

IN THE IOWA DISTRICT COURT FOR APPANOOSE COUNTY

Iowa Freedom of Information Council and Randy Evans,)	Case No. CVEQ005699
)	
Plaintiffs,)	
)	
v.)	Amended and Substituted Petition
)	
Board of Education of the Centerville Community School District, Kevin Wiskus, Mike Thomas, Bob Thomas, Kris Shondel, Tim Burger, and Derek Carter,)	
)	
Defendants.)	

Plaintiffs the Iowa Freedom of Information Council (“the Council”) and its executive director Randy Evans (“Evans”) file this Amended and Substituted Petition pursuant to Iowa R. Civ. P. 1.402(4) as a matter of course because no responsive pleading has been served..

The Council and Evans bring this Iowa Open Meetings Act lawsuit against Defendants, the Board of Education of the Centerville Community School District, and its members Kevin Wiskus, Mike Thomas, Bob Thomas, Kris Shondel, Tim Burger, and Derek Carter.

The Council and Evans state the following in support of their claim that Defendants violated Iowa Code Chapter 21 by conducting a closed session on February 3, 2023.

I. Parties

A. Plaintiffs

1. Organizers from various news, media, public interest groups and other citizens concerned about openness in Iowa government organized the Council in 1976, and formally incorporated it as an Iowa non-profit corporation in 1977.

2. The Council remains in good standing with the State of Iowa and maintains its principal place of business in Des Moines, Iowa.

3. The Council continues today as “a coalition of journalists, librarians, lawyers, educators and other Iowans devoted to open government.” See IOWA FREEDOM OF INFORMATION COUNCIL, <http://www.ifoic.org/about/> (last visited May 5, 2023).

4. Sustaining members of the Council in 2023 include:

Armstrong Journal
Axios LLC
Business Record
Dave Busiek
Cedar Rapids Gazette Company
CNHI LLC and its Iowa affiliates including the *Ottumwa Courier*
Cityview
The Des Moines Register
Barbara and Michael Gartner
Carol Hunter
International Union of Bricklayers & Allied Craftworkers-Local 3 Iowa
Iowa Broadcasters Association
Iowa Laborers/Employers Cooperation and Education Trust Fund
Iowa Newspaper Association
Iowa PBS
Iowa State Construction & Building Trades Council
KCCI-TV/Des Moines Hearst Television, Inc.
KCRG Cedar Rapids/Gray Television Group Inc.
N'West Iowa REVIEW
O'Brien County Bell-Times-Courier
Quad-City Times
Sailor Enterprises
Sioux City Journal
Storm Lake Times Pilot
Sycamore Media Corp
WHO-TV/Nexstar Media Inc.
Woodward Communications, Inc.

5. Plaintiff Randy Evans serves as the Executive Director of the Council.

6. Evans, a citizen of and a taxpayer to the State of Iowa, resides in Polk County.

7. Evans began as the executive director of the Council in 2015, after a long journalism career that included more than 40 years in editing and reporting positions at *The Des Moines Register*.

8. In his role at the Council, Evans provides education and outreach on the importance of public access to governmental meetings and records so that citizens are informed and public officials remain accountable.

9. Evans also regularly authors news articles and commentary published by Iowa media that relate to matters of public concern, including what transpires in Iowa schools and about matters affecting students, parents, teachers, and administrators.

10. In his role as executive director and through his work as a journalist, Evans monitors and publicizes the activities of taxpayer-funded government bodies and commissions, including local school districts and boards.

11. Evans, the Council, and the public have personal stakes in how taxpayer money is used and whether public officials and governmental boards and agencies comply with the Iowa Open Meetings Act, as codified Iowa Code Chapter 21 (hereafter, “the Act”).

12. Evans, the Council, and the public further have an interest in ensuring the free flow of information, so they can remain knowledgeable about matters of public concern and hold governmental bodies and public officials accountable.

13. The Act grants Evans, the Council and its members, and the general public the right to receive information about meetings of governmental bodies such as agendas and minutes.

14. The Act grants Evans, the Council and its members, and the general public the right to attend meetings of governmental bodies.

15. The Act grants Evans, the Council and its members, taxpayers and any aggrieved person the ability to enforce the Act as provided in Iowa Code § 21.6.

