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SUPERINTENDENT'S OFFICE
DISTRICT 99

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 10, 2009

Community High School District 99 Board of Education
Ms. Julia Kennedy Beckman, President
Dr. Mark McDonald, Superintendent
6301 Springside Ave.
Downers Grove, IL 60516-2489

Re: *Open Meetings Act inquiry*
2009 OMA 145

Dear Ms. Beckman and Dr. McDonald:

The Office of Illinois Attorney General Lisa Madigan has recently received an inquiry in relation to the Community High School District #99 Board of Education and its compliance with the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* The materials received by this Office raise a question as to whether the Board held an improper closed meeting on April 27, 2009. Specifically, it has been alleged that at its meeting on that date, the Board voted to hold a closed meeting to discuss the impact of the District's nepotism policy on a newly elected Board member. The materials provided to this office, which include a copy of that policy, indicate that a Ms. Deborah Boyle had been recently elected to the Board and that Ms. Boyle was related to two employees of the District. Additionally, it has been alleged that, subsequent to that closed meeting, the Board has released "Guidelines for Application of Nepotism Policy," which indicates that discussions of the application of the nepotism policy to a Board member "may take place in closed session to the extent permitted by the Open Meetings Act." It has been alleged that the closed meeting discussion held at the Board's April 27, 2009 meeting exceeded the scope of the cited statutory exceptions.

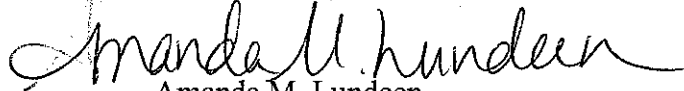
In order to ensure full compliance with the Illinois Open Meetings Act, the Office of the Illinois Attorney General is asking that the Board, or its attorney on behalf of the Board, provide a written response to these allegations addressing their validity. In particular, please explain the circumstances surrounding the Board's September 27, 2009 closed meeting. Please also provide any relevant documents. Please provide the requested information to this Office, Springfield address, within 30 days from the date of this letter.

-OVER-

Ms. Julia Kennedy Beckman, President
Dr. Mark McDonald, Superintendent
November 10, 2009
Page 2

If you have any questions about this or other Open Meetings Act issues, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Amanda M. Lundeen".

Amanda M. Lundeen

Assistant Attorney General
Assistant Public Access Counselor

AL:jp

cc: Lisa Smith
DuPage County State's Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 23, 2009

Community High School District 99 Board of Education
Ms. Julia Kennedy Beckman, President
Dr. Mark McDonald, Superintendent
6301 Springside Ave.
Downers Grove, IL 60516-2489

*RE: Open Meetings Act inquiry
2009 OMA 145*

Dear Ms. Beckman and Dr. McDonald:

I write to check on the status of the Board of Education's response to allegations of a potential Open Meetings Act violation, which were brought to your attention in my November 10, 2009 letter. As stated in that letter, it has been asserted that the Council held a closed meeting discussion of the District's nepotism policy as it related to a newly elected Board member, exceeding the scope of the statutory exceptions allowing for closed meeting discussions.

In that November 10, 2009 letter to you, we requested that the Board respond to these allegations within 30 days in order that our Office may evaluate the situation and take steps to ensure compliance with the Open Meetings Act. As of the date of this letter, no response from the Board has been received. We again ask that you respond to the allegations in question, explaining the incident and providing copies of any relevant documents that will aid in our evaluation. Please provide the requested response to our Springfield office immediately in order to ensure quick resolution of this matter.

If you have any questions about this or other Open Meetings Act issues, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Amanda M. Lundeen".

Amanda M. Lundeen
Assistant Public Access Counselor
Assistant Attorney General

AML:dh

cc: Lisa Smith
DuPage County State's Attorney's Office



Community High School District 99

Administrative Service Center
6301 Springside Avenue • Downers Grove, IL 60516-2489
(630) 795-7100 • FAX (630) 795-7199
www.csd99.org

Board of Education

January 5, 2010

Ms. Amanda M. Lundeen
Assistant Attorney General
Assistant Public Access Counselor
Office of the Attorney General
State of Illinois
500 South Second Street
Springfield, IL 62706

Re: Open Meetings Act Inquiry / 2009 OMA 145

Dear Ms. Lundeen:

I am responding to your letter of November 10, 2009, inquiring about a closed meeting held by the Board of Education of Community High School District 99 on April 27, 2009. Your letter also asks for an explanation of the circumstances surrounding the Board's September 27, 2009, closed meeting. The Board did not have a meeting on September 27, 2009, and, therefore, this letter addresses only the April 27, 2009, closed meeting.

