

FILED

NOV 04 2024

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

PREPARED BY THE COURT

KEITH KAPLAN,

Plaintiff,

vs.

TEANECK BOARD OF EDUCATION, et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-121-24

CIVIL ACTION

ORDER

THIS MATTER having been opened to the Court on August 20, 2024, by Plaintiff, Keith Kaplan, a self-represented litigant, seeking to enforce litigant’s rights pursuant to R. 1:10-3, upon notice to The Weiner Law Group, counsel for Defendants (Stephen J. Edelstein, appearing), and the Court having considered the moving papers, opposition, and reply, for the reasons stated in the attached rider of even date; and for good cause shown.

IT IS on this 4th day of **November** 2024,

ORDERED that Plaintiff’s Motion to Enforce Litigant’s Rights is **DENIED** as a result of Defendants failure to comply with the July 18, 2024, Order; and it is further,

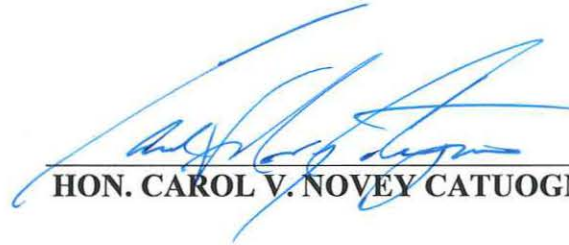
ORDERED that Plaintiff’s request to find that fees in the amount of **\$400.00** are immediately due and owed to the Plaintiff is **MOOT**; and it is further

ORDERED that Plaintiff’s request for civil penalties against the Defendants for their failure to comply with the court’s July 18, 2024, Order is hereby **DENIED**; and it is further

ORDERED that Plaintiff’s request for civil administrative penalties against the Defendants for their failure to comply with the court’s July 18, 2024, Order is hereby **DENIED**; and it is further

ORDERED that Defendants shall reimburse Plaintiff for his motion filing costs in the amount of **\$50.00** within thirty (30) days of the date of this order;¹ and it is further

ORDERED that a copy of this Order shall be served upon all counsel of record within, upon its upload to eCourts.



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

This Motion was:

Opposed
 Unopposed

¹ Defendants complied with the July 18, 2024, Order regarding the payment of \$400 in costs to the Plaintiff. However, the payment was made *after* the filing of Plaintiff's motion to enforce litigant's rights.

KEITH KAPLAN v. TEANECK BOARD OF EDUCATION, et al.

Docket No. BER-L-121-24

RIDER TO THE ORDER DATED NOVEMBER 4, 2024

I. INTRODUCTION

Keith Kaplan brought two motions asking the court to enforce litigant's rights following this Court's July 18, 2024, Decision and Order. The first motion, filed on August 20, 2024, seeks to enforce litigant's rights in the form of civil penalties and administrative penalties for the Board's alleged failure to pay \$400 to Mr. Kaplan in compliance with the July 18, 2024, Order. The other motion, filed on August 23, 2024, seeks to enforce litigant's rights through civil penalties, administrative penalties, and acknowledgment of the Board's alleged continued violations of OPMA.

II. FACTS AND PROCEDURAL HISTORY

On August 20, 2024, self-represented Plaintiff, Keith Kaplan, brought the first motion to enforce litigant's rights before the Court. This motion argues that Defendants did not pay Plaintiff the required \$400 within the ordered 30-day window as previously ordered by the court.² On August 23, 2024, Plaintiff filed the second motion, arguing the Defendants have further violated this Court's July 18, 2024, Order by again violating OPMA by failing to properly notice their August 21, 2024, meeting. Defendants submitted opposition papers to both motions on September 5, 2024, Plaintiff filed a reply to both on September 9, 2024. On September 30, 2024, and October 1, 2024, both Plaintiff and Defendants submitted additional filings for the Court's consideration.

² Both motions are entitled Motion to Enforce Litigant's Rights. Since both are entitled the same, this Court will differentiate them based on the alleged injury for which plaintiff seeks relief, identifying them as the "Fee Motion" and the "OPMA Motion."

As these additional filings were filed without leave of Court, the Court has declined to consider any of those filings. See R. 4:105-7; R. 1:6-3.

