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February 15, 2018

Sent via facsimile (208-656-0010)

Madison County Prosecuting Attorney
Attn: Troy Evans, Civil Deputy
159 East Main
PO Box 350
Rexburg, ID 83440

Re: Idaho Education News v. Sugar-Salem School District
AJH File No.: 2321-455

Dear Mr. Evans:

This letter is written on behalf of Sugar-Salem School District #322 ("Sugar-Salem") in response to the charge the District violated the Open Meeting Act that was submitted by Jennifer Swindell, in her capacity as Managing Editor of Idaho Education News.

For the reasons discussed below, Sugar-Salem respectfully disagrees with Ms. Swindell's claim that the District violated Idaho's Open Meeting Law during its board meeting on January 25, 2018, when it selected Chester Bradshaw to be its new superintendent.

LEGAL ANALYSIS

Under Idaho's Open Meeting Law, it is the public policy of the State of Idaho for all government agencies, including school boards to conduct their meetings in public and not in secret:

The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.

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Idaho Code § 74-201.

Pursuant to this policy, the legislature requires all governing bodies of public agencies, including school districts, to conduct their business in public meetings:

Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting *except as otherwise provided by this act*. No *decision* at a meeting of a governing body of a public agency shall be made by secret ballot.

Idaho Code § 74-203(1) (emphasis added).

The Open Meeting Act identifies specific circumstances where the public is excluded from a board's discussion and deliberation on issues related to the hiring of a public officer, specifically where "the respective qualities of individuals" are being evaluated "in order to fill a particular vacancy." *Idaho Code § 74-206(1)(a)*. In pertinent part, Section 74-206 states that boards may exclude the public from being present when it discusses the qualities of an individual being evaluated to hire or fill a particular position:

An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. ...

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein *the respective qualities of individuals* are to be evaluated in order to fill a particular vacancy or need. ...

Idaho Code § 74-206(1)(a) (non-pertinent portions omitted).

"Executive session" is specifically intended to allow a board to deliberate on certain matters outside the presence of the public:

"Executive session" means any meeting or part of a meeting of a governing body which is closed to any persons for *deliberation* on certain matters.

Idaho Code § 74-202(3) (emphasis added).

"Deliberation" is defined by the Open Meeting Act to include board members' receipt or exchange of information or opinions relating to a particular "decision:"

"Deliberation" means the receipt or exchange of information or opinion relating to a *decision*, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.

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Idaho Code § 74-202(2) (emphasis added).

The Act makes it clear that a “decision” includes any determination, action, vote or other disposition upon a motion:

“Decision” means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present. . . .

Idaho Code § 74-202(1) (non-pertinent portions omitted).

Under the Act, and specifically enumerated in the Section discussing executive session, only a board’s final action or final decision must be made in open session:

No executive session may be held for the purpose of taking any *final action* or making any *final decision*.

Idaho Code § 74-206(3) (emphasis added).

Thus, Idaho’s Open Meeting Act makes clear the distinction between the “deliberations” which may occur in “executive session,” *Idaho Code § 74-202(3), (4)*; from those “actions” or “decisions” which are required to occur in “open session.” *Idaho Code § 74-203; Idaho Code § 74-202(1); Idaho Code § 74-206(3)*.

As a result of the above statutory scheme, under Idaho’s Open Meeting Act, where a board lawfully enters executive session to discuss matters deemed privileged under Idaho Code § 74-206-Executive Sessions, and the board is only required to take or make a *final decision* in open session. *Idaho Code §§ 74-206(1)(a), 74-206(3)*. Thus, there is no requirement for a board to discuss in open session matters discussed during executive session regarding the “respective qualities” of individuals who are being evaluated to fill a particular vacancy or need. *Idaho Code § 74-206(1)(a); Nelson v. Boundary County*, 109 Idaho 205, 209 (Ct.App. 1985) (“[W]here an executive session is authorized, the deliberating process can be conducted in a closed session. In our view, there is no requirement that private discussions of personnel matters must be repeated in public. *If that were the case, the executive sessions would be without meaning.*”).

The Idaho Court of Appeals in *Nelson* followed the reasoning of the Arizona Court of Appeals interpreting a statutory provision identical to Idaho’s executive session provisions wherein it discussed the need to balance the public’s right to know and participate in the decision-making process, against an individual’s legitimate right to confidentiality:

The public’s right to know and to participate in the decision-making process frequently comes into sharp conflict with the need for confidentiality in certain

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areas. The disciplining of employees is one such area, where there is a legitimate need for confidential discussions. (Citation omitted.) [The executive session statute] is clearly intended to establish an equilibrium between the public's desire for access and the governmental agency's need to act in private, short of reaching "a collective decision, commitment or process." We do not believe the legislature intended on the one hand to authorize a private discussion on personnel matters, and on the other hand to require a recital of the discussion in public.

