

# Libertarian Party of Central New Jersey

---

Open Government Task Force  
John Paff, Task Force Chairman  
P.O. Box 5424  
Somerset, NJ 08875-5424  
December 27, 2005

Ann R. Rubin, Esq., Assistant Prosecutor  
Union County Prosecutor's Office  
32 Rahway Avenue  
Elizabeth, NJ 07202-2115

RE: Elizabeth Board of Education  
Open Public Meetings Act

Dear Assistant Prosecutor Rubin:

The Libertarian Party of Central New Jersey has created an Open Government Task Force of which I am the chairman. The Task Force's goal is to bring all local government agencies in our tri-county area (Somerset, Middlesex and Union Counties) into full compliance with the Open Public Meetings Act, Open Public Records Act and other open-government statutes and regulations.

The Open Public Meetings Act, N.J.S.A. 10:4-17<sup>1</sup>, empowers your office to enforce monetary penalties against officials who knowingly violate the Act. We assert that the Elizabeth Board of Education has indeed violated the Act and ask that you investigate the following matters and take whatever action you deem appropriate.

We base our complaint upon the following documents, all of which are attached as exhibits:

- March 20, 2003 Public Meeting Minutes, pages 1 and 7 (Exhibit A)
- March 20, 2003 Closed Meeting Minutes, 2 pages (Exhibit B)
- April 29, 2004 Public Meeting Minutes, page 15 (Exhibit C)
- April 29, 2004 Closed Meeting Minutes, 1 page (Exhibit D)
- June 28, 2005 Public Meeting Minutes, pages 1 and 13 (Exhibit E)
- June 28, 2005 Closed Meeting Minutes, 4 pages (Exhibit F)
- July 21, 2005 Public Meeting Minutes, pages 1 and 9 (Exhibit G)
- August 18, 2005 Public Meeting Minutes, pages 1 and 10 (Exhibit H)
- September 2005 Public Meeting Minutes, page 12 (Exhibit I)

---

<sup>1</sup> We specifically reserve our right to also enforce the Board's future compliance through the civil remedies provided by N.J.S.A. 10:4-16.

**I. The Board is required to provide more detail in its resolutions authorizing closed sessions.**

I examined several resolutions, as required by the Open Public Meetings Act, N.J.S.A. 10:4-13<sup>2</sup>, passed by the Board before going into closed session. Typical of those resolutions is the one passed at the beginning of the August 18, 2005 public meeting<sup>3</sup> which states that the closed session was being called "specifically to conduct interviews, for discussion of personnel, legal matters, contracts, etc." This form of resolution,<sup>4</sup> however, is deficient in that it does not inform the public, with any degree of specificity, of the matters to be discussed during closed session.

In Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO, Local 2364 v. Trenton State College Bd. of Trustees, 284 N.J. Super. 108 (L.1995), the Court found that the defendant Board's practice of passing a very general resolution whenever it desired to go into closed session did not comply with Open Public Meetings Act in that it did not "afford the public any real knowledge of the Board's executive-session proceedings." The Court, at page 113, further stated:

The Board's notice is framed so broadly that it does no more than tell the public that there will be a meeting in executive session. The notice merely recites the litany of exceptions which would allow it to proceed in closed session. No attempt is made to indicate which one or ones of these exceptions are relevant to a particular closed-session proceeding. This complete failure to delineate which subject or subjects will be discussed in closed session does not comply with the statutory mandate that the public know the general nature of the agenda.

To paraphrase the highest court of another state, a body which only announces "legal matters" or "personnel negotiations" for going into executive session has said nothing. It might have well have stated to the audience, "Ladies and gentlemen, we are going into executive session," and stopped there. Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 114 (MS 1989).

Accordingly, we assert that the form of resolution used by the Board is not specific enough to comply with the Open Public Meetings Act.

---

<sup>2</sup> N.J.S.A. 10:4-13 states: "No public body shall exclude the public from any meeting to discuss any matter described in subsection [10:4-12] until the public body shall first adopt a resolution, at a meeting to which the public shall be admitted: a. Stating the general nature of the subject to be discussed; and b. Stating as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public."

<sup>3</sup> See Exhibit H1

<sup>4</sup> Similar, albeit not identical, resolutions are present on Exhibits A1, A2, C, E1, E2, G1, G2, H2 and I.

**II. Some of the matters discussed in closed session do not appear to be justified under any of the exceptions contained in N.J.S.A. 10:4-12(b).**

"A public body may exclude the public **only** from that portion of a meeting at which the public body discusses" certain, enumerated exceptions contained within the Open Public Meetings Act. N.J.S.A. 10:4-12(b), emphasis supplied. These statutory exceptions are to be strictly construed against closure and in favor of governmental bodies conducting their business in public. Hartz Mountain Industries, Inc. v. New Jersey Sports and Exposition Authority, 369 N.J. Super. 179, 186 (App. Div.), certif. denied, 182 N.J. 147 (2004).

