STATE OF NEBRASKA

Office of the Attorney General

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JON BRUNING
ATTORNEY GENERAL

DALE A. COMER
ASSISTANT ATTORNEY GENERAL
CHIEF, LEGAL SERVICES BUREAU

July 13, 2010

Robert and Mary Alice Johnson
1762 Colfax Street
Blair, NE 68008

Re: *File No. 10-M-115; Blair Public Schools; Robert and Mary Alice Johnson.*

Dear Mr. and Mrs. Johnson:

Over the past two years, you have been involved in various disputes with the Board of Education of the Blair Community Schools (the "Board"). Those disputes have led you to file several different complaints with this office under the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2008, Supp. 2009), and the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Supp. 2009). *See File No. 09-R-124* and *File No. 09-M-141*. Your most recent complaint involves the Open Meetings Act, and we received three letters from you in that regard dated February 24, March 1, and March 10, 2010. This correspondence is in response to those letters and that complaint. As is our normal policy, we sent your complaint letters to counsel for the Board, and we subsequently received a response on behalf of the Board from Edmond E. Talbot, III. We have enclosed a copy of the response from Mr. Talbot as requested in your recent email. Our understanding of the facts in this case is based on your materials and the response from Mr. Talbot. We will discuss each of the issues in your complaint, as we understand them, separately below.

1. Public Comment Procedures

The focus of much of your concern with the Board over the past two years has been its policies regarding public comment during its meetings. With respect to the current complaint, you take issue with the following portion of the Board's present "Instructions For Members Of The Public Who Wish To Speak:"

> Personnel or Student Topic: If you are planning to speak about a personnel or student matter involving an individual, please understand that our policies require you to follow the district's complaint procedure before

> addressing the board. Board members will generally not respond to any questions you ask or comments you make about the individual staff members or students. Please remember that slanderous comments will not be tolerated.

You believe that those instructions mislead members of the public about their right to speak on any topic during a public comment period, and prevent members of the public from speaking about individual staff members or students unless they have previously undertaken the district's complaint procedure. Counsel for the Board responds in his letter by stating that:

> . . . there is nothing [in the policy] stating that a person will be restricted from commenting, although other policies require that complaints about personnel or students be handled at a lower level than the school board. This policy is adopted strictly for the efficiency of the board meetings and not to restrict public comment. The board will not act or respond until the policy has been followed.

From counsel's statement, we understand that the Board's policy on Comments from the Public is not intended to restrict members of the public from speaking about individual students or staff during public comment periods, and members of the public are free to do so. However, based on its other policy regarding Complaints, the Board will not entertain questions or otherwise respond to comments from the public regarding individual staff or students, absent compliance with its Complaints policy. While the Open Meetings Act gives members of the public the right to speak at certain meetings of a public body, it does not require that members of a public body answer questions or otherwise respond to comments from the public during a public comment period. Therefore, in light of counsel's explanation of the Board's policy, we do not believe that the Board's current procedures regarding public comments violate the Open Meetings Act. However, we would suggest to the Board that the first sentence of the instructions quoted above is somewhat confusing, and could be more clearly drafted to reflect the explanation provided by counsel.

2. January 11 Evaluation of Superintendent.

The agenda for the Board's meeting on January 11, 2010, contained the following item: "If the Board is in agreement, a motion may be brought to enter into Closed/Executive Session for the purpose of discussing superintendent evaluation for Dr. Jane Stavem." Consistent with that agenda item, the minutes for the Board's meeting on that date indicate that "Bouvia moved to go into executive session for the purpose of discussing the superintendent's evaluation at 8:25." You believe that the Board may have used the January executive session to develop *an evaluation methodology* for the new superintendent instead of conducting the actual evaluation itself. You assert that development of an evaluation methodology is improper for a

closed session. You make the same allegation regarding an executive session on March 8, 2010.

Apart from a categorical denial that the executive sessions were improper, counsel for the Board did not address the specific factual issue of whether evaluation methodology was discussed in the executive sessions under consideration, and the minutes for the January meeting offer little explanation of what was actually discussed in closed session. Therefore, we have no way to know what the Board took up during its executive sessions at the January and March meetings. However, we agree with your assertion that *development of an evaluation methodology* does not warrant a closed session without some showing of why confidentiality regarding such a discussion is necessary to protect the public interest or to protect an individual's reputation. Therefore, we will suggest to the Board that any future discussions of evaluation methodology should be conducted in public. We will also note that the Board's motion to go into executive session during its January 11 meeting was flawed in that it did not discuss *both* the *reason* for the closed session and *its subject matter* as required by § 84-1410 (1). In the future, any motions by the Board to go into closed session should meet the requirements of that statute.

