

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
BERGEN COUNTY
DOCKET NO. BER-L-00121-24
APP. DIV. NO. _____

KEITH KAPLAN, :
 :
 :
 Plaintiff, *Pro Se* :
 :
 :
 v. : TRANSCRIPT
 : OF
 : JUDGE'S DECISION
 TEANECK BOARD OF EDUCATION, :
 SEBASTIAN RODRIGUEZ, :
 VICTORIA FISHER, EDWARD HA, :
 NADIA HOSEIN, DENNIS KLEIN, :
 KASSANDRA REYES, JONATHAN :
 RODRIGUEZ, DENISE SANDERS, :
 AND CLARA WILLIAMS, :
 :
 Defendants. :
 :

Place: Bergen County
Justice Center
(Heard via Zoom)

Date: July 18, 2024

BEFORE:

HONORABLE CAROL V. NOVEY CATUOGNO, A.J.S.C.

TRANSCRIPT ORDERED BY:

KEITH KAPLAN, *Pro Se*
670 Ramapo Road
Teaneck, NJ 07666

APPEARANCES:

KEITH KAPLAN
(Plaintiff, *Pro Se*)

STEPHEN J. EDELSTEIN, ESQ. (Weiner Law Group, LLP)
Attorney for Defendants Teaneck Board of
Education, Sebastian Rodriguez, Victoria Fisher,
Edward Ha, Nadia Hosein, Dennis Klein, Cassandra
Reyes, Jonathan Rodriguez, Denise Sanders, and
Clara Williams

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1 THE COURT: Good Morning. We are on the
2 record in the matter of Keith Kaplan versus the Teaneck
3 Board of Education, Sebastian Rodriguez, Victoria
4 Fisher, Edward Ha, Nadia Hosein, Dennis Klein,
5 Kassandra Reyes, Jonathan Rodriguez, Denise Sanders,
6 and Clara Williams. That is docket Bergen-L-121-24.
7 Counsel, your appearances, please? Hmm.

8 COURT CLERK: We might have -- we might be
9 muted.

10 THE COURT: We were muted?

11 COURT CLERK: One moment, Your Honor. Okay.

12 THE COURT: I'm sorry. Gentlemen, were you
13 able to hear me?

14 MR. EDELSTEIN: Not until just this moment.

15 THE COURT: Well, I was brilliant. You
16 should have heard what I said already. I merely -- I
17 merely called the caption into the record, which I will
18 do again. This is the matter of Keith Kaplan versus
19 Teaneck Board of Education, et al., docket Bergen-L-
20 121-24. Will petitioner please put his appearance on
21 the record?

22 MR. KAPLAN: Keith Kaplan, plaintiff, *Pro Se*.

23 THE COURT: Good morning, Mr. Kaplan. And
24 counsel for the respondent to the defendants, please.

25 MR. EDELSTEIN: Good morning. Stephen

Recitation of Procedural History

1 Edelstein, Weiner Law Group, for the defendants.

2 THE COURT: Good morning. All right. We are
3 here today for my decision on the application before
4 me. I have had the opportunity, of course, to review
5 all of the written submissions as well as had the
6 benefit of hearing oral argument just last week on the
7 instant matter.

8 I'll begin simply by stating that the Court
9 is in receipt, of course, of the January 8th, 2024
10 Order to Show Cause which contained a Verified
11 Complaint and attachment which contained exhibits A
12 through J and a Memorandum in Support of petitioner's
13 application. I am also in receipt of defendant's
14 Answer filed on 2/1/2024, a Motion to Dismiss filed 2/5
15 of 2024; the plaintiff, Mr. Kaplan's reply in -- brief
16 in opposition to the Motion to Dismiss filed on March
17 1st of 2024 again, with a declaration containing
18 exhibits A through E.

19 On March 14th of 2024, there was a
20 supplemental declaration filed with additional
21 exhibits, which was filed without leave of Court and I
22 have not considered it.

23 After we initially heard oral argument on the
24 original return date, the matter was adjourned for Mr.
25 Edelstein to secure transcript of Mr. Kaplan's

1 arguments, as they went further afield, some might say,
2 than what was presented in his papers. And after
3 having reviewed that, Mr. Edelstein chose not to file a
4 written response; however, addressed those matters by
5 way of oral argument, to which Mr. Kaplan had an
6 opportunity to reply just last week.

