



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

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January 20, 2012

Paula A.Y. Maas, President, and members of the
Piscataway Board of Education
1515 Stelton Road
Piscataway, NJ 08854 (via e-mail only to BDeLucia@pway.org)

Dear President Maas and Board Members:

I write both individually and on behalf the New Jersey Libertarian Party's Open Government Advocacy Project to comment on the manner in which the Board of Education goes into and records minutes of its nonpublic (i.e. executive or closed) sessions.

In response to a recent records request, the Business Administrator provided me with the resolutions and minutes of the Board's December 15, 2011, December 8, 2011 and November 17, 2011 nonpublic (i.e. executive or closed) minutes. I've attached copies of these documents for your ready reference. I have three concerns.

First, the Board's resolutions--all identical to each other--merely state:

BE IT RESOLVED that the Board adjourn to executive session for the purpose of review and discussion of a detailed personnel agenda for action this evening, and other matters involving individual staff members, as well as numerous outstanding matters in litigation. It is not known at this time when these matters can be disclosed to the public.

I don't think the form of resolution satisfies N.J.S.A. 10:4-13 because it gives the public no real sense of what is being privately discussed. To paraphrase the highest court of another state, a body which only announces "numerous outstanding matters in litigation as its reason going into executive session has said nothing. It might as 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).

I've enclosed a model resolution that will inform the public of the nature of the privately discussed topics to the maximum extent possible while still keeping respecting legitimate privacy and confidentiality concerns.

Second, N.J.S.A. 10:4-14 requires meeting minutes to be "reasonably comprehensible." Do you think that the three sentences of substance within the December 15, 2011 meeting minutes reasonably capture the sense of a closed meeting that lasted nearly two hours?

The purpose of closed meeting minutes is not merely to inform the *public* of what occurred during the private session, but also to create a record for the *Board members themselves*. Do you think that a Board member who is newly elected in 2012 could be able, by referring solely to the December 15, 2011 executive minutes, to figure out exactly what issues the Board discussed? Imagine this hypothetical, newly elected Board member, after reading the entry "Mr. Rubin reviewed litigation status" trying to understand exactly what was discussed. Which litigation matters? What facts or circumstances pertained to each?

Better practice would be to take more verbose minutes and then redact them, as necessary, before publicly disclosing them. For example, the noted entry might hypothetically read

Mr. Rubin discussed a settlement offer received from the attorney for the plaintiff in Smith v. Piscataway School District, Docket No. MID-L-12345-99. The plaintiff is willing to dismiss his slip and fall lawsuit if the District would pay him \$20,000. Mr. Rubin suggested that the Board accept the offer and avoid the costs of trial.

This way, the Board members themselves would have a clear record of what transpired while any confidentiality interests could be addressed by redacting the minutes before disclosing them to the public.

Third, it's not exactly clear that all of the topics privately discussed were permitted by law to be discussed outside of the public's view. As you are aware, the Open Public Meetings Act requires everything to be discussed in public except for those matters that fit into one or more of the exceptions set forth in N.J.S.A. 10:4-12(b)(8). And, the exceptions are supposed to be construed strictly in favor of openness and against meeting closure. Against this backdrop, it is unclear why Ms. Maas "reviewed Mindsets" during the December 8, 2011 closed meeting.

I'm not clear on what this discussion concerned. Was this a discussion of the book Mindset written by psychologist Carol Dweck? If so, why could this discussion not been held with the public in attendance?

In conclusion, I ask that you please discuss the issues raised in this letter at your February 9, 2012 meeting and let me know what, if any, changes the Board is willing to make to the manner in which it goes into and records minutes of its closed sessions.

Thank you very much for your attention to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a stylized flourish at the end.

John Paff

PISCATAWAY TOWNSHIP BOARD OF EDUCATION
Piscataway, New Jersey

EXECUTIVE SESSION MINUTES
Thursday, December 15, 2011 – 6:01 P.M.

Members present:

Mr. Connors	Mr. Mosier	Mr. Stoddard
Ms. King	Mr. Okamoto	Mr. Szymonowicz
Mrs. Lopez		

Also present were Mr. Copeland, Ms. Rafferty, Ms. Keck, Mr. De Lucia, Ms. Sousa and Mr. Rubin.