A. The Court's July 18, 2024, Decision and Order

On July 18, 2024, this Court granted relief in two of the five counts alleged (pled) by Plaintiff in a previous application. Specifically, relief was granted under Counts Three and Four of that motion. This Court ordered that: (1) Counts One and Two were denied as the statute of limitations barred both; (2) Counts Three and Four were granted; and (3) Count Five was denied.³

Count Three concerned a December 21, 2023, special meeting (“Special Meeting”) that resulted in the transfer of two school principals: Mr. Pedro Valdes and Mr. Piero LoGuidice.⁴ Defendants argued that any deficiencies in noticing that Special Meeting were cured by a subsequent meeting convened on January 17, 2024. This Court determined that there was no such cure. The Court explained that while the January 17, 2024, meeting was properly noticed in two newspapers, it still *did not* strictly comply with OPMA’s requirements because it failed to publish an agenda. The filing of an agenda was required, as the Board had failed to publish its 2024 meeting schedule prior to January 10, 2024, as required by N.J.S.A. 10:4-18, meaning any attempt at corrective action taken at the January 17, 2024, meeting to cure the deficiencies of the December 21, 2023, meeting failed.

In this Court’s July 18, 2024, Decision, the Court made several findings regarding the December 21, 2023, Special Meeting and its attempted cure in the January 17, 2024, meeting.

³ Count One of Plaintiff’s Verified Complaint alleged that the Board failed to file adequate notice of annual meeting dating back to 2020 to 2023 by not sending notice to two newspapers of record. Pl.’s Verified Compl., at 4-5. Count Two addressed an executive session that occurred during the Board’s November 15, 2023, meeting. Pl.’s Verified Compl., at 3. The statute of limitations barred both Counts. Count Five asked this Court to determine that OPMA violations may be redressed through the New Jersey Civil Rights Act. Pl.’s Verified Compl., at 17-19. This Court denied because there was nothing provided to the Court for it to determine such a finding and the Plaintiff had not met his burden in establishing that the Civil Rights Act applied.

³ Pl.’s Verified Compl., at 5-15.

⁴ Pl.’s Verified Compl., at 5-15.

First, this Court declared that the Defendants violated OPMA because they failed to notice the December Special Meeting properly since it was only published in one newspaper. Second, this Court determined that any attempts made during the January 17, 2024, meeting did not cure the Special Meeting because it also failed OPMA's notice requirements by not properly publishing an agenda, as stated above. Although this Court declined to void the actions taken during the Special Meeting, including the transfer of Principal Valdes and Principal LoGuidice, Defendants were clearly instructed that the Special Meeting must be cured through ratification within 70 days, or those actions would be voided.

Count Four concerned the Board's re-organization meeting on January 3, 2024 ("Re-Organization Meeting").⁵ At the outset of the Re-Organization Meeting, Defendant openly admitted that the meeting was not noticed properly but proceeded because of its intent to cure the deficiencies through ratification at the next meeting. That attempt to cure this deficiency also occurred during the January 17, 2024, meeting. As stated above, the deficiencies in notice of the January 17, 2024, meeting that prevented ratification of the December Special Meeting similarly prevent ratification of the January 3rd Re-Organization Meeting. Thus, this Court determined in its July 18, 2024, decision that the Re-organization Meeting violated OPMA because it was not noticed properly, and was not cured by the January 17, 2024, meeting because that meeting was also not noticed properly.

Consequently, the same 70-day window was provided to Defendants to cure those deficiencies. If they failed to cure within 70 days, the actions taken at the Re-Organization Meeting would be voided.

⁵ Pl.'s Verified Compl., at 16-17.

In light of Defendants' history and ongoing pattern and practice of being unable to satisfy OPMA's noticing requirements, this Court granted the Plaintiff's requested injunctive relief. To further compliance with OPMA and ensure that such cures to the Special and Re-Organization Meetings were made, this Court enjoined the Defendants and instructed them to comply with, in strict adherence, the mandates of OPMA. The Court also ordered Defendants to pay \$400 in costs to Plaintiff within 30 days.

B. Facts Subsequent to the Court's Order

Following this Court's July 18, 2024, Decision and Order, the Defendants held a regular meeting on August 21, 2024. Defendants submitted an annual meeting schedule, which included the August 21, 2024, meeting on January 18 and 19, 2024 to two newspapers.⁶ Notice was sent to the Bergen Record on January 18, 2024, to the Star Ledger on January 19, 2024, and both newspapers published the notice on January 23, 2024.⁷ On or about August 19, 2024, Defendants published an agenda for the August 21, 2024, meeting on the Teaneck Board of Education website.⁸

Shortly after the start of the August 21, 2024, meeting, the Board President made an oral resolution that the Board would enter closed session to discuss "legal updates and special education legal updates."⁹ During the meeting, after closed session, a member of the Defendants' public body, Board Trustee James Wolff, stated that he believed the meeting was not noticed in compliance with OPMA.¹⁰ That statement was not recorded in the Defendants' minutes of the August 21, 2024, meeting.¹¹ Defendants also attempted to ratify the January 17, 2024, meeting,

⁶ Certification of Stephen Edelstein, Esq., Sept. 5, 2024, ¶¶ 6-8, Ex. E-G.

⁷ Certification of Stephen Edelstein, Esq., Sept. 5, 2024, ¶¶ 6-8, Ex. E-G.