7 So the matter that is before me for res --
8 determination today involves allegations by Mr. Kaplan,
9 a resident of Teaneck, New Jersey, which include a
10 series of violations of the Open Public Meetings Act,
11 found at N.J.S.A. section 10:4-6 and through 21. The
12 -- the facts and the arguments here -- the facts
13 alleged, or the plaintiff alleges, and frankly,
14 defendant concedes in part that there have been
15 failings by the Teaneck Board of Education, the
16 defendant here, in terms of properly noticing their
17 meetings, as required by the Open Public Records Act.
18 The -- there is a discussion of attempts to comply,
19 partial compliance, or frankly, there's even been
20 mention of what is done in practice or what is not done
21 in practice in meetings such as the ones at issue
22 before the Court.

23 I am compelled to begin by looking at the
24 Supreme Court decision in Polillo vs. Deane, 74 N.J.
25 562, in which the Supreme Court of the state of New

1 Jersey rejects the idea that substantial compliance
2 with the Open Public Meetings Act is sufficient and
3 rather holds that a strict adherence to the letter of
4 the law is required. And it's through that lens that
5 I'm going to go through the counts of the complaint.
6 And I think it would be -- be most, I don't know,
7 economic way to address this is to go count by count
8 because each of them are so fact-sensitive as to
9 whether or not they comply with the different
10 provisions of the Act that I'm going to choose to
11 address it in that way.

12 Count one charges that the defendant Board
13 had failed to file adequate notice of annual meetings
14 dating back to 2020 through the present by not sending
15 notice to two newspapers. The allegation in -- that's
16 alleged in count one is barred by the statute of
17 limitations. Simply stated, Title 10:4-15(a) requires
18 that any action in lieu of prerogative writ to be filed
19 within 45 days of the date of the action sought to be
20 voided. So in this instance, anything that is prior to
21 the November 24th, two thousand and -- the date of
22 November 24, 2023 would be barred by the statute of
23 limitations. So accordingly, count one is -- or any
24 relief under count one is denied.

25 Count two was addressing a closed-session

1 meeting on November fif -- or a closed session that
2 took place during a meeting on November 15th of 2023.
3 Defendant argues that that, too, is time-barred by the
4 statute of limitations. Petitioner argues that it was
5 not in that it was only upon receipt of a communication
6 from the Board that Mr. Kaplan was made aware that some
7 action had been taken during executive session. He
8 filed an OPRA request and when he received the response
9 to the request under the Open Public Records Act on
10 December 18th, he became aware of what he believed and
11 couches as a vote that took place in closed session, a
12 vote of the Board, in violation of the Open Public
13 Records Act.

14 I decline to deny relief or dismiss the count
15 as being not in adherence with the -- with the statute
16 of limitations. In this instance, there is no way one
17 could have been on notice of what transpired during
18 closed session until the requested relief was provided
19 under the Open Public Records request and accordingly,
20 I do not find that the filing violates the statute of
21 limitations.

22 I'll note, too, that in this count, there is
23 not a specific allegation that there was a -- there was
24 insufficient notice or, you know, public notice of the
25 meeting itself. That is not part of this particular

1 count. In this count, Mr. Kaplan alleges that a vote
2 took place in private session and was violative of the
3 Open Public Records Act. It was not -- as it was not
4 then either adopted or voted in public session.

5 The -- exhibit C to the Verified Complaint
6 shows a public vote to enter into executive session
7 that occurred during the November 15, 2023 meeting. It
8 is then, on the other side of that, of course, there is
9 a public vote to come out of executive session and back
10 into the public session also noted in the minutes.

11 Exhibit D are the minutes of what occurred in
12 that closed session, and it indicates that there was a
13 consent to send a letter to Mr. Kaplan about his
14 violating, or what was perceived as a lack of decorum
15 during the meetings.

