IN THE IOWA DISTRICT COURT IN AND FOR APPANOOSE COUNTY

RANDY EVANS, IOWA FREEDOM OF INFORMATION COUNCIL, Plaintiffs, **vs.** **BOARD OF EDUCATION OF THE CENTERVILLE COMMUNITY SCHOOL DISTRICT, KEVIN ROBERT WISKUS, MICHAEL THOMAS, BOB THOMAS, TIMOTHY DANIEL BURGER, KRIS ALLEN SHONDEL, DEREK SCOTT CARTER,** Defendants.	**No. CVEQ 005699** **RULING**

I. BACKGROUND

On May 10, 2023, the Iowa Freedom of Information Council and Randy Evans as Plaintiffs filed a Petition alleging that the Centerville Community School District and the members of the Board of Education violated the Iowa Open Meetings Act under Chapter 21 of the Iowa Code. An Amended Petition was filed on May 11, 2023. For this alleged violation the Plaintiffs sought varied relief as provided in Section 21.6. The Defendants did file an Answer to the Amended Petition denying any such violation and filed affirmative defenses.

Trial was set for January 10, 2024, but continued from that date due to inclement weather. The trial was then set for June 11, 2024, and proceeded to trial on that date. Mr. Randy Evans did appear personally. Mr. Michael A. Giudicessi and Ms. Susan P. Elgin did appear as council for Randy Evans and the Iowa Freedom of Information Council.

The defendants, Kevin Wiskus, Mike Thomas, Bob Thomas, Kris Shondel, Tim Burger, and Derek Carter did appear. Representing them and the Centerville Board of Education for the Centerville School District was Mr. Douglas Phillips.

II. FACTUAL PRESENTATION

Many of the underlying facts in this case were not disputed. The court will only summarize the evidence presented. This is not intended to set forth all the testimony and evidence presented and not intended to put undo emphasis on any particular witness or exhibit admitted.

On February 3, 2023, the Board of Education of the Centerville Community School District (hereinafter Board) held a special board meeting. This meeting was held on a Friday evening. Almost immediately after starting the meeting, the Board voted unanimously to go into closed session. Board Members, Kevin Wiskus, Mike Thomas, Bob Thomas, Kris Shondel, Tim Burger and Derek Carter were present. Kevin Wiskus was the Board President at the time of the meeting. Also present in the closed session was Mark Taylor, Centerville School Superintendent and Board Secretary, Lisa Swarts. The length of the closed session was 30 minutes and 19 seconds. (Exh 8) The agenda for the meeting was admitted as Exhibit 18. The meeting was entitled “Special Board Meeting” with a time of 6:30 p.m. at the Centerville Administrative Office. The notice also sets forth the reason for the meeting as being “Consideration of Employment Resignation Agreement” and sets forth the closed session rational. Beyond that, there is little description.

Board Secretary, Lisa Swarts, testified regarding notice and other consideration. This included the drafting of the agenda with the assistance of school district counsel. This

was done rather late on February 2, 2023. On February 2, 2023, she did post the agenda on the front door of the administrative building and caused it to be posted on the district website at approximately 5:30 p.m. with the IT director being notified at 5:27 p.m. with instructions to post the notice. At approximately 5:51 p.m. the media was notified by email.

She did take the notes and caused the closed meeting to be recorded. She testified as to how the recording was maintained. The minutes of the Board meeting were admitted as Exh. 19. This document sets forth the date and time of the meeting, the members present, the vote to go into closed session, and the reason for the closed session (section 21.5(1)(i)). The vote for the closed session was at 6:32 p.m. and the Board was back in open session at 7:03 p.m. at which time the Board unanimously "approve the resignation and release agreement with Ryan Hodges as presented." The meeting was adjourned at 7:04 p.m.

Ryan Hodges had been employed by the Centerville Community School District as a guidance counselor, head baseball coach, and child abuse investigator. He was put on administrative leave on November 30, 2020, and officially terminated on February 13, 2023. Exhibit 8 (interrogatories) and Exh. 24. (the Board minutes from February 13, 2023) The employment contracts were introduced in Exhibit 15, pages 14-17)

Mr. Mark Taylor was called as a witness by the Plaintiff. Mr. Taylor is currently the superintendent of the Centerville School District. He has held this position since the 2022-2023 school year. His position is on probationary status for three years.

