

9/8/2024

Via NJ eCourts
Honorable Carol Novey Catuogno
Assignment Judge, Superior Court
Bergen County-Law Division
Bergen County Justice Center
10 Main Street
Hackensack, NJ 07601-7680

Keith Kaplan v. Teaneck Board of Education, et al., BER-L-000121-24

Dear Judge Catuogno,

Please accept this Letter Brief in lieu of a more formal Brief in Response to Defendants' Opposition to Plaintiff's Motion to Enforce Litigant's Rights filed on August 23, 2024.

The Defendants' Brief starts with a fundamentally flawed premise: namely, that the January 17th meeting was properly noticed:

“As set forth in more detail in the accompanying Certification of Stephen Edelstein, Esq., in January of 2024, following the January 17, 2024, special meeting (which was properly noticed) the Board noticed the entire annual meeting schedule in both the Star Ledger and the Record.” (Letter of Stephen Edelstein dated Sept. 5, 2024)

As the Court previously ruled, the meeting was **not** properly noticed, and under the law of the case doctrine, the Defendants are bound by that determination:

“I do find that the defendants violated the notice requirement of the open public meetings act for the December 21st 2023 meeting. It was not cured by

the January 17th meeting because again there were omissions in the notice making it invalid.”

and

“[S]ince the January 17 2024 meeting was also not properly noticed it cannot stand to cure the deficiencies of the January 3rd 2024 meeting.”

(July 18, 2024 ruling on the record)

Defendants are now attempting, impermissibly, to relitigate the issues “in more detail”.

The District cannot use this briefing as a chance to relitigate the holdings of the Court, and their time to file for reconsideration or appeal has passed.

Even if the time for reconsideration was proper, the issue was properly decided by the Court. Defendants’ falsely state “the annual meeting notice, which was published within the statutory time limit, was consequently proper.” This is false. They assert:

“In Teaneck's case, then, the do-over meeting for the annual notice was January 17, and the annual notices were newspaper published on January 23 and 24. This is in full compliance with N.J.S.A. 10 :4-18, which requires the publication to take place within seven (7) days of the date of the meeting.”

As this issue was fully briefed by the parties and the Court ruled that notice of the meeting **and** the agenda must occur for meetings this year, under the law of the case doctrine, the Defendants are bound by the prior determination of this Court:

“I am confident that the message is clear that there does not appear to be an exception for this calendar year to filing an agenda in addition to notices of the meetings.”

(July 18, 2024 ruling on the record)

As with the previous example, even if the timing was proper, the issue was properly decided because the Board did not comply with the requirements for an exemption from further notice. Those requirements are:

- The Re-Organization meeting must take place within the first 7 days of January (N.J.S.A. 18A:10-3(c))
- If the Re-Organization meeting cannot take place for any reason, “said meeting shall be held within three days thereafter.” (id.)
- Within 7 days following the annual organization / reorganization or if no such meeting happened, “by no later than January 10 of such year” every district must adequately notice its annual meeting list. (N.J.S.A. 10:4-18)

An action is **voidable** under the OPMA, but not void *ab initio*. See *Polillo v. Deane*, 74 N.J. 562 (1977). Since the Court has not yet voided the meeting of January 3rd, 2024, the seven-day clocks ran from January 3, not from January 17th. Further, the District knowingly and intentionally did not submit an annual meeting list within seven days of the reorganization meeting, which coincides with the deadline of January 10th (see Kaplan Certification at 7). Plaintiff inquired as to whether the District would be noticing the annual meeting list within the statutorily required timeframe (id. at 6) and the Business Administrator, who is trained on such matters made a conscious decision not to notice the annual meeting list at that time (Ex. A to Kaplan Certification).

If the January 3rd date was the date of the reorganization meeting, the district failed to notice the annual meeting dates within seven days. If January 17th was a “re-do,” it failed the strict compliance test from *Polillo* for lack of an agenda. If no reorganization meeting was held, the district failed to notice the annual meeting dates by the January 10th deadline.

Every scenario ends the same: the requirements of N.J.S.A. 10:4-18 were not met. And the Court has already ruled that “there does not appear to be an exception for this calendar year to filing an agenda in addition to notices of the meetings”.

Turning to the meeting of August 21st, 2024, the District’s posting of the agenda on their website did not satisfy the Court’s clear instruction regarding the propriety and

visibility of notice. And N.J.S.A. 10:4-9.2, explicitly indicates electronic notice on a website does not comply with statutory adequate notice requirements.

