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VIA FIRST CLASS MAIL AND EMAIL

23 May 2025

Corrie Shull, Chair  
Jefferson County Public School Board of Education  
[Corrie.Shull@jefferson.kyschools.us](mailto:Corrie.Shull@jefferson.kyschools.us)

Dear Mr. Shull:

This firm and the undersigned represent the Courier Journal. Pursuant to KRS 61.846(1), this letter serves as the Courier Journal's written complaint regarding the JCPS Board of Education's numerous violations of the Kentucky Open Meetings Act in connection with its decision to hire a new superintendent, made at its meeting last night. The Board appears to have violated the Open Meetings Act in multiple ways, including:

- (1) By voting, or otherwise reaching a consensus, during a closed session to hire a new superintendent;
- (2) By holding a sham vote in open session to ratify a decision made during a closed session; and
- (3) By refusing to disclose in its public meeting which superintendent candidate it decided to hire.

Each of these actions was an independent violation of the Act. Individually—and certainly in combination—they demonstrate that the Board fails to appreciate its obligation to keep the public informed of key information that it has a right to know regarding the Jefferson County Public Schools and its leadership.

#### **LEGAL BACKGROUND**

The Open Meetings Act demands that "the formation of public policy is public business and shall not be conducted in secret." KRS 61.800. According to the Act, "[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times." KRS 61.810(1).

There are limited exceptions to this rule, which must "be strictly construed." KRS 61.800. The exception at issue here, KRS 61.810(1)(f), permits only "[d]iscussions or hearings which *might lead* to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee's, member's, or student's right to a public hearing if requested." KRS 61.810(1)(f) (emphasis added). That provision also makes clear that the "exception *shall not* be interpreted to permit discussion of general personnel matters in secret." *Id.* (emphasis added).

This exception cannot be used to discuss any other topic, such as the resignation or promotion of an employee. *See, e.g., Carter v. Smith*, 366 S.W.3d 414, 421 (Ky. 2012).

Nor can any personnel actions be taken in a closed session, even if some discussion is permissible. *See* KRS 61.815(1)(c) (“No final action may be taken at a closed session.”). That prohibition includes, but is not limited to, reaching a consensus about what action to take, even in the absence of a formal vote. *See* KRS 61.805(3) (“‘Action taken’ means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body.”); *Bd. of Commissioners of City of Danville v. Advocate Commc’ns, Inc.*, 527 S.W.3d 803, 806 (Ky. 2017) (Board improperly took action in closed session by reaching a consensus); *see also Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 397 (6th Cir. 2005) (“An ‘action taken’ thus may either be an actual vote or a ‘collective decision,’ [KRS 61.805(3)], and accordingly the ‘consensus’ reached by the Council and recorded in its minutes fits well within this definition.”).

## **DISCUSSION**

### **I. The Board Violated the Act by Voting, or Otherwise Reaching a Consensus, in Closed Session About Which Superintendent Candidate to Hire.**

The Board violated the Act in voting, or otherwise reaching a consensus, during closed session to hire a new superintendent. You cannot dispute that such a consensus was reached; after all, the Board’s minutes state that it took up a motion “to authorize the Board Chair to communicate an offer to the finalist identified in closed session and authorize legal counsel to begin contract negotiations with the finalist or his representative.” May 22 Board Minutes. Although it was unclear during the meeting which candidate this was, public reporting suggests that five of the seven Board members selected Brian Yearwood. *See* K. Johnson, *Brian Yearwood chosen as next JCPS superintendent, source says*, [www.courierjournal.com](http://www.courierjournal.com) (May 23, 2025). Apparently Board Members Linda Duncan and Taylor Everett disagreed and would have preferred a different candidate. *Id.*

Plainly, the Board reached a consensus during closed session to hire the candidate preferred by five out of seven members (presumably Yearwood). That’s a violation of the Act. KRS 61.815(1)(c) does not allow the Board to make any hiring decisions in closed session.<sup>1</sup> It matters not whether a formal vote was taken, or the Board simply reached a consensus on how to proceed. *See* KRS 61.805(3) (“‘Action taken’ means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body.”); *Advocate Commc’ns, Inc.*, 527 S.W.3d at 806; *Blau*, 401 F.3d at 397.

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<sup>1</sup> There are certain exceptions to this prohibition, spelled out in KRS 61.815(2), but none of them apply here. Indeed, KRS 61.815(2) is clear that only decisions related to “students” may be made in closed session, to the extent KRS 61.810(1)(f) otherwise applies. No decisions related to faculty or staff may be made in closed session.

## **II. The Board Violated the Act by Attempting to “Ratify” Its Hiring Decision During an Open Meeting**

Where the Act is violated, it cannot be cured by merely voting in public to “ratify” the improperly made decision. As the Supreme Court explained in *Carter*, “[a] public agency cannot ratify actions improperly taken in closed session.” 366 S.W.3d at 423. Such “approvals, albeit conducted in public, [are] window-dressing.” *Advocate Commc’ns, Inc.*, 527 S.W.3d at 80.

That’s precisely what happened here. The Board made a decision in closed session which candidate to hire; your Board Minutes concede as much. The Board then came back in open session to improperly “ratify” that decision. Even worse, the Board withheld essential information from the public because it refused to say which of the candidates it selected. That, too, violates the Act because it’s not even telling the public what business the Board was conducting.

While we understand that the Board viewed this as a “personnel” matter, that does not mean it can conduct its business behind closed doors. Rather, only certain, specified “personnel” matters may be *discussed* in closed session, and none of those may be acted upon in that forum. As a public governing body responsible for the success of our County’s public schools, JCBOE has a legal and moral obligation to do the public’s work in the open. That this decision was not unanimous makes it all the more pressing for the Board to follow the law, so the public can decide for itself whether its elected representatives are doing the work the people entrusted to them.

### **REQUESTED REMEDY**

To remedy these multiple violations of the Open Meetings Act, we request that the Board:

1. Publicly admit that the Board violated the Open Meetings Act when it (1) decided in closed session and/or outside of a public meeting which superintendent candidate to hire; (2) voted in open session to “ratify” the closed-door decision it made; and (3) refused to provide the name of the candidate it selected when voting.
2. Discuss in open session at its next meeting when, how, and by whom the decisions described in the preceding paragraph were made, including the factors that went into the decision;
3. Discuss in open session at its next meeting the reasons why Board members supported the Superintendent’s candidacy or not; and
4. Release any public records related to the improper closed meetings, including, but not limited to any Board Member notes, recordings, attendance lists, vote counts, meeting minutes, and any other documentation regardless of physical form or characteristic.

### **CONCLUSION**

Thank you for your prompt attention to this complaint. The Courier Journal expects your response to within three business days as required by KRS 61.846(1). Please preserve all records related to this matter whether those records are stored on publicly funded systems or Board members’ personal phones and email accounts.

Sincerely yours,

s/ Michael P. Abate

Jon L. Fleischaker

Michael P. Abate

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