

# Libertarian Party of Central New Jersey

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## Open Government Task Force

John Paff, Task Force Chairman

P.O. Box 5424

Somerset, NJ 08875-5424

November 29, 2006

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

RE: Garwood 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, as well as my personal 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 Garwood Board of Education has 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:

October 18, 2005 Executive Session Minutes

April 6, 2006 Executive Session Minutes

June 20, 2006 Executive Session Minutes

**I. One of the matters discussed in closed session does 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

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<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.

Jersey Sports and Exposition Authority, 369 N.J. Super. 179, 186 (App. Div.), certif. denied, 182 N.J. 147 (2004).

The Board's June 20, 2006 closed session minutes, however, reveal that the following topic was discussed:

*Automatic building controls has come to Lincoln School to assess the needs for correcting the glycol problem.*

It does not appear to us that privately discussing a "glycol problem" in one of the schools is permitted by any of the exceptions contained within N.J.S.A. 10:4-12(b). Accordingly, we assert that the Board violated the Act by discussing a matter in private that ought to have been discussed with the public in attendance.

**II. The description set forth in the June 20, 2006 minutes is insufficient.**

Even if the Board's private discussion of the "glycol problem" was somehow justified under the Open Public Meetings Act, the Board's closed session resolution, as required by N.J.S.A. 10:4-13<sup>2</sup>, insufficiently described that topic.

The resolution, which appears at the top of the June 20, 2006 closed session minutes, is set up so that the secretary can simply check off the boxes that correspond to the topics that are going to be discussed in private. The boxes checked for the June 20, 2006 meeting indicate that "personnel matter, staff" and "other permitted by law" would be discussed.

Since the "glycol problem" is evidently not a "personnel matter, staff" problem, it must fall under the "other permitted by law" category. We assert, however, that N.J.S.A. 10:4-13 requires the Board to do more than to simply inform the public that "other" topics will be discussed.

Moreover, we assert that the checklist form of resolution employed by the Board is generally deficient. Although none of the attached exhibits pertain to a discussion regarding pending litigation, we imagine that when litigation is discussed, the Board simply checks the "litigation" box and provides no further identifying information, such as the names of the parties, on the litigation under discussion.

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

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<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."

why the public is not entitled to know the identify of parties to the specific lawsuit under discussion instead of knowing only that "litigation" is being discussed.

**III. The minutes do not appear to be "reasonably comprehensible" as required by N.J.S.A. 10:4-14.**

The October 18, 2005 closed session minutes reveal that

*Mr. John Geppert addressed the Board regarding the matter involving Mr. Monty Brown. Mr. Geppert advised the Board that there is no action for the Board to take regarding the matter with Mr. Brown.*


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." Liebeskind v. Mayor & Mun. Council of Bayonne, 265 N.J. Super. 389, 400-01 (App. Div. 1993), 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 that the public cannot "appraise the reasonableness of" the Board's decision to "take no action" on "the matter involving Mr. Monty Brown" without knowing the nature of Mr. Brown's relationship to the Board and being given some idea of what type of "matter" is at issue.

We are also troubled that the April 6, 2006 nonpublic meeting lasted for more than four hours<sup>3</sup> but the "discussion" at that meeting is boiled down to only two sentences in the minutes. We believe that "reasonably comprehensible" means more than that.

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

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<sup>3</sup> From 8:51 p.m. to 1:17 a.m.

**GARWOOD BOARD OF EDUCATION  
GARWOOD, NEW JERSEY  
EXECUTIVE SESSION MINUTES  
October 18, 2005**

**CALL TO ORDER:**

The Board entered executive session at 8:05 p.m.

Be it resolved that the GBOE conducts a closed, executive session concerning the following topic (s) as permitted by the New Jersey Open Public Meeting Act after which time the Board may or may not return to public session to take action:

<input checked="" type="checkbox"/> personnel matter, staff	safety and protection of property
personal matter, student	contract negotiations
litigation	<input checked="" type="checkbox"/> other permitted by law

Be it further resolved that at such time as it is legally appropriate for the substance of the closed session to be made public that same will be ordered.

**ROLL CALL:**

P Mr. M. Brown	P Miss C. Guerriero	P Mr. J. Matheson
P Mrs. D. Courtney	P Ms. L. Koenig	P Mrs. A. Palmer
P Mrs. B. Greet	P Mr. G. Maher	P Mrs. A. Lewis

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**OTHERS PRESENT:**

P Mr. John Geppert, Board Attorney

**DISCUSSION:**

Mr. John Geppert addressed the Board regarding the matter involving Mr. Monty Brown.

