IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
GENERAL DIVISION

ELECTRONIC CLASSROOM OF TOMORROW,	:	
Plaintiff,	:	**Case No. 17 CVH-06-5315**
v.	:	**Judge: Guy L. Reece, II**
OHIO STATE BOARD OF EDUCATION,	:	
Defendant.	:	

DECISION AND ENTRY
GRANTING DEFENDANT'S JUNE 28, 2017
MOTION FOR JUDGMENT ON THE PLEADINGS
AND
DISMISSING AS MOOT PLAINTIFF'S JULY 3, 2017
MOTION FOR PRELIMINARY INJUNCTION
AND
DISMISSING AS MOOT PLAINTIFF'S JUNE 20, 2017
MOTION FOR EXPEDITED DISCOVERY

REECE, J.

This matter is before the Court on the following: Plaintiff Electronic Classroom of Tomorrow's ("Plaintiff" or "ECOT") June 20, 2017 Motion for Expedited Discovery; Defendant Ohio State Board of Education ("Defendant" or "BOE") June 26, 2017 Memorandum Contra Plaintiff's Motion for Expedited Discovery and Motion to Stay Discovery; BOE's June 28, 2017 Motion for Judgment on the Pleadings; ECOT's June 30, 2017 Memorandum Contra Defendant's Motion for Judgment on the Pleadings; BOE's July 3, 2017 Reply to Plaintiff's Memorandum Contra Plaintiff's Motion for Judgment on the Pleadings; ECOT's July 3, 2017 Reply Memorandum in Support of Motion for Expedited Discovery and Memorandum Contra

Defendant's Motion to Stay Discovery; and ECOT's July 3, 2017 Motion for Preliminary Injunction.

The parties' motions have been fully briefed and are deemed submitted to the Court pursuant to Loc.R. 21.01.

BACKGROUND

ECOT commenced this action against BOE on June 14, 2017, seeking to invalidate BOE's adoption of a determination made by its designee that allowed the Ohio Department of Education ("ODE") to "claw back" approximately $60 million in full-time equivalency funding that ODE previously paid to ECOT. ECOT argues the adoption of that recommendation is invalid because it was made in violation of Ohio's Open Meetings Act, as codified in R.C. §121.22.

In its June 30, 2017 First Amended Complaint, ECOT argues BOE "engaged in no meaningful deliberation or substantive discussion of the matter on the record during the public BOE meeting held on June 12, 2017," during which meeting BOE voted to adopt the hearing officer's report and recommendation. (Amended Complaint at ¶1.) ECOT argues "Ohio courts have held that the absence of an actual deliberation at a public meeting is evidence that the public body impermissibly deliberated in violation of the Ohio Meetings Act." (Id.) ECOT argues BOE further violated the Open Meetings Act by engaging in "last-minute manipulation of the June 12-13, 2017 BOE meeting agenda by conspicuously removing – both in paper copies handed out at the meeting and online – an agenda item that originally provided for a 'non-public' discussion of pending 'administrative' proceedings – i.e., the ECOT clawback matter." (Id.) ECOT contends the removal of the item from the agenda signals that BOE either impermissibly folded the "non-public" session into its executive session with ODE's counsel or that it simply did not need to hold a "non public" session because it already impermissibly deliberated prior to the meeting. ECOT alleges BOE

members engaged in such deliberation and decision-making at the June 11, 2017 Board dinner and ice breaker activities. ECOT alleges BOE violated the Open Meetings Act by engaging in non-public deliberations (Count I), by discussing the subject of the hearing officer's resolution during the executive session with counsel (Count II), and by conducting public meetings without providing reasonable notice of the same pursuant to R.C. §121.22(F) (Count III).