16. Upon a finding that a statutory violation occurred, the Act requires a Court to impose mandatory remedies under Iowa Code § 21.6(b), including attorney fees and litigation costs to a successful party such as Evans or the Council, and permits the Court to afford such discretionary relief to them as the Act authorizes.

17. The Council and Evans constitute aggrieved persons under the Act in relation to the February 3, 2023 closed session that is the subject of this lawsuit.

B. Defendants

18. The Centerville Community School District (the “District”) is a duly formed and validly existing political subdivision and/or tax-supported district under the laws of the State of Iowa.

19. Defendant Board of Education of the Centerville Community School District (the “Board”) is a duly constituted and validly existing elective body authorized and permitted under the laws of the State of Iowa.

20. The Board serves as the governing body for the District.

21. The Board holds and exercises policymaking authority for the District.

22. The Board possesses the attributes of a “governmental body” as set forth in Iowa Code § 21.2(1).

23. The Board is a “governmental body” under Iowa Code § 21.2(1).

24. Defendant Kevin Wiskus (“Wiskus”) is a duly elected and serving member of the Board.

25. Wiskus served as the Board’s president in February 2023.

26. Defendant Mike Thomas (“M. Thomas”) is a duly elected and serving member of the Board.

27. Defendant Bob Thomas (“B. Thomas”) is a duly elected and serving member of the Board.

28. Defendant Kris Shondel (“Shondel”) is a duly elected and serving member of the Board.

29. Defendant Tim Burger (“Burger”) is a duly elected and serving member of the Board.

30. Defendant Derek Carter (“Carter”) is a duly elected and serving member of the Board.

31. Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter participated in Board meetings and activities throughout February 2023.

II. Jurisdiction and Venue

32. This Court holds personal jurisdiction over the parties and subject matter jurisdiction over the claim made, including as provided in Iowa Code § 21.6.

33. The actions of the Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter alleged in this lawsuit and the February 3, 2023 closed Board meeting they attended took place in Appanoose County, Iowa.

34. The Board maintains its principal place of operation in Appanoose County, Iowa.

35. Defendants Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter conduct their duties and business as members of the Board in Appanoose County, Iowa.

36. Iowa Code § 21.6(1) establishes that proper venue for this lawsuit rests in the Iowa District Court for Appanoose County.

III. Facts

A. Ryan Hodges: high school counselor, head baseball coach, and child abuse investigator

37. The District employed Ryan Hodges (“Hodges”) as a guidance counselor at the District’s high school, a child abuse investigator, and its head baseball coach.

38. The District compensated Hodges as a public employee from funds derived from taxpayer dollars.

39. The District employed Hodges in his counselor position and head coaching job pursuant to written contracts.

40. Those contracts and Iowa law provided that the District could not terminate or fail to renew the agreements it had with Hodges unless it followed specified procedures.

41. On or about December 1, 2022, the District placed two employees on paid administrative leave, one of whom was Hodges.

42. The District designated Tara Thomas (“T. Thomas”), a media relations independent contractor operating under the business name of GT Consulting, to serve as its spokesperson in connection with the two paid leaves of absence.

43. According to the superintendent of the District, it was working with T. Thomas and GT Consulting “on messaging.”

44. T. Thomas issued a December 1, 2022 message concerning the two paid leaves of absence, which stated:

Two Centerville Community Schools staff members have been placed on administrative leave pending a thorough and internal investigation.

Allegations made against one of the staff members are of a personal nature involving another adult who does not work for the district. The issue is not school-related but some of the alleged communication took place on district time which is why a district investigation is happening.

A second employee has been placed on leave due to allegations of inappropriate behavior with a minor. The district took immediate action by putting the employee on leave and contacting law enforcement. An investigation is underway. We want to encourage anyone who knows something about this matter to please contact school administrators to report the information so that it can be shared with investigators.

The safety and wellbeing of our students and staff are paramount. We appreciate your patience and understanding as both investigations take place. Please allow for the process to be completed in a thorough and fair manner.

