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	: SUPERIOR COURT OF NEW JERSEY
FRANCISCO A. FERREIRO, and	: LAW DIVISION: HUDSON COUNTY
WEST NEW YORK CONCERNED RESIDENTS,	:
	:
Plaintiffs,	: Docket No. L-
	:
-vs.-	: Action in Lieu of Prerogative Writ
	:
CARMELA RICCIE, in her capacity as West	: VERIFIED COMPLAINT
New York Municipal Clerk, and the TOWN OF	:
WEST NEW YORK,	: and <u>R.</u> 4:69-4 Certification
Defendants.	:
_____	X

The Plaintiffs, FRANCISCO A. FERREIRO and the WEST NEW YORK  
CONCERNED RESIDENTS, by way of their Verified Complaint, state as follows:

**PRELIMINARY STATEMENT**

1. This action lieu of prerogative writ involves actions taken by the Town of West New York to deny its citizens the right to elect, in a school board election this April, four new members of the West New York Board of Education, as they had anticipated they would have had the right to do when they voted by referendum, last November, to change their school board from an appointed school board (which was controlled by the governing body) to an elected board.

2. This Complaint specifically relates back to the filing of an Order to Show Cause by FRANCISCO A. FERREIRO, *pro se*, which was dismissed, with prejudice, by Judge Bariso in

an Order dated March 25, 2014. In that action, Mr. Ferreiro, acting without counsel, filed his application for temporary restraints on March 4, 2014, but failed to submit a complaint, certifications or any other form of pleadings in support of his request for temporary restraints. And although Judge Bariso entertained discussion about the basis on which Mr. Ferreiro believed he was entitled to relief, because neither Mr. Ferreiro nor Intervenor West New York Board of Education filed a complaint in that action (and defendants did not file an answer) there was no pending matter once Judge Bariso denied Mr. Ferreiro's OTSC. Accordingly, Judge Bariso dismissed Mr. Ferreiro's action with prejudice, while suggesting in oral argument that he should find counsel and file "properly" "a new action seeking relief."

3. Now, a group of West New York residents and citizens, including Matthew Cheng, who sits on the West New York Board of Education as one of the two elected members, and others who intended to run for a seat on the school Board this April, join Mr. Ferreiro in his attempt to elect four new members to the Board of Education as quickly as possible, and to require that the terms of four previously appointed board members be permitted to expire in May, in accord with N.J.S.A. 18A:12-19.2 It is the belief of the WEST NEW YORK CONCERNED RESIDENTS that a special school board election is necessary in order to break the stalemate currently existing on the Board of Education, and to permit the Board to change its way of doing business so as to prevent, *inter alia*, the wrongful hiring practices outlined in the report issued by the State of New Jersey, Department of Education, Office of Fiscal Accountability and Compliance, PFAC Case #INV-068-12, in April of 2013. (hereto attached as Exhibit A).

4. Specifically, Plaintiffs seek (A) a declaration that the Town of West New

York (“Governing Body”) violated the Open Public Meetings Law, N.J. S.A. 10:4-12(a) by failing to allow any public comment at its February 19, 2014, regular meeting, let alone, public comment on Resolution-20 “Establishing the Election of Members of the West New York Board of Education As the First Tuesday after the First Monday in November,” an action that is of such significance that it can be initiated and taken with voter approval pursuant to statute; (B) a declaration that the Governing Body and the Municipal Clerk violated N.J.S.A. 19:60-1.1(a) by failing, prior to holding a meeting for the adoption of the resolution to move the date of the annual school election, to provide adequate notice or any notice of the meeting directly to the affected Board of Education; (C) a declaration that the Governing Body violated N.J.S.A. 19:60-1.1 (c) by failing to give notice, in writing, to change the date of a school election from the third Tuesday in April to the first Tuesday in November, to the county clerk “no less than 60 days prior to the third Tuesday in April”; and (D) an order declaring Resolution-20 invalid, permitting board terms to expire as would be the case if an election had occurred in April, N.J.S.A. 18A:12-19.2; and requiring the Hudson County Superintendent to fill the vacancies of those board members, pursuant to N.J.S.A. 18A:12-15(b), until a special school board election is held on the last Tuesday in September in accord with N.J.S.A. 19:60-2.