The Court notes there is pending litigation between ECOT and ODE related to ODE's method of determining and evaluating ECOT's full-time equivalency ("FTE") funding. ECOT maintains the standard used by ODE to determine ECOT's FTE funding is contrary to a 13-year practice and is in violation of ODE's obligation to comply with R.C. §3301.13 and R.C. §3314.08. That issue was decided by Judge French, whose decision was appealed to the Tenth District Court of Appeals, and that matter is not the subject of this case. The issue in this case is whether the BOE, who is not a party to the other litigation, violated the Open Meetings Act in the manner in which it adopted the hearing officer's decision related to the method of determining ECOT's FTE funding.

In its Motion for Judgment on the Pleadings, BOE argues it is entitled to judgment on the pleadings in its favor as a matter of law because the Open Meetings Act does not apply to BOE when it engages in quasi-judicial functions, as it did when it decided whether to adopt the hearing officer's report and recommendation. BOE explains that the hearing officer presided over a ten-day hearing that spanned the period of December 5, 2016, to February 1, 2017, related to ECOT's R.C. §3314.08(K)(2)(a) appeal. BOE contends notice of the hearing was provided to all prior to the hearing, and ECOT participated in the hearing and presented over two thousand exhibits related to the FTE funding matter. On May 10, 2017, the hearing officer issued a 100-page report, recommending that the State of Ohio recover $60 million in funds previously awarded to ECOT.

The hearing officer's report and recommendation was then slated for BOE's final adjudication at the June 12, 2017 meeting.

BOE argues notice of the June 12, 2017 meeting was posted on the ODE website as of June 8, 2017. Soon after the meeting began, BOE adjourned into executive session to conference with its legal counsel about personnel matters and pending or imminent court actions. After BOE reconvened the public meeting, its legal counsel, Diane Lease, gave a six-minute presentation[1] related to BOE's consideration of the ECOT resolution. BOE argues that, later on during the meeting, it spent nine minutes[2] considering the hearing officer's decision related to the ECOT resolution and it ultimately decided that ECOT was overpaid by $60 million for the 2015-2016

[1] At the beginning of the June 12, 2017 BOE meeting, BOE legal counsel Diane Lease explained that on the agenda was BOE's review of the hearing officer's decision related to ODE's determination that ECOT was overpaid money for the 2015-2016 academic year. Ms. Lease explained that BOE received a copy of the decision, which was made after a ten-day informal evidentiary hearing pursuant to R.C. §3314.08(K). She further explained that the hearing officer certified that decision to BOE, that ECOT filed eleven objections challenging the officer's decision, and that BOE has the authority to review the decision and either accept it or reject it and issue its own decision. Ms. Lease noted that the hearing officer gave two alternative amounts related to the overpayment. While ECOT initially did not give any durational data related to the 2015-2016 academic year, ODE gave credit to the durational data that ECOT provided pursuant to the common pleas court's order and relied on that data to determine the FTE funding to which ECOT is entitled. Ms. Lease advised the BOE that the hearing officer gave two overpayment options: 1.) if the FTE funding determination is based solely on the information ECOT gave in the common pleas court action, then ECOT was overpaid by $64,054,630.00 for the 2015-2016 academic year; or 2.) if the BOE gives ECOT credit for additional data it provided during the administrative hearing process (data that ECOT had not provided in response to the common pleas court's order), then ECOT was overpaid by $60,350,791.00 for the 2015-2016 academic year. Ms. Lease explained that BOE is free to consider ECOT's objections either separately or collectively, and is free to accept or reject the hearing officer's decision, but if it elects to accept the decision, it should make clear which of the two alternative amounts it is accepting.

[2] During the June 12, 2017 meeting, BOE members discussed publicly a resolution to accept the hearing officer's recommendation that ODE recover from ECOT $64 million in overpayments. BOE members, for nine minutes, discussed whether the proper amount of overpayments should be $64 million or $60 million. One member indicated the amount should be $64 million because ECOT "cheated the children and the taxpayers" and it should therefore pay all of the money back. Another member indicated the amount should be $60 million because, based on her reading of the officer's report, additional material was presented to the hearing officer and the amount was changed from $64 million to $60 million. At that point Ms. Lease advised that the hearing officer's job was to review ODE's FTE funding determination and either affirm or modify it, so the hearing officer gave BOE two alternatives: either uphold ODE's determination of $64 million or reduce it to $60 million. At that point, a member moved to amend the resolution to indicate the overpayment was $60 million. The amendment to the resolution passed by a vote of 14 to four. Then, by a vote of 16 to one, with one abstention, the resolution, as amended, also passed.

academic year, accepting one of the two alternative overpayment amounts determined by the hearing officer.

