Supreme Court of Ohio Clerk of Court - Filed June 19, 2015 - Case No. 2014-1796

IN THE SUPREME COURT OF OHIO

ADAM J. WHITE	:	No. **2014-1796**
	:	
Appellant,	:	
	:	Jurisdictional Appeal from the
vs.	:	Delaware County Court of Appeals,
	:	Fifth Appellate District
DAVID E. KING, *et al*.,	:	
	:	App. Case No. 14CAE-02-0010
Appellees.	:	

MERIT BRIEF OF APPELLANT ADAM J. WHITE

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STATEMENT OF FACTS:

In its *Second Motion for Judgment on the Pleadings* filed in the trial court on October 7, 2013, Appellee Olentangy Local School District Board of Education assumed that all facts pled in Appellant White's *First Amended Complaint* with attachments were true pursuant to ORCP Rule 12(C). (R. 25, Motion, p. 2). [1]

The undisputed facts upon which the trial court and the Fifth District Court of Appeals each granted judgment on the pleadings for Appellees are thus as pled:

1. Board Members David King, Julie Feasel, Kevin O'Brien, and Stacy Dunbar actively collaborated with and utilized District employees during work hours to assist in the preparation and publication of an official Board policy statement to the public in response to the Dispatch editorial. (such policy statement cited, hereinafter, as the "Response"). (R. 17, Amended Complaint, Ex. 3-3; Appdx., p. 53).

2. Board President David King instructed Board Superintendent Wade Lucas, Board members Feasel, O'Brien, and Dunbar, and District staff members Niehaus, Martin and Truett to collaborate on the Response. (R. 17, Ex. 3-3; Appdx., p. 53).

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[1] Appellant White hereby adopts the record references to original documents as set forth in the Case History ("Record") dated February 28, 2014, maintained by the Clerk of Court in trial court Case No. 13 CVH-04-0352, copy attached in the Appendix, p. 88-94. References to the Record are cited as "R. #__, Doc. Name, Ex. ___, p. ___,". References to documents contained in the Appendix/Supplement are cited as "Appdx., p. ___".

3. Board President David King circulated the final draft Response to the group for approval and personally signed and submitted the Response to the Dispatch in his capacity as President of the School Board. (R. 17, Exs. 3-19, 3-34; Appdx., p. 69, 84).

4. Board Superintendent Wade Lucas provided input to the Response and approved the Response. (R. 17, Exs. 3-21, 3-23; Appdx., p. 71, 73).

5. Board Member Julie Feasel contacted the Dispatch herself, suggested a list of items to include in the Response, advised the group on the proper method of publishing the Response, and approved the Response. (R. 17, Exs. 3-1, 3-5/6, 3-13; Appdx., p. 51, 55-56, 63).

6. Board Member Kevin O'Brien submitted edits to the Response and submitted a draft of the Response to the Dispatch, and approved the Response. (R. 17, Exs. 3-6, 3-22, 3-28, 3-30/31; Appdx., p. 56, 72, 78, 80-81).

7. Board Member Stacy Dunbar communicated her input to the Response , and approved the Response. (R. 17, Exs. 3-4, 3-32; Appdx., p. 54, 82).

8. Asst. Superintendent Linda Martin drafted a preliminary response and revisions (R. 17, Ex. 3-7; Appdx. p. 57). District staff members Teresa Niehaus, Linda Martin, Karen Truett, and Krista Davis all participated in the formulation and publication of the Response. (R. 17, Exs. 3-3, 3-5, 3-7/11, 3-14/20, 3-24/27, 3-33; Appdx., p. 53, 55, 57-61, 64-70, 74-77, 83).

9. The first draft of the Response submitted to the Dispatch was signed by Board Members King, Dunbar, Feasel, and O'Brien in their official capacities as Board Members. (R. 17, Exs. 3-28, 3-31, 3-33; Appdx., p. 78, 81, 83).

10. The final Response was signed by David King in his capacity as Board President and indicated that it was published with the consent of four of the five Board Members, i.e. David King, Julie Feasel, Kevin O'Brien, and Stacy Dunbar. (R. 17, Ex. 3-35/36; Appdx., p. 85-86).

11. Mr. White was never consulted about the Response before issued or published, was not included in any of the e-mail communications contained in Ex. "3", was not given any opportunity to vote for or against issuance of the Response, and never received any minutes relating to the public policy statement purportedly issued by and on behalf of the Board. (R. 17, Amended Complaint, ¶ 21).

12. The Response issued on October 13, 2012 and published by the Dispatch on October 27, 2012 constituted a vote to affirm Board Policy No. 0148.1(B) issued on September 25, 2012. (R. 17, Exs. 1-1/2; Appdx., p. 45-46).

13. On April 25, 2013, Plaintiff White filed a civil action in this case below against Defendants King, Feasel, O'Brien, and Dunbar alleging the Defendants violated the Ohio Open Meetings Statute by the acts described above.
(R. 2, Complaint).

14. Later that evening on April 25, 2013, a regular meeting of the Board was called to order. Mr. White advised the Board of the suit filed against them that day and moved that "no public monies be spent defending the 4 board members, or in the alternative, if any public monies are spent defending the 4 board members, those members agree to reimburse the district for any monies spent". The motion died for lack of a second. (R. 17, Ex. 4; Appdx., p. 87).

15. After voting against Mr. White's motion, Board Members King, Feasel, O'Brien, and Dunbar voted in Board Agenda Item 13-150 to ratify the "... letter to the editor that 4 Board members submitted to the Columbus Dispatch in response to an October 11, 2012 editorial". (R. 17, Ex. 4; Appdx., p. 87).

16. In that same vote, Board Members King, Feasel, O'Brien, and Dunbar voted that the "... Board denies that it violated the Open Meetings Statute...". Mr. White abstained from both such votes that evening. (R. 17, Ex. 4; Appdx., p. 87).

17. In the Amended Complaint, ¶22, under the section entitled, "The Facts", Mr. White specifically alleged that, "The Response issued on October 13, 2012 and published by the Dispatch on October 27, 2012 constituted a vote to affirm Board Policy No. 0148.1(B) issued on September 25, 2012". (R. 17, Amended Complaint, ¶ 22).

18. Likewise, Mr. White specifically alleged at ¶27 of his Amended Complaint that, "By affirmatively ratifying the 'letter to the editor that 4 Board members submitted to the Columbus Dispatch in response to an October 11, 2012 editorial' at the April 25, 2013 Board meeting, Defendants King, Feasel, O'Brien, and Dunbar officially confirmed that the letter to the editor was 'public business' by a 'public body' as those terms are used in the Open Meetings Statute, Ohio Rev. Code §121.22". (R. 17, Amended Complaint, ¶ 27).

LEGAL ARGUMENT:

Proposition Of Law Number I:

Under the Ohio Open Meetings Statute, Ohio Rev. Code §121.22, liberally construed, private deliberations concerning official business are prohibited, whether such deliberations are conducted in person at an actual face-to-face meeting or by way of a virtual meeting using any other form of electronic communication such as telephone, e-mail, voicemail, or text messages.

Proposition Of Law Number II:

Under the Ohio Open Meetings Statute, Ohio Rev. Code §121.22, when a board of education formally votes to ratify a prior action, the ratified prior action constitutes "public business" under the Statute.

1. **Standard of Appellate Review, De Novo:**

In *Dillon v. Farmers Insurance of Columbus, Inc.*, 2014-Ohio-431, 2013CA0014 (OHCA5), the Fifth District Court of Appeals said:

> {¶18} Our review of the trial court's decision on a judgment on the pleadings is de novo. See *State v. Sunfronko*, 105 Ohio App.3d 504, 644 N.E.2d 596 (4th Dist. 1995). When reviewing a matter de novo, this Court does not give deference to the trial court's decision. *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 809 N.E.2d 1161, 2004-Ohio-829. "Under Civ.R. 12(C), dismissal is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief." *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996).

Based upon that legal authority, it is respectfully submitted that this Court should review the *Second Motion for Judgment on the Pleadings* de novo.

2. **Duty of Trial Court to Liberally Construe the Statute:**

Ohio Rev. Code § 121.22 (the "Statute") reads, in relevant part, as follows:

> (A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

In its *Memorandum Contra Jurisdiction* filed in this Court on November 14, 2014 at p. 1-2 Appellees attempted to attach Senate Bill 93 in an impermissible attempt to support their argument that this Court should consider the legislative intent underlying the Statute and should defer to the Ohio Legislature on the question whether e-mail deliberations are prohibited meetings under R.C. §121.22.

The Clerk properly refused to allow that attachment but the issue of legislative intent has been raised by Appellees. In *Slingluff v. Weaver* (1902), 66 Ohio St. 621, 64 N.E. 574, paragraph one of the syllabus, this Court established the foundational construction standard on legislative intent, ruling as follows:

> "[T]he intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

Likewise, in *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 105-106, 65 O.O.2d 296, 298, 304 N.E.2d 378, 381, this Court ruled:

> "It is a cardinal rule that a court must first look to the language of the statute itself to determine the legislative intent. * * * If that inquiry reveals that the statute conveys a meaning which is clear, unequivocal and definite, at that point the interpretative effort is at an end, and the statute must be applied accordingly."

Ohio Rev. Code §1.49, *Determining legislative intent*, reads as follows:

> If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:
>
> (A) The object sought to be attained;
> (B) The circumstances under which the statute was enacted;
> (C) The legislative history;
> (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
> (E) The consequences of a particular construction;
> (F) The administrative construction of the statute.

The language of the Ohio Open Meetings Statute, R.C. §121.22 is not ambiguous, it is clear, unequivocal and definite. "The elements of the statutory definition of a meeting [under R.C. §121.22] are, (1) a prearranged discussion, (2) a discussion of the public business of the public body, and, (3) the presence at the discussion of a majority of the members of the public body." *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio.St.3d 540, 543, 1996-Ohio-372.

Each of those elements of the Statute were met by the facts alleged in Plaintiff's Amended Complaint and are summarized, as follows:

(1) *a prearranged discussion:* The October 11, 2012 e-mail from Board president King to Board members Feasel, Dunbar, and O'Brien advising them of King's plan to meet the next day constituted notice of a prearranged discussion to commence on October 12, 2012. Mr. King specifically used the word "meeting" in his e-mail to communicate that he had a specific action plan in mind and was seeking majority support for that rule or resolution from the Board.

(R. 17, Ex. 3-3; Appdx., p. 53).

The dialogue between the four Board members which commenced on October 12, 2012 and culminated with publication of the Response on October 27, 2012 was a pre-arranged discussion of public business led by Mr. King.

(2) *a discussion of the public business of the public body:* Per Mr. King's e-mail notice on October 11, 2012, the purpose of the meeting on October 12, 2012 was to respond to the Dispatch and to consider board action against Mr. White.

Neither the trial court nor the court of appeals cited any case law or statutes in determining whether the Response in this case was public (i.e. official) business or not. Instead, both courts simply ruled that the Response was not public business because, in their view, there was no pending rule or resolution before the Board, because the four members did not meet in person, and because "sporadic emails" are not included in the statutory definition of a "meeting" under the Statute. (Opinion, p. 6, Entry Granting Motion, p. 6; Appdx., p. 27, 38).

Both the trial court and the court of appeals ruled that the Board's ratification of its October 27, 2012 letter to the editor at the Board meeting on April 25, 2013, six months later, did not retroactively convert that letter into public business. (Opinion, p. 6, Entry Granting Motion, p. 6; Appdx., p. 29, 38).

In the case of *Covert v. Ohio Auditor of State*, 2006-Ohio-2896, 05CA3044 (OHCA8), however, the Eighth District Court of Appeals ruled that a delay of seven months between the termination of an employee by the ADAMH Executive Director and ratification of such termination by the ADAMH Board did not render the prior termination ineffective and that such termination was effective as a matter of law on the earlier date.

Likewise, the act of "Ratification" is defined by Black's Law Dictionary, Sixth Ed., 1990, p. 1261-1262, in relevant part, as follows:

> "It [ratification] is equivalent to a previous authorization and relates back in time when act ratified was done...".

So, when the Board ratified its October 27, 2012 Response as the official policy position of the Board concerning Board Policy No. 0148.1(B) issued September 25, 2012, it also ratified the private deliberations that preceded the issuance of that Response.

By voting to ratify their previous deliberations and published policy statement on April 25, 2013, the Board itself certified that its actions in October, 2012 were deliberations upon official business at that time. The finding to the contrary by the trial court and the court of appeals were erroneous as a matter of law, contrary to the plain meaning and intent of the Statute, and should be reversed.

It is a reasonable inference under Civil Rule 12(C) that by ratifying their prior private deliberations at the Board meeting on April 25, 2013, the Board understood and acknowledged the legal insufficiency of the procedure by which the Response had been privately deliberated, privately structured, and privately executed as the purported *official* public policy of the Board on a pending matter.

The Board ratified the Response because it knew its prior private deliberations over the matter were unlawful. They sought to correct their error. The ratification of the Response is strong evidence the Board did deliberate on official public business in private in violation of the Ohio Open Meetings Statute.

In addition, the trial court ruled that the board members could not be sued individually and were immune from suit in this case because the Response was signed by Board Members King, Dunbar, Feasel, and O'Brien "acting solely in their official capacity". (Entry Granting Motion, p. 4-5; Appdx., p. 36-37).

