

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN) MEETINGS COMPLAINT AGAINST) RAPID CITY AREA SCHOOL) DISTRICT – PENNINGTON COUNTY)	OMC 2025-03 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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The above captioned matter was heard before the South Dakota Open Meetings Commission (hereafter “Commission”) on November 3, 2025.

Nicole Swigart, Complainant, appeared in person and without the assistance of legal counsel. Rapid City Area School District 51-4 Board of Education, Respondent, was represented by and through counsel Michael Hickey, who appeared remotely via Teams, albeit late. Prior to the hearing, the Commission reviewed the written submissions of the parties as well as any other exhibit, pleading or paper on file herein. Prior to beginning the hearing, Commission Board Member Lance Russell recused himself indicating he had a conflict of interest, left the hearing room, and did not participate in this matter.

Based upon the materials submitted and the arguments of the parties, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that the Rapid City Area School District 51-4 is a school district organized pursuant to the provisions of Title 13 of the South Dakota Codified Law to provide and operate a school educational program in South Dakota.

2. The Commission also takes official notice that the Rapid City Area School District 51-4 Board of Education (hereafter “School Board”) is the public body elected pursuant to applicable provisions of state law to govern the Rapid City Area School District 51-4.

3. On November 21, 2024, Nicole Swigart submitted an open meetings complaint to Pennington County State’s Attorney Lara Roetzel regarding the School Board.

4. After determining there was a conflict, Pennington County State’s Attorney Lara Roetzel forwarded the complaint to the Minnehaha County State’s Attorney’s Office pursuant to SDCL § 1-25-6.1.

5. Minnehaha County State’s Attorney’s Office requested an investigation of the complaint by the Lincoln County Sheriff’s Office due to a conflict in the Minnehaha County Sheriff’s Office.

6. Lincoln County Sheriff’s Office Detective Leah Stroschein investigated the complaint, reviewed the online agendas, minutes, and meetings of the School Board’s meetings for the period June 3, 2024, to October 1, 2024, and provided her report to the Minnehaha County State’s Attorney’s Office.

7. On June 23, 2025, Minnehaha County Chief Civil Deputy State’s Attorney Eric Bogue forwarded the complaint to the Commission pursuant to SDCL § 1-25-6(3).

8. On June 30, 2025, the complaint was received by the Commission.

9. Nicole Swigart had been employed with the School District for thirty-three (33) years. She was appointed as interim superintendent in 2022 and full-time superintendent in 2023.

10. Nicole Swigart alleged in her complaint that the School Board should have voted in open session to take official action to suspend her as the superintendent.

11. Nicole Swigart alleged in her complaint that sometime before August 13, 2024, a quorum of the School Board discussed and voted to take official action to terminate her as the superintendent. This alleged meeting, if it occurred, would not have been properly noticed to the public.

12. The School Board held public meetings on June 3, 18, and 26, 2024; July 2, 3, 16, 24, and 30, 2024; and August 6, 2024. During these meetings, the School Board entered executive sessions pursuant to SDCL § 1-25-2(1) and (3). No official action was taken at any of these meetings by the School Board concerning a vote on the suspension of the district's Superintendent Nicole Swigart.

13. Nicole Swigart alleged in her complaint that the School Board should have taken minutes during executive sessions and accused the board of illegally reaching decisions in executive sessions.

14. On July 1, 2024, a private meeting was held between the School Board president, the board's attorney, Swigart, and her attorney wherein she was notified in a written Conference Review that she would be suspended thirty (30) days from July 2, 2024, through the end of July 2024, with requirements that she

complete Native American cultural competency training and other specific requirements.

15. Following the private meeting described in Finding of Fact No. 14, Swigart, through her attorney, advised the District that the contents of the Conference Review were considered “a confidential personnel record that was not subject to FOIA/Sunshine disclosure.”

16. On or about July 18, 2024, midway during the period of the suspension, Superintendent Nicole Swigart received a certified letter dated July 18, 2024, that stated it was the School Board’s intention to terminate her employment consistent with Section 11.4 of her Employment Agreement, and the item for action to terminate her employment would be on the School Board’s agenda for approval on August 20, 2024.

17. The School Board has a 7-member board.

18. On August 13, 2024, Superintendent Nicole Swigart’s employment was terminated by official action of the School Board by a vote of 6-1.

19. Any Finding of Fact more appropriately labeled as a Conclusion of Law is hereby re-designated as such and incorporated below therein.

Alternative Proposed Findings

The Rapid City Area School District 51-4 Board of Education filed a limited set of Proposed Findings of Fact which only addressed certain facts proposed. In compliance with SDCL § 1-26-25, the Proposed Findings of Fact are accepted, modified or rejected as follows:

The alternative proposed fact amending paragraph 14 is set forth in full and is adopted and accepted in full and has been inserted therein.

The alternative proposed fact adding a new paragraph 15 is set forth in full and is adopted and accepted in full and has been inserted therein.

The alternative proposed fact amending, adopting, and renumbering paragraph 15 to a new paragraph 16 is set forth in full and is adopted and accepted in full therein.

CONCLUSIONS OF LAW

1. The Rapid City Area School District 51-4 Board of Education, as the governing body of the Rapid City Area School District 51-4, is a public body subject to the open meeting requirements of SDCL ch. 1-25. The Open Meetings Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. SDCL § 1-25-2 provides in part:

1-25-2. Executive or closed meetings--Purposes--Authorization--Violation as misdemeanor.

Executive or closed meetings may be held for the sole purposes of:

(1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor;

....

(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;

....

However, any official action concerning the matters pursuant to this section shall be made at an open official meeting. An executive

or closed meeting must be held only upon a majority vote of the members of the public body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion. Nothing in § 1-25-1 or this section prevents an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a Class 2 misdemeanor.

3. The Commission concludes that the executive session exemption does not specifically address an employee's suspension.

4. The Commission concludes that internal personnel decisions of the School Board are confidential by statute.

5. SDCL § 1-27-1.5 provides in part:

1-27-1.5. Certain records not open to inspection and copying.

The following records are not subject to §§ 1-27-1, 1-27-1.1, 1-27-1.3, and § 1-27-1.23:

....

(7) Personnel information other than salaries and routine directory information. This subdivision does not apply to the public inspection or copying of any current or prior contract with any public employee and any related document that specifies the consideration to be paid to the employee;

....

6. The Commission concludes that insufficient evidence exists in the record before the Commission to establish that a quorum of the School Board met to discuss or take official action of the body outside of a properly noticed meeting.

7. The Commission concludes that there is no statutory mandate to take minutes in an executive session. The taking of notes in executive session would violate the attorney-client privilege.

8. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the School Board did not violate the South Dakota Open Meetings Laws in relation to the suspension of the school district's superintendent.

9. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the School Board did not violate the South Dakota Open Meetings Laws in relation to the termination of the school district's superintendent on August 13, 2024.

10. Any Conclusion of Law more appropriately labeled as a Finding of Fact is hereby re-designated as such and incorporated above therein.

Based upon the foregoing Findings of Fact and Conclusions of Law, the South Dakota Open Meetings Commission hereby determines that the Rapid City Area School District 51-4 Board of Education did not violate the South Dakota Open Meetings Laws in regard to the facts and allegations raised by the complaint filed in this matter.

Entered by Commissioners **E. Sovell** (Chair), **A. Hoffman**, **K. Hoffman**, and **M. Smith**. Commissioner **L. Russell**, having recused himself from this matter, abstained from hearing the matter and took no part in the Commission's deliberation or decision.

Dated this ____ day of _____ 2026.

OPEN MEETINGS COMMISSION

By: _____
Emily Sovell, Chair