

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Mary Petrowski,

FINAL DECISION

Complainant

Docket #FIC81-137

against

February 23, 1983

City and Town of Norwich; Norwich
Free Academy,

Respondents

The above captioned matter was heard as a contested case on November 23, 1981 and December 15, 1981, at which times the complainant and the respondent academy appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

At its April 28, 1982 meeting and again on November 17, 1982 the Commission reviewed the Hearing Officer's Report in this matter and voted unanimously to remand the report for further review of the record on the issue of voting in executive session.

After consideration of the entire record and additional reviews of the record as directed by the Commission, the following facts are found:

1. At hearing, the respondent academy claimed that it is not a public agency as defined in § 1-18a(a), G.S., and is therefore not subject to the jurisdiction of this Commission.

2. The respondent academy is a secondary school which exists by virtue of a corporate charter granted in 1854 by the General Assembly and which is partially endowed by private funds.

3. The property and affairs of the respondent academy are controlled and managed by a board of trustees selected under the bylaws of the respondent academy.

4. The respondent academy is a high school approved by the State Board of Education pursuant to § 10-34, G.S.

5. Article Eight of the Constitution of Connecticut states: "There shall always be free public elementary and secondary schools in the state."

6. In furtherance of this constitutional principle, the General Assembly enacted § 10-220, G.S., which requires local boards of education to implement the educational interests of the state as defined in § 10-4a, G.S.

7. The board of education of the respondent city and town of Norwich has designated the respondent academy as a facility to provide secondary education to Norwich residents, pursuant to § 10-33, G.S.

8. The respondent academy is the primary facility in the city and town of Norwich for the education of secondary school students, with a current enrollment of approximately 1,500 students. The Norwich Community School, the only other high school in the city and town of Norwich, is an "alternative" school, accommodating only 40 to 60 students.

9. Pursuant to §§ 10-33 and 10-34, G.S., the city and town of Norwich pays the whole of the tuition fees of pupils who with their parents or guardian reside in the city and town of Norwich, and who attend the respondent academy.

10. Approximately 87% of the operating cost of the respondent academy is derived from public funds. Over the past 4 years approximately 13% of the operating expenses per year has been funded by private sources.

11. Students at the respondent academy are provided with free transportation to and from school, the cost for which is paid by the city and town of Norwich, which in turn, is reimbursed by the state, pursuant to § 10-277, G.S.

12. The board of trustees of the respondent academy is required, pursuant to § 10-760, G.S., to provide special education for students of the respondent academy. The respondent academy may charge any sending town for the costs of any such special education provided to a student for whose education such town is responsible. The sending town is eligible to apply for state payment for such costs under § 10-76g, G.S.

13. Teachers at the respondent academy are eligible to participate in the state teachers' retirement system, pursuant to § 10-183b et seq., G.S.

14. The respondent academy claimed that all buildings built at its campus are constructed with funds from the respondent academy or from private sources.

15. However, the respondent academy is eligible to apply pursuant to §§ 10-282 and 10-238, G.S., for school building project funds for "the construction, furnishing and equipping of any building which the town[s] of Norwich. . .may provide by lease or otherwise for use by the Norwich Free Academy. . .in furnishing education for public school pupils under the provisions of § 10-34."

16. It is found that the respondent academy is the functional equivalent of a public agency for the following reasons:

16. It is found that the respondent academy is the functional equivalent of a public agency for the following reasons:

- a) The respondent academy performs the important public function of implementing the educational interests of the state in providing public secondary education;
- b) The respondent academy receives the majority of its funding from the government;
- c) The respondent academy is subject to essentially the same government regulation as schools that receive no private endowments, and is entitled to many of the same benefits; and
- d) Although the respondent academy is privately chartered, its contractual designation as a secondary school providing free secondary education for the city and town of Norwich was as a result of the government's creation of the statutory mechanism whereby such establishment was made possible.

17. It is therefore found that the respondent academy is a public agency within the meaning of § 1-18a(a), G.S., and is subject to the jurisdiction of this Commission.

18. It is found that the complainant was, at all times material to this complaint, employed as a teacher by the respondent academy.

19. It is found that, by letter dated May 8, 1981, the complainant was advised that the board of trustees of the respondent academy would probably be considering the termination of her employment, possibly during an executive session, at a special meeting on May 11, 1981. The complainant was advised of her right to attend the meeting and to have the board of trustees hear such matter in open session.

20. It is found that the complainant elected not to have consideration of the proposed termination of her employment conducted at a public meeting.

21. It is found that the respondent academy considered a recommendation that the complainant's teaching contract be terminated at meetings held as hearings on May 21, 1981 and June 18, 1981.

22. It is found that the complainant and her attorney were present at the May 21, 1981 and June 17, 1981 meetings of the board of trustees of the respondent academy.

23. It is found that the respondent academy terminated the complainant's employment contract by a decision rendered July 2, 1982.

