

State of Wisconsin ex rel, John Krueger,

Plaintiff

Outagamie County Case No.  
13 CV 868

v.

Appleton Area School District  
Board of Education, and  
Communication Arts 1 Materials  
Review Committee,

Defendants.

---

**DECISION AND ORDER ON PLAINTIFF AND DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

---

In this action both parties have filed a Motion for Summary Judgment and each party has filed Affidavits and Memorandums of Law in support of their Motions for Summary Judgment. I have reviewed the Affidavits and written arguments as well as considering the oral arguments that were made by both parties in open Court on November 24, 2014. Both parties agree that there is no genuine issue as to any material facts and that the case can be decided upon Summary Judgment.

In this action, the Plaintiff claims that the Appleton Area School District Board of Education and Communication Arts 1 Materials Review Committee violated Wisconsin's Open Meetings law. The defendant claims that the Plaintiff failed to show that there is genuine issue of material fact for which the Plaintiff is entitled to judgment as a matter of law.

In 2011, John Krueger requested Administration from the Appleton Area School District to consider creation of an alternate Communication Arts 1 course. His proposal was that the

course would use a reading list with books that were at the ninth grade reading level which contained no profanity, obscenities, or sexualized content. In the response to the request from John Krueger, the Appleton School District Administration formed a group to review his request. The group contained various teachers from the Appleton Area School District as well as Administrators. The group met on various occasions in 2011 and 2012. The group reviewed a variety of potential books that would be part of the educational materials for Communication Arts 1. They decided on a reading list that contained twelve books that were already part of the Communication Arts 1 course and twelve new books to add to the reading list. The Plaintiff alleges that he was not allowed to attend the meetings of this group and that the meetings were subject to Wisconsin's Open Meetings Law.

The group that was created in response to Mr. Krueger's request is referred to in documents filed with the Court as the Communication Arts 1 Materials Review Committee (CAMRC). Mr. Krueger asked to attend meetings held by CAMRC and was told that the meetings were not open to the public. After CAMRC agreed on a proposed reading list the public was allowed to review the materials for 30 days and make any objections to the materials that were being proposed. It is my understanding that one book was taken off the list of twenty four books that was originally proposed. The Board of Education then later approved the list of 23 books. It is not being alleged that the meeting of the Board of Education was not in conformity with the Open Meetings Law.

In determining whether or not the Defendant violated the Open Meetings Law, there needs to be a determination made whether or not CAMRC was a "governmental body". If CAMRC meets the definition of a governmental body, then it is subject to Wisconsin's Open

Meeting Law. A governmental body is defined as including “a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order. The term order is not defined in the Open Meetings Law. The provisions of the Open Meetings Law must be broadly construed to ensure the public's right to the fullest and most complete information regarding the affairs of government as is compatible with conduct of governmental business. The Attorney General's Office has interpreted “order” as used in section 19.82(1), to include any directive from an existing governmental body, that authorizes the creation of another body and assigns duties to that body. The group in question must constitute a collective body rather than a mere assemblance of individuals. Further, the group must convene members for the purpose of exercising the responsibilities authority power or duties delegated to or vested in the body. The group must have identifiable governmental powers and duties vested in it by law or delegated to it by law when it acts formally as a body.

CAMRC was a Committee created initially and primarily to address the request by Mr. Krueger for a new Communication Arts 1 course, it was not created pursuant to a directive by the Board of Education and there were no members of the CAMRC Committee that were also members of the Board of Education. CAMRC was created internally by Administration as part of an effort to address Krueger's concerns and request for an alternative Communication Arts 1 Course, it was created without any specific directive of the Board.

School Boards do not have sole authority as it relates to the review and selection of curriculum, such that any meeting of any group of individuals to discuss curriculum constitutes a meeting of a governmental body subject to the Open Meetings Law Administration has

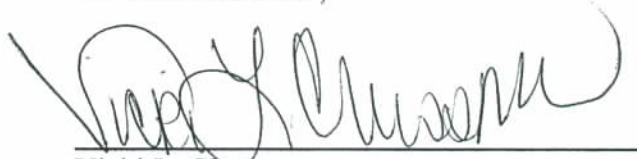
independent authority and responsibility for curriculum. Members of the CAMRC Committee were teachers and administrators who had the responsibility for determinations regarding curriculum.

While the initial creation of CAMRC was to respond to Mr. Krueger's request for a new Communication Arts course; the scope of CAMRC was extended beyond Krueger's request. CAMRC further evaluated their Communication Arts 1 reading list and also looked at the potential impact of the pending common core standards. The decision to extend the scope of CAMRC was not done as the result of a directive of the Board of Education but was another internal decision by the Administration. Administrative professionals and staff are responsible for planning, revising and implementing consistent curriculums with State standards as part of their job duties. School Boards are not directly involved in creating in curriculums, rather it is expected that Administrators will evaluate and develop curriculums. School District Administrators are allowed to make recommendations to the School Board regarding curriculum under §118.24, Wis. Stats.

I will find that CAMRC was not a governmental body subject to the Open Meetings Law requirements as it was not created at the directive of the Board of Education. To find that CAMRC was a governmental body would have a significant adverse effect on the ability of School Administrators to address issues regarding curriculum that arise in the ordinary course of business. Accordingly, the Board did not violate the Open Meetings Law by virtue of CAMRC's meetings. Therefore, I will grant defendant's Motion for Summary Judgment, deny Plaintiff's Motion for Summary Judgment, and dismiss Plaintiff's Amended Complaint in it's entirety.

Dated at Waupaca, WI this 22nd day of December, 2014.

**BY THE COURT,**

A handwritten signature in black ink, appearing to read "Vicki L. Clussman", written over a horizontal line.

Vicki L. Clussman  
Circuit Judge – Branch II