

DISTRICT COURT, PUEBLO COUNTY STATE OF COLORADO Pueblo Combined Court 501 N. Elizabeth Street Pueblo, CO 81003	DATE FILED August 11, 2026 5:36 PM CASE NUMBER: 2026CV30266 COURT USE ONLY	
Plaintiffs: JONATHAN LEWIS; TARA STROESENREUTHER; and ADOLPH VIGIL v. Defendant: PUEBLO COUNTY DISTRICT 70 SCHOOL DISTRICT BOARD OF EDUCATION		
<u>AMENDED ORDER RE: TRIAL ON THE MERITS-CORRECTING TYPOGRAPHICAL ERRORS IN PARAGRAPH 13 AND H</u>		

THIS MATTER CAME BEFORE the Court for a trial on the merits, regarding Plaintiffs' two (2) claims for relief: Permanent Injunction and Declaratory Relief.

At the trial, the following witnesses testified: Brad Allen Miller (previous board attorney), Jonathan Michael Aaron Lewis, Adolph Vigil, Ann Bennett (board president), Ronda Jean Rein (District 70 superintendent), Ann Ochs (previous board president), Dr. A.J. Wilson (board member), Chris DeLuca (previous board member), Michelle Erickson (board member), Tara Stroesenreuther, Cathleen Culhane-Howland (previous board member), and John Anton Christenson (previous board member). The following Exhibits were admitted: 2, 5, 8, 11, 18, and A.

Having considered the testimony of the witnesses, the credibility, or lack thereof, of the witnesses, the Exhibits, the Court file, and the relevant statutes and case law, the Court hereby issues the following FINDINGS AND ORDERS:

ISSUES PRESENTED

Plaintiff's Complaint alleged two (2) claims for relief: (1) Declaratory Relief for violation of the Colorado Open Meetings Law, pursuant to C.R.S. § 24-6-402 and C.R.C.P. 57; and (2) Injunctive relief requesting return to the *status quo ante* and barring further violations of the Colorado Open Meetings Law ("COML").

The central question in this case is whether the public received notice, and open decision-making, as required by the COML, for two decisions made by the District 70 School Board: (1) permitting Riverstone Academy (hereafter "Riverstone") to operate within District 70 through Reenvisioned BOCES (ERBOCES) MOU; and (2) the filling of a vacant board seat.

FINDINGS OF FACT

I. June 10th and 24th board meetings RE: Riverstone charter school.

1. In June of 2025, the Pueblo County School District 70 School Board (hereafter "Board") was made up of five (5) board members, including board president Ann Ochs, and members Dr. A.J. Wilson, Cathleen Culhane-Howland, John Christenson, and Chris DeLuca.
2. The Board was represented by attorney Brad Miller. Mr. Miller also was outside counsel for Education ReEnvisioned Board of Cooperative Education Services ("ERBOCES"). Mr. Miller has represented ERBOCES since 2013.
3. On June 4, 2025, Mr. Miller sent an email to board president Ochs, stating the following:

"All,

As you are aware, I represent the ERBOCES, which operated a variety of unique schools and programs throughout Colorado. In that capacity, I was approached by an organization called Alliance Defending Freedom (ADF) which had hosted me about a month ago to watch the oral arguments in the US Supreme Court on a case out of Oklahoma having to do with the question of whether the law would permit a religious school to be operated using public funds. The case resulted in a 4-4 tie and so the question did not get answered.

ADF asked me if I could find a way for a parallel case to be initiated out of Colorado. For this, the ERBOCES is the natural starting point. I asked Ronda yesterday if the District could be willing to grant ERBOCES the right to operate such a school within the district's boundaries for purposes of creating this test case.

ERBOCES proposes to create a modest sized school with around 30 students and then to work with ADF on testing the legalities around the issue of whether a public school may provide religious education.

We would anticipate that this will create a surge of public attention at a point in time. But it would not be anything for which the district will have any participation. We would not have any role in the actual school.

If you are amenable to this, I would ask that the district approve the attached MOU no later than June 24. I am more than happy to respond to any questions you might have.

Brad Miller

719-338-4189.” See Exhibit 2.

4. Ms. Ochs forwarded the email to Ronda Rein, superintendent of District 70, and the other four (4) board members that same day.
5. During his testimony, Mr. Miller acknowledged that he sent the email, because it was important for the Board to be aware of the nature of the school that was going to be authorized by ERBOCES and operate within the District. See Trial Tr. pg. 25, In 16-19. Significantly, however, it was never clarified why it was important for the Board to know of the nature of the school, but not the public.
6. Six days later, on June 10, 2025, the Board conducted a regular board meeting. Board president Ochs and member Culhane-Howard were not present at that meeting: only board members DeLuca, Christenson, and Wilson were present. The agenda listed the following discussion topics:

“5.02 Presentation of the MOU between Pueblo County School District 70 and Education ReEnvisioned Board of Cooperative Educational Services (ERBOCES) – Dr. A.J. Wilson.” See Exhibit 4.
7. The MOU was attached to the agenda as a link for the public’s view. No additional commentary or explanation was provided about the MOU or Riverstone’s curriculum to the Board. Mr. Miller’s email was also not attached to the MOU or the Agenda.
8. In pertinent part, the MOU stated as follows:

“WHEREAS the Parties recognize that a formal acknowledgement and specific approval by the District for the ERBOCES to operate a public school will ensure stability and continuity for the students and families associated with Riverstone;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual understands contained herein, the Parties agree as follows:

