeting. It is further found that, at this time, the respondent chairwoman asked the CREC representatives, including the complainant, to leave the room. It is found that the CREC representatives complied with the chairwoman’s request. It is found that the Governing Board then convened an executive session to discuss the RFP process. It is found that the Governing Board did not reconvene in an open session before finally adjourning the meeting. It is further found that the minutes for the December 7, 2012 meeting do not state that a vote was taken to move into executive session, nor do they identify the individuals who attended the session.

20. It is found that, shortly after the executive session began, Ms. E. Brad Noel arrived and went into the executive session. It is found Ms. Noel is both a member of the Hartford Board of Education (“BOE”) and a member of the Governing Board.

21. It is further found that, in addition to the Governing Board’s members, the chairwoman invited individuals from Manchester Community College who comprised an

RFP selection committee into the executive session. It is found that these individuals were invited into the executive session as a group, and were permitted to attend the entire session.

22. The complainant contends that, because the focus of the executive session was the RFP process, and because only CREC and the Hartford BOE had submitted bid proposals to become the management entity for GPA, Ms. Noel should have been excluded from the executive session so as not to have provided Hartford with an unfair advantage. The complainant further contends that the RFP process turned out to a sham because, part way through a well-documented process concerning proposal review and the selection, the process was abandoned and the respondent chairwoman independently determined that the Hartford BOE would replace CREC. The complainant contends the Commission should find that the criteria set forth in §1-210(b)(24), G.S., which permits proposals submitted in response to an RFP to be discussed in executive session under the provisions §1-206(E), G.S., was not met in this case.

23. It is concluded that the respondents made many procedural errors in this case. First, it is concluded that by failing to make a motion to move into executive session, accompanied by a public statement about the matters planned for discussion in said session, the respondents violated the provisions of §1-225(f), G.S. Second, by failing to reconvene in a public session before voting to adjourn the meeting, it is concluded that the respondents violated the provisions of §1-225(a), G.S. Finally, by failing to keep a record of the individuals who attended the executive session, it is concluded that the respondents violated the provisions of §1-231(a), G.S.

24. Moreover, in Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Docket No. 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.”

25. While it is found that the respondents did not discuss matters regarding personnel in executive session, it is concluded that the use of a generic agenda item such as “Personnel” is insufficient to apprise the public and interested parties what matters that respondents had planned on discussing in executive session. It is therefore concluded that the respondent technically violated §1-225(c), G.S., by failing to describe fairly and sufficiently the business it planned to discuss during the December 7, 2011 executive session.

26. It is further found that discussion of the respondents’ RFP process and related next steps in such process, as opposed to the bids themselves, is not a permitted topic for

executive session.<sup>1</sup> It is therefore concluded that the respondents violated the provisions of § 1-200(6), G.S., by discussing the RFP process in executive session, when such discussion should have been conducted during the open meeting.

27. With regard to Ms. Noel's attendance at the executive session, it is found that the respondent chairwoman communicated with all of the Governing Board members prior to the December 7, 2011 meeting concerning the possibility of the members volunteering for the RFP selection committee. It is found that, in this communication, the respondent chairwoman indicated that any board member with a conflict of interest should not volunteer for the committee, but rather should consider recusing his or herself from the process. It is further found that, at the start of the December 7, 2011 executive session, the respondent chairwoman specifically raised the issue of whether Ms. Noel should recuse herself from the session. It is found that Ms. Noel determined that, because she was a board member, she was entitled to attend the executive session. It is found that, while the better course of action may have been for Ms. Noel to not remain in executive session, the respondent chairwoman did not have the authority under the FOI Act to remove Ms. Noel from the board's meeting. It therefore concluded that the respondents did not violate the FOI Act by permitting Ms. Noel to attend the executive session.

28. It is found that, while the RFP committee did briefly address the Governing Board during the December 7, 2011 executive session, there was no evidence in the record that would justify inviting the entire RFP committee into the executive session. Moreover, the fact that the RFP process itself, as opposed to the substantive bids, was the main focus of the executive session discussion further supports a finding that it would have been sufficient for one committee member to be invited into the session. Finally, it is found that there was no evidence presented that would justify permitting the RFP committee members to attend the entire executive session. It is therefore concluded that the respondents violated §1-231(a), G.S.

29. Finally, it is found that the RFP process that the respondents envisioned and set forth in writing was not specifically followed. (See Compl. Ex. F). It is found that, while the respondents originally planned that the RFP process would proceed through a series of detailed steps with the Board of Trustees ultimately selecting the management entity, at some point during the process the Board of Regents determined that the selection of the management entity would be made by the President of the Manchester Community College. It is found that, while certain steps in RFP process were curtailed, at the time of the December 7, 2011 meeting the respondent chairwoman had yet to select a management entity. It is therefore found that the complainant's contention that the RFP process was a sham is not supported by the evidence in this case.

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<sup>1</sup> Likewise, it is found that discussion of "GPA By-laws" would have been an improper topic for an executive session discussion. However, based on the testimony, it is found that no discussion concerning the school's by-laws occurred during the December 7, 2011 executive session.

30. With regard to the complainant's request for civil penalties, it is found as follows: the respondents readily admitted at the contested case hearing that they violated many of the procedural aspects of the FOI Act in conducting the December 7, 2011 meeting, including not properly stating the purpose of the executive session at the open meeting and not moving into executive session from the open meeting by a two-thirds vote; not creating a record in the minutes that identifies the attendees of the executive session; and not reconvening in an open meeting before adjourning the December 7, 2012 meeting. The respondents seemed to embrace the opportunity to receive FOI training, not as a punishment, but as an opportunity to learn the law and conduct their meetings appropriately. It is concluded that the respondents are in need of a FOI training session and one is so ordered. However, it is found that no other remedies are merited by the facts in this case.

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

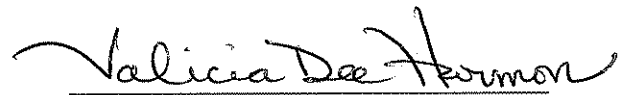
1. Henceforth, the respondents shall strictly comply with the requirements of §1-200(6), G.S., by convening in executive sessions for the limited purposes set forth in the statute.

2. Henceforth, the respondents shall strictly comply with the requirements of §§1-225(a) and (f), G.S., by stating the reason for an executive session on the record at a public meeting, and by conducting all voting in public session, including the vote to convene an executive session and the vote to adjourn a public meeting.

3. Henceforth, the respondents shall strictly comply with the requirements of §1-225(c), G.S., by fairly and sufficiently detailing on their meeting agendas the purpose of any executive session they plan to conduct.

4. Henceforth, the respondents shall strictly comply with the requirements of §1-231(a), G.S., by limiting attendance at executive session to only those individuals whose presence is necessary, and by disclosing in the meeting minutes the names of all persons who attend executive session, except job applicants who attend for the purpose of being interviewed by a public agency.

5. Forthwith, the respondents, or their designee, shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session.

  
Valicia Dee Harmon  
as Hearing Officer