

Plaintiff's return copy

COPY

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Plaintiff

SUPERIOR COURT BERGEN COUNTY  
FILED

JAN 06 2014

*Jim Goodman*  
REGISTRY CLERK

JOHN PAFF  
Plaintiff,

vs.

MONTVALE BOARD OF  
EDUCATION  
Defendant

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
BERGEN COUNTY  
DOCKET NO. L-184-14

Civil Action

VERIFIED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF

Plaintiff John Paff, by way of verified complaint against the Defendant Montvale Board of Education (i.e. "the Board") states as follows:

**Preliminary Statement**

Despite Plaintiff's attempts to convince it to comply, the Board continues its practice of holding a nonpublic (i.e. executive or closed) meeting prior to virtually every regular, public meeting, without having initially passed a resolution, as required by N.J.S.A. 10:4-13, advising the public of the general nature of the subjects to be discussed during the nonpublic meeting and, as precisely as possible, the time and circumstances under which the private discussions can be disclosed to the public.

Instead of complying with N.J.S.A. 10:4-13 for each nonpublic meeting, the Board habitually establishes a schedule of its 8 p.m. public meetings for the upcoming year at its annual reorganization meeting and states then, without more, that "Executive Session Meetings [will] be held if needed prior to the Board Meetings to begin at or on about 7 p.m." (See, e.g. the relevant page from the agenda for the January 6, 2014 reorganization meeting attached as Exhibit 1.)

The objects of this lawsuit are to obtain a) a declaration from this Court that the Board's present procedure violates the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et. seq. and b) an interlocutory and permanent injunction requiring the Board to comply with N.J.S.A. 10:4-13 separately for each nonpublic session it holds in the future.

### **Parties**

1. Plaintiff John Paff is an individual who resides in Franklin Township, Somerset County, New Jersey and receives mail at P.O. Box 5424, Somerset, NJ 08875. He is "[a]ny person, including a member of the public" who is authorized to bring this action in accordance with N.J.S.A. 10:4-16.

2. Defendant Montvale Board of Education is a public body as that term is defined by N.J.S.A. 10:4-8(a).

### **General Allegations**

3. Plaintiff repeats the allegations stated above as if set forth at length herein.

4. On March 12, 2012, Plaintiff submitted a records request (Exhibit 2) to the Board Secretary/Business Administrator seeking, among other items, "[t]he resolutions, as required by N.J.S.A. 10:4-13, that authorized" various nonpublic meetings held by the Board.

5. In her March 22, 2012 response (Exhibit 3), Board Secretary/Business Administrator Marian Latz responded that

Our Board typically meets in executive session prior to public meetings; however on the rare occasion that they enter into private session for items that still need to be discussed, the resolution can be found close to the end of the agenda/minutes.

6. On March 22, 2012, Plaintiff wrote to Latz and questioned why she did not disclose "the resolutions that authorized the nonpublic sessions that were held at 7 p.m or 7:30 p.m. on [01/16/12, 02/06/12 and 02/13/12]." In response, Latz informed Plaintiff that

There are no resolutions to enter executive sessions for those meeting held prior to the public meetings being called to order. However, our advertised meeting calendar states that executive meetings will begin at 7 p.m. on the nights that work session or public meetings are held. (Exhibit 4.)

7. A representative example of the Board's "advertised meeting calendar" is attached as Exhibit 5. The calendar sets forth the dates of the Board's scheduled, regular meetings and contains at the bottom a statement that "Monday evening public meetings are scheduled to begin at 8 p.m., preceded by 7:00 p.m. private executive session meetings."

8. On March 23, 2012, Plaintiff took exception to the Board's policy of "us[ing] a single notice to advertise several executive meetings" and asked Latz to advise the Board's

attorney that plaintiff had "recently filed suit against the Englewood Cliffs Board of Education on the same issue." (Exhibit 6.)