1. Formal Approval

- a. State law permits ERBOCES to operate schools with permission of the District.
 - b. The District recognizes that ERBOCES has formally requested its express permission to authorize and to operate Riverstone in the District.
 - c. The District hereby confirms its agreement that ERBOCES may operate Riverstone at a location within District boundaries for a term of 5 years, starting July 1, 2025, and ending June 30, 2030.
 - d. The term will be automatically extended for a subsequent additional 5 years unless notice of the desire to amend or terminate this agreement is given in writing by the Superintendent of the District to the Executive Director of ERBOCES at least 120 days prior to the end of the currently effective term. This automatic renewal process will continue as long as this agreement remains in effect.” See Exhibit 5.
9. Two weeks later, the MOU appeared again on the Board's June 24th consent agenda, with no further explanation of Riverstone's true nature or Brad Miller's email.
10. Superintendent Ronda Rein testified that Ms. Ochs placed the MOU on the June 24th agenda, which was reviewed by attorney Brad Miller. (Trial Tr., pg. 163, ln. 23-25). The Board by a vote of five (5) approved MOU by consent agenda, without further discussion or comment.
11. The consent agenda was generally used to approve routine items, not subject to debate. To that end, Ms. Ochs and Mr. Miller testified that the Riverstone MOU was

much like the MOU created for Pueblo Classical Academy, and therefore, this was a matter of routine business, not requiring further explanation.¹

12. Testimony at the hearing revealed that board president Ochs and board member Wilson read Brad Miller's email prior to voting on the MOU. Board members Culhane-Howland and DeLuca, however, did not read the email prior to voting. Mr. Christenson testified that he only "glanced" at the email before the June 10th meeting, but did read the email before the June 24th vote.
13. As such, two (2) board members had not read the email prior to voting. Thus, the Court finds at least two voting members did not understand the nature of Riverstone, and the potential public policy impact and import, prior to voting. See Trial Tr. pg. 207, ln. 4-14, pg. 257, ln. 1-13. In as much as reading the email constituted a discussion or deliberation on the matter, only two (2) definitively engaged.
14. Regardless, no further discussion occurred about the school, its curriculum, and any possible implications to District 70, at either the June 10 or June 24 meetings. By placing it on the consent agenda, the item was considered routine business and not discussed.
15. All Plaintiffs testified that they reviewed the June 10th agenda, and the MOU, at one point or another, and that they had no understanding, as a lay person, that Riverstone would be a religious school. See Trial Tr., pg. 52, ln 1-19; pg. 53, ln. 23-25, pg. 54, ln. 1-4. All Plaintiffs stated they believed the public should have been given notice of the school's curriculum and were surprised to later learn about Attorney Miller's email. The Court agrees that the agenda, the MOU, and the consent agenda do not give any notice of Riverstone's intended curriculum.
16. Ultimately, Riverstone opened in 2025 within the geographic boundaries of District 70. According to Ms. Bennett, the school received state and federal funds. A federal lawsuit regarding the school was filed in 2026. (See *Riverstone Academy v. Susanna Cordova*, et. al. 1:26CV00595.)
17. That case, however, never came to fruition, because in May of 2026, the General Assembly passed Colorado Senate Bill SB26-023 under the School Finance Act.
18. Under the new law, BOCES are prohibited from acting as a statewide authorizer of programs or schools, and limited BOCES to operating a school or program outside

¹ There is no dispute, however, that Pueblo Classical Academy is not a religious school, nor does it provide religious education, as Mr. Miller described Riverstone in his June 4, 2025, email to the President.

the geographic boundaries of its school district members, unless specified conditions are satisfied. C.R.S. § 22-5-124(2). Also, Section 28 prohibited public agencies from contracting with a private entity to operate a fully educational program. C.R.S. § 22-32-122(6).

19. Riverstone is no longer operating and was closed as of May 28, 2026.²

II. February 10th and 24th board meetings: filling of Ann Och's vacant board seat.

20. At some point after the June board meetings, the public became aware of Ms. Ochs' employment with ERBOCES. After public outcry, President Ochs resigned the board presidency on December 9, 2025.

21. Following her resignation, Ann Bennett became the board president. The other board members at that time were Michelle Erickson, Mark Emery, and Dr. A.J. Wilson.

22. In January of 2026, Plaintiffs Jonathan Lewis, Tara Stroesenreuther, and Adolph Vigil, as well as Susannah Carnes, submitted their applications for Ms. Ochs' vacant board seat.

23. The next scheduled board meeting was February 10, 2026, to address their applications, with the opportunity for public participation and commentary on filling the vacancy.

24. State law and board policy requires the Board to fill the vacant seat within 60 days. See C.R.S. § 22-31-129(2). If the Board failed to do so, appointment authority would pass to the board president, Ann Bennett.

25. At the February 10, 2026, board meeting, four days before the statutory deadline, the Board convened under Agenda Item 10.01: "Appointment to Fill Vacancy in Direct District II." A quorum was present (i.e., a board quorum is three members. See Trial Tr. pg. 108, ln 9-12). The Board considered public commentary, questions were asked, and the Plaintiffs' candidacies were considered. The meeting was open to the public and streamed online.

² For this reason, Defendant argues that Plaintiff's COML claims for the June meetings are hereby moot, because under SB26-023 Riverstone cannot operate again in District 70.

