

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

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, 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

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.

VENUE

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

FACTUAL ALLEGATIONS

6. The members of the Board are Henry Brackett ("Brackett"), Ann Wright ("Wright"), Krista Butts ("Butts"), Ann Lane ("Lane"), Jim Kach ("Kach"), Jocelyn O'Quinn ("O'Quinn") and Megan Turnbull ("Turnbull"), all with a principal address of 36 Coe Drive, Durham, County of Strafford, and State of New Hampshire.
7. On May 5, 1999 the Board revised Policy BBAA - Individual Members. The Board has not rescinded or amended Policy BBAA since that date. This version of Policy BBAA remains in effect. Policy BBAA is used in the normal course of business of the Board.
8. Policy BBAA provides "Individual board members may not exercise their authority over district affairs. The board may, by majority vote, take action at a legal meeting of the board. In other instances an individual board member, including the chairperson, has power only when the board by vote has delegated authority to him or her. No legal action can be taken except at a duly posted meeting of the board and by a quorum acting as a unit."
9. By requiring all legal action of the Board to be taken at a duly posted meeting and all authority to be delegated by a vote also at a duly posted meeting, these aspects of Policy BBAA require a broader public

access than the requirements of RSA 91-A and by RSA 91-A:2 II, these aspects of Policy BBAA take precedence over the requirements of RSA 91-A and a violation of these aspects of Policy BBAA is a violation of RSA 91-A.

10. On October 17, 2007 the Board adopted Policy BE - School Board Meetings. The Board has not rescinded or amended Policy BE since that date. This version of Policy BE remains in effect. Policy BE is used in the normal course of business of the Board.
11. Policy BE defines a “special meeting” of the Board as a “special meeting of the Board is a meeting that is held to address important matters that arise between regular meetings and/or require Board action before the time set for the next regular meeting, or to consider a single subject in one session.”
12. Policy BE further provides under special meetings that “The notice or agenda shall indicate the subject(s) of the meeting and action to be taken. No business other than that stated in the notice of the meeting shall be transacted.”
13. Policy BE also defines a “workshop” as “The Board, at its discretion or if required by law, may schedule workshops and other meetings to discuss a

discuss a particular subject or proposal or to gather input from staff, community, or other groups.”

14. Policy BE further provides that “No formal action shall be taken by the Board at a workshop or informational meeting.”
15. The above aspects of Policy BE require a broader public access than the requirements of RSA 91-A and by RSA 91-A:2 II, these aspects of Policy BE take precedence over the requirements of RSA 91-A and a violation of these aspects of Policy BE is a violation of RSA 91-A.
16. On October 13, 2011 at about 7:00 p.m. the Board met at Oyster River High School. The notice for this meeting was posted as a “Notice of School Board Workshop Special Meeting.” Since the notice of this meeting identified the meeting as a special meeting, this meeting is a special meeting as defined by Policy BE. Since the notice of this meeting identified the meeting as a workshop, this meeting is a workshop as defined by Policy BE.
17. The body of the notice for the October 13, 2011 meeting states in full: “The Oyster River School Board will meet for a special workshop at the ORHS - Room C-124 from 7:00 PM – 8:30 PM on Thursday, October 13th 2011.”

18. The notice for the October 13, 2011 meeting does not indicate the subject of the meeting and action to be taken. The notice does not state the business of the meeting. By not indicating the subjects, actions and business of this meeting, the notice violates the requirements of Policy BE for special meetings and workshops that require a broader public access than the requirements of RSA 91-A and therefore by precedence the notice violates RSA 91-A and the October 13, 2011 meeting violates RSA 91-A.
19. At the October 13, 2011 meeting the Board reviewed “the timeline and deadlines for the Superintendent search process.” The Board also considered “how NESDEC might be able to serve the Board in conducting community forums for building trust” which is not part of the Superintendent search process. Neither of these items were stated in the notice as subjects or business for this meeting. These subjects discussed at this meeting without proper notice violate Policy BE and by precedence RSA 91-A.
20. At the October 13, 2011 meeting the board considered the announcement for the Superintendent search. The Board took action to delegate to O’Quinn “to compile the suggestions on the announcement.” The Board further took action to decide “that Danielle [Bolduc] would be the appropriate person to add ... verbiage”

to the announcement. These actions were not indicated in the notice for this meeting. These actions were taken at a workshop. These actions taken at this meeting without proper notice violate Policy BE and by precedence RSA 91-A. Since the notice for this meeting was not proper, this is not a duly posted meeting and this action violates Policy BBAA and by precedence RSA 91-A.

