

El Paso County, CO, District Court Court address: 270 South Tejon Colorado Springs, CO 80903 Phone Number: (719) 452-5000	DATE FILED: June 25, 2020 2:58 PM CASE NUMBER: 2019CV32570
Plaintiff: MELANIE KNAPP v. Defendant: BOARD OF EDUCATION, ACADEMY DISTRICT TWENTY	<hr/> Court Use Only <hr/> Case Number: 19CV32570 Division 3, Courtroom 406
CONCLUSIONS OF LAW AND ORDER	

This case is before the Court on cross Motions for Determination of a Question of Law. The Court has considered the Court file, the written submissions of the parties, the applicable legal authorities and the stipulated facts and here enters the following Conclusions of Law and Order.

I. STATEMENT OF THE CASE AND STIPULATED FACTS

This action arises from the interview process conducted by the Defendant, Board Of Education Academy District Twenty (Board) for the position of superintendent of the school district. The Board interviewed five individuals for the position in the spring of 2019. The board then publicly announced a sole finalist, Ms. Kimberly Hough, on April 4, 2019. Finalist Hough then withdrew her name for consideration. The Board then publicly named a different sole finalist, Mr. Thomas Gregory, who was ultimately appointed to serve as superintendent.

Plaintiff, Melanie Knapp (Knapp) served requests on the Board to make public the names and application materials of the other finalists per the Colorado Open Records Act (CORA). The Board refused. The parties have stipulated to the following facts:

1. The Board is a “local public body” subject to the Colorado Open Meetings Law and Colorado Open Records Act.

2. Plaintiff Melanie Knapp is a “citizen” under Colorado Open Meetings Laws and “person” under Colorado Open Records Act, granting her standing to bring a claim under each statute.

3. On November 1, 2018, after Superintendent Mark Hatchell announced his retirement, the Board began its search for a new Superintendent.

4. The Superintendent is the “chief executive officer” of Academy District 20, as that term is used in § 24-6-402(3.5) and § 24-72-204(3)(a)(XI), C.R.S.

5. On the following dates, pursuant to a motion reciting the specific citation and a vote of at least two-thirds of the quorum present, the Board held executive sessions under § 24-6-402(4)(g) C.R.S., to review the ‘Superintendent applications and candidates’:

- a. February 26, 2019
- b. March 5, 2019
- c. March 6, 2019
- d. March 7, 2019 (two meetings)
- e. March 11, 2019
- f. March 12, 2019
- g. March 13, 2019
- h. March 14, 2019
- i. March 21, 2019
- j. April 4, 2019
- k. April 18, 2019
- l. April 20, 2019

m. May 7, 2019

n. May 9, 2019

6. The Board worked with Hazard, Young, Attea, & Associates (HYA) to assist with the Superintendent search.

7. The Board received applications from twenty-six (26) qualified candidates for the Superintendent position.

8. On April 4, 2019, following execution session, the Board announced in open session, one finalist, Dr. Kimberly Hough, for the Superintendent position. At that open session, Board President Tracey Johnson stated that "after working closely with our consultants, Hazard, Young, and Attea; and after reviewing the paperwork of twenty-six applicants from across the nation who wish to serve as the leaders of District 20; and after extensive interviews with five very fine and capable candidates; and after more interviews and tours with three of those candidates; and after site visits with two of candidates who are highly honored and respected by their communities, we are so pleased to announce Ms. Kimberly Hough as our finalist to be the next Superintendent of Academy District 20. . . "20:21-20:55 Video of April 4, 2019 Open Meeting.

9. Shortly after the Board publicly announced Dr. Kimberly Hough as a finalist, Dr. Hough withdrew her name from consideration.

10. On May 9, 2019, following executive session, the Board announced Thomas Gregory as a finalist for the Superintendent position, in open session. At that open session, Board President Tracey Johnson stated that "after working closely with our consultants, Hazard, Young, and Attea; and after reviewing the paperwork of twenty-six applicants from across the nation who wish to serve as the leader of District 20; and after extensive interviews with five very fine and capable candidates; and after more interviews and tours with four of those candidates; and after site visits with three of the candidates who were each highly honored and respected by their communities,

we are so pleased to announce Mr. Tom Gregory as our finalist to be the next Superintendent of Academy District 20. . . "5:29- 6:07 Video of May 4, 2019 Open Meeting.

11. On May 23, 2019, fourteen-days after naming Thomas Gregory as a finalist, the Board, by resolution, hired him as the District's Superintendent.

12. On May 13, 2019 and May 14, 2019, Plaintiff Melanie Knapp, pursuant to the Colorado Open Records Act, requested the application materials of the finalists for the Superintendent position. Plaintiff Knapp's record requests are attached as Exhibits 2 and 3.

13. On September 6, 2019, the Board provided Plaintiff Melanie Knapp with the application materials for Dr. Kimberly Hough and Thomas Gregory. The Board declined to provide the application materials of any of the other candidates, including those candidates interviewed by the Board.