BOE argues Count I of ECOT's First Amended Complaint fails to present a viable claim that BOE conducted non-public deliberations during the June 12, 2017 meeting in violation of the Open Meetings Act. First, BOE argues that it did deliberate publicly during the June 12, 2017 meeting for nine minutes before taking a vote on a resolution to adopt the hearing officer's decision. BOE argues that, while ECOT "may dislike the degree of deliberation involved and the result of those deliberations *** BOE complied with R.C. 121.22, though its deliberations on the ECOT resolution were not even subject to the statute's requirements." (BOE Motion for Judgment on the Pleadings, at 6.) BOE contends the R.C. §3314.08(K)(2) hearing related to ECOT's FTE funding constituted a quasi-judicial hearing, not a meeting, and BOE was therefore removed from the Open Meetings Act's purview when it deliberated on the hearing officer's decision. BOE maintains the Open Meetings Act does not apply to quasi-judicial proceedings, citing to *State ex rel. Ross v. Crawford County Board of Elections*, 125 Ohio St.3d 438, 2010-Ohio-2167, 928 N.E.2d 1082 (2010), in support thereof. BOE explains that acts by administrative agencies are quasi-judicial in nature when they involve the exercise of discretion and they require notice, hearing and the opportunity to present evidence, citing to *M.J. Kelley Co. v. City of Cleveland*, 32 Ohio St.2d 150, 290 N.E.2d 562 (1972), and *Union Title Co. v. State Board of Education*, 51 Ohio St.3d 189, 555 N.E.2d 931 (1990).

BOE argues the statutory procedure set forth in R.C. §3314.08(K)(2) satisfies the elements for a quasi-judicial proceeding because it provides for a notice, a hearing, the presentation of evidence and a final determination. BOE contends that, after providing ECOT with notice of a hearing and after allowing it to participate in the ten-day hearing and present evidence, the hearing

officer made a recommendation related to ECOT's FTE funding. BOE argues it then reviewed the hearing officer's recommendation at its June 12, 2017 meeting and voted to adopt the recommendation, resulting in a final adjudication of the funding issue pursuant to R.C. §3314.08(K)(2)(d). Because it's review of the hearing officer's recommendation was a continuation of the quasi-judicial proceeding, BOE argues its deliberations on the funding issue were exempt from the Open Meetings Act and ECOT's argument that BOE violated the Open Meetings Act by deliberating in a non-public session (Count I) fails as a matter of law.

BOE argues Count II and Count III of ECOT's First Amended Complaint likewise fail as a matter of law. It explains that it properly participated in an executive session with its legal counsel during the June 12, 2017 meeting, as R.C. §121.22(G)(3) allows for a public body to recess into an executive session to consult with legal counsel on disputes "that are the subject of pending or imminent court action." While ECOT acknowledges that there is pending litigation involving ECOT and ODE, it maintains the actions do not involve BOE and therefore there was no pending legal action involving BOE such that it could consult an attorney with respect to the same. BOE argues, however, that it is a statutorily-named part of ODE and BOE could, as the governing board of ODE, consult with an attorney related to pending or imminent legal action involving its administrative unit, ODE. Finally, with respect to Count III related to the lack of proper notice of the June 12, 2017 meeting, BOE argues it did provide reasonable notice of its meeting, advising the Court that the notice was published on June 8, 2017, informing the public that a meeting would be held on June 12, 2017, starting at 8:00 a.m. at the ODE headquarters. BOE argues ECOT fails to identify what about that notice was deficient and that claim must also fail as a matter of law.