21. At the October 13, 2011 meeting the Board took action to delegate to the Communications Committee to “send out letters to the individual constituents asking them to recruit members for the steering committee.” This action was not indicated in the notice for this meeting. This action was taken at a workshop. This action taken at this meeting without proper notice violates Policy BE and by precedence RSA 91-A. Since the notice for this meeting was not proper, this is not a duly posted meeting and this action violates Policy BBAA and by precedence RSA 91-A.

22. On October 25, 2011 at about 3:00 p.m. the Board met at Oyster River High School. The notice for this meeting was posted as a “Notice of School Board Special Workshop Meeting.” Since the notice of this meeting identified the meeting as a special meeting, this meeting is a special meeting as defined by Policy BE. Since the notice of this meeting identified the meeting as a

meeting identified the meeting as a workshop, this meeting is a workshop as defined by Policy BE.

23. The body of the notice for the October 25, 2011 meeting states in full: "The Oyster River School Board will meet with NESDEC for a special Superintendent Search workshop at the ORHS - Room C-124 from 3:00 PM - 5:00 PM on Tuesday, October 25th 2011."
24. The notice for the October 25, 2011 meeting indicates the subject of the meeting as the "Superintendent Search" but does not indicate any action to be taken. The notice states the business of the meeting as the "Superintendent Search".
25. At the October 25, 2011 meeting the Board modified the announcement for the Superintendent search and took action to approve "the letter moving forward with modifications." This action was not indicated in the notice for this meeting. This action was taken at a workshop. This action taken at this meeting without proper notice violates Policy BE and by precedence RSA 91-A. Since the notice for this meeting was not proper, this is not a duly posted meeting and this action violates Policy BBAA and by precedence RSA 91-A.

26. Subsequent to the action of the Board at the October 25, 2011 meeting, NESDEC published the announcement approved at this meeting on the web.
27. At the October 25, 2011 meeting the Board modified the advertisement for the Superintendent search and took action to approve “the ad as modified.” This action was not indicated in the notice for this meeting. This action was taken at a workshop. This action taken at this meeting without proper notice violates Policy BE and by precedence RSA 91-A. Since the notice for this meeting was not proper, this is not a duly posted meeting and this action violates Policy BBAA and by precedence RSA 91-A.
28. Subsequent to the action of the Board at the October 25, 2011 meeting, NESDEC published and distributed the advertisement approved at this meeting.
29. At the October 25, 2011 meeting the Board considered focus groups for the Superintendent search and took action to have these 7 focus groups: “School Board, Administrators, Teachers/Support Staff, Government and Business Leaders, Parents of School Age Children, Residents/Community Groups, Students.” This action was not indicated in the notice for this meeting. This action was taken at a workshop. This action taken at this meeting without proper notice

violates Policy BE and by precedence RSA 91-A. Since the notice for this meeting was not proper, this is not a duly posted meeting and this action violates Policy BBAA and by precedence RSA 91-A.

30. At the October 25, 2011 meeting the Board took action to delegate to the Communications Committee to “draft the focus group letters and press release.” This action was not indicated in the notice for this meeting. This action was taken at a workshop. This action taken at this meeting without proper notice violates Policy BE and by precedence RSA 91-A. Since the notice for this meeting was not proper, this is not a duly posted meeting and this action violates Policy BBAA and by precedence RSA 91-A.
31. Subsequent to the action of the Board at the October 25, 2011 meeting, NESDEC conducted a series of focus group meetings as approved at this meeting.
32. On November 14, 2011 at about 7:30 p.m. the Board met at Oyster River High School. The notice for this meeting was posted as a “Notice of School Board Special NESDEC Workshop Meeting.” Since the notice of this meeting identified the meeting as a special meeting, this meeting is a special meeting as defined by Policy BE. Since the notice of this meeting identified the meeting as a workshop, this meeting is a workshop as defined by Policy BE.

33. The body of the notice for the November 14, 2011 meeting states in full: "The Oyster River School Board will meet with NESDEC for a special Superintendent Search work session at the ORHS - Room C-124 from 7:30 PM - 9:00 PM on Monday, November 14th 2011. Screening Committee Discussion: 1. Composition 2. Responsibilities 3. Expectations 4. Schedule"
34. The notice for the November 14, 2011 meeting indicates the subject of the meeting as the "Superintendent Search" but does not indicate any action to be taken. The notice states the business of the meeting as the "Superintendent Search".
35. At the November 14, 2011 meeting while discussing selections for the screening committee:
- "Megan [Turnbull] offered up clarification as to why she thought a lottery system might be better. She had spoken with someone on a PTO committee and there was a fear that there are some parents that are not involved with PTOs because of work schedules, etc that might also provide a vested interest in this district and would not necessarily be recognized because they have not been able to volunteer. Ken [DeBenedictis of NESDEC] suggested that we have people submit names to the central office and then have the student

representative choose the names. Jocelyn [O'Quinn] asked Ken whether or not we should be considering people's backgrounds and what the necessary components are for a position such as this. He said that was a very valid point. A hybrid system was suggested that the PTO or parent group choose three people and then we draw one for the committee."

