

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

DAVID K. TAYLOR

16 Surrey Lane

Durham, New Hampshire 03824

v.

THE OYSTER RIVER COOPERATIVE SCHOOL BOARD

36 Coe Drive

Durham, New Hampshire 03824

and

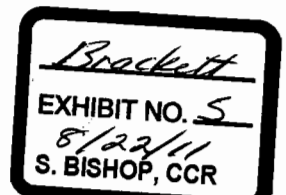
HENRY BRACKETT, Chairman

36 Coe Drive

Durham, New Hampshire 03824

PETITION FOR INJUNCTIVE RELIEF PURSUANT TO RSA 91-A:7

NOW COMES David K. Taylor, ("Taylor") a citizen of the town of Durham, New Hampshire, and petitions this Court pursuant to RSA 91-A: 7 for injunctive relief against the Oyster River Cooperative School Board, (the "Board") a body corporate and politic, Henry Brackett, Chairman of ORCSB, ("Brackett") and states as follows:



INTRODUCTION

1. The New Hampshire Constitution, Part 1, Article 8, provides that all power derives from the People and that public bodies are at all times accountable to the People. This Constitutional grant ensures that the People's right of access to governmental proceedings and records is not unreasonably restricted. This grant guarantees that government is open, accessible, accountable and responsive.

2. By enacting, RSA 91-A, the New Hampshire legislature declared that the open conduct of public business is essential to a democratic society. RSA 91-A establishes rules to ensure an open, public process in government. In recent months, the Board has repeatedly violated the tenets of RSA 91-A, has actively avoided compliance with RSA 91-A: 2 and RSA 91-A:3, and has pursued a hidden agenda that is destructive to the high quality of education expected by the citizens of Durham, Madbury and Lee.

PARTIES

3. David K. Taylor is an individual with a resident address of 16 Surrey Lane, Durham, County of Strafford, and State of New Hampshire.

4. The Oyster River Cooperative School Board is a political body organized under the laws of the State of New Hampshire with a principal address of 36 Coe Drive, Durham, County of Strafford, and State of New Hampshire.

5. Henry Brackett is the Chairman of the Oyster River Cooperative School Board, with a principal address of 36 Coe Drive, Durham, County of Strafford, and State of New Hampshire.

VENUE

6. Venue is proper in this Court because the parties and actions complained of all occurred within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

7. On April 19, 2011 at 11:18 a.m. Brackett emailed other Board members, Ann Wright, Ann Lane, Megan Turnbull, Jim Kach, Jocelyn O'Quinn, Krista Butts to arrange a meeting that was purportedly excluded from the requirements of RSA 91-A (a "non-meeting") on April 21, 2011 with Hoefle, et. al. at their office. See attached Exhibit 1. All Board members except Brackett have released this document arranging the purported non-meeting. On April 21, 2011 the Board held a non-meeting with Hoefle, et. al. at the Hoefle, et al. office. See attached Exhibit 2.

8. On April 29, 2011 the Board held yet another non-meeting with Hoefle, et. al. at their office. See attached Exhibit 2. This time, however, no documents arranging this meeting have been released. On April 30, 2011 at 9:17 and 9:21 p.m. Board member Ann Wright sent two emails to Board members Jim Kach, Ann Lane, Megan Turnbull, Jocelyn O'Quinn, and Krista Butts about a purported non-meeting on April 29, 2011 and

that Brackett called her by phone on April 28, 2011 to arrange that meeting. See attached Exhibits 3 and 4.

9. On May 20, 2011 the Board held yet another non-meeting with Hoefle, et. al. at their office. See attached Exhibit 5. No documents arranging this meeting have been released. On May 23, 2011 a subcommittee of the ORSB and an unidentified "public relations person" held a non-meeting with Hoefle, et. al. at their office. See Id. No documents arranging this meeting have been released. In addition on May 23, 2011 the ORSB held yet another non-meeting with Hoefle, et. al. at their office. See attached Exhibit 5. No documents arranging this meeting have been released.

10. On June 6, 2011 the Board or an unidentified subcommittee of the Board held a non-meeting from 10:00-12:00 at the Durham Police Department. See attached Exhibit 6. No documents arranging this meeting have been released. On June 10, 2011 a subcommittee of the ORSB consisting of Brackett, Jim Kach and Megan Turnbull held a non-meeting at the Durham Police Department. See attached Exhibits 6 and 7. No documents arranging this meeting have been released.

