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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

NO.: 814-558 STATE OF LOUISIANA

DIVISION: H

STATE OF LOUISIANA, BY AND THROUGH
ATTORNEY GENERAL JEFF LANDRY

VERSUS

JEFFERSON PARISH SCHOOL BOARD, JEFFERSON PARISH SCHOOL BOARD
DISCIPLINE POLICY REVIEW COMMITTEE, SCHOOL BOARD PRESIDENT CHAD
NUGENT, AND PARISH SUPERINTENDENT DR. JAMES GRAY

FILED: _____

DEPUTY CLERK: _____

**PETITION TO ENFORCE LOUISIANA OPEN MEETINGS LAW AND FOR CIVIL
PENALITIES, ATTORNEYS FEES AND COSTS**

NOW INTO COURT, through undersigned counsel, comes the STATE OF LOUISIANA through ATTORNEY GENERAL JEFF LANDRY, who is authorized to institute, prosecute, or intervene in any civil action or proceeding as necessary for the assertion or protection of any right or interest of the State of Louisiana and specifically to enforce the Louisiana Open Meetings Law. LA. Const. art. IV, § 8; *see also* La. R.S. 13:5036, La. R.S. 42:25.

1.

The Attorney General brings this suit on behalf of the State of Louisiana pursuant to La. Const. Art. IV, § 8 and La. R.S. 42:25 to enforce the open meetings laws of the State and those provisions of the Louisiana Constitution that establish the rights of citizens to observe and participate in the operation and conduct of public bodies as established in La. Const. art. XII, § 3.

2.

Made Defendants are:

- i. JEFFERSON PARISH SCHOOL BOARD ("School Board"), which is a political subdivision of the State of Louisiana domiciled in Jefferson Parish with the capacity to sue and be sued pursuant to La. R.S. 17:51;
- ii. The JEFFERSON PARISH SCHOOL BOARD DISCIPLINE POLICY REVIEW COMMITTEE ("Disciplinary Review Committee"), a committee of the Jefferson

Parish School Board responsible for the review and recommendation of proposed disciplinary policies prior to their adoption;

- iii. CHAD NUGENT, in his official capacity as President of the Jefferson Parish School Board, domiciled in Jefferson Parish, Louisiana;
- iv. DR. JAMES GRAY, in his capacity as Parish Superintendent of Jefferson Parish Schools, domiciled in Jefferson Parish, Louisiana, and who is directly charged in La. R.S. 17:81(A)(20) with seeing that the provisions of state law are complied with.

The Jefferson Parish School Board Discipline Policy Review Committee

3.

In 1994, the Louisiana Legislature enacted a statute, R.S. 17:416.8, that brought teachers, school patrons, parents, guidance counselors, principals, school bus operators, and through the operation of the open meetings law, the public, into the development and formulation of disciplinary policies to govern student behavior in a public school setting by creating a discipline policy review committee for all Louisiana public school districts.

4.

The evident intent of the Legislature in adopting R.S. 17:416.8 was to broaden input and participation in the formulation of school disciplinary rules in order to include differing perspectives and inspire public trust by opening the process to any and all interested members of the community.

5.

The Legislature thus mandated the creation of a committee made integral to the development of disciplinary policies for all Louisiana school districts.

6.

The role of the discipline review committee is to review and make recommendations concerning the revision and adoption of school disciplinary policies prior to and as an integral and essential part of the adoption of such policies.

7.

Then, in school year 2020-2021, with much of public school education moving online, the Legislature saw a need for disciplinary policies to govern student conduct in remote settings,

principally in private homes, and the Legislature directed public school districts to revise or enact such policies.

8.

The Legislature assigned school discipline policy review committees a central role in developing disciplinary policies for remote learning in Acts 2020, 2nd Ex. Sess., No. 48, prescribing in Section 4 of the Act:

Section 4. No later than December 31, 2020, every public school board shall comply with the provisions of R.S. 17:416.8 and convene a meeting of its disciplinary policy review committee to update all policies and procedures relative to conduct that occurs at home or other locations that are not school property where a student is participating in virtual instruction.

9.

The Legislature thus made review by its disciplinary policy review committee a precondition to the revision or adoption of policies for application to students engaged in remote education particularly as those disciplinary policies apply in private home settings.

10.

The Jefferson Parish School Board established a discipline policy review committee known as the Jefferson Parish School Board Discipline Policy Review Committee, which was in existence in December 2020.

11.