24. By complaint filed with the Commission on July 30, 1981, the complainant alleged:

- a) That a decision terminating her employment was rendered July 2, 1981 by the board of trustees of the respondent academy.
- b) That the board of trustees of the respondent academy had indicated that it would meet in executive session on June 30, 1981 to decide her case.
- c) That her attorney had requested that she and the complainant be allowed to attend such executive session.
- d) That neither she nor her attorney had been allowed to attend the executive session scheduled for June 30, 1981.
- e) That neither she nor her attorney knew where or when such executive session took place.
- f) That the actions of the board of trustees of the respondent academy violated § 1-18a(e), G.S.

25. At the December 15, 1981 hearing on this matter, the respondent academy made a motion to dismiss for the following reasons:

- a) On July 2, 1981, the [board of trustees of the respondent academy] met in executive session to consider the teaching contract of Mary Petrowski.
- b) Mrs. Petrowski and her attorney, Deborah Benson, had presented all the testimony and opinion they desired on the matter on May 21 and June 17, 1981.
- c) No testimony or opinion was required of Mrs. Petrowski or Attorney Benson on July 2, 1981.
- d) Section 1-21g of the General Statutes prohibits persons, other than members of the meeting body, from attending an executive session unless such persons are to present testimony or opinion to such body.

26. The respondent academy's motion to dismiss was denied because the allegations contained in the motion do not deprive

the Commission of jurisdiction over this matter, but are merely a defense to the allegations made in the complaint.

27. Also at the December 15, 1981 hearing, the complainant moved to consolidate the proceedings in her complaint with those in docket #FIC81-184, City of Norwich v. Norwich Free Academy, which motion was denied.

28. It is found that at its June 18, 1981 meeting, the board of trustees of the respondent academy announced that another meeting would be held, in executive session, to further consider the proposed termination of the complainant's teaching contract.

29. At hearing, there was conflicting testimony as to what date was announced for the proposed executive session referred to in paragraph 28, above, and the complaint filed with the Commission alleges that the executive session was believed to have been held on June 30, 1981.

30. It is found that on July 2, 1981, the board of trustees of the respondent academy met and voted to go into executive session to discuss the proposed termination of the complainant's employment, at which meeting neither the complainant nor her attorney was in attendance.

31. By motion dated May 10, 1982, the respondent board moved to revise the hearing officer's report to show that all parties in the matter know that the respondent board would reconvene on July 2, 1981 to discuss the complainant's employment.

32. Upon review of the record, it is found that the testimony of the complainant reflects she was, in fact, aware that the respondent board would meet in executive session on July 2, 1981.

33. It is therefore found that at its June 18, 1981 meeting the respondent board announced that it would meet in executive session on July 2, 1981, rather than on June 30, 1981, as stated in the complainant's complaint.

34. It is found that the July 2, 1981 meeting of the board of trustees of the respondent academy was a continued hearing within the meaning of § 1-21e, G.S.

35. It is found that the respondent academy failed to prove that notice of continuance was provided as required by § 1-21e, G.S.

36. It is therefore concluded that the board of trustees of the respondent academy violated § 1-21e, G.S., when it failed to provide proper notice of the July 2, 1981 hearing, continued from a prior date.

37. It is found that when the board of trustees of the respondent academy convened in executive session on July 2, 1981, it did so with the understanding that the complainant had requested that proceedings relating to the termination of her employment be conducted in private.

38. Section 1-21g, G.S., limits attendance at executive sessions to agency members and persons invited by the agency to present testimony or opinion pertinent to matters before the agency, provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion.

39. It is further found that nothing in the Freedom of Information Act provides a public officer or employee with the right to be present at an executive session at which his or her appointment, employment, performance, evaluation, health or dismissal is being discussed.

40. It is therefore concluded that the exclusion of the complainant from the July 2, 1981 executive session of the board of trustees of the respondent academy did not constitute a violation of §§ 1-18a(e)(1) or 1-21, G.S.

41. In addition, however, it is found that:

- a) The respondent academy violated § 1-18a(e)(1), G.S., when it voted in executive session on July 2, 1981.
- b) The respondent academy violated § 1-21, G.S., when findings of fact, conclusions, and decisions were made by the President of the Board of Trustees, although the minutes failed to disclose that said findings were voted on by the members of the board.
- c) The respondent academy violated § 1-21, G.S. when it went into executive session on July 2, 1981 without stating the reasons for such executive session in its minutes.

The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned matter:

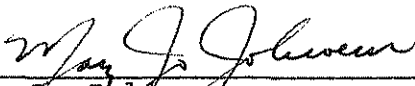
1. Henceforth the board of trustees of the respondent academy shall act in strict compliance with the notice of continued hearings requirements set forth in § 1-21e, G.S. and with the requirements

of § 1-18a(e)(1) and § 1-21 regarding the conduct of executive sessions and the recording of votes.

2. All actions taken at the respondent academy's July 2, 1981 meeting are hereby declared null and void.

3. The Commission notes that although technical perfection in the drafting of a complaint is not required, the lack of precision in the drafting of the complaint in the above matter led to regrettable confusion and delay in its resolution.

Approved by order of the Freedom of Information Commission at its regular meeting of February 9, 1983.



Mary Jo Jolicoeur
Clerk of the Commission