⁸ Certification of Stephen Edelstein, Esq., Sept. 5, 2024, ¶ 9, Ex. H (including only the first page of a 201 page agenda).

⁹ Certification of Keith S. Kaplan, In Support of Pl.'s Mot. to Enforce Litigant's Rights, Aug. 23, 2024, ¶ 20.

¹⁰ Certification of Keith S. Kaplan, In Support of Pl.'s Mot. to Enforce Litigant's Rights, Aug. 23, 2024, ¶ 13.

¹¹ See generally Teaneck Public Schools, *August 21, 2024 RPM minutes PDF*, <https://www.teaneckschools.org/Downloads/Minutes%20RPM%2008-21-242.pdf?v=0>.

which had attempted to ratify the December 2023 Special and January 3rd Re-Organization Meetings, by passing a resolution during the August 21, 2024, meeting.¹²

C. The Fee Motion

As indicated above, included in this Court's July 18, Decision and Order, Plaintiff was awarded fees in the amount of \$400. This Court ordered that those fees be paid within 30 days of the July 18, 2024, Order.

On August 20, 2024, three days after the 30-day window expired, Plaintiff made his Fee Motion. On September 5, 2024, Defendants filed an Opposition to Motion stating they "inten[ded] to discuss and resolve this payment to Plaintiff" at their August 21, 2024, meeting.¹³ However, because Plaintiff filed his Notice of Motion on August 20, 2024, at 12:02 am, the Defendants state they relented and sent payment in the amount of \$400 to the Plaintiff.¹⁴ Defendants noted that despite paying Plaintiff, he had not withdrawn his Fee Motion.¹⁵

Plaintiff filed reply papers to the same and included a certification and exhibits. Said certification and exhibits demonstrate that Plaintiff did receive a \$400 check dated August 20, 2024, accompanied by a letter from Defendants explaining the same and asking Plaintiff to withdraw his Fee Motion.¹⁶ Upon receipt of said check, Plaintiff sent a letter to the Defendants stating he would withdraw his Fee Motion if the Defendants agreed the Plaintiff was the prevailing motion party, would pay his motion fees, and agree to abide by this Court's July 18 Order.¹⁷ Plaintiff's letter received no response, prompting him to then request motion fees in his reply brief, relying on this Court's reasoning in awarding him fees in the July 18, 2024 Decision and Order.¹⁸

¹² Certification of Stephen Edelstein, Esq., Sept. 5, 2024, ¶ 10, Ex. I, J.

¹³ Certification of Stephen J. Edelstein, Esq., ¶ 4.

¹⁴ Certification of Stephen J. Edelstein, Esq., ¶ 5-6.

¹⁵ Certification of Stephen J. Edelstein, Esq., ¶ 7.

¹⁶ Certification of Keith S. Kaplan, In Support Of Pl.'s Mot. to Enforce Litigant's Rights, Ex. A.

¹⁷ Certification of Keith S. Kaplan, In Support Of Pl.'s Mot. to Enforce Litigant's Rights, Ex. B.

¹⁸ Pl.'s Reply Brief In Support Of Pl.'s Mot. to Enforce Litigant's Rights.

D. The OPMA Motion

On August 23, 2024, Plaintiff filed a second motion to enforce litigant's rights. Plaintiff argues that Defendants violated OPMA by not properly noticing an agenda for the August 21, 2024, meeting, by not sending a Rice notice to Mr. Valdes, by failing to enter objections by a board member into the meeting's minutes, by not informing the public of the closed session discussion topics, and for failing to cure and ratify the deficiencies of the January 3, 2024, re-organization meeting and the December 21, 2023, special meeting. Defendants counter that the meeting was noticed properly, that a Rice notice was not required for Mr. Valdes at the August 21, 2024, meeting, that no entry of board member objections needed to be entered into the meeting's minutes, that the public was adequately informed for the closed session discussion topics, and that they did cure and ratify the two deficient meetings.

III. RULES & DECISIONS

In his two motions to enforce litigant's rights, Plaintiff asks this Court to find that: (1) Defendant did not properly ratify and cure the deficiencies of the January 3, 2024 re-organization meeting and the December 21, 2023 special meeting; (2) Defendant violated OPMA by not properly noticing its August 21, 2024 regular meeting resulting in the failure to ratify the December 21, 2023, and January 3, 2024, meetings; (3) Defendant's violation of OPMA is also a violation of this Court's July 18, 2024, Order; and (4) Defendant also violated this Court's July 18, 2024, Order by not paying Plaintiff \$400 in costs within the requisite timeframe. For relief of these violations, Plaintiff seeks civil penalties, civil administrative penalties, and the receipt of the ordered \$400. In his reply papers, he additionally asks for the award of his motion costs. This Rider proceeds with the argued OPMA violations, the \$400 in fees, the Plaintiff's request of motion fees, and concludes with the additional penalties requested.