26. Seven (7) votes were taken for the vacant seat, all of which were deadlocked at 2-2, with Bennett and Wilson voting together, and Emery and Erickson voting together on the other side.
27. At approximately 8:16 PM, after the seventh vote to fill the seat, Dr. Wilson experienced a seizure. Ms. Bennett called for a 10-minute recess and removed Dr. Wilson from the meeting. No ambulance was called, medical personnel were not called, and Ms. Bennett did not take Dr. Wilson to the hospital.
28. Testimony revealed Dr. Wilson's condition was not unknown: he had shared information about his seizures with the Board. Superintendent Rein testified that she had Dr. Wilson's wife's phone number, if his wife needed to come and get him. See Trial Tr. pg. 170 ln. 7-11.
29. Ms. Bennett removed Dr. Wilson and sat with him for approximately half an hour in a quiet, dark room. Ms. Bennett testified that this was a traumatic event, reminding her of her child's seizures. Ultimately, a ride was arranged for Dr. Wilson, and he left the building.
30. Ms. Bennett also left the meeting and the building. However, Ms. Bennett never informed the Board that she intended to leave and never returned to adjourn the meeting. Dr. Wilson, who had been taken home, also did not return to the meeting. Without the third member, there was no quorum to conduct business.
31. No vote was taken to adjourn the meeting, and no formal adjournment ever occurred. The remaining board members were surprised to learn that Ms. Bennett left, without notifying anyone, or closing the meeting.
32. Superintendent Ronda Rein testified that she saw Ms. Bennett leaving and stated,
- “A (by Ms. Rein): I said, you have to go back in there and close this meeting, that's your job. You can't just leave. And she said, no, I'm leaving. I'm breaking the quorum. And she left.” Trial Tr., pg. 191, ln. 9-11.
33. Ms. Bennett denied ever making such a statement to superintendent Rein. The Court, however, found Ms. Rein more credible, as Ms. Bennett's explanation of events was not reasonable under the circumstances.
34. There was no evidence in the record suggesting that Ms. Bennett needed to end the meeting: Dr. Wilson's medical emergency had been tended to, and for the Board's

purposes, the situation had been resolved, the other board members were present and were ready to continue voting. Simply put, there was no reason the meeting could not have continued with quorum, and a new member elected.

35. After the February 10, 2026, meeting, President Bennett did not seek to reschedule a meeting before the 60-day statutory deadline. Ms. Bennett testified that she did not seek to reschedule the meeting, because it would be “futile” based on the prior deadlocked votes. See Trial Tr., pg. 123, ln. 5-11.
36. Board member Erickson testified that she contacted Ms. Bennett to try to set up a special board meeting before the timeframe ran. Ms. Erickson also moved during the February 10th board meeting to have a special meeting on February 12, 2026, though her proposal did not pass.
37. C.R.S. § 22-32-108(1) states: “Regular meetings of the board of education of a school district shall be held at the time and place provided for in its bylaws. **Special meetings may be called by the president at any time and shall be called by him upon written request of a majority of the members of the board.**” Emphasis added by the Court. See also Trial Tr., pg. 123, ln. 5-11.
38. Here, board member Erickson testified that she contacted Ms. Bennett to schedule a special board meeting with the support of board member Emery; however, Ms. Erickson’s request was denied by Ms. Bennett.
39. Ms. Bennett testified she did not believe it would not be productive to hold a special meeting. *Id.* Therefore, a majority of board members did not request a special meeting under C.R.S. § 22-32-108(1). Though, it is also true that Ms. Bennett’s sudden departure prevented another public vote on the appointment.
40. On or about February 15, 2024, Ms. Bennett appointed Ms. Susannah Carnes by email and not at a publicly noticed meeting. (See Trial Tr. pg. 141, ln. 9-10 “I...there was not a publicly noticed meeting. I sent an email noting the appointment” and pg. 141 ln. 13-15, “I believed that my email was the appointment. That my email resulted in the appointment.”)
41. Nine days later, on February 24, 2026, Ms. Bennett sent an email informing Plaintiffs that the vacancy had been filled. (See Trial Tr. pg. 62, ln. 8-15. Ms. Carnes was sworn in on February 25, 2026, by Ms. Bennett, outside any board meeting.)

42. The next regular board meeting was on February 24, 2026. However, that meeting did not ultimately happen, because the Board could not agree upon an agenda, nor could the board approve the minutes from the February 10, 2026 meeting.
43. Attorney Miller informed the Board that there was no reason to meet, and the meeting was adjourned. There was no vote to adjourn the February 24, 2026, meeting and Ms. Bennett again left that meeting, breaking quorum.

LEGAL STANDARD & ANALYSIS

i. Plaintiff's claims regarding the June 2025 board meetings are not moot.

44. "Colorado courts invoke their judicial power only when an actual controversy exists." DePriest v. People, 487 P.3d 658, 662 (2021). If such a controversy no longer exists, or if the relief granted by a court would have no practical effect on an existing controversy, the issue before the court is generally considered moot and unreviewable. People in Interest of O.C., 308 P.3d 1218, 1220 (Colo. 2013).
45. Two recognized exceptions exist to the mootness doctrine: when the matter is capable of repetition, yet evading review, or involves a question of great public importance or recurring constitutional violations. Anderson v. Applewood Water Ass'n, 409 P.3d 611, 618 (Colo. App. 2016); Taxpayers Against Congestion v. Regional Transp. Distr., 140 P.3d 343 (Colo. App. 2006).
46. Here, the Court finds that Plaintiff's claims regarding the June 10th and 24th, 2025, meetings, and the ERBOCES MOU, are not moot for several reasons.
47. First, the Court notes that the District's MOU with ERBOCES was for a period of five (5) years. ("ERBOCES may operate Riverstone at a location within District boundaries for a term of 5 years, starting July 1, 2025, and ending June 30, 2030." See Exhibit 5.) No evidence was presented that the Board terminated or rescinded the MOU.
48. Senate Bill SB26-023, Section 24, added C.R.S. § 22-5-124(2), which prohibited a BOCES from operating a school outside of its boundaries. Given that the MOU here was specific to Riverstone, the Court finds that Riverstone could not operate again within District 70, pursuant to Senate Bill SB26-023.
49. However, invalidation is not the only remedy for COML violations. C.R.S. § 24-6-402(8), also grants the Court authority to issue injunctions and award costs and reasonable attorney fees associated with the violation.