In several cases, however, the Board's closed session minutes suggest that topics may have been discussed in private that should have been discussed in public. Following are some examples:

1. "Mr. Dunn reviewed charts outlining health and safety and renovations in process in various schools." Exhibit B2.
2. "Mr. Dunn notified the Board that he sent letters to parents notifying them of procedure to be followed in case of an emergency. He also stated that principals would be sending letters to parents." Exhibit B2.
3. "Mr. Fajardo requested that the check to be paid to the City of Elizabeth for taxes be held and not mailed. He noted that he and Mrs. Cascio would deliver the check to the tax office." Exhibit D.
4. "Mr. Shapiro advised the Board of the Mid-July anticipated list of construction projects that will continue by the SCC, mentioning that it will be a fraction of the original plan." Exhibit F2.

Accordingly, we assert that the Board violated the Act by discussing matters in private that were required have been discussed with the public in attendances.

**III. Some cases mentioned in the closed session minutes identify the parties by their initials rather than by their full names.**

At its closed meeting of March 20, 2003<sup>5</sup>, for example, the Board discussed settlement of four employee matters which were apparently the subject of litigation. The employees in those matter, however, are identified only by their initials<sup>6</sup> instead of their full names.

In each of these four cases, the Board voted to either authorize the settlement or to put the settlement recommendation on the agenda for public action. Since the

---

<sup>5</sup> Exhibits B1 and B2

<sup>6</sup> The employees are referred to as B.M., K.B., E.T. and R.D.

negotiations had already been completed by the time the March 20, 2003 closed meeting minutes were drafted, it is difficult to understand why the full names of the employees with whom the Board had settled could not be disclosed in the meeting minutes.

In Payton v. New Jersey Turnpike Authority, 148 N.J. 524 (1997) the court found that the litigation and personnel exceptions, set forth in N.J.S.A. 10:4-12(b)7 and N.J.S.A. 10:4-12(b)8, justified alteration of closed session minutes only "in some exceptional cases" and that "any confidentiality concerns are moot given the public announcement of [the employees'] punishments and plaintiff's having filed suit." Id. at 557-58.

Since the four cases addressed in the Board's minutes dealt with compensation cases filed before the workers compensation court, the docket and records of which appear to be public<sup>7</sup>, there appears to be no justification for the Board's suppression of the employees' names from the minutes. We assert, therefore, that the Board violated the Open Public Meetings Act by suppressing those employees' names.

Thank you for your attention to this matter. We look forward to learning the results of your investigation and what action, if any, that you have elected to take.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Paff", written over a vertical line.

John Paff  
Task Force Chairman

---

<sup>7</sup> N.J.S.A. 34:15-59 states: "Docket; records. The secretary of the [Workers' Compensation Bureau] shall keep a docket in which shall be entered the title of each cause, the date of the determination thereof, the date of appeal, if any, and the date on which the record in case of appeal was transmitted to the appellant. The secretary shall also file the record of each case left with him by the official conducting the hearing, and shall keep a card index of such record in such manner as to afford ready reference thereto. Such records shall be open to the inspection of the public."

BOARD OF EDUCATION  
(Official)

March 20, 2003  
Elizabeth, New Jersey

The regular meeting of the Board of Education was called on March 20, 2003, at 5:30 p.m., in the Board of Education Meeting Room, 500 North Broad Street, Elizabeth, New Jersey.

President Cascio presented the following statement at 5:40 p.m.

"Ladies and Gentlemen, good evening. This is a regular meeting of the Board of Education. Pursuant to New Jersey Statutes and the rules adopted by the Board of Education, notice of this meeting was sent to The Home News Tribune, The Star Ledger, and Cablevision of Elizabeth on Friday, March 14, 2003. In addition, this notice is posted on the Bulletin Board in the lobby of 500 North Broad Street, and pursuant to this act, a copy has been filed with the City Clerk of Elizabeth."

Present: Messrs. Burgos, Da Silva, Mrs. Duran, Messrs. Fajardo (arr. 6:12 p.m.), Ford, Dr. Proctor, Mrs. Puglese (arr. 6:40 p.m.), Mrs. Wilcots, Mrs. Cascio - 9

Absent: None

Pledge of Allegiance

Mrs. Cascio called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically for an expulsion hearing, discussion of personnel legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Dr. Proctor, seconded by Mrs. Duran, to go into private session at 5:42 p.m.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Mr. Ford, Dr. Proctor, Mrs. Wilcots, Mrs. Cascio - 7

Negative: None

The Board reconvened in public at 7:03 p.m. to continue with the meeting and to take formal action.

Mrs. Cascio called for a moment of silence to pray for justice and peace in the world.

Robert Shapiro, Executive Director of the Watchung Conference presented the Jack von Bischoffshausen Most Outstanding Football Player in Elizabeth Memorial Award to outstanding lineman, Ginelle Saint Dic. William von Bischoffshausen, brother of the late Jack vonB, spoke about his brother who was a coach at the former Thomas Jefferson High School.

Ginelle thanked all concerned for the prestigious award.

Mrs. Cascio called upon citizens who wished to address the Board to come forward. She reminded the public that each speaker would be allowed three minutes to address the Board.

Resolution – Approval of Extension of Education Program

A motion was made by Mr. Ford, seconded by Dr. Proctor, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Messrs. Fajardo, Ford, Dr. Proctor, Mrs. Puglese, Mrs. Wilcots, Mrs. Cascio – 9

Negative: None

Resolution – Expulsion of Student – V.W.