Even if the August 21st meeting had been properly noticed with a noticed agenda, the Court ordered that Defendants “shall cure the deficiencies of the December 21, 2023 [and January 3, 2024], meeting, pursuant to the mandates of the New Jersey Open Public Meetings Act.”

As fully detailed in the moving papers, Defendants cite to *Aronowitz v. Planning Bd.* (257 N.J. Super. 347, 608 A.2d 451 (Law Div. 1992) as an exemplar of the manner in which compliance with the OPMA is to be handled in order to cure deficiencies after a violation has occurred. The opposition cites to criteria permitting the action taken, but they do not speak to any reason the *Aronowitz* factors would not apply.

The Court decided this issue in *Polillo*:

[T]he [District] may in its sound discretion utilize so much of the testimony and evidence which it acquired in the course of its original effort as it deems necessary and appropriate. However, any decision in that regard must be arrived at in a manner in strict conformity with the Open Public Meetings Law so that the public may be fully apprised by adequate notice and a publicized agenda exactly what prior meetings and what aspects of the existing [District] record are sought to be so utilized. *Polillo v. Deane*, 74 N.J. 562 (emphasis added)

The August 21st corrective action doesn't even mention the meetings of December 21, 2023, or January 3, 2024. The public could not possibly understand the import of the action the District claimed to have been taking.

Neither for that matter could the Court, which is why the letter of Stephen Edelstein submitted in opposition includes the resolutions referencing the meetings of January 3, 2024, and December 21, 2023 on page 4. Without them, it's unclear what the Board was voting on at all.

The mere fact that the December and January resolutions must be included in his letter to advise the Court as to what actions were being taken, underscores how the lack of such information in the agenda (even if it were properly noticed), could not possibly inform the public in a manner consistent with *Polillo* and *Aronowitz*.

Defendants claim that a Rice Notice was not necessary. Per defendants, Mr. Valdes was not entitled to a Rice Notice, as “[h]is name was never mentioned in public session nor in any Resolution on August 21, and his employment was not discussed in Executive Session at that meeting.”

Defendants’ admission that Mr. Valdes **was not** mentioned provides the Court with more information than the public had on August 21st, 2024 as to whether he was impacted by the vote.

Turning to the issue of Executive Session topics, the Board of Education Trustees receive physical packets on the Friday before each Wednesday meeting. In these packets are an Executive Session agenda. The Executive Session agendas have never once appeared in a published agenda on the Teaneck District website or in physical copy at a meeting. The Executive Session Agenda was not part of the August 21st agenda published on the District website (See Kaplan Certification at 8).

Even if the Board President’s “walked-in” agenda complied with the Court’s Injunction to “adhere strictly” to the requirements of the OPMA, it provides no information as to the topics under discussion beyond a boilerplate recitation as to the reasons they may exclude the public (*e.g.*, legal updates). Defendants cite to no reasons why the topics of discussion should not or could not have been listed. *See Council of N.J. State College Locals, Local 2364 v. Trenton State College Bd. of Trs.*, 663 A.2d 664, 667 (1995), “N.J.S.A. 10:4-13, which requires a public body to state the general nature of the subject or subjects to be discussed in closed session, would be devoid of all substantive meaning if mere reiteration of all potential reasons for moving into closed session were sufficient for compliance.”

Further, when “action taken at the public meeting involves an issue of grave public concern... it is understandable why the mere designation of the word "personnel" on the agenda would be insufficient to inform the public of such a significant policy action.” *Cole v. Woodcliff Lake Bd. of Educ.*, 382 A.2d 966, 972 (N.J. Super. Ct. Law Div. 1978). The phrase “legal updates” serves no greater purpose.

Bereft of facts or law, Mr. Edelstein claims that Plaintiff has “private motives” which “may not been vindicated.” He also states that Plaintiff is not the arbiter of the purpose of the OPMA.

The drafters of the OPMA included their “Legislative findings and declaration” (N.J.S.A. 10:4-7) as well as the requirement that the “act shall be liberally construed in order to accomplish its purpose and the public policy of this State as set forth in section 2” (N.J.S.A. 10:4-21).