50. Colorado courts have directly addressed the interplay between mootness and outstanding attorneys' fees claims. In In re Marriage of Clark, the Colorado Court of Appeals rejected an argument that a motion to compel was mooted in its entirety, reasoning that because there was relief that could still be granted — such as awarding wife her attorneys' fees — the issue was not moot. In re Marriage of Clark, 2023WL7381480 Not Reported in Pac. Rptr. (2023). The broader principle is that so long as a court can grant effectual relief to a prevailing party, dismissal for mootness is generally inappropriate. In re: Estate of Verzuh, 2022WL2293135 Not Reported in Pac. Rptr. (2022).
51. Even if this matter is moot, the Court finds that this matter falls under recognized exceptions to the mootness doctrine. Anderson v. Applewood Water Ass'n, 409 P.3d 611, 618 (Colo. App. 2016).
52. First, the Court finds that this issue is capable of repetition. It was never clarified at the Hearing what ERBOCES' geographic boundaries are. Testimony revealed that ERBOCES previously had a charter with Pueblo School of Arts and Sciences and has a charter with Pueblo Classical Academy. It appears to the Court that ERBOCES has an ongoing relationship with District 70, and without definitive evidence of ERBOCES' geographical boundaries, the Court cannot find that this issue will not be repeated.
53. Secondly, this is a case of great public importance — it reaches far past the 30 students that were enrolled in Riverstone. The issue here is whether the Board was transparent with its constituents about the true nature of a religious, charter school operating in their boundaries. More pointedly, the relevant issue is public transparency, not school choice in the spirit of the COML. This issue impacts all District 70 constituents.
54. Further, while this Court does not need to decide any issues regarding constitutionality, the Court nonetheless notes that the school board was making decisions that implicated the Plaintiffs' constitutional rights, without proper notice. (See Article IX, Section 7 of the Colorado Constitution, provides that neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever. C.R.S.A. Const. Art. 9 § 7.)

55. For that reason, the Court again finds that this issue is of great public importance and falls under an exception to the mootness doctrine.

ii. **The June 10th and June 24th board meetings violated the COML requirement of full notice and an opportunity for meaningful public participation.**

56. The COML embodies the General Assembly's policy that it is "a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." C.R.S. § 24-6-401.

57. The COML protects the public's right to observe the formation of public policy as it occurs and, through that observation, to participate meaningfully in governmental decision-making. Cole v. State, 673 P.2d 345, 347 (Colo. 1983).

58. The intent of the COML is to afford public access to a broad range of meetings at which public business is considered. Benson v. McCormick, 578 P.2d 651 (Colo. 1978). The Colorado Supreme Court has held that the COML applies to meetings occurring for the purpose of policy making. Wisdom Works Counseling Servs., P.C. v. Colorado Dep't of Corr., 360 P.3d 262, 266 (Colo. App. 2015).

59. Courts should broadly interpret public meetings laws to further the legislative intent that citizens be given a greater opportunity to become fully informed on issues of public importance, so that meaningful participation in the decision-making process may be achieved. Cole v. State, *supra*.

60. C.R.S. 24-6-402(8) states that,

"no resolution, rule, regulation ordinance or formal action of a state or local body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section." C.R.S. § 24-6-402(8).

61. Colorado law permits a public body to cure a COML violation through a later compliant meeting. Colo. Off-Highway Vehicle Coalition v. Colo. Bd. Of Parks & Outdoor Rec., 292 P.3d 1132 (Colo. App. 2012); O'Connell v. Woodland Park School District, 576 P.3d 197 (Colo. 2025).

62. Further, the COML requires full notice in any case where formal action occurs, or at which a majority or quorum of the body is in attendance or is expected to be in attendance. C.R.S. § 24-6-402(2)(b)-(c)(I) provides, in relevant part,

“(2)(b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

....

(2)(c)(I) **Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs** or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public.” C.R.S. 24-6-402(2)(b)-(c)(I), emphasis added by the Court.

63. Further, minutes of any meeting must be taken and must be open to public inspection. § 24-6-402(2)(d)(II).

64. Arguably, here, Ms. Bennett’s forwarding of Mr. Miller’s email to the board members was a “meeting” of three or more members, albeit electronically, at which public business was discussed. Therefore, the “meeting” (i.e., the email) should have been open to the public.

65. The focus of the COML “is on the process of governmental decision-making, not on the substance of the decisions themselves.” Colorado Off-highway Vehicle Coalition v. Colorado Bd. Of Parks and Outdoor Recreation, 292 P.3d 1132 (Colo. App. 2012). Here, the lack of appropriate notice about the email to the board surely gave no insight into the Board’s decision-making process. Ultimately, however, the Court does not need to ultimately answer whether the email constituted a meeting, because full notice was not given for the June meetings, as outlined below.

66. In determining whether notice is “full”, the Colorado Supreme Court stated that an objective standard should be applied, meaning that “...notice should be interpreted in light of the knowledge of an ordinary member of the community to whom it is directed.” Town of Marble v. Darien, 181 P.3d 1148, 1152 (Colo. 2008).

67. This standard is warranted by the COML’s stated purpose, which is to provide “fair notice of public meetings to members of the community.” Id. at 1152. The “full and timely notice” requirement is a “flexible standard” that “depends[s] upon the

particular type of meeting involved.” Id. Although a specific agenda should be included whenever possible, there is no “precise agenda requirement.” Id. at 1152.