Hoskanson v. High School District No. Eight (8) of Pima County, 589 P.2d 907, 910-911 (Ct.App. Az, Div. 2).

DISCUSSION

According to Idaho Education News, the Sugar-Salem Board allegedly violated Idaho's Open Meeting Act when it hired Chester Bradshaw. The following is the alleged violation:

According to draft board minutes obtained by me [Jennifer Swindell] through a public records request, Sugar-Salem trustees entered into executive session "to consider hiring an employee". The trustees then returned to an open meeting and according to the draft minutes "The board members deliberated about which candidate they should offer the position to." No names were mentioned. The board then made a motion to "offer the superintendent position to candidate O." It was approved by a vote of 5-0. The minutes go on to reflect "Kristin Galbraith (board chair) went and called candidate O on the phone and he accepted the offer." The true name of the candidate was not named in the open meeting, according to the draft minutes.

(Letter dated February 2, 2018, from Jennifer Swindell on behalf of Idaho Education News, to Madison County Prosecutor, Sid D. Brown.)

Sugar-Salem disagrees with this characterization in one important respect; Chester Bradshaw was identified as the selected candidate (candidate O) at the meeting, as is reflected in an article by Adam Jacobs, dated January 26, 2018, wherein he reported that on Thursday, January 25, 2018, at the Sugar-Salem board meeting, Chester Bradshaw was selected as Sugar-Salem's new superintendent. (A true and correct copy of the article written by Adam Jacobs, dated January 26, 2018, on behalf of the Rexburg Standard Journal is attached hereto at Exhibit A.) Based on this article, it is obvious that persons attending the meeting were aware that Chester Bradshaw had been selected by the Board as its new Superintendent.

With regard to the requirements of the Open Meeting Act, there was absolutely no requirement that the District discuss in open session any of the attributes of the candidates. Indeed, by doing so, even though it used pseudonyms, the District actually provided the public with more information than required by Idaho's Open Meeting Act. Under the Act, upon leaving executive session and entering open session, the Board Chair could have simply asked for a

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motion, and a motion to hire candidate Chester Bradshaw as the new Superintendent would have followed. The Chair would have asked for discussion, to which there is no requirement to discuss Mr. Bradshaw's or any other candidate's "personal attributes," after which a vote would have occurred that would have been unanimously passed. Such minimal information when hiring an employee satisfies the requirements of the Open Meeting Act, and by discussing the attributes of the candidates, through pseudonyms, the public was actually *more informed of the attributes* of the candidates than actually required by Idaho's Open Meeting Act.

Please note that Sugar-Salem takes seriously the rights of the applicants' confidentiality and has no desire to in any way violate their confidentiality, which is the public policy protected by authorizing executive session under Idaho Code § 74-206(1)(a). For these reasons, Sugar-Salem respectfully requests that the prosecuting attorney find that Sugar-Salem complied with the requirements of Idaho's Open Meeting Act and take no further action with regard to the charge submitted by Idaho Education News that Sugar-Salem had violated the Act when it hired Chester Bradshaw as its Superintendent.

As a result, Sugar-Salem prefers to protect the confidentiality of applicant qualifications, believes it is restrained from discussing their respective qualities in open session, and therefore it is Sugar-Salem's position that it is prohibited from doing so absent a court order.

We thank you for your attention to the above. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian K. Julian", with a stylized flourish at the end.