The Appellate Division has taken the purpose of the act into account in similar contexts. *See Fisher v. Hamilton*, No. A-4441-11T3 (App. Div. Jul. 17, 2013):

“In enacting the School Ethics Act, the Legislature has made clear that the statute is not only aimed at preventing the actual violation of the public trust by school board members but also ensuring that board members will avoid conduct "which creates a justifiable impression among the public that such trust is being violated." N.J.S.A. 18A:12-22. In our de novo review of the pleadings, we are satisfied that a fundament of a cause of action has been pled in the complaint. In doing so, we take no position as to the merits of the allegations contained in the complaint. Rather, we merely reinstate the complaint and leave plaintiff to the opportunity to pursue his claim in further proceedings.”

The Order of the Court and its Injunctions are clear. The legislative goals of the OPMA are clear. The OPMA demands the Court accomplish its purpose.

The statements made at the August 21st meeting in reference to this litigation indicate that the Teaneck School District seems to be under the impression that they won this action

(see Kaplan Certification of August 23, 2024, at 24). That couldn't be further from the truth, and their inability to grasp this basic fact is painfully clear when we see their continued refusal to comply with the OPMA.

Plaintiff therefore respectfully asks the Court to impose sufficient sanctions upon the District to ensure compliance with this Court's orders and the laws of the State of New Jersey.

Sincerely,

A handwritten signature in blue ink, appearing to read "Keith Kaplan".

Keith Kaplan
Plaintiff, pro se.

Keith Kaplan

Teaneck, NJ 07666

keith@teanecktoday.com

KEITH KAPLAN,

Plaintiff, pro se,

vs.

TEANECK BOARD OF EDUCATION,
SEBASTIAN RODRIGUEZ,
VICTORIA FISHER, EDWARD HA,
NADIA HOSEIN, DENNIS KLEIN,
KASSANDRA REYES, JONATHAN
RODRIGUEZ, DENISE SANDERS,
AND CLARA WILLIAMS,

Defendants.

NEW JERSEY SUPERIOR COURT
BERGEN COUNTY-LAW DIV,
DOCKET NO. BER-L-000121-24

**CERTIFICATION OF KEITH S
KAPLAN, IN SUPPORT OF
PLAINTIFF’S MOTION TO
ENFORCE LITIGANT’S RIGHTS**

I, **Keith S Kaplan**, being of full age, certify as follows:

1. I am Plaintiff, pro se in the matter Keith Kaplan vs. Teaneck Board of Education, et al., BER-L-000121-24.
2. I make this Certification in support of Plaintiff’s Response in Opposition to the Motion to Enforce Litigant’s Rights, through which Plaintiff seeks enforcement of an order entered by this court on July 18, 2024 (“Order”) against defendants Teaneck Board of Education, et al. (“Defendants”) that

CERTIFICATION OF KEITH S KAPLAN, IN SUPPORT OF PLAINTIFF’S MOTION TO ENFORCE LITIGANT’S RIGHTS

compels Defendants to, among other things, “adhere strictly to all the mandates of the New Jersey Open Public Meetings Act and shall remain in full compliance with same moving forward”.

3. Plaintiff emailed the Teaneck Business Administrator on January 2nd, 2024, to indicate that the Reorganization meeting was not properly noticed. The email is attached hereto as Exhibit A.
4. Defendants called the improperly noticed meeting on January 3, 2024.
5. Defendants did not adjourn the meeting and reschedule within 3 days as required by N.J.S.A. 18A:10-3(c), opting to re-vote any decisions at a future meeting.
6. Six days before the deadline imposed by OPMA to Notice the Annual Meeting list, Plaintiff emailed the District Business Administrator to ask if the District would be noticing the Annual Meeting dates. (Id.)
7. The District Business Administrator responded on January 8th, 2024 (two days before the deadline) that they were choosing to notice the dates after January 17th. (Id.)
8. The draft minutes for the meeting of August 21, 2024, contain no reference to the objections of Trustee Wolff under the section “Board

Statements”. A copy of the section of the Draft Minutes is attached as Exhibit B.

9. The agenda posted to the Teaneck School District website for the meeting of August 21, 2024, contained no Executive session Agenda.

I certify that the foregoing statements made by me are true.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Keith S Kaplan
Plaintiff, Pro Se

Dated: August 23, 2024.

EXHIBIT A

CERTIFICATION OF KEITH S KAPLAN, IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE
LITIGANT'S RIGHTS



Keith Kaplan <keith@teanecktoday.com>

Adequate Notice for Re-Organization meeting

Haquisha Taylor <htaylor@teaneckschools.org>
To: Keith Kaplan <keith@teanecktoday.com>

Mon, Jan 8, 2024 at 3:44 PM

Good Morning,

You are welcome and you are correct. The district will be noticing the January 17th meeting. The district plans to vote on the remaining 2024 meeting dates at the January 17th meeting. The district plans to, then, advertise the remaining annual meeting dates.