16 I do not find that this aro -- rises to the
17 level of a vote by the Board as a public body. It's
18 really rather a consensus that was reached that sending
19 a letter to Mr. Kaplan might be beneficial to all
20 involved. I'll note, too, that there was not a
21 fundamental function of the public body being exercised
22 at that point; this was an issue as to de -- decorum or
23 demeanor, which I have no details on, I'm not weighing
24 in on that, I'm just simply saying that the Board's
25 decision to send a letter was not a vote that required

1 to be made in public session. Accordingly, I do not
2 find that there is any relief to be granted under count
3 two of the instant complaint.

4 Under count three, there is an allegation by
5 Mr. Kaplan that there was inadequate notice of a
6 Special Public Meeting scheduled for December 21, as it
7 was only published in one newspaper. Now, the request
8 that's re -- the -- excuse me. The request for relief
9 here is, among other things, which I'll address
10 separately, avoiding of what transpired during that
11 meeting. Specifically, there was a transfer of two
12 pers -- members of the school personnel that plaintiff
13 asks to void.

14 Now, defendant argues that any action taken
15 at the December 21, 2023 meeting, which they concede
16 was not properly noticed, was cured by a January 17th
17 meeting where a vote was taken by the Board, excuse me,
18 to ratify all that had occurred at the December 21st,
19 2023 meeting. The January 17th, 2024 meeting was
20 noticed in -- by way of two newspapers. However, an
21 agenda was not published. There was some discussion
22 during argument as to whether or not that was required
23 and the requirement exists unless, of course, the
24 annual meeting schedule was posted pursuant to the
25 rules and regulations under the Open Public Meetings

1 Act.

2 Now, in this instance, although the January
3 17th meeting was posted in two newspapers, there was no
4 agenda made public and it was not -- that was not --
5 this meeting is not exempt from that requirement
6 because there had not been any schedule of the annual
7 meetings published at that point in time; in fact, it
8 was only published the day after the January 17th
9 meeting.

10 So I do find that the defendants violated the
11 notice requirement of the Open Public Meetings Act for
12 the December 21st, 2023 meeting. It was not cured by
13 the January 17th meeting because again, there were
14 omissions in what -- in the notice, making it invalid.

15 The corrective action that was taken, or
16 attempted to be taken, by the Board failed here. Now,
17 counsel for defendants also state that this count must
18 be dismissed as two indispensable parties were not
19 noticed or joined into the action. Those, of course,
20 would be the two principals; Principal Valdez and
21 LoGuidice, who were transferred during -- as a result
22 of a vote at this meeting.

23 I reject defendant's argument that this count
24 cannot be heard because indispensable parties have not
25 been joined. And the reason being is this. I agree

1 that the action taken by the Board affected an interest
2 of those two individuals. But the subject matter
3 before the Court has to do with enforcement of the Open
4 Public Meetings Act. And while -- were the Court to
5 void that -- the vote that was made that night and the
6 decision that was made to transfer, it would surely
7 have effect on these individuals. But the substance of
8 this action does not involve the interests of those
9 individuals. Rather, the substance of this action re
10 -- involves compliance with the Open Public Meetings
11 Act.

12 The very nature of an open public meeting,
13 for example, a school board, when they make decisions,
14 affect parents and children in their school district.
15 It would be virtually impossible for me to conjure an
16 example of action taken by a school board during a
17 meeting that would not affect the interests of others,
18 that would not -- excuse me one second; I'm just
19 looking for the language.

20 So I'm looking at the language from DuMont
21 Labs vs. Marcalus Manufacturing, 30 N.J. 290. "Whether
22 a party is indispensable depends upon the circumstances
23 of the particular case. As a general proposition, it
24 seems accurate to say that a party is not truly
25 indispensable unless he has an interest inevitably

1 involved in the subject matter before the Court and a
2 judgment cannot justly be made between the litigants
3 without either adjudging or necessarily affecting the
4 absentee's interest."

5 I would imagine in every decision that's made
6 by a school board, there are parties, whether parents
7 or children, who have an interest involved in the
8 subject matter and the outcome of which would
9 necessarily affect their interest. This is a -- this
10 proceeding is a proceeding regarding the Board's
11 compliance or non-compliance with the requirements of
12 the Open Public Meetings Act. Any decision made by the
13 Board is going to affect someone else's interest, which
14 would necessarily mean that in every action filed under
15 the OPMA that any person affected would have to be
16 joined as a party, and that simply cannot stand for
17 reason. So I reject the argument that this cannot be
18 heard by failure to join indispensable parties.