### **PARTIES**

5. Plaintiff FRANCISCO A. FERREIRO officially resides at 5206 Bergenline Avenue, West New York, New Jersey 07093, and has been an active participant in the public affairs of West New York for many years. He is the founder of Residents for a Better West New York, an unincorporated association that was a major proponent of the referendum to change the West New York school board from an appointed board to one where all members are elected. He has a special interest in this matter.

6. Plaintiff WEST NEW YORK CONCERNED RESIDENTS is an unincorporated association that has significantly more than seven (7) members. It was formed specifically to advocate around educational matters in West New York, and consists of persons who supported the November 2013 referendum to change the West New York school board from an appointed board to one where all members are elected, including Matthew Cheng, who was elected to the school board in January 2014, and several individuals who ran for the school board in January and who had intended to run in the April election had it been held when the public expected it to be held. WEST NEW YORK CONCERNED RESIDENTS and its members have a special interest in this matter.

7. Defendant CARMELA RICCIE is, and was at the relevant time to this complaint, the Clerk of the Town of West New York with her principal place of business at 428-60<sup>th</sup> Street, West New York, NJ 07093. In her capacity as Municipal Clerk, Ms. Riccie acts as the secretary to the governing body, prepares meeting agendas, is present at all meetings, keeps a journal of the proceedings of every meeting, retains the original copies of all ordinances and resolutions, and records the minutes of every meeting. Ms. Riccie is also responsible for all required notices to be posted, published or sent to specific agencies with respect to the public meetings of the Commissioners. Defendant Riccie's responsibilities with respect to such notices are ministerial in nature.

8. Defendant TOWN OF WEST NEW YORK ("Governing Body" or the "Commissioners") is, and was at all relevant times, the body corporate representing the inhabitants residing within its borders pursuant to N.J.S.A. 40:70-1 et seq. Organized pursuant to the Walsh Act, West New York is governed by a five-member commission, N.J.S.A. 40:72-2, one of whom is selected by its members as the Mayor. N.J.S.A. 40:72-10. As a commission

form of government, the Board of Commissioners is authorized to enact ordinances and resolutions, and hold public meetings in accordance with N.J.S.A. 40:73-13 and the Open Public Meetings Act, N.J.S.A. 10:4-9 *et seq.*

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

9. On November 5, 2013, Town of West New York voters approved a public question “Shall the West New York’s ordinance be amended to establish a Type II School District (N.J.S.A. 18A:9-3) which provides for the election of all board of education members by the residents of West New York?” by a margin of 3,193 to 759 or 80.79% to 19.21% (the “Elect Our School Board Referendum”).

10. On January 28, 2014, there was a West New York Special School Board Election for two new members of the Board. Matthew Cheng was the winner of one seat for a 1 year term, and Joan Palermo was the winner of the second seat for a 2 year term.

11. At the next scheduled school board meeting on February 12, 2014, Matthew Cheng and Joan Palermo were sworn in as Trustees of the West New York Board of Education. At that meeting the Trustees present defeated a resolution entitled “Resolution 5.4 Establishing the Election of Members of the West New York Board of Education As the First Tuesday after the First Monday in November” by a margin of 4 Yes, 4 No.

12. Assuming that the defeat of this resolution meant that the next school board election would occur in April 2014, the Trustees then approved resolutions entitled “Resolution 5.5 Approve Polling Locations”, “Resolution 5.6 Establish Date & Time of Annual Board Election”, “Resolution 5.7 Drawing for Position on School Ballot”, “Resolution 5.8 Establish Date & Time

of Annual Board Election” and “Resolution 5.9 Transfer of Funds to Pay for Annual Election” by a margin of 6 Yes, 0 No, 2 Abstentions.

13. Members of the public, including Mr. Ferreiro and persons associated with the West New York Concerned Residents, who were also present at this school board meeting, expected, after witnessing the host of resolutions approved by the Trustees, that the annual school board election would be held in April, as contemplated by statute.

14. At some time soon thereafter, one or more of the Commissioners of West New York decided to consider a resolution at the next scheduled regular meeting of the Governing Body to change the annual school board election from April to November. As a result of such approval, the terms of four appointed members of the school board (i.e., Trustee Nasrin Alam, Trustee Angela Duval, Trustee Sara Gastanadui, and Trustee Adam Parkinson) would not expire on May 16, 2014, as would be the case if the annual election were held in April, as the public expected when it approved the establishment of a Type II School District (N.J.S.A. 18A:9-3) which provides for the election of all Board of Education Members by the residents of West New York.