Mr. Geppert advised the Board that there is no action for the Board to take regarding the matter with Mr. Brown.

Motion by Mr. Matheson, seconded by Mr. Maher to adjourn executive session.

ADJOURNED AT 8:35 p.m.

/s/ Julia DePinto-Perez SBA/BS

**GARWOOD BOARD OF EDUCATION  
GARWOOD, NEW JERSEY  
EXECUTIVE SESSION MINUTES**

**April 6, 2006**

**CALL TO ORDER:**

The Board entered executive session at 8:51 p.m.

Be it resolved that the GBOE conducts a closed, executive session concerning the following topic (s) as permitted by the New Jersey Open Public Meeting Act after which time the Board may or may not return to public session to take action:

<input checked="" type="checkbox"/> personnel matter, staff	safety and protection of property
<input checked="" type="checkbox"/> personal matter, student litigation	contract negotiations
	<input checked="" type="checkbox"/> other permitted by law

Be it further resolved that at such time as it is legally appropriate for the substance of the closed session to be made public that same will be ordered.

**ROLL CALL:**

Y Mr. M. Brown	Y Miss C. Guerriero	Y Mr. J. Matheson
Y Mrs. D. Courtney	Y Ms. L. Koenig	Y Mrs. A. Palmer
Y Mrs. B. Greet	Y Mr. G. Maher	Y Mrs. A. Lewis

**OTHERS PRESENT:**

P Mr. John Geppert, Board Attorney

**DISCUSSION:**

Dr. Murphy discussed projected staffing. Also discussed were Mr. Sneekloth's evaluation, Ms. Chilstrom working three days a week and Mrs. Lipsett working in the main office and as a teacher's aide.

Additionally, the Board discussed matters of contract negotiations regarding Dr. Murphy.

Motion by Mr. Matheson, seconded by Mr. Maher to adjourn executive session.

ADJOURNED AT 1:17 a.m.

/s/ Julia DePinto-Perez SBA/BS

**GARWOOD BOARD OF EDUCATION  
GARWOOD, NEW JERSEY  
EXECUTIVE SESSION  
MINUTES  
June 20, 2006**

**CALL TO ORDER:**

The Board entered executive session at 9:30 p.m.

Be it resolved that the GBOE conducts a closed, executive session concerning the following topic (s) as permitted by the New Jersey Open Public Meeting Act after which time the Board may or may not return to public session to take action:

<input checked="" type="checkbox"/> personnel matter, staff	safety and protection of property
personal matter, student	contract negotiations
litigation	<input checked="" type="checkbox"/> other permitted by law

Be it further resolved that at such time as it is legally appropriate for the substance of the closed session to be made public that same will be ordered.

**ROLL CALL:**

P Mr. M. Brown

P Miss C. Guerriero

P Mr. J. Matheson

P Mrs. D. Courtney

P Ms. L. Koenig

P Mrs. A. Palmer

P Mrs. B. Greet

P Mr. G. Maher

P Mrs. A. Lewis

**OTHERS PRESENT:**

P Mr. John Geppert, Board Attorney

/s/ Julia DePinto-Perez SBA/BS

**DISCUSSION:**

There was discussion regarding Mrs. Modero as play director. For the past three years, Mrs. Linken has been the play director. Under Mrs. Linken, the play ran successfully and in the "black". Also, staff members did not have difficulty working with Mrs. Linken. Under Mrs. Modero, the play ran in the "red" and staff members found it difficult to work with Mrs. Modero.

Mrs. Conrad is retiring and Dr. Murphy would like to appoint Ms. Edmundo as teacher.

The negotiations committee met with the GEA regarding the "memo of understanding". There was some confusion as to the dollar amount in question. The GEA was informed of the dollar amount and agreed that the memo was fine.

There is a special ed student in the pre-k that has not made any educational gains. There will be an out of district placement once an appropriate school has been found.

Automatic building controls has come to Lincoln School to assess the needs for correcting the glycol problem.

Motion by Mrs. Lewis, seconded by Mr. Maher to adjourn executive session.

ADJOURNED AT 10:03 p.m.

/s/ Julia DePinto-Perez SBA/BS