It stands to reason that an action taken by a majority of state officials on a board, acting solely in their official capacity, constitutes the doing of official public business, *prima facie*. If the business performed was private in nature, the defendants would not be entitled to political subdivision immunity. The trial court itself premised dismissal of the individual claims on its finding of fact that that the Response was official business. Its subsequent finding that the Response was not official business under the Statute is inconsistent and demonstrates error.

As to the element of "public body", a school board is a public body or "body politic" under Ohio Rev. Code §121.22(B)(1)(a) and R.C. §3313.17. There is no dispute between the parties concerning that issue.

In sum, Mr. White contends that all of the e-mail messages back and forth between the four Board members, plus the submission of drafts of the Response by board members and School District employees, collectively constituted a "discussion of the public business of the public body".

The trial court and court of appeals both ruled, however, that there was no prearranged discussion, no pending rule or resolution, and no public business discussed under the Statute.

Respectfully, both courts erred by failing to apply current Ohio law which holds that the practice of conducting several identical back-to-back, face-to-face sessions attended by fewer than a majority of its members is still a violation of the Statute. *State ex rel. Schuette v. Liberty Twp. Bd. of Trustees*, Delaware App. No. 03-CAH-11064, 2004-Ohio-4431, ¶35; *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio.St.3d 543-544, 1996-Ohio-372.

In the *Cincinnati Post* case, an actual face-to-face meeting of a majority of the board was not required so long as a majority of the board did in fact communicate on the subject matter, *albeit* incrementally. This Court found that the majority did deliberate on the subject matter as a group in a non-public manner.

A series of discreet e-mail communications between members is no different than a series of discreet personal meetings between members. The *Cincinnati Post* case thus provides current persuasive support for Propositions of Law #1 and #2.

Likewise, in *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97, 564 N.E.2d 486 (Ohio 1990) the Mayor of Pickerington, Ohio attended a closed meeting where annexation was discussed. No specific proposals were made and no official action was taken at that time, although some annexation took place later. The Mayor issued a press release afterward which described the discussions held on that day as "concerning the future development of Violet Township." *Id*., at p. 488.

The conduct in *Fairfield Leader* also violated the Statute and, accordingly, the *Fairfield Leader* case also supports Propositions of Law #1 and #2.

In the *Fairfield Leader* case, this Court held that, "... regular and special meetings are the only alternatives under the charter for a majority of the council to assemble to discuss public business, and we reject the theory that the January 28 meeting was neither of these. Indeed, like the unannounced council meeting with the mayor in *State, ex rel. Plain Dealer Publishing Co., v. Barnes* (1988), 38 Ohio St.3d 165, 167, 527 N.E.2d 807, 810, the January 28 meeting here was within the ambit of the special meeting category of the Pickerington Charter". *Id*, at 490.

Appellant White submits that the e-mail deliberations / meetings in this case are equivalent in substance to both the incremental meetings which violated the Statute in *Cincinnati Post* and *Schuette*, *Supra*, and the generic private meeting to discuss public business which also violated the Statute in *Fairfield Leader, Supra.*

(3) *the presence at the discussion of a majority of the members of the public body:* Four of five board members actively participated in the deliberations over the Response by e-mails and phone. The Response was signed by the president of the School Board with the consent of a majority of the Board.

As such, a majority of the board was virtually present at the discussion and issuance of the Response. The majority of that public body therefore violated the Statute by deliberating and acting in private.

This Court is requested to hold that private electronic deliberations upon official business are prohibited under the Statute.

3. Standard of Judicial Review, Motion for Judgment on the Pleadings:

"A court must construe as true all of the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party. *Whaley v. Franklin Cty. Bd. of Commrs*., 92 Ohio St.3d 574, 581, 752 N.E.2d 267 (2001)". *Schmitt v. Educational Serv. Ctr. of Cuyahoga Cty*., 2012-Ohio-2208 at ¶10, 970 N.E.2d 1187 (Ohio App. 8 Dist. 2012).

As noted at ¶17 and ¶18 in the Statement of Facts above, Mr. White affirmatively alleged the following facts in his Amended Complaint:

a. The Response issued on October 13, 2012 and published by the Dispatch on October 27, 2012 constituted a vote to affirm Board Policy No. 0148.1(B) issued on September 25, 2012.

b. By affirmatively ratifying the "letter to the editor that 4 Board members submitted to the Columbus Dispatch in response to an October 11, 2012 editorial" at the April 25, 2013 Board meeting, Defendants King, Feasel, O'Brien, and Dunbar officially confirmed that the letter to the editor was "public business" by a "public body" as those terms are used in the Open Meetings Statute, Ohio Rev. Code §121.22.

As noted above, this Court reviews this appeal *de novo.* It must construe Ohio Rev. Code §121.22 liberally and it must construe the factual allegations and all reasonable inferences as true and in favor of Mr. White per Rule 12(C).

Framed as such, this Court is urged to start from the factual premise that the Response by the Appellees was issued pursuant to a vote on official public business by a public body. Any other interpretation of the Response would violate the burden-shifting standards imposed by Civ. R. 12(C) and Rev. Code §121.22.

To grant Appellees' motion, it must be shown beyond reasonable doubt that Mr. White could prove no set of facts from the complaint that would entitle him to relief. Neither court below, though issued findings "beyond a reasonable doubt".

Regardless, the evidence proves that Appellees, (i) engaged in deliberations over Board policy consisting of a coordinated series of telephone calls and e-mail communications amongst Board members and staff, (ii) circulated drafts of a Board policy position statement intended to and actually published in the newspaper, (iii)

reached a joint consensus on the content of the Board policy position statement, (iv) authorized signing of the policy statement by the President of the School Board in his official capacity as president with the consent of the four named Board member defendants, and, (v) ratified the published public policy position statement by formal vote at the Board Meeting on April 25, 2013.

The cited evidence can only be construed pursuant to Civ. Rule 12(C) at this stage as undisputed proof that, (i) there was a prearranged discussion between the four Board Members initiated by Board President King and carried out by his staff and the named Board Members, (ii) that when Defendants were exchanging emails to develop the Response, there was a pending rule or resolution before the Board that had recently sparked sharp public controversy and was thus still under active consideration, i.e. Board Policy No. 0148.1(B) issued on September 25, 2012, and, (iii) that official business was discussed during the multiple e-mails and phone calls between Board members, District staff, and the Board president.

The only proper finding of fact from the facts alleged in the Amended Complaint is that the Board did conduct private deliberations concerning the official business action it took in this case, the Response. There are no exceptions in the Open Meetings Statute which would exempt the policy deliberations and official public action which took place here, and which was later ratified by the Board.

The trial court, however, erroneously ruled in favor of Appellees, finding there was, "... no prearranged discussion between the Defendants", and ,"... when Defendants were exchanging emails to develop the response letter, there was no pending rule or resolution before the Board", and, "... there was no public business discussed". (Entry Granting Motion, p. 6; Appdx., p. 38).

The Court of Appeals affirmed the trial court's findings of fact and conclusions of law. (Opinion and Entry; Appdx., p. 30-31).

It is respectfully submitted that the trial court and the court of appeals materially and prejudicially erred by failing to liberally construe R.C. § 121.22 and by finding no prearranged discussion, no pending rule or resolution, and no public business discussed despite compelling evidence to the contrary.

Unless the Judgment Entries below are reversed, *all* public bodies throughout the State of Ohio will be allowed to conduct *all* public business in private by e-mail or other electronic means so long as they later ratify such private deliberations at a public meeting. That outrageous conclusion of law would eviscerate the clear, unequivocal and definite language of the Open Meetings Statute and should not stand.

CONCLUSION:

For the reasons discussed above, Appellant Adam J. White respectfully urges the Court to reverse the Judgment Entry Granting [Defendant-Appellees'] Second Motion for Judgment on the Pleadings issued by the trial court on January 16, 2014 (Appdx., p. 33-39), to reverse the Opinion and Judgment Entry issued by the Court of Appeals on September 5, 2014 (Appdx., p. 22-32), and to remand the matter for further proceedings or issue judgment directly in favor of Appellant.

Respectfully submitted,

/s/ Phillip L. Harmon

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CERTIFICATE OF SERVICE

The undersigned attorneys hereby certify that a copy of the foregoing Merit Brief of Appellant White was served by e-mail this 19th day of June, 2015 upon Appellees David E. King, Julie Feasel, Kevin O'Brien, Stacy Dunbar, and Board Of Education, Olentangy Local School District, c/o their legal counsel, John C. Albert, Esq. CRABBE, BROWN & JAMES, LLP, 500 S. Front Street, Suite 1200, Columbus, Ohio 43215, and upon legal counsel for *Amici Curiae*, David L. Marburger, Esq., BAKER HOSTETLER, LLP, 1900 E. 9th Street, Ste. 3200, Cleveland, Ohio 44114.

/s/ Phillip L. Harmon

PHILLIP L. HARMON (OSCR #0033371)

IN THE SUPREME COURT OF OHIO

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	:	Fifth Appellate District
DAVID E. KING, *et al.*,	:	
	:	App. Case No. 14CAE-02-0010
Appellees.	:	

APPENDIX AND SUPPLEMENT TO BRIEF OF APPELLANT ADAM J. WHITE

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ADAM J. WHITE	:	No. 14-1796
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vs.	:	On Appeal from the Delaware County Court of Appeals, Fifth Appellate District
DAVID E. KING, *et al.*,	:	
Defendants-Appellees.	:	App. Case No. 14CAE-02-0010

NOTICE OF APPEAL OF APPELLANT ADAM J. WHITE

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* Note: Pursuant to S.Ct.Prac.R. 3.14(A), the caption of this case is the same as that assigned to the case by the Fifth District Court of Appeals. Pursuant to S.Ct.Prac.R. 3.07(B), however, the only appellee in this case before the Ohio Supreme Court is the *Olentangy Local School District Board Of Education.*

FILED
OCT 16 2014
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT ADAM J. WHITE

Appellant **ADAM J. WHITE** hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Delaware County Court of Appeals, Fifth Appellate District, entered in Court of Appeals case No. 14CAE-02-0010 on September 5, 2014.

Pursuant to S.Ct.Prac.R. 7.01(B)(1)(d)(iii), this case involves a question of public or great general interest.

Respectfully submitted,

Phillip L. Harmon, Counsel of Record (0033371)
Counsel For Appellant ADAM J. WHITE

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to Counsel for Appellee *Olentangy Local School District Board Of Education*, John C. Albert, Esq., CRABBE, BROWN & JAMES, LLP, 500 S. Front Street, Ste. 1200, Columbus, OH 43215 on October 17, 2014.

Phillip L. Harmon, Counsel of Record (0033371)
Counsel For Appellant ADAM J. WHITE

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ADAM J. WHITE

Plaintiff-Appellant

-vs-

DAVID E. KING, et al.

Defendants-Appellees

JUDGES:
Hon. William B. Hoffman, P. J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 14 CAE 02 0010

OPINION

CHARACTER OF PROCEEDING: Civil Appeal from the Court of Common Pleas, Case No. 13 CVH 04 0352

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY:

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FILED
2014 SEP -5 AM 10: 16
JAN ANTONOPLOS
CLERK

APPEARANCES:

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Columbus, Ohio 43215

Court of Appeals
Delaware Co., Ohio
I hereby certify the within be a true
copy of the original on file in this office.
Jan Antonoplos, Clerk of Courts
By Jan Kline Deputy

Wise, J.

{¶1}. Plaintiff-Appellant Adam J. White appeals the decision of the Court of Common Pleas, Delaware County, which entered a dismissal on the pleadings regarding appellant's complaint under R.C. 121.22 against his fellow school board members, Appellees herein. The relevant facts leading to this appeal are as follows.

{¶2}. At the times pertinent to the matter, Appellant White and Appellee King were members of the Olentangy Local School District Board of Education ("Board"), as were Appellees Julie Feasel, Kevin O'Brien, and Stacy Dunbar.

{¶3}. In March 2012, Appellant White commenced an independent investigation into certain expenditures by two athletic directors employed by the District. As a result of the information uncovered by Appellant White, one of the athletic directors resigned and both of them were required to reimburse the District for improper spending.

{¶4}. On September 25, 2012, the Board voted four-to-one to amend Board Policy No. 0148.1(B) to require that all future communications between Board members and staff must first pass through the District Superintendent or Treasurer. Appellant White voted against the changes to Board Policy No. 0148.1(B).

{¶5}. On October 11, 2012, the Columbus Dispatch newspaper published an editorial entitled: "Role reversal: School boards, not superintendents, are the boss and should act like it." The editorial essentially criticized policies restricting direct access by school board members to administrators and personnel, and it favorably mentioned Appellant White's decision to vote against the Olentangy Local School District's aforesaid revised policy.

{¶6}. Appellee King, who was serving as Board President, thereupon proposed to the other Board members, Appellees Feasel, O'Brien, and Dunbar, that a public response to the Dispatch editorial should be made. A series of emails between Appellees King, Feasel, O'Brien, Dunbar and certain school district employees resulted in a response that was submitted to the Dispatch. The final response, issued on October 13, 2012 and published on October 27, 2012, was signed only by Appellee David King, based on the newspaper's editorial policy, but said letter had the consent of Appellees Feasel, O'Brien, and Dunbar. Appellant White was not consulted about the response before it was issued or published.

