

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
REPORT OF EXAMINATION - OCTOBER 2007
PLAINFIELD SCHOOL DISTRICT
HIRING OF INTERIM SUPERINTENDENT

EXECUTIVE SUMMARY

The Department of Education (DOE), Office of Fiscal Accountability and Compliance (OFAC) received a complaint regarding the hiring of the interim superintendent of the Plainfield School District. The complaint alleged that the board attorney had undue influence in the hiring. There were questions about the resignation of the previous superintendent, as well as questions about the legality of the actions taken at an emergency meeting in light of the inadequate notice given to the public.

The OFAC investigators went to the school district on August 14, 15 and 29, 2007 and reviewed board minutes, agendas, contracts and payments. The former and interim superintendents, the board attorney and board members were interviewed as well. The investigation revealed there was inadequate meeting notice as well as a lack of board minutes, which violate the Open Public Meetings Act.

The Plainfield Board of Education (the board) violated state Open Public Meetings Act statutes by having an emergency meeting without adequate advertisement. However, the time limit in which to file a complaint has elapsed. The lack of board minutes remains a valid violation of the Open Public Meetings Act.

The board attorney, Mr. Raymond Hamlin, who was representing Mr. Peter Carter in another legal matter, recommended him for the interim superintendent position to the board. With the exception of the board president, board members did not recall the board attorney disclosing to the board this previous relationship. This relationship should have been disclosed to the board and the public. The board attorney also gave a recommendation as to the interim superintendent's abilities. These recommendations are beyond the scope of the board attorney's duties and fall within the realm of participating in board decision making.

The remainder of this report contains a summary of events, findings, conclusion and recommendations.

SUMMARY OF EVENTS

The OFAC was asked to determine whether there was an undue influence by the board attorney regarding the hiring of the interim superintendent at the Plainfield School District. OFAC auditors obtained documentation regarding this issue. Specific allegations are addressed and explained in the findings below.

ALLEGATIONS AND FINDINGS

- 1. There are Open Public Meetings Act violations regarding the emergency Plainfield Board of Education Meeting of June 8, 2007. There are questions regarding the validity of subsequent votes to accept the resignation of the former superintendent and the appointment of the interim superintendent and interim school business administrator of the Plainfield School District.**

The OFAC received a complaint regarding the June 8, 2007 meeting of the Plainfield Board of Education. The meeting was advertised as an emergency meeting on the same day of the meeting in one newspaper. The meeting resulted in the acceptance of the resignation of the Former superintendent. There were also board resolutions to appoint both an interim superintendent and an interim school business administrator/board secretary. The complainant is concerned with whether the meeting was held in violation of the Open Public Meetings Act.

According to the board members interviewed, there was a particularly contentious executive session at a board meeting on June 5, 2007 because a business administrator/board secretary was supposed to be appointed at that meeting. The district had been without a business administrator/board secretary since May 31, 2007. However, agreement on the final candidate could not be reached and the meeting ended abruptly. On June 6, 2007, Paula Howard, Superintendent, wrote a letter of resignation and had copies delivered to the homes of the school district's board members. In the letter she stated, "It is with deep regret that I am writing to inform you that I am formally resigning from the position of superintendent of the Plainfield Public Schools as of June 6, 2007. Please be advised that in the time that I will remain I will carry out all duties with the utmost integrity."

Even though the superintendent resigned, she still came into the office daily. On June 8, 2007, he sent a letter rescinding the resignation with the board packet.

The board advertised on June 8, 2007 in the Courier News for an Emergency Meeting. The advertisement indicated that the items to be considered were the resignation of the chief school administrator, and appointment of an interim superintendent and interim school business administrator/board secretary. The meeting was advertised as an emergency pursuant to N.J.S.A. 10:4-9. At this meeting the board voted to accept the resignation of the superintendent. They also voted to appoint an interim superintendent and interim business administrator.

According to N.J.S.A. 10:4-9(b)(1), "Upon the affirmative vote of three quarters of the members present a public body may hold a meeting notwithstanding the failure to provide adequate notice if ... such meeting is required in order to deal with matters of such urgency and importance that a delay for the purpose of providing adequate notice would be likely to result in substantial harm to the public interest."

According to N.J.S.A. 10:4-9(b)(3), "Notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice in the public place described in section 3.d. above, and also by notifying the two newspapers described in section 3.d. by telephone, telegram, or by delivering a written notice of same to such newspapers."

