

Libertarian Party of Central New Jersey

Open Government Task Force
John Paff, Task Force Chairman
P.O. Box 5424
Somerset, NJ 08875-5424
March 27, 2006

Ann R. Rubin, Esq., Assistant Prosecutor
Union County Prosecutor's Office
32 Rahway Avenue
Elizabeth, NJ 07202-2115 *(via PDF email attachment)*

RE: Kenilworth 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. 10:4-17¹, empowers your office to enforce monetary penalties against officials who knowingly violate the Act. We assert that the Kenilworth 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:

- January 6, 2003 Public Meeting Minutes
- January 6, 2003 Closed Meeting Minutes
- January 5, 2004 Public Meeting Minutes
- January 5, 2004 Closed Meeting Minutes
- January 3, 2005 Public Meeting Minutes
- January 3, 2005 Closed Meeting Minutes

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

¹ 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.

On January 4, 2004 and January 3, 2005 the Board passed resolutions, apparently in an effort to comply with N.J.S.A. 10:4-13², calling for closed meetings “to discuss the topics of negotiations litigation/deregionalization³ and personnel.” This form of resolution,⁴ 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.

The minutes of the January 3, 2005 closed meeting, for example, reveal that the Board was then notified of, and presumably discussed, “a pending lawsuit⁵ in which a parent claims a wide range of complaints (Klein).” A member of the public who attended the January 3, 2005 public meeting or who read the minutes of that meeting would not, however, have known that this item of litigation was discussed.

The typical civil lawsuit is a matter of public record and the file is available to anyone willing to visit the county courthouse. R.1:38. Accordingly, we see no reason why the identify of parties to the specific lawsuit under discussion could not have been publicly revealed in the closed session’s authorizing resolution.

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

² 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.”

³ It is not clear to us that “deregionalization” is a lawful topic to be discussed outside of public view.

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

⁵ Since the lawsuit is described as “pending,” I am assuming that it was filed with the court prior to the January 3, 2005 meeting.

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).

II. The closed session meeting minutes are not "reasonably comprehensible" as required by N.J.S.A. 10:4-14.

Each of closed session minutes attached to this letter state that "The topics of discussion ***included:***" (emphasis supplied). This suggests that other topics were privately discussed but were not recorded in the minutes. N.J.S.A. 10:4-14 requires that what took place at the meeting and what final action was taken should be reflected in the minutes. Liebeskind v. Mayor & Mun. Council of Bayonne, 265 N.J. Super. 389, 401 (App. Div. 1993). A member of the public cannot tell "what took place" at a closed meetings if other, unlisted topics were also discussed.

We are also troubled that the closed session minutes reveal nothing more than a bulleted list of topics discussed. While we are cognizant that "reasonably comprehensible minutes" do not require "a word for word recitation of every event or a verbatim detailing of every public comment or objection." Id. at 400-01, we also are aware that "minutes are intended to recite and disclose any official decision or action taken by a public body, and necessarily must contain sufficient facts and information to permit the public to understand and appraise the reasonableness of the public body's determination." South Jersey Publishing Co., Inc. v. New Jersey Expressway Auth., 124 N.J. 478, 493 (1991). It seems to us, therefore, that something more than a bulleted list of topics is required to satisfy the "reasonably comprehensible" mandate.

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,



John Paff
Task Force Chairman

January 6, 2003

A **Workshop Meeting** of the Kenilworth Board of Education was **called to order** at 7:30 p.m. by President Schlenker, in the Board of Education Conference Room of the Brearley School on **January 6, 2003**.

This meeting is being held in accordance with the schedule of meetings adopted at the organizational meeting held April 22, 2002. **Adequate notice** of this Workshop Meeting of the Kenilworth Board of Education has been provided to the Home/News Tribune, The Star Ledger, Cranford Chronicle and the Roselle Park/Kenilworth Leader. A copy has been filed with the Kenilworth Borough Clerk, posted in the Board Office, the Kenilworth Borough Hall, Brearley and Harding Schools, **as is provided by the Open Public Meetings Act**.

President Schlenker stated that the **purpose of this workshop meeting** is to discuss the items on the agenda for the **January 13, 2003** meeting.

President Schlenker led the **salute to the Flag**.

Upon **roll call** the following members were present: Carol Boyden, Annmarie Duda, Gerard Laudati, Mark LoBello, Linda McMEnamin, George C. Schlenker, Susan Washuta and Nancy Zimmerman. The following members arrived after roll call at the times indicated: Helen Paster 7:36 p.m.