{¶7}. On April 25, 2013, Appellant White filed an action against Appellees King, Feasel, O'Brien, and Dunbar, alleging violations of Ohio's Open Meeting statute, R.C. 121.22. A Board meeting was also held on April 25, 2013 in which the Board voted to "ratify" appellees' response letter to the editor submitted to the Columbus Dispatch.

{¶8}. Appellees filed a timely answer and amended answer.

{¶9}. Appellees filed a motion for judgment on the pleadings on June 20, 2013. Appellant then filed a motion to add a party and for leave to file his first amended complaint. Said leave was granted by the trial court on July 10, 2013, making appellees' first motion for judgment on the pleadings moot. The amended complaint was filed against Appellees King, Feasel, O'Brien and Dunbar in both their official and individual capacities and against the Olentangy Local School District Board of Education seeking a declaratory judgment for a violation of R. C. 121.22.

{¶10}. Appellees filed a timely answer to the amended complaint. Appellees then filed a second motion for judgment on the pleadings on or about October 4, 2013. Appellant responded on October 18, 2013. Appellees filed a reply on October 23, 2013.

{¶11}. On January 16, 2014, the trial court issued a judgment entry granting appellees' second motion for judgment on the pleadings and a judgment entry denying appellees' second motion to amend the case schedule.

{¶12}. On February 13, 2014, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶13}. "I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FAILING TO LIBERALLY CONSTRUE THE CLEAR MEANING OF THE OHIO OPEN MEETINGS STATUTE TO THE FACTS OF THIS CASE."

I.

{¶14}. In his sole Assignment of Error, appellant contends the trial court erred in construing the Open Meetings Statute and thus granting appellees' motion for judgment on the pleadings. We disagree.

{¶15}. Motions for judgment on the pleadings are governed by Civ.R. 12(C), which states: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Pursuant to Civ.R. 12(C), "dismissal is [only] appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief." *State ex rel. Midwest Pride IV, Inc. v. Pontious* (1996), 75 Ohio St.3d 565, 570, 664 N.E.2d 931, 936. The

very nature of a Civ.R. 12(C) motion is specifically designed for resolving solely questions of law. *See Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 297 N.E.2d 113, 117. Reviewing courts will reverse a judgment on the pleadings if the plaintiffs can prove any set of facts that would entitle them to relief. *Flanagan v. Williams* (1993), 87 Ohio App.3d 768, 772, 623 N.E.2d 185, 188, abrogated on other grounds by *Simmerer v. Dabbas,* 89 Ohio St.3d 586, 733 N.E.2d 1169, 2000-Ohio-232. The review will be done independent of the trial court's analysis to determine whether the moving party was entitled to judgment as a matter of law. *Id.*

{¶16}. As an initial matter, we must set the parameters of the proper review of the record before us. Appellant appears to challenge the trial court's purported reliance on documentation attached to his complaint and amended complaint, such as copies of e-mail correspondence between various school board members. Appellant argues that "[w]hen a trial court relies upon evidence outside [of] the pleadings, the court effectively converts the Civ.R. 12(C) motion to a motion for summary judgment subject to review per the Civ.R. 56(C) standard." Appellant's Brief at 13. However, the "[d]etermination of a motion for judgment on the pleadings is restricted solely to the allegations in the complaint and answer, as well as any material attached as exhibits to those pleadings." *Schmitt v. Educational Serv. Ctr. of Cuyahoga Co.*, 8th Dist. Cuyahoga No. 97605, 970 N.E.2d 1187, 2012-Ohio-2208, ¶ 10. Under the circumstances presented, we will not countenance appellant's challenge to the trial court's utilization of documents that appellant presented to the court as his own complaint attachments. We thus further find on a preliminary basis that there was no requirement that appellees' second motion for

judgment on the pleadings be converted to a summary judgment motion, as appellant suggests.

{¶17}. We also briefly note at this juncture that appellant admittedly is not appealing the trial court's conclusion that appellees have no individual liability and are entitled to statutory immunity. Therefore, we need not address these topics.

{¶18}. Turning to the statute at issue, R.C. 121.22, Ohio's "open meeting" or "sunshine" law, provides in pertinent part as follows:

{¶19}. "(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

{¶20}. "***

{¶21}. "(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

{¶22}. "***."

{¶23}. The intent of the "Sunshine Law" is to require governmental bodies to deliberate public issues in public. *See Moraine v. Montgomery County Board of Commissioners* (1981), 67 Ohio St.2d 139, 423 N.E.2d 184. A "meeting" is defined by the statute to mean "any pre-arranged discussion of the public business of the public body by a majority of its members." R.C. 121.22(B)(2). Thus, a claim for a violation of the "Sunshine Law" must set forth the existence of the following elements: a (1) pre-arranged (2) discussion (3) of the public business of the public body in question (4) by a

majority of its members. *See State ex rel. Schuette v. Liberty Twp. Board of Trustees*, 5th Dist. Delaware No. 03-CAH-11064, 2004-Ohio-4431, ¶ 29.

{¶24}. The case of *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Hamilton Nos. C-040578, C-040589, 995 N.E.2d 862, 2005-Ohio-3489, bears a number of similarities to the appeal sub judice. The dispute in *Haverkos* also had its genesis in a newspaper article about a school board's actions, to which four members of said board ultimately responded with a jointly-signed letter. *Id.* at ¶1. Communication via a single e-mail and a few telephone calls about formulating the response letter took place in the meantime between certain board members, and the letter was later read aloud at the board's next public meeting. *Id.* at ¶ 2. Mark Haverkos, eventually the appellant/cross-appellee in the matter, then filed a suit under R.C. 121.22 against the board and four members thereof. *Id.* at ¶ 3.

{¶25}. In ruling in favor of the board members, the First District Court in *Haverkos* first found that there had been no pre-arranged meeting for purposes of the Sunshine Law, and at no time had there been a meeting of the majority of the board. The Court specifically concluded under the facts of the case that "[o]ne-on-one conversations between individual board members [do] not constitute a 'meeting' under the Sunshine Law." *Id.* at ¶ 7, citing *State ex rel. Floyd v. Rockhill Local Bd. of Edn.* (Feb. 10, 1998), 4th Dist. Lawrence No. 1862, 1988 WL 17190. The First District Court also considered the import of an e-mail message as a form of "discussion" Ohio's Sunshine Law. *Id.* at ¶ 9. The Court reviewed corresponding statutes from other states, and noted that although Ohio's statute had been amended as recently as 2002, no language regarding modern electronic communications was to be found: "Since the legislature chose not to

include electronic communication in the statute, we hold Ohio's Sunshine Law does not cover e-mails" *Id.* at ¶ 9. Furthermore, the Court recognized that as far as the claim of public business being discussed privately by board members, the response letter "did not mention any pending rule or resolution before the board." *Id.* at ¶ 10. Finally, the Court noted that "*** the contacts were informal and not pre-arranged." *Id.* at ¶ 11.

{¶26}. We recognize that the case sub judice involves much more expansive use of emails; perhaps several dozen if "copied" recipient formats are counted individually. However, appellant herein never alleged that appellees improperly met in person. As in *Haverkos*, we conclude that if the Generally Assembly had intended to include sporadic emails in the statutory definition of "meeting," it would have said so. As an appellate court, we ordinarily must presume that the legislature means what it says. *See State v. Link,* 155 Ohio App.3d 585, 2003-Ohio-6798, 802 N.E.2d 680, ¶ 17, citing *State v. Virasayachack* (2000), 138 Ohio App.3d 570, 741 N.E.2d 943. Furthermore, at the time the emails were exchanged, there was no pending rule or resolution before the Board. Even if the Board "ratified" the rebuttal letter in April 2013, after appellant filed his civil action in this case, this was six months after said letter was published in the Dispatch. We find no merit in appellant's claim that the Board's action at that time somehow retroactively created a prearranged discussion of public business via e-mails. Moreover, the mere discussion of an issue of public concern does not mean there were deliberations under the statute. *See Haverkos, supra*, at ¶ 10.

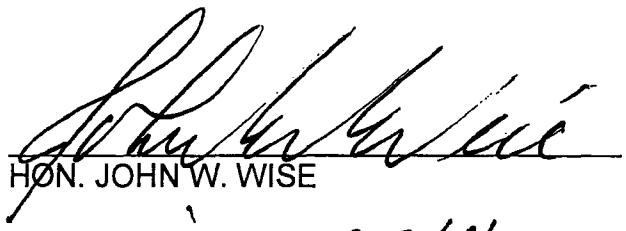
{¶27}. We therefore find no error as a matter of law in the granting of appellees' motion for judgment on the pleadings under the facts and circumstances of this case. Appellant's sole Assignment of Error is overruled.

{¶28}. For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Delaware County, Ohio, is hereby affirmed.

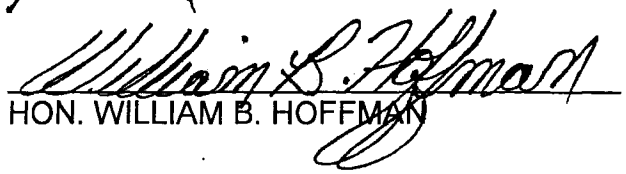
By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.



HON. JOHN W. WISE



HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER

JWW/ 0814

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ADAM J. WHITE	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
DAVID E. KING, et al.	:	
Defendants-Appellees	:	Case No. 14 CAE 02 0010

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Delaware County, Ohio, is affirmed.

Costs assessed to appellant.

HON. JOHN W. WISE

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FILED
2014 SEP -5 AM 10: 16
JAN ANTONOPLOS
CLERK

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

CASE NO: 14 CAE 02 0010

ADAM J WHITE
PLAINTIFF / APPELLANT

vs

DAVID E KING
DEFENDANT / APPELLEE

CLERK'S CERTIFICATE OF MAILING BY ORDINARY MAIL
(RULE 4.6 (D), OHIO CIVIL RULES)

I hereby certify that, pursuant to written instructions received by this Office from the attorney for Plaintiff/Defendant, I complied with said written instructions and mailed the documents requested to be served to the following named person/persons at the address/addresses indicated, by ORDINARY UNITED STATES MAIL on this date: September 5, 2014

Document(s) mailed: **OPINION/JUDGMENT ENTRY FROM 5TH DISTRICT APPEALS COURT**

ATTN: PHILLIP L HARMON
6649 NORTH HIGH STREET SUITE 105
WORTHINGTON, OHIO 43085

JOHN C ALBERT
500 SOUTH FRONT STREET SUITE 1200
COLUMBUS, OHIO 43215

NANCY G BROWN
17 SOUTH HIGH STREET SUITE 650
COLUMBUS, OHIO 43215

DELAWARE COUNTY COMMON PLEAS
COURT JUDGE (HAND DELIVERED)

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FILED
2014 SEP -5 PM 1:55
JAN ANTONOPLOS
CLERK

JAN ANTONOPLOS
DELAWARE COUNTY CLERK
RMCline, DEPUTY

IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

ADAM J WHITE, :

Plaintiff, : Case No. 13 CV H 04 0352

445
247-253

VS. :

DAVID E KING, et al., : EVERETT H. KRUEGER, JUDGE

Defendants. :

COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
FILED
2014 JAN 16 AM 7:3
JAN ANTONOPLOS
CLERK

JUDGMENT ENTRY GRANTING DEFENDANTS' SECOND MOTION FOR JUDGMENT ON THE PLEADINGS
AND
JUDGMENT ENTRY DENYING DEFENDANTS' SECOND MOTION TO AMEND CASE SCHEDULE

This matter is before the Court on Defendants Olentangy Local School District Board of Education, David E. King, Julie Feasel, Kevin O'Brien and Stacy Dunbar's ("Defendants") Second Motion for Judgment on the Pleadings filed on October 7, 2013. Defendants have moved for judgment on the pleadings and dismissal of Plaintiff's Amended Complaint on all counts. Plaintiff Adam J. White ("Plaintiff") filed a Memorandum in Opposition on October 18, 2013. Defendants filed a reply thereto on October 23, 2013.

This matter is also before the Court on Defendants Second Motion to Amend Case Schedule filed on December 23, 2013.

For the reasons stated below, the Court GRANTS Defendants' Second Motion for Judgment on the Pleadings and DENIES Defendants' Second Motion to Amend Case Schedule.

I. Standard of Review

The Court must dispose of the instant Motion for Judgment on the Pleadings within the confines of Rule 12(C) of the Ohio Rules of Civil Procedure. Civil Rule 12(C) motions are specifically for resolving questions of law. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75

Ohio St.3d 565, 569, 1996–Ohio–459, 664 N.E.2d 931 (1996). "[E]ntry of judgment pursuant to Civ.R. 12(C) is only appropriate 'where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that entitle him to relief.'" *Hester v. Dwivedi*, 89 Ohio St.3d 575, 577-578, 733 N.E.2d 1161 (2000) (quoting *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996)); see, also, *Whaley v. Franklin Cty. Bd. Of Commrs.*, 92 Ohio St.3d 574, 581, 752 N.E.2d 267 (2001); *Peterson v. Teodosio*, 34 Ohio St.2d 161, 165-166, 297 N.E.2d 113 (1973). In ruling on a motion for judgment on the pleadings, the court may only consider statements contained in the pleadings, and may not consider any evidentiary material. *Burnside v. Leimbach*, 71 Ohio App.3d 399, 594 N.E.2d 60 (1991).