45. At or about that same date, the District's superintendent sent an open letter to the community concerning the paid leaves of absence:



CENTERVILLE CSD



Mark Taylor – Superintendent
Brad Warren – Centerville High School Principal
Rhonda Raskie – Howar Middle School Principal/Sp. Ed. Director
Terri Schofield – Lakeview Elementary Principal
Julie Caraccio – Preschool/Lakeview Associate Principal
Rich Parker – Activities Director

Centerville Schools Family,

We understand that the rumor mill is swirling, so we wanted to address two separate issues involving Centerville Community Schools staff members. Two of our staff members have been placed on administrative leave pending a thorough and internal investigation, for separate incidents.

Allegations made against one of the staff members are of a personal nature involving another adult who does not work for the district. This issue is not school-related but some of the alleged communication took place on district time which is why a district investigation is happening.

A second employee has been placed on leave due to allegations of inappropriate behavior with a minor. The district took immediate action by putting the employee on leave and contacting law enforcement. An investigation is underway. We want to encourage anyone who knows something about this matter to please contact school administrators to report the information so it can be shared with investigators.

The safety and wellbeing of our students and staff are paramount. We appreciate your patience and understanding as both investigations take place. Please allow for the process to be completed in a thorough and fair manner.

Sincerely,

Mark Taylor
Superintendent of Schools
Centerville Community School District
(641) 856-0601
mark.taylor@centervillek12.org

Mission: All students will learn well, become life long learners, and contribute positively to society.

46. The employee in the first situation described in the public statement by T. Thomas and Mark Taylor's ("Taylor") letter to the Centerville Schools Family was Matthew Kruzich ("Kruzich"), a physical education teacher at the high school.

47. The employee in the second matter mentioned in the public statement by T. Thomas and Taylor's letter to the Centerville Schools Family was Ryan Hodges.

48. By February 1, 2023, the District had reinstated Kruzich to active employment.

49. As of February 1, 2023, the superintendent confirmed to the press that "the Hodges matter" is still "pending investigation" and the District had "nothing new to report regarding that matter."

50. At that time, Hodges remained on paid administrative leave that the District used taxpayer dollars to fund.

*B. The District's negotiation and acceptance
of the voluntary resignation of Ryan Hodges*

51. Considering that Hodges signed a resignation agreement on February 1, 2023, by that date the District already had entered discussions with Hodges to negotiate his separation from public employment.

52. Thus, as of February 1, 2023, lawyers for Hodges and the District had exchanged drafts of his negotiated departure that resulted in a final version titled "Resignation of Employment (sic) and Release Agreement."

53. Hodges signed the "Resignation of Employment (sic) and Release Agreement" on February 1, 2023.

54. This negotiation and signature occurred prior to or contemporaneously with the February 1, 2023 statements by the District's superintendent that the Hodges investigation was continuing and that the District had nothing new to report.

55. The “Resignation of Employment (sic) and Release Agreement” Hodges signed and dated on February 1, 2023, recited that Hodges “is currently employed as a guidance counselor and coach in the District” and that he “has offered to resign his employment.”

56. The “Resignation of Employment (sic) and Release Agreement” Hodges signed and dated on February 1, 2023, further recited that “the Board is willing to accept this offer.”

57. The “Resignation of Employment (sic) and Release Agreement” Hodges signed and dated on February 1, 2023, also recited that “the parties desire to settle all potential outstanding issues between them in accordance with the terms and conditions stated in this Agreement.”

58. Under the terms of the “Resignation of Employment (sic) and Release Agreement” Hodges signed and dated on February 1, 2023, Hodges resigned “all employment contracts with the District *effective February 3, 2023*, but shall continue on paid administrative leave until Board action to accept the resignation.” (Emphasis added).

59. The “Resignation of Employment (sic) and Release Agreement” Hodges signed and dated on February 1, 2023, further stated that “in return” for his resignation, the District would pay Hodges “15 days’ pay” at his “contracted per diem rate.”

60. On February 3, 2023, the District countersigned the “Resignation of Employment (sic) and Release Agreement” that Hodges signed and dated on February 1, 2023.

61. Defendant Wiskus signed the “Resignation of Employment (sic) and Release Agreement” in his capacity as Board President of the District.

