

**OPEN RECORDS AND MEETINGS OPINION
2019-O-11**

DATE ISSUED: July 2, 2019

ISSUED TO: Belcourt School District #7 Board of Education

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Chris Cerney asking whether the Belcourt School District #7 Board of Education violated N.D.C.C. § 44-04-20 by failing to provide notice of meetings.

FACTS PRESENTED

The Belcourt School District Board of Education considered a superintendent evaluation report at a special meeting on March 12, 2019.¹ Prior to this meeting, and pursuant to School Board policy, members were given an evaluation form to fill out, individually, to provide ratings for the superintendent in ten performance areas.² Each Board member then provided their individual ratings to the school's secretary and business manager, who compiled the individual ratings and comments into one document.³ This document was presented for the Board to review and approve at the March 12, 2019, special

¹ Letter from Rachel Bruner, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (May 23, 2019), *see also*, Minutes, Belcourt Sch. Dist. (Mar. 12, 2019).

² Letter from Rachel Bruner, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (May 23, 2019); *see also* Policy Manual, Belcourt Sch. Dist. #7, § C – Administration, CAAB – Superintendent Evaluation Procedure.

³ Letter from Rachel Bruner, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (May 23, 2019).

meeting.⁴ The Board denied having any discussions involving the superintendent evaluation outside of the March 12, 2019, meeting.⁵

ISSUE

Whether the Belcourt School District Board of Education held “meetings” regarding a superintendent evaluation in violation of open meetings law.

ANALYSIS

Except as otherwise specifically provided by law, all “meetings”⁶ of a governing body of a public entity must be open to the public,⁷ preceded by sufficient public notice in compliance with N.D.C.C. § 44-04-20, and minutes must be taken in compliance with N.D.C.C. § 44-04-21. A “meeting” occurs when a “quorum”⁸ of a “governing body”⁹ is present and its “public business”¹⁰ is considered or discussed.¹¹ When a series of conversations regarding public business between members of a governing body collectively involve a quorum, it is considered a meeting subject to open meetings law, whether such conversations happen in person, via telephone, or other electronic means.¹²

⁴ Letter from Rachel Bruner, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (May 23, 2019), *see also*, Minutes, Belcourt Sch. Dist. (Mar. 12, 2019).

⁵ Letter from Rachel Bruner, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (May 23, 2019) with attached statements from five out of the seven board members. Per policy, the superintendent was to be given a chance to review the evaluation at a Board meeting. The superintendent waived this right and therefore no such meeting occurred. Letter from Rachel Bruner, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (May 23, 2019).

⁶ N.D.C.C. § 44-04-17.1(9) (definition of “meeting”).

⁷ N.D.C.C. § 44-04-19.

⁸ N.D.C.C. § 44-04-17.1(15) (definition of “quorum”).

⁹ N.D.C.C. § 44-04-17.1(6) (definition of “governing body”).

¹⁰ N.D.C.C. § 44-04-17.1(12) (definition of “public business”).

¹¹ N.D.C.C. § 44-04-17.1(9) (definition of “meeting”).

¹² N.D.A.G. 2018-O-10; *see also* N.D.C.C. § 44-04-17.1(9)(a)(2) (definition of “meeting” includes “less than a quorum . . . if the members attending one or more of such smaller gatherings collectively constitute a quorum”).

The act of a Board member individually filling out an evaluation without the input of any other Board member does not implicate open meetings law because it lacks a quorum. Instead, the final evaluation, composed by school staff, was presented for public discussion at a special meeting. The Board members also deny having any conversations with any other Board member regarding the evaluation outside of the special meeting.¹³ Opinions issued under N.D.C.C. § 44-04-21.1 must take the facts of the public entity.¹⁴

CONCLUSION

Therefore, it is my opinion that the Board did not violate open meetings law regarding its handling of the superintendent evaluation.

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cc: Chris Cerney (via email only)

¹³ At the time of this opinion, two members of the school board involved in the superintendent evaluation had been removed from the board. The remaining five members provided statements that they did not engage in any discussions outside of the meeting. Even if the two members who did not provide statements held discussions outside of special meetings, two members out of a seven person board does not constitute a quorum. Therefore, the quorum rule would not be met, even if all board members provided statements. Letter from Rachel Bruner, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (May 23, 2019) with attached statements from five out of the seven board members.

¹⁴ Accordingly, this office cannot question the written assurance from the Board that no discussions occurred outside of the special meeting. N.D.A.G. 2013-O-06.