STATE OF RHODE ISLAND **PROVIDENCE, SC.**		**SUPERIOR COURT**
PROVIDENCE STUDENT UNION, AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND, RHODE ISLAND BLACK BUSINESS ASSOCIATION, RI TEACHERS OF ENGLISH LANGUAGE LEARNERS, TIDES FAMILY SERVICES, RHODE ISLAND DISABILITY LAW CENTER, DIRECT ACTION FOR RIGHTS AND EQUALITY, RICK RICHARDS and TOM SGOUROS **Plaintiffs,** **v.** **RHODE ISLAND BOARD OF EDUCATION and EVA-MARIE MANCUSO in her capacity as Chair.** **Defendants.**	: :	**C.A. No.: 2013-3649**

PLAINTIFFS' TRIAL MEMORANDUM

Now come the Plaintiffs, by and through their attorneys, and respectfully request that this Court issue Judgment for Plaintiffs on all counts, and for the relief set forth below.

Facts

Plaintiffs incorporate by reference the Stipulated Facts and accompanying Exhibits.[1]

This action challenges, under the Open Meetings Act and the Administrative Procedures Act, Defendants' failure to properly consider a Petition proposing amendments to Regulations imposing high stakes testing as a graduation requirement.

[1] Plaintiffs request the opportunity to supplement this Memorandum in the event the Court requires disclosure of the September 9, 2013, executive session minutes.

By letter dated May 20, 2013, certain individuals and organizations, including Plaintiffs, urged the Rhode Island Board of Education ("RIBOE" or "Board") to rescind regulations adopted by its predecessor, the Board of Regents for Elementary and Secondary Education "Board of Regents"), that condition receipt of a high school diploma on passing a "high stakes test," the New England Common Assessment Program ("NECAP"). The letter noted that the newly-constituted RIBOE "has not had the opportunity to consider the full consequences" of the NECAP requirement, and particularly in light of the "potentially devastating impact of the requirement," asked the RIBOE to consider "alternative strategies to improve student outcomes." Stipulation ¶20; Exhibit ¶G. The RIBOE did not respond to the May 20, 2013, letter. Stipulation ¶22.

By letter dated June 21, 2013, certain organizations, including Plaintiffs, submitted a petition pursuant to R.I.G.L. 42-35-6 and the RIBOE's Title A Regulations, A-1-23, proposing amendments to the "Secondary School Regulations: K-12 Literacy, Restructuring of the Learning Environment at the middle and high school levels, and proficiency based graduation requirements (PBGR) at High Schools" ("the Petition"). Stipulation ¶23; Exhibit H. The Petition addressed the controversy surrounding implementation of the NECAP graduation requirement by inviting an "official and structured rule-making process." It would essentially prohibit high stakes testing as a graduation requirement, and instead, require that any such assessment "be used to promote school and district accountability and improvement and to target early and intensive remediation to individual students and to at-risk sub-groups." However, the June 21, 2013, letter was careful to note that Petitioners "were not requesting Board members to take a definitive stand on the merits of the Petition," but rather to initiate a "public rule-making

process" in which there might be "timely, meaningful and structured consideration of this critical issue." The letter designated ACLU/RI as the contact for any response to the Petition.

On July 12, 2013, RIBOE Chair Mancuso responded to Plaintiffs' letter and Petition by stating that RIBOE members would be receiving "an in-depth informational briefing on the relationship between large-scale assessments and graduation requirements" at an annual retreat on August 24 and 25, 2013, and that "the Board has taken no action to 'deny' your position" but was also not "in a position to begin formal rulemaking within the prescribed time period [specified in 42-35-6]." The letter concluded by stating that it should be considered "equivalent to a 'denial' of your petition . . . born of temporal circumstance only." Stipulation ¶24; Exhibit I. When it met on July 15, the RIBOE did not discuss or consider Plaintiffs' Petition, nor did the RIBOE discuss or vote upon either denying the Petition or initiating rule-making proceedings. Stipulation ¶5; Exhibit J (Agenda for July 15, 2013).

On or about August 2, 2013, Plaintiff Richards, along with two others, filed suit against Defendants regarding their stated intent to conduct the August 24-25 "retreat," referenced in the July 12, 2013 letter, in closed session. On or about August 6, 2013, Superior Court Justice Procaccini issued a Bench Opinion enjoining Defendants from discussing graduation requirements in closed session. Exhibit L. He stated:

> I'm going to require the Rhode Island Board of Education open to the public that portion of their retreat that discusses the subject matter referenced by Chair Mancuso related to the NECAP and high-stakes testing that they are considering implementing here in Rhode Island of have implemented here in Rhode Island.

