

SUPREME COURT OF THE STATE OF NEW YORK,
IAS PART - ORANGE COUNTY
Present: Hon. Catherine M. Bartlett, AJSC

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Application for a Judgment under Article 78 of the CPLR
and other relief,

NEWS 12 WESTCHESTER, INC.,
Petitioner,

- against -

To commence the statutory time
period for appeals as of right
(CPLR 5513[a]), you are advised
to serve a copy of this order, with
notice of entry, upon all parties.

MONROE-WOODBURY CENTRAL SCHOOL DISTRICT
BOARD OF EDUCATION, MICHAEL DiGERONIMO,
ERICH TUSCH, JOHN BRODERICK, NATALIE
BROOKS, THERESA BUDICH, WAYNE CHAN, ELENI
KIKIRAS CARTER, RAYMOND RIVERA and JENNIFER
TRUMPER,
Respondents.

Index No. 1277/2011

**DECISION, ORDER AND
JUDGMENT**

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In a proceeding, inter alia, pursuant to article 78 of the CPLR to compel the respondents
to allow videotaping of school board meetings, the following papers were read:

1. The notice of petition and verified petition with exhibits A and B, affirmation in support with exhibits 1 through 12, and memorandum of law;
2. The answer and objections in point of law, and affidavit in opposition with exhibits A through D and memorandum of law;
3. The reply memorandum of law.

UPON the foregoing papers, it is hereby,

ORDERED, ADJUDGED AND DECREED that the petition is granted to the extent of declaring that the respondents violated the Open Meetings Law when they precluded the petitioner from videotaping portions of meetings based on concerns that the coverage might

adversely affect the health and safety of students and their families, and that the petition is otherwise denied and the proceeding dismissed.

Introduction

The petitioner News 12 Westchester, Inc. commenced this proceeding after it was asked by the respondents (hereinafter referred to collectively as BOE) not to videotape portions of two meetings discussing the issue of teen suicide. The petitioner seeks, inter alia, to hold the BOE in violation of the Open Meetings Law and to enjoin the BOE from precluding it from videotaping any future meetings.

Factual and Procedural Background

On January 27, 2011, the BOE held a meeting, inter alia, to discuss ways to detect bullying and teen suicide risks. The petitioner sent a reporter and video camera operator to the meeting. However, the petitioner was asked not to videotape that portion of the meeting concerning teen suicide and complied.

By letter dated January 28, 2011, counsel for the petitioner objected to the “unlawful” exclusion of the video camera from the meeting (Petitioner’s Exh B). Counsel asserted that, under the New York State Open Meetings Law, and the case law, the petitioner was authorized to videotape all meetings, subject only to reasonable restrictions to ensure that the camera did not cause a genuine distraction. Here, counsel noted, the petitioner would comply with all such restrictions.

By letter dated January 31, 2011, the respondent Dr. Michael DiGeronimo, president of the BOE, asked the petitioner to meet and discuss a plan to voluntarily limit the petitioner’s

coverage of the issue of teenage suicide, and “to discuss the dangers which we perceive to be created by news coverage which heedlessly publicizes (and perhaps glamorizes) the subject of teenage suicide” (Petitioner’s Exh B). DiGeronimo noted that the school board videotaped all meetings and made copies of the same available to public, and that he would provide copies to the petitioner upon request. DiGeronimo asserted that the school board was aware of its duties under the Open Meetings Law, and complied with the same by allowing anyone to videotape, etc. the meetings, “so long as the use of the recording device is neither disruptive nor obtrusive.” However, he noted, “[o]n occasion, the [school district] will limit pictures and videotaping by outside agencies at their BOE meeting when it may appear that such action can adversely affect the health and safety of our students and their families.” One such instance, he contended, was when the discussion concerned the intervention process surrounding teenage suicide.

DiGeronimo then detailed various studies and expert opinions discussing how media coverage of teenage suicide can result in increased incidents of the same. DiGeronimo concluded by asking that the petitioner cooperate and not set up or employ its video recording equipment during any portion of a meeting discussing the intervention process, and respect the BOE’s “legitimate documented concerns to protect the health, welfare and safety of the children entrusted to us.”