15. On information and belief, Defendant Carmela Riccio did not communicate to the affected school board, either by phone, e-mail, text or written Notice, the intention of the Commissioners to consider a resolution at their next scheduled regular meeting to change the school board election from April to November as required by N.J.S.A. 19:60-1.1(a).

16. During the public comment period at the March 12, 2014 West New York Board of Education meeting, Allan Roth, Administrative Assistant to Special Services, stated that the “district did not receive notice [of the Resolution changing the school board election] from the Town” prior to consideration of that resolution. A copy of the minutes of the Public Comments portion of that meeting is attached hereto as Exhibit B.

17. In response to an OPRA request submitted by Matthew Cheng to the Town of West New York asking for all “communications between Town Clerk Carmela Riccie and West New York Board of Education Secretary Kevin Franchetta prior to February 19, 2014 relating to the governing body of the Town of West New York’s [consideration of ] a Resolution changing the Annual School Board Election from April to November,” Defendant Carmela Riccie responded that she had “not identified any written public records that are responsive to your request.” Attached hereto as Exhibit C is an e-mail from Ms. Riccie to Mr. Cheng, dated March 18, 2014.

18. In e-mail dated March 19, 2014, Kevin Franchetta, West New York Board of Education Business Administrator/Secretary to the Board, responded to a question posed by Matthew Cheng as to whether he had received “verbal notification from the Town Clerk Carmela Riccie regarding the resolution . . . prior to the February 19 meeting,” in the negative. Mr. Franchetta specifically stated that “I only recall being contacted by phone by the secretarial staff members in Ms. Riccie’s office asking me generic questions during the period of February 13, 2014 to February 19, 2014.” A copy of such e-mail is attached hereto as Exhibit D.

19. On April 11, 2014, Matthew Cheng submitted an OPRA request to the West New York Board of Education asking for text messages or e-mails between the Town Clerk Carmela Riccie and Kevin Franchetta and/or Allan Roth regarding a resolution to change the date of the School Board Election from April to November. On April 16, 2014, Mr. Cheng received a response that there were no text messages or e-mails in response to his request. Both Mr. Cheng’s OPRA request and the response are attached hereto as Exhibit E.

20. Mr. Ferreiro and members of the organizational Plaintiff, who wanted to submit nomination petitions for the April election, and/or who desired a majority elected Board of Education as soon as possible, were harmed because of the Defendants’ failure to adequately

notify the Board of Education of its intentions to consider a resolution to change the date of the school board elections prior to its February 19, 2014 meeting.

WHEREFORE, the Plaintiffs demand relief against Defendant Riccie and the Town of West New York (1) adjudging and declaring, pursuant to N.J.S.A. 2A:6-50 et seq. and R. 4:42-3, that Riccie's failure to notify in any manner the Secretary of West New York Board of Education regarding the Commissioners' intention to consider a resolution to change the date of the School Board Election from April to November prior to February 19, 2014 violated N.J.S.A. 19:60-1.1(a); (2) declaring that the Resolution-20 adopted by the Town of West New York is null and void; and (3) requiring board terms of four Trustees to expire as would be the case if an election had occurred in April, (N.J.S.A. 18A:12-19.2) and directing the Hudson County Superintendent to fill the vacancies of those board members, pursuant to N.J.S.A. 18A:12-15.(b), until a special school board election is held on the last Tuesday in September in accord with N.J.S.A. 19:60-2; and (4) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

## **COUNT TWO**

21. Plaintiffs repeat and restate each and every allegation contained in Paragraphs 1-20.

22. On Saturday, February 15, 2014, Defendant Riccie published a Public Notice Advertisement in the *Jersey Journal* indicating the Governing Board's intention to consider a resolution entitled "Establishing the Election of Members of the West New York Board of Education As the First Tuesday after the First Monday in November". This was a holiday weekend because Monday, February 17, 2014 was President's Day, a federal holiday.

23. On information and belief, the Governing Board did not cause to be published in the *Jersey Journal*, or any other newspaper, any other resolution that it intended to be considered at its February 19, 2014, regular meeting as part of its consent agenda.