11. On June 12, 2011 at 7:21 a.m. Ann Wright sent an email to Brackett, Jocelyn O'Quinn, Krista Butts, Jim Kach, Ann Lane, and Megan Turnbull describing board deliberations over the phone and apparently without a meeting being duly noticed and called. See attached Exhibit 8. All Board members except Brackett have released this document.

12. On June 13, 2011 the Board held yet another non-meeting with Hoefle, et. al. from 11:00 to 1:30 at the Durham Police Department. See attached Exhibits 6 and 9. No documents arranging this meeting have been released. On June 14, 2011 at 4:47 p.m. Ann Wright sent an email to Brackett, Jocelyn O'Quinn, Krista Butts, Jim Kach, Ann Lane, and Megan Turnbull describing those actions taken at the June 13 non-meeting. See attached Exhibit 10. All Board members except Brackett have released this document.

13. On June 14, 2011 the Board or an unidentified subcommittee of the Board held a non-meeting from 9:00 to 11:00 a.m. at the Durham Police Department. See attached Exhibits 6 and 7. No documents arranging this meeting have been released.

14. On June 15, 2011 the board's purpose in using non-meetings became clear. On June 15, 2011, the Board and Superintendent Howard Colter signed a separation agreement with an effective date of June 30, 2011. This was announced at the June 15, 2011 regular school board meeting. Prior to this agreement and announcement of the agreement, the Board had deliberated and made the decision to buy out Superintendent Colter's contract. The Board had hired professionals, including an attorney, to advise them in that matter. No documents about the search for or selection of the attorney have been released.

15. The Board's deliberations and decisions with regard to buying out Mr. Colter's contract do not appear in any notice of meetings public or non-public as

required by RSA 91-A:2 and RSA 91-A:3. No minutes have been recorded and made available to the public regarding these actions as required by RSA 91-A:2 and RSA 91-A:3. By these actions, the Board has used the vehicle of a non-meeting to circumvent the spirit and purpose of RSA 91-A and have violated RSA 91-A. see RSA 91-A: 2, III (d).

16. On June 15, 2011, the Board announced that they would hire an interim Superintendent to replace Mr. Colter. Brackett also announced that he had consulted with an attorney and begun a search for an interim superintendent. Brackett said he had contacted educational professionals throughout the State of New Hampshire for advice and to help identify qualified interim candidates. Brackett and other Board members had initial meetings with candidates. Prior to this, the Board had deliberated the decision to hire an interim superintendent and to contact candidates. The Board had authorized Brackett to consult with an attorney and to begin the search for an interim Superintendent. The Board had also authorized Brackett and other members to meet with candidates.

17. These deliberations and decisions do not appear in any notice of meetings public or non-public as required by RSA 91-A:2 and RSA 91-A:3. No minutes have been recorded and made available to the public regarding these actions as required by RSA 91-A:2 and RSA 91-A:3. By these actions, the Board has used the vehicle of a non-meeting to circumvent the spirit and purpose of RSA 91-A and have violated RSA 91-A. see RSA 91-A: 2, III (d).

18. On June 20, 2011, Taylor filed a Right-to-Know request pursuant to RSA 91-A for "all records of communications (emails, etc.) from 1 Jan. 2011 involving school board members, other government officials such as selectmen or state officials, or administrators of the school district or towns of Durham, Lee or Madbury concerning any arrangements for non-meetings as defined in the [New Hampshire] Right to Know law. This includes but is not limited to communications concerning when and where meetings might take place, who might attend, and what the subject might be. Please also send any such records of communications involving the search for or selection of an attorney involved in any such non-meetings." See attached Exhibit 11.

19. On June 21, 2011, a Board staff member, Wendy L. DiFruscio, acknowledged receipt of the Right-to-Know request and stated "Please note that some of the information will not be available until June 30th 2011." See attached Exhibit 12. On June 30, 2011 the Board met and acted to implement the separation agreement with Superintendent Colter: "Motion made by Ann Lane, seconded by Jim Kach to expend \$185,000 from the unspent surplus fund as stated in the terms of the Contract Settlement and related attorney fees and consultant fees. Motion passed by a vote of 5□0."

20. On June 30, 2011 Wendy L. DiFruscio notified Taylor that "I want to let you know that the information requested is still being compiled for review. We tentatively plan on releasing any information that can be released by the end of next week, or the beginning of the following week at the latest." See attached Exhibit 13. On

July 7, 2011 Wendy L. DiFruscio notified Taylor that "In speaking with the SD attorney, please be advised that the information requested in your first set of RTK's is expected to be available mid week of July 15th." See attached Exhibit 14.

