

SHEEHAN, BARNETT, DEAN,
PENNINGTON, LITTLE & DEXTER, P.S.C.
ATTORNEYS AT LAW
114 SOUTH FOURTH STREET
DANVILLE, KENTUCKY 40422-1826

Telephone (859) 236-2641
Fax Number (859) 236-1483

JAMES HADDEN DEAN
HENRY VINCENT PENNINGTON, III
RAMONA CASTELLVI LITTLE
STEPHEN ABELL DEXTER
CHRISTOPHER JAMES TUCKER
MELANIE CLARK THORNBERRY

OF COUNSEL
ELIZABETH NICKELS LENN

RETIRED
JAMES WILLIAM BARNETT

March 1, 2018

Concerned Staff and Citizens of the
Danville Independent School District Community
(see attached Distribution List)

RE: Complaint dated February 26, 2018

Ladies and Gentlemen:

I am writing in response to the Letter of Complaint to Members of the Danville Board of Education dated February 26, 2018 (hereinafter, "Complaint"), which was hand-delivered to school board members at the beginning of the special-called meeting at Danville High School at 6 p.m. on February 26, 2018. Numerical paragraphs 5 – 16 appear be expressions of concern about, or criticism of, the school board's oversight of the school district. In my view, the school board should review and consider those matters pursuant to Board Policy 10.2 ("Citizen Suggestions and Complaints"), a copy of which is attached, and I will so advise the board.

Numerical paragraphs 1 – 4, by contrast, are collected under the heading "Open Meeting Violations Related to the February 19, 2018 Board of Education Meeting," and I am therefore making this response pursuant to KRS 61.846(1). This response will be distributed as indicated on the attached Distribution List, which is incorporated herein by reference. Although no signatory contact information was included with the Complaint, a good faith effort has been made to provide a copy of this response to each and every individual who signed the Complaint. However, there are 2 signatures on the Complaint that are illegible to the undersigned, and there are 13 names for which I have been unable to locate an email or postal mailing address. I will respond to the four alleged violations in the order presented in the Complaint.

1. "The meeting violated KRS 61.840 as it relates to meeting room conditions."

As acknowledged in your Complaint, the regular school board meeting of February 19 occurred in the "Flex Room" of Danville High School, which is the normal meeting place for

regular school board meetings. The Complaint alleges that Chairperson Matthews “failed to accommodate attendees with adequate space and seating.” The Complaint further alleges that: “Microphones were available to board members, but their inability to speak into them and the room’s acoustics made for difficult hearing with clarity.”

The Board denies that any violation of KRS 61.840 occurred. It is true that the meeting was especially crowded during items 1 – 3 of the agenda. In agenda item 3.C, the school board recognized the achievements of two academic teams, the Danville High School wrestling team, and the John W. Bate Middle School seventh grade basketball team. During this time, there were undeniably a number of people in the hallway as they waited to be called for recognition. However, the vast majority of these students and their families left after the conclusion of the student recognitions. During the portion of the meeting that is the primary focus of the Complaint (agenda items 8 and 9), there were only a handful of individuals in the hallway, and they were there by choice – not because they were unable to enter the meeting room.¹ There was not a single complaint to the Board during the meeting that a person who wanted to participate in the meeting could not participate because he or she could not enter, or remain in, the meeting room. There was not a single complaint to the Board that a person was unable to hear the discussion. Each board member, and each person who addressed the board, spoke into microphones that were more than adequately amplified. The school district’s videotape of the school board meeting demonstrates that the sound quality was quite clear.²

In 2004, the Kentucky Supreme Court addressed an alleged violation of KRS 61.840 in *Knox County v. Hammons*, 129 S.W.3d 839, which is now the controlling case law on the question. The alleged Open Meetings Act violations in *Hammons* are very similar to those alleged in numerical paragraph one of the Complaint:

Furthermore, the Appellees also claim that the special called meeting violated KRS 61.840 because it did not allow ‘effective public observation’ of the proceedings. It is undisputed that numerous citizens were not able to enter the crowded district courtroom and observed the proceedings from the hallway.

The Kentucky Supreme Court rejected outright the argument that Knox County had violated either the letter or spirit of the Open Meetings Act, finding that there was “no evidence that persons wishing to attend or participate in the proceeding were effectively prevented from doing so.” 129 S.W.3d at 845. The *Hammons* decision effectively overruled earlier Kentucky Attorney General decisions that had interpreted KRS 61.840 much more strictly.

