

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

No. 219-2012-CV-000001

DAVID K. TAYLOR

v.

THE OYSTER RIVER COOPERATIVE SCHOOL BOARD

DAVID K. TAYLOR'S REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

NOW COMES David K. Taylor, ("Taylor"), Petitioner in the above captioned matter, and submits the within Request for Findings of Fact and Rulings of Law.

FINDINGS OF FACT

1. On February 8, 2011 the voters of the Oyster River Cooperative School District approved a motion "to add \$15,000 to fund 10 for a fund 10 total of \$35,978,504 and an overall total of \$37,439,552 for the purpose of hiring a contractor, nominated by the Superintendent and elected by the School Board, to investigate the culture of distrust and disrespect in our district leadership and community at large and to report specific recommendations to improve that culture." This motion passed 51 to 30 and was not later amended. This motion did not have anything to do with a superintendent search.
2. On October 13, 2011 the Board held a "Workshop Special Meeting." The notice for this meeting did not state the subject of the meeting and action to be taken. At the 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” related to the February 8, 2011 budget amendment and not part of the Superintendent search process. Neither of these items were stated in the notice as subjects or business for this meeting. The subject of community forums for building trust was not stated in the agenda for this meeting, either. Also at this 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 [Director of Instruction] Danielle [Bolduc] would be the appropriate person to add ... verbiage” to the announcement. 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.”

3. On October 25, 2011 the Board held a “Special Workshop Meeting.” The notice indicated the Board would “meet with NESDEC for a special Superintendent Search workshop.” The notice does not indicate any action to be taken. At the meeting the Board modified the announcement for the Superintendent search and took action to approve “the letter moving forward with modifications.” At the meeting the Board modified the advertisement for the Superintendent search and took action to approve “the ad as modified.” At the 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.” At the meeting the Board took action to delegate to the Communications Committee to

“draft the focus group letters and press release.” Subsequent to the actions of the Board at the meeting, NESDEC published the announcement approved at the meeting on the web, published and distributed the advertisement approved at the meeting, and conducted a series of focus group meetings as approved at the meeting.

4. On November 14, 2011 the Board held a “Special NESDEC Workshop Meeting.” The notice indicated the Board would “meet with NESDEC for a special Superintendent Search work session.” The notice does not indicate any action to be taken. The notice further provided that there would be a “Screening Committee Discussion: 1. Composition 2. Responsibilities 3. Expectations 4. Schedule.” At this meeting, the Board discussed the procedure to select a Screening Committee, including using a lottery system in which Board members would “submit names to the central office and then have the student representative choose the names.” At this meeting, the Board took action to approve the composition of 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.”
5. On November 30, 2012 the Board held a “Special Workshop Meeting.” The notice stated that the Board would “meet for a special meeting to discuss Superintendent Search committee selection process, and to conduct a budget work session with the Advisory Budget Committee.” The notice does not indicate any action to be taken. At this meeting, the Board again voted on the composition of the superintendent

search Screening Committee. The Board voted and approved “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.” The Board members also voted unanimously to have the election of Board members to the committee in a manner “similar to how the Chair and Vice-Chair are nominated.”

6. On December 5, 2011 the Board held a “Special Workshop Meeting.” The notice stated that the Board would “meet with NESDEC for a special Superintendent Search workshop.” The notice does not indicate the subject of building trust related to the February 8, 2011 budget amendment would be discussed. The issue of building trust is not related to the superintendent search. The notice does not indicate any action to be taken. At this meeting the Board discussed the report from the focus groups, building trust related to the February 8, 2011 budget amendment, a sample letter for the Screening Committee, selecting community members, and the press release for the search. The Board voted to send letters to constituent groups, “Ann Wright made motion to have communications committee send the letters to constituent groups on screening committee. Krista Butts seconded. Voted 7-0.” The Board also voted, “Ann Lane made a motion upon the receipt of letters of interest, board reviews list and discusses qualifications, and addresses inadequacies in terms of representation on the committee; then, following conversation, each board member selects a name, puts into a hat and either [Superintendent] Lee [Levesque] or [Student member] Cody [Jacobsen] select name; Krista Butts seconded motion. Jim [Kach] suggested names are redacted. Vote 6 approved- 1 (Henry Brackett voted

against)” The Board also delegated to the “Communications committee puts together press release about screening committee”