A. The Open Public Meetings Act

The New Jersey Open Public Meetings Act (“OPMA”) requires meetings of public bodies to be conducted in open session and in the eyes of the public. N.J.S.A. 10:4-6–4:21. OPMA provides two separate, but related, ways to provide adequate notice: (1) on an annual basis; or (2) at least 48 hours prior to each meeting. N.J.S.A. 10:4-8(d). Further, electronic notice may supplement, but not replace OPMA’s traditional notice requirements. N.J.S.A. 10:4-9.2. If a public body provides proper annual notice of regular meetings, the public body does not need to provide any further notice of the meeting. N.J.S.A. 10:4-18.

To annually notice its regular meetings, a public body must accomplish certain procedural steps. First, the public body must provide annual notice of its “schedule of regular meetings to be held during the succeeding year” no later than January 10.¹⁹ N.J.S.A. 10:4-18. The “schedule of regular meetings” must “contain the location of each meeting to the extent it is known, and the time and date of each meeting.” *Id.* And finally, the public body must: (1) mail, telephone, telegram or hand deliver the schedule to the two designated newspapers; (2) file the schedule with the relevant clerk; and (3) post and maintain that posting throughout the year in a public place reserved for such announcements. N.J.S.A. 10:4-18, 10:4-8. If a public body fails to properly annually notice its meetings, then it must provide “written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any . . . meeting” in the same manner as required for annual notice. N.J.S.A. 10:4-8. In sum, all meetings by a public body must be properly noticed—either annually or at least 48 hours in advance.

¹⁹ New Jersey Education Law mandates when boards of education must hold their annual organization or reorganization meetings. *See* N.J.S.A. 18A:10-3. Because the parties have not identified what type of school district applies in this instance, the Court does not rely on the dates provided by New Jersey Education Law and focuses solely on OPMA.

Alternatively, if the public body does not annually notice the meeting schedule, OPMA then requires at least 48 hours before the meeting, notice of the meeting “and, to the extent known, the agenda” of the meeting be properly noticed to two previously designated newspapers of record, posted in one public place reserved for such announcements, and filed with the relevant clerk. N.J.S.A. 10:4-8. In other words, OPMA requires publication of an agenda when no annual notice has been provided. N.J.S.A. 10:4-18.

An “agenda” is “a list or outline of things to be considered or done.” Opderbeck v. Midland Park Bd. of Educ., 442 N.J. Super. 40, 56 (2015), certif. denied, 223 N.J. 555 (2015). Public bodies do not have “to provide copies of appendices, attachments, reports, or other documents referred to in their agenda[.]” to comply with OPMA. Id. at 44.

Additionally, there are exceptions to OPMA’s public notice requirements. N.J.S.A. 10:4-12(b). Personnel matters affecting employees of the public body do not require public notice, unless all parties require or consent to a public hearing. N.J.S.A. 10:4-12(b)(8). However, public employees have a statutory right under OPMA to request a public hearing when their employment rights may be adversely affected. Rice v. Union Cnty. Reg’l High Sch. Bd. of Educ., 155 N.J. Super. 64, 73-74 (App. Div. 1977). To ensure employees are aware their employment may be discussed, they “must be given ‘reasonable notice’ when a public entity intends to consider taking adverse employment action related to them.” Kean Fed’n of Teachers v. Morell, 233 N.J. 566, 574 (2018) (citing Rice, 155 N.J. Super. at 74). The Rice notice allows public employees to make a decision on whether they desire a public hearing and prepare and submit an appropriate request for a public hearing in writing. Rice, 155 N.J. Super. at 73-74.

OPMA also provides mechanisms by which public bodies can hold closed sessions at meetings, out of the public eye. To hold a closed session, the public body must meet procedural

requirements, and the subject matter of the closed session must fall within one of OPMA's exceptions. N.J.S.A. 10:4-12. If the subject matter does not fall within an exception, the public body must discuss the subject in open session. N.J.S.A. 10:4-13 ("No public body shall exclude the public from any meeting to discuss any matter described in [N.J.S.A. 10:4-12b] until the public body" follows the necessary procedures to do so). OPMA allows a public body to hold closed session when the subject matter involves "pending or anticipated litigation" involving the public body, or if the subject matter "fall[s] within attorney-client privilege, to the extent that confidentiality is required" for the attorney to act ethically as a lawyer. N.J.S.A. 10:4-12b(7).

