

STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY, SS

SUPERIOR COURT

Docket No. 219-2011-CV-00349

David K. Taylor

v.

The Oyster River Cooperative School Board and Henry Brackett, Chairman

PRETRIAL MEMORANDUM

NOW COME The Oyster River Cooperative School Board, and Henry Brackett, by their attorneys, Wiggin & Nourie, P.A., and submit the following Pretrial Memorandum.

This case ostensibly arises out of a right to know request submitted by petitioner, David K. Taylor in an email dated June 20, 2011. (See Exhibit 11 to original and amended petitions for injunctive relief). That request pertained to records of communications concerning arrangements for non-meetings involving School Board members from January 1, 2011 presumably, although not specifically stated to be, through the date of the request.

At the time that the petitioner filed this action, six of seven School Board members had responded and counsel for the Board had provided the petitioner with voluminous additional documents, including material far beyond the original request. Those documents included timelines of events specifically generated in an effort to satisfy petitioner's request for information pertaining to the activities of the School Board during

the timeframe in question. Substantively, the original petition focused primarily on complaints by the petitioner concerning non-meetings with counsel relevant to the negotiation of a separation agreement with former superintendent Howard Colter, as well as work conducted by a subgroup of the Board investigating a search process to locate an interim replacement for Mr. Colter.

It is the position of the Board that the non-meetings which occurred with counsel surrounding the effort to negotiate a separation agreement with former superintendent Colter are specifically exempted from the mandates of RSA 91-A. See RSA 91-A:2 I (b).

It is the position of the School Board that the work undertaken by members of the Board to begin exploring an interim superintendent search process was also outside the scope of RSA 91-A. While RSA 91-A does apply to committees or subcommittees of a subordinate body the informal work sessions which involved less than a quorum of the School Board were not the work of a subcommittee. Rather, they were work sessions undertaken to begin exploring the process for conducting an interim superintendent search subsequent to the time that Board chairman Henry Brackett was tasked with gathering information about such a process. Chairman Brackett engaged Board members as well as outside consultants to assist in that fact-finding function consistent with his authority as chairman and common practice in the state of New Hampshire. At no time did those efforts involve a quorum of the Board in a meeting.

Both the original and amended petitions contain limited prayers for relief. Both petitions seek production of documents initially requested in the June 20, 2011 email request, an injunction in the form of an order from the Court compelling the Board to

comply with future RSA 91-A requests by Taylor within the mandates of the law, and a request for costs and attorney's fees.

Despite the narrowness of the petitioner's prayers for relief, and despite the fact that prior counsel for the Board provided petitioner with material far beyond his original request, petitioner has noticed and taken three lengthy depositions in this case. Petitioner has deposed chairman Henry Brackett, vice chairman Ann Wright, and Board member Megan Turnbull. Consistent with the broadened scope of complaints raised in the factual section of the amended petition, petitioner's questioning in those depositions was far ranging and far beyond the scope of the issues relevant to the limited prayers for relief. Petitioner's activities to date suggest a broad attack on the manner in which the School Board conducts its business motivated by some general sense of dissatisfaction the petitioner holds with the way the Board does conduct its business.

This Court scheduled a one hour trial on petitioner's claim for injunctive relief consistent with the mandates of RSA 91-A. Petitioner has requested the presence of the three School Board members deposed as witnesses and they will be voluntarily produced. In addition, petitioner has requested that two additional Board members and two district employees be available as witnesses. It is clear from the witness requests and discovery taken to date that petitioner seeks to try not his original RSA 91-A request, but a much broader case.

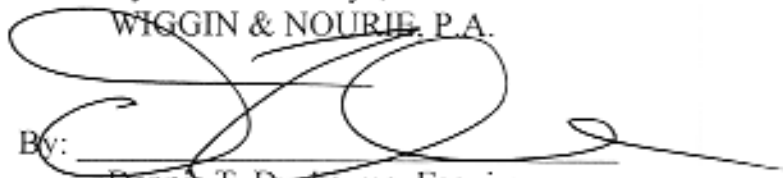
The Board submits this memorandum to advise the Court that it has provided the documents originally requested and that it intends to comply with future 91-A requests of the petitioner in a timely manner. Simply stated, taking the petitioner's original or

amended prayers for relief there is little for the Court to delve into. The documents have been produced. The Board is certainly not in a position to contest its obligation to comply with appropriate RSA 91-A requests in the future. The only issue for the Court is the extent to which the petitioner might be entitled to an award of costs. It is the position of the Board that the three depositions taken were not necessary for the prosecution of the petitioner's 91-A request and that they were taken because of a much broader agenda being pursued. For that reason, the Board requests that the petitioner's costs for the depositions not be considered by the Court. The Board also requests that the Court limit the issues at trial to those relevant to petitioner's requested relief, and not allow the petitioner to use a 91-A request as a mechanism to air his general dissatisfaction with the Board.

WIGGIN & NOURIE, P.A., MANCHESTER, NEW HAMPSHIRE

Respectfully submitted,

The Oyster River Cooperative School
Board and Henry Brackett, Chairman
By Their Attorneys,
WIGGIN & NOURIE, P.A.

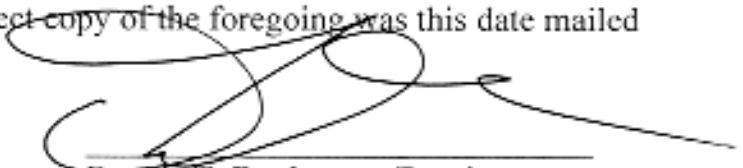


By: _____
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Dated: November 14, 2011

Certification

I hereby certify that a true and correct copy of the foregoing was this date mailed to David K. Taylor.

A handwritten signature in black ink, appearing to read "Dennis T. Ducharme", written over a horizontal line.

Dennis T. Ducharme, Esquire

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