II. Facts Alleged in First Amended Complaint for Declaratory Judgment and Other Relief

Plaintiff Adam J. White and Defendants David E. King, Julie Feasel, Kevin O'Brien, and Stacy Dunbar are members of the Olentangy Local School District Board of Education. (Amend. Compl. ¶3). During March 2012, in response to a report of audit issued by the State of Ohio Auditor's Office, Plaintiff White conducted an independent investigation into an alleged improper expenditure of funds by two athletic directors employed by Olentangy Local School District. *Id.* at ¶4. Plaintiff White made a public filing of facts with the Delaware County Sheriff's Office. *Id.* at ¶5. Plaintiff White's investigation resulted in one of the athletic directors resigning and both being required to reimburse the District for improper expenditures. *Id.*

On September 25, 2012, the Board voted to tighten Board Policy No. 0148.1(B) to require that all future communications between Board members and staff must first pass through the District Superintendent or Treasurer. *Id.* at ¶6. Plaintiff White voted against Board Policy No. 0148.1(B). *Id.* at ¶7. On October 11, 2012, the Columbus Dispatch published an

editorial praising Plaintiff White for voting against this policy and implicitly criticizing the other members of the Board for adopting the more restrictive policy. *Id.* at ¶8. Board President David E. King called upon the other Board members, Defendants King, Feasel, O'Brien, and Dunbar, to publically respond to the Dispatch editorial. *Id. at* ¶10. A series of emails between Board Members King, Feasel, O'Brien, Dunbar and school district employees resulted in a response that was submitted to the Dispatch. *Id.* at ¶11-13. A first draft of the response letter was signed by Defendants King, Dunbar, Feasel and O'Brien in their official capacities as Board members. *Id.* at ¶19. The final response, issued on October 13, 2012 and published on October 27, 2012, was signed only by Board President David King, but had the consent of Defendants Feasel, O'Brien, and Dunbar. *Id.* at ¶19-20. Plaintiff White was not consulted about the response before it was issued or published. *Id.* at ¶21.

On April 25, 2013, Plaintiff White filed the civil action against Defendants King, Feasel, O'Brien, and Dunbar alleging violations of Ohio's Open Meeting statute, R.C. 121.22. *Id.* at ¶23. A Board meeting was also held on April 25, 2013 in which the Board voted to ratify the response letter to the editor submitted to the Columbus Dispatch in response to the October 11, 2012 editorial. *Id.* at ¶24.

On July 10, 2013, Plaintiff White filed his First Amended Complaint against Defendants King, Feasel, O'Brien and Dunbar in both their official and individual capacities and against the Board of Education seeing a declaratory judgment for a violation of Revised Code 121.22.

III. Analysis

Defendants argue that they are entitled to judgment on the pleadings because a suit against a state official in their official capacity is not a suit against the official but rather a suit against the state entity. The Fifth District Court of Appeals has recognized that suits against state officials in their official capacity are treated as an action against the entity. *Duff v. Coshocton County,* 5th Dist. No. 03-CA-019, 2004-Ohio-3713, 2004 WL 1563404, ¶18.

Accordingly, the suit against the Defendant Board members in their official capacities will be treated as an action against the Board.

Defendants also argue they are entitled to judgment on the pleadings for the claims against them in their individual capacities. Defendants argue that the facts set forth in the Amended Complaint indicate they were acting solely in their official capacity. The Court agrees. The response letter was drafted after Board President David E. King called upon the other three Board members to issue a Board policy statement response to the Columbus Dispatch. (Amend. Compl. ¶10-12). The response letter was submitted by Defendant King in his official capacity as President of the School Board. *Id.* at ¶13. A first draft of the response letter was also signed by Defendants Dunbar, Feasel and O'Brien in their official capacities. *Id.* at ¶19. Furthermore, the response letter was ratified by the Board at their April 25, 2013 meeting. *Id.* at ¶25. There are no factual allegations to indicate these board members were acting in their individual capacities.

Plaintiff White argues that paragraphs 28 and 29 of the Amended Complaint provide facts that the Defendants were acting in their individual capacities. These paragraphs indicate that the Defendants engaged in "...ultra vires activities outside the scope of their statutory authority, under color of their official capacities as members of the Board, by purposefully conducting private deliberations..." and they "...acted in bad faith and with malicious purpose, and in a wanton and reckless manner by conducting an electronic private meeting [.]" *Id. at ¶28-29.* The facts alleged in the Amended Complaint indicate that the Defendants were taking action to issue a public statement by the Board to defend their revised board policy which cannot be said to be outside the scope of their authority as Board members. Further, there are no facts to support the conclusory statement that the actions of Defendants were in bad faith or were with malicious purpose, or they acted in a wanton and

reckless manner. Accordingly, Defendant Board Members King, Feasel, O'Brien and Dunbar are entitled to judgment and dismissal in their individual capacities.

Defendants argue they are entitled to political subdivision immunity. Revised Code 2744.03(A)(6) provides that an employee is immune from liability except when the employee's acts were manifestly outside the scope of the employee's employment or official responsibilities, the acts were done with malicious purpose, in bad faith, or a wanton or reckless manner or civil liability is imposed by a section of the Revised Code. As determined above, the Amended Complaint does not set forth facts that Defendants actions were outside the scope of their official responsibilities, nor are there facts to indicate the actions were wanton or reckless. Additionally, Revised Code 122.22, Ohio's Open Meeting Statute, does not impose civil liability on the individual. Furthermore, in the case of *Whiting v. Coyne*, the court found that statutory immunity applied to employees pursuant to R.C. 2744.03(A) when there was a violation of R.C. 122.22 for failure to conduct an open meeting. *Whiting v. Coyne*, 8th Dist. No. 69410, 1996 WL 492266 (Aug. 29, 1996). Therefore, the Court finds that Defendants are entitled to statutory immunity.

Finally, Defendants argue they have not violated R.C. 121.22, Ohio's Sunshine Law. Revised Code 121.22(C) provides as follows:

> All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

Meeting is defined by the statute to mean "any prearranged discussion of the public business of the public body by a majority of its members." R.C. 121.22(B)(2). Accordingly, a claim for a violation of the Sunshine Law must set forth the following elements: (1) a prearranged (2) discussion (3) of the public business of the public body in question (4) by a majority of its members. *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 2005-Ohio-3489, 995

N.E.2d 862, 864 (1st Dist.) The communication between the Defendant Board Members in this case originated with an email from Defendant David King to Defendants Feasel, Dunbar & O'Brien recommending that they issue a response in writing to the Dispatch editorial. The email was unsolicited by Defendants Feasel, Dunbar & O'Brien and, accordingly, was not a prearranged discussion between the Defendants. The case of *Haverkos v. Northwest Local School Dist. Bd. of Edn.* also found that an email sent by one board member to two others suggesting a response to a newspaper article did not constitute a meeting under the Sunshine Law. *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 2005-Ohio-3489, 995 N.E.2d 862, 864 (1st Dist.). The case further held that "[s]ince the legislature chose not to include electronic communication in the statute * * * Ohio's Sunshine Law does not cover emails." *Id.* at 865. As there was no prearranged discussion between the Defendants, there can be no violation of R.C. 121.22.

Plaintiff attempts to distinguish the case at hand from *Haverkos* by arguing that no official action resulted from the minimal private communications between the parties in *Haverkos,* while the Board here took official action by voting to ratify the letter sent to the Dispatch. This argument goes to the third element of the claim whether public business was discussed. The court found no public business was discussed in *Haverkos* reasoning that there was no pending rule or resolution before the board and the board took no official action as a result of the letter. *Id.* at 865. Similarly, when Defendants were exchanging emails to develop the response letter, there was no pending rule or resolution before the Board. It was nearly six (6) months after the letter was published when the Board decided to ratify the letter. Accordingly, at the time the emails were exchanged, there was no public business discussed. Therefore, the Defendants are entitled to judgment and dismissal of the Amended Complaint.

As reasoned above, since the Plaintiff can prove no set of facts in support of his claims that would entitle him to relief, the Court hereby GRANTS Defendants Motion for Judgment on the Pleadings. Furthermore, the Court DENIES Defendant's Second Motion to Amend Case Schedule as moot.

Dated: January 14, 2014

THIS IS A FINAL APPEALABLE ORDER.
THERE IS NO JUST CAUSE FOR DELAY.

EVERETT H. KRUEGER, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by ☒ Regular Mail, ☐ Mailbox at the Delaware County Courthouse, ☐ Facsimile Transmission

PHILLIP L HARMON, 6649 NORTH HIGH STREET, SUITE 105, WORTHINGTON, OH 43085
JOHN C ALBERT, 500 SOUTH FRONT ST SUITE 1200, COLUMBUS OHIO 43215

The Clerk is ordered to serve upon all parties not in default to appear, notice of the judgment and date of entry upon the journal within three days of journalization.

This document sent to each attorney/party by:
☒ ordinary mail
☐ fax
☐ attorney mailbox
☐ certified mail
Date: 1/16/14 By:

Ohio Statutes

Title 1. STATE GOVERNMENT

Chapter 121. STATE DEPARTMENTS

Includes all legislation filed with the Secretary of State's Office through 12/26/2012

§ 121.22. Public meetings - exceptions

(A)

This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B)

As used in this section:

(1)

"Public body" means any of the following:

(a)

Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b)

Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c)

A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, "court of jurisdiction" has the same meaning as "court" in section 6115.01 of the Revised Code.

(2)

"Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

(3)

"Regulated individual" means either of the following:

(a)

A student in a state or local public educational institution;

(b)

A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or retardation, disease, disability, age, or other condition requiring custodial care.

(4)

"Public office" has the same meaning as in section 149.011 of the Revised Code.

(C)

All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D)

This section does not apply to any of the following:

(1)

A grand jury;

(2)

An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;

(3)

The adult parole authority when its hearings are conducted at a correctional institution for the sole

purpose of interviewing inmates to determine parole or pardon;

(4)

The organized crime investigations commission established under section 177.01 of the Revised Code;

(5)

Meetings of a child fatality review board established under section 307.621 of the Revised Code and meetings conducted pursuant to sections 5153.171 to 5153.173 of the Revised Code;

(6)

The state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code;

(7)

The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to division (B) of section 4723.281 of the Revised Code;

(8)

The state board of pharmacy when determining whether to suspend a license without a prior hearing pursuant to division (D) of section 4729.16 of the Revised Code;

(9)

The state chiropractic board when determining whether to suspend a license without a hearing pursuant to section 4734.37 of the Revised Code;

(10)

The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code;

(11)

The board of directors of the nonprofit corporation formed under section 187.01 of the Revised Code or any committee thereof, and the board of directors of any subsidiary of that corporation or a committee thereof;

(12)

An audit conference conducted by the audit staff of the department of job and family services with officials of the public office that is the subject of that audit under section 5101.37 of the Revised Code.

(E)

The controlling board, the industrial technology and enterprise advisory council, the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122. or 166. of the Revised Code, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board, council, or authority members present, may close the meeting during consideration of the following information confidentially received by the authority, council, or board from the applicant:

(1)

Marketing plans;

(2)

Specific business strategy;

(3)

Production techniques and trade secrets;

(4)

Financial projections;

(5)

Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority, council, or board to accept or reject the application, as well as all proceedings of the authority, council, or board not subject to this division, shall be open to the public and governed by this section.

(F)

Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to,

mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(G)

Except as provided in division (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1)

To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2)

To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3)

Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4)

Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5)

Matters required to be kept confidential by federal law or regulations or state statutes;

(6)

Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(7)

In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.61 of the Revised Code.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (7) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

A public body specified in division (B)(1)(c) of this section shall not hold an executive session when meeting for the purposes specified in that division.

(H)

A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

(I)

(1)

Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

(2)

(a)

If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i)

That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;

(ii)

That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(b)

If the court of common pleas does not issue an injunction pursuant to division (I)(1) of this section and the court determines at that time that the bringing of the action was frivolous conduct, as defined in division (A) of section 2323.51 of the Revised Code, the court shall award to the public body all court costs and reasonable attorney's fees, as determined by the court.

(3)

Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.

(4)

A member of a public body who knowingly violates an injunction issued pursuant to division (I)(1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

(J)

(1)

Pursuant to division (C) of section 5901.09 of the Revised Code, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

(a)

Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;

(b)

Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;

(c)

Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.

(2)

A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under sections 5901.01 to 5901.15 of the Revised Code, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.

(3)

A veterans service commission shall vote on the grant or denial of financial assistance under sections 5901.01 to 5901.15 of the Revised Code only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

Cite as R.C. § 121.22

History. Amended by 129th General Assembly File No.

129, SB 314, §1, eff. 9/28/2012.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 129th General Assembly File No. 1, HB 1, §1, eff. 2/18/2011.

Effective Date: 05-15-2002; 04-27-2005; 2007 HB194 02-12-2008

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Exhibit 1-1

2. Routine, not for publication, correspondence of the Superintendent and other Board employees.

3. "Campaign articles" or "position papers" of candidates for elections to the Board.