He did attend the meeting of the Centerville School Board on February 3, 2023, that is at issue in this case. He was with them when the Board went into closed session. He testified that the reason for the closed meeting was to discuss the professional

competency of Ryan Hodges. This basis is set forth in Exhibit 18 which sites Iowa Code Section 21.5(1)(i). At the time of the meeting, he was aware that Mr. Hodges had signed a “tentative” agreement of resignation. The document was signed by Mr. Hodges on February 1, 2023. The document was admitted as Plaintiff’s Exhibit 14 and was entitled “RESIGNATION OF EMPLOYMENT AND RELEASE AGREEMENT.” It has the signature of Mr. Hodges dated February 1, 2023, and the signature of Mr. Wiskus, as Board president, signed on February 3, 2023.

Mr. Taylor testified that Exhibit 14 was negotiated by the attorney for Mr. Hodges, James Carney, and the attorney for the school district, Ms. Haindfield. Mr. Taylor was not part of these negotiations between the attorneys. He stated that on February 3, 2023, the Board president had been informed of the resignation agreement before the meeting, but Board members had not seen the agreement. He testified it would have been his recommendation to the Board to accept the resignation agreement. He stated that at the time “we” weren’t at the point of considering termination” with the investigation into the allegations not being completed. He did testify as to his belief in the use of evaluations and how they can be used to fix things. He was asked whether the evaluation of Mr. Hodges was meant to help him improve.

Exhibit 12 was a letter posted on the Centerville School District website addressing two staff members placed on administrative leave. The letter addressed allegations against two employees. Mr. Hodges was not named; however, the reference was in part about his situation. The letter was prefaced with “We understand the rumor mill is swirling...” This was posted on or about December 3, 2022.

He did testify about the Level 1 and Level 2 reports and how that are made and the progression. The Level 2 report was admitted under higher security level as Exhibit 27 with the first two pages not being part of the report but correspondence between Mr. Taylor and a news reporter. The correspondence is part of Exhibit 15. Part of the correspondence initiated by the reporter relates to whether there was progress in the investigation of Mr. Hodges, whether any action had been taken, setting forth knowledge of a report being completed. Mr. Taylor's response as to Mr. Hodges was that the investigation was still pending and the District "had nothing new to report." This is when Mr. Hodges had already signed the resignation agreement. The "nothing new to report" statement was explained in that he had nothing new to report that he was allowed to report. This was on February 1, 2023. On February 2, 2023, the reporter made specific reference to the Level 2 report and that this report was being widely circulated on social media. A copy of the report was given to Mr. Taylor by the reporter.

Mr. Taylor did discuss the closed session with Mr. Wiskus as president of the Board. Mr. Taylor did testify that prior to the closed session members had not seen the draft agreement. They did have the internal complaint, the Level 1 and 2 reports, and other complaints.

This in turn led to the further correspondence in Exhibit 15 between Mr. Carney as counsel for Mr. Hodges and Ms. Haindfield as counsel for the School District. This included discussion as to how the Level 2 report made its way to social media. It was understood from the testimony and exhibits that the Level 2 report was in fact made widely available on social media.

Mr. Taylor did testify that Exhibit 16 was the only advice from district counsel about "permission" from Mr. Hodges to go into closed session on the evening of February 3, 2023. The written permission consisted of an email from Mr. Carney that states, "This is an acknowledgment that Ryan will agree to a closed hearing tomorrow night. We have no objection to a closed hearing. We will, however, agree to a closed session."

He did testify that Ms. Haindfield drafted the agenda for the meeting and this was provided to Ms. Swarts. He was asked if the community knows the rationale for accepting the resignation and he testified, "probably not." He did agree that a Board meeting on a Friday night was rare and that meetings were generally held at 5:30 p.m.

During questioning, Mr. Taylor also addressed how other school employees facing allegations of improper conduct or competency were addressed. The resignation of another teacher was done in open session on a consent agenda with no evaluation.

He did agree that in Exhibit 14 Mr. Hodges did receive fourteen days' pay after the document was signed. He indicated that he was aware of other complaints regarding Mr. Hodges. There is currently a lawsuit filed as a result of the allegations that led to the resignation agreement naming Mr. Hodges as a defendant, along with Mr. Taylor and the School Board, among others. See Exh. 28. As stated in court, Exhibit 28, the lawsuit will lead to a resolution in that court and the allegations in the suit remain allegations for the purposes of this case.

The resignation was again addressed at the meeting on February 13, 2023, "to make sure it was properly approved." This was later addressed by Mr. Carney and Ms. Haindfield.

Exhibit 20 was the transcript of the closed meeting. Regarding Section 21.5(2) and the requirement that during a closed session business that does not relate to the specific reason for the closed session not be discussed, Mr. Taylor did explain statements, perhaps falling outside that prohibition, as "context."