36. At the November 14, 2011 meeting the Board took action to approve the screening committee: "Jim Kach made a motion to be 2 parents, 2 community members, 1 student, 3 teachers, 1 administrator, 2 School Board, seconded by Jocelyn O'Quinn. ... The motion passed with a vote of 5-2." This action was not indicated in the notice for this meeting. This action was taken at a workshop. This action taken at this meeting without proper notice violates Policy BE and by precedence RSA 91-A. Since the notice for this meeting was not proper, this is not a duly posted meeting and this action violates Policy BBAA and by precedence RSA 91-A.
37. On November 30, 2011 at about 6:30 p.m. the Board met at Oyster River High School. The notice for this meeting was posted as a "Notice of School Board/ Advisory Budget Committee Special Workshop Meeting." Since the notice of this meeting identified the meeting as a

special meeting, this meeting is a special meeting as defined by Policy BE. Since the notice of this meeting identified the meeting as a workshop, this meeting is a workshop as defined by Policy BE.

38. The body of the notice for the November 30, 2011 meeting states in full: "The Oyster River School Board will meet for a special meeting to discuss Superintendent Search committee selection process, and to conduct a budget work session with the Advisory Budget Committee at the ORHS - Room C-124 at 6:30 PM on Wednesday, November 30th 2011."

39. The notice for the November 30, 2011 meeting indicates the subjects of the meeting as "to discuss Superintendent Search committee selection process, and to conduct a budget work session with the Advisory Budget Committee" but does not indicate any action to be taken. The notice states the business of the meeting as "to discuss Superintendent Search committee selection process, and to conduct a budget work session with the Advisory Budget Committee."

40. At the November 30, 2011 meeting the Board took action to approve the Superintendent search screening committee:

"Ann Wright moved to have the composition of the Superintendent Search Committee to consist of 13 individuals, 2 Administrators, 2 School Board members, 3

Teachers, 3 Parents, 1 Student, and 2 Community Members 2nd by Ann Lane. Motion failed 1-4 with Ann Wright in favor of this motion.

Megan Turnbull moved to approve the above list for the Superintendent's Screening Committee, 2nd by Ann Lane.

Jocelyn O'Quinn moved to amend the proposal for the composition of the Superintendent Screening Committee to change community members' selection to board chosen, 2nd by Ann Lane. Motion passed 3-2- 1 with Megan Turnbull and Ann Wright against and Krista Butts abstaining.

The original motion passed 6-1 with Krista Butts abstaining.

Ann Wright moved that all Board members that are interested in serving on this committee submit their name to be randomly drawn by lottery, 2nd by Megan Turnbull. Motion failed 1-6 with Ann Wright voting for the motion.

Krista Butts moved to have election of School Board members to the committee nominated and voted on similar to how the Chair and Vice- Chair are nominated, 2nd by Megan Turnbull. Motion approved unanimously."

41. These actions were not indicated in the notice for this meeting. These actions were taken at a workshop. These actions taken at this meeting without proper notice violate Policy BE and by precedence RSA 91-A. Since the notice for this meeting was not proper, this is not a duly posted meeting and these

posted meeting and these actions violate Policy BBAA and by precedence RSA 91-A.

42. Prior to December 21, 2011, community members interested in serving on the Superintendent search screening committee submitted letters of interest to the Superintendent's Office.
43. Prior to the December 21, 2011 Board meeting, at least 6 Board members reviewed the letters of interest from community members and individually selected a name to nominate. Each individual selection was placed in a separate sealed envelope that was handed to the Superintendent or Administrative Assistant Wendy DiFruscio. During the nomination process, the names of the Board members were not recorded with each nomination, neither on the slip of paper with the nomination nor on the envelope nor separately elsewhere, so there is no record of which Board member nominated which community member. These envelopes were brought to the December 21, 2011 Board meeting.
44. Prior to or during the individual nominations, at least a quorum of the Board, through a sequence of communications outside of a meeting, discussed the possible nominations and decided how to coordinate their selections. These communications violate RSA 91-A:2-a.