Exhibit K, Slip Op. at 4.

On August 14, 2013, the RIBOE met in closed, executive session to discuss the instant lawsuit as filed on July 24, 2013. Defendant Mancuso announced that the RIBOE would be

considering the Petition at its September 9, 2013 meeting. Stipulation ¶28; Exhibit L (Minutes of August 14, 2013 Meeting).

On or about September 6, 2013, the RIBOE posted the Agenda for its September 9, 2013 meeting. The Agenda, Exhibit M, provided, in pertinent part:

> ***9. EXECUTIVE SESSION***
>
> *The Board may seek to enter into Executive Session to discuss --*
>
> *a. Update on Collective Bargaining pursuant to RIGL §42-46-5 (a) (2) (all bargaining units except Graduate Assistants)*
>
> *b. Discussion of Litigation – Prov. Student Union et al. v. Board of Ed. et al. pursuant to RIGL §42-46-5 (a) (2)*
>
> ***10. ADDITIONAL ACTION ITEMS***
>
> *a. Board Determination on Petition of Prov. Student Union et al.*

On September 9, 2013, a number of the Plaintiffs, including PSU, ACLU/RI, RITELL, RIDLC, and Richards; other signatories to the Petition; and members of the public who had been apprised of the meeting by the Plaintiffs, attended RIBOE's scheduled meeting. The RIBOE went into closed, executive session to (purportedly) discuss the instant lawsuit. Stipulation ¶35. Immediately following the closed, executive session, Defendant Mancuso announced that the RIBOE had voted to deny the Petition by a vote of 6-5. The RIBOE engaged in no public discussion of the Petition prior or subsequent to announcing the vote on it, and did not explain the reason for the denial. Petitioners have never been apprised of the RIBOE's reason for the denial in writing. Stipulation ¶39. However, in a September 19, 2013, Providence Journal Op-Ed, Exhibit P, Defendant Mancuso stated that the September 9 vote "was not about the merits of any of our battery of state assessments; it was about starting the debate again about whether or not to have state assessments." Stipulation ¶41.

Argument

I. The RIBOE Violated the APA by (a) Failing to Consider the Petition Within Thirty (30) Days, and (b) Failing to Lawfully Deny the Petition, With Reasons for the Denial in Writing.

A. The RIBOE failed to consider the Petition within thirty (30) days.

Rhode Island Gen. Laws § 42-35-6 provides:

> Any interested person may petition an agency requesting the promulgation, amendment, or repeal of any rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. **Upon submission of a petition, the agency within thirty (30) days shall either deny the petition in writing (stating its reasons for the denials) or initiate rule-making proceedings in accordance with § 42-35-3.**

(Emphasis added).

The evidence is indisputable that RIBOE failed to comply with the thirty (30) day time constraint. The Petition was filed by letter dated June 21, 2013.[2] The Petition was denied[3] on September 9, 2013.[4] [5]

---

[2] Although regularly scheduled meetings of the RIBOE were held on July 15 and August 14, 2013, within thirty (30) days of filing the Petition, the Agenda for the meetings did not include a discussion or consideration of Plaintiffs' Petition, and RIBOE did not discuss or vote to either deny the Petition or initiate rule-making.

[3] As discussed *infra* at 7-13, the September 9, 2013, denial was unlawful because the determination was made in an improperly posted closed session.

[4] Defendant Mancuso's communication to Plaintiff ACLU did not constitute action on the Petition. Although Defendant Mancuso on July 12 advised that RIBOE members would be receiving "an in-depth informational briefing on the relationship between large-scale assessments and graduation requirements" at an annual retreat on August 24 and 25, she added that "the Board has taken no action to 'deny' your position" but was also not "in a position to begin formal rulemaking within the prescribed time period [specified in 42-35-6]." Thus, by its terms, the letter was neither a "denial" nor initiation of rulemaking. While the letter concluded that it should be considered "equivalent to a 'denial' of your petition . . . born of temporal circumstance only," Section 42-35-6 prescribes that "the agency," not its Chair, must act on the Petition. RIBOE did not discuss or consider in any manner Plaintiffs' Petition, nor did RIBOE discuss or