68. COML expressly provides that formal action is not valid unless taken at a meeting that satisfies the statute. Wisdom Works Counseling Servs., P.C. v. Colo. Dep’t of Corr., supra.
69. Here, Plaintiffs argue that with the agenda’s notice, an objective person would not understand that Riverstone was a religious school, or that it was intended to be used as a Supreme Court “test case.” The Court concurs with this conclusion.
70. At the outset, the Court finds that adoption of the Riverstone charter occurred at a meeting where a quorum of the board was present and involved a formal action. As such, full notice is required pursuant to Town of Marble, supra.
71. Defendant argues, however, that full notice was given for the following reasons: individual board members did not actually seek to authorize a religious school, or a test case, and for that reason, their subjective intents are not relevant; there is no evidence that Riverstone was a ‘religious’ school; and finally, because District 70 would not be the authorizer of Riverstone (ERBOCES was the authorizer and would enroll homeschooled students) there was no financial impact to the District.
72. First, the Court finds that it is undisputed that the June 10th agenda, the MOU, and the consent agenda for June 24, 2026, contain no information about the nature of Riverstone school’s religious curriculum, or Mr. Miller’s email. No further discussion occurred at either meeting about Riverstone’s religious agenda.
73. The Court rejects Defendant’s argument that Riverstone was not a religious school. Multiple witnesses testified to Riverstone’s “Christian curriculum” and the Court took judicial notice of federal litigation where Riverstone’s Christian curriculum was at issue. (That Riverstone was a Christian school is inferred by the federal litigation that was commenced in Feb of 2026. See Riverstone Academy v. Susanna Cordova, et. al. 1:26CV00595.) Most importantly, Mr. Miller’s email explicitly states the nature of Riverstone school.
74. Second, the Court also rejects Defendant’s argument that because there was no intention by the board members to create a ‘test case’ there was no need to give the public notice of Riverstone’s curriculum. The Court believes this argument is a “red herring.”

75. Whether the board members subjectively believed that there would be litigation is not the relevant issue: the relevant issue here is whether the public had a right to full notice that a religious school, operating with state funds in their district, was going to be granted a charter.
76. The Court agrees with Defendant that the evidence ultimately did not reveal a conspiracy, or collusion, between Ms. Ochs and the other board members to create a Supreme Court test case: that evidence was not revealed during the hearing. While Mr. Miller's email is certainly revelatory about his subjective intentions, the Court does not find that the evidence proved that the Board members intended the same (though, the Court acknowledges that Ms. Ochs' subjective intentions are less clear to the Court.)
77. Regardless, however, of any board members subjective thoughts about potential future litigation – which may or may not have come to fruition – the issue of a religious charter school operating with public funds is an issue of public policy, of which the public should have full notice. To the extent that the Board did not fully disclose this information to the public, this violated the COML.
78. Third, the Court rejects Defendant's argument that the board members' subjective intent was not relevant under the COML, therefore, obviating the need for any notice about the nature of the school's intended curriculum.
79. As previously mentioned, while a board member's subjective feelings about an issue may not generally be relevant under the COML, the Court finds that the true nature any formal board action is relevant under the COML. That is, Riverstone's true nature should have been made clear both to the public, and to the voting board members, by way of the agendas.
80. Here, the Court finds that the board-members testimony reveals that full notice was not given – not just for the public, but concerning, also for the board members themselves.
81. Testimony revealed that two (2) board members didn't read attorney Miller's email prior to the meeting, and two (2) other board members did read the email but nonetheless during their testimony questioned whether they fully understood the import of the email. See Trial Tr. 207, ln. 4-14, pg. 257, ln. 1-13.
82. Regardless of whether the board members read the email, the June agendas and attached MOU did not reference school's intended curriculum, or Mr. Miller's email.

As such, it appears to the Court that several board members voted without a full appreciation of what they were voting for.

83. For that same reason, the public also was not fully informed of the true nature of the school. No subsequent discussions occurred during the meeting to enlighten the board members or the public.

84. Finally, Court also rejects Defendant's argument that this was not a matter of public policy because there was no fiscal consequence for the District. At the outset, nowhere does the COML state that issues of public policy only apply when there is an associated fiscal note. The COML's mandate is broad and includes matters of public policy without defining those issues as pecuniary only. C.R.S. § 24-6-401. Further, the Court rejects the narrow consideration of only District 70 funds as "public funds", given that it's undisputed Riverstone received federal and state funds.

85. Further, there is no evidence suggesting that Riverstone would not have ultimately pulled students from District 70, given that the board authorized it to operate within their geographic boundaries for a period of five (5) years, and possibly indefinitely. (Both superintendent Rein and Ms. Ochs acknowledged that during their testimony they ultimately did not know if any District 70 students attended the school. See Trial Tr. pg. 182, ln. 15-17.)

86. Therefore, for the foregoing reasons, the Court finds that the June 10th and 24th meetings violated the COML for failure to provide the public with full notice.

iii. Full notice was provided for the February 10th and 24th board meetings.

87. The Court now turns to the February 10th and 24th meetings. Here, the Court does find that proper, full notice was given to the public of the nature of those meetings and the intended formal action, i.e. replacement of Ms. Och's board seat.

88. Specifically, agenda item 10.01 stated, "Appointment to Fill Vacancy in Director District II—Consideration and Appointment of Qualified Candidate" followed by descriptions of the four candidates, and additional vacancy appointment information, as well as a link to a sample resolution. See Defendant's Exhibit B.

89. The evidence showed that at the February 10th meeting, the various candidates were discussed, comments were made, and there was an opportunity for public observation and participation.

90. When the Board voted on the vacancy, it deadlocked repeatedly, with seven (7) separate votes ending in 2-2. See Exhibit 17. There were also motions to continue the meeting until a later, specially noticed February meeting. Those votes were also deadlocked. Id.
91. Dr. Wilson did, in fact, experience a medical event necessitating his absence from the February 10 meeting. President Bennett then left, breaking quorum, and preventing further voting. Following that meeting, Ms. Bennett unilaterally appointed Susannah Carnes by email.
92. No meeting occurred on February 24, 2026. The Board met for a regular board meeting; however, ultimately no meeting occurred, because the agenda was never adopted. President Bennett then concluded the meeting and departed.
93. Plaintiffs argue that President Bennett purposefully left the February 10 meeting because it was apparent that with Dr. Wilson's departure, the next vote would yield a successful candidate (though not President Bennett's preferred candidate.)
94. Plaintiffs argue that Ms. Bennett's actions ensured that she could make a unilateral appointment, in private, in violation of the COML. Plaintiffs argue that President Bennett again departed the February 24, 2026, breaking quorum, violating the COML.
95. Defendant, however, argues that board members' actions during the February meetings do not fall under the COML, as courts cannot dictate how meetings are run.
96. Here, the Court finds that Plaintiffs' theory is less clear, and the Court could not find any caselaw supporting the absence of board action (or the failure of an individual board member to act) is a violation of the COML.
97. The COML does not dictate when, where or how often, any public body must meet. Wisdom Works at 2015 COA 118, p. 15. "The Open Meetings Law does not undertake to direct public bodies in the State of Colorado as to how to do their business." Van Alstyne v. Hous. Auth. Of City of Pueblo, Colo., 985 P.2d 97, 101 (Colo. App. 1999).
98. Here, the Court agrees with Defendant that it cannot dictate members adherence to certain procedural mechanisms, including following Robert's Rules, or any other procedural regulations, implemented by the Board.