In its Memorandum Contra BOE's Motion for Judgment on the Pleadings, ECOT argues judgment on the pleadings is not appropriate. ECOT argues BOE is bound by the admissions of its

legal counsel, Diane Lease, made in a letter dated May 19, 2017, that the June 12, 2017 meeting was not a hearing pursuant to R.C. §3314.08(K) because the statute contemplates a single hearing and that hearing had already taken place in front of the hearing officer. ECOT argues BOE "specifically proceeded as though its compliance with the Act (*i.e.*, public notice, agenda, public meeting and public vote) was required in considering the challenged resolution" but BOE "failed as to the most important element: public deliberation." (ECOT Memo. Contra, at 2-3.)

ECOT argues BOE's consideration and approval of the hearing officer's recommendation was not quasi judicial in nature because R.C. §3314.08(K) does not provide for the presentation of evidence but only provides for an "informal hearing." ECOT cites to a number of cases including *State ex rel. Municipal Construction Equipment Operators' Labor Council v. Cleveland*, 141 Ohio St.3d 113, 2014-Ohio-4364, 22 N.E.3d 1040 [redacted] *ate ex rel. Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, in su[redacted]f its argument that whether a proceeding is quasi judicial in nature depends on what the law requires the public body to do and not what the public body actual does.

ECOT next argues that BOE's adoption of the hearing officer's recommendation was a policy decision that cannot be characterized as quasi-judicial in nature. ECOT explains that is so because BOE did not itself hold the informal hearing or provide ECOT with an opportunity to present evidence but that was done by the hearing officer instead. Therefore, ECOT's logic continues, BOE was free to consider any factors, whether they were a part of the record or not, and issue its own decision unrelated to the hearing officer's recommendation. ECOT argues Ms. Lease "made this clear in scripted remarks to the Board," referring to Exhibit H attached to its First Amended Complaint and Memorandum Contra. ECOT supports its argument with references to a number of cases outside of the Tenth Appellate District. ECOT also argues that, even if BOE was

allowed to proceed in a quasi-judicial capacity, it is bound by Ms. Lease's statements that the deliberations related to the hearing officer's recommendation should be made as a part of the public meeting.

ECOT argues its First Amended Complaint contains allegations that state viable claim for a violation of the Open Meetings Act. It argues that the following allegations support such a finding: 1.) BOE's president engaged in pre-meeting polling of Board members with respect to their planned votes (Complaint, at ¶45); 2.) BOE engaged in suspicious last minute manipulation of the meeting agenda by deleting the "non public" information gathering session from the agenda (Id., at ¶¶27-32); 3.) despite being presented with hundreds of pages of objections by ECOT, BOE engaged in minimal deliberations with respect to the funding recommendation (Id., at ¶42); and 4.) Ms. Lease repeatedly advised BOE about the funding recommendation prior to the June 12, 2017 meeting.

ECOT argues that any deliberations outside the public meeting result in a violation of the Open Meetings Act. It contends that the lack of meaningful deliberations during the June 12, 2017 meeting about such an important public issue gives rise to an inference that deliberations about the issue took place outside of the public meeting, citing to *Tobacco Use Prevention & Control Foundation Board of Trustees v. Boyce*, 185 Ohio App.3d 707 (10th Dist. 2009), and *Wheeling Corporation v. Ohio River RR Co.*, 147 Ohio App.3d 460 (10th Dist. 2001), in support of its argument. ECOT further argues that straw-polling of BOE members also constitutes a violation of the Open Meetings Act, and it matters not whether that was done in person or via e-mail or telephone.

In its Reply, BOE argues ECOT has taken Ms. Lease's May 19, 2017 letter out of context and when one reads the letter in context it will become clear that the letter raises questions and does not make any concessions related to whether quasi-judicial conduct took place at the June 12, 2017

meeting. Therefore, the argument continues, Ms. Lease did not make any admissions by which BOE would now be bound.