3. Executive Session on August 24, 2009 meeting.

Your previous Open Meetings complaint (File No. 09-M-141) involved an executive session of the Board which occurred at Deerfield Elementary School on August 24, 2009. As we understand it, you continue to allege that the executive session on August 24, 2009, was improper because there is no mention of it in the Board's minutes for the meeting on that date. However, counsel for the Board provided us with a copy of the Board's minutes regarding the executive session on August 24, 2009, and we have enclosed a copy of those materials for your information. Those minutes are apparently separate from the Board's minutes regarding its other meeting on the same date. Thus, this portion of your complaint does not involve a violation of the Open Meetings Act.

4. Publication of minutes.

Finally, in your letter of March 10, 2010, you complain that the Board did not publish all the minutes from its meeting of August 24, 2009, in the newspaper. Specifically, you contend that the minutes for the meeting at Deerfield School where the Board went into executive session were not published. You also ask, "[w]hat are the requirements of the school board to publishing (sic) minutes of meetings where votes and approval on action items are taken?"

The Open Meetings Act does not *require* public bodies to publish minutes of their meetings in the newspaper. Neb. Rev. Stat. § 84-1413. It simply requires that adequate minutes be "written and available for inspection" within ten days of a meeting, or prior to the body's next meeting, whichever occurs earlier. Therefore, the Board was

not required to publish the minutes from its August 24, 2009, meeting in the newspaper under the Open Meetings Act. Apart from the Open Meetings Act, there may well be other requirements for newspaper publication of Board minutes in the various statutes specifically pertaining to school districts. However, this office has no enforcement authority regarding those school statutes.

We do not believe that the various matters discussed at length above warrant any further action regarding your complaint by this office. Accordingly, we are closing this file. If you disagree with our analysis, you may wish to consult with your private attorney to discuss what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

JON BRUNING
Attorney General

Dale A. Comer
Assistant Attorney General
Chief, Legal Services Bureau

cc. Edmond E. Talbot, III

05-195-30

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036541

May 17, 2010

DEPARTMENT OF JUSTICE
MAY 19 2010
STATE OF NEBRASKA

Dale A. Comer
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, NE 68509-8920

Re: File No. 09-R-124; Blair Community Schools Board of Education; Robert and Mary Johnson, Petitioners

Dear Mr. Comer:

I received your request for a response to Mary Alice Johnson's letters dated February 24th, March 1st and March 10th, 2010. I have assumed that her request relates to Open Meetings violations and will address them accordingly.

The February 24, 2010 correspondence indicates that there was a failure to record, on August 24, 2009, minutes from the executive session. I have attached the minutes from the executive session for your review.

Ms. Johnson's March 1, 2010 letter does not set an Open Meetings violation.

Finally, the March 10, 2010 correspondence sets out two specific areas of concern. The first relates to public comments. The board has adopted the policy reflected in her correspondence; however, there is nothing stating that a person will be restricted from commenting although other policies require that complaints about personnel or students be handled at a lower level than the school board. This policy is adopted strictly for the efficiency of the board meetings and not to restrict public comment. The board will not act or respond until the policy has been followed.

The next area that Ms. Johnson addresses is closed sessions. There is no statutory restriction on evaluations and the implication that the executive session was not used appropriately is without fact or merit.

Of the three letters you have received regarding misconduct by the Blair Board of Education, none rise to the level of a violation of the Open Meetings Act. The district has

expended a great deal of time and money answering complaints from the Johnsons that started when their son was dismissed from the soccer team. Although I realize your office provides a useful service for citizens to effectively challenge the operation and practices of boards throughout the state, in this situation it seems to be perverted as it relates to the Johnsons. One more complaint, one more request for a response and one more letter costing the district money. My question to your office is, when does this end?

Thank you for your prompt attention to this matter.

Sincerely,

EDMOND E. TALBOT III

EET/km
Enclosure
cc: Dr. Jane Stavem, Superintendent
Blair Community Schools

Amy Hansen, President
Blair Board of Education

BLAIR BOARD OF EDUCATION
MINUTES OF MEETING
Monday, August 24, 2009
7:00 PM

The Blair Board of Education met in special session for superintendent evaluations with McPhearson Jacobson.

The following were present: Michael Pinquoch President presiding, Jay Anderson, Herta Bouvia, Molly Dahlgren, Richard Hansen, Lana Pleak, and Dr John Renelt. Dr. Jane Stavem, Superintendent. Others in attendance were Randy Nelson of McPhearson Jacobson.

Pleak moved to go into executive session to discuss personnel. After a second by Bouvia the motion carried 8-0.

The Board reconvened to open session at 8:35 and adjourned.

Mick Pinquoch, Secretary Pro Tem.