Board members told the OFAC investigator that because of the wording of the superintendent's resignation letter, they felt that they had an emergency because they no longer had a superintendent. The district also did not have a business administrator/board secretary. Both positions are required in order to manage the district. This appears to be a reasonable determination based upon the circumstances. However, the notice was posted in only one newspaper and not the two required, which violates the Open Public Meetings Act regarding notice of the meeting. However, the time limit in which to file a complaint (45 days after the action sought to be voided has been made public) has elapsed. Accordingly, the actions taken at this meeting prevail. Also, the board has not had board minutes available from mid-May 2007 to the date of this investigation. This is also an Open Public Meetings Act violation. Failure to prepare and make minutes available deprives the public of disclosure of board action. There is no official record of board actions if members of the public wish to review board action taken at publicly advertised meetings. The OFAC investigator was unable to obtain minutes from mid-May, July and August of 2007. Thus, this violation is valid. The district has since produced board minutes for all meetings except for June 8, 2007.

N.J.S.A. 10:4-14 states: "Each public body shall 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 shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act."

There were unapproved regular and executive session minutes written by a board member for the June 8, 2007 meeting. The OFAC received a copy of these unapproved minutes. These minutes need to be reviewed and approved by the board.

2. The board attorney recommended his client for appointment as the interim superintendent. The board attorney is representing the interim superintendent on a legal matter. This was not disclosed to either the public or the board of education.

According to the June 8, 2007 unapproved minutes and based on statements from several board members, Mr. Martin Cox, who is a board member, asked the New Jersey School Boards Association (NJSBA) for a list of retired superintendents who were looking for interim superintendent positions. He got a list with 93 names on it. He reportedly then "called some educational people to ask who would be their top rated person" for an interim superintendent's position. Mr. Peter Carter's name was mentioned several times. The OFAC investigator was able to speak to Mr. Cox on August 29, 2007.

Mr. Raymond Hamlin, the board attorney, who was general counsel at the time, called Mr. Carter on the morning of June 7, 2007 and inquired whether he would be interested in an interim position in Plainfield. Mr. Cox spoke to Mr. Carter by phone on the morning of June 8, 2007. Mr. Cox said that he spoke to other applicants, but the per diem amount they requested was excessive. Mr. Carter was willing to work for less. The board president and vice president, as well as other board members, also verified that they saw the list used by Mr. Cox in order to search for an interim superintendent. However, none of the board interviewed members verified that Mr. Carter's name appeared on the list.

The list, which now has 96 names on it, was received by the OFAC investigator from NJSBA. A review of the list determined that Mr. Carter's name was not on the list. Mr. Hamlin told OFAC that he gave Mr. Carter's name to Mr. Cox. According to the unapproved minutes, Mr. Hamlin and Mr. Ridley, who are both partners in the board counsel's law firm, vouched for Mr. Carter to the board regarding his abilities during the board's executive session. Mr. Hamlin also answered a question by a board member regarding Mr. Carter's previous employment.

Mr. Hamlin recommended Mr. Carter to the board for the interim superintendent position. He is also representing Mr. Carter in a legal matter unrelated to the Plainfield School District. With the exception of the board president, board members did not recall the board attorney disclosing to the board this previous relationship. This relationship should have been disclosed to the board and the public.

By recommending and commenting on Mr. Carter's abilities for the interim superintendent position during a board meeting, Mr. Hamlin, as the board's general counsel, acted beyond the scope of the duties of an attorney. The board attorney must only act in an advisory capacity regarding legal issues for the board.

At the time of this action, the board had a labor and personnel attorney. However, only the general counsel, rather than the labor and personnel attorney was consulted and participated in the hiring process of the interim superintendent.

CONCLUSIONS

The Plainfield Board of Education violated state Open Public Meetings Act statutes by having an emergency meeting without adequate advertisement. However, the statute of limitations on this violation has expired; therefore the actions taken are viable. The lack of board minutes is also a violation of the Open Public Meetings Act.

Mr. Hamlin, the board attorney, who is currently representing Mr. Carter in another legal matter, recommended him for the interim superintendent position to the board. Mr. Hamlin participated in a hiring decision of the board, which is beyond his responsibility to provide legal advice to the Board. The general counsel, rather than the labor and personnel counsel participated in this hiring process. Mr. Hamlin also did not disclose to all the board members that he was representing Mr. Carter on another legal matter and had a previous relationship with him.

RECOMMENDATIONS

The Plainfield Board of Education needs to perform the following:

1. Ensure compliance with notice of meeting requirements even in an emergency.
2. Immediately complete the June 8, 2007 board minutes.
3. Ensure that the board attorney refrains from participating in board decision making.
4. Disclose the relationship between the board attorney and the interim superintendent to all board members and the public.

This report will be forwarded to the New Jersey State Bar Association for investigation of possible ethics violations by Mr. Hamlin.

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