62. The “Resignation of Employment (sic) and Release Agreement” Hodges signed and dated on February 1, 2023, further provided that Hodges released the District and its directors, officers, employees, agency, administrators, consultants, contractors, and attorneys

from all claims, demands, agreements, causes of action, injunctions and restraints or liabilities of whatever kind, including claims for any tort.

63. The “Resignation of Employment (sic) and Release Agreement” Hodges signed and dated on February 1, 2023, indicated that Hodges provided a covenant not to sue any released party for claims or actions arising out of or attributable to his employment with the District or any action or cause of action released by him in the “Resignation of Employment (sic) and Release Agreement.”

64. Immediately above the signatures of Hodges and Wiskus on their written contract, the “Resignation of Employment (sic) and Release Agreement” provided that it was “subject to approval by the Board of Directors for the District and shall become effective only upon approval of the Board.”

C. The District disclaims that Hodges resigned in lieu of termination

65. The District later declined requests to provide the documented reasons and rationale why it negotiated the “Resignation of Employment (sic) and Release Agreement” or accepted Hodges’s resignation, which Iowa Code § 22.7(11)(a)(5) requires a government body to disclose whenever a public employee resigns “in lieu of termination.”

66. For example, in response to a February 3, 2023 request from a news reporter seeking a Section 22.7(11)(a)(5) statement regarding why the District accepted the resignation by Hodges, the District’s superintendent replied, “The reasons and rationale will not be produce[d] as it was a voluntary resignation at the time received and is not considered a resignation in lieu of termination.”

67. In denying a similar Iowa Code § 22.7(11)(a)(5) request from the Council and Evans addressed to Wiskus that the District received on March 8, 2023, the District’s lawyer responded on March 27, 2023, stating:

Finally, in response to your request for the documented reasons and rational (sic) for the resignation of Mr. Hodges pursuant to Iowa Code Section 22.11(a)(5) (sic), the District is denying that request as Mr. Hodges's resignation was not, at the time received, a resignation in lieu of termination, a discharge or a demotion; and those are the only reasons upon which under Iowa law a public entity shall disclose the documented reasons and rational (sic) for its actions related to employment. See Iowa Code (sic) Section 22.7(11)(a)(5). A voluntary resignation does not trigger the requirements of Iowa Code Section 22.7(11)(a)(5).

*D. The Board's secret session to approve
the "Resignation of Employment (sic) and Release Agreement"*

68. On February 2, 2023, the Board issued an agenda for a "special" board meeting to convene on the night of Friday, February 3, 2023 at 6:30 o'clock at the Centerville Administration Office.

69. According to meeting agendas and minutes available on the District's web site, between July 15, 2019 and May 8, 2023, the Board had never met on a Friday night.

70. Instead, according to meeting agendas and minutes available on the District's web site, most Board meetings occurred on Mondays and its two Friday meetings in that nearly four-year period consisted of a noon work session on August 5, 2022, and a six-minute meeting at 4 p.m. on October 28, 2022 to approve a construction change order.

71. On the night of Friday, February 3, 2023, the Board met, for the stated purpose of evaluating "the professional competency of an individual whose appointment, hiring, performance or discharge is being considered" and for "consideration" of the "Resignation of Employment (sic) and Release Agreement" that Hodges signed two days earlier.

72. The Friday night meeting on February 3, 2023 did not pertain to the appointment of any individual.

73. The Friday night meeting on February 3, 2023 did not pertain to the hiring of any individual.

74. The Friday night meeting on February 3, 2023 did not pertain to the performance or evaluation of any individual.

75. According to the District's position in denying access to the reasons and rationale for accepting Hodges's resignation, the Friday night meeting on February 3, 2023 did not pertain to the discharge of any individual.

76. Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter attended the February 3, 2023 meeting of the Board that started at 6:30 p.m.

77. The first action that night consisted of the Board's approval of the agenda issued the previous day.

78. On a unanimous vote, the Board adopted a motion to approve the agenda for the February 3, 2023 meeting, which in turn recited that that the purpose of the meeting was "Closed Session Pursuant to Iowa Code section 21.5(1)(i) 'To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.'"

79. After approving that agenda, Carter made a motion "to move into closed session pursuant to Iowa Code section 21.5(1)(i) 'To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.'"