24. On February 18, 2014, the Governing Body caused the agenda of the monthly Commissioner's Meeting to be posted on the Town's website [www.westnewyorknj.org](http://www.westnewyorknj.org). Resolution R-20 "Establishing the Election of Members of the West New York Board of Education As the First Tuesday after the First Monday in November" is on that agenda, noted as a change to consent agenda.

25. At the February 19, 2014 regular meeting of the Governing Body, four Commissioners, including the Mayor, were present. Commissioner Wiley asked that Resolution R-20 be removed from the consent agenda and be discussed and voted upon separately. On information and belief, a motion is not required to remove an item from the consent agenda. The Mayor decided not accommodate Commissioner Wiley's request.

26. Members of the public who attended this meeting, including Plaintiff Ferreiro and members of the West New York Concerned Residents, made several requests to be heard prior to the Governing Body taking any formal action. Mr. Cheng and Joan Palermo of the School Board were present; and, each of them was notified that R-20 was on the consent agenda by personal friends who had seen the notice in the *Jersey Journal*. West New York Board of Education President Vilma Reyes stated in the March 12, 2014, meeting that "she didn't attend that meeting, but generally as a member of the public, she does attend the town meeting." (Exhibit B). However, media coverage of the February 19, 2014 meeting clearly shows Ms Reyes sitting with members of the public. Neither Mr. Franchetta nor Mr. Roth, informed Mr.

Cheng or, on information and belief, any other member of the Board of Education about the proposed consideration of R-20 by the Governing Board.

27. Despite public protest and other expressions of anger and frustration, the Commissioners voted on and approved the consent agenda, including R-20 “Establishing the Election of Members of the West New York Board of Education As the First Tuesday after the First Monday in November” with 3 yes votes and 1 no. Mayor Felix Roque and Commissioners Caridad Rodriguez and Ruben Vargas then abruptly walked out of the meeting.

28. There was no public portion of the meeting as required under the Open Public Meetings law, N.J. S.A. 10:4-12(a).

29. The February 19, 2014 regular meeting of the Governing Body ended abruptly, and was never formally closed.

30. Members of the public interpreted the Governing Body's failure to follow the requirements of the OPM and to follow other procedural requirements as a slap in the face and a statement that the Commissioners do not believe that they have to listen to the sentiment of the people, even on a matter as significant and controversial as R-20, and one that may, as a matter of statute, be initiated by the voters themselves.

WHEREFORE, the Plaintiffs demand relief against the Town of West New York (1) adjudging and declaring, pursuant to N.J.S.A. 2A:6-50 et seq. and R. 4:42-3, that the Commissioners' failure to permit any public comment period during the regular meeting of the Governing Board, and in particular to comment on R-20, violated N.J. S.A. 10:4-12(a) and New Jersey public policy; (2) declaring R-20 as null and void pursuant to N.J. S.A. 10:4-15; (3) requiring board terms of four Trustees to expire as would be the case if an election had occurred in April, (N.J.S.A. 18A:12-19.2), and directing the Hudson County Superintendent to fill the

vacancies of those board members, pursuant to N.J.S.A. 18A:12-15.(b), until a special school board election is held on the last Tuesday in September in accord with N.J.S.A. 19:60-2; and (4) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

### **COUNT THREE**

31. Plaintiffs repeat and restate each and every allegation contained in Paragraphs 1-30 as set forth herein.

32. On information and belief, Defendant Carmela Riccie notified the Hudson County Clerk and the West New York Board of Education of the Governing Body's Resolution to change the date of the school board election via email and same day delivery through Lawyers Service on February 20, 2014. Specifically, an agent of the Town of West New York hand delivered a certified copy of the resolution entitled "Establishing the Election of Members of the West New York Board of Education As the First Tuesday after the First Monday in November" to Board of Education Secretary Kevin Franchetta.

33. In turn, also on February 20, 2014, Board of Education Secretary Kevin Franchetta mailed a copy of the resolution to all Board of Education Trustees with the note "Enclosed please find a copy of the Town of West New York resolution that was hand delivered to me this afternoon. I have contacted our attorney, Lester Taylor, to investigate the legality of the resolution."