99. Further, the evidence did not reveal any type of conspiracy to break quorum (that is, there was no evidence in the record that Ms. Bennett colluded with Dr. Wilson, or anyone else to break quorum – this action appears to have been hers alone.)

100. Although Ms. Bennett's breaking quorum may have been in derogation of C.R.S. § 22-31-129(2)(which states that the board "**shall**" appoint within 60 days, and doesn't allow a board member to decline to participate in the voting process, decline to set a special meeting if requested by a majority of the board, or to otherwise stymie the process), and it may also have been in derogation of her role as board president, the Court cannot find any caselaw to suggest that this action alone violated the COML.

101. Ultimately, the February meetings were properly noticed, no formal actions were taken, and Ms. Bennett's actions during the meeting were viewed by the public – that is, her breaking of quorum occurred publicly, and not in secret.

102. For these reasons, the Court declines to find that the February 10th and 24th 2026 meetings violated the COML, and the Court does not invalidate those meetings. However, the Court analyzes President Bennett's actions taken outside of the meeting separately below.

iv. **President Bennett's appointment of Susannah Carnes by email was a formal action, not taken during a publicly noticed meeting, in violation of the COML and the plain language of C.R.S. § 22-31-129(4).**

103. While the COML does not require public bodies to meet, nor does it proscribe when and how they meet, the remedy of voiding certain actions taken without meeting applies to a public body, even if its regulations or practices do not require a meeting. Wisdom Works Counseling Servs., P.C. v. Colorado Department of Corrections, 360 P.3d 262 (Colo. App. 2015).

104. In Wisdom Works, plaintiff appealed the Approved Treatment Provider Board's denial of its applications to provide sex offender treatment to parolees, without a meeting. Wisdom Works, 360 P.3d 262 at 264. The denials were instead based on independent reviews by its two board members, as permitted by DOC's regulations. Id.

105. The Court of Appeals rejected the Board's contention because the application process occurred outside of a public meeting, it was not subject to the COML. Id. The Court stated,

"Such a myopic view would permit any public body to establish a uniform practice or adopt a regulation that allows one or more of the listed actions to be taken without meeting, and thereby end-run invalidation under the OML. This view is the antithesis of liberally construing a remedial statute." Id. at 267.

106. The Court further highlighted that the COML's concern is primarily with, "the formation of public policy ... conducted in secret," section 24-6-401; the single remedy in section 24-6-402(8); and the right to recover attorney fees for enforcing this remedy in section 24-6-402(9)(b)." Id. at 267. "Giving voice to these provisions, we conclude that interpreting section 24-6-402(8) as allowing public bodies to so easily conduct public business in secret, and yet leave those adversely affected without a remedy, 'would be an absurd result.'" Id. at 267, citing Alpenhof, LLC v. City of Ouray, 297 P.3d 1052 (rejecting interpretation that "would leave the city powerless to protect the public health, safety, and welfare from a flooding hazard partially resulting from human activity" as an "absurd result"). Id. 267-68.

107. Similarly, courts have found violations of the COML when there have been discussions between various members of that body outside of a formal meeting in an overt attempt to arrive at a formal decision. See Minshall v. Douglas County Board of Education, 2022CV30071 (Douglas Cty. Dist. Ct. Jun. 16, 2023); see also Wisdom Works Counseling Servs., P.C. v. Colo. Dep't of Corr., 360 P.3d 262 (Colo. App. 2015).

108. Here, the Court finds that President Bennett's appointment of Ms. Carnes was a formal action, that was required to occur at an open meeting under the COML. See Weisfield v. City of Arvada, where a citizen sued the City of Arvada because Arvada's mayor and city council used secret ballots to fill the vacancy. Weisfield v. City of Arvada, 361 P.3d 1069 (Colo. App. 2015). In that case, the Colorado Court of Appeals held that filling a vacancy is a "formal action." Id. at 1073.

109. Like filling a city council vacancy, the school board also votes and selects a new member for a public body. The School Board Vacancy Statute confirms this. Section § 22-31-12(2) requires that "the appointment...be evidenced by an appropriate entry in the minutes of the meeting." C.R.S. § 22-31-129(2)(2026).