80. Burger seconded that motion.

81. By roll call vote, all members of the Board present (namely, Defendants Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter) voted to go into closed session.

82. With unanimous passage of that motion, the Board moved into closed session at 6:32 p.m. – two minutes after it convened.

83. While not determinative, Hodges never alleged that he would suffer needless and irreparable harm to his reputation if the Board's February 3, 2023 meeting remained open to the public.

84. Further, the Board did not articulate at the open portion of the February 3, 2023 meeting the basis for concluding that an individual whose appointment, hiring, performance, or discharge was under consideration would suffer needless and irreparable harm to his or her reputation unless a closed session was held.

85. The Board at no time expressed such a finding or conclusion in connection with and prior to going into closed session on February 3, 2023.

86. Instead, the Board quoted the words of the statute regarding closed sessions, voted without discussion, and proceeded in closed session by excluding the public and the press and ending its live streaming of the February 3, 2023 meeting.

87. Further, the archived recording of the February 3, 2023 meeting that the Board posted on its website excludes audio and video of the closed portion of the proceeding.

88. Following a 31-minute discussion behind closed doors, Hodges, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter reconvened the February 3, 2023 Board meeting in public session.

89. According to the minutes of the February 3, 2023 meeting, the Board then met in public for one more minute.

90. In that single minute, Defendants Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter unanimously introduced a motion, received a second of that motion, and

voted without public discussion or a call for public comment to approve the “Resignation of Employment (sic) and Release Agreement” that Hodges signed two days earlier.

91. The Board did not document, discuss, debate, or receive any public comment on the reasons and rationale for its decision to enter into the “Resignation of Employment (sic) and Release Agreement” during either open portion of its meeting on February 3, 2023.

92. To date, neither the discussions regarding nor the reasons and rationale for Defendants Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter to approve the “Resignation of Employment (sic) and Release Agreement” were disclosed to or accessible by the public or the press.

93. On information and belief, the Council and Evans allege that no lawyer for the Board or any of the members of the Board named as a Defendant in this case attended the February 3, 2023 meeting or the closed session occurring on that date.

94. The minutes of the February 3, 2023 meeting of the Board do not indicate whether the Board made, sealed, and retained detailed minutes and an audio recording of the closed session that occurred on that date as required by Iowa Code § 21.5(5).

95. On information and belief, the Council and Evans allege that the Board kept detailed minutes of all discussions, persons present, and actions taken at its February 3, 2023 closed session as Iowa Code § 22. 5(5)(a) requires.

96. On information and belief, the Council and Evans allege that the Board audio recorded all of its February 3, 2023 closed session as Iowa Code § 22. 5(5)(a) requires.

97. On information and belief, the Council and Evans allege that the Board made a video recording of its February 3, 2023 closed session

98. On information and belief, the Council and Evans allege that the Board has sealed and retained in its possession the detailed minutes and audio recording of the February 3, 2023 closed session as Iowa Code § 22. 5(5)(a) requires.

99. On information and belief, the Council and Evans allege that the Board has kept the video recording of its February 3, 2023 closed session in its possession.

100. When it voted to go into closed session on February 3, 2023, the Board did not articulate by name who had requested a closed session.

101. The Board lacks documentation that Hodges initiated a request that Board discuss the acceptance of his “Resignation of Employment (sic) and Release Agreement” in a closed session or otherwise did anything more than acquiesce to a suggestion from the Board of its intent to proceed in private.

102. The Board lacks documentation that Hodges asserted prior to February 3, 2023, that he would suffer needless and irreparable harm to his reputation unless the Board discussed whether to accept his “Resignation of Employment (sic) and Release Agreement” in a closed session.

103. The Board issued a notice and agenda for its February 3, 2023 Friday night special meeting that indicated that discussion would relate to approval of an employee’s resignation.

104. That resignation was embodied in the “Resignation of Employment (sic) and Release Agreement” that Hodges signed on February 1, 2023.

105. The Board’s closed session on the evening of Friday, February 3, 2023 was not called to evaluate “the professional competency of an individual whose appointment, hiring, performance or discharge” was under consideration.