A motion was made by Mr. Ford, seconded by Mrs. Duran, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Mr. Fajardo, Dr. Proctor, Mrs. Wilcots, Mrs. Cascio – 7

Abstention: Mr. Fajardo, Mrs. Puglese - 2

Negative: None

Mrs. Cascio called upon citizens who wished to address the Board to come forward. She reminded the public that each speaker would be allowed three minutes to address the Board.

Citizens who addressed the Board:

Felix Ramirez, 33 Scotland Road, noted that a student attending Elizabeth High School was accepted to go to a National Youth Forum for medicine in Washington, DC. He asked if funds were available for this trip.

Mr. Fajardo responded.

Dan Nozza, 1109 Applegate Avenue, commented on bills by Richard Shapiro, Esquire.

Since there were no other citizens to address the Board, Mrs. Cascio declared this portion of the public meeting closed.

Mrs. Cascio called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically for personnel matters, legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Mr. Ford, seconded by Mrs. Puglese, to go into private session at 8:30 p.m.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Messrs. Fajardo, Ford, Dr. Proctor, Mrs. Puglese, Mrs. Wilcots, Mrs. Cascio – 9

Negative: None

Mrs. Duran excused herself from the meeting at 9:30 p.m.

Mrs. Puglese excused herself from the meeting at 9:40 p.m.

The Board reconvened in public at 9:40 p.m. to take formal action.

APPROVED

4-10-03

BOARD OF EDUCATION  
PRIVATE SESSION

March 20, 2003

The Board went into private session at 5:42 p.m.

Present: Messrs. Burgos, Da Silva, Mrs. Duran, Messrs. Fajardo (arr. 6:12 p.m.), Ford, Dr. Proctor, Mrs. Puglese (arr. 6:40 p.m.), Mrs. Wilcots, Mrs. Cascio

Absent: None

A motion was made by Mr. Da Silva, seconded by Mr. Ford to place the expulsion of V.W. on the agenda in public session.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Mr. Ford, Dr. Proctor, Mrs. Wilcots, Mrs. Cascio — 7

Negative: None

Robert Murray, labor attorney, reviewed the case of B.M, teacher, and recommended that the Board enter into settlement agreement to restore sick days.

A motion was made by Mr. Ford, seconded by Dr. Proctor, to authorize the settlement.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Mr. Ford, Dr. Proctor, Mrs. Wilcots, Mrs. Cascio - 7

Negative: None

Alan L. Harwick, Esquire, discussed settlement of workers' compensation case in the matter of K.B. v Elizabeth Board of Education and asked for authorization to resolve the matter for no more than 45% of partial total disability.

A motion was made by Mr. Ford, seconded by Mrs. Duran, to grant the authorization to Mr. Harwick.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Mr. Ford, Dr. Proctor, Mrs. Wilcots, Mrs. Cascio - 7

Negative: None

Mr. Harwick discussed settlement of workers compensation case in the matter of E.T. vs. Elizabeth Board of Education and recommended settlement

A motion was made by Dr. Proctor, seconded by Mr. Ford, to place the recommendation on the agenda in public session for formal action.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Mr. Ford, Dr. Proctor, Mrs. Wilcots, Mrs. Cascio - 7

Negative: None

Mr. Harwick discussed settlement of workers compensation case in the matter of R.D. vs. Elizabeth Board of Education and recommended settlement Of \$5,301.59

A motion was made by Dr. Proctor, seconded by Mr. Ford, to place the recommendation on the agenda in public session for formal action.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Da Silva, Mrs. Duran, Mr. Ford, Dr. Proctor, Mrs. Wilcots, Mrs. Cascio - 7

Negative: None

Mr. Dunn reviewed charts outlining health and safety and renovations in process in various schools.

Mr. Dunn notified the Board that he sent letters to parents notifying them of procedure to be followed in case of an emergency. He also stated that principals would be sending letters to parents. He then explained the Emergency Crisis Plan.

Mr. Dunn notified the Board that an e-mail was received concerning site not suitable for school building. Consider using site for warehouse.

The Board reconvened in public session at 7:05 p.m. and returned to private session at 8:30 p.m.

#### Superintendent's Reports — Considerations and Use of Facilities

Mr. Dunn advised the Board that he would review requests for trips out of the City of Elizabeth on a weekly basis due to the crisis. The Board agreed with this procedure.

A motion was made by Mr. Ford, seconded by Mr. Da Silva to place this report on the agenda in public session for formal action. No objections. Carried.

A motion was made by Mr. Ford, seconded by Mr. Da Silva to approve transfers and include them in the Personnel Report, Leaves of Absence, etc. No objections. Carried.

The Board reconvened in public at 9:40 p.m. to continue with the meeting and to take formal action.

BOARD OF EDUCATION  
(Official)

April 29, 2004  
Elizabeth, New Jersey

Pastor Burgos called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically for discussion of personnel, legal matters, contracts. The Board will reconvene in public to take formal action.

A motion was made by Mrs. Cascio, seconded by Mr. Cedenno, to go into private session at 8:15 p.m.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenno, Da Silva, Fajardo, Miss Hawkins, Dr. Proctor, Mr. Whelan, Mrs. Wilcots – 9

Negative: None

The Board reconvened in public at 8:30 p.m. to continue with the meeting and to take formal action.