On January 31, 2011, the BOE held another meeting concerning, inter alia, teen suicide. The petitioner was again asked not to videotape that portion of the meeting concerning the same and complied.

This Proceeding

The petitioner commenced this proceeding, inter alia, pursuant to article 78 of the CPLR. The petitioner alleges that the exclusion of its camera from the above meetings, and the BOE’s

expressed intent to continue such a policy at its discretion, violated the Open Meetings Law (Article 7 of the Public Officer's Law); Education Law § 414(1)(c); the First Amendment of the United States Constitution and Article 1 of the New York State Constitution. The petitioner seeks a declaration that the BOE's conduct is contrary to law, and arbitrary and capricious; and an order permanently enjoining the BOE from prohibiting the petitioner from videotaping board meetings. Finally, it seeks an order compelling the respondents to participate in a training session on their Open Law obligations, and awarding it statutory attorney's fees.

In answer and opposition to the petition, the BOE asserts that it met with the petitioner and explained its "legitimate and documented concerns relating to the possible effect of press coverage on teen suicide." Indeed, the BOE alleges, the petitioner did not dispute such concerns, and stated that it wanted a camera at the meeting to interview people before the meetings. Ultimately, the BOE alleges, the petitioner refused to voluntarily accept its "narrow" request that it not videotape that portion of the meetings dealing with suicide prevention. As points of law, the BOE alleges (1) that there was no statutory right to videotape board meetings at the time of the subject meetings; (2) that there was no state or federal constitutional right to videotape board meetings; (3) that, to the extent that a right to videotape the meetings existed, the BOE properly imposed reasonable restrictions on the same based on its legitimate concern over the coverage glamorizing teen suicide; (4) that primary jurisdiction over the alleged violation of Education Law Section § 414(1)(c) is with the Commissioner of Education; (5) that the proceeding is moot because there are no plans for another board meeting on teen suicide; and (6) that there is no basis to award attorney's fees or order the respondents to attend a training session on the Open Meetings Law.

In further opposition to the petition, the BOE submit an affidavit from Dr. Michael

DiGeronimo (*supra*). DiGeronimo notes that some students must attend school board meetings as part of their Participation in Government course. DiGeronimo asserts that the petitioner's camera is clearly marked with the petitioner's logo, and is large when set up, *i.e.*, approximately 3 to 4 feet wide, and 5 feet high when on its tripod. Further, that it is operated by personal in "bright blue jackets" which are also clearly marked. By contrast, he notes, the video camera used by the BOE is small (*i.e.*, approximately 3" x 5") and hand-held. DiGeronimo asserts that the room where the school board meetings are generally held is approximately 52' x 40' and seats 228 people. He estimated the petitioners camera and crew would displace approximately 10 seats. In general, DiGeronimo argues, the issues raised are moot because the BOE does not plan any more meetings concerning teen suicide. Further, he asserts, if the issue is placed on an agenda in the future, and the petitioner provides adequate notice of its intent to cover the meeting, he will attempt to have the meeting moved to the High School auditorium, which is much larger, seating approximately 1018 people. Further, he notes, it also has a projection booth in the back, where the petitioner may videotape without being seen by students. This is the vantage point from which the BOE records the meetings.

ANALYSIS

Article 7 of the Public Officer's Law

The BOE violated the Open Meetings Law when it denied the petitioner the right to videotape all public portions of the subject meetings. Further, this issue is not moot. Thus, declaratory relief is awarded. However, the court declines to award statutory attorney's fees or order any of the respondents to attend training sessions concerning the Open Meetings Law.

a. The Statutory Framework

The Open Meetings Law is embodied in article 7 of the Public Officer's Law. The Legislature declared the intent of the law to be as follows:

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.

(Public Officers Law § 100). The statute was enacted in 1976 (L 1976, ch 511) in an attempt to overcome the crisis of confidence in American politics occasioned by Watergate, and to restore the public's faith in governmental bodies by encouraging them to conduct business in a public manner, *see Csorny v Shoreham-Wading River Central School District, 305 AD2d 83 (2nd Dept. 2003)*. The Open Meetings Law is to be liberally construed to effectuate the legislative purpose, *see Csorny v Shoreham-Wading River Central School District, 305 AD2d 83 (2nd Dept. 2003)*.