106. Even if the Friday night meeting on February 3, 2023 took place to evaluate “the professional competency of an individual whose appointment, hiring, performance or discharge is being considered,” the Board lacked a rational basis to conclude that needless harm to the reputation of Hodges would occur unless it held a closed session.

107. Even if the Friday night meeting on February 3, 2023 took place to evaluate “the professional competency of an individual whose appointment, hiring, performance or discharge is being considered,” the Board lacked a rational basis to conclude that irreparable harm to the reputation of Hodges would occur unless it held a closed session.

108. Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter voted to close the Board’s February 3, 2023 only for the stated purpose of discussing whether to accept the “Resignation of Employment (sic) and Release Agreement.”

109. On information and belief the Council and Evans allege that Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter failed to adhere to that statutory restriction by discussing matters unrelated to approval of the “Resignation of Employment (sic) and Release Agreement” that Hodges had already signed.

IV. Plaintiff’s Iowa Code Chapter 21 Claim

110. The Iowa Open Meetings Act, as embodied in Iowa Code Chapter 21 (2023), fosters the declared public policy that the basis and rationale of governmental decisions as well as the decisions themselves should remain easily accessible to the people.

111. Under the Iowa Open Meetings Act, public officials and judges are directed by the General Assembly to resolve ambiguity in the construction or application of the statute in favor of openness.

112. The February 3, 2023 conduct and acts of the Board and Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter failed to satisfy the goals and the requirements of the Iowa Open Meetings Act.

113. Defendant Board of Education of the Centerville Community School District:

- a. Is a governmental body;
- b. Is subject to the mandates of Iowa Code Chapter 21;
- c. Held a meeting on February 3, 2023; and
- d. Met in closed session on February 3, 2023, to accept a resignation agreement already negotiated with and signed by Hodges.

114. Defendants Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter voted in favor of the closed session on February 3, 2023, and participated in it.

115. The Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter closed the February 3, 2023 meeting to the public and the press and terminated the live Internet feed of that meeting while they met in closed session.

116. The Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter closed the February 3, 2023 meeting to the public and the press and terminated the live Internet feed of that meeting without having first received a request initiated by Hodges to obtain a private hearing or a closed session.

117. The Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter bear the burden of demonstrating compliance with Iowa Code Chapter 21.

118. They lack facts sufficient to show such compliance with Iowa Code Chapter 21 with respect to their February 3, 2022 secret session.

119. First, the Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter lacked statutory grounds under Iowa Code § 21.5(1)(i) to close the February 3, 2023 meeting.

120. Second, the Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter closed their February 3, 2023 meeting without satisfying the predicates of Iowa Code § 21.5(1)(i) or the procedural steps needed to close a meeting of a governmental body.

121. Third, the Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter lacked the factual bases necessary under Iowa Code § 21.5(1)(i) to proceed in closed session on February 3, 2023.

122. Each of the Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter thereby violated Iowa Code Chapter 21 by meeting in closed session on February 3, 2023.

123. Each of the Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter violated Iowa Code Chapter 21 by delaying and denying the Council, Evans, and the public access to meaningful information that relates to the authorization of an expenditure of taxpayer monies in settlement.

124. By proceeding in closed session, each of the Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter denied the Council, Evans, and the public the opportunity to learn the basis and rationale for the Board's decision made on February 3, 2023 to approve of the "Resignation of Employment (sic) and Release Agreement" with Hodges, the person about whom the District had issued a public statement to the "Centerville Schools Family" and that involved an ongoing investigation for which the District hired an outside contractor to handle "messaging."

125. Each of the Board, Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter violated Iowa Code Chapter 21 by delaying and denying the Council, Evans, and the public access to meaningful information that relates to the cessation of an investigation whether a

District counselor, head coach, and abuse investigator engaged in inappropriate conduct with a minor, a matter of significant public importance and concern.

126. This lawsuit was commenced within six months of the Board's closed session on February 3, 2023.

127. This Court, pursuant to Iowa Code § 21.6, is empowered to enforce the rights of the Council and Evans by mandamus and injunction and, pursuant to Iowa Code § 21.6, *shall* order certain enforcement remedies as prescribed therein upon a finding that Iowa Code Chapter 21 has been violated.