The Board members and now former Board members who were named as defendants were at the closed meeting on February 3, 2023, and participated in the meeting and decision to close the meeting. Each member described their career and career training. Each testified to the oath they took on becoming a Board member. They did discuss in varying detail the specific training they received during their tenure on the Board. Each, to varying degrees, expressed knowledge of the Iowa Open Meetings Act/Public Records Act which was a universal subject in the training they attended.

Kevin Wiskus did testify as Board President. Much of his testimony can be summarized in Exhibit 29, which is his deposition testimony. For background, Mr. Wiskus, was in the military for seventeen years and a plant manager for the Rubbermaid Company for several years. As part of this position, he evaluated the performance of individuals on many occasions and he himself was likewise evaluated. He did agree that no written evaluation was made of Mr. Hodges. He had previously been involved in two termination hearings regarding school employees. He was aware of the Level 2 report prior to the closed meeting. He did believe the two options available to the Board at the time were to accept the resignation agreement or continue the investigation. The agreement did call for Mr. Hodges to continue as an employee until the next session. He was questioned concerning Section 21.5(i). The issues of whether there was an evaluation, whether Mr. Hodges requested, as opposed to gave permission, for a closed session, and the closed

session was "necessary to prevent needless and irreparable injury to that individual's reputation." Plaintiffs did reference Exhibit 6 and the response to item 6 and the responses, "None. That determination was made by Mr. Hodges." He was questioned about specific items discussed during the closed session that could be construed as being outside the parameters of the purpose of the closed session. This was also discussed in part in the portion of Exhibit 29 for trial purposes.

On page 15 of Exhibit 29 he was asked concerning defenses asserted under Section 21.6(3)(a)(2) on the issue of good faith belief and Section 21.6(3)(a)(3) based upon the formal opinion of counsel for the school district given in writing. He did believe the email on February 3, 2023, constituted an advisory opinion. He asked questions regarding the limitations of the Board in evaluating teachers unless it was in the realm of the teacher termination as set forth in Chapter 279. (See Section 279.14, 279.15, and 279.16.) In deposition testimony he stated that the evaluation on February 3, 2023, was an informal evaluation "to determine his professional competency and to see if he could continue to serve in his role." Exh 29, p. 24. He further stated that if the resignation was not accepted, Mr. Hodges would have continued as an employee under suspension until the superintendent took further action. In his experience, the informal evaluations of certified staff members were limited. He did state in deposition testimony that the Board did not issue a statement as to why they accepted the resignation of Mr. Hodges. Exh. 29, p.47.

Bob Thomas did testify as a member of the Board. Mr. Thomas does have experience as a Board member having served for approximately seven years and was a former teacher for twenty-four years in the Centerville School District. He is now retired.

Regarding the specifics of the February 3 meeting, he testified that he had not seen Exhibit 17, which was the meeting minutes. Regarding the closing of the meeting and any questions he had, he stated, “No, that means I was following the lawyer that we hired.” He believed that information from the lawyer conveyed that it was alright to have a closed meeting and this was “relayed at the meeting.” It was Mr. Taylor who had the document from the lawyer.

He testified that when teaching his performance or competence was assessed by the principal. The school board never assessed his performance or competence. Regarding the vote to close the meeting, he stated he never asked any questions about whether it should be closed. He did not ask any questions as to why there was “needless and irreparable harm unless there would be a closed session.” He was asked if he was aware that the meeting was to approve the Resignation of Employment and Release Agreement and he stated, “yes.” He did recall three times going into closed session for three property matters, evaluation of the superintendent, and a termination hearing of a coach. When asked whether there was an evaluation of Ryan Hodges by any of the Board members on February 3, 3023, he stated, “No, That’s not our job.”

On cross-examination he testified that a public discussion of allegations of a school employee accused of grooming a student would cause needless, irreparable injury to that person’s reputation.

He did discuss his recollection of the closed meeting and how the information provided assisted his later decision.

Mike Thomas testified as a Board member and is in his second term. As a Board member he had never completed an evaluation for a coach or guidance counselor. He

was present at the February 3, 2023, meeting and testified that he understood the purpose of the meeting was to, “consider a resignation” and he did vote to close the meeting. He testified that the meeting was to, “consider his resignation, not approve it.” He testified to the different options the Board had at the meeting. He was aware that Mr. Hodges had already signed the agreement before the meeting. When asked the question whether the purpose of the closed meeting was to “evaluate Mr. Hodge’s competence so that you could make an informed decision on whether to accept the resignation or agreement?” he responded that, “It was not an evaluation. It was more of a hearing. We listened to the evidence as the superintendent presented.” He did agree, however, to the question that the information presented was considered in determining the competence of Mr. Hodges to determine whether the resignation agreement was appropriate.