- ✓ Mr. Rubin held two HIB hearings and a monthly review of HIB reports.
- ✓ Ms. Sousa reviewed the personnel agenda.
- ✓ Mr. Rubin reviewed litigation status.

Mrs. Greeley arrived at 6:28 P.M.

The Board adjourned Executive Session at 7:58 P.M.



Board Secretary

MINUTES OF BUSINESS MEETING OF DECEMBER 15, 2011

The monthly Business Meeting of the Piscataway Township Board of Education was held on Thursday, December 15, 2011 at the Administration Building. The meeting was called to order at 6:00 PM by the Board Vice President, Mr. Mosier.

I. CALL TO ORDER

Salute to Flag - Board President
Roll Call - Board Secretary

<u> </u> P	Mr. Connors	<u> </u> P	Mrs. Lopez	<u> </u> P	Mr. Okamoto
<u> </u>	Mrs. Greeley	<u> </u>	Ms. Maas	<u> </u> P	Mr. Stoddard
<u> </u> P	Ms. King	<u> </u> P	Mr. Mosier	<u> </u> P	Mr. Szymonowicz

II. NOTIFICATION ANNOUNCEMENT

HEREBY BE IT KNOWN that the Piscataway Township Board of Education has complied with the notification requirements of the Open Public Meetings Act for the announcement of this meeting date and place on November 14, 2011, in the following manner:

- ◆ Posting of the public notice on the posting board for the Board of Education in the Administration Building
- ◆ Mail notification to the newspaper serving Piscataway, *The Home News Tribune*
- ◆ Notification filed with the Municipal Clerk at the Municipal Building on Hoes Lane

This meeting is being digitally recorded. This recording is not an official record or supplement to the minutes and is intended only as a source of information that the public might utilize at a later date to familiarize themselves with the Board's activities.

Mrs. Greeley arrived at 6:28 p.m.

III. EXECUTIVE SESSION

BE IT RESOLVED that the Board adjourn to executive session for the purpose of review and discussion of a detailed personnel agenda for action this evening, and other matters involving individual staff members, as well as numerous outstanding matters in litigation. It is not known at this time when these matters can be disclosed to the public.

Motion to adjourn:

Moved	<u> </u> Mr. Stoddard	Seconded	<u> </u> Mr. Okamoto
	Yea <u> </u> 8		Nay <u> </u> 0

IV. PUBLIC SESSION

BE IT RESOLVED that the Board reconvenes public session.

Motion to reconvene:

Moved	<u> </u> Mr. Connors	Seconded	<u> </u> Mr. Okamoto
	Yea <u> </u> 8		Nay <u> </u> 0

Public session reconvened at 8:00 p.m.

PISCATAWAY TOWNSHIP BOARD OF EDUCATION
Piscataway, New Jersey

EXECUTIVE SESSION MINUTES
Thursday, December 8, 2011 – 6:31 P.M.

Members present:

Mr. Connors	Mrs. Lopez	Mr. Okamoto
Mrs. Greeley	Ms. Maas	Mr. Stoddard
Ms. King	Mr. Mosier	Mr. Szymonowicz

Also present were Mr. Copeland, Ms. Rafferty, Ms. Keck, Mr. De Lucia, Ms. Sousa and Mr. Rubin.

- ✓ Ms. Mass reviewed Mindsets.
- ✓ Ms. Sousa reviewed the personnel agenda.
- ✓ Mr. Rubin reviewed litigation status.

The Board adjourned Executive Session at 7:58 P.M.



Board Secretary

MINUTES OF BUSINESS MEETING OF DECEMBER 8, 2011

The monthly Business Meeting of the Piscataway Township Board of Education was held on Thursday, December 8, 2011 at the Administration Building. The meeting was called to order at 6:30 PM by the Board President, Ms. Maas.