45. On December 21, 2011 at about 6:30 p.m. the Board met at Oyster River High School. The notice for this meeting was posted as a “Notice of School Board Meeting.”
46. The body of the notice for the December 21, 2011 meeting states in full: “The Oyster River School Board will meet in regular session in C-124 at Oyster River High School at 6:30 p.m. on Wednesday, December 21st, 2011.” This meeting is a regular meeting as defined by Policy BE.
47. At the December 21, 2011 meeting, Superintendent Levesque described how the 2 community members of the Superintendent search screening committee were nominated:

“Letters of interest have been submitted to the Superintendent’s office. And, letters were acknowledge by my office Administrative Secretary [Wendy DiFruscio] to those who sent in letters. The letters were placed in 3-ring binders. And, Board members came in individually, reviewed those who expressed interest, and made a selection and gave it to me or Wendy in a sealed envelope and here it is. I don’t know who’s in here. But, I’ve discussed with my colleague, Cody [Jacobsen] here, how we’re going to do this. So, I guess you better come forward and the process is going to be that we’ll do the shuffle with these, and we’ll let Cody pick. ... What we’ll do, we’ll pick 2 envelopes and we will pick until we have 2 different names.” [3:27:24 to 3:28:25 of podcast]

48. At the December 21, 2011 meeting, Cody Jacobsen, the student member of the Board picked at random 2 envelopes and read the names of Luci Gardner and Yusi Wang Turrell. The names in the other envelopes were not read at the meeting. The Board did not reveal which Board member submitted which name. It was not possible for those who observed this meeting to know who each Board member had put forward. Therefore, this nomination process was by a form of secret ballot. This nomination violates RSA 91-A:2 II that provides "Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot."
49. At the December 21, 2011 meeting, following the nomination by secret ballot, the Board acted to appoint the nominations to the Superintendent search screening committee. Jim Kach moved "to appoint the 2 named community members." Seconded by Ann Wright. The motion passed unanimously 7-0.
50. On December 22, 2011 at about 1:05 a.m. Taylor sent by email a Right-to-Know request to Wendy DiFruscio stating "This is a Right-to-Know request under RSA 91-A for electronic copies of the contents of all the envelopes of selections of community members for the Superintendent Screening Committee made by Board members for the Dec. 21, 2011 meeting."

51. The December 22, 2011 request was acknowledged by Wendy DiFruscio by email at about 8:01 a.m.: “Your Right-To-Know has been received. Thank you.”
52. At about 2:34 p.m. on December 22, 2011 Wendy DiFruscio responded to the Right-to-Know request with a copy of 6 handwritten nominations and an attached letter stating “Below listed and attached please find the names submitted by Board members in all the envelopes for selections of Community Members for the Superintendent Screening Committee, as requested in your December 22, 2011 Right-to-Know. Yusi Wang Turrell, JoAnn Portalupi, Luci Gardner, Henry Smith” The attached 6 handwritten nominations were for: Yusi Wang Turrell, Yusi Wang Turrell, Community Representative Henry Smith, JoAnn Portalupi, Luci Gardner, Luci Gardner.
53. At about 2:38 p.m. on December 22, 2011 Taylor clarified his Right-to-Know request by email to Wendy DiFruscio stating “Thank you very much for your quick response. I only counted 6 notes, but there are 7 Board members. Did not all members submit envelopes? Can you identify which note was from which Board member?”
54. On December 27, 2011 at about 3:49 p.m. Taylor forwarded the email from December 22, 2011 at about 2:38 p.m. to Superintendent Levesque adding “I also sent this to Wendy last week but did not get a reply.”
55. At about 4:06 p.m. on December 27, 2011 Superintendent Levesque responded “We had only six selections.”

56. At about 4:06 p.m. on December 27, 2011 Taylor followed up "Thank you. Do you have a record of which Board member made each selection?"
57. On December 28, 2011 at about 9:25 a.m. Superintendent Levesque responded "No."

WHEREFORE, Taylor requests that this Court:

- A. Enjoin future violations of Chapter 91-A by the Board in accordance with RSA 91-A:8 III, by issuing an order compelling the Board to comply with all aspects of RSA 91-A within the mandates of that law;
- B. Invalidate all actions related to the Superintendent search taken by the Board at the meetings found to have violated RSA 91-A, and issue an order compelling the Board to restart the full Superintendent search process from the point of the first invalidated action, namely the approval of the announcement and advertisement for the search, and carry out a completely new search from that point, including a new announcement and advertisement, waiting for candidates to respond to the announcement and advertisement, new focus groups, and new charge, advertisement, selection, nomination and formation of a new search screening committee, and any subsequent actions;
- C. Issue an ex parte order for injunctive relief to immediately stop the in progress Superintendent search;

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

Respectfully submitted,

David K. Taylor, *pro se*

Dated: January _____, 2012