128. The acts of the Board and each of Wiskus, M. Thomas, B. Thomas, Shondel, Burger, and Carter in closing the meeting on February 3, 2023, and participating in that secret session in violation of the Iowa Open Meetings Act, were knowing and willful.

V. Requested Relief

WHEREFORE, Plaintiffs the Iowa Freedom of Information Council and Randy Evans request that the Court:

- A. Declare that Defendant Board of Education of the Centerville Community School District constitutes a governmental body subject to the Iowa Open Meetings Act;
- B. Declare that the Iowa Open Meetings Act, including without limitation Iowa Code §§ 21.3 through 21.5, applied to the Board of Education of the Centerville Community School District and each member of the Board personally named as a Defendant in this case when they met in closed session on February 3, 2023;

- C. Order that The Board of Education of the Centerville Community School District shall deliver to the Court the detailed minutes and audio recording of the February 3, 2023 closed session that Iowa Code § 21.5(5) required the Board to create and keep under seal and any other video or audio recordings of that session in its custody or control so that the Court may open the sealed materials and examine all detailed minutes and audio and video recordings *in camera*;
- D. As authorized by Iowa Code § 21.5(b)(1), order the Board to produce the detailed minutes and audio recording of the February 3, 2023 closed session that Iowa Code § 21.5(5) required the Board to create and any other recordings of that session in its custody or control to the Council, Evans, and their attorneys for use in this enforcement proceeding;
- E. Hold the trial of this matter on an expedited basis;
- F. Declare that Board of Education of the Centerville Community School District's closed session on February 3, 2023, was unlawful and constituted an illegally-closed meeting that violated Iowa Code Chapter 21;
- G. Declare that Board of Education of the Centerville Community School District and each member of the Board of Education named as a Defendant in this case violated the Iowa Open Meetings Act, including Iowa Code § 21.3 and § 21.5, by voting for, holding and/or participating in a closed session on February 3, 2023, in part because the closure was not

authorized by the Iowa Open Meetings Act and their actions did not comply with Iowa Code Chapter 21;

- H. Assess damages as required by Iowa Code § 21.6(3)(a) in amounts as required for the willful violations by each of the members of the Board of Education of the Centerville Community School District named as Defendants in this case who participated in the closed session on February 3, 2023;
- I. Award the Council and Evans their costs and fees, including their reasonable attorney fees, in part pursuant to the mandatory attorney fees provision of Iowa Code § 21.6(3)(b), and assess such costs and attorney fees to the Defendant persons or Board of Education of the Centerville Community School District, whichever may be required by that statutory provision;
- J. Direct by mandatory injunction and/or mandamus that the Board of Education of the Centerville Community School District and each of its members named as a Defendant in this case who participated in the February 3, 2023 closed session shall comply with the requirements of Iowa Code Chapter 21 going forward for one year under penalty of civil contempt, as authorized in part by Iowa Code § 21.6(2)(e);
- K. Order that the Board of Education of the Centerville Community School District immediately release to the Council without restriction or delay (1) a complete, unaltered copy of the recording of the February 3, 2023 closed session required by Iowa Code § 21.5(5), (2) complete and detailed

minutes for that meeting to the extent they have not already been made public, (3) all other recordings of the closed session in its custody or control and (4) copies of each document or record that was reviewed during or generated as a result of that closed session;

- L. Remove each member of the Board of Education of the Centerville Community School District named as a Defendant in this case from office if that member engaged in a prior violation of Iowa Code Chapter 21 for which damages were assessed against that member during his or her term as a member of the Board of Education of the Centerville Community School District;
- M. Enter all orders and impose all remedies mandated by Iowa Code § 21.6(3);
- N. Grant the Council and Evans all such remedies and relief required or permitted under the Iowa Open Meetings Act, including without limitation the provisions of Iowa Code § 21.6;
- O. Provide the Council and Evans such further relief as this Court deems appropriate in its discretion and equitable powers;
- P. Enter final judgment accordingly in favor of the Council and Evans and against each of the Defendants; and
- Q. Retain jurisdiction over the subject matter and the Defendants in this matter for enforcement of all Orders of this Court and its Judgment.

Dated: May 11, 2023.

Respectfully submitted,

FAEGRE DRINKER BIDDLE & REATH LLP

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