7. On December 13, 2011 Superintendent Leon Levesque sent a memorandum to the Board suggesting an alternative process for selecting community members to the screening committee. The alternative process did not involve discussion or conversation at a meeting as did the process approved at the December 5, 2011 meeting. The Board did not take action at a duly posted meeting to accept the alternative process. The Board did agree to implement the alternative process by participating in it, thereby deciding in favor of the alternative process.
8. Prior to December 19, 2011, community members interested in serving on the Superintendent search screening committee submitted letters of interest to the Superintendent’s Office. On December 19, 2011, outside of a posted public or nonpublic meeting, sequentially six Board members reviewed the community members’ letters of interest and each selected a name as their nomination. They anonymously wrote this name on a piece of paper, which was then sealed in an unmarked envelope and submitted to the Board’s administrative assistant. Prior to this lawsuit, there was no record of which Board member made which selection. This selection process narrowed the pool of candidates to 4 names.
9. Also, by communicating outside of a posted public or nonpublic meeting, at least a quorum of the Board conspired about which community members’ names to select. Four Board members agreed to select two community members between them. Two Board members agreed to nominate Luci Garner and two Board members agreed to

nominate Yusi Wang Turell. The effect of this agreement doubled the odds of being selected for these 2 candidates compared to those of the other 2 candidates. In the end, these increased odds paid off because these 2 names were selected.

10. On December 21, 2011 the Board had its regularly scheduled meeting. At this meeting, the student member of the Board picked two of the envelopes randomly and read the names of Luci Gardner and Yusi Wang Turell. The Board then voted and approved the appointment of these two individuals to the Screening Committee. Jim Kach moved "to appoint the 2 named community members." Seconded by Ann Wright. The motion passed unanimously 7-0.
11. The minutes of the December 21, 2011 public meeting were not posted on the district website or made available to the public until January 5, 2012. The motion to enter non-public session did not state on its face a valid specific exemption under paragraph II of RSA 91-A:3 which is relied upon as foundation for the non-public session, as the minutes record "RSA 91-A:3, II 1." The motion to enter non-public did not "indicate the matter(s) to be discussed" in addition to the "statutory exception." During the non-public session the Board discussed both "the status of negotiated agreements" as well as community members for the Distinguished Service Award. The Board also discussed awarding more than one Distinguished Service Award and "Henry Brackett motioned to recognize two community members for the 2012 Distinguished Service Award. Ann Lane seconded the motion. Motion passed 7-0." The public minutes also do not specifically record the names of the other members of the Screening Committee, "Lee reviewed the slate of volunteers for the

superintendent search committee put forth by the constituents of each group.

Motion made by Ann Wright, seconded by Megan Turnbull, motion passed 7-0.”

12. On December 22, 2011 Taylor submitted a Right-to-Know request pursuant to RSA chapter 91-A for the contents of the envelopes with the Board members’ nominations of community members, including the name of the Board member connected to each nomination. The contents of the envelopes were provided to Taylor; however, the identity of the Board member who submitted each nomination was not provided because such information was not recorded. The contents of the 6 envelopes showed the names Yusi Wang Turell and Luci Gardner both twice and Henry Smith and JoAnn Portalupi each once.

RULINGS OF LAW

1. “The board shall consist of seven voting members and one non-voting student representative” ORCSD Policy BB - Legal Status
2. “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.” ORCSD Policy BBAA - Individual Members
3. “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....

The notice or agenda [for a special meeting] 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." ORCSD Policy BE - School Board Meetings

4. The Board meetings on October 13, 2011, October 25, 2011, November 14, 2011, November 30, 2011 and December 5, 2011 were special meetings.
5. "The Board, at its discretion or if required by law, may schedule workshops and other meetings to discuss a particular subject or proposal or to gather input from staff, community, or other groups.... No formal action shall be taken by the Board at a workshop or informational meeting." ORCSD Policy BE - School Board Meetings
6. The Board meetings on October 13, 2011, October 25, 2011, November 14, 2011, November 30, 2011 and December 5, 2011 were workshops.
7. The Board meetings on October 13, 2011, October 25, 2011, November 14, 2011, November 30, 2011 and December 5, 2011 violated the notice requirements of Policy BE.
8. "The motion calling for a non-public session will indicate the matter(s) to be discussed and the statutory exception allowing the non-public session. Only the matter(s) stated in the motion shall be considered." ORCSD Policy BE - School Board Meetings
9. "All minutes will be kept and made available for public inspection in accordance with state law. Minutes will also be posted on the district website. Minutes of public

meetings shall be made available for public inspection not more than five business days after the meeting.” ORCSD Policy BEDG - Board Meeting Minutes