¹ The undersigned board attorney has spoken to two individuals who remained in the hallway during all or a portion of agenda items 8 and 9. Both agreed that they were in the hallway at this time voluntarily, not because of a lack of space for them in the meeting room. The first of these individuals estimated that there were fewer than 10 individuals in the hallway during this time. The second individual estimated that there were approximately 6 people in the hallway and a few more in the upstairs lobby area at the end of the hallway. Both agreed that there were no individuals outside the meeting room who wished to be inside the room but were prevented from entering due to space constraints.

² A videotape of the meeting (hereinafter, “Videotape”) can be found at: http://www.danvilleschools.net/district_information/board_of_education/recorded_board_meetings/.

Post-2004 Kentucky Attorney General decisions have applied this much less onerous standard and have almost invariably resolved similar cases in favor of public agencies. For instance, in 06-OMD-079, the Attorney General found no violations of the Open Meetings Act by the Greenup City Council even where some citizens were forced to stand in a hallway during a crowded city council meeting and some attendees were unable to hear because the “room was not equipped with an internal amplification system.” In 12-OMD-131, a citizen alleged that the Carter County Fiscal Court violated KRS 61.840 during a fiscal court meeting with an overflow crowd because numerous people had to stand in the hall and some citizens could not hear because the county judge and magistrates allegedly refused to turn on and use their microphones. Not only did the Attorney General decline to find a violation in 12-OMD-131, it further held that, in light of the Kentucky Supreme Court decision in *Hammons*, it *could not* find a violation in similar situations unless there was “uncontested proof” that a citizen who wished to attend or participate in a public meeting had been precluded from doing so. No such evidence – much less uncontested evidence – exists in this case. The fact that a few individuals stayed in the hallway outside the meeting room, voluntarily or not, is not decisive; in fact, it does not even approach the level of “uncontested” proof of an individual being denied participation that is required to support a finding of a violation under KRS 61.840. See, for instance, *Hammons*, 129 S.W.3d 839, 845.

The Attorney General’s office has also ruled in 03-OMD-178 and 04-OMD-001 that a public agency cannot be found to be in violation of KRS 61.840 due to citizens’ inability to hear where agency members were not made aware of the alleged problem. In this case, no citizen at the meeting notified the school board that there was any problem whatsoever with the amplification or acoustics.

2. Public Comment.

The second numerical paragraph of the Complaint alleges that the school board violated the Open Meetings Act [a] by virtue of Chairperson Matthews allegedly manipulating the order in which she called citizens to speak in an effort to create “a seamless transition to support the Chairperson’s motion to declare a vacancy of the superintendent’s position”; [b] as a result of Ms. Matthews texting with certain individuals in attendance at the meeting; and [c] by allowing two individuals to present improper public comment. The Complaint fails to identify precisely what provision of the Open Meetings Act is claimed to have been violated.

The undersigned board attorney has obtained a copy of the Public Comment Sign-In sheet for the 2/19/18 school board meeting from Teresa Osbourn, Personnel Specialist for Danville Independent Schools, and a copy is attached. This sign-in sheet is maintained pursuant to Board Procedure 01.421 AP.1, a copy of which is also attached. The sign-in sheet for the 2/19/18 meeting reflects that 12 individuals requested to address the school board: Kay Anderson; Amanda Addison; Mary Neal; Glenn Ball; Leo Labrillazo; Jennifer Pusateri; Rhonda Caldwell; Amber Norman; Eric Moore; Ronda Harmon; Brooks Evans; and DeMarco Prewitt. With the single exception of Kay Anderson, Board Chairperson Matthews called the individuals in the order that they signed the sheet. Ms. Matthews did not call Ms. Anderson first because she had received a text message from Ms. Anderson during the meeting indicating that Ms. Anderson

had changed her mind and did not want to address the Board; as a result, Ms. Matthews started the public comment section of the agenda by calling Amanda Addison, who was listed second on the sign-in sheet. Later in the meeting, Ms. Matthews received a follow-up text message from Ms. Anderson, who indicated that she would, in fact, like to address the Board. After receiving the follow-up message, Ms. Matthews then called Ms. Anderson to speak (in the 8th slot, after Amber Norman and before Eric Moore). Aside from that minor change – one that is certainly within the discretion of the presiding officer of a meeting of a public agency – Ms. Matthews called the speakers precisely in the order in which they had signed up. Plain and simple, there was no effort whatsoever to manipulate the order of speakers to justify a certain outcome.

