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May 14, 2010

President Jack Torres
Bernalillo Public Schools Board of Education
224 Camino del Pueblo
Bernalillo, NM 87004

Cc: Nancy Walker, Errol Chavez, Olivia Calabaza, Virginia Montoya

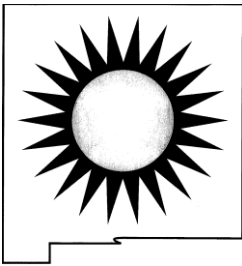
Dear Mr. Torres,

I recently received a packet of information regarding BPS Board of Education meetings from March 4, 2010 through April 8, 2010. After reviewing the materials, I am concerned that the Board appears to have violated the Open Meetings Act.

Specifically, the agendas for March 18, March 23 and April 6 give notice of an executive session for "discussion of personnel matters: superintendent search issues." Limited personnel matters may be discussed in executive session, pursuant to NMSA 1978, § 10-15-1(H)(2). But those limited matters include only the "hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation of complaints or charges against *any individual public employee.*" (emphasis added.)

This last phrase is key. This exemption is intended to protect an actual named human being from having his or her personal job performance and/or qualifications criticized in public. It would therefore apply to a superintendent's annual performance evaluation or to a discussion of a particular superintendent candidate's qualifications. But it does not allow a public body to go behind closed doors to discuss general hiring policies or procedures, such as budget considerations, minimum hiring qualifications, search procedures or committee formation. These important policy discussions must be held publicly in an open meeting.

Although the Open Meetings Act regulates what is discussed behind closed doors, perhaps its most serious purpose is in preventing action items from being approved in secret. It is of grave concern, then, that the BPS Board of Education appears to have begun advertising the superintendent position, and recruiting selection-committee members, without ever discussing or approving those actions in an open meeting. This is precisely what the Open Meetings Act is designed to prevent – a sudden action that takes the public by surprise and precludes citizens from participating in an important discussion.



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P. 2 of 2

Finally, with regard to these three special executive meetings, I could find no statement in the Board's minutes stating that the matters discussed behind closed doors were limited only to those matters specified in the notice. Such a statement is required by NMSA 1978, § 10-15-1(J).

Violations of the Open Meetings Act are quite serious but easy to remedy if they have occurred recently. Pursuant to NMSA 1978, § 10-15-3(A), actions of a public body are invalid unless taken at a meeting that complies with the Act. In essence and in law, such actions never occurred. The remedy is to take the action or actions in a properly convened open meeting. Such a "do over" meeting must include a summary of the original discussion. (NMSA 1978, § 10-15-3(B))

I urge the Board of Education to take any and all necessary steps to correct these apparent violations, including holding a new and open process to determine the criteria and process for selecting a new superintendent. I believe that transparent processes, though sometimes difficult, are ultimately in the best interests of the Board, the school district and the public.

I would be happy to discuss this matter with you further; please know that our organization's primary mission is to educate the public and help them understand the rights and responsibilities conferred by our state's sunshine laws. Another helpful resource is the New Mexico Attorney General's Civil Division, at (505) 827-6070.

Thank you for your time and service, and please don't hesitate to contact me.

Sincerely,

Sarah Welsh
Executive Director