Also in attendance were Lloyd M. Leschuk, Superintendent and Vincent A. Gonnella, Business Administrator/Board Secretary. The following members of the administrative team were present: Nancy Baton, Principal, Charles Cappello, Assistant Principal, Ann Cooke, Director of Special Services, Valerie Baker and Joseph Lafferty, Athletic Director. Approximately twenty-two (22) members of the public were present.

Schlenker called for discussion on the Superintendent's Report:

- The District has received notification of the Middle States Accreditation; a formal presentation will be made next week.
- Leschuk reviewed the GEPA Test Results.
- Mr. Donnelly is serving as interim principal during Mr. Rica's absence.
- Members of the Administrative Team presented their monthly reports.

COMMITTEE REPORTS:

Finance & Facilities: Gerard Laudati, Chairperson.

- The Kenilworth Abundant Life Worship Center has requested use of the Harding School on Tuesdays and Sundays. A resolution authorizing the use will be placed on the agenda.

January 6, 2003

- The committee will meet to review requests by CAST for storage facilities.
- It appears the State will freeze municipal aid.

Motion was made by LoBello, seconded by Laudati that the **meeting be opened to the public**. Motion carried unanimously.

- Sue Pinto: Transportation for Master Singers is needed in the future.
- Jodi Lang: Use of Facilities.
- Renae Cappizano: Informed the Board of a student-to-student death threat. Dr. Leschuk reviewed the how the incident was handled from an administrative level.
- Mrs. Eager: Concerned with the Math Program.
- Mrs. Pantina: Concerned with the Math Program.
- Caroline Van Pelt: Questions regarding the DLC Program and whether Choice would be moving to Harding School as well.

Motion was made by Zimmerman, seconded by Paster, that the **meeting be closed to the public**. Motion carried unanimously.

RESOLUTION: Introduced by Washuta, who moved its adoption, seconded by Zimmerman, Be It Resolved by the Board of Education of Kenilworth that the Board of Education **meet in private session**, from which the public shall be excluded, **to discuss the topic of negotiations** which private discussion is being held pursuant to Section 7b and 8 of the Open Public Meetings Act. The matters under discussion will be disclosed to the public as soon as final decisions are made and voted upon. Motion carried unanimously.

At 9:00 p.m. President Schlenker called a 5-minute recess.

At 9:35 p.m. President Schlenker reconvened the public session, and informed the public that **the Board took no action in private executive session**.

Motion was made by Paster, seconded by Zimmerman, that when the **meeting adjourns, it adjourns to the call of the chair**. Motion carried unanimously.

Meeting adjourned 9:35 p.m.

Respectfully submitted,

January 6, 2003

Vincent A. Gonnella
Secretary to the Board

EXECUTIVE MINUTES

January 6, 2003

(Workshop Meeting)

The **closed executive session** of the Kenilworth Board of Education was called to order by President Schlenker at 9:05 p.m.

Members present: Boyden, Duda, Laudati, LoBello, McMenamain, Paster, Schlenker, Washuta and Zimmerman. Also present Leschuk and Gonnella.

The topics of discussion included:

- Secretary Negotiations: Aides and Cappizano OT issue.

At 9:35 p.m. motion was made by Paster, seconded by Zimmerman, that the meeting return to open public session. Motion carried unanimously.

Respectfully submitted,

Vincent A. Gonnella
Board Secretary

Submitted for Board Review: February 10, 2003

January 5, 2004

A **Workshop Meeting** of the Kenilworth Board of Education was **called to order** at 7:30 p.m. by President LoBello, in the Board of Education Conference Room of the Brearley School on **January 5, 2004**.

This meeting is being held in accordance with the schedule of meetings adopted at the organizational meeting held April 30, 2003. **Adequate notice** of this Workshop Meeting of the Kenilworth Board of Education has been provided to the Home/News Tribune, The Star Ledger, Cranford Chronicle and the Roselle Park/Kenilworth Leader. A copy has been filed with the Kenilworth Borough Clerk, posted in the Board Office, the Kenilworth Borough Hall, Brearley and Harding Schools, **as is provided by the Open Public Meetings Act**.

President LoBello stated that the **purpose of this workshop meeting** is to discuss the items on the agenda for the January 12, 2004 meeting.

President LoBello led the **salute to the Flag**.

Upon **roll call**, the following members were present: Claudio Campanella, Annmarie Duda, Gerard Laudati, Mark LoBello, Livio Mancino, Linda McMEnamin, Antonio Pugliese and Nancy Zimmerman. Absent was: Carol Boyden.