21. On July 7, 2011 Taylor notified Wendy L. DiFruscio, Interim Superintendent Meredith S. Nadeau, Bracket and Vice Chairman Ann Wright that "I find this further delay unreasonable. I asked on 20 June. By law I should have had the documents by 25 June. You responded a few days later the documents would not be released until 30 June. It is now 7 July and you are saying they won't be available until 15 July (if then!)." Taylor further asked "I assume by now at least some of the documents I requested have been collected and reviewed. Please forward all those reviewed documents to me immediately. Further, please detail what documents you are waiting on, specifically what the reason is for the delay, and what can be done to expedite their release." See attached Exhibit 15.

22. On July 7, 2011 Wendy L. DiFruscio sent by electronic mail an attached file in electronic Portable Document Format (PDF) containing 49 pages of copies of electronic mails between members of the Board. See attached Exhibit 16. She also included an attached PDF file of 2 pages including a cover letter and invoice for requested copies. In the cover letter, Wendy L. DiFruscio noted "Some of the governmental records that respond to your request are available for your review and copying at the SAU office. We are still waiting for the School Board Chairman's e-mails. Those e-mails will then be reviewed by School District counsel. The expected date for

completion of that review is the middle of next week. At that time, additional governmental records that respond to your request and that are not exempt from disclosure will be available for you to review and copy at the SAU office." See attached Exhibit 17.

22. The July 7, 2011 invoice was for \$3.04 for 38 copies, namely 47 pages less the first 9 that are provided for free. See attached Exhibit 18.

23. On July 7, 2011 Taylor asked "However, I noticed that any identifying information about interim superintendent candidates was redacted. I would like to ask again under RSA 91-A for all the information about these candidates that you can provide. I refer you to NH Supreme Court case Lambert v. Belknap County Convention (attached) that argues there is a public interest in disclosure of such identifying information as the list of names and cover letters for candidates. I think the office of Superintendent is clearly of equal or greater interest to a community as sheriff as described in Lambert." See attached Exhibit 19.

24. On July 11, 2011 Wendy L. DiFruscio acknowledged the request from Taylor for the redacted information. See attached Exhibit 20. On July 11, 2011 Wendy L. DiFruscio responded that the redacted information would not be disclosed. See attached Exhibit 21. On July 13, 2011 Taylor paid \$3.04 by check to the Oyster River Cooperative School District.

25. On July 13, 2011, Taylor asked about the status of his right to know request. See attached Exhibit 22. On July 13, 2011 Wendy L. DiFruscio responded that she "received this inquiry and ... forwarded [it] to the school board." See attached Exhibit 23. On July 20, 2011 the ORSB met and Chairman Henry Brackett participated by phone because he was on vacation. On July 21, 2011, Taylor asked about the status of the right to know request and noted "given it has been over a full month, the failure to satisfy this request in full is a clear and knowing violation of RSA 91-A by the board, and as you indicated in your letter of 7 July, specifically by Chairman Henry Brackett. Please let me know whether you have still not received any documents for review from Mr. Brackett. Also, as I noticed at last night's board meeting, please confirm that Mr. Brackett is out of town on vacation while this request is still pending his action." See attached Exhibit 24.

26. On July 21, 2011 Wendy L. DiFruscio responded "Please be advised that at this point we have still not received any information from the board chair. Also, I only know what I was told and that being the Mr. Brackett would be out of town on vacation this week." See attached Exhibit 25.

27. To date, Taylor's request for information from the Board under RSA 91-A have not been fully complied with or answered. By these actions, the Board has acted in a manner which circumvents the spirit and purpose of RSA 91-A and has violated RSA 91-A. see RSA 91-A: 2, III (d).

28. To date, Taylor's request for information from Brackett under RSA 91-A have not been fully completed with or answered. By these actions, Brackett has acted in a manner which circumvents the spirit and purpose of RSA 91-A and has violated RSA 91-A. see RSA 91-A: 2, III (d).

COUNT I

RSA 91-A

(Violation of the Right to Know statute by the Oyster River School Board)

29. The allegations contained in paragraphs 1 through 28 are hereby fully realleged and incorporated.

30. Despite Taylor's acknowledged requests pursuant to RSA 91-A, the Board has continued to ignore his requests or raise any defense to Taylor's requests under RSA 91-A. The Board has repeatedly, knowingly and in a disturbing pattern failed to respond to Taylor's rightful request for information under RSA 91-A.