On Thu, Jan 4, 2024 at 11:14 AM Keith Kaplan <keith@teanecktoday.com> wrote:

Ms. Taylor,

First, I want to thank you very much for acknowledging and pledging to correct the failure to adequately notice meetings of the BOE in Teaneck.

As the notice was technically (which you did mention), and the board will be re-voting on the matters done, I had a question about the annual meeting schedule.

I ask because, until the next meeting, the vote on the annual meeting dates is also subject to being overturned in an OPMA action.

Since it's not going to be officially voted on by the board until the **NEXT** meeting, will the District be noticing a single meeting (for the January 17th meeting) appropriately, vote on the Annual meeting dates at that meeting, and **then** advertise the annual meeting dates?

Thanks for your help in all this,
Keith Kaplan

p.s. As Dr. Spencer suggested, I'd like to come chat with you regarding the budgeting issues I raised regarding line items so we can talk about how overages (to the extent necessary) are calculated when you prepare a budget. Looking forward.

On Tue, Jan 2, 2024 at 3:39 PM Keith Kaplan <keith@teanecktoday.com> wrote:

Dear Ms Taylor,

As you're aware, every meeting must be noticed according to NJ's Sunshine Act, OPMA.

NJSA 10:4-8(d) describes adequate notice for meeting (in part):

d. "Adequate notice" means written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be... mailed, telephoned, telegraphed, or hand delivered to *at least two newspapers*...

While I'm happy to see that tomorrow's Re-Org agenda has been updated to add a second newspaper—the fact this has not been the prior practice of the board means that tomorrow meeting was never properly noticed.

Pursuant to NJSA 10:4-19, I'm requesting a copy of the notice.

I'm in the lobby of the BOE building right now.

Thank you,
Keith Kaplan

Statutes
Title 10 - Civil Rights

Section 10:4-19 - Requests for notices of meetings; annual renewal

Universal Citation: NJ Rev Stat § 10:4-19 (2022)

10:4-19. Requests for notices of meetings; annual renewal

Any person may request that a public body mail to him copies of any regular meeting schedule or revision described in section 13 of this act and any advance written notice described in subsection 3. d. of this act of any regular, special or rescheduled meeting of such body, and upon prepayment by such person of a reasonable sum, if any has been fixed by resolution of the public body to cover the costs of providing such notice, the public body shall mail to such person written advance notice of all of its meetings within the time prescribed by subsection 3. d. herein, subject only to the exceptions set forth in subsection 4. b. herein. Such resolution may provide that notice requested by the news media shall be mailed to such news media free of charge. All requests for notices made under this section shall terminate at midnight on December 31 of each year, but shall be subject to renewal upon a new request to the public body.

L.1975, c. 231, s. 14.



JUSTIA
U.S. Law

2022 New Jersey Revised Statutes
:: Title 10 - Civil Rights :: Section
10:4-19 - Requests for notices of
meetings; annual renewal
law.justia.com

Sent from my mobile device.

EXHIBIT B

CERTIFICATION OF KEITH S KAPLAN, IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE
LITIGANT'S RIGHTS

Minutes of the proceedings of the **REGULAR PUBLIC MEETING** held on Wednesday, August 21, 2024, in-person at the Teaneck High School located at 100 Elizabeth Avenue and virtually via zoom app, at 8:00 PM. *Clara Williams, Board President, presided.*

I. Salute to the Flag

II. Presiding Officer's Meeting Notice Statement

"I hereby call to order the Regular Public Meeting of the Teaneck Board of Education, held on Wednesday, August 21, 2024, in-person at the Teaneck High School located at 100 Elizabeth Avenue and virtually via zoom app, at 8:00 PM. Adequate notice of this meeting has been sent to the Record and The Star Ledger, filed with the Municipal Clerk and posted on the school district website at www.teaneckschools.org, on January 23, 2024."