Also in attendance were Lloyd M. Leschuk, Superintendent and Vincent A. Gonnella, Business Administrator/Board Secretary. The following members of the administrative team were present: Fred Rica, Principal, Charles Cappello, Principal, Eileen O'Donnell, Supervisor, Ann Cooke, Director of Special Services, Valerie Baker, Supervisor, Joseph Lafferty, Athletic Director, Joseph Schaffren, Supervisor of Guidance & Assessment, and Brian Luciani, Assistant Principal. Nine (9) members of the public were present.

LoBello called for discussion on the Superintendent's Report:

Dr. Leschuk presented his report, "A Study of the Effects of Block Scheduling on the High School Program," Parts I & II. Upon the conclusion of his Powerpoint presentation, Leschuk entertained questions from the Board and the public.

- Mrs. Manto commented on the need for English and Math year round and the extended period instruction requires teachers who know how to teach under those conditions.
- Mrs. Eager also commented on the need for English and Math year round as well as the impact on SAT scores, and the honor roll.
- Mrs. Lang commented on the decreased student suspensions and expulsions.
- Mrs. Pinto stated the Guidance Department did a great job with balancing the schedules this

January 5, 2004

semester.

The members of the administration highlighted their monthly reports:

- Mr. Rica stated the Winter Concert was a huge success.
- Mrs. O'Donnell updated the Board on the professional development plan, the E-rate application being filed, and the Technology Plan that needs to be revised.
- Mrs. Baker reviewed the simulation of the GEPA Test and Mr. McDonald's session for parents of 8th grade honor students.
- Mr. Lafferty stated the winter sports are in full swing and the teams are doing well.
- Mr. Cappello updated the plan to better use the CSI Student Record keeping system in the building including teachers entering grades and attendance from their classrooms. Due to the opportunity period, there is a need to increase graduation requirements.
- Mr. Schaffren also commented on the CSI project and that he and his staff were trying to get to know the students better.
- Mrs. Cooke stated the Special Education Department would be monitored in June.
- Mr. Luciani stated the low attendance rate was due to illness in December.

COMMITTEE REPORTS:

Finance & Facilities: Gerard Laudati, Chairperson.

The Committee has scheduled two public meetings (1/14 & 1/21) to review the administrators' 2004-2005 budget requests.

Other matters of discussion:

The Winfield send/receive committee met this evening and reviewed several issues including summer school, articulation, and transportation.

Mancino commented on Mr. Gonnella's Report on By-Law #9326 "Minutes-Recordings of Meetings", disagreeing with several of the conclusions. Mr. Mancino is in favor of recording meetings and will make a motion next week to pursue the issue. The Board discussed the issue further.

Dr. Leschuk updated the Board on the Choice Program at the request of Mr. Mancino.

Motion was made by McMenamin, seconded by Duda that the **meeting be opened to the public**. Motion carried unanimously.

- Mrs. Manto was concerned with the lack of entrance criteria for the Choice Students.
- Mrs. Felner stated there were a lot of fine Choice students.

January 5, 2004

- Mrs. Finistrella was also concerned with the lack of entrance criteria for the Choice Students.
- Mrs. Lang had a question regarding the Peer Mediation Program. The administration will look into the matter.
- Mrs. Eager suggested more newspaper articles to increase the positive things going on in the school.

Motion was made by McMenamain, seconded by Laudati, that the **meeting be closed to the public.** Motion carried unanimously.

RESOLUTION: Introduced by Duda, who moved its adoption, seconded by McMenamain, Be It Resolved by the Board of Education of Kenilworth that the Board of Education **meet in private session,** from which the public shall be excluded, **to discuss the topics of negotiations litigation/ deregionalization and personnel** which private discussion is being held pursuant to Section 7b and 8 of the Open Public Meetings Act. The matters under discussion will be disclosed to the public as soon as final decisions are made and voted upon. Motion carried unanimously.

At 9:50 p.m. President LoBello called a 5-minute recess.

At 10:35 p.m. President LoBello reconvened the public session, and informed the public that **the Board took no action in private executive session.**

Motion was made by Duda, seconded by Pugliese, that when the **meeting adjourns, it adjourns to the call of the chair.** Motion carried unanimously.

Meeting adjourned 10:35 p.m.

Respectfully submitted,

Vincent A. Gonnella
Secretary to the Board

EXECUTIVE MINUTES

January 5, 2004

(Workshop Meeting)

The **closed executive session** of the Kenilworth Board of Education was called to order by President LoBello at 9:55 p.m.