In general, the statute requires public notice of a meeting (Public Officers Law § 104), and that “[e]very meeting of a public body shall be open to the general public,” except executive sessions as provided for in Public Officers Law § 105 (Public Officers Law § 103). By amendment effective April 14, 2011, “[p]ublic bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings” (Public Officers Law § 103[c]; L.2010, c. 43). By amendment effective April 1, 2011:

(1) Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means. As used herein the term “broadcast” shall also include the transmission of

signals by cable.

2. A public body may adopt rules, consistent with recommendations from the committee on open government, reasonably governing the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a meeting so as to conduct its proceedings in an orderly manner. Such rules shall be conspicuously posted during meetings and written copies shall be provided upon request to those in attendance.

(Public Officers Law § 103[c]; L.2010, c. 43). The legislative findings in support of the amendment *supra* provide:

It is the policy of this state that all public business “be performed in an open and public manner and that the citizens of this state be fully aware and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy” (Public Officers Law § 100). However, because most citizens are unable to attend first-hand the meetings of public bodies, they rely upon the printed press and broadcast media to act as their agent in seeking out and communicating these events. Advances in technology now allow meetings to be photographed, broadcast and recorded in a non-disruptive manner, and these advances should be utilized to give effect to the policy of open and public governmental proceedings.

(L.2010 c. 43, § 1). The Sponsor of the amendment stated:

JUSTIFICATION: Since 1977, the proceedings of public bodies have been open to the public. This bill would allow the public to record and broadcast by various means public proceedings as long as their activities are not disruptive; it would also allow the public body to regulate these actions if it feels the situations warrant it. Advances in technology have made it possible to record the proceedings of a meeting without detracting from the deliberative process.

(Sponsor’s Memorandum, 2010 A.B. 10093, November 25, 2010).

Any person aggrieved by a violation of the Open Meetings Law may commence a proceeding pursuant to article 78 of the CPLR, or an action for declaratory and injunctive relief (Public Officers Law § 107[1]). “In any such action or proceeding, if a court determines that a public body failed to comply with this article, the court shall have the power, in its discretion, upon good cause shown, to declare that the public body violated this article and/or declare the action taken in relation to such violation void, in whole or in part * * *” (Public Officers Law §

107[1]). The court may also require the members of the public body to participate in a training session concerning the obligations imposed by the statute, and, in its discretion, award costs and reasonable attorney fees to the successful party (Public Officers Law § 107[1]).

Finally, the Open Meetings Law provides for the creation of a committee on open government, which “shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law” (Public Officers Law § 109).

b. Case Law

The parties have not cited, and research has not revealed, any case law arising after the amendment *supra* expressly permitting recording. Further, the case law prior to the amendment is somewhat sparse. However, there are several cases relevant to the issues presented.

In *Mitchell v Board of Educ. of Garden City Union Free School Dist.* (113 AD2d 924 [2nd Dept. 1985]), the respondent board banned the use of “unobtrusive, hand-held tape-recording devices” at its public meetings. In overturning the ban, the Second Department held that the Open Meetings Law was enacted and designed to enable members of the public to listen to the deliberations and decisions that go into the making of public policy, and “that the unsupervised recording of public comment by portable, hand-held tape recorders is not obtrusive, and will not distract from the true deliberative process of the body,” *Mitchell v Board of Educ. of Garden City Union Free School Dist.*, 113 AD2d at 925. In response to the concerns raised by the respondent Board, the *Mitchell* court held:

Those who attend such meetings, and who decide to freely speak out and voice

their opinions, fully realize that their comments and remarks are being made in a public forum. The argument that members of the public should be protected from the use of their words, and that they have some sort of privacy interest in their own comments, is therefore wholly specious.

Nor are we persuaded by the appellants' contention that since recordings can be edited, altered, or used out of context, the Board was justified in forbidding their use altogether. Clearly if the Board were to prohibit the use of pen, pencil and paper, because of the potential for misquotation, such a restriction would be unreasonable and arguably violative of the 1st Amendment. A contemporaneous recording of a public meeting is undoubtedly a more reliable, accurate and efficient means of memorializing what is said at the proceeding. Once the information and comments are conveyed to the public, it should be of no consequence that they may subsequently be repeated, by means of replay, to those who were unable to attend.

