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FREEDOM OF INFORMATION



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Christopher Peak and New Haven Independent
Complainant(s)
against

Notice of Meeting

Docket #FIC 2018-0386

Darnell Goldson, President, Board of Education, New
Haven Public Schools; and Board of Education, New
Haven Public Schools

Respondent(s)

May 6, 2019

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 **2:00 p.m. on Wednesday, May 22, 2019**. 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 May 16, 2019**. 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 May 16, 2019**. **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 May 16, 2019** 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


Wendy R.B. Paradis

Acting Clerk of the Commission

Notice to: Christopher Peak and New Haven Independent
Attorney Kathleen Foster

FIC# 2018-0386/ITRA/PSP//KKR/WRBP/2019-05-6

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Christopher Peak and
New Haven Independent,

Complainants

against

Docket #FIC 2018-0386

Darnell Goldson, President,
Board of Education, New Haven
Public Schools; and Board of
Education, New Haven Public
Schools,

Respondents

May 6, 2019

The above-captioned matter was heard as a contested case on January 24, 2019, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

For purposes of hearing, the above captioned matter was consolidated with Docket # FIC 2018-390; Christopher Peak and New Haven Independent v. Darnell Goldson, President, Board of Education, New Haven Public Schools; and Board of Education, New Haven Public Schools.

Subsequent to the hearing, the complainants submitted, without objection, an after-filed exhibit, which has been marked as Complainants' Exhibit B (after-filed): Notice to Board Regarding Reappointment of Jamell Cotto. In addition, pursuant to an order of the hearing officer, the respondents submitted an after-filed exhibit, which has been marked as Respondents' Exhibit 1 (after-filed): Voter Registration Records and Letter to Hearing Officer, dated April 17, 2019.

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

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.

2. By email received on July 19, 2018, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by holding a

“secret meeting...by email on May 18, 2018, which was not properly noticed and recorded.” The complainants also requested that the Commission “require the board members to publish all email communication[s] between themselves from May 18, 2018 to the hearing date”; order the respondents “to strictly follow the law and educate themselves on the Freedom of Information Act’s requirements”; and impose civil penalties against the respondents.

3. Section 1-200, G.S., states in relevant parts:

(1) ‘Public agency’ or ‘agency’ means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official....

(2) ‘Meeting’ means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power... ‘Meeting’ does not include...a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency....

(3) ‘Caucus’ means (A) a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision, or (B) the members of a multimember public agency, which members constitute a majority of the membership of the agency, or the other members of the agency who constitute a minority of the membership of the agency, who register their intention to be considered a majority caucus or minority caucus, as the case may be, for the purposes of the Freedom of Information Act, provided (i) the registration is made with the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of a political subdivision of the state for any public agency of a political subdivision of the state, or in the office of the clerk of each municipal member of any multitown district or agency, (ii) no member is registered in more than one caucus at any one time, (iii) no such member's registration is rescinded during the member's remaining term of office, and (iv) a member may remain a registered member of the majority caucus or minority caucus

regardless of whether the member changes his or her party affiliation under chapter 143.

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

5. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held.

6. It is found that on May 23, 2018, the complainants made a records request to the respondents for certain records, which are not at issue in this matter. It is found that on July 5, 2018, the respondents provided the complainants with copies of a series of emails in response to such request. Among such emails was an email from the respondent President to members of the respondent Board of Education (“Board”), among others. It is found that such email consisted of a letter that was provided to the Superintendent of New Haven Public Schools concerning a student’s suspension and a school “walkout.” The letter stated, in relevant part:

.... Therefore, based on the extremely mitigating circumstances related to this suspension, including the fact that this student’s school was just closed by the BOE, the administration may have supported the walkout, we are not clear as to whether or not an informal hearing has occurred, and there are still questions as to what actually occurred to cause the suspension, a majority of BOE members have voted by email to hold a formal hearing for this student on Monday, May 21, 2018.

In the interim, we have met and taken a vote by phone and email, and have decided to stay the suspension until such hearing has been held, since there was not an informal hearing held. As a result of this stay, the student shall be allowed to attend her prom this Friday, May 18, 2018....[Emphasis in original].

It is found that such letter was signed by five members of the Board.

7. It is found that the complainants first learned of the alleged secret meeting on July 5,

2018, when they were provided with records in response to their records request, described in paragraph 6, above. It is found that the complainants received actual or constructive notice within the meaning of §1-206(b)(1), G.S., of the alleged secret meeting on July 5, 2018. It is concluded that the Commission has jurisdiction to adjudicate the merits of the complaint in this case.

8. With respect to the merits of the complaint, at the hearing, the respondents acknowledged that a “discussion” occurred and a “consensus” was reached, by email, regarding the student’s suspension. However, the respondents contended that such communications constituted a “caucus” of the Democratic members of the Board, and were therefore excluded from the open meetings provisions of the FOI Act.

9. It is found that the Board is a seven-member board consisting of five Democrats and two unaffiliated members.

10. It is found that the five Board members who discussed and signed the letter to the Superintendent, as described in paragraphs 6 and 8, above, consisted of three Democrats and two unaffiliated members.

11. It is found that the communications described in paragraphs 6 and 8, above, did not constitute a “caucus” within the meaning of §1-200(3), G.S.

12. It is found that the communications described in paragraphs 6 and 8, above, constituted communications by or to a quorum of the Board for the purpose of discussing or acting upon matters over which the Board had supervision, control, jurisdiction or advisory power.

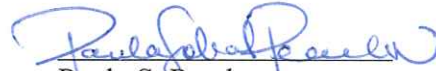
13. It is concluded, therefore, that the communications described in paragraphs 6 and 8, above, constituted a “meeting” within the meaning of §1-200(2), G.S., and that the respondents failed to comply with the requirements of §1-225, G.S.

14. With regard to the various remedies and sanctions requested by the complainants, counsel for the respondents contended that such remedies are unwarranted. Counsel argued that even though a few complaints have been filed against the respondent Board in recent years, only two of those complaints were filed against the respondent President, one of which was withdrawn. Respondents’ counsel also represented that the respondent President has received FOI training, frequently contacts Commission staff with inquiries, and confers with counsel about the FOI open meetings requirements. In addition, there have been updates to the Board’s Bylaws regarding the requirements under the FOI Act.

15. Notwithstanding the conclusion in paragraph 13, above, the Commission declines to order the various remedies and sanctions requested by the complainants.

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 fully comply with the meetings provisions set forth in §§1-200(2) and 1-225, G.S.



Paula S. Pearlman
as Hearing Officer

FIC#2018-0386/HOR/PSP/05062019