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July 11, 2012

Vito Gagliardi, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
P.O. Box 1997
Morristown, NJ 07962-1997

Re: Clinton Township School Board Sunshine Law Violations
February 27, 2012 and March 26 and 29, 2012

Dear Mr. Gagliardi:

This Office received a report that the Clinton Township School Board has violated the Open Public Meetings Act ("OPMA") on several occasions. My review of the evidence confirms that on three separate occasions, the Board violated OPMA by (1) going into closed/executive session without stating the general nature of the subject to be discussed and stating when the information discussed in the closed session can be expected to be disclosed to the public; and (2) failing to keep reasonably comprehensible minutes of actions taken because the minutes with respect to each of these meetings say that a resolution was passed at the meeting going into closed session and that the reasons for going into closed session were set forth, when in fact they were not. In addition, there is potential exposure under N.J.S.A. 2C:28-7 if this incorrect entry was knowingly made.

I have listened to a copy of the official recordings of the Board meetings of February 27, 2012, March 26, 2012, and March 29, 2012, and have reviewed the Board's written minutes from those meetings. In all three meetings, the chair announces that the board will be going into executive session, makes a motion, gets a first and second, and then the motion is approved. No mention is made of the general nature of the subject to be discussed. Nor is there any mention of the time when and the circumstances under which the discussion conducted in closed session can be disclosed to the public. The failure to state these items violates N.J.S.A. 10:4-13.

The minutes for all three dates contain nearly identical entries (the only differences relate to the subjects discussed at the closed session) regarding when the Board went into executive session:

Resolved by the Board of Education of Clinton Township as per Chapter 231, P.L. 1975

- a. That it is hereby determined that it is necessary to meet in Executive Session on Monday, February 27, 2012 to discuss matters rendered legally confidential and the Superintendent Search.
- b. The matter discussed will be made public if and when confidentiality is no longer required and action pursuant to said discussion shall take place only at a public meeting.
- c. The length of the meeting is thought to be approximately 30 minutes.
- d. Action will not be taken upon return.

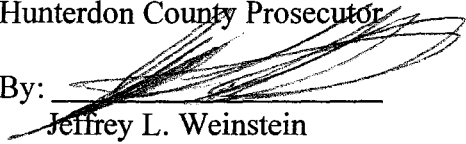
The language used in the minutes suggests that the drafter knew of the disclosure requirements of Section 13 and felt it was important to include them in the minutes. The problem is that these entries do not reflect what actually happened at the February 27, March 26, and March 29 meetings. The caption on the first page of the minutes says "Minutes Regular Meeting" and the respective date. These entries create the impression that all items above labeled "a" through "d" were discussed during the public portion of the meeting. A review of the audio recordings for each of these meetings proves that they were not. Rather, the chair announced a motion to go into executive session, and mentioned only the expected length of the meeting and that no action would be taken upon return. But at all three meetings neither the subject matter or the expected date that the topics would no longer be confidential are mentioned. N.J.S.A. 10:4-14 requires in part that a public body shall keep reasonably comprehensible minutes showing the subjects considered and the actions taken. The minutes violate this section because they reflect that public disclosures were made that were required by N.J.S.A. 10:4-13 when in fact these disclosures were not made. It is particularly troubling that this pattern of non-disclosure at the public meetings is followed by minutes that wrongly state that the disclosures were made. Three instances have been brought to our attention. This Office is concerned that the minutes demonstrate a pattern as to how the Board regularly conducts itself.

This Office has terminated the investigation at this time. As you may be aware, the County Prosecutor or the Attorney General may choose to bring an action for imposition of penalties for violations of the Sunshine Law against board members who participated in the unauthorized action N.J.S.A. 10:4-17. The enforcement action is separate and apart from a civil action that any person may bring for injunctive relief or overturning the agency action that was made in violation of the Sunshine Law N.J.S.A. 10:4-15 and 10:4-16. And if the Board knowingly included false information in the minutes, that could constitute a violation of N.J.S.A. 2C:28-7, a disorderly persons offense.

Since this matter represents the first time that we have been advised of a potential OPMA violation, our purpose at this point is simply to bring this matter to your attention so that you may properly advise your client of its obligations under the OPMA, its obligation to make truthful minutes of meetings under OPMA and other statutes, and that this Office takes such matters seriously.

Feel free to contact me if you have any questions regarding this matter.

Very truly yours,
Anthony P. Kearns, III
Hunterdon County Prosecutor

By: 
Jeffrey L. Weinstein
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c: Nick Corcodocolis