4. Routine "thank you" letters of the President of the Board.

5. Statements by Board members on nonschool matters (providing the statements do not identify the author as a member of the Board).

6. Personal statements not intended for publication.

7. Postelection statements by Board members thanking citizens for voting for them.

B. Copies of this bylaw shall be sent to local media by the Board President.

0148.1 **Board-Staff Communications**

The Board of Education desires to maintain open primary channels of communication between itself and the staff. The basic line of communication, will, however, be through the Superintendent.

A. Staff Communications to the Board

Communications from staff members to the Board or its committees shall be submitted through the Superintendent, Board President, and / or Treasurer. The Superintendent shall forward such communications or Treasurer received from staff members to the Board. This procedure is not intended to deny any staff member his/her constitutional right of free speech or the right to appeal to or otherwise address the Board on important matters through established procedures.

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Exhibit 1-2

B. Board Communications to Staff

All official communications, policies, and directives of the Board of staff interest and concern to the staff will generally be communicated through the Superintendent and or Treasurer as appropriate, who shall also keep staff members informed of the Board's concerns and actions.

C. Social Interaction

Both staff and Board members share an interest in the schools and in education generally, and it is to be expected that when they interact at social affairs and other functions, they will informally discuss such matters as educational trends, issues, and innovations, and general activities of the District. However, since individual Board members are not authorized to act on behalf of the Board unless in open public session or when specifically vested with such authority, it will be considered to be unacceptable conduct for Board members to discuss individual personalities, personnel grievances, or other complaints with members of the staff. Instead, staff members should be encouraged to utilize the procedures, established in Board Policy or the collective bargaining agreement to have their concerns, complaints, or grievances addressed.

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Exhibit 1-3

0149 **Access to Records**

Individual members of the Board do not possess the powers that reside in the Board of Education.

[x] but no member of the Board shall be denied documents or information to which s/he is legally entitled and which are required in the performance of his/her duties as a Board member.

Access to District personnel and student records shall be subject to Board policies and applicable State and Federal law.

Information obtained from employee personnel records by members of the Board shall be used only for the purpose of aiding the members to fulfill their legal responsibilities in making decisions on such matters as appointments, assignments, promotions, demotions, remuneration, discipline and dismissal, or to aid the development and implementation of personnel policies, or for such other uses as are necessary to enable the Board to carry out its legal responsibilities.

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The Regular Meeting of the Olentangy Local Board of Education was called to order at the Olentangy Administrative Office by David King, at 6:00 p.m.

Roll Call — S. Dunbar, absent; D. King, present; K. O'Brien, present; J. Feasel, present; A. White, present

Pledge of Allegiance

Approve Agenda 12-192 — J. Feasel moved, K. O'Brien seconded to approve the agenda as amended to change the word "employee" to "employees" in Executive Session motion for the September 25 meeting.
Vote: J. Feasel, yes; K. O'Brien, yes; A. White, yes; D. King, yes.
Motion carried.

S. Dunbar arrived at 6:04 p.m.

Presentation

A. Heart Tests for Athletes – ***Mark Raiff and Brett Douglas with M-Core Foundation***

Board President's Report – Powell apartments; Liberty Township Zoning Meeting – apartments; Development Committee Strategy, 2020 Committee moving forward; Upcoming meetings; OEF golf outing

Superintendent's Report and Race to the Top Update – Good things; Race to the Top; Apartment Complexes; Agenda Items; "How I spent My Summer" video; Letters of Appreciation

A. Staff summer activities – ***Wade Lucas***

Treasurer's Report – Finance Committee; Bond refunding – ***Brad Sprague, David Tigget***

Public Participation Session #1 – For General Comments –
John M. Wildenthal – General Comments
Karl Salmon – Artificial Turf Project
Kirby V. Nielsen – Artificial Turf
Dimon McFerson – Future Growth

Discussion Items –

A. Reading of Board Policy: Third Grade Guarantee – ***Linda Martin, Jack Fette***

B. Second reading of Board Policy Updates: 0000's and 9000's – ***Linda Martin***

C. Second reading of the Continuous Improvement Plan (CIP) for 2012-13 – ***Jack Fette***

Public Participation Session #2 – Regarding Action Items
John M. Wildenthal – Board Policy Updates

Board Action Item 12-193 — J. Feasel moved, S. Dunbar seconded to approve the following Board Action Item:

A. Approve board policies as given readings in Discussion Items above

Vote: J. Feasel, yes; S. Dunbar, yes; K. O'Brien, yes; A. White, no; D. King, yes.
Motion carried.

Exhibit 2 - 1

Role reversal

School boards, not superintendents, are the boss and should act like it

ABOUT OUR EDITORIALS

Dispatch editorials express the view of the *Dispatch* editorial board, which is made up of the publisher, the president of *The Dispatch*, the editor and the editorial-writing staff. As is the traditional newspaper practice, the editorials are unsigned and intended to be seen as the voice of the newspaper. Comments and questions should be directed to the editorial page editor.

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Role reversal

School boards, not superintendents, are the boss and should act like it

Thursday October 11, 2012 5:32 AM

Comments: 1 Tweet 1

Exhibit 2-2

Recent developments in Ohio's public schools make it clear that school boards should be more independent and watchful, not less, to guard against potential problems. More diligence by board members might head off problems such as the attendance-rigging scandal that has put all Ohio school districts, including honest ones, under a cloud of suspicion.

Yet a number of school districts around central Ohio require, either formally or in practice, board members to call the district's superintendent first before speaking directly with any other school administrators or visiting schools. The Olentangy school district voted last week to require school-board members to request permission from the superintendent to talk to a school staff member, visit a school or obtain a district record.

Unfortunately, many board members seem fine with this. Only one Olentangy member voted against the policy. Adam White expressed his opposition well: "They're there to oversee the use of taxpayer money," he said of the board. "The powers that should be given to them are unbiased communication between staff and board."

Cheryl Ryan of the Ohio School Boards Association countered that members "should guide and they should direct and they should advocate for, but they shouldn't be on-the-ground managers and the doers in the district on the daily basis."

Of course, board members shouldn't micromanage, nor should they expect school personnel to be at their beck and call at a moment's notice. But to perform their oversight and policy-setting role, they ought to be free to seek out firsthand knowledge of how their district is performing. Boards would be better advised to make free communication the policy, and then deal as needed with any problems that might arise.

Ryan said that those who take issue with these rules are often newer board members who expect to be more hands-on. That sounds like a good argument for fresh blood on school boards. People run for school board because they want to make a difference in the district.

If board members are to perform their duty of overseeing the schools in the best interests of students, parents and taxpayers, they need unfettered access to schools and administrators. Otherwise, what they are told and shown can be easily controlled to hide anything that could be inconvenient to the superintendent.

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Ohio State Buckeyes Store

Exhibit 3-1

From: Julie Wagner Feasel October 1, 2012 8:51:31 AM

Subject: School boards control access

To: cbinkley@dispatch.com,Internet

Cc: Dave King Kevin OBrien

Collin,
Regarding your article in today's Dispatch about school boards controlling access to district staff members, let me point something out. People tell school boards all the time to run the district like a business. Well, in the business world, if a member of the board of directors wants a company staff member to do something, the board member goes through the board of directors president and/or company CEO. I've worked for a board of directors my entire professional career (23 years and 3 different organizations) and it is understood that if a member of the board of directors (which is an elected position) wants me to do something, they talk to the CEO or board of directors president first. As a staff member of the Ohio Chamber of Commerce, my duties are handed down to me by the president/CEO of the organization. He knows what I'm working on, if the request is legitimate, if the request falls inline with the goals of the organization, he is my boss.

The same is true for school board members. School board members do not oversee the day to day operations of the district, that is the superintendent's duty. The school board as a whole is the boss of the superintendent and treasurer and we set the goals and direction of the district. We do not tell the teachers what their lesson plans should look like or how they should discipline a student. As individual board members, we have no individual control; our actions are taken as a board of the whole. According to the Ohio Revised Code, we are only allowed to hire the district superintendent and treasurer. Thus, these are the only two district employees we should have direct access to.

In being on the Olentangy School Board since 2006, I have NEVER had an issue with getting the information I have requested from the superintendent or treasurer. Our superintendent even meets individually with us on a monthly basis to discuss our individual concerns (however Mr. White has never taken advantage of this). This spring I was collecting data for athletic GPAs and in talking with the superintendent, he directed me to work with another staff member who was also working on the same issue so that we could share data. The superintendent had no problem directing me to the proper staff member since he understood what information I was wanting to obtain.

School district employees have a lot of work to do. If they are constantly being interrupted by board members, they can get off task. Plus, as the leader of the district, the superintendent should be able to help the board member out with any request they should have as it is his/her duty to respond to board members. If the superintendent needs to direct the board member to another staff person, then that type of communication is warranted.

Too many times board members think they have more power than they really do when infact, as individual board members they have no power. The power comes during official board meetings when the group acts as a whole. The policy our board voted on last Tuesday reflects how our school board has been operating since at least 2004.

Julie Wagner Feasel, member

Olentangy School Board

Please note that all e-mail communication to elected officials is public record and maybe viewed by anyone who requests it.

Exhibit 3.2

RE: School boards control access
From: Collin Binkley <cbinkley@dispatch.com>,Olentangy Local Schools
Subject:
To: Julie Wagner Feasel

Hi Julie,
Thanks for taking the time to respond. I understand what you're saying, in particular the business analogy that we hear so often. I think the quote and paraphrase from Cheryl Ryan of OSBA hits on some of the points you're making:

"'They should guide and they should direct and they should advocate for, but they shouldn't be on-the-ground managers and the doers in the district on a daily basis,' Ryan said. Those who butt heads with the rules are often newer board members, she said, who expect the board to be more hands-on."

That being said, there are some board members who feel they should be allowed to be more hands-on. None I spoke with said they should be telling teachers or principals what to do; to the contrary, most said they just wanted the opportunity to get the opinions of people working in schools. So I think there's a balance to be decided by each district, as Olentangy did in the policy update.

Your point is well taken regarding what would happen if board members inundated school employees with requests. One board member in another district made the point, though, that there has to be some trust that board members will know better than to overburden employees.

Again, I think it's another point that just comes down to the relationship between the board and the superintendent, and the culture of the district.

The point of the article wasn't to say that one way is right or wrong, but rather that it's an ongoing debate to be settled on a district-by-district basis.

Thanks again for your time, and I hope all is well,

Collin Binkley
Reporter
The Columbus Dispatch
614-461-8561
34 S. Third St.
Columbus, OH 43215
Twitter: @cbinkley

Exhibit 3.3

—— Reply message ——
From: "Teresa Niehaus" <teresa_niehaus@olentangy.k12.oh.us>
To: <jfeasel@aol.com>, <sldunbar@att.net>, <kobrien1@insight.rr.com>
Cc: "Wade Lucas" <Wade_Lucas@olentangy.k12.oh.us>, "Linda Martin" <Linda_Martin@olentangy.k12.oh.us>, "Karen Truett" <karen_truett@olentangy.k12.oh.us>, <dking@horneandking.com>
Subject: From Dave King: re Fall party and Dispatch editorial
Date: Thu, Oct 11, 2012 9:09 am

Dave King is traveling today and asked that forward his message:

Julie, Stacy, and Kevin,

re: Fall party email and today's Dispatch Editorial

Wade, Linda and I met briefly this morning to discuss both of these issues. We are recommending that we four board members respond in writing to the Dispatch editorial. Tomorrow morning we will compose a response and will share it with you for comments/suggestions. After your comments are considered, we will submit the response to the Dispatch. If you do not agree with this course of action, please let me know.

Further, we need to consider a response to Adam's involvement in the Fall Party issue. I have received your comments and will discuss the appropriate course of action with Wade and Linda as part of tomorrow morning's meeting.

Thanks.
Dave

003

Exhibit 3.4

—Original Message—
From: sldunbar <sldunbar@att.net>
To: Teresa Niehaus <teresa_niehaus@olentangy.k12.oh.us>; jfeasel <jfeasel@aol.com>; kobrien1 <kobrien1@insight.rr.com>
Cc: Wade Lucas <Wade_Lucas@olentangy.k12.oh.us>; Linda Martin <Linda_Martin@olentangy.k12.oh.us>; Karen Truett <karen_truett@olentangy.k12.oh.us>; dking <dking@homeandking.com>
Sent: Thu, Oct 11, 2012 10:16 am
Subject: Re: From Dave King: re Fall party and Dispatch editorial

Please make sure you include in the response that Mr White's dedication to being a watchdog included contacting a principal directly to question why elementary students couldn't wear costumes to a fall festival. I am serious when i say this. Letting them paint him as someone who would have uncovered the attendance scandal when in fact he is getting involved in silly things is key in this discussion.

Also emphasize that contacting the superintendent first is a way to not waste time. It doesn't prevent me from talking to administrators, it just helps me focus on who is dealing with what. Noone seems to have an issue getting the information they need except Adam.

Stacy

004

Exhibit 3-5

From: Karen Truett
Julie Feasel <jfeasel@aol.com>,Internet

October 11, 2012 1:10:32 PM

Subject: Fwd: Re: From Dave King: re Fall party and Dispatch editorial

To: kristasdavis@gmail.com,Internet Krista Davis

Attachments: Attach0.html 6K

Karen Truett
Director of Communications
Olentangy Local Schools
(740) 657-4066

Our mission is to facilitate maximum learning for every student.

