

DISTRICT COURT, TELLER COUNTY, COLORADO
101 W. Bennett Ave.
Cripple Creek, Colorado 80813
(719) 689-7360

ERIN O'CONNELL,
Plaintiff,

v.

**WOODLAND PARK SCHOOL DISTRICT BOARD
OF EDUCATION and
CHRIS AUSTIN in his official capacity as Board
Member;
GARY BROVETTO in his official capacity as Board
Member;
DAVID ILLINGWORTH II in his official capacity as
Board Member;
SUZANNE PATTERSON in her official capacity as
Board Member;
DAVID RUSTERHOLTZ in his official capacity as
Board Member,
Defendants.**

Attorney for Plaintiff:
Eric Maxfield, #29485



Case No: 22CV30023

Division 11

VERIFIED MOTION FOR CITATION FOR CONTEMPT OF COURT

Plaintiff Erin O'Connell respectfully submits this Verified Motion for Citation for Contempt of Court against Defendant Woodland Park School District Board of Education ("Board") and Chris Austin, David Illingworth, II, Suzanne Patterson, and David Rusterholtz, in their official capacities as Board members, seeking that the court find the Board in Contempt of Court, and to Order appropriate relief.¹ In support of this Motion Ms. O'Connell provides as follows:

[Counsel for the Plaintiff and Defendants communicated about this motion back and forth by email yesterday and today, and Defendants do not agree to stipulate to contempt. Nonetheless, Defendants' counsel indicates that he has not had adequate time to consult with his clients as of this filing. It is counsel for Plaintiff's position that as a result of Defendant's stated position, this requires no further consultation.]

OPEN MEETINGS LAW REQUIREMENTS

"The purpose of the COML, as declared in § 24-6-401, C.R.S., is to afford the public access to a broad range of meetings at which public business is considered; to give citizens an expanded opportunity to become fully informed on issues of public importance, and to allow citizens to participate in the legislative decision-making process that affects their personal interests." *Walsenburg Sand & Gravel Co. v. City Council*, 160 P.3d 297, 299 (Colo. App. 2007).

¹ Gary Brovetto did not participate in these events, having resigned from the Board prior to the relevant dates, and is therefore not named specifically in his official capacity in this Verified Motion for Citation for Contempt of Court.

PROCEDURAL POSTURE

The Court held a hearing on Plaintiff Ms. O’Connell’s C.R.C.P. 65 Emergency Motion for Preliminary Injunction on April 26, 2022. Following the hearing, on April 29, the Court issued its Order.

THE COURT ORDER

The Court issued its Order on April 29, 2022 as follows:

A preliminary injunction is GRANTED. The Defendant shall comply with the OML by clearly, honestly and forthrightly listing all future Agenda items regarding Merit Academy. Perhaps something as simple as “Merit Academy Charter School Application”. The Board is further enjoined from “rubber stamping” any Board decision that does not comply with the notice requirements of the OML.

SO ORDERED this 29th day of April, 2022.

The Board held a meeting on May 4, 2022. Prior to the meeting, the Board posted its agenda for the meeting. It read in full:

WOODLAND PARK SCHOOL DISTRICT RE-2 BOARD OF EDUCATION

Work Session/Special Board Meeting – May 4, 2022

Place: District Administration Office 6:00 p.m.

AGENDA

I. CALL WORK SESSION TO ORDER

II. Information

a. Feasibility Study Presentation by Executive Director of Technology & Operations Miles Tuttle followed by BOE Q & A with Cooperative Strategies

- III. ADJOURN WORK SESSION AND CALL SPECIAL BOARD MEETING TO ORDER
- IV. EXECUTIVE SESSION/Legal Advice as per C.R.S. §24-6-402(4)(b)
- V. ADJOURN SPECIAL MEETING

The agenda can be accessed at: <https://wpsdk12.org/uploads/forms/2022-05-04-Work-Session-and-Special-Board-Meeting.pdf> (last accessed 6/3/2022). The Work Session/Special Board Meeting was held five days after the Court’s Order granting a preliminary injunction and directing the Board to clearly, honestly and forthrightly list all future agenda items regarding Merit Academy.

Timely and full Agendas for local public bodies are required to be posted by 24 hours prior to the meeting. § 24-6-402(2)(c), C.R.S. The agenda was timely, but not full.

The meeting was in fact held to hear a presentation by Board Staff Miles Tuttle and review a feasibility study prepared by private entity Cooperative Strategies concerning the feasibility of Merit Academy sharing space with Woodland Park Middle School (WPMS). https://wpsdk12.org/uploads/icons/050422_Presentation_Feasibility_FN.pdf (last accessed 6/3/22). As can be seen from the agenda, there is no mention of Merit Academy.