19 (Brief pause/dead air.)

20 THE COURT: Under this count, plaintiff
21 requests the -- I'm going to go a little bit out of
22 order from what's in the Complaint, a declaration the
23 defendants were in violation of the Open Public
24 Meetings Act. That is granted. There is a request to
25 void all actions taken with regard to the transfer of

1 Principal Valdez and Principal LoGuidice.

2 One of the things -- I cited, or referred to,
3 Polillo earlier. One of the things that is most
4 instructive in that matter is -- well, there's a couple
5 of things. One of which is that the Court says that
6 even where counts may not -- may have been dismissed,
7 there is -- the Court has the ability to look at them
8 even if they're outside the statute of limitations and
9 relief isn't granted to determine whether there is a
10 pattern of non-compliance and to take that into account
11 in fashioning a remedy.

12 Similarly, however, the Court also says that
13 where the -- although the substantial compliance
14 argument failed as a defense, the substantial
15 compliance along with a lack of mal-intent may be taken
16 into consideration in fashioning a remedy.

17 Now, I -- Mr. Kaplan argued that he assigns
18 to defendants a motive in having that vote to -- the
19 December 21st meeting to move those principals as --
20 because their concern was that after the
21 reorganization, they would not have sufficient votes to
22 -- to move that through. I don't have any reason to
23 accept that or assign mal-intent to the board members
24 for that vote. That's supported, too, by the fact that
25 even though the January 17th vote failed to remedy the

1 failings of the December 21st vote because of its own
2 failings of notice, the December 21st vote was ratified
3 at that meeting with the three new members not taking
4 part -- they took part in the vote, but they abstained
5 from voting.

6 So I do -- I don't find that there's any bad
7 intent on the part of the Teaneck Board of Education
8 specifically. However, one cannot ignore that there
9 has been a series or a longstanding, consistent failing
10 under the Open Public Meetings Act to notice these
11 meetings properly.

12 Having said that, I do think that remedy is
13 -- is necessary. And following the example of Polillo,
14 I am prepared to order as relief that the Board must
15 rectify the vote that was taken on December 21st, or I
16 should say the results of that vote need to be
17 ratified, it needs to be reinstated, re-voted, within
18 70 days or by -- they're going to -- those actions are
19 going to be voided if it's not done within that time
20 frame.

21 Now, I have a few other things to say about
22 this. As I indicated, there were -- the reasons I'm
23 not voiding it outright, although I'm confident that
24 whatever I voided could be cured, is because in this
25 instance, I do -- I did hear from Mr. Edelstein that

1 his clients have been trying to comply. They have not
2 complied, but there have been efforts to comply. Where
3 -- when -- used to be -- the notices used to be noticed
4 in one newspaper; they're now being noticed in two
5 newspapers. I am confident that the message is clear
6 that there does not appear to be an exception for this
7 calendar year to filing an agenda in addition to
8 notices of the meetings.

9 In addition, I cannot ignore the fact that
10 the actions -- the specific action -- and I'm not
11 necessarily saying that this -- the specific action
12 regarding the principals will be voided, I'm saying all
13 action taken at that meeting will be voided. But I
14 know that the request was specific to those two
15 individuals. But one of the factors that leads me to
16 this remedy is that those two individuals have been
17 acting in their current, or the capacity that they were
18 -- the transfers that were made at the December 21st
19 meeting have put them into different employment
20 situations. I understand they're always -- they're
21 still Board employees. I'm not talking about who their
22 employer is, I'm talking about what their job
23 responsibilities are, and they have been presumably
24 carrying those out for at least the last seven months.

25 So to simply void that without allowing the

1 Board an opportunity to cure I simply don't think is in
2 the best interest of the citizenry or Teaneck, or
3 surely not those who are participating or are currently
4 making good use of the public school system.

5 The fourth count in the complaint talks about
6 a January 3rd, 2024 meeting, which was the 2024
7 reorganization meeting. And interestingly, it appears
8 that the Board at the outset of that meeting
9 acknowledged that it had not been properly noticed and
10 decided to continue anyway.

