

STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

Docket No. 219-2011-CV-00349

David K. Taylor

v.

The Oyster River Cooperative School Board et al

OBJECTION TO MOTION TO RECONSIDER

NOW COMES the defendant, Oyster River Cooperative School Board, by its attorney, Dennis T. Ducharme, and objects to Petitioner's Motion to Reconsider, stating for cause as follows:

INTRODUCTION

Petitioner has moved for reconsideration of three aspects of this Court's January 17, 2012 order. Respondents object to all aspects of the motion because Petitioner has not met the most basic requirement of Superior Court Rule 59-A. Petitioner has not, and cannot, establish that the Court has overlooked or misapprehended points of law or fact. As such, the Motion should fail.

**PETITIONER'S ARGUMENT WITH REGARD TO THE "PRECEDENCE
CLAUSE" IS UNSUPPORTED BY LAW**

As was the case at trial, Petitioner puts forth an argument that a violation of a Board policy amounts to a violation of RSA 91-A. While Petitioner accurately cites the Statute, he offers no legal authority for the contention that a violation of a policy amounts to a statutory violation. No such authority exists, as the Court has already ruled. No New Hampshire Supreme Court case supporting the argument can be found. The Court should not revisit the issue.

**THE COURT SHOULD NOT RULE THAT SUB GROUPS OF THE BOARD
CONSTITUTED COMMITTEES OF THE BOARD**

Despite a very favorable ruling from the Court, castigating the Board for the activities of its sub groups in working on aspects of the interim superintendent search process, Petitioner seeks reconsideration, arguing that the Court should make a specific finding that the sub groups in question constituted sub-committees under RSA 91-A. The Respondents object.

First, there was clear testimony from Lyonel Tracey, an experienced educator, formerly a superintendent in a number of New Hampshire school districts, and past New Hampshire Commissioner of Education, directly at odds with the proposition Petitioner puts forth. Dr. Tracey testified that the work done by subgroups of the Board was commonly undertaken and consistent with his experience advising and working with many boards. He testified that the conduct was not prohibited by RSA 91-A or he would not have worked with the individuals in question, and that it did not constitute committee

work subject to notice requirements. The Court's order of January 19, 2011 did not even acknowledge Dr. Tracey's testimony. To the extent the Court is inclined to reconsider the point argued by Petitioner, it should consider Dr. Tracey's testimony.

It is the Respondents' position that the Court's original order, finding the activities of the sub groups at issue to be contrary to the mandates of RSA 91-A was incorrect. Contact between less than a quorum of Board members is not violative of RSA 91-A if no decisions are made by those sub groups. Webster v Town of Candia, 146 N.H. 430, 444 (2001). The groups of members at issue, working to gather background information and seek advice as to processes were not making Board decisions.

By seeking reconsideration and a ruling that the groups in question were, *by definition*, committees, Petitioner seeks a ruling having little to do with the case at hand. Rather, having obtained virtually all of the relief sought, Petitioner seeks a ruling for ancillary benefit in his on-going battle with The Oyster River School Board. Petitioner seems to be of the view that when any two members of a public body meet, they constitute a prohibited committee. The ruling sought has no basis in law and would in no way impact the merits of this case. Petitioner seeks the ruling only with the hope that it becomes an arrow in his quiver for future attacks on the Board.

**ENJOINING THE BOARD FROM FUTURE VIOLATIONS SERVES NO
PRACTICAL PURPOSE**

The Board is legally obligated to follow RSA 91-A, whether or not a court case is pending. The Board, through counsel, represented that it would work to comply with RSA 91-A going forward. It intends to do so. Whether the Court enters an order enjoining the Board or not, Petitioner will no doubt continue to monitor the Board's activities, and argue perceived statutory violations when they occur. A specific injunction telling the Board to do what it is legally obligated to do serves no practical purpose. Petitioner offers no factual or legal arguments supporting that aspect of his request for reconsideration. It should be denied.

Respectfully submitted,

The Oyster River Cooperative School
Board

By Its Attorneys,
DUCHARME RESOLUTIONS, PLLC

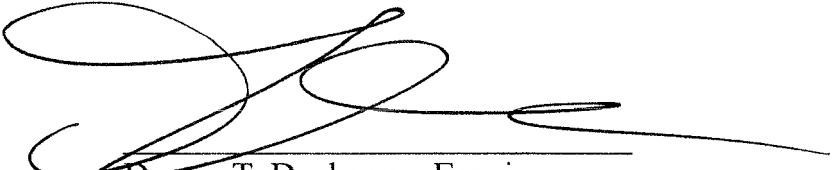
Dated: February 6, 2012

By: 

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Certification

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


Dennis T. Ducharme, Esquire