Members present: Campanella, Duda, Laudati, LoBello, Mancino, McMenamin, Pugliese, and Zimmerman. Also present Leschuk and Gonnella.

The topics of discussion included:

- Winfield negotiations, the possibility of 7th & 8th grade attending.
- Secretary Negotiations: The committee asked for parameter to negotiate. They were given a maximum of 4.5%.

At 10:35 p.m. motion was made by Duda, seconded by Pugliese, that the meeting return to open public session. Motion carried unanimously.

Respectfully submitted,

Vincent A. Gonnella
Board Secretary

Submitted for Board Review: February 9, 2004

January 3, 2005

A **Workshop Meeting** of the Kenilworth Board of Education was **called to order** at 7:30 p.m. by President LoBello, in the Board of Education Conference Room of the Brearley School on **January 3, 2005**.

This meeting is being held in accordance with the schedule of meetings adopted at the organizational meeting held April 26, 2004. **Adequate notice** of this Workshop Meeting of the Kenilworth Board of Education has been provided to the Home News Tribune, The Star-Ledger, Cranford Chronicle and the Roselle Park/Kenilworth Leader. A copy has been filed with the Kenilworth Borough Clerk, posted in the Board Office, the Kenilworth Borough Hall, Brearley and Harding Schools, **as is provided by the Open Public Meetings Act**.

President LoBello stated that the **purpose of this workshop meeting** is to discuss the items on the agenda for the January 10, 2005 meeting.

President LoBello led the **salute to the Flag**.

Upon **roll call**, the following members were present: Carol Boyden, Annmarie Duda, Gerard Laudati, Mark LoBello, Thomas Mannix, and Antonio Pugliese. Absent was: Claudio Campanella, Livio Mancino, Fred Viteka and Nancy Zimmerman.

Also in attendance were Lloyd M. Leschuk, Superintendent and Vincent A. Gonnella, Business Administrator/Board Secretary. The following members of the administrative team were present: Fred Rica, Principal, Charles Cappello, Principal, Eileen O'Donnell, Supervisor, Ann Karpenski-Cooke, Director of Special Services, Valarie Baker, Supervisor, Joseph Lafferty, Athletic Director, Joseph Schaffren, Supervisor of Guidance & Assessment, and Brian Luciani, Assistant Principal. Ten (10) members of the public were present.

PRESENTATIONS: Technology Program, Bridge Building Project, & Animanga Club: Paul Perry.

LoBello called for discussion on the **Superintendent's Report**:

- Dr. Leschuk reviewed class sizes, enrollment projections and the impact on the instructional program next year.
- The report on the results of the Parent Survey will be in the Board's packet on Friday with a formal presentation at the Regular BOE meeting.

Members of the Administrative Team highlighted their monthly reports:

January 3, 2005

- Mr. Schaffren, Supervisor of Guidance & Assessment: Mrs. Jeans continues to work on character development at Harding School, including a program on respecting differences in the primary grades, anti-bullying in the 6th grade, and personal responsibility, anger management and self esteem in the 3rd & 4th grades. At the high school, individual student counseling is taking place, PSAT results were reviewed with students, progress reports were completed on the computer, and the Program of Studies books are being printed.
- Mrs. O'Donnell, Supervisor of Instruction & Technology: The Spring STAY program is being expanded to the Middle School due to the grant.
- Mrs. Cooke, Supervisor of Special Education: BSI Exit criteria was being reviewed, changes to IDEA reauthorization. Mr. Laudati suggested that that be a topic of a Board presentation in the Spring.
- Mr. Lafferty, Supervisor of Athletics: The Girls' Basketball Team returned from a successful trip to San Diego, CA. Vincent Russo was named UC Offensive Player of the Year and 1st Team All State.
- Mr. Rica, Harding School Principal: The building was decorated appropriately for the holiday season, the PTO sponsored "Winter Wonderland" and the Winter Vocal and Instrumental Program were a big success.
- Mr. Luciani, Brearley Assistant Principal: Door decorating in the Middle School was sponsored by the Student Council, and other holiday activities were reviewed.
- Mr. Cappello, Brearley Principal: Dr. Pugliese conducted a workshop on backpack safety, a meeting to review an evacuation plan to St. Theresa's was held, the band performed at the Senior Citizens Club, and staff development activities were reviewed.
- Mrs. Baker, Supervisor of Math & Science: Highlighted her written report and reviewed classroom happenings.