Resolution - Appointment of Auditor – Mendonca & Suarez

A motion was made by Mrs. Cascio, seconded by Mr. Cedenno, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenno, Da Silva, Fajardo, Miss Hawkins, Dr. Proctor, Mr. Whelan, Mrs. Wilcots - 9

Negative: None

On a motion by Mr. Fajardo, seconded by Mrs. Cascio, the meeting was adjourned at 8:40 p.m.

The motion was carried by the following vote:

Affirmative: Messrs. Burgos, Mrs. Cascio, Messrs. Cedenno, Da Silva, Fajardo, Miss Hawkins, Dr. Proctor, Mr. Whelan, Mrs. Wilcots – 9

Negative: None

Linda G. King  
Secretary-School Business Administrator

BOARD OF EDUCATION  
PRIVATE SESSION

April 29, 2004

The Board met in private session at 8:15 p.m.

Present: Pastor Burgos, Mrs. Cascio, Messrs. Ceden, Da Silva, Fajardo, Miss Hawkins, Dr. Proctor, Mr. Whelan, Mrs. Wilcots

Mr. Fajardo requested that the check to be paid to the City of Elizabeth for taxes be held and not mailed. He noted that he and Mrs. Cascio would deliver the check to the tax office.

A motion was made by Mr. Da Silva, seconded by Mr. Fajardo, to place the appointment of Auditor — Mendonca & Suarez on the agenda in public session for formal action. No objections. Carried.

By consensus, the appointment of Chief Medical Inspector will be made at a later date.

The Board returned to public session at 8:30 p.m. to continue the meeting and take formal action.

BOARD OF EDUCATION  
(Official)

June 28, 2005  
Elizabeth, New Jersey

The regular meeting of the Board of Education was called on June 28, 2005, at 5:30 p.m., in the Board of Education Meeting Room, 500 North Broad Street, Elizabeth, New Jersey.

Pledge of Allegiance

Vice President Da Silva presented the following statement at 5:50 p.m.

"Ladies and Gentlemen, good evening. This is a regular meeting of the Board of Education. Pursuant to New Jersey Statutes and the rules adopted by the Board of Education, notice of this meeting was sent to The Star Ledger, The Home News Tribune and Cablevision of Elizabeth on Friday, June 24, 2005. In addition, this notice is posted on the Bulletin Board in the lobby of 500 North Broad Street, and pursuant to this act, a copy has been filed with the City Clerk of Elizabeth."

Present: Pastor Burgos, Mrs. Cascio, Messrs. Cedenno, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo (6:30 p.m.) - 8

Absent: Mr. Gonzalez - 1

Pledge of Allegiance

Vice President Da Silva called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically to conduct interviews, for discussion of personnel, legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Mrs. Cascio, seconded by Pastor Burgos, to go into private session at 5:55 p.m.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenno, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan – 7

Negative: None

The Board reconvened in public at 7:40 p.m. to continue with the meeting and take formal action.

Pastor Cedenno offered an invocation.

Resolution – Charles Harris, Deceased

Mr. Fajardo read the resolution.

A motion was made by Mr. Fajardo, seconded by Pastor Burgos, that the resolution be adopted.

The motion was carried by the following vote;

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenno, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo – 8

Negative: None

Mr. Coute was referred to Mrs. Barrett.

Since there were no other citizens to address the Board, Mr. Fajardo declared this portion of the public meeting closed.

Pastor Burgos proposed that a Bible Study Course be offered as a literature course elective.

Resolution – Study of the Bible as an Elective Course

Pastor Burgos read the resolution.

A motion was made by Pastor Burgos, seconded by Mr. Cedenno, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenno, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo - 8

Negative: None

Mr. Fajardo called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically to conduct interviews, for discussion of personnel, legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Mrs. Cascio, seconded by Pastor Burgos, to go into private session at 9:07 p.m.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenno, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo – 8

Negative: None

Mr. Fajardo excused himself from the meeting at 9:40 p.m.

Mrs. Cascio excused herself from the meeting at 10:50 p.m.

The Board reconvened in public at 12:30 a.m. to continue with the meeting and take formal action.

A motion was made by Pastor Burgos, seconded by Mr. Cedenno, to approve the contract with MCCS to be included in the Award of Contracts Report.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Messrs. Cedenno, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan – 6

Negative: None

Resolution – Renewal of Insurance Coverage

A motion was made by Pastor Burgos, seconded by Mr. Cedenno, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Messrs. Cedenno, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan - 6

Negative: None

BOARD OF EDUCATION  
PRIVATE SESSION

June 28, 2005

The Board went into private session at 5:55 p.m.

Present: Pastor Burgos, Mrs. Cascio, Messrs. Cedenó, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo (arrived at 6:30 p.m.)

Acting Superintendent Munoz stated that he was recommending Harold E. Kennedy, Jr. for the position of School Business Administrator/Board Secretary. Mr. Munoz introduced candidate Harold E. Kennedy, Jr. who was then interviewed by members of the Board.

A motion was made by Pastor Burgos, seconded by Mrs. Cascio, to place the recommendation on the agenda at the public session for formal action.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenó, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan — 7

Negative: None

Mr. Munoz stated that he was recommending Jerome Dunn for the position of Principal of Robert Morris School No. 18. Mr. Munoz introduced candidate Jerome Dunn who was then interviewed by members of the Board.