BOE argues that, whether quasi-judicial conduct took place is a question of law for the Court to decide based on the parties' pleadings, their incorporated documents and R.C. §3314.08(K). BOE contends the statute unequivocally contemplates a quasi judicial proceeding through an informal hearing and the fact it does not expressly say "evidence" does not negate that concept. BOE argues ECOT was afforded an opportunity to present evidence and it did present thousands of pages of exhibits and evidence, and the Court should not be misled by ECOT's argument that, since the statute does not say "opportunity to present evidence" then that means the proceeding was not quasi-judicial in nature.

BOE also argues the fact that it voluntarily chose to comply with R.C. §121.22, even though it was not subject to the same, does not negate the fact that its final adjudication of ECOT's FTE funding issue was a quasi-judicial determination. BOE notes ECOT appears to have conceded the fact that BOE complied with the Open Meetings Act as it relates to the executive session claim and the meeting notice claim, as it states at pages 2-3 of its Memorandum Contra that BOE failed to comply with the Open Meetings Act only as to "the most important element: public deliberation." However, BOE also notes ECOT appears to then concede that BOE did conduct public deliberations, as it no longer claims that BOE did not conduct any public deliberations but now claims that BOE did not hold "meaningful" public deliberations, apparently being dissatisfied with the degree or extent of the deliberations. With respect to the argument that BOE's conduct was not quasi-judicial because the hearing officer, and not BOE, conducted the informal hearing, BOE argues that argument ignores the statute's language that either the BOE or its designee can conduct the informal hearing. BOE argues it acted through the hearing officer and its decision to adopt the

hearing officer's recommendation was quasi-judicial in nature, citing to *TBC Westlake, Inc. v. Hamilton County Board of Revision*, 81 Ohio St.3d 58 (1998), in support thereof.

LAW & ANALYSIS

I. MOTION FOR JUDGMENT ON THE PLEADINGS

A motion for judgment on the pleadings pursuant to Civ.R. 12(C) has been characterized as "a vehicle for raising the several defenses contained in Civ.R. 12(B) after the close of the pleadings." *Burnside v. Leimbach*, 71 Ohio App.3d 399, 402, 594 N.E.2d 60 (10th Dist. 1991), citing *Fischer v. Morales*, 38 Ohio App.3d 110, 111, 526 N.E.2d 1098 (10th Dist. 1987).

A Civ.R. 12(C) motion for judgment on the pleadings presents only questions of law. *Fontbank, Inc. v. Compuserve, Inc.*, 138 Ohio App.3d 801, 807, 742 N.E.2d 674 (10th Dist. 2000), citing *Compton v. 7-Up Bottling Co./Brooks Beverage Mgt.*, 119 Ohio App.3d 490, 492, 695 N.E.2d 818 (10th Dist. 1997). Thus, when reviewing a motion for judgment on the pleadings, courts are "restricted solely to the allegations in the pleadings, as well as any material incorporated by reference or attached as exhibits to those pleadings." *Curtis v. Ohio Adult Parole Authority*, 10th Dist. No. 04AP-1214, 2006-Ohio-15, at ¶24, citing *Drozeck v. Lawyers Title Ins. Corp.*, 140 Ohio App.3d 816, 820, 749 N.E.2d 775 (8th Dist. 2000); *Peterson v. Teodosio*, 34 Ohio St.2d 161, 165, 297 N.E.2d 113 (1973); Civ.R. 7(A); Civ.R. 10(C).

When assessing the merits of a Civ.R. 12(C) motion, trial courts are to construe all material allegations in the complaint, with all reasonable inferences to be drawn therefrom, as true and in favor of the party against whom the motion is made. *Peterson*, 34 Ohio St.2d at 165-166. Accordingly, a complaint is properly dismissed based on a Civ.R. 12(C) motion when a court "(1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the non-moving party as true, and (2) finds beyond doubt, that the

plaintiff could prove no set of facts in support of his claim that would entitle him to relief." *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996), citing *Lin v. Gatehouse Constr. Co.*, 84 Ohio App.3d 96, 99, 616 N.E.2d 519 (8th Dist. 1992).

