

January 23, 2023

Teree Caldwell-Johnson, Board Chair
Des Moines Public Schools
teree.caldwell-johnson@dmschools.org

RE: Superintendent Search Process

Dear Teree:

You have requested guidance with respect to the confidentiality of the superintendent search discussions, including what discussions must be held in open session and what may take place in closed session under Iowa law. We are attaching a procedures document that summarizes briefly the typical stages in the process and the applicable provisions of Iowa (if any).

In general, the provisions of the Iowa Open Meetings Act, Iowa Code chapter 21, that apply to the superintendent search include:

- Iowa Code § 21.5: A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:
 - Iowa Code § 21.5(1)(a): To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.
 - Iowa Code § 21.5(1)(i): To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable

injury to that individual's reputation and that individual requests a closed session.

- Iowa Code § 21.9: A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, "employment conditions" mean areas included in the scope of negotiations listed in section 20.9.

Iowa Code sections 21.5(1)(a) and (1)(i) provide the basis for the Board to discuss specific applications, conduct interviews of specific candidates, and deliberate regarding specific candidates in closed session. Please note that you must confirm with each candidate to be interviewed/discussed that they would like to have the discussion held in closed session. *See* Iowa Code § 21.5(1)(i). We would recommend obtaining this confirmation in writing, but if that does not occur, you can confirm it on the record once you are in closed session, immediately after the Board Chair calls for everyone in the room to identify themselves for the recording.

Iowa Code § 21.9 forms the basis for going into closed session to discuss the compensation package and other terms and conditions of employment for the Superintendent.

Additionally, the following provision of the Iowa Open Records Act, Iowa Code chapter 22, allows the District to keep the contents of superintendent application files confidential unless the candidate consents to disclosure of some or all application materials:

- Iowa Code § 22.7(18): [The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information]: Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination.... Notwithstanding this provision:

- a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

If, as you get to the final stages in the process, the Board wishes to hold any interview or discussion in open session or produce any application materials, it is essential that the Board obtain affirmative, written consent from the finalist(s) and that you consider the trade-offs of making such information public. For example, conducting an interview with the finalist in open session may increase the public's understanding and awareness of the finalist's qualifications, but it may also stifle or limit the finalist's willingness to provide candid answers and the Board's ability to ask challenging questions necessary to make an informed decision.

If you have any questions or would like any additional information, don't hesitate to contact me.

Very truly yours,

Ahlers & Cooney, P.C.



Miriam D. Van Heukelem

Cc: Kim Martorano, Board Vice Chair