To hold a closed session, a public body must adopt, at an open session, a resolution stating: (1) the general nature of the subject to be discussed at the closed session; and (2) as precisely as possible, if and when the closed session discussion can be disclosed to the public. N.J.S.A. 10:4-13. The resolution to enter closed session can be made orally, so long as the adopted oral resolution is memorialized in the meeting's minutes. Twp. Comm. of Edgewater Park v. Edgewater Park Hous. Auth., 187 N.J. Super. 488, 603 (App. Div. 1982). Further, the "to the extent known" requirements that apply to a public body's agenda, do not apply to resolutions to enter closed session. See McGovern v. Rutgers, 211 N.J. 94, 111 (2012) (declining to extend N.J.S.A. 10:4-8's requirements for agendas to N.J.S.A. 10:4-13's requirements for resolutions to enter closed session).

OPMA requires public bodies to keep "reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be" included by law. N.J.S.A. 10:4-14. These minutes must "be promptly available to the public to the extent that making such matters public" is not inconsistent with N.J.S.A. 10:4-12. N.J.S.A. 10:4-14. If a

member of a public body believes a meeting of that public body is being held in violation of OPMA, that person must immediately state their belief along with specific reasons for that belief. N.J.S.A. 10:4-17. Such objection must be recorded in the meeting's minutes. N.J.S.A. 10:4-17.

1. The December 21, 2023 Special Meeting, the January 3, 2024 Re-Organization Meeting, and the January 17, 2024 Special Meeting

Prior to this Court's July 18, 2024, Order, Defendants conceded that both the December 21, 2023, meeting and the January 3, 2024, re-organization meeting were not properly noticed. As already determined by the court on July 18, 2024, the January 17, 2024, meeting was not noticed properly and therefore violated OPMA.

The purported January 3, 2024, re-organization meeting was not noticed properly, nor was a 2024 meeting schedule presented at that meeting. Because Defendants failed to file an annual schedule within 7 days of a properly noticed re-organization meeting or by January 10, 2024, Defendants do not enjoy the "annual notice" benefit for any regular meeting of 2024. The January 17, 2024, meeting failed to properly effectuate annual notice because it was not within the statutory timeframe, as stated above.

For the January 17, 2024, meeting, while Defendants submitted notice to two newspapers, they failed to strictly comply with OPMA by not submitting an agenda for that meeting to the same two newspapers. Defendants did publish an agenda on the Teaneck Board of Education website on January 15, 2024, 48 hours in advance of the January 17, 2024, meeting. However, electronic notice of meetings on websites supplements OPMA's traditional notice requirements; it does not replace them. See N.J.S.A. 10:4-9.1 ("In addition to the notice requirements of [OPMA] . . . a public body may provide electronic notice of any meeting of the public body through the Internet.").

Therefore, the Defendants improperly held a meeting on January 17, 2024. Because that meeting was improperly noticed, any attempts to use it as a vehicle to cure and ratify the previous improperly noticed meetings must fail.

2. The August 21, 2024, Regular Meeting

Plaintiff makes a number of arguments concerning the August 21, 2024, meeting, mainly: (1) Defendants did not notice the meeting properly; (2) Defendants did not provide Mr. Valdes with a Rice notice; (3) Defendants failed to enter a public body member's objection into the meeting minutes; (4) Defendants improperly entered closed session; and (5) Defendants did not cure the deficiencies of the Special Meeting and the Re-Organization Meeting through ratification. Each argument and Defendants counterarguments are addressed below.

a. Notice of Meeting and Agenda

Plaintiff argues the August 21, 2024, meeting violated OPMA because it was not noticed properly.²⁰ Defendants counter that the meeting was noticed properly through annual notice at the January 17, 2024, meeting.²¹

At the outset, the Court has already determined that there was no proper annual notice for 2024 because it was not effectuated within 10 days of a re-organization meeting nor by January 10, 2024. Also, as already stated above, this Court has already made an adjudication regarding whether the January 17, 2024, meeting was noticed properly under OPMA. Therefore, there cannot be annual notice for the August 21, 2024, meeting and Defendants must provide proper notice at least 48 hours in advance of the meeting to be in compliance with OPMA.

²⁰ Pl.'s Mem. In Support of Mot. to Enforce Litigant's Rights, Aug. 23, 2024, at 1-2.

²¹ Def.'s Opp'n to Mot. Br., at 1-3.

Concerning the August 21, 2024, meeting, Defendants sent notice to two properly designated newspapers on January 18 and 19, 2024.²² Defendants attempted to comply with OPMA by publishing an agenda for the meeting on the Teaneck Board of Education website. Defendants, however, did not submit an agenda for the August 21, 2024, meeting to the requisite two newspapers. This is in violation of OPMA.