For: Brian K. Julian

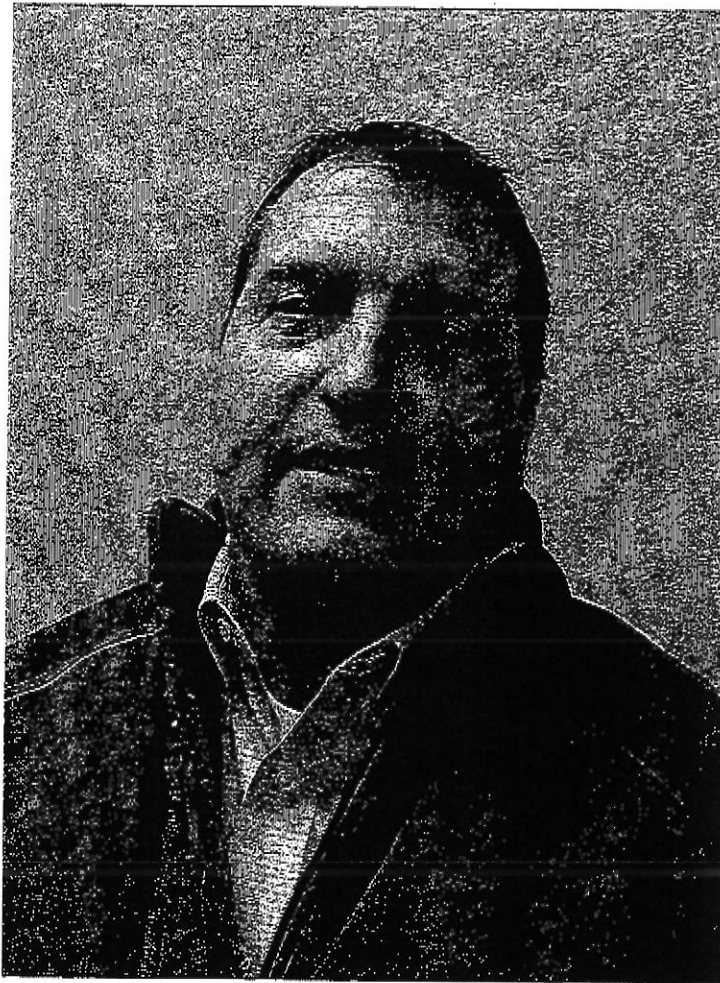
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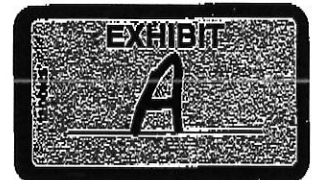
https://www.rexburgstandardjournal.com/news/education/new-superintendent-selected-for-sugar-salem-school-district/article_2b79e658-f9fa-5887-b49c-6cbf809656b3.html

New superintendent selected for Sugar-Salem School District

By Adam Jacobs ajacobs@uvsj.com Jan 26, 2018



Chester Bradshaw has been chosen as the new superintendent of Sugar-Salem School District.
Adam Jacobs/Standard Journal



SUGAR CITY — After months of viewing candidates and conducting interviews, the Sugar-Salem School Board has chosen a replacement for the outgoing superintendent Alan Dunn. The decision was made on Thursday, Jan. 25, at the Sugar-Salem School District Board meeting.

The new superintendent will be Chester Bradshaw, a resident of Rockland, Idaho. Bradshaw had served the small Idaho town as both the Rockland School District superintendent and principal of the district's elementary, middle and high schools.

Kristin Galbraith, chair of the Sugar-Salem School Board, said she was happy to have someone like Bradshaw as the new head of the district.

"We were highly impressed with his integrity and desire to move forward in great ways in administration," Galbraith said. "He's coming to us from a smaller school district. He has worn many hats in the district he's been in."

Bradshaw has a wealth of knowledge regarding federal grants Galbraith said. She said the Sugar-Salem School Board sees that knowledge as a big need for the district's students and faculty.

"He brings a lot of knowledge of federal programs, budgeting and financial responsibility," Galbraith said. "He will be a great asset to our community and our school district."

Doug McBride, who is also a member of the school board, said he is looking forward to having Bradshaw on as superintendent.

"He's got wonderful credentials," McBride said. "Because of his experience he has additional insights and skills."

Before serving as superintendent of Rockland School District, Bradshaw was a teacher in the Bliss School District for 13 years. With a background of almost every level of leadership in public education, McBride said, Bradshaw is well-prepared to take on the role of superintendent in the Sugar-Salem School District.

"In June we'll be getting prepped for him, and in July is when he takes over," McBride said.

Galbraith said Bradshaw has big shoes to fill.

"We will absolutely miss Alan Dunn," she said. "He has been a phenomenal leader in our district."

Dunn said he knew the district would be in good hands with Bradshaw.

"Chester Bradshaw has a long history of having an outstanding reputation as a superintendent," Dunn said. "I've known him, and I'm happy that the board has chosen him as the next superintendent in Sugar-Salem School District."

Bradshaw is still fulfilling his duties as superintendent of Rockland School District. Watch for an additional article about Bradshaw in a February edition of the Standard Journal.

Adam Jacobs