11 Now, again, there was an effort made to cure
12 this deficiency, again, by having either the votes --
13 whatever votes were taken. There's -- I have no
14 information in the com -- the papers submitted about
15 what votes may have taken place at that time. Not --
16 there's not one that's particularly referenced in terms
17 of trying to void it. But there was an effort to cure
18 in -- by the January 17th, 2024 meeting and having the
19 matter -- all of those -- whatever votes were taken
20 ratified or -- or re-voted. As previously noted,
21 however, since the January 17th, 2024 meeting was also
22 not properly noticed, it cannot stand to cure the
23 deficiencies of the January 3rd, 2024 meeting.

24 So again, I find that what transpired at the
25 January 3rd, 2024 meeting violated the terms and

1 conditions of the Open Public Meetings Act. It was, as
2 I said, not cured by January 17th. In addition to that
3 declaration of judgment, the same remedy is going to
4 apply. And that is any action that was -- formal
5 action that was taken by the Board is going to be
6 voided if not cured in some fashion within that same 90
7 days.

8 COURT CLERK: (Indiscernible.)

9 THE COURT: I said 70 days the first time?
10 70 days. Sorry about that.

11 The fifth count of the Complaint seeks relief
12 not under the Open Public Meetings Act but rather under
13 the New Jersey Civil Rights Act, specifically N.J.S.A.
14 10:6-2. And plaintiff requests that the Court make a
15 number of findings, the first of which is declaring
16 that the Open Public Meetings Act violations may be
17 addressed with, through, or by application of the New
18 Jersey Civil Rights Act, determining that the
19 defendants' violations of the Open Public Meetings Act
20 deprive plaintiff and others of a right protected by
21 statute, voiding all actions and enjoining further
22 violations.

23 Now, in terms of the app -- applicability of
24 this particular section to the case in front of me,
25 finding that the Open Public Meetings Act violations

1 may be addressed through the Civil Rights Act would
2 require the Court to find that any subs -- substantive
3 right, privilege, or immunity secured by the
4 constitution or laws of this state or whose exercise or
5 enjoyment of those substantive rights, privileges, or
6 immunities has been interfered with or attempted to be
7 interfered with by threats, intimidation, or coercion
8 by a person under -- acting color of -- excuse me,
9 acting under color of law may bring a civil action, et
10 cetera, et cetera.

11 First of all, there's no allegation here that
12 any rights have been interfered with with -- by
13 threats, intimidation, or coercion by people under --
14 acting under color of law. So it really has to do with
15 whether any substantive right, privilege, or immunity
16 secured by the constitution of laws -- or laws of the
17 state of New Jersey have been deprived. I will say
18 that the plaintiff fails to make any argument or
19 provide any support for the fact that a violation of
20 the Open Public Meetings Act equals such substantive
21 right, privilege, or immunity. There is nothing
22 provided to the Court to support a finding here. And
23 accordingly, I find that the plaintiff has failed to
24 meet his burden in establishing that there is
25 applicability of the Civil Rights Act in this instance.

1 One of the -- in each instance -- so I'm
2 particularly look -- specifically, I should say,
3 looking at counts three and four for which relief has
4 been granted. In both of those counts, in addition to
5 the declaratory relief, the voiding of actions taken,
6 I'm asked to award what's generally referred to as
7 injunctive relief thereby compelling, or therefore
8 compelling the defendants to change their agenda and
9 public notice practices to provide adequate notice to
10 the public.

11 I think based upon a review of the facts and
12 circumstances in their totality, including the
13 instances or the date -- meeting dates referenced in
14 count one, although they did not -- they're not
15 cognizable before this Court because they violate the
16 statute of limitations, I do not think they can be
17 ignored, that this has been an ongoing pattern and it
18 carries through to the -- counts three and four, where
19 relief was granted, that there has been a pattern here.
20 Accordingly, I do think it is appropriate for the Court
21 to enjoin the defendants and inform them that they are
22 required, as is everybody that legislates or passes any
23 sort of administrative policies, personnel decisions on
24 behalf of the public are required to comply with, in
25 strict adherence, according to the Supreme Court of the

1 state of New Jersey, with the mandates of the Open
2 Public Records Act. So I do think injunctive relief is
3 granted in this in -- is appropriate in this interest
4 (sic) and therefore it is granted.