The agenda for the April 27, 2009, meeting is enclosed. After beginning the April 27, 2009, meeting in open session, the Board adopted a motion by roll call vote to go into closed session for the purposes of discussing the employment of specific employees and collective negotiating matters, as more fully set forth in the agenda. In addition to the six Board members present, Mark McDonald, the Superintendent; Mary Biniewicz, the Assistant Superintendent for Student Learning; Joann Power, the Board's Secretary; and Todd Faulkner, the Board's attorney, were present for the closed session.

In closed session, the Board received and discussed its attorney's advice on the application of the Board's nepotism policy to two employees and Deborah Boyle and related collective bargaining matters. Deborah Boyle was elected to the Board of Education at the April 7, 2009, consolidated election and seated as a Board member on May 4, 2009. Ms. Boyle is the sister of John F. Wander, a tenured teacher and head football coach at the District's North High School and the daughter of John P. Wander, employed by the District as an equipment manager. Ms. Boyle's relationship to both employees is covered by the Board's nepotism policy, and her brother is covered by the Board's collective bargaining agreement with the Downers Grove Education Association. A copy of the nepotism policy is enclosed.

North High School
4436 S. Main
Downers Grove, IL 60515
(630) 795-8400

South High School
1436 Norfolk
Downers Grove, IL 60516
(630) 795-8500

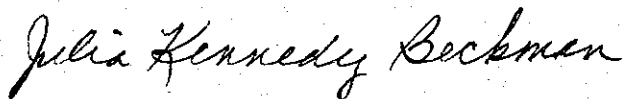
The Board recognizes that the discussion of policies, including the nepotism policy, as a general matter must be done in open session. However, where the application of the policy impacts, or potentially impacts, specific employees and collective bargaining matters, that discussion may take place in closed session. This is particularly the case where the Board is engaging in attorney-client privileged communication with its attorney on these topics. The Board believed on April 27, 2009, and continues to believe, that its discussion in closed session on that date was proper and permitted under the Open Meetings Act.

No action was taken on the nepotism policy at the April 27 meeting following the closed session. At open meetings on July 20, 2009, the Board discussed the nepotism policy and reached consensus on guidelines developed to assist in applying the nepotism policy. A copy of the Guidelines for Application of Nepotism Policy is enclosed.

Your letter also references the Guidelines and specifically notes the portion of the Guidelines which indicates that discussion of the application of the nepotism policy to a Board member may take place in closed session to the extent permitted by the Open Meetings Act. Please recognize that no closed sessions have been held to discuss application of the Guidelines to date. Should a closed session to discuss application of the Guidelines be considered in the future, the decision whether to go into closed session will be based on the facts, circumstances and provisions of the Open Meetings Act at that time. It would be inappropriate to categorically conclude at this time, in a vacuum, that a closed session discussion of the application of the Guidelines is impermissible under the Open Meetings Act.

I trust this letter is responsive to your inquiry. Should you have any additional questions or require additional information, please contact our attorney, Todd Faulkner at Franczek Radelet P.C., 300 South Wacker Drive, Suite 3400, Chicago, Illinois 60606, 312/986-0300, jtf@franczek.com.

Sincerely,



Julia Kennedy Beckman
President, Board of Education

Enclosure

cc: Board of Education
Dr. Mark McDonald, Superintendent
Mr. Todd Faulkner, Attorney for the Board of Education



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Board of Education

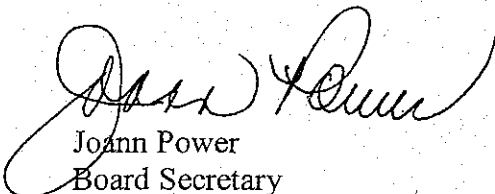
April 24, 2009

Editor,

NOTICE OF SPECIAL MEETING

NOTICE IS HEREBY GIVEN that the President of the Board of Education, Community High School District 99, DuPage County, Illinois, has called a Special Meeting to be held on Monday, April 27, 2009. The meeting will begin at 7:00 p.m. at the Administrative Service Center, 6301 Springside Avenue, Downers Grove, Illinois. The agenda is as follows:

- I. Call to Order and Roll Call
- II. Closed Session - The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the District or legal counsel for the District, including hearing testimony on a complaint lodged against an employee or against legal counsel for the District to determine its validity. *5 ILCS 120/2(c)(1), as amended by P.A. 93-0057*, and collective negotiating matters between the District and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees. *5 ILCS 120/2(c)(2)*.
- III. Open Session - Discussion and action on Board Policy 2.100-Nepotism
- IV. Reception of Visitors
- V. Adjournment



Joann Power
Board Secretary

p.c. Todd Faulkner

North High School
4436 S. Main
Downers Grove, IL 60515
(630) 795-8400

South High School
1436 Norfolk
Downers Grove, IL 60516
(630) 795-8500

Nepotism

The intent of this policy is to prohibit nepotism.