III. Roll Call

Board Member	Present	Absent
Ms. Fisher (Victoria) - arrived @ 8:06pm	x	
Dr. Gruber (David)	x	
Mr. Ha (Edward)	x	
Dr. Kirshenbaum (Gerald)	x	
Dr. Klein (Dennis)	x	
Mrs. Reyes (Kassandra)- Vice President	x	
Mr. Rodriguez (Jonathan)		x
Mr. Wolff (James)	x	
Mrs. Williams (Clara) - President	x	

IV. Reaffirmation of District Goals

V. Executive Session

Ms. Reyes motioned to adjourn the public meeting and convene into the executive session at 8:06 pm. Said motion was seconded by Mr. Ha and carried by a unanimous vote.

Motion: K. Reyes	Second: E. Ha			
Board Member	Yes	No	Abstain	Absent
Ms. Fisher (Victoria)	x			
Dr. Gruber (David)	x			
Mr. Ha (Edward)	x			
Dr. Kirshenbaum (Gerald)	x			
Dr. Klein (Dennis)	x			
Mrs. Reyes (Kassandra) - Vice President	x			
Mr Rodriguez (Jonathan)				x
Mr. Wolff (James)	x			
Mrs. Williams (Clara) - President	x			

Ms. Reyes motioned to adjourn the executive session at 9:37 pm and reconvene back into the public session at 9:39 pm. Said motion was seconded by Mr. Ha and carried by a unanimous vote.

Motion: K. Reyes	Second: E. Ha			
Board Member	Yes	No	Abstain	Absent
Ms. Fisher (Victoria)	x			
Dr. Gruber (David)	x			
Mr. Ha (Edward)	x			
Dr. Kirshenbaum (Gerald)	x			
Dr. Klein (Dennis)	x			
Mrs. Reyes (Kassandra) - Vice President	x			
Mr. Rodriguez (Jonathan)				x
Mr. Wolff (James)	x			
Mrs. Williams (Clara) - President	x			

VI. Superintendent's Report

Please click on the link below to view the Superintendent's report:

<https://www.eduvision.tv/l/?RORtyeL>

VII. Board Member Statements

NONE

VIII. Public Comment I (Agenda Items Only)

Please click on the link below to view the Public Comments session I:

<https://www.eduvision.tv/l/?RORtyRA>

IX. Board Committee Reports

Please click on the link below to view the Board Committee Report:

<https://www.eduvision.tv/l/?RORtyRe>

X. Agenda Items

Please click on the link below to view the public meeting:

<https://www.eduvision.tv/l/?RORtymA>

XI. Public Comment II (Non-Agenda and Agenda Items)

Please click on the link below to view the Public Comments session II:

<https://www.eduvision.tv/l/?RORtymD>

XII. New and Old Business

Please click on the link below to view the New and Old Business:

<https://www.eduvision.tv/l/?RORtymg>

XIII. Adjournment

Dr. Gruber motioned to adjourn the regular public meeting at 11:41 pm. Said motion was seconded by Ms. Reyes and carried by a unanimous vote.

Motion: D. Gruber	Second: K. Reyes			
Board Member	Yes	No	Abstain	Absent
Ms. Fisher (Victoria)				X
Dr. Gruber (David)	X			
Mr. Ha (Edward)	X			
Dr. Kirshenbaum (Gerald)	X			
Dr. Klein (Dennis)	X			
Mrs. Reyes (Kassandra) - Vice President	X			
Mr. Rodriguez (Jonathan)				X
Mr. Wolff (James)	X			
Mrs. Williams (Clara) - President	X			

Respectfully submitted,

Haquisha Q. Taylor, SBA/BS

Keith Kaplan

Teaneck, NJ 07666

keith@teanecktoday.com

KEITH KAPLAN,

Plaintiff, pro se,

vs.

Teaneck Board of Education, Sebastian Rodriguez, Victoria Fisher, Edward Ha, Nadia Hosein, Dennis Klein, Kassandra Reyes, Jonathan Rodriguez, Denise Sanders, AND Clara Williams,

*Defendants*¹.

NEW JERSEY SUPERIOR COURT
BERGEN COUNTY-LAW DIV,
DOCKET No. [BER-L-000121-24](#)

PROOF OF SERVICE

Keith Kaplan, hereby certifies as follows:

1. I am Plaintiff pro se in the above-referenced matter
2. On Monday, September 9, 2024, I electronically filed the following documents:
 - a. Response to Opposition to Plaintiff's Motion to Enforce Litigant's Rights
 - b. Certification of Keith S Kaplan

I certify that all parties have been electronically served and via email.

¹ Terms of office for defendants Rodriguez, Hosein and Sanders ended on December 31, 2023.

The foregoing statements made by me are true and I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.



Keith S Kaplan

Dated: September 9, 2024