34. On February 21, 2014, Matthew Cheng met with the Board of Education Superintendent John Fauta and Board of Education Secretary Kevin Franchetta to discuss the status of the resolution. Mr. Cheng asked Superintendent Fauta to ask Board President Vilma Reyes to call a special meeting to discuss the resolution and taking action. She declined.

Matthew Cheng was unable to get a majority of the Board members (5) to sign a petition calling for a special meeting to discuss the resolution and consider action.

35. On information and belief, Board of Education Secretary Kevin Franchetta did not make nomination forms available to members of public to date for the annual 2014 school board election, although on March 13, 2014, he showed a nomination kit to one member of the West New York Concerned Residents.

36. N.J.S.A. 19:60-1.1 (c) states that the Governing Body must give notice of a its approval of a resolution to change the date of a school election from the third Tuesday in April to the first Tuesday in November, to the county clerk “no less than 60 days prior to the third Tuesday in April.” Other sections of Title 19 regarding school board elections, such as N.J.S.A. 19:60-7 “Nomination procedures; withdrawal, vacancy; objections”, set deadlines from the “date of the election” and not from the “third Tuesday in April.”

37. February 20, 2014 is only 55 days prior to the “third Tuesday in April”, which is April 15. As a result of Defendants' actions in violation of the plain language of N.J.S.A. 19:60-1.1 (c) , certain members of the public, including individuals associated with West New York, were not able to submit nominating petitions to be a candidate for trustee at the previously scheduled April 23, 2014 school board election, and all voters of West New York, including Plaintiffs, have been deprived of their right to elect school board members at an annual April school board election in order to transform the school board as soon as possible.

WHEREFORE , the Plaintiffs demand relief against the Town of West New York (1) adjudging and declaring, pursuant to N.J.S.A. 2A:6-50 et seq. and R. 4:42-3, that the Defendants’ failure to act and notify the County Clerk and the West New York School Board within 60 days of the “third Tuesday in April”, in contrast to the actual date of this year’s election, violates the

plain language of N.J.S.A. 19:60-1.1 (c); (2) declaring R-20 as null and void (3) requiring board terms of four Trustees to expire as would be the case if an election had occurred in April, (N.J.S.A. 18A:12-19.2), and directing the Hudson County Superintendent to fill the vacancies of those board members, pursuant to N.J.S.A. 18A:12-15.(b), until a special school board election is held on the last Tuesday in September in accord with N.J.S.A. 19:60-2; and (4) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

Plaintiffs

Respectfully submitted,

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Renée Steinhagen, Esq.

Date: April 28, 2014

#### **DESIGNATION OF TRIAL COUNSEL**

Renée Steinhagen, Esq. is hereby designated as trial counsel for Mr. Ferreiro and the West New York Concerned Residents.

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Renée Steinhagen, Esq.

Date: April 28, 2011

#### **CERTIFICATION PURSUANT TO RULE 4:5-1**

I, RENÉE STEINHAGEN, hereby certify that:

1. The matter in controversy is not the subject of any other pending Court or arbitration proceeding.

2. I am not aware of any other contemplated Court or arbitration proceeding and;

3. I am not aware at the present time of any other party that should be joined to this litigation.

Date: April 28, 2014

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Renée Steinhagen, Esq.

**CERTIFICATION PRUSUANT TO RULE 4:69-4**

I hereby certify that there were no local agency proceedings relevant to the subject of this Complaint that were or could have been transcribed and that the relevant governmental records consist entirely of documents. Accordingly, no transcripts have been ordered.

Date: April 28, 2014

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Renée Steinhagen, Esq.

**CERTIFICATION OF CONCERNED CITIZEN MEMBER MATTHEW CHENG**

I, MATTHEW CHENG, being of full age do hereby swear and certify as follows:

1. I am a member of plaintiff Concerned Citizens of West New York, and an elected member of the West New York Board of Education. I have personal knowledge of the facts and circumstances giving rise to this action.
2. I have read the annexed Complaint including all the facts alleged therein.
3. All the facts alleged in the Complaint are true and accurate to the best of my personal knowledge and belief.
4. Pursuant to R. 1:4-7, I intend this certification to constitute a verification of the Complaint in this matter.
5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false that I am subject to punishment.

Dated: April 29, 2014

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MATTHEW CHENG