(Mitchell v Board of Educ. of Garden City Union Free School Dist , 113 AD2d at 925).

In the seminal case of *Csorny v Shoreham-Wading River Central School District*, (305 AD2d 83 [2nd Dept. 2003]), the respondent school board established rules limiting recording of meetings, e.g. it required that all taping to be unobtrusive, and allowed any person in attendance to request that a videotape or other visual recording be interrupted and/or discontinued for a portion of the meeting. The respondent school board adopted such rules to “alleviate the concerns of reticent parents who would be discouraged from participating in meetings because of the presence of a rolling video camera.”

The Supreme Court in *Csorny* denied a petition challenging the rules as in violation of the Open Meetings Law. The court found that the law protected the rights of citizens to *attend* public meetings, not to videotape meetings, and that the respondent school board did not ban the videotaping of meetings, but rather only imposed reasonable conditions on the same.

On appeal, the Second Department in *Csorny* reversed. Initially, the Second Department observed, although there was (then) no explicit command within the Open Meetings Law

compelling the Board to permit its meetings to be recorded on videotape, “an examination of the purpose and history of the law vis-à-vis technological advancements in electronic recording, leaves no doubt that a liberal interpretation of the Open Meetings Law permitting citizens to exercise their freedoms by recording the meetings of the Board and other democratic institutions, is wholly consonant with the legislative intent.” In the case before them, the Second Department noted, the respondent board had implemented a de facto absolute ban on videotaping, *i.e.*, subsequent to the adoption of the rules, the board had not permitted the petitioners to videotape meetings, and had not undertaken any efforts to allow any other individuals or entities to record or televise board meetings. In annulling the ban, the Second Department held:

Like the *Mitchell* court [*supra*], we are not persuaded that the videotape recording of Board meetings will truly inhibit the democratic process. While the Board adduced affidavits from three parents who expressed their fears of being videotaped at meetings, the Board may not hold the law hostage to the personal fears of a few individuals. The petitioner's camera, mounted on a tripod at the rear of the room, is not obtrusive. It is as innocuous as an audiotape recorder to which these same affiants have voiced no objection.

The law has embraced the undeniable fact that modern electronic recording devices are silent observers of history. Video cameras provide the most accurate and effective way of memorializing local democracy in action. To sustain the [resolution] would diminish democratic freedom. The Board must recognize that its camera ban risks a “loss of public trust where it appears that government has something to hide” (*People v Ystuenta*, 99 Misc2d 1105 (NY Dist. Ct; 1979).

(*Csorny v Shoreham-Wading River Central School District*, 305 AD2d 89-90). After canvassing legal opinions and the case law of other jurisdictions reaching similar results, the Second Department concluded:

This is not to say that the Board lacks any authority to regulate the use of cameras at its meetings. It certainly has the authority to impose reasonable regulations upon the public's use of video cameras at its public meetings so as to ensure that cameras do not genuinely interfere with the work at hand. What the Board may not do, is prohibit the use

of cameras outright, as the [resolution] has effectively done.

(*Csorny v Shoreham-Wading River Central School District*, 305 AD2d 89-90).

c. Discussion

Initially, as noted by the BOE, the amendment to the Open Meetings Law which expressly permits the recording of meetings (*supra*) was not yet effective as of the date of meetings at issue. However, this is not controlling for several reasons. First, under the case law *supra*, videotaping was found to be permissible under the Open Meetings Law even prior to the amendment. Second, the effective date of a statute or amendment is not controlling on the issue of whether it is to be given retroactive effect. Rather, the issue is determined by discerning the intent of the Legislature as to the same, *see Brothers v Florence*, 95 NY2d 290 (2000). One factor that militates strongly in favor of retroactive application is when the purpose of new legislation is to clarify what the law was always meant to say and do, *see Brothers v Florence*, 95 NY2d 290 (2000). Here, the amendment did not break any new ground, but merely, in effect, codified what had already been found in the case law, *i.e.*, that the stated purpose of the statute—that all public business be performed in an open and public manner and that citizens be fully aware and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy—was best served by embracing advances in technology (*e.g.* smaller and less obtrusive recording devices). In sum, retroactive application of the amendment is appropriate. However, as noted, this will have no determinative impact on the decision herein, as the right to video tape public meetings had already been declared in case law decided prior to the amendment at issue. Indeed, the

respondent school board does not argue to the contrary. As will be discussed *infra*, the relevant issue, regardless of whether the Open Meetings Law (as amended) or the case law *supra* is applied, is whether the restriction at issue was reasonable.