10. The minutes of the December 21, 2011 meeting were not posted on the website and not made available for public inspection within 5 business days after the meeting. By not recording names in motions, these minutes did not completely and accurately record the final actions of the Board in violation of RSA 91-A:2, II. By not correctly citing on its fact the specific exemption under RSA 91-A:3, II, the motion to enter non-public session violated RSA 91-A. By also not indicting the matter(s) to be discussed, this motion violated Policy BE. During the non-public session the Board considered multiple subjects not covered by any single statutory exemption and subjects such as the decision to allow multiple Distinguished Service Awards that do not fall under any statutory exemption for non-public session.
11. “All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonably restricted.” N.H. Constitution, Part I, Article 8
12. “Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.” RSA 91-A:1

13. “[A] “meeting” means the convening of a quorum of the members of a public body ... for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power.” RSA 91-A:2 I
14. “[A]ll meetings ... shall be open to the public. ... [N]o vote while in open session may be taken by secret ballot. ... Minutes of all such meetings, including ... a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the meeting [A] notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places ... at least 24 hours ... prior to such meetings” RSA 91-A:2 II
15. The decision by which the Board narrowed the applicant pool for community members of the Superintendent Screening Committee was taken by secret ballot.
16. “If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter.” RSA 91-A:2 II
17. “I. Unless exempted from the definition of “meeting” under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III. II. Communications outside a meeting, including, but not limited to, sequential communications among members of a

public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1." RSA 91-A:2-a

18. The final decision on the process to narrow the application pool for community members of the Superintendent Screening Committee was done by communications outside a meeting and violates the spirit of RSA 91-A.
19. The series of individual selections cast by at least 6 Board members to narrow the pool for community members of the Superintendent Screening Committee was done by communications outside a meeting and violates the spirit of RSA 91-A.
20. The discussions among a quorum of at least 4 members of the Board on which community members to select for the Superintendent Screening Committee was done by communications outside a meeting and violates the spirit of RSA 91-A.
21. "(a) Public bodies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No public body may enter nonpublic session, except pursuant to a motion properly made and seconded. (b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present. (c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion." RSA 91-A:3 I

22. "Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee

(b) The hiring of any person as a public employee.

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself

(e) Consideration or negotiation of pending claims or litigation"

RSA 91-A:3, II

23. "Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective" RSA 91-A:3, III

24. "I. If any public body or agency or employee or member thereof, in violation of the provisions of this chapter, refuses to provide a governmental record or refuses access to a governmental proceeding to a person who reasonably requests the same, such public body, public agency, or person shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter provided that the court finds that such lawsuit was necessary in order to make the information available or the

proceeding open to the public. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was a violation of this chapter or where the parties, by agreement, provide that no such fees shall be paid. In any case where fees are awarded under this chapter, upon a finding that an officer, employee, or other official of a public body or agency has acted in bad faith in refusing to allow access to a governmental proceeding or to provide a governmental record, the court may award such fees personally against such officer, employee, or other official. ... III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter.” RSA 91-A:8

WHEREFORE, Taylor requests that this Court:

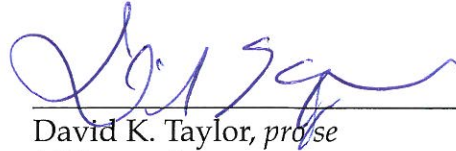
- A. Enjoin future violations of Chapter 91-A by the Board in accordance with RSA 91-A:8 III, by issuing an order compelling the Board to comply with all aspects of RSA 91-A within the mandates of that law;
- B. Invalidate all actions related to the Superintendent search taken by the Board at the meetings 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*

Date: February 1, 2012

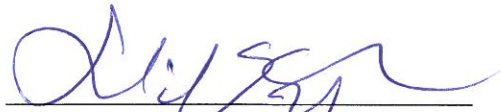
By:



David K. Taylor, *pro se*
16 Surrey Lane
Durham, NH 03824
Tel: (603) 659-0976

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Request for Findings of Fact and Rulings of Law has been forwarded this 1st day of February, 2012 to Dennis Ducharme, Esquire.


David K. Taylor, *pro se*