

OATH OF ALLEGIANCE

New Jersey's statutory Oath of Allegiance does not violate constitutional rights of speech and expression or inhibit political beliefs or activities. Gough v. State, 285 N.J. Super. 16 (App. Div. 1995), aff'g unreported op. Monmouth County Law Division Dkt. No. MON-L-4388-93, Nov. 5, 1993.

OPEN PUBLIC MEETINGS ACT

Closed session

Agenda meeting - Board bylaw providing for agenda meeting prior to regular meeting not legally enforceable - No Open Public Meetings Act requirement violated (97 N.J.A.R.2d (EDU) 295, Sooy, III)

Board member with suit against board may be excluded from closed session discussion of litigation (90:939, Syvertsen I, aff'd St. Bd. 90:944, aff'd 251 N.J. Super. 566, (App. Div. 1991))

Discussion of whether board president should be indemnified in defamation suit brought by citizen, could be held in closed session although the board itself was not a named party in the defamation action (97 N.J.A.R.2d (EDU) 34, Montagna)

Invalidation not warranted where action ratified at appropriately noticed open meeting where issue was publicly aired. State College Locals v. State College Board, 284 N.J. Super. 108 (Law Div. 1995).

No right to private deliberation under the Open Public Meetings Act (90:240, Nazarechuk)

Policies of school board affecting RIF procedures must be adopted at a public meeting (87:1506, Mann, aff'd St. Bd. 87:1522, aff'd App. Div. unpub. op. Dkt. No. A-2695-87T1, June 7, 1990)

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Resolution to enter closed session "to consider personnel matter, labor relations, any pending litigation, and any other matter specifically exempted by the OPMA" did not comply with the statutory intent, lacking in specificity. State College Locals v. State College Board, 284 N.J. Super. 108 (Law Div. 1995).

Jurisdiction

Commissioner has jurisdiction to consider OPMA issues as they relate to controversies under school laws (92:Oct. 7, Bond)

Commissioner has jurisdiction under OPMA where he has jurisdiction over underlying controversy (90:863, Entwistle)

Commissioner lacks jurisdiction to determine question of public employee's right to privacy under OPMA in case where there is no related controversy involving school law (94 N.J.A.R.2d (EDU) 576, Cheung)

Commissioner lacks jurisdiction to resolve issue of whether public body can prohibit tape recording of closed executive sessions under OPMA 93 N.J.A.R.2d (EDU) 538, Fraleigh)

Commissioner without jurisdiction to adjudicate exclusive allegation of violation of OPMA (93 N.J.A.R.2d (EDU) 313, Rovello) (97 N.J.A.R.2d (EDU) 16, Demikoff, aff'd St. Bd. 95:July 5, aff'd App. Div. unreported opinion Feb. 3, 1997)

No authority to assess penalties under OPMA (90:863, Entwistle)

Minutes

Public session minutes to be published two weeks from meeting for which they were taken; private session minutes disclosed when subject is publicly acted on (91:Feb. 8, Council of Parents of North Caldwell)

Should not be verbatim records but should summarize discussions surrounding the actions (90:863, Entwistle)

Notice requirements

Individual notice is not necessary where board action on personnel matters takes place in public (90:240, Nazarechuk)

OPMA notice requirement met by mailing of notice to three newspapers even though notices never published (93 N.J.A.R.2d (EDU) 694, Brodie)

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Posting of notice on bulletin board outside of board office meets OPMA requirement that notice be posted in public place (93 N.J.A.R.2d (EDU) 694, Brodie)

Special meetings; notice sent to three official newspapers four days before meeting adequate even though never published in any of papers (92 N.J.A.R.2d (EDU) 428, Hahn)

Participation via Speakerphone

Application for participation in reorganization meeting via speaker phone denied. Would be contrary to purposes and intent of the Open Public Meetings Act. Koch v. Bd. of Ed. of the Twp. of Jackson, Ocean County, Dkt. No. L-1405-98, May 22, 1998.

Period of Limitations

Request for relief untimely; did not comply with 45-day rule for Superior Court (96 N.J.A.R.2d (EDU) 540, Rosenblum, aff'd 96 N.J.A.R.2d (EDU) 743, aff'd App. Div. unpublished op. Dkt. No. A-0171-96T3, Oct. 20, 1997)

Personnel exception

Commissioner lacks jurisdiction to determine question of public employee's right to privacy under OPMA in case where there is no related controversy involving school law (94 N.J.A.R.2d (EDU) 576, Cheung)

Discussion of employment of staff member to be held in closed session unless affected party specifically requests they be held in public; settlement language which implies that staff member can direct board to hold discussions in private or in public misleading (91:Feb. 8, Council of Parents of North Caldwell)