No Board Member shall have a beneficial interest directly or indirectly in any contract, work, or business of the District unless permitted by the School Code.

The Board will not newly employ in any capacity an immediate relative of a sitting member of the Board of Education or of the Superintendent.

In cases where a Board member has a relative already employed by the District, the Board member shall publicly disclose the nature and extent of the relationship prior to any deliberations regarding the relative. The Board member shall recuse himself or herself from any deliberations or voting on any matter related-to the relative's wages, benefits, hours, terms and conditions of employment, including a collective bargaining agreement which applies to the relative *and/or budget items which apply to the relative.*

No employee of the District, part-time or full-time, will be assigned to a position under the direct supervision of an immediate relative.

For the purpose of this policy, "immediate relative" includes father, mother, husband, wife, son, daughter, brother, sister, grandparents, grandchildren, uncles, aunts, nieces, nephews, cousins, the legal guardian of any such person, and someone residing in the household of a Board member. Immediate relative also includes all individuals who are related by blood, marriage, or adoption to the individuals listed in this paragraph (i.e brother-in-law, step-son, etc.).

GUIDELINES FOR APPLICATION OF NEPOTISM POLICY 2.100

1. The primary responsibility for determining application of the Board of Education's Nepotism Policy (2.100) rests with the Board member who has a relationship within the scope of the policy, with emphasis on avoiding even the appearance of favoritism.

Where there is a reasonable question about whether the policy is applicable, the Board member should discuss the question with the Board President. Where another Board member has a question about the application of the policy, that Board member should also raise the question with the Board President.

The Board President will review the question with the Board member raising the question and the affected Board member and communicate to all Board members the President's recommended determination as to whether the policy applies or does not apply. Any Board member who questions the recommended determination may request of the President that the recommended determination be discussed by the Board at a properly-called meeting no later than the meeting at which the item is to be discussed. The question will be discussed at a meeting and decided by vote of the Board members present. The discussion may take place in closed session to the extent permitted by the Open Meetings Act, but action will take place only in open session.

2. In applying the policy, the item in question must have a reasonably direct, identifiable monetary benefit to the relative. Alternatively or additionally, the item must meaningfully improve, or diminish, conditions reasonably unique to the conditions under which the relative works. For example, an adjustment in class size for the department to which the relative is assigned would be a term and condition of employment, but this would fall within the scope of the policy only if the adjustment was unique to the employee or a relatively small segment of the department that included the employee. Also, for example, a construction project to improve the office to which the employee is assigned would likely be within the scope of the policy, but probably would not be if the project was to improve the general office area for the department to which the employee is assigned.
3. If the policy is determined to be applicable; either by an affected Board member or the Board, the affected Board member will: (a) describe the relationship and the circumstances that result in application of the policy; (b) not participate in discussion of, and not vote on, the item to which the policy is applicable. If the item is to be discussed in closed session, the Board member will be excluded from that portion of the closed session during which the item is discussed. If the affected Board member does not describe the relationship and the circumstances that result in application of the policy, the Board President will do so.
4. If the policy is applicable to an item in a group of items to be discussed and voted on by the Board, any Board member may request that the item be removed from the group and discussed and acted upon separately. The affected Board member will not discuss or vote on

the removed item, but may discuss and act on the remaining group of items. If the item is not removed from the group of items, the affected member will not discuss or vote on the group of items.

5. If the Board member refuses to comply with the determination of the Board, the President will not recognize the Board member for purposes of discussion of the item or will declare the Board member out of order if discussion is attempted. If a vote is taken, the Board member will be recorded as abstaining. An attempt by the Board member to vote will be recorded in the minutes, but in determining the result of the vote, an abstention will be shown in the tabulation of the results of the vote in the minutes. Where discussion and/or a vote appears to constitute a statutory conflict of interest, the issue may be referred by the Board to the DuPage County State's Attorney for review.
6. A Board member who is restricted from discussing and voting on an item due to application of this policy may receive agenda materials and other information relevant to the item on the same basis as any other Board member.