110. Even assuming that authority had been properly vested in Ms. Bennett because the 60-days had passed, the law nonetheless requires a formal action “to occur in an open meeting.” See *a/so Weisfield v. City of Arvada*, 361 P.3d at 1071 quoting *Benson v. McCormick*, 578 P.2d at 653 (“Our Open Meetings Law...reflects the considered judgment of the Colorado electorate that democratic government best serves the commonwealth if its decisional processes are open to public scrutiny.”)
111. Here, Susannah Carnes was not appointed during a noticed meeting. Instead, Ms. Bennett appointed Susannah Carnes by email several days after abandoning the school board meeting and declining to agree with Erickson and Emery that a special board meeting should be conducted. (Trial Tr. pg. 141, ln. 9-10.)
112. It is undisputed that the Carnes appointment was done outside of a formal meeting, and without any public commentary or input. After appointment, Ms. Bennett also swore Ms. Carnes in at a non-noticed meeting on February 25, 2026. At no point was Ms. Carnes’ appointment entered into any type of formal meeting minutes.
113. Courts have found that the COML’s objective is to prevent the abuse of “secret or star chamber” sessions of public bodies. *Bagby v. School Dist. No. 1, Denver*, 528 P.2d 1299, 1302 (Colo. 1974). Similarly, in *Cole v. State*, the Court noted that “A citizen does not intelligently participate in the legislative decision-making process merely by witnessing the final tallying of an already predetermined vote.” *Cole v. State*, 673 P.2d 345, 349 (Colo. 1983).
114. Further, when interpreting remedial statutes, the statutes “should be interpreted most favorably for...the public.” *Wisdom Works*, 360 P.3d at 267. Moreover, interpreting COML as “allowing public bodies to so easily conduct public business in secret, and yet leave those adversely affected without a remedy ‘would be an absurd result.’” *Id.* at 267-68
115. The plain language of the school board vacancy statute echoes this requirement, stating:
- “(2) ...If the appointment is not made by the board within the sixty-day period, the president of the board shall forthwith appoint a person to fill the vacancy. **The appointment shall be evidenced by an appropriate entry in the minutes of the meeting and the board shall cause a certificate of appointment to be delivered to the person so appointed. A duplicate of each certificate of appointment**

shall be forwarded to the department of education.” C.R.S. § 22-31-129(4), emphasis added.

116. As such, the plain language of the vacancy statute proscribes that the appointment, even if unilaterally decided, should occur in a meeting, be documented in the meeting minutes, and that the board shall issue a certificate of appointment to the Department of Education. Id.
117. None of the above occurred here: Ms. Carnes’ appointment was by email – it was not in a publicly noticed meeting, evidenced in any minutes, nor (to the Court’s knowledge based on evidence presented) did the Board cause a certificate of appointment to be delivered.
118. Rather, the appointment was done in secret: precisely the type of formal action the COML prohibits. This action deprived District 70 constituents of their ability to observe the conduct of the Board, and more specifically here, the board president.
119. As suggested above, to the extent that Ms. Bennett took actions at the February 10, 2026, meeting to break quorum, it is less clear that that particular action violated the COML. the Court could not find any caselaw on point interpreting an individual board member’s behaviors during an open meeting, including breaking with procedural requirements, as a violation of the OML.
120. Ultimately, however, the Court finds that it does not need to directly address that act, because Ms. Bennett’s private appointment of Ms. Carnes, outside of a meeting, violated the COML.
121. In terms of construing a remedy, however, the Court considers the cumulative effect of Ms. Bennett leaving the meeting, in combination with her private denial of setting a special meeting. The Court finds this was a private action, outside of a meeting, in an attempt to end-run invalidation under the COML.

v. Injunction Standard.

122. The permanent injunction standard is derived from the preliminary injunction articulated elements in Rathke, but eliminates the irrelevancies associated with the preliminary posture of a case. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010); Rathke v. MacFarlane, 648 P.2d 648, 653-54 (Colo. 1982).

123. A party seeking a permanent injunction must show that: (1) the party has achieved actual success on the merits; (2) irreparable harm will result unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause to the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest. Id. This four-part framework is well-established in Colorado and applies broadly to permanent injunction requests governed by C.R.C.P. 65. Rinker v. Colina-Lee, 452 P.3d 161 (Colo. App. 2019).
124. Courts can issue injunctive relief as it relates to complying with the COML. Courts “shall have jurisdiction to issue injunctions to enforce” the COML. Colo. Rev. Stat. § 24-6-402(9)(b). Indeed, the COML “specifically authorizes” the court to issue injunctions. Bjorensen v. Board of County Com’rs of Boulder County, 487 P.3d 1015, 1022 (Colo. App. 2019). In Bjorensen, the plaintiff petitioned the court, and was granted, an injunction “ordering the Board to comply with certain practices going forward.” Id. at 1030.
125. C.R.C.P. 65(d) requires that every order granting an injunction set forth the reasons for its issuance, be specific in terms, and describe in reasonable detail — and not by reference to the complaint or other document — the act or acts sought to be restrained. C.R.C.P. 65.
126. A trial court's findings are inadequate to support a permanent injunction where the court does not enter findings explaining how the moving party satisfied each of the required elements. Cronk v. Bowers, 537 P.3d 401 (2023). This requirement applies even where a party argues that an injunction is a necessary corollary to a legal right, such as property ownership; the moving party must still satisfy all four elements and the court must explain the basis for issuing the injunction under C.R.C.P. 65(d). Here, the Court finds as follows:

- a. **Plaintiffs prevailed on the merits:** Here, the Court finds that Plaintiffs prevailed on the merits for both the June 2025 meetings and February 2026 actions of the board president.

Regarding the June 10th meeting, the Plaintiffs proved that the agenda, and attached MOU, hid the issue of the Board approving a charter between ERBOCES and a public, religious school. The June 24th consent agenda resulted in the Board approving an item that had not been fully disclosed to the board members or the public —essentially “rubberstamping” the charter.

Regarding the February meetings, the Court does not find that the meetings violated the COML –the meetings were properly notice and no formal actions occurred at the meetings.

However, the Court does find President Bennett’s unilateral appointment of Ms. Carnes by email violated the COML because it was a formal action done privately, without the opportunity for public participation.

- b. **Danger of immediate and irreparable harm will result, unless the injunction is issued:** The Court finds that Plaintiff proved an ongoing pattern of lack of transparency regarding the District, beginning with the June meetings that lacked full notice, and culminated in February with the private appointment of Ms. Carnes.

The irreparable harm not only includes the lack of observation, but the constituents’ ability to ensure their legally protected rights to have a Board that represents them and their interests.

The Court finds that injunctive relief is necessary to prevent further harm, which has been the public’s inability to meaningful observe, and the opportunity to participate in, the Board’s formal actions.