9. The First Count of Plaintiff's suit against the Englewood Cliff's Board of Education (Docket No. BER-L-2148-12, the First Count is attached as Exhibit 7) raised the same issue raised in this lawsuit and resulted in a Consent Judgment (Exhibit 8) requiring the Englewood Cliffs Board to open each public session "for the purpose of adjourning to executive session and then reconvene public session at the same time."

10. Both the Montvale Board and the Englewood Cliffs Board are represented by the same attorney, Fogarty and Hara. (See Exhibit 9, with is a page from the Board's 2013 reorganization meeting authorizing Fogarty and Hara to serve as Board Attorney.)

11. Despite a) Plaintiff's correspondence with Latz that specifically directed her attention to Plaintiff's lawsuit against the Englewood Cliffs Board of Education that raised the same issue; b) Plaintiff's request that Fogarty and Hara be advised that both the Montvale Board and the Englewood Cliffs Board suffered from the same Open Public Meetings Act deficiency and c) the fact that both the Montvale Board and the Englewood Cliffs Board use the same attorney, the Montvale Board of Education still does not pass a separate resolution, as required by N.J.S.A. 10:4-13, for each nonpublic session it holds.

12. Since Plaintiff's March 2012 correspondence with the Board, the Board has, on at least twenty occasions, held nonpublic meetings at either 6 p.m., 7 p.m., 7:15 p.m., 7:30 p.m. or 7:45 p.m. prior to a regular public meeting and for each of those nonpublic meetings,

no separate, authorizing resolution was passed as required by N.J.S.A. 10:4-13. (The first page from twenty-two of the Board's regular meeting minutes, ranging from April 2012 through to November 2013 are attached as Exhibit 10). Board Attorney Stephen Fogarty was present at the July 31, 2013, 8:00 p.m. public meeting, and presumably at the July 31, 2013, 7:00 p.m. nonpublic meeting.

13. According to §10.1 of the agenda of its January 5, 2014 reorganization meeting, Exhibit 1, the Board is set to once again employ the same procedure of using a single announcement to authorize all the nonpublic meetings that it intends to hold prior to its regular meetings during 2014.

**WHEREFORE**, Plaintiff demands:

A. A declaration by this Court that the Board has violated the Open Public Meetings Act by not passing a separate authorizing resolution, pursuant to N.J.S.A. 10:4-13, prior to each of the nonpublic meetings held prior to its regular, public meetings between April 2012 and present date.

B. An interlocutory injunction preventing the Board, prior to excluding the public from any future meeting, to pass a resolution in public that contains all the elements required by N.J.S.A. 10:4-13.

C. A permanent injunction preventing the Board, prior to excluding the public from any future meeting, to pass a resolution in public that contains all the elements required by N.J.S.A. 10:4-13.

- D. Awarding Plaintiff his costs.
- E. Such other relief as the Court deems equitable and just.

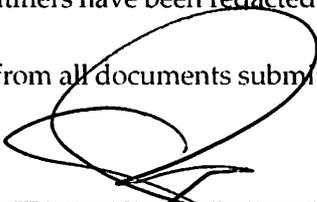
**Certification Of No Other Actions**

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

**Certification Pursuant to R.1:38-7(b)**

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future.

Dated: January 6, 2014



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John Paff  
Plaintiff

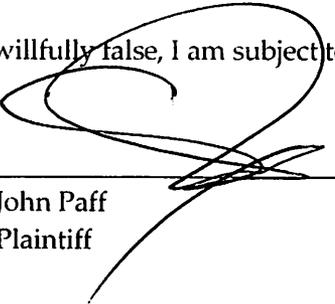
## VERIFICATION

John Paff, of full age, certifies as follows:

1. I am the Plaintiff in the action captioned John Paff v. Montvale Board of Education. All of the facts stated in the verified complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe those facts to be true. All attachments to this Verified Complaint are accurate representations of the originals.

2. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 6, 2014



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John Paff  
Plaintiff