II. OHIO'S OPEN MEETINGS ACT AND QUASI-JUDICIAL PROCEEDINGS

Ohio's Open Meetings Act, as codified in R.C. §121.22 provides, in pertinent part, as follows:

> (A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.
>
> ***
>
> (G) Except as provided in divisions (G)(8) and (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:
>
> ***
>
> (3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;
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> ***
>
> (H) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

However, as the Ohio Supreme Court has explained,

> " *** a quasi-judicial hearing is not a meeting for purposes of this [R.C. 121.22] definition, and hence is not subject to the open meeting requirements." Fenton and McNeil, Ohio Administrative Law Handbook and Agency Directory (2009-2010 Ed.), Section 8:18. That is, "the Sunshine Law does not apply to adjudications of disputes in

> quasi-judicial proceedings." *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision* (1998), 81 Ohio St.3d 58, 62, 1998 Ohio 445, 689 N.E.2d 32.

State ex rel. Ross v. Crawford County Board of Elections, 125 Ohio St.3d 438, 2010-Ohio-2167, 928 N.E.2d 1082, ¶25.

A quasi-judicial hearing is one where a public body exercises discretion in adjudicating a justiciable conflict that requires evaluation and resolution, having provided notice and a hearing. See, *TBC Westlake, Inc. v. Hamilton County Board of Revision*, 81 Ohio St.3d 58, 62, 689 N.E.2d 32 (1998). As the Ohio Supreme Court explained in *Union Title Co. v. State Board of Education*, 51 Ohio St.3d 189, 555 N.E.2d 931 (1990),

> In explaining the distinction between quasi-legislative and quasi-judicial proceedings, this court stated in *Rankin-Thoman, Inc.* v. *Caldwell* (1975), 42 Ohio St. 2d 436, 438, 71 O.O. 2d 411, 413, 329 N.E. 2d 686, 688, that "[q]uasi-judicial proceedings require notice, hearing and the opportunity for introduction of evidence. * * * Quasi-legislative proceedings do not. More frequently, however, courts have examined the nature of the proceedings themselves, to ascertain whether they involve the making or revising of rules, rather than the application of rules in an adjudicatory manner.

Union Title Co. v. State Board of Education, 51 Ohio St.3d at 191.

With respect to annual enrollment reports and payments to community schools, R.C. §3314.08(K) provides as follows:

> **(1)** If the department determines that a review of a community school's enrollment is necessary, such review shall be completed and written notice of the findings shall be provided to the governing authority of the community school and its sponsor within ninety days of the end of the community school's fiscal year, unless extended for a period not to exceed thirty additional days for one of the following reasons:
>
> > **(a)** The department and the community school mutually agree to the extension.
> >
> > **(b)** Delays in data submission caused by either a community school or its sponsor.
>
> **(2)** If the review results in a finding that additional funding is owed to the school, such payment shall be made within thirty days of the written notice. *If the review*

results in a finding that the community school owes moneys to the state, the following procedure shall apply:

(a) Within ten business days of the receipt of the notice of findings, the *community school may appeal* the department's determination *to the state board of education or its designee*.

(b) *The board or its designee shall conduct an informal hearing* on the matter within thirty days of receipt of such an appeal *and shall issue a decision* within fifteen days of the conclusion of the hearing.

(c) *If the board has enlisted a designee* to conduct the hearing, the designee shall certify its decision to the board. The board *may accept the decision of the designee or may reject the decision of the designee* and issue its own decision on the matter.

(d) Any decision made by the board under this division is *final*.

(3) If it is decided that the community school owes moneys to the state, the department shall deduct such amount from the school's future payments in accordance with guidelines issued by the superintendent of public instruction.

(Emphasis added.)