As a committee of the Jefferson Parish School Board, itself a public body, the Jefferson Parish School Board Discipline Policy Review Committee is a public body as defined by R.S. 42:13(A)(3) and as such is bound to carry out its public function in accordance with the Open Meetings Laws of the state.

12.

Upon information and belief, the Jefferson Parish School Board Discipline Policy Review Committee met on three occasions in December 2020, first on December 7, 2020, second on December 14, 2020, and third on December 17, 2020, to review and consider revisions and recommendations to disciplinary policies and/or amendments to existing policies that would apply to students in a remote education setting and in private homes. Such policies had already been developed and adopted in draft form on November 4, 2020.

The Louisiana Open Meetings Law

13.

The Louisiana Constitution in Article XII, Section 3 establishes the right of citizens to observe and participate in the conduct and operations of their government expressly providing that: “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.”

14.

The Open Meetings Law in Louisiana was intended to ensure the rights of citizens to participate in the deliberations of public bodies.

The primary purpose of Louisiana’s Open Meeting Law and the constitutional provision insuring the right of citizens to participate in the deliberations of public bodies is to protect citizens from secret decisions made without any opportunity for public input. The public has a right to know what is being considered and is entitled to *direct participation* in deliberations as styled by the title to Section 3, Article XII of the Constitution of 1974. *Wagner v. Beauregard Parish Police Jury*, 525 So. 2d 166, 169 (La. App. 3 Cir 1988).

15.

Because the Open Meetings Law is designed to ensure the rights of citizens in the conduct of their public business, the protections of the laws are to be liberally construed:

La. R.S. 42:12. Public policy for open meetings; liberal construction

A. It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. *Toward this end, the provisions of this Chapter shall be liberally construed.* [emphasis supplied]

16.

Accordingly, all public bodies are required to strictly abide by the requirements of the open meetings law, and any proceedings conducted in violation of the open meetings laws are subject to invalidation under La. R.S. 42:24.

The Disciplinary Review Committee Violated the Open Meetings Laws and Its Proceedings Conducted in Violation Must Be Declared Null and Void and Without Legal Effect

17.

Unfortunately, the Jefferson Parish Disciplinary Review Committee in its December 2020 meetings failed to comply with the open meetings laws in the following, non-exclusive, particulars:

- a. The Committee failed to have the December 7, 14, and 17, 2020 meetings open to the public. La. R.S. 42:14(A) provides that “[e]very meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, 17, or 18.” The December 7,

- 14, and 17, 2020 meetings were, upon information and belief, closed zoom meetings that attendees needed a meeting ID and passcode to enter or observe.
- b. The Committee failed to provide proper written public notice as required by La. R.S. 42:19 and La. R.S. 42:17.1. The notice requirement for a meeting of a public body held via electronic means during a gubernatorially declared disaster, such as the meetings of the Committee, is provided for in La. R.S. 42:17.1(B) which requires that no later than twenty-four hours prior to the start of a meeting, the notice and agenda must be posted on the website of the public body, emailed to any member of the public or news media who requests notice of meetings, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body. Additionally, the notice is required to have “[d]etailed information regarding how members of the public may participate in the meeting and submit comments regarding matters on the agenda.” La. R.S. 42:17.1(B)(2).
- c. The Committee failed to allow public comment on all items prior to a vote being taken as required by La. R.S. 42:15. School Boards and their committees have a heightened public comment requirement; La. R.S. 42:15 provides that each school board “shall allow public comment at any meeting of the school board prior to taking any vote. *The comment period shall be for each agenda item and shall precede each agenda item.*” (Emphasis added.) For meetings conducted via electronic means during a gubernatorially declared disaster, “the public body shall provide a mechanism to receive public comment electronically both prior to and during the meeting.” La. R.S. 42:17.1(C)(1). The Jefferson Parish Discipline Policy Review Committee wholly failed to allow public comment at the December 7, 14, and 17, 2020 meetings.
- d. The Committee failed to publish written minutes of the meetings as required by La. R.S. 42:20. Written minutes of a public body shall include: (1) the date, times, and place of the meeting; (2) the members of the public body recorded as either present or absent; (3) the substance of all matter decided, and, at a request of any member, a record, by individual member, or any votes taken; and (4) any other information that the public body requests to be included. La. R.S. 42:20(A). Additionally, for a

meeting held pursuant to La. R.S. 42:17.1, the “public body shall properly identify and acknowledge all public comments during the meeting and shall maintain those comments in its record of the meeting.” La. R.S. 42:17.1(C)(2).

18.

Despite the failure by the disciplinary review committee to comply with the open meetings laws, the School Board met on or around January 6, 2021 and revised and/or adopted disciplinary policies to apply to students engaged in remote education, particularly in their homes.