A motion was made by Pastor Burgos, seconded by Ms. Hawkins, to place the recommendation on the agenda at the public session for formal action.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenó, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan — 7

Negative: None

Mr. Munoz stated that he was recommending Steven H. Liddawi for the position of Assistant Superintendent of Schools. Mr. Munoz introduced candidate Steven H. Liddawi who was then interviewed by members of the Board.

A motion was made by Mrs. Cascio, seconded by Pastor Burgos, to place the recommendation on the agenda at the public session for formal action.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenó, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo — 8

Negative: None

Mr. Munoz stated that he was recommending Bruce Elflein, for the position of Administrative Assistant to the Superintendent. Mr. Munoz introduced candidate Bruce Elflein who was then interviewed by members of the Board.

A motion was made by Pastor Burgos, seconded by Mrs. Cascio, to place the recommendation on the agenda at the public session for formal action.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedenó, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo — 8

Negative: None

Mr. Munoz stated that he was recommending Maria Gaeta-Alvarez, for the position of Principal of Frances C. Smith Center for Early Childhood. Mr. Munoz introduced candidate Maria Gaeta-Alvarez who was then interviewed by members of the Board.

A motion was made by Pastor Burgos, seconded by Ms. Hawkins, to place the recommendation on the agenda at the public session for formal action.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Ceden, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo — 8

Negative: None

Mr. Munoz stated that he was recommending Jeffrey Roszkowski for the position of House Director of Elizabeth High School - Halsey House. Mr. Munoz introduced candidate Jeffrey Roszkowski who was then interviewed by members of the Board.

A motion was made by Pastor Burgos, seconded by Mrs. Cascio, to place the recommendation on the agenda at the public session for formal action.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Ceden, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo — 8

Negative: None

Mr. Munoz stated that he was recommending William A. Greene for the position of Comptroller. Mr. Munoz introduced candidate William A. Greene who was then interviewed by members of the Board.

A motion was made by Pastor Burgos, seconded by Mrs. Cascio, to place the recommendation on the agenda at the public session for formal action.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Ceden, Da Silva, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo — 8

Negative: None

The Board returned to public session at 7:40 p.m. and reconvened in private at 9:40 p.m.

Mr. Fajardo excused himself from the meeting at 9:40 p.m.

Richard Shapiro, Esq. stated he has been Special Abbott Counsel for six years. He briefed the Board on an appeal for denied custodial and secretarial positions in the 2005-2006 ECPA budget and pending settlement with the Department of Education. Mr. Shapiro advised the Board of the Mid-July anticipated list of construction projects that will continue by the SCC, mentioning that it will be a fraction of the original plan. He advised the Board to go before the Court after the list comes out. Mr. Shapiro advised the Board of recent ruling by the Court for the Millville Board of Education concerning full funding of the ECPA program by the Department. He sought authorization to send Assist Commissioner Machines a letter seeking full funding of the District's ECPA program of approximately \$2.4 million.

A motion was made by Mrs. Cascio, seconded by Mr. Da Silva authorizing Mr. Shapiro to proceed with a letter to Machines concerning ECPA.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Ceden, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan — 7

Negative: None

Robert E. Murray, Esq. gave an update on negotiations and reviewed the salary structure for central staff, administrators/supervisors. He reviewed the settlement with the Elizabeth Administrators and Supervisory Council to be voted on in public if placed on the agenda. A meeting with Directors is scheduled for mid-July. He reviewed negotiations with the trades which will be adjusted according to outside rates.

A motion was made by Pastor Burgos, seconded by Ms. Hawkins, that a resolution on settlement with the Elizabeth Administrators and Supervisory Council be placed on the agenda in public session.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Ceden, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan — 7

Negative: None

A motion was made by Pastor Burgos, seconded by Ms. Hawkins, to approve third party administrative contract with MCCS to be included in Award of Contracts Report and placed on the agenda in public session.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Ceden, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan — 7

Negative: None

A motion was made by Mr. Ceden, seconded by Pastor Burgos, that the Board of Education renew following insurance coverage: Excess Workers Compensation and Employers Liability Coverage, Dental Insurance Coverage and Prescription Drug Coverage and placed on the agenda in public session.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Ceden, Da Silva, Ms. Hawkins, Ms. Moore, Mr. Whelan — 7

Negative: None

Mrs. Cascio excused herself from the meeting at 10:50 p.m.

Karen Murray, Esq. reviewed the following cases to be voted on in public if placed on the agenda:

Settlement Agreement of E.J.

Suspension of J.R.

Termination of Services of A.P.

Termination of Services of F.G.

Suspension of J.V.

Suspension of M.B.

Suspension of R.D.

A motion was made by Mr. Ceden, seconded by Pastor Burgos, that resolutions for the above cases be placed on the agenda in public session. No objections. Carried.

Mrs. Murray reviewed resolution on 2005-2006 Increment and Salary Adjustment Withheld for Performance and/or Attendance and resolution on reappointments for the 2005-2006 school year.

A motion was made by Pastor Burgos, seconded by Mr. Cedeno to place the resolutions on the agenda in public session. No objections. Carried.

