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FREEDOM OF INFORMATION
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Juan Arriola; Diane Gagnon; and John Russell
Complainant(s)

against

Chair, Board of Education, Hampton Public Schools; and
Board of Education, Hampton Public Schools
Respondent(s)

Notice of Meeting

Docket #FIC 2023-0356

April 25, 2024

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 person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, May 22, 2024.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. 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 10, 2024.*** 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 10, 2024.*** **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 10, 2024*** 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

Jennifer M. Mayo
Acting Clerk of the Commission

Notice to: Juan Arriola
Diane Gagnon
John Russell
Attorney Jessica L. Ritter

FIC# 2023-0356/ITRA/VDH//RB/JMM/2024-04-25

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Juan Arriola; Diane Gagnon;
and John Russell,

Complainants

against

Chair, Board of Education, Hampton
Public Schools; and Board of Education,
Hampton Public Schools,

Respondents

Report of Hearing Officer

Docket #FIC 2023-0356

April 24, 2024

The above-captioned matter was heard as a contested case on January 3, 2024, at which time the complainants and the respondents appeared 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 email received and filed July 10, 2023, the complainants appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act on June 28, 2023 by permitting Superintendent Samantha Sarli (the "superintendent") to remain in attendance throughout an executive session.

3. Section 1-225(a), G.S., provides, 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...."

4. Section 1-200(6) 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; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's

> conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; 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.

6. Section 1-231(a), G.S., provides:

> 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. (Emphasis supplied).

7. It is found that the Hampton Elementary Schools Board of Education ("respondent board") held a regular meeting on June 28, 2023 during which it convened in an executive session to discuss a complaint that had been filed with the Commission on Human Rights and Opportunities ("CHRO").

8. It is found that those attending the executive session were: eight out of the nine members of the respondent board, the respondent board's insurance counsel[1], and the superintendent.

9. It is found that the superintendent did not present any testimony or opinion during the executive session.

10. The respondents contended that, because the superintendent is the chief executive officer of the school district and because she provided relevant testimony and opinion concerning the CHRO complaint referenced in paragraph 7, above, during previous executive sessions of the

[1] The complainants do not allege that the attendance of the respondent board's insurance counsel during the June 28, 2023 executive session violated the provisions of §1-231(a), G.S.

respondent board,[2] it was reasonable for the board to anticipate that the superintendent's testimony or opinion might be required during the June 28, 2023 executive session.

11. Section 10-157, G.S., provides, in relevant part, that:

> (a) Each local board of education for a municipality with (1) a population of ten thousand or more, (2) three or more public schools located in the municipality, and (3) two thousand or more resident students… shall provide for the supervision of the schools under its control by a superintendent who shall serve as the chief executive officer of the board….The superintendent shall have executive authority over the school system and the responsibility for its supervision. Employment of a superintendent shall be by election of the board of education…The board of education shall evaluate the performance of the superintendent annually in accordance with guidelines and criteria mutually determined and agreed to by such board and such superintendent.

12. It is found that, while the provisions of §10-157, G.S., provide the superintendent with executive authority over the school system and refer to her as the chief executive officer of the board, such statutory provisions do not provide that the superintendent, because of such authority or title, is a member of the board of education.

13. It is found that the superintendent's attendance at the June 28, 2023 executive session was not limited to the period for which her presence was necessary to present testimony or opinion, within the meaning of §1-231(a), G.S.[3]

14. It is therefore concluded that the respondents violated the provisions of §1-231(a), G.S., when they permitted the superintendent to remain in attendance at the executive session for the entire duration of such executive session, without providing any testimony or opinion during such executive session.

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 executive session provisions of §1-231(a), G.S.

Valicia Dee Harmon

Valicia Dee Harmon
as Hearing Officer

FIC2023-0356/HOR/VDH/04/24/2024

[2] In this regard, it is found that the superintendent acted as a liaison between the respondent board and its insurance counsel regarding the CHRO complaint referenced in paragraph 7, above.

[3] It is found that, following the June 28, 2023 meeting and before the contested case hearing in this matter, the respondents voluntarily attended a FOI training session conducted by the Commission's staff.