

# ALERT

June 29, 2017

## **Formulaic Resolutions to Go into Closed Session and Vague Minutes May Violate the Requirements of the Open Public Meetings Act**

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On June 21, 2017, a Mercer County Superior Court Judge, Hon. Mary Jacobson, J.S.C., issued an Order reinforcing the requirement that resolutions to enter closed session set forth, with as much specificity as is possible, the reason(s) for the non-public discussion. The Court also emphasized that minutes taken during closed session must be “reasonably comprehensible” to allow the public to understand what took place in the closed session.

In New Jersey Foundation for Open Government, Inc. v. Lawrence Township Board of Education, MER-L-1831-16 (Law Div. June 21, 2017), the Plaintiff claimed the Board violated the Open Public Meetings Act by approving insufficient resolutions to enter into closed session and for not issuing “reasonably comprehensible” minutes of those closed session meetings. The Court agreed with the Plaintiff and directed the Board to ensure resolutions for closed sessions contain as much available information “as is consistent with full public knowledge without doing any harm to the public interest.” The Court also ordered that closed session meeting minutes “contain sufficient facts and information to describe what took place at the meeting and what final action was taken in order to permit the public to understand and appraise the reasonableness of the” Board’s determination.

While the requirements that resolutions to enter into closed session and the minutes taken during such sessions provide as much detail as possible are not new, Judge Jacobson’s decision emphasizes the need for Boards to avoid formulaic resolutions and vague minutes. To comply with these requirements, resolutions should state the specific reason(s) for the closed session meeting and not simply list all potential reasons for non-public discussion. For example in McGovern v. Rutgers, 211 N.J. 94 (2012), the New Jersey Supreme Court found the following resolution to be adequate to meet the requirements of the Open Public Meetings Act: “to discuss matters involving contract negotiations for sports marketing, naming rights of athletics facilities and stadium construct; employment of personnel and terms and conditions of employment; and pending litigation, investigations, and matters falling within the attorney-client privilege with

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respect to these subjects.” Whereas the Lawrence Township Board’s resolution, which simply stated “Whereas as the Board of Education must discuss subjects concerning personnel, negotiations, H.I.B. and legal matters,” fell short of the required level of specificity.

In short, both the resolution to enter closed session and the minutes taken during that session should be as specific and contain as much information as is possible. Vague, formulaic, and unnecessarily broad language may constitute a violation of the Open Public Meetings Act.

If you have any questions regarding the effect of this new decision, or would like assistance in preparing resolutions or minutes in the future, please do not hesitate to contact the school law attorneys at SPSK.

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