SUPERINTENDENT SEARCH LEGAL QUESTIONS

1. At what stage in the search process do the names of the candidates being interviewed need to be made public?

Per Minn. Stat. 13.43, subd. 3, applicant names become public "when applicants are considered by the appointing authority to be finalists for a position." "Finalist" means "an individual who is selected to be interviewed by the appointing authority prior to selection." Advisory Opinions from the Data Practices Office are clear that the "appointing authority" in this case would be the school board; therefore, the names are public data when they are selected to be interviewed by the school board. Preliminary interviews, such as by the consulting agency, would not meet this threshold.

Note that this just means the names are public data – there is not an affirmative obligation to make a public announcement about the finalists. But, if an inquiry is made, the names would be public data that would be required to be disclosed.

2. To what extent do the interviews need to be conducted in open session?

If an interview will be conducted with a quorum of the board present, there is no exception to the Open Meeting Law that would permit closing the meeting; these interviews would need to be in open session. Per Minn. Stat. 13D.05, it is permissible to discuss otherwise private data in an open meeting, as long as it is reasonably necessary to conduct the agenda item. So, the board should be able to freely discuss the candidates' resumes and experience without having to tap dance around which elements are public and which are private (and, per the above, at the stage at which they are being interviewed by the board, their names are public).

3. What applicant information for the finalists need to be made public?

For ALL applicants (finalists or not), the following data is public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. As noted in #1, once they become finalists, their names are also public. No other applicant data is classified as public. Again, this is just the data classification – there is not an obligation to affirmatively release this information to the public until someone requests it. If you have questions about whether specific pieces of data fit into these categories at any point, let us know.

4. How can the contract negotiations between the selected candidate and Board be conducted to comply with the Open Meetings Act?

The only possible open meeting exception would be under 13D.03, “to consider strategy for labor negotiations, including negotiation strategies or developments or discussion and review of labor negotiation proposals, conducted pursuant to [PELRA].” It is a bit ambiguous whether this would apply to discussing a superintendent’s contract, as the purpose of the clause seems to be geared more towards negotiations of labor agreements with unions. There does not appear to be direct legal authority addressing this question, but nothing in the text of the statute conclusively *excludes* high-level contracts such as a superintendent, so the board could probably rely on this exception in good faith. Note, however, that it is only for the purpose of discussing negotiation strategy – actual *negotiations* need to be done in an open meeting (or, handled without a quorum of the board). For example, an individual board member, or group less than a quorum, could perhaps handle the back-and-forth with the candidate, based on the parameters the Board has set, and with the understanding that the full board would need to approve any final agreement.

Gregory S. Madsen | Attorney at Law
Kennedy & Graven, Chartered

700 Fifth Street Towers | 150 South Fifth Street
Minneapolis, MN 55402
Direct: 612.337.9305 | Cell: 651.983.5002 | Fax: 612.337.9310
gmadsen@kennedy-graven.com | kennedy-graven.com