Kris Shondel did testify as a Board member. He served from 2019 to 2023 and did not run in the last election. He did vote to close the session on February 3, 2023, and participated in the closed session. He did understand that a ground to be in a closed session included evaluating the performance of an employee of the district. He did state that during his tenure he did not conduct any evaluations. He testified that during the meeting nothing was put into writing or given to Mr. Hodges. He did not recall reviewing Exhibit 14, which was the Resignation of Employment and Release Agreement on February 3. He stated that he had not seen Exhibit 15 before, which was the email correspondence between the school district attorney and the attorney for Mr. Hodges. There were additional messages between the superintendent and a newspaper report.

He did agree that discussing allegations against a school counselor regarding grooming a high school student would result in irreparable harm to his reputation. He did

believe that the information during the closed session was informative for making the decision ultimately made. Prior to the closed meeting he was not aware of the grooming allegations.

Timothy Burger did testify that he is a Board member and did participate in the February 3, 2023, meeting, including the closed session. At the meeting he indicated that he understood that there was confirmation from the Board attorney that a closed meeting was "okay." He did state that he did not go into the meeting "knowing that we were going to approve it, but to definitely evaluate it and learn more about the situation, because I had tried to ignore stuff that was going on in the community so I could stay unbiased." He agreed that the Board decision that night was whether Mr. Hodges would remain on administrative leave with pay or whether the Board was going to vote to accept the agreement. Prior to the meeting he had not seen the Level 1 report, the Level 2 report, the resignation agreement, or any complaint filed by the alleged victim. He felt the information provided at the closed session made him comfortable in accepting the resignation agreement.

Mr. Evans did testify as a Plaintiff in this case. He did go over his position with the Iowa Freedom of Information Council and his experience in journalism. He took the position that the public "was deprived of the information it was entitled to" within the closed meeting on February 3, 2023. He referred to the resignation of Mr. Hodges in terms of a voluntary resignation and analogized it in terms of a resignation in lieu of termination which implicated section 22.7(11.a)(5). The basis and rationale for the decision was not provided to the public. The concept of "passing the trash" was discussed where a board might

accept a resignation to remove a person who may be involved in wrongdoing to avoid a termination proceeding.

Mr. Carney did testify that he was the attorney for Mr. Hodges in the months before the February 3, 2023, hearing. He did state that following the allegations being made public, radio, newspapers, and television were approaching his client, and this was distressing to his client. He stated a desire to “nip it in the bud” in reference to lessening the inquiries by resigning. He states that “from our perspective, the sooner the better.” When asked if Mr. Hodges wanted a closed session, he stated “yes” and later stated there was “no question in my mind” about that desire. He was concerned that if there was an open session he did not know what questions would be asked or who would show up. He did discuss the release of the Level 2 report and his ideas about how it got released. This was also discussed in Exhibit 15.

When asked why they did not simply wait until the next scheduled meeting on February 13, 2023, he stated “We wanted this done as soon as possible.”

He then stated that the events “were a forced termination of some kind” and that he had little doubt the school would terminate Mr. Hodges’s unless he resigned.

Ms. Haindfield did testify as attorney for the school board. She did testify to considerable knowledge regarding her experience in employment law. She testified that there was considerable communication between her and Mr. Carney. She recalled that the resignation option came up as a result of a suggestion by Mr. Carney. She stated that the resignation is only an offer and this is subject to Board approval. She stated her concerns about compliance with Chapter 279 and the requirement that Mr. Hodges be provided with his due process rights as a matter of fairness and to comply with Iowa law.

In reference to Exhibit 15, she had no question in her mind that a closed session was requested by Mr. Carney on behalf of his client. She believed an evaluation of the information had to be made by the Board in order to accept the resignation agreement as this should not be done without some information.

She indicated that the needless harm to reputation issue was discussed "numerous times" with Mr. Carney, who expressed that concern. She discussed the elaborate process used to terminate a teacher and her belief the school had not gotten to the point of having just cause to terminate Mr. Hodges. She did discuss the issue of the level of formality of an opinion and stated it depended on the facts and circumstances. She stated her opinion was in Exhibit 16. She was asked why the Board did not simply wait until the February 13, 2023, meeting to address this issue, and she referred to obtaining the knowledge that the Level 2 report had been released to the public. She indicated that action was "urgent." She stated that in 25 years this was the first time a Level 2 report had been publicized in the paper.

III. LEGAL PRINCIPALS

Section 21 of the Iowa Code is prefaced as the Iowa Open Meetings Act referred to as IOMA. The law regarding this chapter has already been extensively addressed in prior filings.

Section 21.1 states:

> "This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness."

