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**OPEN RECORDS AND MEETINGS OPINION**  
**2022-O-13**

DATE ISSUED: September 29, 2022

ISSUED TO: Minot Public School District No. 1

**CITIZEN'S REQUEST FOR OPINION**

Mike Blessum requested an opinion from this office under N.D.C.C. § 44-04-21.1 regarding whether the Minot Public School District No. 1 (MPS) violated N.D.C.C. § 44-04-19 by holding an unnoticed committee meeting.

**FACTS PRESENTED**

On May 30, 2020, MPS Superintendent Mark Vollmer, “in consultation with members of his staff and pursuant to his powers and authority as the Superintendent,” decided to establish a “Reintegration Committee” to “assist him in developing a plan to address precautions that MPS could implement to keep schools as safe as possible, while continuing the fine tradition of excellence in education following the COVID-19 closures.”<sup>1</sup> The Reintegration Committee (Committee) members were “selected by the superintendent’s office” according to individuals’ areas of expertise. The Committee’s members included “employees from First District Health, [Minot Air Force Base] Public Health Office, and educators, with representation from all academic levels.” Many committee members also were parents of MPS students.<sup>2</sup>

The MPS Board “heard or received information from” the Committee ten times between July 2020 and July 2021.<sup>3</sup> “No MPS Board Members served as members of the Committee or attended these meetings.”<sup>4</sup> Notices and agendas for the June 21, 2021, and August 10, 2021, committee meetings were not provided to the public.<sup>5</sup>

**ISSUE**

Whether Minot Public School District No. 1’s Reintegration Committee is a governing body of a public entity and thereby subject to the notice requirements of N.D.C.C. § 44-04-20.

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<sup>1</sup> Letter from Peter B. Hankla, Att’y at Law, to Att’y Gen. Office (Sept. 17, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## ANALYSIS

“Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public.”<sup>6</sup> A “meeting” is defined as a “formal or informal gathering or a work session . . . of [a] quorum of the members of the governing body of a public entity regarding public business.”<sup>7</sup> The definition of a “governing body” includes any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.<sup>8</sup>

When a governing body such as a public school board delegates authority to two or more people to perform any function, including gathering information, reporting, or recommending or taking action, on its behalf, a “committee” subject to open meetings law is formed.<sup>9</sup> When a quorum of the committee gathers to perform the delegated function, the committee is holding a “meeting” that must be noticed in compliance with N.D.C.C. § 44-04-20.<sup>10</sup>

In two former opinions, the Attorney General concluded Superintendents’ Cabinets are not subject to open meetings law because they were not created by school board rule and were not delegated any authority by the school board.<sup>11</sup> The Cabinets were not “acting collectively pursuant to authority delegated to [them] by the governing body.”<sup>12</sup>

Here, MPS policy authorized Superintendent Vollmer to establish the Reintegration Committee.<sup>13</sup> The MPS board policies, codified in its school district code, “define the [MPS’s] administrative goals as well as the role, purpose, powers and limitation of powers of the Superintendent.”<sup>14</sup> Another MPS board policy states: “[t]he general purpose of the [MPS’s] administration will be to coordinate and supervise, under the Board policies, the creation and operation of an environment in which students learn most effectively.”<sup>15</sup> The policy sets forth “major goals of administration in the District” which include:

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<sup>6</sup> N.D.C.C. § 44-04-19.

<sup>7</sup> N.D.C.C. § 44-04-17.1(9)(a).

<sup>8</sup> N.D.C.C. § 44-04-17.1(6).

<sup>9</sup> N.D.A.G. 2016-O-15; N.D.A.G. 2014-O-05; N.D.A.G. 2009-O-12. A governing body does not need to make a formal motion to create a committee. Rather, if the governing body of a public entity consents, authorizes, or otherwise delegates authority to a group of people to perform any function on behalf of the governing body, a committee is formed. N.D.A.G. 2016-O-15.

<sup>10</sup> N.D.A.G. 2016-O-15.

<sup>11</sup> N.D.A.G. 98-O-02; N.D.A.G. 97-O-02.

<sup>12</sup> N.D.A.G. 97-O-02.

<sup>13</sup> Letter from Peter B. Hankla, Att’y at Law, to Att’y Gen. Office (Sept. 17, 2021), citing MPS School Dist. Code: 250 – Admin. Councils, Cabinets and Comm.’s, adopted Jul. 24, 1995.

<sup>14</sup> *Id.*

<sup>15</sup> MPS School Dist. Code: 210 – Admin. Goals, adopted Jul. 24, 1995.

2. To provide professional advice and counsel to the Board and to advisory groups established by Board action. Where feasible, this will be done through reviewing alternatives, analyzing the advantages and disadvantages of each, and recommending a selection from among the alternatives.
3. To manage as to assure the best and most effective learning programs, through the achievement of such subgoals as:
  - ... ,
  - 3.2 providing leadership in keeping abreast of current educational developments;
  - 3.3 coordinating cooperative efforts at improvement of learning programs, facilities, equipment, and materials, and
  - 3.4 providing access to the decision-making process for staff, students, parents, and others to offer ideas for improvement.<sup>16</sup>

This same policy specifically limited the Reintegration Committee’s actions to “making recommendations for submission to the Board through the Superintendent” and specifically prevented the Reintegration Committee from “exercising any inherent authority, reserving such authority for implementing policy to the Board.”<sup>17</sup> Through another policy, the Board specifically “authorized the Superintendent to establish such permanent or temporary councils, cabinets, and committees as the Superintendent deems proper or necessary.”<sup>18</sup>

According to the MPS Board, “[t]he purpose of the [Committee] was to provide Superintendent Vollmer and his staff with input and insight into various issues identified by the Superintendent’s staff to be of importance in MPS’s plan to re-opening schools as well as to provide input and insight into those issues identified by the State of North Dakota in their publication entitled ‘North Dakota K-12 Smart Restart – Healthy Return to Learning’ plan . . . .”<sup>19</sup> The Minot Public School Board was clear in its response: “Superintendent Vollmer undertook the establishment of this Committee and the decision to prepare a Reintegration Plan as part of his administrative duties and without the involvement or direction of the MPS Board.”<sup>20</sup> Because the Reintegration Committee does not meet the definition of a governing body there were no violations of N.D.C.C. § 44-04-20.

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<sup>16</sup> *Id.*

<sup>17</sup> Letter from Peter B. Hankla, Att’y at Law, to Att’y Gen. Office (Sept. 17, 2021), citing MPS School District Code: 210 – Admin. Councils, Cabinets and Comm.’s, adopted Jul. 24, 1995.

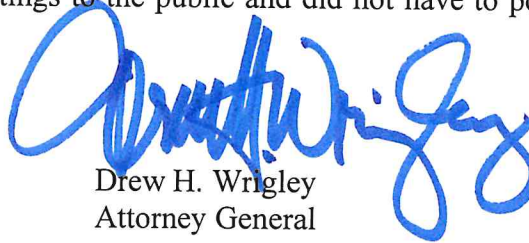
<sup>18</sup> *Id.*

<sup>19</sup> Letter from Peter B. Hankla, Att’y at Law, to Att’y Gen. Office (Sept. 17, 2021).

<sup>20</sup> *Id.*

CONCLUSION

Superintendent Vollmer's Reintegration Committee is not subject to open meetings law because it does not meet the statutory definition of a governing body. MPS did not have to provide notice of the Reintegration Committee meetings to the public and did not have to post or file meeting notices.



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cc: Mike Blessum (via email only)