General employment policies do not fall within personnel exception and must be discussed in public session (91:Feb. 8, Council of Parents of North Caldwell)

No violation; vice principal pursuant to contract had notice of meeting, was aware of right to request public hearing and failed to produce any evidence that secret meeting held (94 N.J.A.R.2d (EDU) 520, Jackson)

Public

No requirement of public participation at board meetings; public participation left to board's discretion (93 N.J.A.R.2d (EDU) 416, Fuhrmann)

Special meetings; notice sent to three official newspapers four days before meeting adequate even though never published (92 N.J.A.R.2d (EDU) 428, Hahn)

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Statute of limitations

Challenge was within time although filed 49 days after board approved minutes, where board did not timely provide minutes to petitioner (90:863, Entwistle)

Teacher not legally employed due to lack of certification; no official action taken - no violation of Open Public Meetings Act (91:1201, Cooker, aff'd St. Bd. 91:1224, aff'd App. Div. unpub. op. Dkt. No. A-2128-91T1, Nov. 24, 1992)

Tenure charges may not be considered at an open meeting (90:Jan. 23, L.G.)

Tenure charges must be certified at properly noticed closed session (90:Feb. 23, Borrelli)

Tenure; discussions regarding suspension did not give employee the right to request an open meeting, since discussions were pertinent to the Tenure Employee Hearing Law (90:294, Migliaccio, appeal dismissed St. Bd. 90:May 2)

Ratification

Later ratification of board's action at duly-noticed open meeting remedied prior defective notice. State College Locals v. State College Board, 284 N.J. Super. 108 (Law Div. 1995)

Remedies

Board which was found to have violated OPMA ordered to review provisions and purposes of Act with county superintendent (95 N.J.A.R.2d (EDU) 352, Davis)

Petition must be filed within 45 days (87:1506, Mann, aff'd St. Bd. 87:1522, aff'd App. Div. unpub. op. Dkt. No. A-2695-87T1, June 7, 1990)

Teacher who challenged closed session adoption of tie-breaking RIF procedure had no entitlement to back pay or to position (87:1506, Mann, aff'd St. Bd. 87:1522, aff'd App. Div. unpub. op. Dkt. No. A-2695-87T1, June 7, 1990)

Violations of

Adequate notice; although not given, Commissioner could impose no penalty where no action had been taken, however, such practices must be censured (90:683, Entwistle)

Board did not violate Open Public Meetings Act by socializing after adjournment of board meeting (96 N.J.A.R.2d (EDU) 436, Kesselman)

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- Board failed to hold deliberations on non-renewal of non-tenured staff in public as employee requested in writing is violation but no purpose served in re-deliberation as employee has access to recorded closed session (96 N.J.A.R.2d (EDU) 1024, Payne)
- Board violated OPMA by voting to terminate employees in public session without notifying employees but violation does not invalidate action (91:568, Inglese)
- Board violated OPMA where, after formal conclusion of meeting, five members discussed public business (95 N.J.A.R.2d 352, Davis)
- Closed session
- Closed session resolution too vague; merely reiterated all potential exceptions. State College Locals v. State College Board, 284 N.J. Super. 108 (Law Div. 1995)
- Closed session resolution which failed to state when personnel discussions would be disclosed violated OPMA but did not warrant invalidation of board action (93 N.J.A.R.2d (EDU) 605, Burrows)
- Legal aspects of lease purchase improperly discussed (90:863, Entwistle)
- Commissioner lacks jurisdiction to resolve issue of whether public body can prohibit tape recording of closed executive sessions under OPMA (93 N.J.A.R.2d (EDU) 538, Fraleigh)
- Failure to send agent to look for members of public waiting for board to return to public session not a violation of OPMA (91:703, DiMare, on remand from 90:1473)
- Failure to timely make minutes public (90:863, Entwistle)
- Notices sent with knowledge that newspaper cannot publish 48 hours in advance of meeting, violated the Open Public Meetings Act (90:863, Entwistle)
- Open Public Meetings Act not violated by socializing after adjournment of board of education meeting (96 N.J.A.R.2d (EDU) 436, Kesselman)
- Statements of compliance; failure to publish in minutes not fatal where underlying notices were not defective (90:863, Entwistle)
- Technical violation consisting of failure to read OPMA opening statement at outset of meeting properly re-mediated and does not require invalidation of actions taken (93 N.J.A.R.2d (EDU) 694, Brodie)
- Violation cannot occur in absence of board action (93 N.J.A.R.2d (EDU) 577, Bond)

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Withdrawal by board into closed executive session to discuss potential board candidates not in violation of OPMA; sufficient notice of closed session given by member's motion to withdraw to discuss personnel (90:1473, DiMare, rem'd to ALJ for plenary hearing on merits, 91:703)