Section 21.6(2) provides that "Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter."

Section 21.6(3) provides that the court does need to find by a preponderance of the evidence an open meetings violation and sets forth penalties or sanctions if a violation is established as well as potential defenses by an individual board member in the event such a violation is established.

In Section 21.6(4) it is set forth that "Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding under this section."

Section 279.14 is entitled "Evaluation criteria and procedures" and states in part the following: "The board shall establish evaluation criteria and evaluation procedures."

The undisputed basis for the closed meeting at issue was Section 21.5(i) which states that a basis for a closed meeting is, "To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session."

Section 21.4 sets forth the requirements of notice for an official meeting. This includes that the notice be given "in a manner reasonably calculated to apprise the public of that information." Reasonable notice is then defined and the 24-hour notice "prior to the commencement" of the meeting is set forth. The meeting shall be held "at a time reasonably convenient to the public."

When procedures are imposed on county governmental bodies, the standard is substantial rather than absolute compliance with the statutory requirements. Iowa Code §§ 331.301(1), (5). The issue of substantial compliance, as opposed to absolute compliance, was found to be the standard in the determination of compliance with the requirements of the *IMOA. KCOB/KLVN, Inc. v. Jasper County Bd. Of Sup'rs* 473 N.W. 2d 171 (Iowa 1991).

Section 21.5(2) states that, "The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session."

The cited case *Hall v. Broadlawns Medical Center*, 811 N.W. 2d 478 (Iowa 2012) stated, "The purpose of the closed meeting under Section 21.5(*i*) is to "*evaluate* the professional competency" of an individual. Nothing in the internal audit "evaluates" Hall's performance for the benefit of the governmental body. Under Hall's argument, a myriad of documents in a public agency would no longer be public documents because they "relate" to some employee's performance and might at some unspecified time in the future be considered in a closed meeting."

In the context of attorney disciplinary decisions, "professional competence" refers to the person having "the requisite legal knowledge and skill to handle the case." *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Thomas,* 794 N.W.2d 290, 293 n. 2 (Iowa

2011). "Professional competence" can be taken to mean a person having sufficient knowledge and skill to do their job.

The Plaintiffs also asked the Court to review Section 284.2(5) and 284.2(8) of the Iowa Code which define "Evaluator" and "Performance Review" in the context of teacher performance. The Plaintiffs also asked the Court to consider *Barrett v. Lode,* 603 N.W. 2d 766 (Iowa 1999), which was an appeal from a summary judgment granted in favor of the school board in an open meetings case. The summary judgment was reversed in part and affirmed in part. The superintendent was dismissed from the case while the summary judgment in favor of the school board was reversed.

IV. ANALYSIS

In many open meetings cases the issue arises as to whether there was a meeting as contemplated in Chapter 21. In this case there was no dispute that there was a meeting on February 3, 2023. There was no dispute that this meeting, with open and closed portions − was by a governmental entity, namely, the Centerville Community School District School Board. The vote of the Board to go into close session was unanimous.

As was clear to anyone, the circumstances that led to this meeting were serious. Allegations of a teacher having inappropriate interactions with a student, in any school system, is something that merits heightened and quick action to resolve the allegation in a manner that is fair to whoever is making the accusations and to the teacher or staff member. The decision in this case is unrelated to the truth or accuracy of the allegations. That is for another forum or court. It does provide a backdrop to the issues that are before the court which are relatively narrow.

The Plaintiff asserts a number of acts by the Defendants that would constitute a violation of the IOMA. The court will address them with some of the assertions overlapping.

NOTICE—21.4

The Supreme Court of Iowa in 2013 addressed, in part, the issue of notice of a close meeting. *City of Postville v. Upper Explorerland Regional Planning Com'n*, 834 N.W. 2d 1 (Iowa 2013). This discussion was in the context of a summary judgment appeal. In this case, the board secretary testified that the following was done within 24 hours of the meeting on February 3, 2023: 1) the agenda was made; 2) the agenda was posted on the front door of the administrative building; 3) notice was posted on the district website; and 4) she testified the media was emailed the agenda.

In this case, these acts were all done within 24 hours of the meeting—barely—but still within 24 hours. The notice given did provide the public with the time, date, and place of the meeting and the agenda as set forth in Exhibit 18. It could be inferred from the evidence that this was the usual place for school board meetings. The notice was placed on the front door of the building and the court assumes that this can be viewed by the public and would be "prominent" in the context of a physical posting. The witness testified that the news media was notified, and this was done by email. While the specifics of what was the "news media" was not specifically discussed, it was clear that given the rather intense coverage of this story, "news media" was meant to be taken in the plural and was inclusive. In addition, the agenda with the time, date, place, and purpose was posted on the district website. Even as compared to a few years ago, a website posting has the ability to reach far more people than posting a notice on a door.