19.

As a result of the open meetings violations by the Discipline Review Committee, which compromised the public’s opportunity to observe and participate in the formulation of disciplinary policies affecting remote education, the proceedings and actions of the committee must be declared null and void and without legal effect under R.S. 42:24, thus threatening the validity and enforceability of all school disciplinary policies that rest upon the Committee proceedings undertaken pursuant to Section 4 of Act No 48 of the 2nd Extraordinary Session of 2020.

20.

Disciplinary policies adopted by the Jefferson Parish School Board on or about January 6, 2021, applicable to students in remote education in their homes are without foundation and unenforceable and shall remain so until the School Board, through its disciplinary policy review committee complies with the mandate of Section 4 of Act No. 48 of the 2nd Extraordinary Session of the Legislature and the Louisiana Open Meetings Law in formulating and developing disciplinary policies applicable to remote learning in the home.

Remedies

21.

In light of the foregoing, the Court should issue a declaratory judgment finding that the Disciplinary Review Committee engaged in public meetings in December 2020 at which the Louisiana Open Meetings Law was violated.

22.

The exclusion of the public from the meetings of the Disciplinary Review Committee Board meeting evinces a fundamental lack of understanding and/or complete disregard of the

Open Meetings Law on the part of the School Board, its Disciplinary Review Committee, its Superintendent and its Board President, which has caused irreparable harm to citizens interested in participating in meetings of their School Board, and accordingly, an injunction should issue in due course directing the defendants to strictly adhere to and abide by the Open Meetings Law in all future proceedings of the Disciplinary Review Committee.

23.

Because the interests of the public were so egregiously abused by the School Board, its Disciplinary Review Committee, its Parish Superintendent and Parish President at all December 2020 meetings of the Disciplinary Review Committee, any and all action taken at the meetings should be declared null and void and without legal effect, including but not limited to any review and recommendations relating to disciplinary policies proposed to apply to remote education in private homes.

24.

A civil penalty under La. R.S. 42:28 should be assessed as to those School Board members and members of the Disciplinary Review Committee who may be determined after a hearing to have contributed to and/or participated in the violations of the Open Meetings Law that occurred in December 2020 as described herein.

25.

Costs of these proceedings and reasonable attorney's fees should be awarded against the defendants in favor of the State of Louisiana, through Jeff Landry, in his official capacity as Louisiana Attorney General, for the necessity of bringing and prosecuting this enforcement action.

WHEREFORE, the State of Louisiana, through Jeff Landry, in his official capacity as Attorney General, respectfully prays that defendants, Jefferson Parish School Board, Jefferson Parish School Board Discipline Policy Review Committee, Chad Nugent, School Board President, and Dr. James Gray, Parish Superintendent, appear and show cause on a day and time convenient to the court, why this Court should not:

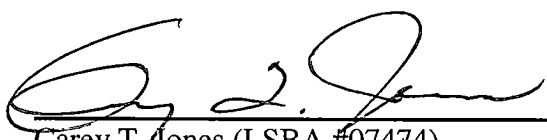
1. Issue a declaratory judgment pursuant to the Louisiana Open Meetings laws finding that the Jefferson Parish School Board and its Disciplinary Review Committee, its Parish Superintendent and Board President engaged and/or participated in a meeting at which the Louisiana Open Meetings laws were violated;

2. Issue a preliminary injunction and in due course a permanent injunction directing the defendants to strictly adhere to and abide by the Open Meetings laws in conducting meetings of the School Board and Disciplinary Review Committee in the future;
3. Declare that any and all action taken at the meetings of the Disciplinary Review Committee at its meetings on December 7, 14, and 17, 2020 and/or other meetings that may have occurred in the month of December 2020 be declared null and void and without legal effect, including, but not limited to, the review and/or recommendation of any and all student disciplinary policies applicable to remote education particularly in private homes, which includes but is not limited to those policies entitled, "Virtual Discipline Policy" and "Code of Conduct," that were adopted by the School Board on or about January 6, 2021;
4. Issue an order imposing a civil penalty under La. R.S. 42:28 to those members of the Jefferson Parish School Board and its Disciplinary Review Committee who are determined after a hearing to have contributed to the violations of the Open Meetings Law; and
5. Award costs of these proceedings and reasonable attorney's fees in favor of the State of Louisiana, through Jeff Landry, in his official capacity as Louisiana Attorney General.

Respectfully submitted,

JEFF LANDRY
ATTORNEY GENERAL

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