COMMITTEE REPORTS:

Curriculum & Instruction: Carol Boyden, Chairperson.

A meeting to review the status of the AB Block Implementation is scheduled for 1-24-05 at 7:30 p.m. in the Brearley Auditorium.

January 3, 2005

Steering Committee: Mark LoBello, Chairperson.

The Committee met this evening prior to this meeting and reviewed communications, specifically how to get our message to the public and informing them of the positive things going on in our schools.

Motion was made by Laudati, seconded by Pugliese that the **meeting be opened to the public**. Motion carried unanimously.

- Jodi Lang: If the BOE was going to send out informational postcards, there should be a contact number for further follow-up. She requested an update on the residency investigations. Dr. Leschuk provided her with the statistics.

Motion was made by Laudati, seconded by Boyden, that the **meeting be closed to the public**. Motion carried unanimously.

Other Items of Discussion:

- The Board reviewed point by point the letter submitted by Mr. Mancino (attached).
- Mr. Mancino's efforts should be recognized in securing the \$112,000 grant for the Kindergarten program.

RESOLUTION: Introduced by Laudati, who moved its adoption, seconded by Duda, Be It Resolved by the Board of Education of Kenilworth that the Board of Education **meet in private session**, from which the public shall be excluded, **to discuss the topics of negotiations litigation/deregionalization and personnel** which private discussion is being held pursuant to Section 7b and 8 of the Open Public Meetings Act. The matters under discussion will be disclosed to the public as soon as final decisions are made and voted upon. Motion carried unanimously. (8:53 p. m.)

At 9:10 p.m. President LoBello reconvened the public session, and informed the public that **the Board took no action in private executive session.**

Motion was made by Laudati, seconded by Boyden, that when the **meeting adjourns, it adjourns to the call of the chair**. Motion carried unanimously.

Meeting adjourned 9:10 p.m.

Respectfully submitted,

January 3, 2005

Vincent A. Gonnella
Secretary to the Board

EXECUTIVE MINUTES

January 3, 2005

(Workshop Meeting)

The **closed executive session** of the Kenilworth Board of Education was called to order by President LoBello at 8:53 p.m.

Members present: Boyden, Duda, Laudati, LoBello, Mannix, and Pugliese. Also present: Leschuk and Gonnella.

The topics of discussion included:

- The administration advised the Board of a pending lawsuit in which a parent claims a wide range of complaints (Klein).

At 9:10 p.m. motion was made by Laudati, seconded by Boyden, that the meeting return to open public session. Motion carried unanimously.

Respectfully submitted,

Vincent A. Gonnella
Board Secretary

Submitted for Board Review: February 14, 2005

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

June 8, 2006

Vito A. Gagliardi, Jr., Esq.
Kenilworth Board of Education Attorney
Porzio, Bromberg & Newman
100 Southgate Parkway
Post Office Box 1997
Morristown, New Jersey 07962-1997

**Re: Kenilworth Board of Education
Open Public Meetings Act
March 27, 2006 Letter of John Paff**

Dear Mr. Gagliardi:

Complaints regarding violations of the Open Public Meetings Act are referred to my attention at the Union County Prosecutor's Office. In that capacity, I am writing to you as the attorney for the Kenilworth Board of Education based on my receipt of the attached letter from John Paff.

Mr. Paff's concern is that on three occasions in 2003, 2004 and 2005, the minutes of the private executive sessions of the Kenilworth Board of Education reflected a lack of specificity as to the topics discussed. Mr. Paff complains that the practice of stating in the minutes of the private executive sessions "the topics of discussion **included**" suggests that other topics that were not included were also discussed. This may simply be a matter of semantics. However, having reviewed the minutes in light of the decision in *South Jersey Publishing Co., Inc. v. New Jersey Expressway Authority*, 124 N.J. 478, 493 (1991), I agree with Mr. Paff that all topics of discussion at private executive sessions must be disclosed and that the minutes should be more specific so as to "permit the public to understand and appraise the reasonableness of the public body's determination." *Id* at 493.

Would you kindly discuss these concerns with Board Secretary Vincent Gonella so that this situation can be corrected immediately. As always, your cooperation and assistance is greatly appreciated.

Very truly yours,

THEODORE J. ROMANKOW
Prosecutor of Union County

A handwritten signature in black ink, appearing to read "Ann Rubin". The signature is fluid and cursive, with a prominent initial "A" and "R".

By: ANN R. RUBIN
Assistant Prosecutor

enclosure
c: Vincent Gonnella, Board Secretary
John Paff