The Board had knowledge of the Court Order by May 1, 2022, as is demonstrated by the May 1, 2022 written news article posted by Channel 13 KRDO, wherein Board President Rusterholtz described the Court’s Order through a “statement.” The statement included, in relevant part:

At the same time, we respect the judge’s insistence that we must always comply with open meetings law by clearly, honestly, and forthrightly listing our agenda items in a manner that meets the requirements of statute.

<https://krdo.com/news/2022/05/01/judge-orders-woodland-park-school-board-to-follow-the-law/>

(last accessed 6/3/22).

The Board has the ability to comply with the Order on May 3, 2022, twenty-four hours prior to the May 4, 2022 Work Session/Special Board Meeting. The Board was spoon-fed language by the Court that a matter concerning Merit Academy must inform the public that it concerns Merit Academy. Nonetheless, the Board refused to comply and identify that the meeting concerned Merit Academy.

There has not been a stay of execution or modification of the Order.

The actions of the Board are contrary to the Order of this Court, and they are willful.

The Court should issue an Order to the Board to appear before the Court at a specific date and time for a hearing to show cause why there has been a failure and/or refusal to comply with the Order of this Court.²

The Court should find that the Board is in remedial contempt of this Court's Order.

WHEREFORE, Plaintiffs respectfully pray that this Court grant her Verified Motion for Citation for Contempt of Court and Order:

Payment of Costs and reasonable attorney fees in connection with this contempt proceeding;

Payment of a fine until the party, who has the present ability to comply, performs the acts ordered;

² Counsel for the Plaintiff seeks permission of the Court to appear by Webex for such hearing.

Invalidate any steps taken in relation to Merit Academy sharing space with Woodland Park Middle School from May 4, 2022 onward, and require that prior to renewing any such steps or action, the Board shall provide the public with full and timely notice and take a new public vote on its intended conduct.

Respectfully submitted this 3rd day of June, 2022.

Attorney for Plaintiff:

s/ Eric Maxfield
ERIC MAXFIELD, #29485
ERIC MAXFIELD LAW, LLC
3223 Arapahoe Ave., Suite 300
Boulder, CO 80303
Telephone: 303-502-7849

Verification:

I declare under penalty of perjury under the law of Colorado that the foregoing facts are true and correct.

/s/ Erin O'Connell
Erin O'Connell

It is important that the party accused of contempt read the following information.

A party accused of remedial contempt has the following rights:

1. The right to be represented by a lawyer.
2. The right to a hearing before a judicial officer where the court must find that you

were subject to a court order, that you had knowledge of that Order, that you did not comply with the Order, that you had the ability to comply with that Order, and that you have the present ability to comply with that Order.

If you are found to be in remedial contempt of court, the court may require you to pay the other party's court costs and attorney's fees connected with the contempt hearing, to pay a fine, and/or to serve an indefinite jail sentence until you comply with the original order.

A party accused of punitive contempt has the following rights:

1. The right to be represented by a lawyer. If you cannot afford a lawyer and if a jail sentence is contemplated, you may apply for a court-appointed lawyer.
2. The right to a jury if a jail sentence in excess of 180 days is contemplated.
3. If the judge initiated the proceedings, the right to have the contempt matter heard by a different judge.
4. The right to plead guilty or not guilty to the charge of contempt.
5. The right to be presumed innocent unless and until the allegation(s) in the motion for contempt is/are proven beyond a reasonable doubt.
6. The right to confront and cross-examine all witnesses against you.

7. The right to present relevant witnesses and evidence at the hearing.
8. The right to request the court to issue subpoenas to compel witnesses to appear and give testimony.
9. The right to remain silent.
10. The right to testify on your own behalf. If you testify, you waive your right to remain silent and the other party may cross-examine you.
11. The right to make a statement on your own behalf prior to the imposition of sanctions, if you are found in contempt of court.

If the court finds beyond a reasonable doubt that you were subject to a lawful court Order, that you had knowledge of that Order, that you had the ability to comply with that Order, that you willfully failed or refused to obey that Order, and that such conduct was offensive to the authority and dignity of the court, you may be sentenced to pay a fine or serve a jail sentence.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **VERIFIED MOTION FOR CITATION FOR CONTEMPT OF COURT** was served on June 3, 2022, by ICCESS electronic service to:

Bryce Carlson, Esq.
Attorney for Woodland Park Board of Education
bryce@millerfarmerlaw.com

/s/ Eric Maxfield
Eric Maxfield