The Complaint also alleges that Ms. Matthews violated the Open Meetings Act (again, no specific section is indicated) by using her mobile phone to send and receive text messages during the public comment section of the meeting. Part of the explanation for those text messages is found in the immediately preceding paragraph. In addition, Ms. Matthews received text messages from a couple members of the audience who wished to speak but who had not located the sign-in sheet. After receiving these text messages, Ms. Matthews made an announcement to everyone in attendance that if they wished to speak but had not yet signed-in, they still could do so and the Board would hear their comments (see Videotape @ 1:44:26). Finally, Ms. Matthews received a text message from one of her daughters saying that she was sick, to which Ms. Matthews responded by instructing her to send a text message to her father. The bottom line is that there was no discussion whatsoever about substantive school board matters or policy issues; all discussion (other than the text messages concerning the sick daughter) pertained to procedural issues relating to the sign-in sheet. As was the case at a previous school board meeting on January 22, 2018, the school board erred on the side of allowing robust public discussion, permitting every citizen who cared to speak that opportunity. Given the strong feelings expressed, Chairperson Matthews and the Board allowed several speakers to exceed the typical 3-minute limit at both the 1/22/18 and 2/19/18 meetings. No speaker in favor of renewing Dr. Look's contract was interrupted or required to limit his or her comments, despite the fact that several exceeded the normal 3-minute limit. Only one speaker, Amber Norman, was required to limit her remarks (see Videotape @ 1:44:25), and she had spoken against renewal of Dr. Look's contract. In short, citizens on both sides of the contract renewal issue addressed the school board passionately and eloquently, and neither Chairperson Matthews nor the school board did anything to hinder this public discussion.

Finally, the second numerical paragraph of the Complaint alleges that the school board violated the Open Meetings Act by allowing two unnamed individuals to present improper comment to the school board and that Ms. Matthews had "tacitly encouraged" this allegedly improper public comment by "allowing it to happen." Presumably, the two speakers in question are Amber Norman (see Videotape @ 1:39:45 – 1:44:25) and Brooks Evans (see Videotape @ 1:56:48 – 1:59:25). As she has on several occasions in the past, Ms. Norman addressed the board to express concerns about her children being bullied at John W. Bate Middle School and her belief that school district administrators have failed to take appropriate steps to remedy the matter. Mr. Evans expressed concerns that his son, a student at John W. Bate Middle School, had been unfairly disciplined. The 2/19/18 meeting was a regular school board meeting, and the scope of the public comment section was not limited to the issue of whether Dr. Look's contract should be renewed. Within the parameters of the attached Board Procedure 01.421 AP.1

("Public Participation Guidelines"), citizens were free to address the school board regarding any concerns they might have. Finally, as mentioned above, Ms. Matthews did, in fact, limit the comments of Ms. Norman (see Videotape @ 1:44:25).

3. Discussion of superintendent's contract.

The third numerical paragraph of the Complaint alleges that the school board violated the Open Meetings Act in its description of item 9 on the agenda; indeed, that this was an intentional effort to mislead the public. As a purely legal matter, a public agency is not required to have an agenda for a regular meeting. 2017 Ky. AG LEXIS 123 ("In contrast to KRS 61.823, the provision that governs special meetings, and which expressly requires the inclusion of an agenda in the posted written notice of such meetings, KRS 61.820 does not require agencies to prepare an agenda for a regular meeting" (*emphasis added*). Furthermore, even with a published meeting agenda, at a regular meeting a public agency is free to deviate from the agenda, even to the point of discussing – and voting on – matters that are not listed on the agenda. This power, in fact, is a primary distinction between a regular and a special-called meeting.

The Videotape itself belies any assertion that the public was confused or tricked by the wording of the agenda item. The meeting was well-attended, and nearly every speaker identified above gave his or her opinion on whether Dr. Look's contract should be renewed. As discussed below, a good number of those speakers – both those who spoke for and against Dr. Look – had detailed notes or prepared written statements from which they read during the public comment section. One of the speakers, DeMarco Prewitt (Videotape @ 2:04:12 – 2:04:35), acknowledged that school district employees had been emailing each other for several days in anticipation of the vote. The question of whether Dr. Look's contract should be renewed had also been the subject of a lengthy public comment section of the school board's regular meeting on January 22, 2018, and the issue had been discussed in at least one *Advocate-Messenger* newspaper article. The fact that a vote occurred came as no surprise to the many school district employees and citizens who attended an otherwise routine board meeting, and no board members were surprised by the vote.