Mrs. Murray also reviewed the following resolutions to be voted on in public if placed on the agenda:

Reorganization Structure

Reorganization/Personnel Actions

Confidential Administrative Secretaries

A motion was made by Pastor Burgos, seconded by Mr. Cedeno to place the resolutions on the agenda in public session. No objections. Carried.

A motion was made by Pastor Burgos, seconded by Mr. Cedeno that the following resolutions be placed on the agenda in public session:

Salary Guide for 2004-2005 for Assistant Superintendent and School Business

Administrator/Board Secretary

Three Year Salary Guide Program for Assistant Superintendent and School Business

Administrator/Board Secretary

Three Year Salary Guide Program for Administrative Assistant to the Superintendent, Comptroller, and Assistant Board Secretary

That the School Business Administrator/Board Secretary be placed at the Initial Salary Rate on the Salary Guide.

That the Assistant Superintendents of School be placed at the Maximum Step on the Salary Guide

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Messrs. Cedeno, Da Silva, Ms. Hawkins, Ms. Moore, Mr.

Whelan – 6

Negative: None

The Board returned to public session at 12:30 a.m. to take formal action.

BOARD OF EDUCATION  
(Official)

July 21, 2005  
Elizabeth, New Jersey

The regular meeting of the Board of Education was called on July 21, 2005, at 5:30 p.m., in the Board of Education Meeting Room, 500 North Broad Street, Elizabeth, New Jersey.

Mrs. Cascio presented the following statement at 5:35 p.m.

"Ladies and Gentlemen, good evening. This is a regular meeting of the Board of Education. Pursuant to New Jersey Statutes and the rules adopted by the Board of Education, notice of this meeting was sent to The Star Ledger, The Home News Tribune and Cablevision of Elizabeth on Thursday, July 14, 2005. In addition, this notice is posted on the Bulletin Board in the lobby of 500 North Broad Street, and pursuant to this act, a copy has been filed with the City Clerk of Elizabeth."

Present: Mrs. Cascio, Mr. Ceden<sup>o</sup>, Mr. Da Silva (arr. 5:45 p.m.), Mr. Gonzalez, Ms. Hawkins (an. 6:00 p.m.), Ms. Moore, Mr. Whelan, Mr. Fajardo (5:50: p.m.) - 8

Absent: Pastor Burgos - 1

Pledge of Allegiance

Mrs. Cascio called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically to conduct interviews, for discussion of personnel, legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Mr. Cedeño, seconded by Mr. Gonzalez, to go into private session at 5:40 p.m.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, Gonzalez, Ms. Moore, Mr. Whelan- 5

Negative: None

The Board reconvened in public at 7:35 p.m. to continue with the meeting and take formal action.

Resolution – Appointment of Principal of Hamilton Middle School – Marianela Martin

Mrs. Cascio read the resolution.

A motion was made by Mrs. Cascio, seconded by Mr. Gonzalez, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, Da Silva, Gonzalez, Ms. Moore, Messrs. Whelan, Fajardo – 7

Abstention: Ms. Hawkins - 1

Negative: None

Mr. Fajardo called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically for discussion of personnel, legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Mrs. Cascio, seconded by Ms. Hawkins, to go into private session at 8:25 p.m.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, Da Silva, Gonzalez, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo – 8

Negative: None

The Board reconvened in public at 11:50 p.m. to continue with the meeting and take formal action.

#### Superintendents Report — Use of Facilities

Request from Elizabeth Giants Youth Organization for use of Williams Field for the up-coming 2005 Pop Warner football season. Game Dates: September 4, 11, 18 and October 2, 2005, from 8:00 a.m. — 4:00 p.m., with waiver of all fees. Recommended: waiver of facility fees.

A motion was made by Mr. Da Silva, seconded by Mrs. Cascio, to waive all fees.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, Da Silva, Gonzalez, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo - 8

Negative: None

Request from Elizabeth Education Association for use of School No. 1 Williams Field and all the facilities plus Security for an EEA President's Cup Youth Soccer Tournament on August 12, 2005 and August 13, 2005 from 5:00 p.m. — 10:00 p.m., with waiver of all fees. Recommended: waiver of facility fees.

A motion was made by Mr. Da Silva, seconded by Mrs. Cascio, to waive all fees.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, Da Silva, Ms. Hawkins, Messrs. Whelan, Fajardo — 6

Abstention: Mr. Gonzalez, Ms. Moore - 2

Negative: None

Request from New Hope Baptist Church for use of George Washington School No. 1 for a summer camp program from July 22, 2005 through August 19, 2005 from 8:30 a.m. to 5:30 p.m., Monday through Friday, with waiver of all fees. Recommended: waiver of facilities fees.

A motion was made by Mrs. Cascio, seconded by Mr. Cedeño, to waive all fees.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, Da Silva, Gonzalez, Ms. Hawkins, Messrs. Whelan, Fajardo — 7

Abstention: Ms. Moore - 1

Negative: None

BOARD OF EDUCATION  
(Official)

August 18, 2005  
Elizabeth, New Jersey

The regular meeting of the Board of Education was called on August 18, 2005, at 6:00 p.m., in the Board of Education Meeting Room, 500 North Broad Street, Elizabeth, New Jersey.

President Fajardo presented the following statement at 6:10 p.m.