31. Due to the Board's failure to honor its obligations under RSA 91-A, Taylor's rights have been violated and he has been deprived the access to information and government guaranteed by RSA 91-A. By these actions, the Board has acted in a manner which circumvents the spirit and purpose of RSA 91-A and has violated RSA 91-A. see RSA 91-A: 2, III (d).

32. The damages are within the jurisdictional limits of this Court.

COUNT II

N.H. CONSTITUTION

(Violation of Part 1, Article 8 by the Oyster River School Board)

33. The allegations contained in paragraphs 1 through 32 are hereby fully realleged and incorporated.

34. Part 1, Article 8, of the New Hampshire Constitution provides that all power derives from the People and that public bodies are at all times accountable to the People. This Constitutional grant ensures that the People's right of access to governmental proceedings and records is not unreasonably restricted. This grant guarantees that government is open, accessible, accountable and responsive.

35. Despite Taylor's acknowledged requests pursuant to RSA 91-A, the Board has continued to ignore his requests or raise any defense to Taylor's requests under RSA 91-A. The Board has repeatedly, knowingly and in a disturbing pattern failed to respond to Taylor's rightful request for information under RSA 91-A.

36. This failure of the Board to honor its obligations under RSA 91-A, violates Taylor's constitutionally guaranteed rights and he has been deprived the due process of law by access to information and government guaranteed by the New Hampshire Constitution.

37. The damages are within the jurisdictional limits of this Court.

COUNT III

RSA 91-A

(Violation of the Right to Know statute by Brackett)

38. The allegations contained in paragraphs 1 through 37 are hereby fully realleged and incorporated.

39. Despite Taylor's acknowledged requests pursuant to RSA 91-A, Brackett has continued to ignore his requests or raise any defense to Taylor's requests under RSA 91-A. Brackett has repeatedly, knowingly and in a disturbing pattern failed to respond to Taylor's rightful request for information under RSA 91-A.

40. Due to Brackett's failure to honor its obligations under RSA 91-A, Taylor's rights have been violated and he has been deprived the access to information and government guaranteed by RSA 91-A. By these actions, Brackett has acted in a manner which circumvents the spirit and purpose of RSA 91-A and has violated RSA 91-A. see RSA 91-A: 2, III (d).

41. The damages are within the jurisdictional limits of this Court.

COUNT IV

N.H. CONSTITUTION

(Violation of Part 1, Article 8 by Brackett)

42. The allegations contained in paragraphs 1 through 41 are hereby fully realleged and incorporated.

43. Part 1, Article 8, of the New Hampshire Constitution provides that all power derives from the People and that public bodies are at all times accountable to the People. This Constitutional grant ensures that the People's right of access to governmental proceedings and records is not unreasonably restricted. This grant guarantees that government is open, accessible, accountable and responsive.

44. Despite Taylor's acknowledged requests pursuant to RSA 91-A, Brackett has continued to ignore his requests or raise any defense to Taylor's requests under RSA 91-A. Brackett has repeatedly, knowingly and in a disturbing pattern failed to respond to Taylor's rightful request for information under RSA 91-A.

45. This failure of Brackett to honor its obligations under RSA 91-A, violates Taylor's constitutionally guaranteed rights and he has been deprived the due process of law by access to information and government guaranteed by the New Hampshire Constitution.

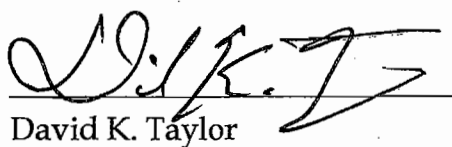
46. The damages are within the jurisdictional limits of this Court.

WHEREFORE, Taylor requests that this Court:

- A. Compel the Board and Brackett to comply with Chapter 91-A and produce the requested information within forthwith;
- B. Enjoin future violations of Chapter 91-A by the Board and Brackett in accordance with RSA 91-A:8 III, by issuing an order compelling the Board and Brackett to comply with all RSA 91-A requests within the mandates of that law;

- C. Award Taylor his costs and attorneys fees made necessary by the bringing of this action as allowed by RSA 91-A:8, I;
- D. Declare such other relief as may be just and equitable.

Respectfully submitted,


David K. Taylor

Dated: 4 Aug. 2001