5 Now, one of the things Mr. Kaplan has asked
6 for also in counts three and four are costs. Mr.
7 Kaplan, I will hear you regarding your costs, Sir. Mr.
8 Kaplan, you're muted.

9 MR. KAPLAN: My apologies, Your Honor. Can
10 you hear me?

11 THE COURT: Yes. Now I can. Thank you very
12 much.

13 MR. KAPLAN: Perfect. As a non-attorney, my
14 only cognizable costs to the current action is the cost
15 of filing summons -- the Complaint and Order to Show
16 Cause as well as copy costs, which are fairly minimal.
17 But those are the only costs I'd be seeking at this
18 time.

19 THE COURT: Tell me, do you know what your
20 copying costs were?

21 MR. KAPLAN: I don't exact figures. I mean,
22 they were over \$100, but I'm happy to cap it at \$100
23 for the Court if defendants will -- or the Court will
24 acknowledge that. Otherwise, I can get you a
25 itemization. But it was not very significant. I -- I

1 don't want to make this about the fees.

2 THE COURT: I -- I understand. There were --
3 the filing costs of the Complaint and the Order to Show
4 Cause I am told was \$300. Does that sound accurate to
5 you?

6 MR. KAPLAN: That is correct. Yes.

7 THE COURT: All right. Mr. Edelstein, do you
8 want to be heard regarding costs?

9 MR. EDELSTEIN: Well, I would simply note
10 that the Open Public Meetings Act is not a fee- --
11 cost-shifting statute.

12 THE COURT: All right. Thank you very much.
13 I agree with you; it's not a cost- or fee-shifting
14 statute. However, I do think it's appropriate in this
15 instance to award costs to Mr. Kaplan in the amount of
16 \$400; \$300 for the filings and \$100 for his copying
17 costs. And I think it's appropriate because when we
18 talk about the purpose of the Open Public Meetings Act
19 and -- and similar -- similar statutes, they are meant
20 to provide relief to the public when the statutes are
21 not being followed and the rules are not being followed
22 by the public entities. And in this instance, Mr.
23 Kaplan has come forward and shone a light on this --
24 what -- particular issue at the Teaneck school board,
25 which I -- I hear Mr. Edelstein say and it appears that

1 they are trying to comply, but they have not yet done
2 so.

3 So I do not think that the private citizen
4 who brings the act under -- to enforce the Open Public
5 Meetings Act against the public body should have to
6 bear the costs. Accordingly, I'm awarding costs in the
7 total amount of \$400. You will receive an order
8 outlining my decision today. Gentlemen, I thank you
9 both for --

10 MR. KAPLAN: Your Honor?

11 THE COURT: Yes, Sir.

12 MR. KAPLAN: If I could just be heard for a
13 brief moment regarding the injunctive relief moving
14 forward, only because that was the only part that deals
15 with something yet to happen. At the meeting last
16 night, three -- the executive session happened again
17 without a resolution indicating what the topics are and
18 the -- three resolutions were walked into the meeting
19 after public comment, with the requirement moving
20 forward that they have a resolution in the agenda to
21 advise the public as per the requirements under Polillo
22 and its brethren.

23 THE COURT: I am not going to address an
24 outline instance by instance, Mr. Kaplan. That is not
25 my job. I cannot give advice as to how to proceed. I

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am confident that Mr. Edelstein will counsel the Board of Education that they are to comply with every aspect of the Open Public Meetings Act.

MR. KAPLAN: Thank you, Your Honor. I appreciate it.

THE COURT: Thank you. Thank you both for your time and attention to this matter. As I indicated, you'll receive an order summarizing my findings today. Thank you all very much. Stay well.

(Proceeding concluded at 12:26 p.m.)

CERTIFICATION

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I, SARAH L. FETZ, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on CourtSmart, Index No. from 11:49:31 to 12:26:55, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Sarah L. Fetz
Sarah L. Fetz

AD/T 626
AOC Number

KLJ Transcription Service
Agency Name

09/12/2024
Date