----- **Original Message** -----

I've got a list of items to include in a response to the editorial. I will get those to the appropriate people this afternoon.

Regarding Adam contacting the principal, this is something that we as a board, not the administration, need to address as it is board policy that he is breaking. I find it ironic that he supports parties during the school day as they do take up time that could be spent learning.
Julie

— Original Message —

Exhibit 3-6

Wade:

After speaking with Julie today, I thought it might be helpful to provide you with some thoughts on the editorial in today's Dispatch:

- In my mind, there is nothing about the policy we re-affirmed at our meeting last month that would prohibit us from remaining "independent and watchful" over the OLSD. In fact, since that policy has been in place for x years, our results (cost per pupil, performance index, etc) would argue that the means by which the OLSD Board operates delivers the results many communities across the state of Ohio would love to have.
- I don't believe that our policy indicates that we have to "request permission" from the Superintendent. By identifying the Superintendent as the primary channel for Board/Employee communication, the policy is intended to create an efficient (and hopefully more effective) means of communication between the two parties. The policy simply mirrors what is in practice is most large employers in Central Ohio.
- While Mr. White indicates that we are here to "oversee the use of taxpayer money"and implies this policy will inhibit his ability to do so, I find it odd that he didn't ask a single question about our 5 year forecast that was presented and discussed at our Board meeting Tuesday night (listen to the tape) and he failed to attend the Audit and Finance Committee meeting in which the forecast and related assumptions were reviewed and discussed. Is Mr. White really impaired by this policy or is this just another way for Mr. White to get his name in the paper?
- We would agree with the Dispatch that Board members should be "free to seek out firsthand knowledge of how the District is performing" and believe that this policy offers a responsible way for that to occur. Additionally, Board members are encouraged to attend school events, participate in committee meetings and public forums and get involved in activities beyond the scheduled Board of Education meetings. Of course Mr. White has failed to attend any committee meetings and has yet to be seen any school events like graduations, public forums, etc.
- At the end of the day, if a Board member who is following our long-held communication policy, feels as if the superintendent is "hiding anything", then that member and the entire Board has in fact failed on one of the most important decisions we make - they have chosen the wrong superintendent.
- We should also mention that at our next meeting (and once per month thereafter), we have added an extra 30 minutes of "open forum" time for residents, staff, and other interested parties to come in and have an open and "uncontrolled" dialogue with the Board a means of ensuring the Board has as much input on issues as possible.

Hope that helps.

Kevin

Kevin G. O'Brien
Vice President & CFO
Nationwide Retirement Plans
614-854-2509

006

Exhibit 3-7

From: Linda Martin
Krista Davis <kristasdavis@gmail.com>,Internet

10/12/12 8:16:48 AM

Subject: Fwd: Response to Dispatch Editorial

To: Teresa Niehaus

Attachments:		
	Attach0.html	7K
	Dispatch Response 10-12-12.docx	105K
	Attach2.html	6K

could you print this

Linda Martin
Assistant Superintendent
Olentangy Local Schools
740-657-4012
linda_martin@olentangy.k12.oh.us

----- Original Message -----

Good Morning,

Please find letter in response to the editorial attached.

After receiving Stacy, Kevin and Julie's points and talking w/ Julie, I've got the following draft for your review.

Julie wanted to emphasize that the policy was established and vetted via a community committee. Kevin had some really good points which are incorporated.

I'm available today, except for 9-11 am and 11:30-12. Text, call, email- and I can continue to work on it.

Thanks!
Krista

Good Morning,

Exhibit 3.8

From: Krista Davis <kristasdavis@gmail.com>,Olentangy Local Schools 10/...

Subject: Response to Dispatch Editorial

To: karen_truett@olentangy.k12.oh.us,Internet
Truett Karen <truett.karen@gmail.com>,Internet
Linda_Martin@olentangy.k12.oh.us,Internet Wade Lucas

Cc: Krista_Davis@olentangy.k12.oh.us,Internet

Attachments:

Attach0.html	7K
Dispatch Response 10-12-12.docx	105K
Attach2.html	6K

Good Morning,

Please find letter in response to the editorial attached.

After receiving Stacy, Kevin and Julie's points and talking w/ Julie, I've got the following draft for your review.

Julie wanted to emphasize that the policy was established and vetted via a community committee. Kevin had some really good points which are incorporated.

I'm available today, except for 9-11 am and 11:30-12. Text, call, email- and I can continue to work on it.

Thanks!
Krista

008

Exhibit 3.9

Krista Davis on Friday, October 12, 2012 8:23 AM +0400 wrote:

Hi there-

Forwarding this to you just in case Wade/Linda didn't get a chance to look at email. Think they were going over this with Dave and others this morning.

Thanks!
Krista

Exhibit 3-10

From: Teresa Niehaus October 12, 2012 8:28:09 AM

Subject: Re: Fwd: Response to Dispatch Editorial

To: Krista Davis

Got it -- thanks, Krista! Nice seeing you yesterday. :)

Terri

Terri Niehaus

Teresa Niehaus, Executive Assistant
Olentangy Local Schools
Office of the Superintendent and Assistant Superintendent
(740) 657-4011

Exhibit 3-11

From: Krista Davis — October 12, 2012 8:35:36 AM

Subject: Re(2): Fwd: Response to Dispatch Editorial

To: Teresa Niehaus

Thanks! Great to see you too!
Stay healthy! Karen texted that they all have the stomach bug now!
eek!

Exhibit 3 - 12

From: Wade Lucas
OBRIENK1@nationwide.com,Internet

October 12, 2012 9:09:12 AM

Subject: Fwd: Thoughts/Talking Points on today's Dispatch Editorial

To: Linda Martin

Attachments: Attach0.html 4K

fyi

w

Wade E. Lucas, Ed.D.
Superintendent

Olentangy Local Schools
814 Shanahan, Suite #100
Lewis Center, Ohio 43035

(740) 657-4050

012

Exhibit 3-13

From: Julie Feasel <jfeasel@aol.com>,Olentangy Local Schools 10/12/12 9:...

Subject: letter to the editor

To: dave_king@olentangy.k12.oh.us,Internet
dking@horneandking.com,Internet

Cc: Kevin OBrien

Attachments: Attach0.html 2K

Dave,
The letter to the editor form is at

http://www.dispatch.com/content/pages/opinion/send-letter-to-editor.jsp. Copy it and paste it into the box where the letter should go.

Also email the letter with all of our names directly to the head of the editorial department Glen Sheller at gsheller@dispatch.com. Invite Mr. Sheller to meet with you and Kevin to review the policy process with him. You can also reiterate in your email to Mr. Sheller that the policy was reviewed by the Policy Committee of which Adam does not attend any of those or any other committee meeting.

Thanks!
Julie

Exhibit 3-14

Look over this transcription. Comments/corrections?

Linda Martin
Assistant Superintendent
Olentangy Local Schools
740-657-4014
linda.martin@olentangy.k12.oh.us

014

Exhibit 3.15

From: Teresa Niehaus October 12, 2012 10:08:40 AM

Subject: Dispatch Response 10-12-12 -- my changes

To: Linda Martin Krista Davis

Attachments: Dispatch Response 10-12-12 2.docx 27K

I had a few suggestions -- I like it. I say, GO!

Terri

Terri Niehaus

Teresa Niehaus, Executive Assistant
Olentangy Local Schools
Office of the Superintendent and Assistant Superintendent
(740) 657-4011

Exhibit 3.16

From: Krista Davis October 12, 2012 10:58:13 AM

Subject: Letter to Dispatch- REVISED

To: Linda Martin Teresa Niehaus Karen Truett
truett.karen@gmail.com,Internet

Attachments: Dispatch Response 10-12-12 2 3.docx 149K

Hi all-

Received your revised letter, left phone message with Linda.
I have made a few more revisions and a comment re: the question in the middle of the letter.
Take a look- let me know if you have any add'l comments, want to discuss, further revisions, etc...
Thanks!
Krista

Exhibit 3-17

From: Teresa Niehaus
Krista Davis

October 12, 2012 11:04:58 AM

Subject: Fwd: Letter to Dispatch- REVISED

To: Linda Martin Krista Davis Karen Truett
truett.karen@gmail.com,Internet

I agree with Krista's thoughts about the "guess who.." comment. I also thought you may want to add the the superintendent reaches out by phone but also email and personal meetings. Let's give him credit for using all of the possible means of communication.

Terri

Terri Niehaus

Teresa Niehaus, Executive Assistant
Olentangy Local Schools
Office of the Superintendent and Assistant Superintendent
(740) 657-4011

017

Exhibit 3.18

From: Linda Martin
Krista Davis <kristasdavis@gmail.com>,Internet

10/12/12 11:23:23 AM

Subject: Fwd: KSD REVISED- Dispatch response

To: Krista Davis <kristasdavis@gmail.com>,Internet Teresa Niehaus
Karen Truett

Attachments:		
	Attach0.html	6K
	Dispatch Response 10-12-12 2 3.docx	149K
	Attach2.html	7K

I also agree with Krista & Terri's comment (below). Terri, can you make the changes and send to Wade & Dave?

I agree with Krista's thoughts about the "guess who.." comment. I also thought you may want to add the the superintendent reaches out by phone but also email and personal meetings. Let's give him credit for using all of the possible means of communication.

Linda Martin
Assistant Superintendent
Olentangy Local Schools
740-657-4012
linda_martin@olentangy.k12.oh.us

Exhibit 3.19

From: Teresa Niehaus October 12, 2012 11:49:32 AM

Subject: FROM DAVE KING: Dispatch Response 10-12-12 FINAL

To: jfeasel@aol.com,Internet sldunbar@att.net,Internet
kobrien1@insight.rr.com,Internet

Cc: dking@horneandking.com,Internet Wade Lucas Krista Davis
Karen Truett Rebecca Jenkins Linda Martin

Attachments: Dispatch Response 10-12-12 FINAL.docx 28K

Message from Dave King:

Attached is the final draft of the letter crafted by Linda, Wade and myself this morning. Please review and, if you have suggestions or comments, submit them as **soon as possible to the group**.

Thanks,
Dave

Exhibit 3-20

From: Teresa Niehaus October 12, 2012 12:01:28 PM

Subject: Dispatch Response 10-12-12 FINAL FINAL

To: dking@horneandking.com,Internet jfeasel@aol.com,Internet
Krista Davis obrienk1@nationwide.com,Internet Karen Truett
Wade Lucas Rebecca Jenkins Linda Martin

Attachments: Dispatch Response 10-12-12 FINAL.docx 28K

One change, from Julie. Last paragraph: listing exact date of last board meeting.

Terri

Terri Niehaus

Teresa Niehaus, Executive Assistant
Olentangy Local Schools
Office of the Superintendent and Assistant Superintendent
(740) 657-4011

Exhibit 3.21

Stacy
On Oct 12, 2012, at 12:04 PM, "Wade Lucas" <Wade_Lucas@olentangy.k12.oh.us> wrote:

I have one "word smithing " item: 2nd paragraph, fourth sentence. Suggestion to change:

"Those members who have met with the supt. have not been denied appropriate requested information."

Thanks.

W

Sent from FirstClass with my iPhone

Exhibit 3.22

From: OBRIENK1@nationwide.com,Olentangy Local Schools 10/12/12 1:16:...

Subject: Re: Dispatch Response 10-12-12 FINAL FINAL

To: teresa_niehaus@olentangy.k12.oh.us,Internet

Cc: dking@horneandking.com,Internet jfeasel@aol.com,Internet
karen_truett@olentangy.k12.oh.us,Internet
Krista_Davis@olentangy.k12.oh.us,Internet
Linda_Martin@olentangy.k12.oh.us,Internet
Rebecca_Jenkins@olentangy.k12.oh.us,Internet Wade Lucas

Attachments: Attach0.html 3K
Dispatch Response 10-12-12 FINAL(KO).docx 35K

I made some edits (trimmed some language and moved a sentence). The sentence I moved was the "unfortunately, not all board members...". I moved it to after the other activities sentence. I thought it fit better there. Also - it felt like the second paragraph was making the issue about the Supertintendent - so I made some edits there as well.

Take a look and let me know what you think.

Kevin

Kevin G. O'Brien
Vice President & CFO
Nationwide Retirement Plans
614-854-2509

022

Exhibit 3 - 23

From: Wade Lucas [mailto:Wade_Lucas@olentangy.k12.oh.us]
Sent: Friday, October 12, 2012 1:28 PM
To: OBRIENK1@nationwide.com
Cc: teresa_niehaus@olentangy.k12.oh.us; David King; jfeasel@aol.com; karen_truett@olentangy.k12.oh.us; Krista_Davis@olentangy.k12.oh.us; Linda_Martin@olentangy.k12.oh.us; Rebecca_Jenkins@olentangy.k12.oh.us
Subject: Re: Dispatch Response 10-12-12 FINAL FINAL

I like it, thanks Kevin and Julie.

W

029

Exhibit 3.24

From: Teresa Niehaus
"Wade Lucas" <Wade_Lucas@olentangy.k12.oh.us>,Internet

10/12/12 1...