R.C. §3314.08(K) clearly provides for an informal hearing to take place, either before the BOE or its designee, in the event a community school appeals a determination by the DOE that the community school owes money to the state. In the case at bar, a determination was made by ODE that ECOT owes the state money, which prompted ECOT to appeal that determination to BOE. A ten day hearing was held in front of a designee of BOE, i.e., the hearing officer, and the hearing officer then issued a 100-page report and recommendation based on the evidence presented at that hearing. Although the statute does not expressly provide for the filing of objections to the hearing officer's decision, it appears ECOT then filed 140 pages of objections to the hearing officer's decision, and both the decision and the objections were in front of BOE at its June 12, 2017 meeting, slated for final adjudication.

The procedure outlined by R.C. §3314.08(K) contemplates a quasi-judicial proceeding as it addresses the steps to be followed when adjudicating a justiciable conflict that requires evaluation and resolution, after notice and a hearing. The fact that R.C. §3314.08(K) does not expressly state "notice" or "presentation of evidence" does not detract from the quasi-judicial nature of the proceeding as neither side disputes that notice and a hearing were provided. The Court finds ECOT's reliance on *State ex rel. Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, in support of its argument that, just because R.C. §3314.08(K) does not expressly state "notice" and "opportunity to present evidence," then the procedure outlined in the statute is not quasi-judicial in nature, is misplaced. Unlike the language in R.C. §3314.08(K) that provides for an informal hearing – which hearing did take place – the Ohio Supreme Court in *State ex rel. Zeigler v. Zumbar* found there was no statute that required the board of commissioners "to conduct a hearing resembling a judicial trial before it removed [Zeigler] from the office of county treasurer pursuant to R.C. 321.38." The High Court then explained that

> The mere fact that the board of commissioners gave Zeigler limited notice of the August 23 hearing and conducted the hearing in a manner resembling a judicial trial does not mean that it exercised the quasi-judicial authority required to make the removal order appealable under R.C. 2506.01. The *requirement* of conducting a quasi-judicial hearing is the key point of exercising that authority. *State ex rel. Scherach v. Lorain Cty. Bd. of Elections*, 123 Ohio St.3d 245, 2009 Ohio 5349, 915 N.E.2d 647, ¶ 23 (fact that board of elections held a protest hearing resembling a judicial trial even though not required to do so did not constitute the exercise of quasi-judicial authority).

State ex rel. Zeigler v. Zumbar, 2011-Ohio-2939, at ¶21.

In the case at bar, the requirement of conducting a quasi-judicial hearing is clearly spelled out in R.C. §3314.08(K). The statute expressly provides for a hearing.

The Court is likewise not persuaded by ECOT's argument that, because the informal hearing was in front of the hearing officer and not BOE, that BOE did not engage in quasi-judicial conduct when it decided to accept the hearing officer's decision, which was based on that

informal hearing, and render a final decision on the issue of determining ECOT's FTE funding. R.C. §3314.08(K) provides that the informal hearing can be either in front of BOE or a hearing officer/designee. The fact that the quasi-judicial proceeding began in front of a hearing officer and culminated in front of BOE does not negate the fact that what occurred was quasi-judicial in nature. BOE, after an informal hearing that was held in front of its designee, at which hearing ECOT presented thousands of pages of exhibits and evidence, exercised its discretion in deciding a justiciable conflict that requires evaluation and resolution. BOE engaged in quasi-judicial conduct when deciding to adopt the hearing officer's decision that ECOT was overpaid by $60 million for the 2015-2016 academic year. Therefore, its deliberations that led to the decision were quasi-judicial in nature and not within the purview of R.C. §121.22.