I. CALL TO ORDER

Salute to Flag - Board President

Roll Call – Board Secretary

<u> </u> P	Mr. Connors	<u> </u> P	Mrs. Lopez	<u> </u> P	Mr. Okamoto
<u> </u> P	Mrs. Greeley	<u> </u> P	Ms. Maas	<u> </u> P	Mr. Stoddard
<u> </u> P	Ms. King	<u> </u> P	Mr. Mosier	<u> </u> P	Mr. Szymonowicz

II. NOTIFICATION ANNOUNCEMENT

HEREBY BE IT KNOWN that the Piscataway Township Board of Education has complied with the notification requirements of the Open Public Meetings Act for the announcement of this meeting date and place on November 22, 2011, in the following manner:

- ◆ Posting of the public notice on the posting board for the Board of Education in the Administration Building
- ◆ Mail notification to the newspaper serving Piscataway, *The Home News Tribune*
- ◆ Notification filed with the Municipal Clerk at the Municipal Building on Hoes Lane

This meeting is being digitally recorded. This recording is not an official record or supplement to the minutes and is intended only as a source of information that the public might utilize at a later date to familiarize themselves with the Board's activities.

III. EXECUTIVE SESSION

BE IT RESOLVED that the Board adjourn to executive session for the purpose of review and discussion of a detailed personnel agenda for action this evening, and other matters involving individual staff members, as well as numerous outstanding matters in litigation. It is not known at this time when these matters can be disclosed to the public.

Motion to adjourn:

Moved	<u> </u> Mr. Stoddard	Seconded	<u> </u> Mr. Mosier
	Yea <u> </u> 9		Nay <u> </u> 0

IV. PUBLIC SESSION

BE IT RESOLVED that the Board reconvenes public session.

Motion to reconvene:

Moved	<u> </u> Mr. Connors	Seconded	<u> </u> Ms. King
	Yea <u> </u> 9		Nay <u> </u> 0

Public session reconvened at 8:00 p.m.

PISCATAWAY TOWNSHIP BOARD OF EDUCATION
Piscataway, New Jersey

EXECUTIVE SESSION MINUTES
Thursday, November 17, 2011 – 7:01 P.M.

Members present:

Mr. Connors	Mrs. Lopez	Mr. Okamoto
Mrs. Greeley	Ms. Maas	Mr. Szymonowicz
Ms. King	Mr. Mosier	

Also present were Mr. Copeland, Ms. Rafferty, Ms. Keck, Mr. De Lucia, Ms. Sousa and Mr. Rubin.

- ✓ Ms. Sousa reviewed the personnel agenda.
- ✓ Mr. Rubin reviewed litigation status.

The Board adjourned Executive Session at 7:58 P.M.



Board Secretary

MINUTES OF BUSINESS MEETING OF NOVEMBER 17, 2011

The monthly Business Meeting of the Piscataway Township Board of Education was held on Thursday, November 17, 2011 at the Administration Building. The meeting was called to order at 6:00 PM by the Board President, Ms. Maas.

I. CALL TO ORDER

Salute to Flag - Board President

Roll Call - Board Secretary

<u> </u> P	Mr. Connors	<u> </u> P	Mrs. Lopez	<u> </u> P	Mr. Okamoto
<u> </u> P	Mrs. Greeley	<u> </u> P	Ms. Maas	<u> </u> P	Mr. Stoddard
<u> </u> P	Ms. King	<u> </u> P	Mr. Mosier	<u> </u> P	Mr. Szymonowicz

II. NOTIFICATION ANNOUNCEMENT

HEREBY BE IT KNOWN that the Piscataway Township Board of Education has complied with the notification requirements of the Open Public Meetings Act for the announcement of this meeting date and place on November 14, 2011, in the following manner:

- ◆ Posting of the public notice on the posting board for the Board of Education in the Administration Building
- ◆ Mail notification to the newspaper serving Piscataway, *The Home News Tribune*
- ◆ Notification filed with the Municipal Clerk at the Municipal Building on Hoes Lane

This meeting is being digitally recorded. This recording is not an official record or supplement to the minutes and is intended only as a source of information that the public might utilize at a later date to familiarize themselves with the Board's activities.

III. EXECUTIVE SESSION

BE IT RESOLVED that the Board adjourn to executive session for the purpose of review and discussion of a detailed personnel agenda for action this evening, and other matters involving individual staff members, as well as numerous outstanding matters in litigation. It is not known at this time when these matters can be disclosed to the public.