In their opposition brief, Defendants state the January 17, 2024, meeting was properly noticed, stating that “posting the agenda on the website is . . . perfectly permissible” because it is a “norm throughout New Jersey.” Of course, norms that are not in strict compliance with OPMA cannot satisfy OPMA. The requirements in N.J.S.A. 10:4-8 regarding notice are clear and our state’s Supreme Court is clear that only strict compliance with OPMA satisfies OPMA. See Polillo v. Deane, 74 N.J. 562, 578 (1977) (rejecting the argument that substantial compliance with OPMA satisfies OPMA and holding “that strict adherence to the letter of the law is required in considering whether a violation of [OPMA] has occurred.”). The Court also notes that Defendants seem to believe agendas can only be published online, due to the length of the agendas. Defendants argue that boards of education publish their agendas only on websites because “publishing the entire agenda in a newspaper would be impossible, since the agendas can easily be forty pages or more” and furthers their belief that norms, which are not in strict compliance with OPMA, are somehow in compliance with OPMA.²³

An agenda does not need to include every document that is referred to in the agenda. Opderbeck, 442 N.J. Super. at 44. An agenda can be as simple as “a list or outline of things to be considered or done” by a public body at a meeting. Id. at 56. The Court additionally notes that OPMA does not *require* a newspaper to actually publish the agenda or notice of meeting. OPMA

²² Certification of Stephen Edelstein, Esq., Sept. 5, 2024, ¶¶ 6-7, Ex. E-F.

²³ Def.’s Opp’t to Mot. Br., at 2.

simply requires the public body perform the ministerial task of *submitting* the agenda and notice of meeting to two designated newspapers. See N.J.S.A. 10:4-8d.

Nevertheless, Defendants failed to comply with OPMA's notice requirements for the August 21, 2024, meeting because they did not submit the meeting's agenda to the designated two newspapers. The August 21, 2024, meeting therefore violated OPMA.

b. Rice Notice

Plaintiff argues the Defendants violated OPMA by failing to send Mr. Valdes a Rice notice for the August 21, 2024, meeting. Defendants counter that Mr. Valdes was not entitled to a Rice notice for the meeting because he was not a topic of discussion and was not planned to be a topic of discussion.

Rice recognizes a statutory right for public employees that will be potentially adversely affected by a public body's personnel decision. 155 N.J. Super. at 73-74. This statutory right "cannot be transferred to a third party by implication." Id. at 75. The statutory right belongs only to "individuals who could be adversely affected by the action of the" public body. Id. at 75.

Plaintiff is not Mr. Valdes, nor is Plaintiff Mr. Valdes's attorney. Accordingly, Plaintiff does not have standing to challenge whether or not Mr. Valdes properly received a Rice notice for any meeting. Only Mr. Valdes can bring such a claim.

c. Entry of Objections

Plaintiff argues that Defendants violated OPMA by failing to enter another board member's concern that the August 21, 2024, meeting was not noticed properly. Defendants counter that Plaintiff's argument "has no meaning whatsoever" because the "entire meeting is recorded." Defendants' argument ignores the text of OPMA.

Public bodies are mandated by OPMA to keep reasonably comprehensible minutes of its meetings. N.J.S.A. 10:4-14. When a member of a public body states their belief that a meeting is being held in violation of OPMA, the public body must record that objection in the meeting's minutes. N.J.S.A. 10:4-17.

At the August 21, 2024, meeting, Board Trustee James Wolff stated during the board member statements that he did not believe the meeting was adequately noticed in compliance with OPMA because the meeting and agenda was not noticed in two newspapers.²⁴ Board Trustee Wolff's statement appears nowhere in the August 21, 2024, meeting minutes.²⁵ Defendants contention that the meeting is recorded and somehow compliant with OPMA in recording objections of the public body's members need not occur is misguided. OPMA's text is clear. Board Trustee Wolff's objection should have been recorded in the meeting's minutes. Defendants failed to do so. Accordingly, this is in violation of OPMA.

d. Closed Session

Plaintiff argues that Defendants violated OPMA by entering closed session during the August 21, 2024, meeting. Specifically, he argues that the oral resolution made by the Board President to enter closed session to discuss "legal updates and special education legal updates" does not comply with OPMA's express requirements for closed sessions.²⁶ Defendants counter that the public was informed "in writing" of the closed session subject matter, "legal update".²⁷

The Court notes first that Defendants failed to certify or demonstrate where the public was informed of the same and that a "legal update" was the topic discussed in closed session. Still, OPMA is clear as to what is required of public bodies when they seek to enter closed session.

²⁴ Certification of Keith S Kaplan, In Support of Pl.'s Mot. to Enforce Litigant's Rights, Aug. 23, 2024, ¶ 13.

²⁵ See Certification of Keith S Kaplan, In Support of Pl.'s Mot. to Enforce Litigant's Rights, Sept. 9, 2024, Ex. B.

²⁶ Certification of Keith S. Kaplan, In Support of Pl.'s Mot. to Enforce Litigant's Rights, ¶¶ 20-23.