Taken as a whole, the court does conclude that the notice of the meeting did substantially comply with Section 21.4(1) as each point in the statute was complied with in terms of the timing, date, and location. While noting that this "taking it to the edge" timing of the notice would raise some questions, it does comply with the statute.

While not brought up as a specific issue during the trial, the description of what was to be taken up at the meeting in the agenda was rather broad in that it states, "Consideration of Employment Resignation Agreement." The agenda issue was discussed again in *Barret v. Lode* where the agenda item description was found not to reasonably inform the public of the purpose of the discussion. In this case the notice sets forth that there would be a closed meeting and the legal basis for closing the meeting. The notice was going to be a discussion of an employee resignation agreement without reference to any particular employee or factual situation.

The Centerville School District has many employees, and this description did not narrow it down to a particular circumstance or person, leaving it uncertain as to who it applied to. A Minnesota statute, unlike Iowa, appears to require that the "public body shall identify the individual to be evaluated," before going into closed session. *MN ST, Section 13D.05.Sub 3*

The court did review *KCOB/KLVN, Inc. v. Jasper County Bd. of Supervisors,* 473 N.W.2d 171 (Iowa 1991) which discussed issues surrounding notice. In the *KCOB/KLVN* case, the Court did state that, "the issue to be resolved is not whether the notice given by the governmental body could have been improved, but whether the notice sufficiently apprised the public and gave full opportunity for public knowledge and participation." The statute and case law only refer to the 24-hour notice requirement absent special

circumstances. The notice in this case was just within the 24-hour requirement and checked the basic requirement boxes of the statute. While having a meeting with minimum notice on a Friday night is far from ideal to "reasonably apprise the public," the evidence, by itself, would not provide a basis to find that the notice requirements under Section 21.4 were violated.

COMPLIANCE WITH SECTION 21.5(i)

The basis for the closed meeting asserted by the Defendants was Section 21.5(i) as set forth above. The section can be broken down into its parts applicable to this case. First, "To evaluate the professional competency of an individual," second, "performance or discharge is being considered," third, "when necessary to prevent needless and irreparable injury to that individual's reputation," and fourth "that individual requests a closed session."

(a) THAT INDIVIDUAL REQUESTS A CLOSED SESSION

The issue of whether the person, Mr. Hodges, requested a closed session was an issue brought up. From email exchange in Exhibit 15 the specific words used left an opening as to whether Mr. Hodges requested the closed session or simply acquiesced or did not object to a closed session. The words "Ryan will agree" and "We have no objection" and "however, we will agree to a closed session" leave some room to debate this issue. The statute is clear that Mr. Hodges would have to be the one requesting the closed session. The words used in Exhibit 15 could be taken as a request given all the circumstances.

Mr. Carney represented Mr. Hodges during this time. Clearly, he was in close contact with Mr. Hodges. His testimony was "yes" when asked if Mr. Hodges wanted a

closed session. He stated “no question in my mind” when asked if Mr. Hodges wanted a closed session. He testified “we requested it” when asked again about the position of Mr. Hodges. He did acknowledge that the word “request” was ever put in writing in the email exchanges.

Mr. Carney was legal counsel for Mr. Hodges. Mr. Carney testified firmly that from his representation of Mr. Hodges, that Mr. Hodges wanted the closed session or did not want an open session on the issue of the termination agreement. In addition, Mr. Carney testified to circumstances, including Mr. Hodges being approached by the press, that would provide a basis for such a request. Mr. Hodges did not testify, and there was no evidence presented that he felt Mr. Carney misrepresented this position. The later testimony of Ms. Haindfield would also add confirmation to the testimony of Mr. Carney.

The evidence does show that while the term “request” or “requested” was not used, Mr. Hodges clearly wanted, desired, and hoped for a closed session, which he conveyed to his attorney, who conveyed it to the counsel for the school who conveyed it to the Board. Given all of these circumstances, the court does find that Mr. Hodges did request the closed session and the Board acted appropriately in accepting the representation made as such a request.

(b) WHEN NECESSARY TO PREVENT NEEDLESS AND IRREPAIRABLE INJURY TO THAT PERSON’S REPUTATION

The term “reputation” broadly means the general belief or opinion that other people have of a particular person. Discussions of reputation often come up in criminal cases or libel cases. While neither is at issue in this case, the discussions in the cases are useful to the issue presented. Mr. Hodges was a counselor in the school, was the abuse investigator and was the baseball coach. As with any teacher, guidance counselor, and/or

coach, he or she encounters a great many individuals, whether they be students, parents, their friends and relatives, and other employees of the school district. Mr. Carney did briefly speak to Mr. Hodges's accomplishments. Mr. Hodges was given positions of responsibility within the school district. He would have friends and relatives in the area, professional acquaintances, and social interactions with various people.