As a further threshold issue, the BOE argues that matter is moot, and that no exceptions to the mootness doctrine apply, because there is no policy in place prohibiting the use of videotape cameras, and there is no further meetings scheduled to discuss teen suicide. Moreover, the BOE asserts, even if a meeting were to be scheduled, it might be held at a different location where the petitioner's camera's could operate out of sight. Finally, the BOE argues, this proceeding does not "involve a question of broad significance, but is, rather, a narrow dispute dictated largely by the logistics of the camera's size and prominence, as well as the presence of students, and the size of the district's Board room." However, the proceeding is not dismissed as moot.

It is a fundamental principle of New York jurisprudence that the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the tribunal, *see Hearst Corp. v Clyne, 50 NY2d 707 (1980)*. The principle forbids courts to pass on academic, hypothetical, moot, or otherwise abstract questions, and is founded both in constitutional separation-of-powers doctrine, and in methodological strictures which inhere in the decisional process of a common-law judiciary, *see Hearst Corp. v Clyne, 50 NY2d 707 (1980)*. In general, a matter will be considered moot unless the rights of the parties will be directly affected by the determination of the court, and the interest of the parties is an immediate consequence of the judgment, *see Hearst Corp. v Clyne, 50 NY2d 707 (1980)*. If not, the matter may not be decided unless found to be within the

exception to the mootness doctrine, which permits the courts to preserve for review important and recurring issues which, by virtue of their relatively brief existence, would be rendered otherwise nonreviewable, *see Hearst Corp. v Clyne, 50 NY2d 707 (1980)*. Application of the doctrine requires three factors, (1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, *i. e.*, substantial and novel issues, *see Hearst Corp. v Clyne, 50 NY2d 707 (1980)*.

Here, whether the BOE violated the Open Meetings Law by, in effect, precluding the petitioner from videotaping portions of the subject meetings based on stated concerns that the coverage might adversely affect the health and safety of students and their families, and whether it may properly preclude coverage based on the same again, are not questions that are academic, hypothetical, moot or otherwise abstract. Further, based on the alleged violations of the open Meetings Law, the petitioner is seeking statutory attorney's fees and an order directing the respondents to attend training. Thus, the rights of the parties will be directly affected by the determination of the court, and the interest of the parties is an immediate consequence of the judgment. Thus, the proceeding is not moot.

In order to discuss the merits, the basis of the BOE's preclusion of the petitioner's camera from the portions of the meetings at issue must be determined. Based on the letter from DiGeronimo *supra*, it is clear that the petitioner's camera was excluded from the meetings based on the BOE's concern that the coverage itself might increase the risk of additional teen suicides. Indeed, the meetings were otherwise videotaped by the BOE, and the full content of the same was made available to the public. Nowhere in the letter does DiGeronimo make any mention of

the size or obtrusiveness of the petitioner's camera or its operator. Further, he announces a categorical right of the BOE to make ad hoc determinations limiting "pictures and videotaping by outside agencies" at any meeting "when it may appear that such action can adversely affect the health and safety of our students and their families." Given such, the court rejects the contentions in the affidavit of DiGeronimo submitted in this proceeding (*supra*) that the camera was excluded due to concerns about its size and obtrusiveness, and that of the personnel operating it. Indeed, the affidavit appears tailored to meet the case law *supra*. The BOE violated the Open Meetings Law by, in effect, excluding the petitioner's camera from meeting based on an ad hoc, content-based determination that the coverage might adversely affect the health and safety of students and their families.