B. The RIBOE failed to deny the Petition "in writing" or "stat[e] its reasons for the denial[]."

Rhode Island Gen. Laws § 42-35-6 provides that "[u]pon submission of a petition, **the agency** . . . shall either **deny the petition in writing (stating its reasons for the denials)** or initiate rule-making proceedings in accordance with § 42-35-3." Emphasis added. Having denied the Petition on September 9 (in closed session), the RIBOE was in any event required to do so "in writing[,] stating its reasons." It did neither.[6]

II. The RIBOE Violated the Open Meetings Act by Failing to Consider the Petition in Open Session.

Under the OMA, public business must be conducted in the open, to allow meaningful public participation, and the provisions of the Act are to be broadly construed to effectuate this purpose. When construing a statute, the Court's "ultimate goal is to give effect to the purpose of the act as intended by the Legislature." Oliveira v. Lombardi, 794 A.2d 453, 457 (R.I. 2002) (quoting Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001)). Tanner v. Town Council of Town of E. Greenwich, 880 A.2d 784, 791-92 (R.I. 2005). The fundamental purpose of the OMA is set forth in the Preamble:

> It is essential to the maintenance of a democratic society that **public business be performed in an open and public manner** and that **the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy**.

---

vote upon either denying the Petition or initiating rule-making proceedings pursuant to 42-35-6, within thirty (30) days, as required by the APA.

[5] The RIBOE squandered three (3) opportunities to consider the Petition at a meeting; first on July 15, 2013, next on August 14, 2013, and again, on August 24-25, when it held a "retreat" concerning graduation requirements.

[6] It is irrelevant that Defendant Mancuso sent a letter which she characterized as "equivalent to a denial." The Board Chair is not the "Agency."

(Emphasis added). Rhode Island Open Meetings Act, R.I. Gen. Laws § 42-46-1. See also Ohs 2005 WL 2033074.

> The General Assembly enacted the Open Meetings Act for the stated purpose of guaranteeing that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Section 42-46-1. **We have previously expressly stated that the provisions of the Open Meetings Act should be broadly construed and interpreted in the light most favorable to public access to achieve their remedial and protective purpose.** Solas v. Emergency Hiring Council of Rhode Island, 774 A.2d 820, 824 (R.I.2001).

Emphasis added. See also Anolik v. Zoning Bd. of Review of City of Newport, 64 A.3d 1171, 1174 (R.I. 2013).

A. The RIBOE Unlawfully Considered the Petition in Closed Session.

i. The Agenda posted "determination" of the Petition for open session.

When the RIBOE finally considered the Petition on September 9, 2013 – eighty (80) days after the Petition was submitted – it did so in closed, executive session. Yet the Agenda for the September 9, 2013, meeting, posted on September 6, provided for determination of *the Petition* in open session and "discussion" of *this litigation* in closed session. The Agenda provided, in pertinent part:

> **9. EXECUTIVE SESSION**
>
> The Board may seek to enter into Executive Session to **discuss** --
>
> a. Update on Collective Bargaining pursuant to RIGL §42-46-5 (a)(2)
> (all bargaining units except Graduate Assistants)
>
> b. **Discussion of Litigation** – Prov. Student Union et al. v. Board of Ed. et al. pursuant to RIGL §42-46-5(a)(2)
>
> **10. ADDITIONAL ACTION ITEMS**
>
> a. Board **Determination on Petition** of Prov. Student Union et al.

Emphasis added.

R.I. Gen. Laws Ann. § 42-46-6 provides that:

> (a) All public bodies shall give written notice of their regularly scheduled meetings at the beginning of each calendar year. …
> (b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and **a statement specifying the nature of the business to be discussed.**

Emphasis added. The Agenda is therefore legally inadequate for at least three reasons. First, *the RIBOE promised a determination of the Petition in* ***open session*** (as was legally required)*, yet it made the determination in* ***closed session***. Second*, the Agenda stated that only a* ***discussion of litigation*** *would occur in closed session, but that is where the* ***determination of the Petition*** *occurred*. Third, *determination of the Petition was listed as an "****additional action item[]****," falsely indicating that determination of the Petition was in addition to what had been discussed in closed session*. Even Defendants must acknowledge the dichotomy between "discussion of litigation" and "determination" of the Petition, and the difference between "Executive Session" and "additional action items" in open session.

The Supreme Court's decision in Tanner v. Town Council of Town of E. Greenwich, 880 A.2d 784, 797-98 (R.I. 2005) is directly on point. There, the Town Council posted a notice that it would "interview" candidates for appointment to certain committees, but at the meeting instead appointed the candidates. The Court held that the Notice was fatally defective.

