

**THE STATE OF NEW HAMPSHIRE**

**ROCKINGHAM, SS.**

**SUPERIOR COURT**

Michael Miller and Susan Miller

v.

Joseph Dreyer, Chairman  
Fremont School Board

No. 03-E-152

**ORDER**

The petitioners, Michael Miller and Susan Miller, brought this action against the respondent to enforce RSA 91-A, referred to as the right-to-know law. The court scheduled a hearing on April 11, 2003. The petitioners appeared with their representative, Harriet E. Cady, who filed a power of attorney executed by the petitioners. The respondent appeared with counsel. On April 14, 2003, the petitioners filed a pleading labeled as a request for findings of fact. The pleading itself proffers facts that were not placed in evidence and raises new issues. The court declines to consider the petitioners' late-filed expansion of the record and the issues to be considered. Because the petitioners did not sustain their burden of showing that the respondent failed to comply with the requirements of RSA 91-A, their petition is DENIED.

The petitioners assert:

1. They requested copies of minutes of the Fremont School Board and respondent did not fully comply with their request;
2. The minutes that were supplied did not contain sufficient detail;
3. The members of the school board have been communicating by e-mail in violation of the requirement that public meetings be noticed; and

4. Certain employees of the Fremont Elementary School, Ellis School produced a newsletter on school time supporting a building bond, thereby using taxpayer funds to promote their preferred outcome.

The court will address these claim in turn.

The petitioners first claim that the respondent failed timely to supply minutes of certain meetings. In his answer, the respondent asserts that the petitioners' written request was addressed to him personally. As a result, it was not processed by the school board staff; rather, it was forwarded to him unopened. The respondent further states that once he opened the letter, he took steps to ensure that the board provided a timely response to the petitioners' request. The petitioners do not contest the respondent's facts. Thus, they have not sustained their burden of showing that the respondent failed to respond timely.

The petitioners next claim that certain minutes discussing the hiring of a superintendent were not supplied. The respondent answers that the decision was not made by the Fremont school board, but rather by the SAU 14 board. Because the petitioners did not request the SAU 14 minutes, there cannot be a finding of non-compliance. Again, the petitioners did not contest the respondent's offer as to the facts. Under this circumstance, the petitioners have not sustained their burden.

The petitioners also claim that the minutes taken and supplied contained insufficient detail of the discussions at the meetings. The board is required to record minutes promptly. RSA 91-A:2, II. The minutes must include "names of members, persons appearing before the [board] and a brief description of the subject matter discussed and final decisions." *Id.* The petitioners have not specified a violation of those specific requirements, nor would the minutes supplied (Exh. 3) support the petitioners' claim of a failure to include that statutory elements. Accordingly, the petitioners have not sustained their burden on this claim.


Next, the petitioners assert that the board members engage in substantive discussions via e-mail. The respondent does not deny the claim, but argues that it treats e-mails involving a quorum of the board as public records. The petitioners agree that they have had access to these e-mail printouts; indeed, they have supplied the court with copies of a set of such printouts. The petitioners claim that the respondent is nevertheless out of compliance with the right-to-know law because the e-mail printouts have not been physically attached to the minutes. Because RSA 91-A does not require such written communications to be physically attached to the minutes and because the communications have otherwise been disclosed in accordance with the right-to-know law, the petitioners' have not sustained their burden on this claim.

Finally, the petitioners assert that certain employees of the Fremont Elementary School, Ellis School produced a newsletter on school time supporting a building bond, thereby using taxpayer funds to promote their preferred outcome. First, the right-to-know law requires disclosure—it does not pertain to the substance of what is required to be disclosed. Thus, the substantive assertion that employees are misusing taxpayer money does not state a claim under RSA 91-A. Even if the petitioners had stated a right-to-know claim, they not only failed to present evidence, also failed to make an offer of proof. Thus, the court would be compelled to deny the claim on the merits.

Based on the foregoing, the prayers for relief as set forth in the petition are DENIED.

**So ORDERED.**

**Date: April 16, 2003**

  
**LARRY M. SMUKLER**  
**PRESIDING JUSTICE**