Subject: Fwd: Re: Dispatch Response 10-12-12 FINAL FINAL

To: Krista Davis Karen Truett

Cc: Wade Lucas Linda Martin

Attachments: Attach0.html 8K

Krista and Karen,

I am working from home this afternoon.

I made and shared Julie's suggestion. Dave and Kevin made suggestions as well, but I do not see any from Stacy as yet. Will one of you be making final changes and submitting to The Dispatch?

Let me know how/if I can help! :)

Terri

Terri Niehaus

Teresa Niehaus, Executive Assistant
Olentangy Local Schools
Office of the Superintendent and Assistant Superintendent
(740) 657-4011

024

Exhibit 3-25

From: "Krista Davis" <Krista_Davis@olentangy.k12.oh.us>,Olentangy Local Schools
Subject:
To:
Cc:
Attachments: Attach0.html 13K
Dispatch Response 10-12-12 FINAL.docx 155K
OBRIENK1@nationwide.com,Internet
Teresa Niehaus dking@horneandking.com,Internet
jfeasel@aol.com,Internet Karen Truett Linda Martin
Rebecca Jenkins Wade Lucas
Stacy_Dunbar@olentangy.k12.oh.us,Internet

Hi all-

Please find the FINAL version attached. This version includes edits from Wade, Julie and Kevin. I do not have edits from Stacy (not sure if you have any, Stacy- I just noticed you were not on the original email string so you may not have seen it??)

Look it over one last time, and I believe it is ready to send. Karen and I think the letter should be submitted to the Dispatch from Dave on behalf of the 4 of you, and should not come from the district. Terri mentioned that Dave may be traveling so maybe Julie could submit? Karen says you can find submission information for electronic submission on the Dispatch website or it could be sent to Colin Binkley.

Please text me at 614-323-6708 if any questions.

Krista

Exhibit 3.26

From: Krista Davis October 12, 2012 1:45:18 PM

Subject: Re: Fwd: Re: Dispatch Response 10-12-12 FINAL FINAL

To: Teresa Niehaus

Cc: Karen Truett Wade Lucas Linda Martin

hi all-

I haven't seen any comments from Stacy yet either- are we expecting her to respond? (meaning can she do so from work?)

I have a feeling Karen is still out of commission today- I have about an hour until I am taking Katie to a dr. appointment. I am happy to make the changes Kevin suggested. I could send it to the Dispatch for you all but I don't know the typical protocol. Linda mentioned sending it electronically... Terri, do you know who/method/etc...? I'll give Stacy about another 30 min and then make the final changes from Kevin and send by 3pm before I leave for the appt.

Krista

Exhibit 3 · 27

From: Teresa Niehaus October 12, 2012 2:16:16 PM

Subject: Re(2): Fwd: Re: Dispatch Response 10-12-12 FINAL FINAL

To: Krista Davis

Hi K,

I called your cell - I have no idea how to send a letter to the editor. Sounds like a call to Karen, unfortunately?

I did call Stacy and left a message on her voicemail. I'd say, if we don't hear back from her (I encouraged her to call me or email the group) that you go ahead, make the changes and submit.

Call if you need me - 614.302.9672. :)

Terri

Terri Niehaus

Teresa Niehaus, Executive Assistant
Olentangy Local Schools
Office of the Superintendent and Assistant Superintendent
(740) 657-4011

Exhibit 3 - 28

From: kobrien1@insight.rr.com [kobrien1@insight.rr.com]
Sent: Friday, October 12, 2012 4:31 PM
To: Collin Binkley
Cc: Dave King; julie_wagner_feasel@olentangy.k12.oh.us; stacy_dunbar@olentangy.k12.oh.us
Subject: Response to 10/11/12 Editorial

Collin:

Hope you are well. Attached please find a response to the Editorial published by the Dispatch on 10/11/12.

Please contact Dave King, President of the Olentangy School Board with any questions.

Thanks.
Kevin G. O'Brien
OLSD - BOE
Vice President

Exhibit 3-29

On Oct 12, 2012, at 4:42 PM, Collin Binkleyc b<inkley@dispatch.co>m wrote:

Hi Kevin et al.,

Thanks for passing that along. I had no role in the editorial (it's an entirely different staff and department), but I passed it along to our opinion editor, Glenn Sheller. His email address is gsheller@dispatch.com .

Have a good weekend,

Collin Binkley
Reporter
The Columbus Dispatch
614-461-8561
34 S. Third St.
Columbus, OH 43215
Twitter: @cbinkley

Exhibit 3-38

From: Kevin O'Brien m{ailto:kobrienl@insight.rr.co]m
Sent: Friday, October 12, 2012 4:51 PM
To: Collin Binkley
Cc: David King;j ulie_wagner_feasel@olentangy.k12.oh.;u s
stacy_dunbar@olentangy.k12.oh.us
Subject: Re: Response to 10/11/12 Editorial

Thanks. I did submit the response via the online form as well (probably should have mentioned that).

Kevin

Exhibit 3 · 31

From: Glenn Sheller <gsheller@dispatch.com>
Date: October 12, 2012, 5:18:59 PM EDT
To: "'kobrien1@insight.rr.com'" <kobrien1@insight.rr.com>
Subject: FW: Response to 10/11/12 Editorial

Dear Mr. O'Brien:

The Dispatch does not publish letters with multiple signers.

One of you will have to be the sole signer of the letter. If you want to get the names of the other three into the letter, you could add a sentence to the letter that says "my colleagues (name here), (name here), and (name here) join me in saying that the way we do things is super, etc."

But we'll still need home addresses and daytime phone numbers for everybody named in the letter so that we can confirm that each of them consents to be named in the letter.

Send your revised letter and the contact info to: letters@dispatch.com

Thanks,
Glenn Sheller
Editorial page editor
The Columbus Dispatch
614-461-5072

Exhibit 3.32

From: Dunbar <sldunbar@att.net>,Olentangy Local Schools 10/12/12 5:20:...

Subject: Re: FROM DAVE KING: Dispatch Response 10-12-12 FINAL

To: Wade Lucas

Cc: teresa_niehaus@olentangy.k12.oh.us,Internet
jfeasel@aol.com,Internet kobrien1@insight.rr.com,Internet
dking@horneandking.com,Internet
Krista_Davis@olentangy.k12.oh.us,Internet
karen_truett@olentangy.k12.oh.us,Internet
Rebecca_Jenkins@olentangy.k12.oh.us,Internet
Linda_Martin@olentangy.k12.oh.us,Internet

Attachments: Attach0.html 4K

Sorry all, was in afternoon meetings and left my phone in the car. I am fine with the response.

Exhibit 3.33

From: Krista Davis [mailto:Krista_Davis@olentangy.k12.oh.us]
Sent: Saturday, October 13, 2012 9:34 AM
To: sldunbar@att.net
Cc: Wade_Lucas@olentangy.k12.oh.us; teresa_niehaus@olentangy.k12.oh.us; jfeasel@aol.com; kobrien1@insight.rr.com; David King; karen_truett@olentangy.k12.oh.us; Rebecca_Jenkins@olentangy.k12.oh.us; Linda_Martin@olentangy.k12.oh.us
Subject: Re: FROM DAVE KING: Dispatch Response 10-12-12 FINAL

HI all-

To update everyone (if you're checking your email on Saturday morning!)....

The letter was rejected by the Dispatch late yesterday afternoon as it needed Dave's signature at a minimum. Kevin, Dave and Julie were in touch and I believe they are turning it in today.

Should be submitted/good to go today!

Enjoy the weekend!

Krista

Exhibit 3 - 34

On Oct 17, 2012, at 3:25 PM, David King <DKing@horneandking.com> wrote:

When I sent the letter to the Dispatch the site confirmed receipt and thanked me, thank you very much.

But, I have not yet received a call or email to confirm.

Dave
David H. King
President
Horne & King Architects
6265 Riverside Dr., Ste. 2N
Dublin, Ohio 43017-5508
614.766.6711 tel
614.766.2810 fax
dking@horneandking.com
Web page: horneandking.com

Communication policy allows school board to do its job properly

Saturday October 27, 2012 8:51 AM

The Oct. 11 *Dispatch* editorial "Role reversal" had a secondary headline that read "School boards, not superintendents, are the boss and should act like it," responding to the Olentangy school board's recent reaffirmation of an 8-year-old policy addressing effective communication between the board and staff.

This policy does, in fact, allow the school board to act as a board of directors and successfully oversee the school district and its use of taxpayer dollars. My fellow board members Kevin O'Brien, Stacy Dunbar, Julie Wagner Feasel and I agree with *The Dispatch*; board members should be "free to seek out firsthand knowledge of how the district is performing," and we strongly believe the renewal of this policy continues to allow the school board to do just that.

Community members serving on the board's Policy Committee vetted this policy before submitting it for approval, affirming that the superintendent is the primary channel for board/employee communication. All board members have the opportunity to access information and interact with the district.

In addition, the superintendent frequently reaches out to each board member by phone, through email and with individual meetings. Those members who have met with the superintendent have not been denied appropriate requested information.

The practice of contacting board members directly creates an effective and efficient means of sharing information, so the board has access to make informed decisions. As board members, we are encouraged to attend school events, participate in committee meetings and public forums and get involved in activities beyond the scheduled Board of Education meetings. Participation in these additional activities is another way for members to gain a familiarity and knowledge base of the district they oversee.

Unfortunately, not all board members take advantage of these opportunities. There is nothing about the policy that prohibits us from remaining "independent and watchful" over the district. In fact, with the policy in place for at least eight years, our efficient use of taxpayer dollars and academic achievement would argue that the means by which the board operates delivers the results that many Ohio communities would love to have.

While board member Adam White indicates that we are here to "oversee the use of taxpayer money"and implies this policy will inhibit his ability to do so, we find it odd that he didn't ask a single question about the five-year financial forecast that was presented and discussed at our board meeting on Oct. 9 (listen to the podcast), and he failed to attend the Audit and Finance Committee meeting in which the forecast and related assumptions were reviewed and discussed.

Is White really impaired by this policy, or is this just another way for him to get his name in the paper?

DAVE KING

Exhibit 3·36

Olentangy School Board president

Powell

Email

Ads by Yahoo!

Data Collection Services
IVR / Web / PDA data collection for cleaning and building maintenance
(www.isai-ivr.com)

Transportation Software
Transportation and Logistics software including accounting
(omni-info.com)

Be A MegaMillion Winner
This Is The January Surprise The Lotteries Are Trying To Avoid...
(www.secretmasterformula.com/en)

Web 2.0 Apps In Minutes
Generate database & reporting apps straight from your database! Try it
(www.ironspeed.com)

Exhibit 4

REGULAR MEETING

April 25 13

The Regular Meeting of the Olentangy Local Board of Education was called to order at the Olentangy Local Schools Administrative Office, by Kevin O'Brien, president at 6:30 p.m.

Roll Call S. Dunbar, present; J. Feasel, present; D. King, present; A. White, present; K. O'Brien, present

Pledge of Allegiance

Dr. Lucas presented the addendum to the agenda as provided to Board members.

Adam White presented paperwork regarding a lawsuit he filed against the other 4 board members and moved that no public monies shall be spent defending the 4 board members, or in the alternative, if any public monies are spent defending the 4 board members, those members agree to reimburse the district for any monies spent.

The motion died for lack of a second.

Approve Agenda 13-149 J. Feasel moved, S. Dunbar seconded to approve the agenda for the April 25, 2013 Meeting with addendum to make additions to Items A-3,6,10,14,17, and 18, and B-2.

Vote: J. Feasel, yes; S. Dunbar, yes; D. King, yes; A. White, no; K. O'Brien, yes. Motion carried.

Presentation (the Board meeting moved to the Shanahan Team Room)

A. Indian Springs Elementary Fourth Grade Chorus (in Shanahan Team Room)

The Board meeting resumed in the Administrative Conference Room.

Board President's Report

A. Strategic Planning Committee

Board Agenda Item 13-150 K. O'Brien Moved, J. Feasel seconded that The Olentangy Local School District Board of Education ratifies a letter to the editor that 4 Board members submitted to the Columbus Dispatch in response to an October 11, 2012 editorial. The Board denies that it violated the Sunshine Law and it will not comment further on a lawsuit that reportedly was filed less than 6 hours ago.

Vote: K. O'Brien, yes; J. Feasel, yes; S. Dunbar, yes; D. King, yes; A. White, abstain. Motion carried.

Board President's Report (Cont.)

B. Board Committee Liaison Quarterly Updates

Superintendent's Report and Race to the Top Update

Treasurer's Report

Public Participation Session #1 – ***Douglas Gibby*** – Recognition of Middle School Math Progress

Discussion Items

A. Turf Update – ***Robert Fuller, Development Committee; Jeff Gordon***

B. Annual Report on Academic Achievement – ***Jack Fette***

C. Adult Facilitation Task Force – ***Heather Camacho-Cole***

D. Student Handbook Revisions for 2013-14 – ***Mark Raiff***

CRTR5925 Detail

Case Number	Status	Judge
13 CV H 04 0352	Closed	KRUEGER, EVERETT H.