As noted *supra*, both the Open Meetings Law (as amended) and the case law permit the videotaping of school board meetings.¹ In addition, both permit public bodies to impose "reasonable" limitations on the same. However, neither provides very specific guidance as to the what constitutes "reasonable." Further, both have described the limitations in phrases open to broad interpretation. For example, the Sponsor of the statutory amended stated that a public body was allowed to "regulate [recording, etc.] if it feels the situation warrants it" and that the recording activities should not be permitted to "detract[] from the deliberative process" (*supra*). In *Csorny, supra*, the Second Department held that the activities should not "genuinely interfere with the work at hand." However, based on language of the Open Meetings Law and the whole of the legislative history, and the case law *supra*, the court concludes that the focus of the right to

¹ The parties have not cited, and research has not revealed, any case, etc. holding that media members are treated any differently than other members of the public.

impose reasonable regulations on the use of recording equipment is on the physical obtrusiveness of the equipment and operator, and on any actual, physical interference with a meeting. Indeed, as noted *supra*, the courts have not recognized the right to impose limitations based on the privacy interests of participants or spectators, the fact that recordings may be edited or replayed, or based on any psychological or mental intimidation or reticence that might arise from the very fact that a recording is being made. Stated otherwise, that an attendee of a meeting might be dissuaded or intimidated from participating due to the mere presence of a recording device is insufficient to limit recording devices. However, the public body could, for example, prohibit the party making the recording from thrusting the device in the attendee's face, or using bright lights to illuminate the proceedings, or placing the recording device in position that was either physically intimidating to attendees, or blocked the view or interaction of those attending. Here, the BOE's limitation of the petitioner's use of its camera based on the potential affect that the coverage itself might have on the students or their families does not fall within these parameters. Thus, the limitation violated the Open Meetings Law. This is not to say that the BOE lacked a legitimate concern over how the media coverage of the meetings might impact the students and their families. Rather, it is merely to say that it is a violation of the Open Meetings Law to exclude an otherwise permissible recording device from the meeting based upon the same.

However, the court declines to award the petitioner statutory attorney's fees or order the respondents to attend training sessions.

As noted *supra*, attorney's fees may be awarded the prevailing party in the court's discretion (Public Officers Law § 107[2]). Such an award does not require evidence that the public body repeatedly acted in violation of the Open Meetings Law, or that its actions were

undertaken in bad faith, *see Gordon v Village of Monticello*, 87 NY2d 124 (1995). However, this does not mean that every violation of the Open Meetings Law automatically triggers its enforcement sanctions, or that awards of attorneys' fees to the prevailing party should be granted as a matter of course, *see Gordon v Village of Monticello*, 87 NY2d 124 (1995). For example, purely technical and non-prejudicial infractions, or wholly unintentional violations, do not rise to the level of supporting an award of attorney's fees, *see Gordon v Village of Monticello*, 87 NY2d 124 (1995). Similarly, where the public body has made a good-faith, reasonable effort to comply with the statute, attorney's fees may not be warranted, *see Gordon v Village of Monticello*, 87 NY2d 124 (1995). By contrast, where there has been obvious prejudice to plaintiffs as a result of a public body's intentional and deceitful conduct, or there have been repeated violations of the Open Meetings Law, an award of fees is justified, *see Gordon v Village of Monticello*, 87 NY2d 124 (1995). Here, given all of the facts and circumstances, the court does not find an award of statutory attorney's fees to be warranted, *see Wilson v Board of Educ. Harborfields Central School Dist.*, 65 AD3d 1158 (2nd Dept, 2009); *Roberts v Town Bd. of Carmel*, 207 AD2d 404 (2nd Dept. 1994). Nor does the court find it appropriate to direct any of the respondents to participate in a training session concerning the obligations imposed by the Open Meetings Law (Public Officer's Law § 107[1]).

Remaining Contentions

The petitioner has not cited, and research has not revealed, any case holding that the BOE's precluding the petitioner from videotaping meetings was a violation of Education Law §

414.

Finally, under established principles of judicial restraint, courts should not address constitutional issues when a decision can be reached on other grounds, *see Syquia v Board of Educ. of Harpursville Cent. School Dist.*, 80 NY2d 531 (1992). In any event, the preclusion at issue does not appear to be of constitutional dimension, *see Csorny v Shoreham-Wading River Central School District*, 305 AD2d 83, 91 (2nd Dept. 2003).

DATED: June 4, 2011 ENTER

Goshen, New York



HON. CATHERINE M. BARTLETT, AJSC
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ACTING SUPREME COURT JUSTICE

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