

# PINELANDS REGIONAL SCHOOL DISTRICT

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MELISSA MCCOOLEY, Ed.D.  
*Superintendent*

NICHOLAS K. BROWN  
*Business Administrator/Board Secretary*

April 10, 2019

Via email: ([opra+request-4563-a0fdc2a2@requests.opramachine.com](mailto:opra+request-4563-a0fdc2a2@requests.opramachine.com))

Debra Sloan

RE: OPRA Request

Please be advised that I am the Custodian of Records for the Pinelands Regional School District Board of Education (the "Board"). I am in receipt of your March 25, 2019 request (the "Request") for records pursuant to the Open Public Records Act ("OPRA" or the "Act") to which I requested an extension until April 12, 2019. The Request seeks:

- 1. The audit of Special Education approved by the BOE on 7/18/18 completed by Shelly Myers as ordered by Dr. Melissa McCooley, Superintendent.**

The Board is not in possession of documentation responsive to this request.

- 2. Evaluation/audit completed by Thomas Hand, Interim Director of Special Services as listed on Pinelands website, but approved as a per diem consultant, regarding Special Education Department at Pinelands School District.**

A government record defined by OPRA is:

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material. [N.J.S.A. § 47:1A-1.1].

However OPRA exempts from the definition of a "government record" documentary information that constitutes "inter-agency or intra-agency advisory, consultative, or deliberative material." N.J.S.A. 47:1A-1.1.

The Supreme Court has found that, "A record, which contains or involves factual components, is entitled to deliberative-process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during the process." Education Law Center v. New

Jersey Dept. of Educ., 198 N.J. 274, 281 (2009.) To meet the deliberative-process protection criteria, the document must have been, "generated before the adoption of an agency's policy or decision," and, "contain opinions, recommendations, or advice about agency policies." Id. At 286.

The Supreme Court also stated:

The deliberative process privilege "permits the government to withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated." Ibid.

The Supreme Court emphasized in In re Liquidation of Integrity Ins. Co., 165 N.J. 75 (2000), that, "the government, like its citizens, 'needs open but protected channels for the kind of plain talk that is essential to the quality of its functioning.'" Id. At 88.

In North Jersey Media Group v. Borough of Paramus, 2009 N.J. Super. Unpub. Lexis 2066, WL 2365397, the Appellate Division applied the Deliberative-Process Protection to a report authored by a hired third-party consultant, wherein the Consultant included interviews of department employees regarding their opinions and advice concerning departmental policies, as well as the third-party consultant's own recommendations.

As such, the Board of Education must deny your OPRA request at this time, as the document prepared by Mr. Hand constitutes inter-agency consultative, or deliberative material pursuant to N.J.S.A. 47:1A-1.1, which was authored prior to the Board making decisions regarding the Special Education Department, and which the Board intended to rely on and relied on in making said decisions.

Thank you for your courtesies. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Brown", with a long horizontal flourish extending to the right.

Nicholas K Brown,  
Business Administrator and Records Custodian  
Pinelands Regional School District