- c. **There is no plain, speedy, and adequate remedy at law.** COML allows courts to issue injunctions as a remedy for violations and resulting harm.
- d. **The injury outweighs the harm that the injunction may cause to the opposing party:** Here, the injuries (i.e., lack of proper notice, disclosure, and private appointment) outweigh any harm that the injunction may cause. The balance of equities favors the Plaintiffs.
- e. **The injunction will not adversely affect the public interest:** Public decision making, notice, and transparency is always in the public’s interest.
- vi. **The remedy for violating the COML is invalidating the June 10th and 24th board meetings, the MOU, and the appointment of Susannah Carnes. The cure doctrine requires that the Board hold a subsequent meeting, in compliance with the COML.**

127. “No rule, regulation, ordinance or formal action” of a school board “shall be valid” unless the school board adopts such action in a COMPL compliant meeting. C.R.S.

§ 24-6-402. The COML is clear: the remedy for violation is voiding any actions taken in violation of the law.

128. Under Colorado's Open Meetings Law, the cure doctrine allows a public body to remedy a violation by holding a subsequent meeting that complies with the law and involves genuine reconsideration of the matter, rather than merely rubber-stamping the earlier decision made in violation of the law. O'Connell v. Woodland Park School District, 576 P.3d 197 (Colo. 2025).
129. The cure doctrine requires that the subsequent meeting provide full and timely public notice and involve a new and substantial reconsideration of the action. Colorado Off-Highway Vehicle Coalition v. Colorado Bd. Of Parks and Outdoor Recreation, 292 P.3d 1132 (2012). The curative meeting cannot be a perfunctory ratification or ceremonial acceptance of decisions made in secret. Id.
130. When a public body successfully cures a violation, the action taken at the properly noticed subsequent meeting is valid, even though the original action was void under the Open Meetings Law. Van Alstyne v. Housing Authority of the City of Pueblo, Colo., 985 P.2d 97 (1999). However, the doctrine does not eliminate liability for the initial violation—parties who successfully challenge Open Meetings Law violations may still be entitled to attorney fees and costs even if the public body later holds a compliant meeting. Id.
131. Here, the Court finds that with the invalidation of Ms. Carnes' appointment, the Board is required to hold a COML compliant meeting, to determine the filling of the Ochs' vacancy.
132. In this case, President Bennett should not be able to unilaterally leave the meeting, in derogation of C.R.S. § 22-31-129, but also not entertain a special meeting under C.R.S. § 22-32-108(1) when there was still time left in the 60-days, and a request was raised to her attention. To the Court's knowledge, Ms. Erickson's attempts at a Board meeting were summarily denied, without further discussion. Thus, the net result of president's actions is that the Board, and the public, were entirely denied participation in the appointment process.
133. Ms. Bennett's thwarting of the Board's statutory duty to conduct its public business—which started after she left the February 10, 2026 meeting, continued with her refusal to entertain requests for a special meeting, and culminated in her privately appointing Ms. Carnes—left the Board without any recourse, or ability, to comply with the COML's directive that appointments occur in a publicly noticed meeting. Ms. Bennett's actions, which were hers alone, prevented the Board from fulfilling its duties under both C.R.S. § 22-31-129 and the COML.

134. The Court finds that returning the Board to the *status quo ante* means returning the Board to the position they were in when attempts were made to schedule a special board meeting that was summarily denied as “futile.” (See Trial Tr. pg 123, ln. 9-11 Ms. Bennetts testimony “And so for that reason, calling a special meeting seemed futile to me.”)

135. The cure doctrine, and a liberal application of the COML, requires that the appointment be done in a publicly noticed meeting, but also, by vote of the Board. That is, the only way to equitably cure this violation is to allow the Board to vote on the vacant seat.

ORDER

THEREFORE, considering the foregoing, the Court here by orders as follows:

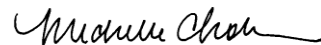
- A. The June 10 and June 24, 2025, agendas did not provide full notice under the COML because they failed to disclose Riverstone’s religious character. The failure to disclose the nature of the school was a violation of § 24-6-402(2)(c)(I), C.R.S.
- B. The Court hereby invalidates the Board’s June 24, 2026, approval of Item 9.06, the MOU between District 70 and ERBOCES, because full notice of the MOU, and the nature of Riverstone, was not given to the public.
- C. The February 10th and 24th, 2026, meetings were COML compliant, in terms of providing notice to the public and no formal actions were taken at those meetings. The Court does not find a violation of the COML for those meetings.
- D. President Bennett’s filling of the Ochs’ vacancy was public business and a formal action under the COML. The appointment of Ms. Carnes by email violated the COML and the plain language of C.R.S. § 22-31-129(4). The Court, therefore, invalidates Ms. Carnes’ appointment.
- E. The Board is enjoined from taking any formal actions privately. The Board shall take all formal actions publicly by clearly stating those actions forthrightly and providing full notice to the public, in compliance with the COML. The Board is enjoined from taking any formal action, such as appointment of a board seat(s), privately.
- F. Therefore, the Court orders that with the invalidation of Ms. Carnes’ appointment, the parties are placed back in the *status quo ante*, i.e., the position that the Board would

have been in had Ms. Bennett not denied a special meeting and not issued the email on February 15, 2026, appointing Susannah Carnes.

- G. The Board is required to meet in compliance with the COML – to include full and fair notice to the public—to address how to move forward, now that the appointment of Ms. Carnes’ is invalidated.
- H. The Court does **not** order that *status quo ante* means that only Emery, Erickson, and Bennett participate in the meeting, as requested by Plaintiffs. The Board, as it is currently comprised (without Ms. Carnes) shall meet.
- I. Attorney’s fees shall be awarded based on the findings in this Order, and pursuant to the COML. Plaintiff is given 21 days to file an affidavit of attorneys’ fees, and Defendant is given 14 days to object.

SO ORDERED THIS 11th Day of August, 2026.

BY THE COURT:



Michelle Chostner
District Court Judge