The Complaint suggests that the agenda item was defective because it included the word "discussion" rather than "vote." Of course, earlier in the meeting the school board had voted on a number of other motions related to agenda items that did not contain the word "vote," and no complaint has been raised regarding those motions or votes. Dr. Look's employment contract ends on June 30, 2018, and there was actually nothing more for the school board to discuss other than whether a majority wished to renew the contract or not. In the event that a majority had favored renewal, the resulting motion likely would have been to direct the board attorney to draft a new employment contract and present it for approval at a subsequent board meeting. Given that a majority did not favor renewal, the appropriate motion was to declare a vacancy effective at the expiration of Dr. Look's employment contract. After (and only after) each citizen who cared to speak and every board member had offered his or her opinion in this public fashion, a vote was taken. Nothing in this process violated the Open Meetings Act.

4. Collusion.

Numerical paragraph 4 of the Complaint alleges that the school board violated KRS 61.810(2) and offers as evidence the fact that three board members (Matthews, Matherly, and Finke) had notes or written statements from which they read, while the remaining board members (Becker and McCowan) did not. Of course, there is nothing improper, in and of itself, about an elected official speaking from notes or a prepared written statement; one can easily imagine why an elected official might stick to prepared remarks when speaking on a controversial or sensitive subject. Other public officials, on the other hand, may feel entirely comfortable speaking "off the cuff," and perhaps that is the case with Mr. McCowan and Mr. Becker, veteran school board members who have served on previous school boards.

In truth, the situation with the board members was no different than that with the school district employees and citizens who addressed the board during the public comment section. The Videotape reveals that at least seven of the individuals who addressed the board during the public comment section read from notes or verbatim from written statements prepared in advance. Several of those individuals spoke strongly in favor of renewing Dr. Look's contract. For instance, Ms. Addison (Videotape @ 1:19:20 – 1:24:40) and Mr. Labrillazo (Videotape @ 1:28:10 – 1:31:00) appeared to have read prepared statements; others like Mr. Ball and Ms. Caldwell appeared to have notes prepared in advance; and still others read from either notes or prepared statements contained on their mobile phones.

For all of the foregoing reasons, the Board of Education of the Danville Independent Schools denies that any violations of the Open Meetings Act occurred in conjunction with the February 19, 2018, regular school meeting.

That said, the school board nonetheless acknowledges that the signatories to the Complaint are valued members of the Danville Schools community who have expressed concerns in good faith. The school board looks forward to working with these individuals to address concerns, even where honest, good faith points of disagreement might remain. Like the stakeholders who signed the Complaint, the Board remains focused on the educational welfare of all students and desires to foster a productive and healthy working relationship among all stakeholders of the Danville Independent Schools.

Sincerely,



H. VINCENT PENNINGTON, III
COUNSEL TO THE BOARD OF EDUCATION,
DANVILLE INDEPENDENT SCHOOLS

I certify that the foregoing response has been made under my authority pursuant to KRS 61.846(1).

Paige Matthews

PAIGE MATTHEWS, PRESIDING OFFICER
DANVILLE SCHOOL BOARD MEETING ON
FEBRUARY 19, 2018

cc: Danville Board of Education Members
Dr. Keith Look, Superintendent
Ms. Teresa Osbourn

Citizen Suggestions and Complaints

SUGGESTIONS

The Board believes that a continuing two-way dialogue between the schools and the public is necessary. It shall be the policy of the Board to give consideration to suggestions posed to the Board by citizens of the district. Citizens wishing to make suggestions should submit them in writing to the appropriate school administrator or the Superintendent or chairman of the Board.

COMMITTEES

From time to time, the Board may appoint committees composed of citizens to advise the Board on specific matters. The Superintendent shall appoint District employees to serve on these committees as necessary. Such committees shall be ad hoc in nature and will serve at the pleasure of the Board.

Committees appointed by the Board shall comply with requirements of the Open Meetings Law.

PUBLIC HEARINGS

The Board will arrange for public hearings when the consideration of important issues requires a public forum. These shall be for the dual purpose of informing the public about the issue(s) and for receiving information from the public about the issue(s). The Board shall give prior notice for public hearings.

COMPLAINTS

The Board welcomes constructive criticism when such is motivated by a sincere desire to improve the effectiveness of the schools. Complaints regarding Board actions and policy matters should be directed to the Board. All other complaints should be directed to the administrative unit in which the problem arises. The proper channel for complaints is as follows:

1. Teacher,
2. Principal,
3. School Council, (where operational)
4. Superintendent, and
5. Board of Education.

Complainants should initially address the problem at the lowest level of involvement and may appeal to higher levels if satisfaction is not achieved.