> [W]e recognize that the OMA does not explicitly require a public body to identify on the notice that it intends to vote on an issue at the meeting; however, our task is to determine whether the notice provided by the town council fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted. In addition to satisfying the date and time requirements of § 42–46–6(b), the contents of the notice reasonably must describe the purpose of the meeting or the action proposed to be taken. Here, plaintiff contends that the notice was misleading, and that misleading notice does not comply with the requirements of the OMA. We agree. Clearly, fair notice to the public under the

> circumstances, or such notice based on the totality of the circumstances as would fairly inform the public of the nature of the business to be discussed or acted upon, is not met by misleading information about the actions to be taken at a meeting of a public body. . . In our opinion, listing the agenda of the meeting as consisting of "interviews" for potential appointments fairly implies just that, *viz.,* that the town council only would be conducting interviews that evening. It does not reasonably describe the purpose of the meeting or the action proposed to be taken as including "voting" on the appointments of these potential board members. In common parlance, "interview" implies a formal meeting in which the interviewer elicits information from the interviewee to aid in evaluating the interviewee. Hence, by posting the agenda as consisting of interviews, the town failed to provide notice to the public that would reasonably describe the action that the town council ultimately took.

Tanner, 880 A.2d at 797-98.

In this case, the RIBOE's Notice was just as misleading. It promised a determination in open session, but made the determination in closed session. RIBOE promised only a discussion of litigation in closed session, but instead made the determination of the Petition there.[7]

This misleading conduct had real, tangible effects on the public, many of whom attended the meeting to hear why Board member accepted or rejected the Petition, and attempt to persuade certain of these officials. They were instead presented with a *fait accompli* when the RIBOE emerged from closed session. What message does this send to parents, educators, and particularly students, about civic participation? And about attending the next RIBOE meeting?

[7] Defendants are expected to argue that the attendance of some (but not all) plaintiffs at the meeting cures the defective notice, relying on Graziano v. Rhode Island State Lottery, 810 A.2d 215 (RI 2002). But the challenged notice in Graziano was notice of the meeting itself, of which plaintiffs were concededly aware. Here, the defect is identification of an Agenda item as open, then taking it in closed, session. Plaintiffs' attendance does not solve this defect, which if permitted, would allow agencies to misidentify any closed session issue as an open session issue, thereby defeating the purpose of the notice. Of course (a) not all plaintiffs attended the meeting and (b) at least one court has questioned the continued vitality of Graziano in light of Tanner. Ohs 2005 WL 2033074.

B. Determination of the Petition does not fall within the "litigation" exception

Consideration of the Petition does not fall within the "litigation" exemption of G.L. 42-46-5(a)(2). That section provides that a public body may close "[s]essions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation." The Supreme Court has not had occasion to consider the scope of this exemption, but in Phoenix-Times Pub.Co. v. Barrington School Committee, 2010 WL 4688074 (RI Super.), Judge Stern issued an instructive opinion examining the issue.

In Phoenix-Times, the School Committee considered in *open session* the merits of implementing a breathalyzer policy, then closed to the public its discussion of possible legal claims associated with such a policy, following receipt of a letter from the ACLU. The Court examined whether the letter could be discussed in closed session. Judge Stern began his analysis by noting the evident purpose of the OMA, citing Tanner and Solas:

> It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Such is the declared purpose for which the OMA was crafted to achieve. *Accordingly, the Rhode Island Supreme Court has required that the OMA be broadly construed and interpreted in the light most favorable to public access in order to effectuate this significant remedial and protective purpose*.

Emphasis added. Slip op. at 3. "[T]he articulated policy of the OMA 'itself betokens that two salient First Amendment values – the public's right to know and the accountability of public institutions – are at the core of the Act.'" (citation omitted). Slip Op. at 5. Noting that the exemption was ambiguous as to "threatened" or "anticipated" litigation, Judge Stern's analysis returned to the statutory purpose favoring public access and government accountability. It was the counterbalance of the attorney-client

privilege, and the necessary protection of trial strategy and settlement proposals, that tipped the scale. Only "litigation strategy" could be conducted in closed session.

Judge Stern was careful to define the limits of this result. "Naturally, this does not mean that consultations by a public body with an attorney in private may be used as a device to thwart the liberal implementation of the policy that the decision making process is to be open and that confidentiality is to be strictly limited." Slip op. at 12. He noted with approval the Attorney General's view that "because virtually any action or decision by a public body or official could result in litigation, the OMA cannot be read so broadly as to permit closed session discussions any time a public [body] asserts that litigation might ensue." Slip op. at 6.