"Ladies and Gentlemen, good evening. This is a regular meeting of the Board of Education. Pursuant to New Jersey Statutes and the rules adopted by the Board of Education, notice of this meeting was sent to The Star Ledger, The Home News Tribune and Cablevision of Elizabeth on Monday, August 15, 2005. In addition, this notice is posted on the Bulletin Board in the lobby of 500 North Broad Street, and pursuant to this act, a copy has been filed with the City Clerk of Elizabeth."

Present: Messrs. DaSilva, Gonzalez, Ms. Hawkins (an. 7:10 p.m.), Ms. Moore, Messrs. Whelan, Fajardo - 6

Absent: Pastor Burgos, Mrs. Cascio, Mr. Cedeño - 3

Pledge of Allegiance

Mr. Fajardo called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically to conduct interviews, for discussion of personnel, legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Mr. DaSilva, seconded by Ms. Moore, to go into private session at 6:11 p.m.

The motion was carried by the following vote:

Affirmative: Messrs. DaSilva, Gonzalez, Ms. Moore, Messrs. Whelan, Fajardo — 5

Negative: None

The Board reconvened in public at 7:10 p.m. to continue with the meeting and take formal action.

Resolution — Appointment of Assistant Board Secretary — Donald Gonsalves

Mr. DaSilva read the resolution.

A motion was made by Mr. DaSilva, seconded by Mr. Gonzalez, that the resolution be adopted.

The motion was carried by the following vote;

Affirmative: Messrs. DaSilva, Gonzalez, Ms. Moore, Messrs. Whelan, Fajardo — 5

Abstention: Ms. Hawkins - 1

Negative: None

Resolution – Memorandum of Agreement Between the Elizabeth Board of Education and the Elizabeth Administrative and Supervisory Council 2004-2008 School Year

A motion was made by Mr. Gonzalez, seconded by Mr. DaSilva, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Messrs. DaSilva, Gonzalez, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo - 6

Negative: None

Mr. Fajardo called upon citizens who wished to address the Board to come forward. He reminded the public that each speaker would be allowed three minutes to address the Board.

Mr. Fajardo commented that although it is very difficult to hire new teachers and staff with the current budget from the State of New Jersey, we are working very hard for the children.

Since there were no citizens to address the Board, Mr. Fajardo declared this portion of the public meeting closed.

Mr. Fajardo called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically for discussion of personnel, legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Mr. Gonzalez, seconded by Mr. DaSilva, to go into private session at 8:00 p.m.

The motion was carried by the following vote:

Affirmative: Messrs. DaSilva, Gonzalez, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo - 6

Negative: None

The Board reconvened in public at 11:40 p.m. to continue with the meeting and take formal action.

Resolution — Suspension of Daniel Jimenez

A motion was made by Mr. DaSilva, seconded by Mr. Gonzalez, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Messrs. DaSilva, Gonzalez, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo - 6

Negative: None

Resolution — Unpaid Leave of Absence of Daniel Carvalho

A motion was made by Mr. Gonzalez, seconded by Mr. DaSilva, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Messrs. DaSilva, Gonzalez, Ms. Hawkins, Ms. Moore, Messrs. Whelan, Fajardo - 6

Negative: None

Mr. Fajardo commented that this sums up the plan for leadership of the Board for excellence. We need support from the community. This is a challenge to other Board members to get parents involved.

Mr. Fajardo called for a motion to go into private session to discuss matters exempt under the Open Public Meetings Act, specifically for discussion of personnel, legal matters, contracts, etc. The Board will reconvene in public to take formal action.

A motion was made by Mrs. Cascio, seconded by Ms. Hawkins, to go into private session at 10:45 p.m.

The motion was carried by the following vote:

Affirmative: Pastor Burgos, Mrs. Cascio, Messrs. Cedeño, DaSilva, Gonzalez, Ms. Hawkins, Messrs. Whelan, Fajardo - 8

Negative: None

Pastor Burgos excused himself at 11:00 p.m.

The Board reconvened in public at 11:30 p.m. to continue with the meeting and take formal action.

#### Finance and Accounting Report - Authorization to Pay Vouchers for Mendonca & Suarez LLC

A motion was made by Ms. Hawkins, seconded by Mrs. Cascio, to authorize to pay vouchers for Mendonca & Suarez LLC and be included in the Finance and Accounting Report – Authorization to Pay Vouchers.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, Gonzalez, Ms. Hawkins, Messrs. Whelan, Fajardo – 6

Abstain: Mr. DaSilva

Negative: None

#### Resolution – Settlement Andrew Paulkawitz vs. Elizabeth Board of Education

A motion was made by Mrs. Cascio, seconded by Mr. Cedeño, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, DaSilva, Gonzalez, Ms. Hawkins, Messrs. Whelan, Fajardo – 7

Negative: None

#### Resolution – Suspension of Luis Rojas

A motion was made by Mr. DaSilva, seconded by Mrs. Cascio, that the resolution be adopted.