The Court is also not persuaded by ECOT's argument that BOE is bound by Ms. Lease's statement in her May 19, 2017 letter that the June 12, 2017 meeting was not a hearing, and that, according to ECOT, the conduct that took place on June 12, 2017 related to ECOT's FTE funding issue was not quasi-judicial in nature. Indeed, the Court agrees with Ms. Lease's statement that the June 12, 2017 meeting was not a hearing pursuant to R.C. §3314.08(K)(2) because the hearing set forth in that statute had already occurred over a ten day period spanning December 5, 2016, to February 1, 2017. The statute provides that BOE or its designee shall hold an informal hearing and that hearing had already taken place. The hearing officer had already issued a report and recommendation based on the evidence presented during that hearing. However, the June 12, 2017, meeting was a continuation of the quasi-judicial procedures that were set in motion by the ten-day hearing. Once the hearing officer issued a decision, it was up to BOE to adopt that decision. While the June 12, 2017 meeting was not a hearing at which time ECOT could, yet again, present evidence related to the FTE funding issue, it does not logically follow that the BOE's decision

whether to adopt or reject the hearing officer's report was therefore not a quasi-judicial proceeding. According to the statute, any decision made by BOE is final. Therefore, to finally adjudicate the funding issue, BOE could have presided over the informal hearing itself and it could have then issued a decision, which would have been final, or it could have, as occurred in this case, had the informal hearing take place in front of its designee, who would then issue a decision and certify it to BOE, which would then require BOE to either accept the designee's decision or reject it and issue its own decision in order to finally adjudicate the issue.

The fact that BOE voluntarily chose to deliberate on the R.C. §3314.08(K) funding determination in public at its June 12, 2017 meeting and address whether the proper amount of overpayment to ECOT should be $64 million or $60 million does not detract from the fact that BOE engaged in quasi-judicial conduct while doing so. Because the Open Meetings Act does not apply to quasi-judicial proceedings like the one in which BOE was engaged in, the Court finds ECOT's First Amended Complaint alleging violations of the Open Meetings Act fails as a matter of law.

In light of the foregoing, the Court **GRANTS** BOE's June 28, 2017 Motion for Judgment on the Pleadings, **DISMISSES AS MOOT** ECOT's June 20, 2017 Motion for Expedited Discovery, and **DISMISSES AS MOOT** ECOT's July 3, 2017 Motion for Preliminary Injunction.

IT IS SO ORDERED.

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Isaac Wiles Burkholder & Teetor, LLC
Counsel for Defendant

Franklin County Court of Common Pleas

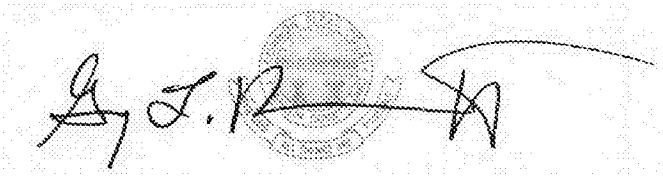
Date: 07-12-2017

Case Title: ELECTRONIC CLASSROOM OF TOMORROW -VS- OHIO STATE BOARD EDUCATION

Case Number: 17CV005315

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 17CV005315

Case Style: ELECTRONIC CLASSROOM OF TOMORROW -VS- OHIO STATE BOARD EDUCATION

Case Terminated: 18 - Other Terminations

Motion Tie Off Information:

1. Motion CMS Document Id: 17CV0053152017-06-2899840000
   Document Title: 06-28-2017-MOTION FOR JUDGMENT ON PLEADINGS - DEFENDANT: OHIO STATE BOARD EDUCATION
   Disposition: MOTION GRANTED

2. Motion CMS Document Id: 17CV0053152017-07-0399960000
   Document Title: 07-03-2017-MOTION FOR PRELIMINARY INJUNCTION - PLAINTIFF: ELECTRONIC CLASSROOM OF TOMORROW
   Disposition: MOTION IS MOOT

3. Motion CMS Document Id: 17CV0053152017-06-2099980000
   Document Title: 06-20-2017-MOTION - PLAINTIFF: ELECTRONIC CLASSROOM OF TOMORROW - EXPEDITED DISCOVERY
   Disposition: MOTION IS MOOT