While not an evidentiary issue, the prerequisites for admitting reputation evidence have been discussed in many different cases. See *State v. Hobbs*, 172 N.W. 2d 268 (Iowa 1969) citing *Dean Mason Ladd, Techniques and Theory of Character Testimony*, supra 24 Iowa L.Rev. 518-519. As pointed out before, and will be pointed out again, the truth or falsity of the allegations are not at issue in this case. Also, as pointed out before, the allegations are serious, and allegations of this type have a tendency to provoke strong feelings and are not soon forgotten.

Members of the Board testified they believed that discussion of any aspect of the allegations which would flow from consideration of the resignation agreement would adversely affect the reputation of Mr. Hodges. *See Hayes v. Smith, 832 P. 2d 1022 (Colo App 1991) citing Wertz v. Lawrence, 179 P. 813 (1919) (*discussing injury to teachers' reputations). It was reasonable to assume this. It was reasonable to assume that this this reputational damage is of the type that follows a person over time and would be significant.

The court dispenses with the argument that the information of misconduct was already out in the public through rumor, news reports, and the Level 2 report being disseminated and therefore the reputational argument was moot. The Level 2 report is not definitive on what events occurred. "The cat was already out of the bag" argument is

dismissed by the court. The testimony of Ms. Haindfield and certain Board members emphasized the need for impartiality and that due process be given.

While some people in the community may have already made up their mind on these issues, the Board had a reasonable belief that the closed meeting was necessary to prevent needless and irreparable injury to the reputation of Mr. Hodges on the date of February 3, 2023, when the decision was made.

However, this is dependent upon a discussion of the allegations of improper conduct being relevant to the stated purpose of the meeting, which was Consideration of Employment Resignation Agreement and an evaluation of the professional competency of Ryan Hodges. (Exh. 18) Consideration of a resignation agreement does not necessarily require discussion of matters that would involve reputation as the agreement does not discuss the allegations.

(c, d) TO EVALUATE THE PROFESSIONAL COMPETENCY OF AN INDIVIDUAL WHOSE PERFORMANCE OR DISCHARGE IS BEING CONSIDERED

The Plaintiffs' argument was that these requirements were bypassed by the Board. Specifically, that the stated reason for going into closed session and the real reason for going into closed session diverged. If a governmental body asserts that a closed session is necessary to evaluate professional competency, then that is what they must do. This section is not intended to provide a means to circumvent the intent of the statute by giving lip service to it.

This is implied in Section 21.5(2) requiring that the specific exemption for the closed session be announced and that the governmental body not discuss "any business during the closed session which does not directly relate to the specific reason announced as a justification for the closed session." If it were otherwise, discussions that fit within the

exemption could be mixed with those that were not, diluting the purpose of the statute. In *Barrett v. Lode* the court posed the issue as whether the discussion was "so inextricably linked with the proposed evaluation" *Id.* at 770.

Request No. 3 of Exhibit 4 was a request for admission and response. The request stated, "The Board does not conduct individual performance evaluations of contract employees such as Ryan Hodges or review supervisor evaluations in the employee's nonrenewal proceeding under Iowa Code Chapter 279." The Response is a partial admission: "Request No. 3 is admitted to the extent it refers to formal evaluations conducted pursuant to Chapter 279. However, the Board does discuss performance and behavior issues when they arise."

Exhibit 29, page 23, Board member Wiskus did discuss the use of formal and informal evaluations and when they are used. He did state on page 24 he was asked if the February 23, 2023, meeting was to evaluate the professional competency of Mr. Hodges to see if he could continue in his role? The response was, "Yes, that's in context of considering his resignation."

From this point several questions were either brought up or inferred to during the trial in this case:

A) Was the purpose of the closed meeting to evaluate the professional competency of Mr. Hodges and did the Board in fact do so;
B) Was any business during the closed session discussed that did not directly relate to the specific reason announced as a justification for the closed session;
C) If the stated purpose of the meeting was "Consideration of Employment Resignation Agreement" why could this not be done in an open meeting on February 3 or at the next regular board meeting?