APPEALS

Complaints appealed to the Board must be in writing and must contain a detailed description of the problem and the redress desired. The Board reserves the right to defer and redirect complaints that have not been explored to the appropriate administrative level.

REFERENCES:

KRS 61.800; KRS 61.805; KRS 61.810; KRS 61.815; KRS 61.820; KRS 61.823
KRS 61.826; KRS 61.835; KRS 61.840; KRS 61.846; KRS 61.848; KRS 61.850
OAG 75-3

RELATED POLICY:

01.421

Adopted/Amended: 11/18/1996

Order #: 8386



**Danville Board of Education Regular Board Meeting
Public Comment Sign-In**

Persons wishing to address the board must complete the following
prior to the start of the meeting.

Things to remember:

1. The speaker must wait to be recognized by the Chairperson before addressing the Board.
2. Presentations are limited to (3) minutes.
3. Board members will listen to all comments but will not engage in discussion.
4. Improper conduct or remarks are not allowed.
5. Copies of public remarks and/or materials must be given to Teresa Osbourn at time of registration. These items will be added to the board minutes.

Board Meeting Date: 2/19/18

Name (please print):
Kay Anderson
Address of Speaker:

Subject of Presentation:
Possible Renewal of Superintendent Contract

Name (please print):
Amanda Addison
Address of Speaker:

Subject of Presentation:
Superintendent contract

Name (please print):
Mary Neal
Address of Speaker:

Subject of Presentation:
Superintendent contract



Name (please print):

GLENN BALL

Address of Speaker:

Subject of Presentation:

SUPT CONTRACT

Name (please print):

LEO LABRILLAZU

Address of Speaker:

Subject of Presentation:

svpt. contract

Name (please print):

Jennifer Pusateri

Address of Speaker:

Subject of Presentation:

Supt. Contract

Name (please print):

Rhonda Caldwell

Address of Speaker:

Subject of Presentation:

Supt Contract

Name (please print):

Amber Norman

Address of Speaker:

Subject of Presentation:

School

Name (please print):

Subject of Presentation:

Address of Speaker:



**Danville Board of Education Regular Board Meeting
Public Comment Sign-In**

Persons wishing to address the board must complete the following
prior to the start of the meeting.

Things to remember:

1. The speaker must wait to be recognized by the Chairperson before addressing the Board.
2. Presentations are limited to (3) minutes.
3. Board members will listen to all comments but will not engage in discussion.
4. Improper conduct or remarks are not allowed.
5. Copies of public remarks and/or materials must be given to Teresa Osbourn at time of registration. These items will be added to the board minutes.

Board Meeting Date: _____

Name (please print): Eric Moore Subject of Presentation: _____

Address of Speaker: Bonda Harmon

Name (please print): Brooks Evans Subject of Presentation: _____

Address of Speaker: _____

Name (please print): Demario Prewitt Subject of Presentation: _____

Address of Speaker: _____



Name (please print):

Subject of Presentation:

Address of Speaker:

Name (please print):

Subject of Presentation:

Address of Speaker:

Name (please print):

Subject of Presentation:

Address of Speaker:

Name (please print):

Subject of Presentation:

Address of Speaker:

Name (please print):

Subject of Presentation:

Address of Speaker:

Name (please print):

Subject of Presentation:

Address of Speaker:

Public Participation Guidelines**PUBLIC PARTICIPATION/SPEAKERS**

Recognizing its responsibility to conduct the business of the District in an orderly and efficient manner, the Board has set reasonable controls for public presentations to the Board.

Persons wishing to address the Board must first be recognized by the Chairperson.

Members of the public may be given time to voice opinions or express concerns. The Chairperson may require the name and address of the speaker.

Public comment is just that – comment. Board members will listen to all comments but not engage in a discussion of any item. The Board may:

- a) request that the Superintendent investigate an issue raised and report back, or
- b) determine it is worthy for Board discussion at a later meeting.

Public viewpoint shall be recorded in the minutes if the speaker provides the Board secretary with a copy of his/her remarks.

1. Any person or persons wishing to present a matter to the Board shall register with the secretary (or his/her designee) of the Board prior to the meeting. The subject of the presentation shall be stated at that time.
2. Materials intended for consideration by the Board may be left with the secretary at the time of registration.
3. Presentations shall be limited to three (3) minutes. The presenter will be signaled when 30 seconds remain in the presentation window.
4. Undue interruption or other interference with the orderly conduct of Board business cannot be allowed. Defamatory or abusive remarks are always out of order. The Chairperson may terminate the speaker's participation if, after being called to order, the speaker persists in improper conduct or remarks.

Review/Revised:2/13/2017