The motion was carried by the following vote:

Affirmative: Mrs. Cascio, Messrs. Cedeño, DaSilva, Gonzalez, Ms. Hawkins, Messrs. Whelan, Fajardo – 7

Negative: None

UNION COUNTY PROSECUTOR'S OFFICE  
32 RAHWAY AVENUE  
ELIZABETH, NEW JERSEY 07202-2115  
(908) 527-4500  
Fax: (908) 289-1267

THEODORE J. ROMANKOW  
Prosecutor of Union County

ALBERT CERNADAS, JR.  
First Assistant Prosecutor

January 23, 2006

Pablo Munoz  
Acting Superintendent  
Elizabeth Board of Education  
500 North Broad Street  
Elizabeth, New Jersey 07207

Re: Elizabeth Board of Education Meetings Violations of Open Public Meetings Act

Dear Mr. Munoz:

The Union County Prosecutor's Office recently received the attached letter regarding possible violations of the Open Public Meetings Act by the Elizabeth Board of Education. Violations of the Act are punishable by the imposition of a \$100 fine for a first offense and up to \$500 for any subsequent offense.

The author of the letter, John Paff, of the Libertarian Party of Central New Jersey, alleges that on various dates between March 20, 2003 and September 2005, the Board passed resolutions authorizing closed meetings without providing sufficient information regarding the nature of the matters to be discussed, in violation of N.J.S.A. 10: 4-13. The Board minutes Mr. Paff provided establish that there were a number of occasions within this time period when the stated reasons for moving to closed session were "for discussion of personnel, legal matters, contracts." Mr. Paff suggests that the case law requires further specificity. See Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO Local 2364 v. Trenton State College Board of Trustees, 284 N.J. Super. 108 (Law Div. 1995).

Mr. Paff's position has merit. For example, when the litigation to be discussed in closed session is already the subject of a filed civil complaint, the name of the case can be set forth in the resolution. In addition, when recommendations are being made to fill particular positions, the title of the position can be listed in the resolution.

Mr. Paff also notes that on several occasions the matters discussed at closed meetings should not have been discussed because they did not fall within any of the exceptions to the open public meeting requirements set forth in N.J.S.A. 10: 4-12b. Reference is made to the matters reviewed by Mr. Dunn at the March 20, 2003 session set forth in Exhibit B2. I would have to agree with Mr. Paff that a review of charts outlining health and safety, renovations in progress at various schools, an explanation of the school system's Emergency Crisis Plan and the suitability of a site for a school building do not appear to fall within the list of exceptions to the open public meeting requirements.

May I suggest that now would be a good time to conduct a review of the requirements of the

Open Public Meeting Act at a meeting with all members of the Board and the Board's attorney. This will preclude any future violations and further action by this Office.

Thank you for your consideration and attention to this matter.

Very truly yours,

THEODORE J. ROMANKOW  
Prosecutor of Union County

By: /s/ ANN R. RUBIN Assistant Prosecutor

c: w/enclosure  
John Paff

**KIRK C. NELSON, JR.**  
**ATTORNEY AT LAW**

1812 Front Street  
Plainfield, NJ 07076  
Telephone: 908-663-2177  
Fax: 908-663-2178

February 15, 2006

Mr. John Paff  
Open Government Task Force Chairman  
Libertarian Party of Central New Jersey  
PO Box 5424  
Somerset, New Jersey 08875-5424

RE: Elizabeth Board of Education  
Open Public Meetings Act

Dear Mr. Paff:

As the Board Attorney for the Elizabeth School District, I am in receipt of a copy of your December 27, 2005 Complaint to the Union County Prosecutor's Office. Initially, I note that the issues you raise cover 2003 through September 2005. Throughout this 2.5 years time span which you reviewed, the current Superintendent has only been in the position for four (4) months of this time period. Thus, many of the issues occurred under a previous administration and hopefully have been resolved or are in the process of being addressed.

As to your specific concerns, let me explain what is being done at this time.

**1. Agenda Items**

The references to personal litigation and negotiations, etc., are used by Boards throughout the state of New Jersey, including the State Operated Districts. Elizabeth is now providing more specific listings, especially relative to personnel actions. However, due to the request of the District's bargaining units, personnel actions generally are referenced by initials. Since anything discussed in closed session requiring Board action is always voted on in open session, there will always be a resolution reflecting the Board's action. After a meeting, these resolutions can be requested and obtained as a public record.

**2. Use of Initials**

The Board is now using case names in resolutions dealing with litigation, except if they involve minors and then initials must be used. Relative to personnel actions, the resolutions will continue to contain initials if requested by the employee's union or attorney. Your organization, of course, can request the

names after a meeting, and they will be provided, except if required by law to be kept confidential.

### **3. Discussion of matters in closed session**

We are extremely careful about not discussing in closed session anything which should be discussed in public and will continue to monitor our actions and be attentive to this requirement.

As the Board attorney, I assure you that this Board and Administration are absolutely committed to acting in full compliance with all statutes and regulations, including the OPMA. We operate on behalf of Elizabeth's students and have nothing to hide as we continue to strive for excellence in education.

The Board is desirous of knowing the concerns of its constituents, as well as organizations like yours. Should you want to talk to me or the District's Public Relations Officer regarding any issues or concerns, please let me know and we will be happy to accommodate you. All constructive criticism only helps us to continue to strive to improve.

Very truly yours,

/s/ Kirk C. Nelson, Jr.  
Board Attorney

KN:kgf

cc: Pablo Munoz, Acting Superintendent  
Rafael Fajardo, Board President  
Board Members  
Harold E. Kennedy, Jr., School Bus. Admin./Board Sec.  
Theodore J. Romankow, Union County Prosecutor