²⁷ Def.'s Opp'n to Mot. Br., at 4.

A public body must adopt a resolution stating: (1) the general nature of the subject to be discussed at the closed session; and (2) as precisely as possible, if and when the closed session discussion can be disclosed to the public. N.J.S.A. 10:4-13. Here, the Defendants did exactly that. The Board President made an oral resolution to enter closed session to discuss “legal updates and special education legal updates.”²⁸ The other board members adopted the resolution. Therefore, in this regard, Defendants did comply with OPMA.

e. Cure and Ratification

Plaintiff argues the Defendants failed to cure the deficient December 2023 Special and January 3rd Re-Organization Meetings at the August 21, 2024, meeting. Defendants counter the opposite, simply that corrective action was taken to cure and ratify the two deficient meetings by passing two resolutions at the August 21, 2024, meeting.

When a public body takes action or holds a meeting that is not in compliance with OPMA, the public body can “take corrective or remedial action by acting de novo at a public meeting held in conform[ance] with” OPMA. N.J.S.A. 10:4-15. To the extent that the matter is before us, Defendants have not cured either the Special or Re-Organization Meeting because, as explained above, they failed to properly notice the August 21, 2024, meeting by not properly noticing an agenda.

B. Justiciability

Cases or controversies that have become moot prior to judicial resolution are ordinarily dismissed. “Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm.” Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311, 315 (App. Div. 2010) (citation omitted) (noting that “[a]

²⁸ Certification of Keith S Kaplan, In Support of Pl.’s Mot. to Enforce Litigant’s Rights, Aug. 23, 2024, ¶ 20.

critical factor in the mootness analysis is whether the unusual circumstances of a case make a recurrence of this specific set of facts unlikely”). When a court’s decision on an issue would have no practical effect on the existing controversy between the parties, that issue is moot. Greenfield v. N.J. Dep’t of Corr., 382 N.J. Super. 254, 257–58 (App. Div. 2006).

The issue concerning Plaintiff being owed \$400 in fees is moot as Plaintiff has clearly received the ordered payment from Defendants. Shortly after the Plaintiff filed these two motions, Defendants paid the \$400 to the Plaintiff on August 20, 2024.²⁹ Thirty days after July 18, 2024, is August 17, 2024. Defendants’ payment to Plaintiff on August 20, 2024, was three days late. Defendants also argue that Plaintiff knew that the \$400 could not be paid to him until the payment was approved by the Board at the August 21, 2024, meeting.³⁰ If such is the case, then Defendants *also knew* that it could not pay the \$400 within the 30-day timeframe ordered by the Court. Defendants would have been wiser to have raised such an issue to the Court when the judgment was issued on July 18, 2024, or simply moved for an extension. Based on the papers presented before the Court, the Plaintiff has received the \$400 in fees required to be paid to him. Regardless of whether Defendants paid the \$400 within the timeframe ordered by this Court, the fact of payment has now rendered the issue moot.

C. Motion Fees

When one party acts in non-compliance with a prior court order, the other party can move to enforce litigant’s rights pursuant to R. 1:10-3. Thus, R. 1:10-3 allows a court to enter an additional order compelling the non-complying party into compliance with its prior order.

²⁹ Certification of Stephen J. Edelstein, Esq., Sept. 5, 2024, ¶¶ 5-6; Certification of Keith S. Kaplan, In Support of Pl.’s Mot. to Enforce Litigant’s Rights, Sept. 9, 2024, ¶ 4, Ex. A. The Court notes that Defendants claims the payment of the \$400 was a few minutes outside the timeframe ordered by this Court. This is incorrect.

³⁰ Certification of Stephen J. Edelstein, Esq., Sept. 5, 2024, ¶ 5.

Saltzman v. Saltzman, 290 N.J. Super. 117, 125 (App. Div. 1996). Such award of fees are meant to compel compliance. Ridley v. Dennison, 298 N.J. Super. 373, 381 (App. Div. 1997).

This Court's prior Order was clear when it ordered that Defendants shall adhere strictly to all the mandates of OPMA and remain in full compliance with OPMA moving forward. It is now clear that Defendants have, again, failed to act in compliance with OPMA. As demonstrated above, the August 21, 2024, meeting was not noticed properly. Its agenda was not properly submitted to two previously designated newspapers for publication pursuant to N.J.S.A. 10:4-8 at least 48 hours in advance. Because they failed to perfect annual notice for 2024, Defendants cannot rely on annual notice for the August 21, 2024, meeting, and thereby avoid submitting an agenda to two newspapers for publication.