STATEMENT OF THE ISSUE

Does the Colorado Open Records Act (CORA) and the Colorado Open Meetings Law (COML) require the Defendant Board to disclose the names and application materials of the other finalists in the context of the application process for Superintendent?

II. CONCLUSIONS OF LAW

Knapp contends that the language of the statutes requires the Board to disclose the names and application materials. The Board asserts, in its cross motion, that the language of the statutes is sufficiently broad to allow the announcement of one finalist fourteen days before appointing the new Superintendent.

The statutory provisions that are at issue include the following: C.R.S. 24-72-201 (CORA) provides that the public policy of Colorado is that all public records shall be open for inspection by any person and reasonable times.

C.R.S. 24-6-402(3.5) (COML) provides that “the state or local public body shall make public the list of all finalists under consideration for the position of chief executive officer no later than 14 days prior to appointing or employing one of the finalists to fill the position.”

C.R.S. 24-72-204 (3)(a) (XI)(A) provides an exception from disclosure “records submitted by or on behalf of an applicant for an executive position... who is not a finalist.”

C.R.S. 24-72-204 (3)(a)(XI)(B) provides that a finalist means an applicant “who is a member of the final group of applicants or candidates made public pursuant to section 24-6-402 (3.5) C.R.S.”

The Court finds in favor of the Plaintiff and orders disclosure of the names and application materials of the other interviewed applicants before the publication of Ms. Kimberly Hough and the names and application materials of the other interviewed applicants before the publication of Mr. Thomas Gregory. The Court finds that the other interviewed applicants are “finalists” within the meaning of CORA and COML, given the plain and ordinary meaning of the statutory language.

Here, per the stipulated facts, four other individuals competed in the final round of the competition – the interviews before the Board, and then four other individuals in addition to Mr. Gregory competed in the final round of competition after Ms. Hough withdrew her application. Under the plain, ordinary meaning of the term “finalist,” in both rounds there were five finalists for the 2019 Superintendent position.

The fact that there were five finalists in both consecutive Board hiring processes was indirectly acknowledged by the President of the Board Tracey Johnson when announcing the identity of the successful candidates. Johnson acknowledged working with consultants and reviewing twenty six applications and selecting five candidates for interviews. The five interviewed candidates from a starting group of twenty six applicants qualify as "finalists" under the statutes.

The plain and ordinary meaning of the term "finalist" in these two rounds of competition makes identification of finalists simple and straightforward: President Johnson identified that in both processes the 26 qualified candidates were reduced for purposes of final interviews to groups of 5 of the most "fine and capable candidates." From the information produced by the Board, the final round of interviews was the last point at which there was meaningful competition among the candidates, and as a consequence, there were 5 finalists for the Superintendent position. The Board asserts that it is permitted to self-select one of the candidates competing in the final round as the "finalist" that it will announce to the public.

The Board also asserts that the pertinent statutes do not require a minimum number of finalists. This position conflicts with the final clause of the subsection, which provides that in the event "only three or fewer applicants or candidates for the chief executive officer position possess the minimum qualifications for the position, said applicants or candidates shall be considered finalists." § 24-72-204(3)(a)(XI)(A), C.R.S. This provision expresses the legislative intent that, unless only one applicant meets the minimum qualification for an executive position, there be more than one finalist.

In the face of this clause, the Board's position that they may disclose only one finalist when there are more than three individuals who meet the minimum qualifications does not make logical sense. If the statute requires that three finalists be named when only three individuals meet the minimum qualifications, it is not consistent to read the statute so as to permit the disclosure of only one finalist when more than three individuals meet the minimum qualifications. Reading the statute as a whole, the

only time a sole finalist may be named is when only one individual meets the minimum qualifications.

The Court finds that the Board improperly denied Ms. Knapp's CORA request for the names and application materials of the finalists for the two rounds of the Board's Superintendent position. Based on the stipulated facts and exhibits, there were five finalists for each of the two consecutive hiring processes for the 2019 Academy District Twenty Superintendent vacancy. The five finalists were the five individuals who advanced through the screening process to be interviewed by the Board, the final round of competition. This interpretation is consistent with the plain and ordinary meaning of the terms used in the statutes.

III. ORDER

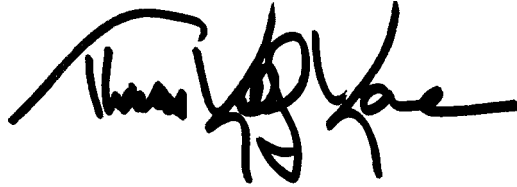
The Defendant Board is ordered to disclose the names and application materials of the finalists who were interviewed in the two stages of the process.

The Plaintiff is awarded her reasonable attorney fees and costs per C.R.S. 24-72-205(5)(b).

The Court stays the Order of Disclosure for a period of twenty eight days to allow the Defendant the opportunity to appeal. If the appeal is initiated, the stay is extended to the time of mandate from the Appellate Courts.

Dated this 25th day of June, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Thomas Kane". The signature is written in a cursive style with a large, sweeping initial "T" and a long horizontal stroke at the end.

THOMAS KANE
DISTRICT COURT JUDGE

