

FOIA complaint filed against Capital School District

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The fallout continues over the Capital School District Board of Education's decision to quietly give administrators a pay raise this past summer.

In late August, the Capital School District found itself defending a last minute school board agenda item that gave its administrators raises.

This autumn, Capital is defending itself against a Freedom of Information Act complaint levied against it in October in part because of that Aug. 24 meeting. The League of Women Voters and the Delaware Coalition for Open Government filed a Freedom of Information Act complaint against the Capital School District for a number of issues. They include the "failure to announce in a timely manner the subject and anticipated vote on salaries at the August 24, 2011 board meeting."

Margaret M. McKay, League of Women Voters of Delaware open government chairwoman, and Delaware Coalition for Open Government President John Flaherty sent five claims in all to the Delaware Department of Justice. State Deputy Attorney General Judy Oken Hodas stated in an Oct. 17, 2011 letter to Capital Board of Education President Phillip Martino Jr. that Capital only had to respond to four of the complaints. The first complaint – that Capital "spends an inordinate amount of time in executive session" – does not state a FOIA violation, she wrote.

But Capital had to respond to the other four items by Oct. 28.

Martino said the school district attorney, David Williams, had responded to the Department of Justice letter in a timely fashion, and he had addressed each of the claims.

"As far as we're concerned, we didn't do anything we weren't supposed to do," Martino said. He declined to comment beyond that.

Martino and Capital Superintendent Dr. Michael D. Thomas had said that the board had been discussing the pay raises since earlier in the summer in an effort to make Capital more competitive amongst similarly sized districts. Therefore, they did not see the last minute addition to the agenda as a surprise.

The salary increase was not listed on the Aug. 24 agenda's open session because Martino said he had operated under the assumption that this was a personnel matter only to be discussed in executive session, which are closed meetings held to discuss personnel, legal and real estate matters.

But, Williams advised Martino that the matter of administrator raises was not a subject for closed-door sessions. Therefore, the board voted to add the salary increase to the open session that night.

It was board member Brian Lewis, who abstained from the vote, who notified the Dover Post of this last minute action.

"My concern was the state of economy we are in right now," Lewis had said.

Among the other FOIA complaints, McKay claimed that the Capital school board went into closed-door executive session at its Sept. 21 meeting before opening in public session. That disturbed her because Delaware state law requires a public body to convene and announce its intention to go into open session.

"I entered the auditorium at 5:26 p.m. for an executive session meeting announced to begin at 5:30 p.m.," she wrote. "I was the only person in the room – save for a janitor. I waited 40 minutes. The Board did not appear in the room." McKay returned at 7:26 p.m. at which time the board appeared and verified a quorum before proceeding into its regularly scheduled meeting.