A similar situation obtained in Dias v. Edwards, NC900038, 1990 WL 10000173 (R.I. Super. Mar. 26, 1990). There, Justice Israel was presented with a Complaint to enjoin a school committee from negotiating without first noticing the meeting under the OMA. Distinguishing the "collective bargaining and litigation" exception, he noted:

> Section 42-46-5(a)(2) refers to the situation where the school committee meets, apart from the bargaining process itself, to consult among its members or with its negotiating team to discuss and/or act on matters *pertaining to* collective bargaining. It ought not refer to the occasions when the committee or one of its subdivisions meets *as part of* an on-going bargaining process.

Emphasis in original. Thus, the Court distinguished between the confidential component, insulated by 42-46-5(a)(2), and the actual process of bargaining, which the Court held was not even a "meeting" under the Act. And as Justice Savage held in a similar context, the mere existence of litigation does not convert an otherwise public matter into a litigation matter. Pine v. Charlestown Town Council, et al, C.A.No. 95-491, 1997 WL 839926 (R.I. Super. June 4, 1997). See also Burnett v. Gloucester Cnty. Bd. of Chosen Freeholders, 409 N.J. Super. 219,

236-37, 976 A.2d 444, 455 (App. Div. 2009) ("the subject under discussion must be the pending or anticipated litigation itself, i.e., the public body must be discussing its strategy in the litigation, the position it will take, the strengths and weaknesses of that position with respect to the litigation, possible settlements of the litigation or some other facet of the litigation itself.").

Thus, the litigation exemption is to be narrowly construed to protect *litigationstrategy*. It is not a talisman for government secrecy. And the mere existence of litigation, or the threat of litigation, does not render public policy discussions confidential.

As of September 9, the litigation involved the (undisputed) allegation that defendants failed to act on the Petition within thirty (30) days, and sought a Writ of Mandamus directing Defendants to act. That question is obviously distinct from the merits of the Petition, i.e., reconsidering utilization of NECAP testing as a graduation requirement. Indeed, Defendant Mancuso admitted as much in a Providence Journal Op-Ed, when she stated that the September 9 vote "**was not about the merits of any of our battery of state assessments; it was about starting the debate again about whether or not to have state assessments**." Stipulation ¶41; Exhibit P. Having conceded that the vote was about the merits of the Petition ("starting the debate again"), rather than "litigation strategy," it is clear that the exemption does not apply.

It is important at this juncture to note that the merits of the Petition involve a critical issue in public education. The Petition proposed amendments to the "Secondary School Regulations: K-12 Literacy, Restructuring of the Learning Environment at the middle and high school levels, and proficiency based graduation requirements (PBGR) at High Schools." It addressed the controversy surrounding implementation of the NECAP graduation requirement. This is a matter of keen public interest, and has engendered charged debate. Clearly the matter deserved public airing, and the public was disserved by the secret session.

Defendants are expected to argue that deliberation in secret was essentially harmless because some plaintiffs voiced their support of the Petition during Open Session, but this argument misconceives the bilateral nature of the Open Meetings Act. The Act is designed not simply that government officials hear from the public, but that the public hears from government officials. The Board's secret deliberation was insulated from public scrutiny.

Of course, there is no small irony in Defendants' invocation of the litigation exception after violating the thirty day time constraint. Consideration of the Petition would have occurred in open session had it been considered by the RIBOE in a timely fashion. Having failed to act within thirty (30) days, thereby provoking a lawsuit, Defendants now claim consideration of the Petition can occur in secret. Defendant asks this Court to condone, indeed reward, its initial violation of the APA by giving it a free pass under the OMA. This turns both statutes, intended to promote open and responsible government, upside down. The Supreme Court "will not construe a statute to reach an absurd result." Kaya v. Partington, 681 A.2d 256, 261 (R.I. 1996).

In this regard, the statute specifically prohibits invocation of the litigation exception to undermine the general purpose of the legislation:

> (b) *No meeting of members of a public body or use of electronic communication, including telephonic communication and telephone conferencing, shall be used to circumvent the spirit or requirements of this chapter*; provided, however, these meetings and discussions are not prohibited.

(Emphasis added). R.I. Gen. Laws Ann. § 42-46-5. Clearly, application of the litigation exception to close a meeting that would otherwise have been open violates both the spirit and requirements of the Act.

