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NEW JERSEY FOUNDATION FOR
OPEN GOVERNMENT,

JUN 30 2015

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION –
MERCER COUNTY

Plaintiff,

Dee Regan

DOCKET NO. MER-L-II-15

v.

DEPUTY CLERK OF SUPERIOR COURT

CIVIL ACTION

TRENTON BOARD OF EDUCATION
and TRENTON BOARD OF
EDUCATION RECORDS CUSTODIAN,

Defendants.

**ORDER GRANTING PLAINTIFF'S
APPLICATION FOR INJUNCTIVE
RELIEF AND ISSUING DECLARATORY
JUDGMENT THEREBY GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING DEFENDANT'S CROSS-
MOTION FOR SUMMARY JUDGMENT**

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THIS MATTER having been opened to the court by way of cross-motions for summary judgment filed by plaintiff, New Jersey Foundation for Open Government, and defendant, Trenton Board of Education, on counts five, six, and seven of the original complaint, which all relate to the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.; counsel representing to the court that the parties have tentatively settled the Open Public Records Act allegations contained in the complaint, pending final approval from the Trenton Board of Education, which is expected to be discussed at the Board's July meeting; and the court having considered the arguments set forth

by the parties during oral argument and on the papers; and for the reasons stated on the record; and for good cause shown:

IT IS on this 30th day of June, 2015, **HEREBY ORDERED** that:

1. The court GRANTS plaintiff's motion for summary judgment and hereby issues an injunction requiring that the Trenton Board of Education include in every resolution to enter executive session a statement of the general nature of the matters to be discussed during executive session as required by N.J.S.A. 10:4-13. The Board must provide the subject matter of the discussions and not simply repeat the language of the statute. If the Trenton Board of Education continues to follow the format of the December 15, 2014 Resolution for Executive Session, the court finds that use of that format presumptively complies with the OPMA.
2. The court issues a declaratory judgment stating that the Trenton Board of Education should apply the statutory exemptions for discussion topics permitted during executive session listed in N.J.S.A. 10:4-12(b), particularly the exemption for material covered by the attorney-client privilege, consistently with Burnett v. Gloucester County Board of Chosen Freeholders, 409 N.J. Super. 219 (App. Div. 2009) and Payton v. N.J. Turnpike Authority, 148 N.J. 524 (1997). Such an approach incorporates case law interpreting the scope of the attorney-client privilege into the pending litigation exemption.
3. The court also GRANTS plaintiff's motion for summary judgment and hereby issues an injunction directing that the Trenton Board of Education keep "reasonably comprehensible" minutes consistent with the directive in N.J.S.A. 10:4-14, especially minutes of matters occurring during executive session, which shall explain on their face and without referencing other meeting minutes or agendas what took place and what

action was taken. The minutes at a minimum should note the subject matter of the discussion as long as disclosure of that information would not undermine the statutory exemption relied upon by the Board for entering executive session.

4. Defendant's cross-motion for summary judgment is DENIED.
5. The court shall conduct a case management conference by telephone on **August 6, 2015, at 10 a.m.**, regarding any remaining OPRA issues. The court encourages the parties to work together in a good-faith effort to resolve the remaining issues. If the parties settle the remaining OPRA issues in advance of the case management conference, they shall notify the court in writing prior to the scheduled case management conference.


MARY C. JACOBSON, A.J.S.C.