Motion to adjourn:

Moved	<u> </u> Mrs. Greeley	Seconded	<u> </u> Mr. Okamoto
	Yea <u> </u> 8		Nay <u> </u> 0

IV. PUBLIC SESSION

BE IT RESOLVED that the Board reconvenes public session.

Motion to reconvene:

Moved	<u> </u> Mr. Okamoto	Seconded	<u> </u> Mr. Mosier
	Yea <u> </u> 8		Nay <u> </u> 0

Public session reconvened at 8:00 p.m.

**PISCATAWAY TOWNSHIP BOARD OF EDUCATION
RESOLUTION NO. _____
AUTHORIZING EXECUTIVE SESSION**

WHEREAS, while the Sen. Byron M. Baer Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.) requires all meetings of the Board of Education to be held in public, N.J.S.A. 10:4-12(b) sets forth nine (9) types of matters that may lawfully be discussed in “Executive Session,” i.e. without the public being permitted to attend, and

WHEREAS, the Board of Education has determined that _____ (insert number) issues are permitted by N.J.S.A. 10:4-12(b) to be discussed without the public in attendance shall be discussed during an Executive Session to be held on _____, 20____ at _____ P.M, and

WHEREAS, the nine (9) exceptions to public meetings set forth in N.J.S.A. 10:4-12(b) are listed below, and next to each exception is a box within which **the number** of issues to be privately discussed that fall within that exception shall be written, and after each exception is a space where additional information that will disclose as much information about the discussion as possible without undermining the purpose of the exception shall be written.

“(1) Any matter which, by express provision of Federal law, State statute or rule of court shall be rendered confidential or excluded from public discussion.” The legal citation to the provision(s) at issue is:_____ and the nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____
_____;

“(2) Any matter in which the release of information would impair a right to receive funds from the federal government.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____
_____;

“(3) Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or program, including but not limited to information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____
_____;

“(4) Any collective bargaining agreement, or the terms and conditions of which are proposed for inclusion in any collective bargaining agreement, including the negotiation of terms and conditions with employees or representatives of employees of the public body” The collective bargaining contract(s) discussed are between the Board and _____
_____;

“(5) Any matter involving the purchase lease or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is

_____;

“(6) Any tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____

_____;

“(7) Any pending or anticipated litigation or contract negotiation in which the public body is or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.” The parties to and docket numbers of each item of litigation and/or the parties to each contract discussed are _____

_____ and
nature of the discussion, described as specifically as possible without undermining the need for confidentiality is _____

_____;

“(8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.” Subject to the balancing of the public’s interest and the employee’s privacy rights under South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, the employee(s) and nature of the discussion, described as specifically as possible without undermining the need for confidentiality are _____

_____;

“(9) Any deliberation of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act of omission for which the responding party bears responsibility.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is

_____;

WHEREAS, the length of the Executive Session is estimated to be _____ minutes after which the public meeting of the Board shall (circle one) reconvene and immediately adjourn or reconvene and proceed with business.

NOW, THEREFORE, BE IT RESOLVED that the Board of Education will go into Executive Session for **only** the above stated reasons;

BE IT FURTHER RESOLVED that the Board of Education hereby declares that its discussion of the aforementioned subject(s) will be made public at a time when the public's interest in disclosure is greater than any privacy or governmental interest being protected from disclosure. For each of the above items, the estimated date by which such disclosure can be made and/or the occurrence that needs to take place before disclosure can be made are listed below (attach separate sheet if necessary)

Subject of Discussion	Estimated Date	Necessary Occurrence

BE IT FURTHER RESOLVED that the Board Secretary, at the present public meeting, shall a) read aloud enough of this resolution so that members of the public in attendance can understand, as precisely as possible, the nature of the matters that the Board will privately discuss and, b) clearly announce whether the Board, after admitting the public to the meeting at the conclusion of the Executive Session, will i) immediately adjourn the public meeting or ii) proceed with Board business.

BE IT FURTHER RESOLVED that the Board Secretary, on the next business day following this meeting, shall furnish a copy of this resolution to any member of the public who requests one at the fees allowed by N.J.S.A. 47:1A-1 et seq.

 President

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE RESOLUTION
 APPROVED BY THE BOARD OF EDUCATION AT ITS
 PUBLIC MEETING HELD ON _____ 20__.

 Board Secretary