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September 14, 2021

Via email: [REDACTED]

John Migueis
[REDACTED]

Re: Open Public Meetings Act and the Berkeley Heights Board of Education

Mr. Migueis:

Please accept this letter in response to your email correspondence dated August 19, 2021, setting forth allegations that the Berkeley Heights Board of Education (the "Board") violated the Open Public Meetings Act (OPMA) on April 30, 2020, May 19, 2020, and May 7, 2021. Specifically, the complaint is based upon committee meetings which took place on these dates with an alleged quorum of Board members in attendance.

Your correspondence to this Office includes the following documents:

1. Minutes from August 7, 2019 Facilities Committee Meeting
2. Minutes from October 15, 2019 Finance Committee Meeting
3. Minutes from April 30, 2020 Facilities Committee Meeting
4. Minutes from May 19, 2020 Facilities Committee Meeting
5. Minutes from February 8, 2021 Finance/Facilities Committee Meeting
6. Minutes from May 7, 2021 Facilities Committee Meeting

It is your position that an effective majority is four Board members, and therefore the Board violated OPMA by not properly advertising the committee meetings and opening same to the public.

At the outset, I note that no formal action or votes took place at any of the above-referenced committee meetings. I further note that it is a common practice throughout the State for boards of education to create and assign members to standing committees. The New Jersey Supreme

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Court has acknowledged that a “public body’s use of the subcommittee process is common and is not fairly viewed as an inherent subterfuge to eschew public discussion.” *Kean Fed’n of Teachers v. Morell*, 233 N.J. 566, 587 (2018). Indeed, while it is not the case here, *Kean* went so far as to note that public bodies routinely and appropriately approve committee recommendations in public meetings without discussion. *Id.*

With that said, please be advised that I have been in communication with the Board’s counsel to discuss these matters at length. The Board consists of eight members, including one member from Mountainside who serves under a sending-receiving agreement in which it sends its high school students to Governor Livingston High School. The issue of whether the Mountainside member counts for purposes of creating a quorum or effective majority is unique. The law is clear that whenever the Board is discussing a matter in which high school students may be affected, five Board members are required to create a quorum. The law is less clear where the Board is discussing an issue only affecting its K-8 student population. It can be argued that the sending-receiving member is a statutory member of the board who must be counted for purposes of establishing an effective majority.

Simply put, there has been some legitimate confusion regarding whether an effective majority consists of four or five board members, and we are in the process of addressing these issues with the Board’s counsel. The Board’s counsel is also now actively engaged in reviewing and revising the Board’s policy, subject to Board ratification, with respect to quorum and committee meetings. The Board’s members will also receive training to further assist in identifying and understanding the various nuances of their operational group model as related to matters only affecting K-8 students, as compared to issues that impact K-12 students, or high school students. Furthermore, during this review and revision process, and effective as of August 24, 2021 and moving forward, the Board has agreed to modify its committee meeting practice to only ever include **three** members in attendance, as opposed to four.

Lastly, I note that the minutes from the committee meetings which took place on August 7, 2019 and February 8, 2021, do not properly record the members in attendance, as required by *N.J.S.A. 10:4-14*. By way of this letter, I am further reminding the Board to take special care to execute statutorily complete minutes.

In sum, I find no deliberate or purposeful violations of OPMA. Given the Board’s agreement to modify the number of members present at any committee meeting pending further clarification and resolution of the issues at hand, the Board’s genuine interest in receiving further guidance and training with respect to OPMA and related issues, and the Board’s long history of compliance with OPMA, this concludes our review of the matter and no further enforcement action is necessary at this time.

Thank you kindly for your vigilance and for bringing these matters to our attention.

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Very truly yours,

WILLIAM A. DANIEL
Prosecutor of Union County

A handwritten signature in black ink that reads "MASpagnoli". The signature is written in a cursive style with a long horizontal flourish underneath.

By: MELISSA A. SPAGNOLI
Assistant Prosecutor

c Vito A. Gagliardi, Jr., Esq.
File