C. The RIBOE has Not Previously Considered the Petition; Consideration of Similar Issues by Prior Boards is Irrelevant.

It is legally inconsequential that the issue of high stakes testing has been previously submitted to education policy makers. Defendants are expected to argue that it is excused from

compliance with the OMA because previous policy makers had considered similar Regulations in 2003 and 2008. Stipulations 8-13. But the OMA does not contain a 'one and done' exception. To the contrary, under the statute, an agency must consider a Petition without exception.

Of course, the particular Petition here has never been considered by any prior agency. And the RIBOE is a new agency, specifically created to supplant the Board of Governors for Higher Education and the Board of Regents, which were abolished. G.L. 11-97-1. This is a brand new Board of eleven (11) members, appointed by a sitting Governor, to staggered terms. Whatever may be said of the wisdom of a single Board of Education, it is incontrovertible that the RIBOE is intended to do things differently. The purpose of the Petition was to have the new RIBOE revise and vote on the regulation. Stipulation ¶6. It is irrelevant that the Board of Regents in 2011[8] approved the regulations. Surely the RIBOE could consider and reconsider policy decisions of the RIBOG or RIBOHE

III. <u>For a Remedy, The Court Should Declare the September 9 Vote Null and Void, and Order the RIBOE to Consider the Petition in Open Session</u>.

Plaintiffs request that the Court declare the September 9, 2013, vote denying the Petition null and void, and order the Board to consider the Petition, with notice to the public and Plaintiffs, in open session.

The RIBOE has proven itself unable or unwilling to consider the Petition in accordance with the OMA. Whether to commence rulemaking or deny the Petition is a matter of public policy, and the RIBOE Chair has conceded as much in her Op-Ed. Therefore, the Court should

[8] It is worth noting that the issue of graduation requirements was considered and reconsidered in 2003, 2008 and 2011 by the Board of Regents, so there is nothing wrong with reconsidering education policy. Stipulations ¶¶7-13. If the Regents could reconsider graduation requirements, surely Plaintiffs could urge the same of the RIBOE.

order that the Petition be considered on its merits by initiating a public rulemaking process, or in the alternative, be considered in open session.

The Court should also order payment of a fine and attorneys' fees pursuant to G.L. 42-46-8(d), which provides:

> The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust.
> The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. In addition, the court may impose a civil fine not exceeding five thousand ($5,000) dollars against a public body or any of its members found to have committed a willful or knowing violation of this chapter.

In this regard, the Court should note that the RIBOE has been deliberate in its disregard of the APA and OMA. Plaintiffs reminded Defendants of the thirty (30) day requirement well in advance of its expiration, yet Defendant Mancuso took it upon herself to issue a letter "equivalent to a denial," rather than present the matter to the full Board in a timely fashion. The RIBOE might easily have posted and considered the Petition on July 15, August 14, or at the August 24-25 retreat, but failed to do so. In addition, only a month before holding the unlawful closed session, Defendants were subject to a Court Order finding a violation of the OMA on this very same educational issue. And of course, when the matter was finally presented to the RIBOE, it was considered in secret. Under these circumstances, a $5,000 fine for each violation – the false September 9 Agenda and denial of the Petition in executive session – should be imposed.

Finally, the Court should note that, notwithstanding Defendant Mancuso's pronouncements, the issue raised by the Petition is a matter of great public concern. The public has never had an opportunity to hear this newly-created Board meaningfully discuss this critical

issue in open session. The issue divides, and likely will continue to divide, well-meaning observers on both sides of the question, including the RIBOE, which decided the question in secret by a *single vote*. Students, businesspeople, teachers, advocates and community members filed a Petition asking this Board to do what educators *ought to do* –continually examine, question, reconsider, and if necessary revise education policy to ensure best outcomes for Rhode Island students. This is what both the APA and the OMA require, and precisely what the the Board failed to do.

Plaintiffs

By their attorneys,

_____

Marc Gursky, Esq. (#2818)
Elizabeth Wiens, Esq. (#6827)
GURSKY LAW ASSOCIATES
ACLU of RI Cooperating Attorneys
420 Scrabbletown Rd., Ste. C
North Kingstown, R.I. 02852
Tel. (401) 294-4700
Fax. (401) 294-4702
mgursky@rilaborlaw.com
ewiens@rilaborlaw.com

A true and accurate copy of the foregoing was served upon Paul Sullivan, Esq., on January _____, 2014.

_____