Exhibit 20 was the minutes of the closed session that were admitted at a higher security level. In order for the discussion to comply with section 21.5(i) the Board had to evaluate the professional competency of Ryan Hodges and that all discussion had to

directly relate to an evaluation of his professional competence. The Supreme Court indirectly addressed the "professional competency" argument and its limits in *Hall v. Broadlawns Medical Center,* indicating a concern over creation of a "virtually limitless exception to our public records law as the specific exemptions contained in the freedom of information statutes are to be construed narrowly." Id at 485, 487.

The evaluation of professional competency was referred to as informal. If formal, the evaluation would have had to follow the criteria and procedures established under Section 279.14. Regardless, an evaluation of professional competency must, at least generally, follow the definition of the words used. Using the explanation from above, an evaluation of professional competency in this case would be a determination of whether Mr. Hodges had the requisite knowledge and skill to effectively teach and perform his other duties under the terms of his contract. This would involve a broad examination of Mr. Hodge's qualifications and performance over time, whether one calls it formal or informal. The statute at issue does not lessen the standards if it is called "informal."

In reading the minutes of the meeting several times, it is difficult to find any consistent, or meaningful, discussion evaluating the professional competency of Mr. Hodges. Without detail, the discussion in general terms centered around the terms of the resignation agreement, avoidance of lawsuits, the leak of the Level 2 report, and how to handle fallout from the resignation that was expected.

From the words used, it was obvious that Mr. Hodge's would not be retained. Mr. Carney clearly pointed that out in his testimony. The initial discussion in the closed meeting clearly did not reference an allegation, but a belief that an improper act had occurred.

It is insufficient for the discussion in some way to relate to the professional competency of Mr. Hodges. The closed meeting had to center around the stated reason for the closed meeting. The discussion in the closed session did not directly relate to the stated reason for the closed session, delving into subjects clearly beyond the stated justification. Reference to "context" as a reason for straying from the stated reason doesn't suffice when the "context" becomes the bulk of the discussion.

Two days prior to the closed meeting, Mr. Hodges had signed the resignation agreement. There was not going to be a discussion about whether to retain Mr. Hodges and any reasons to do so which would typically be part of an evaluation. The closed meeting was superfluous in that whether there was a closed meeting or not, the result was going to be the same.

For these reasons, the court does find that the requirements of the open meetings statute were not met, and this was shown by a preponderance of the evidence.

ENFORCEMENT

Section 21.6(a) states that upon a finding of a violation the following should be done:

> a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a member of a governmental body knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars.

However, the following exceptions to this fine imposition were provided:

> (1) Voted against the closed session.
>
> (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.

> (3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing.

In assessing this issue, the court did review *Olinger v. Smith*, 889 N.W. 2d 775 (2016). From the testimony presented, the court cannot find, by any measure, there was any bad faith on the part of the Board. On the contrary, they were put in a difficult situation dealing with a difficult issue. All the Board members voted to close the meeting, so exception (1) does not apply. Exception (2) is the "facts which, if true" would indicate compliance. In this case the Board reasonably believed that the resignation agreement, and perhaps the Level 2 report, substituted for an evaluation of professional competency. Discussion of topics beyond the justification of the meeting was done under the assumption those facts or beliefs were related to the actual reason for the closed meeting.

The court considers exception (3). Counsel did give a written opinion to the Board which they relied upon. The court does not find that the brevity of the opinion does not qualify as a formal opinion in writing. The opinion was the result of weeks of dealing with the problem presented to the school district. It was the culmination of those weeks and hours of work. The written advice was not "off the cuff" or made without considerable thought. It was the culmination of work going back at least to December. That opinion was relayed to the Board during the meeting. As such, the court does consider that the Board relied upon the advice of counsel. Counsel was not present to direct the discussion at the meeting.

The court does find that each Board member will not be assessed any damages under Section 21.6(3)(a). For the same reasons the court will not entertain any action

under Section 21.6(3)(d) or Section 21.6(3)(e). In doing so the court does specifically consider that ignorance of the requirements of this chapter is not a defense. The members simply made a good-faith decision based upon what was put in front of them on short notice when confronted with a troubling situation.

ATTORNEY FEES AND COSTS

The court is required to assess "costs and reasonable attorney fees" for the trial in this case under Section 21.6(3)(b). The Plaintiffs shall submit their claim for attorney fees within 15 days to be assessed as provided by law. Any objection to the amount requested should be made by the Defendants within ten days of filing by the Plaintiffs.

The case will be set for filed review on October 21, 2024.

IT IS SO ORDERED.

State of Iowa Courts

Case Number	**Case Title**
CVEQ005699	IFOIC ET AL V. BOARD OF EDUCATION OF CSD ET AL
Type:	OTHER ORDER

So Ordered

Mark Kruse, District Court Judge,
Eighth Judicial District of Iowa

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