Defendants have failed to make a showing that they were unable to comply with OPMA's mandates. This Court already determined that the January 17, 2024, meeting was not properly noticed under OPMA. Such determination requires the Defendants to give written notice, *at least 48 hours* before the meeting, providing the time, date, location, agenda, and whether formal action will be taken. N.J.S.A. 10:4-8(d). That written notice must be: (1) posted in at least one public place designated for such announcements; (2) submitted to at least two previously designated newspapers; and (3) filed with the relevant clerk. *Id.* Defendants cannot rely on annual notice for regular meetings because their Re-Organization Meeting was not properly noticed under OPMA, as they themselves conceded when starting the meeting, and because the January 17, 2024, meeting does not strictly comply with OPMA's text either for re-organization meetings nor was it noticed properly. N.J.S.A. 10:4-18.

Accordingly, because Defendants are in non-compliance with this Court's July 18, 2024, Order, were able to comply, and have failed to show why their non-compliance should be excused,

and this has been brought to light by the Plaintiff moving to enforce litigant's rights, the Plaintiff is awarded motion fees pursuant to R. 1:10-3. These fee awards are intended to further compel Defendants to comply, not only with this Court's injunction, but also with OPMA's mandates.

D. Penalties

Plaintiff seeks both civil penalties and civil administrative penalties in both of his motions. For the reasons set forth below, this Court declines to issue civil or administrative penalties.

1. Civil Penalties

OPMA contains two remedial provisions. First, "any person . . . may apply to the Superior Court for injunctive orders or other remedies to insure compliance with the provisions of [the] act and the court shall . . . provide such remedies as shall be necessary to insure compliance with the provisions of [the] act." N.J.S.A. 10:4-16.

Second, if a person knowingly violates OPMA, they may be fined \$100 for the first offense, and between \$100 and \$500 for subsequent offenses. N.J.S.A. 10:4-17. However, this penalty is only recoverable by the State through a summary proceeding under "the penalty enforcement law." Id. (citing N.J.S.A. 2A:58-1, et seq.). This Court, and any Superior Court, only has jurisdiction to enforce such penalty upon the complaint of the Attorney General or the County Prosecutor, not a *pro se* litigant. Id.

In sum, civil penalties are possible for the Defendants repeated OPMA violations. However, those penalties are only possible if the Bergen County Prosecutor or Attorney General sought them or if this Court determines that such civil penalties are "necessary to insure compliance" with OPMA. Id. 10:4-16.

There is no question that Defendants have struggled, and continue to struggle, with following OPMA's requirements. However, at this juncture, this Court declines to find that the imposition of civil penalties are "necessary to insure" that Defendants comply with OPMA.

2. Civil Administrative Penalties

Civil administrative penalties are available for violations of many statutes in New Jersey. See, e.g., N.J.S.A. 58:10A-1-35 (providing for enforcement of the Water Pollution Control Act through civil administrative penalties); N.J.A.C. 7:10-3.5 (providing for enforcement of the Safe Drinking Water Act through civil administrative penalties); N.J.A.C. 7:7-8.11 (providing for enforcement of the Coastal Area Facility Review Act through civil administrative penalties); N.J.S.A. 26:2J-24 (providing for administrative penalties to enforce the Mental Health Parity Law).

In contrast, OPMA contains no provisions allowing a litigant to seek civil administrative penalties when OPMA is violated. As the legislature took great care in making not one but two provisions of OPMA dedicated to what penalties are available, this Court cannot read the availability of administrative penalties into its text.³¹

Therefore, this Court declines to award civil administrative penalties for these violations of OPMA.

IV. CONCLUSION

For the above reasons, this Court finds the Defendants' August 21, 2024, meeting violated OPMA, and thereby also violated this Court's July 18, 2024, Order. Plaintiff's request for \$400 in costs immediately due and payable to the Plaintiff is moot. Lastly, Plaintiff's requests to void the

³¹ This canon of statutory construction *expressio unius est exclusio alterius* makes this legal conclusion clear as the expression of one implies the exclusion of others. See Moses v. Moses, 140 N.J. Eq. 575, 585 (E. & A. 1947) ("An affirmative expression ordinarily implies a negation of any other.").

actions taken at the August 21, 2024, meeting and for civil and civil administrative penalties are denied.

Defendants' August 21, 2024, meeting is hereby declared in violation of the New Jersey Open Public Meetings Act, and the Teaneck Board of Education shall cure the deficiencies of the August 21, 2024, meeting within **50 days** of the date of this order. In addition, because the instant motions were filed prior to the expiration of the initial 70 day time period provided in the Court's July 18, 2024, Order, allowing Defendants to cure the deficiencies of prior meetings, the Court extends the initial time period to cure by an additional **50 days**, to ensure compliance with this Court's prior Order, this Order, and OPMA. The Court affords Defendants this relief *sua sponte* with the goal that this litigation produces compliance with OPMA