In The Matter Of	Action
WHITE, ADAM J vs. KING, DAVID E et al	OTHER CIVIL

Party		Attorneys
WHITE, ADAM J 3579 HIDDEN COVE CIRCLE LEWIS CENTER, OH 43035	PLNTF	HARMON, PHILLIP L 6649 NORTH HIGH STREET SUITE 105 WORTHINGTON, OH 43085
KING, DAVID E OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035	DFNDT	ALBERT, JOHN C 500 SOUTH FRONT ST SUITE 1200 COLUMBUS OHIO 43215
FEASEL, JULIE OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035	DFNDT	ALBERT, JOHN C 500 SOUTH FRONT ST SUITE 1200 COLUMBUS OHIO 43215
O BRIEN, KEVIN OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035	DFNDT	ALBERT, JOHN C 500 SOUTH FRONT ST SUITE 1200 COLUMBUS OHIO 43215
DUNBAR, STACY OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035	DFNDT	ALBERT, JOHN C 500 SOUTH FRONT ST SUITE 1200 COLUMBUS OHIO 43215
BOARD OF EDUCATION OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035	DFNDT	ALBERT, JOHN C 500 SOUTH FRONT ST SUITE 1200 COLUMBUS OHIO 43215

Opened	Disposed	Case Type
04/25/2013	OTHER TERMINATIONS - SUMMARY JUDGMENT	CIVIL

Comments: COURT OF APPEALS CASE 14 CAE 02 0010 FILED 02/13/14

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
	04/25/13	CIVIL / DEPOSIT Receipt: 155476 Date: 04/25/2013	98.00	0.00
	04/25/13	CIVIL FILING FEES Receipt: 155476 Date: 04/25/2013	62.00	0.00
	04/25/13	CLASSIFICATION	0.00	0.00

(21)

CRTR5925 Detail

13 CV H 04 0352 WHITE, ADAM J vs. KING, DAVID E et al

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
2	04/25/13	COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF Receipt: 169590 Date: 01/17/2014	25.00	0.00
3	04/25/13	SUMMONS & CTF COPY OF COMPLAINT TO Receipt: 169590 Date: 01/17/2014	12.00	0.00
	04/25/13	Issue Date: 04/25/2013 Service: INITIAL SERVICE ON COMPLAINT Method: CERTIFIED MAIL Cost Per: $	0.00	0.00
		KING, DAVID E OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035 Tracking No: WA7196900891118415360		
		FEASEL, JULIE OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035 Tracking No: WA7196900891118415361		
		O BRIEN, KEVIN OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035 Tracking No: WA7196900891118415362		
		DUNBAR, STACY OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035 Tracking No: WA7196900891118415363		
	04/25/13	CIVIL CERTIFIED MAIL POSTAGE Receipt: 169590 Date: 01/17/2014	32.00	0.00
4	05/01/13	RETURN CERTIFIED MAIL UPON: Method : CERTIFIED MAIL Issued : 04/25/2013 Service : INITIAL SERVICE ON COMPLAINT Served : 04/29/2013 Return : 05/01/2013 On : KING, DAVID E Signed By : ANN GOSSING Reason : CERT MAIL / SERVICE COMPLETE Comment : Tracking #: WA7196900891118415360	0.00	0.00

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No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
5	05/01/13	RETURN CERTIFIED MAIL UPON: Method : CERTIFIED MAIL Issued : 04/25/2013 Service : INITIAL SERVICE ON COMPLAINT Served : 04/29/2013 Return : 05/01/2013 On : DUNBAR, STACY Signed By : ANN GOSSING Reason : CERT MAIL / SERVICE COMPLETE Comment : Tracking #: WA7196900891118415363	0.00	0.00
6	05/01/13	RETURN CERTIFIED MAIL UPON: Method : CERTIFIED MAIL Issued : 04/25/2013 Service : INITIAL SERVICE ON COMPLAINT Served : 04/29/2013 Return : 05/01/2013 On : O BRIEN, KEVIN Signed By : ANN GOSSING Reason : CERT MAIL / SERVICE COMPLETE Comment : Tracking #: WA7196900891118415362	0.00	0.00
7	05/01/13	RETURN CERTIFIED MAIL UPON: Method : CERTIFIED MAIL Issued : 04/25/2013 Service : INITIAL SERVICE ON COMPLAINT Served : 04/29/2013 Return : 05/01/2013 On : FEASEL, JULIE Signed By : ANN GOSSING Reason : CERT MAIL / SERVICE COMPLETE Comment : Tracking #: WA7196900891118415361	0.00	0.00
8	05/28/13	NOTICE OF APPEARANCE	0.00	0.00
9	05/28/13	ANSWER OF DEFENDANTS DAVID E KING JULIE FEASEL KEVIN OBRIEN AND STACY DUNBAR Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
10	06/10/13	FIRST AMENDED ANSWER OF DEFENDANTS DAVID E KING, JULIE FEASEL, KEVIN O'BRIEN AND STACY DUNBAR	0.00	0.00

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No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
11	06/20/13	JUDGMENT ENTRY OF SCHEDULING ANY PARTY SEEKING A JURY TRIAL SHALL SUBMIT A $500.00 JURY DEPOSIT AT LEAST 60 DAYS PRIOR TO SCHEDULED TRIAL DATE FINAL PRETRIAL CONFERENCE SCHEDULED FEBRUARY 24 2014 AT 2:30 PM TRIAL SCHEDULED TO COMMENCE ON ON MARCH 04 2014 AT 8:30 AM SEE ENTRY IN VOLUME 427 PAGES 238-244 Receipt: 169590 Date: 01/17/2014	21.00	0.00
	06/20/13	POSTAGE FEE Receipt: 169590 Date: 01/17/2014	0.92	0.00
12	06/20/13	DEFENDANTS MOTION FOR JUDGMENT ON THE PLEADINGS Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
	06/20/13	COPIES OF E-FILING AND CHARGED TO CASE Receipt: 169590 Date: 01/17/2014	0.80	0.00
13	07/02/13	PLAINTIFFS MOTION TO ADD PARTY, MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT Attorney: HARMON, PHILLIP L (0033371)	0.00	0.00
14	07/02/13	PLAINTIFFS MEMORANDUM IN OPPOSITION TO DEFENDANTS MOTINO FOR JUDGMENT ON THE PLEADINGS FILED JUNE 20 2013	0.00	0.00
	07/02/13	COPIES OF E-FILING AND CHARGED TO CASE Receipt: 169590 Date: 01/17/2014	6.50	0.00
15	07/10/13	SUMMONS & CTF COPY OF COMPLAINT TO Receipt: 169590 Date: 01/17/2014	3.00	0.00
	07/10/13	Issue Date: 07/10/2013 Service: INITIAL SERVICE ON FIRST AMENDED COMPLAINT Method: CERTIFIED MAIL Cost Per: $ BOARD OF EDUCATION OLENTANGY LOCAL SCHOOL DISTRICT 814 SHANAHAN ROAD SUITE 100 LEWIS CENTER, OH 43035 Tracking No: WA719690089119213087	0.00	0.00
	07/10/13	CIVIL CERTIFIED MAIL POSTAGE Receipt: 169590 Date: 01/17/2014	8.00	0.00

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13 CV H 04 0352 WHITE, ADAM J vs. KING, DAVID E et al

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
16	07/10/13	JUDGMENT ENTRY ADDING PARTY / ENTRY GRANTING PLAINTIFF LEAVE TO FILE FIRST AMENDED COMPLAINT ACCORDINGLY THE BOARD OF EDUCATION OLENTANGY LOCAL SCHOOL DISTRICT IS HEREBY NAMED AS A PARTY DEFENDANT SEE ENTRY IN VOLUME 429 PAGE 128 Receipt: 169590 Date: 01/17/2014	3.00	0.00
17	07/10/13	AMENDED COMPLAINT Receipt: 161143 Date: 07/26/2013	100.00	0.00
18	07/10/13	INSTRUCTIONS FOR SERVICE		0.00
19	07/15/13	RETURN CERTIFIED MAIL UPON: Method : CERTIFIED MAIL Issued : 07/10/2013 Service : INITIAL SERVICE ON COMPLAINT Served : 07/11/2013 Return : 07/15/2013 On : BOARD OF EDUCATION Signed By : KACHIL BRETT Reason : CERT MAIL / SERVICE COMPLETE Comment : SUMMONS ON AMENDED COMPLAINT Tracking #: WA7196900891119213087	0.00	0.00
20	07/19/13	ANSWER OF DEFENDANTS DAVID E KING JULIE FEASEL KEVIN OBRIEN AND STACY DUNBAR TO FIRST AMENDED COMPLAINT Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
21	07/26/13	ANSWER OF DEFENDANT BOARD OF EDUCATINO OLENTANGY LOCAL SCHOOL DISTRICT TO PLAINTIFFS FIRST AMENDED COMPLAINT Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
22	07/26/13	NOTICE OF APPEARANCE ON BEHALF OF DEFENDANT BOARD OF EDUCATION Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
23	07/26/13	AMENDED ANSWER OF DEFENANTS DAVID E KING, JULIE FEASEL, KEVIN O'BRIEN AND STACY DUNBAR TO FIRST AMENDED COMPLAINT Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
24	08/07/13	JUDGMENT ENTRY DENYING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS VOL 432 PG 48-49 Receipt: 169590 Date: 01/17/2014	6.00	0.00
	08/07/13	POSTAGE FEE Receipt: 169590 Date: 01/17/2014	0.92	0.00

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No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
25	10/07/13	DEFENDANTS' SECOND MOTION FOR JUDGMENT ON THE PLEADINGS WITH MEMORANDUM IN SUPPORT (E-FILED) Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
26	10/07/13	DEFENDANTS' MOTION TO AMEND CASE SCHEDULE WITH MEMORANDUM IN SUPPORT (E-FILED) Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
	10/07/13	COPIES OF E-FILING AND CHARGED TO CASE Receipt: 169590 Date: 01/17/2014	1.30	0.00
27	10/08/13	JUDGMENT ENTRY GRANTING DEFENDANTS MOTION TO AMEND CASE SCHEDULE THE DISCOVERY DEADLINE IS HEREBY CONTINUED UNTIL DECEMBER 17 2013 AND THE DISPOISTIVE MTOINO DEADLINE IS HEREBY CONTINUED UNTIL DECEMBER 31 2013 / THE COURTS JUEN 20 2013 SCHEDULING ENTRY REMAINS IN EFFECT IN ALL OTHER RESPECTS SEE ENTRY IN VOLUME 437 PAGES 324-325 Receipt: 169590 Date: 01/17/2014	6.00	0.00
	10/08/13	POSTAGE FEE Receipt: 169590 Date: 01/17/2014	0.92	0.00
28	10/18/13	PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' SECOND MOTION FOR JUDGMENT ON THE PLEADINGS FILED OCTOBER 4 2013 (E-FILED)	0.00	0.00
	10/18/13	COPIES OF E-FILING AND CHARGED TO CASE Receipt: 169590 Date: 01/17/2014	0.60	0.00
29	10/23/13	DEFENDANTS REPLY IN SUPPORT OF SECOND MOTION FOR JUDGMENT ON THE PLEADINGS	0.00	0.00
	10/23/13	COPIES OF E-FILING AND CHARGED TO CASE Receipt: 169590 Date: 01/17/2014	0.90	0.00
30	12/23/13	DEFENDANTS SECOND MOTION TO AMEND CASE SCHEDULE Attorney: ALBERT, JOHN C (0024164)	0.00	0.00
	12/23/13	COPIES OF E-FILING AND CHARGED TO CASE Receipt: 169590 Date: 01/17/2014	0.40	0.00
31	01/16/14	JUDGMENT ENTRY GRANTING DEFENDANTS' SECOND MOTION FOR JUDGMENT ON THE PLEADINGS AND JUDGMENT ENTRY DENYING DEFENDANTS SECOND MOTION TO AMEND CASE SCHEDULE VOL 445 PGS 247-253 Receipt: 169590 Date: 01/17/2014	21.00	0.00

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No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
32	01/16/14	NOTICE OF FINAL APPEALABLE ORDER Receipt: 169590 Date: 01/17/2014	6.00	0.00
	01/16/14	POSTAGE FEE Receipt: 169590 Date: 01/17/2014	0.92	0.00
	01/16/14	FINAL PAGE RECORD CHARGES Receipt: 169590 Date: 01/17/2014	406.00	365.18
33	01/17/14	COST DUE - RECORD BILLED ATTORNEY PHILLIP HARMON	0.00	0.00
34	02/13/14	NOTICE OF APPEAL ********** COURT OF APPEALS CASE NO 14 CAE 01 0010 **********	0.00	0.00
35	02/13/14	DOCKETING STATEMENT	0.00	0.00
36	02/13/14	CLERKS CERTIFICATE OF MAILING	3.00	3.00
	02/18/14	INITIAL NOTICE MAILED WHITE, ADAM J was sent notice for $ 0.00 Printed on 02/18/2014 08:43:50.10.	0.00	0.00
37	02/24/14	TRANSCRIPT OF PROCEEDINGS - TRANSMITTAL OF COURT OF APPEALS CASE NO 14 CAE 02 0010 (NO TRANSCRIPT REQUESTED / NO TRANSCRIPT FILED)	0.00	0.00

Totals By:		
COST	628.18	368.18
DEPOSIT	198.00	0.00
INFORMATION	0.00	0.00

*** End of Report ***

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