

Wednesday, March 3, 2021

MINUTES OF THE SPECIAL MEETING OF THE BRIDGEPORT BOARD OF EDUCATION, held March 3, 2021, by video conference call, Bridgeport, Connecticut.

The meeting was called to order at 6:34 p.m. Present were members Chair John Weldon, Vice Chair Bobbi Brown, Secretary Joseph Lombard, Joe Sokolovic, Sosimo Fabian, Chris Taylor, Sybil Allen. Albert Benejan joined the meeting subsequently as noted.

Supt. Michael J. Testani was present.

The sole agenda item was consideration of the termination of the contract of employment of Kathleen Smith.

In response to a question, Attorney Floyd Dugas, the board's counsel, said a specific state statute covers the dismissal of a teacher. The statute requires a superintendent to give a teacher written notice that they are considering termination of their employment. Supt. Testani did that on February 8th in this case. Under the statute, the teacher has ten days to request a hearing. If the hearing happens, it would either be a full hearing before the board or a hearing before an independent hearing officer. In this case, the teacher failed to request the hearing, which meant that legally she has waived her right to a hearing, and the superintendent can simply terminate her employment or, using the more cautious approach, the board takes that action.

Mr. Weldon noted the board members were provided a file about the case.

Denise Altro-Dixon, executive director of human resources, said the matter was brought to her by Joseph Raiola, principal of Bassick High, a few months ago. Dr. Raiola held a meeting with the teacher and the district is of the belief that the teacher falsified information in the IEPs for at least three students. She said this is in violation of state and federal laws on the IEP process. She said Dr. Raiola and the special education department did an investigation. The teacher was interviewed, with her union representative present, and later a formal disciplinary hearing was held with human resources. Two separate hearings were held and it was determined additional students' IEPs appear to have been falsified. On February 10, 2021, the letter was issued to the employee informing her of her possible termination.

Supt. Testani said there was no dispute by the teacher that these actions were taken. He said the employee was offered a mutual separation, which she did not accept against advice.

He said the falsification of the legal documents could have opened up liability for the district. He said the employee's claims of mitigation were that there were deadlines to meet and she decided this was the best way to meet the deadline.

Mr. Taylor asked if the falsification was to the student's benefit or detriment. Dr. Raiola, said students are supposed to receive an annual review and a tri-annual review every three years that includes testing for eligibility for special education. He said he would characterize it as hurting the student because both types of meetings were not held.

Dr. Raiola said he was not aware of mitigating circumstances, but said the teacher said she couldn't get the parents in. He said the meeting is supposed to be held

without a parent in that situation, along with documentation of efforts to get them in.

In response to a question, Dr. Raiola noted one reason for termination is moral misconduct and insubordination. He said in his professional opinion it was the best cause of action to terminate the teacher.

Supt. Testani noted IDEA is covered by federal law to protect the rights of children, so it goes beyond board protocol.

In response to a question, Supt. Testani said the teacher was notified via letter. Ms. Altro-Dixon said subsequent conversations with the union confirm she received the letter.

Atty. Dugas said the only notice that is required is the February 8th letter and when she failed to request a hearing she waived her rights, and there was no requirement to notify her of tonight's meeting.

The superintendent said the falsification was writing minutes to a meeting that was never held and listing attendees for a meeting that was never held. The IEP was supposed to be developed at that meeting.

In response to a question, Dr. Raiola said in conjunction with the special education department spot checks have taken place and there was no evidence of this happening anywhere else in Bassick except with Ms. Smith. He said internal checks found one of these IEPs out of compliance and questions were raised.

Dr. Fabian asked about the history of the teacher and her performance and her supervisors' actions. He said people

are entitled to notice of a hearing and he wanted to be sure the teacher received adequate notice.

Supt. Testani said he did not believe the employment history was relevant in this situation. In response to a question, he said the IEPs were from the fall time period. He said he believed the supervisors did their jobs properly by catching the error. After the notice, there were settlement negotiations between HR and the collective bargaining unit.

Dr. Fabian said he was not a hundred percent persuaded by the superintendent's answer. He said someone should have been paying attention. Supt. Testani said the IEP is submitted to the case manager, the teacher, and the other teachers that service the child and have to implement it in the classroom. At least one other teacher would have had to have been present in the IEP. He said the meeting was supposedly held on December 14th and it was discovered several weeks later.

In response to a question, the superintendent said the employee requested the district pay her to the end of the school year in exchange for resigning, so to be paid not to work. Ms. Altro-Dixon said the teacher also requested this be removed from her employee file and it not be disclosed.

In response to a question, Atty. Dugas said he recommended the superintendent bring this matter to the board rather than simply terminating the employee due to conflicting interpretations of the law.

Mr. Benejan joined the meeting.

In response to a question, Supt. Testani said the teacher is a special education teacher who has been employed in the district for about ten years.

In response to a question about the teacher's past disciplinary matters, Supt. Testani said he was not aware of it. Mr. Taylor said the district is in dire need of special education teachers. Atty. Dugas said from a quick review of the file there were multiple correspondence regarding poor attendance.

Mr. Taylor said we have a ten-year veteran teacher, that teaches special education, and the only thing in her file is some absences, and then we fast forward to a falsification.

Atty. Dugas said there was also a reprimand for not submitting adequate lesson plans in 2013. There were also written reprimands for poor attendance.

Dr. Raiola said at the end of the 2019 school year there was a recommendation to have Ms. Smith on structured support due to some concerns around instructional practices. He said he was not sure if she came off this probationary level of evaluation. He said the egregious nature of this situation is what is provoking our action.

Mr. Taylor said he was a man of forgiveness, particular if someone has been a loyal employee and had a bad sense of judgment. He said putting someone out of work is harsh and he has a hard time getting to the point of termination. He said he appears that she owned and accepted it.

Supt. Testani said the teacher did not own it; she admitted and tried to blame the Dr. Raiola and the assistant principal

in two separate meetings. Mr. Taylor said he believe she owned it and it is human nature to cast blame on others.

Ms. Altro-Dixon said she admitted originally that she did it; then she tried to backpedal and said it was a matter of pressing the wrong button on the keyboard. However, at the end of the day she violated federal and state rules. She added the falsification has impacted the education of three of our students going forward for their entire educational career and she deprived students of educational services that they are in need of.

Mr. Taylor said he was not making excuses for her, but he was only hearing one side of the story. He said once it came to the board, he will do his due diligence to see if this measures up to termination. He noted we have a mayor that violated federal law. He said if she violated federal law, maybe federal authorities should be alerted. He said this was going to affect a lot of lives.

Atty. Dugas said the file also included a plan of improvement. He said in his experience it is very unusual for a teacher to be on an improvement plan twice.

Mr. Sokolovic said he believed there were two different answers to the same question. One answer was it was discovered by a routine check and another answer had to do with other teachers' names being on the paperwork. He said the way the case is presented and without any defense or personnel files, he was leaning towards throwing it out. He said he has personally beaten cases with claims against him because the cases were not prepared adequately. He said he would look for a penalty lower than termination due to the way the case was prepared.

Mr. Weldon said he understood Mr. Arnold conducted his usual interview and then other things made Dr. Raiola realize this was not an isolated incident.

Supt. Testani explained the IEP process. He said the employee is not being terminated for a case that was built over time because of poor performance. He said this action could be referred to the state Department of Education and the certification could be pulled; it is that serious. He said ten years of service was not relevant to this egregious action. He said the district cannot be lax on this. He said it wouldn't fly in suburban towns and his mind was boggled that we're even having this discussion.

In response to a question, the superintendent said other disciplinary options were a suspension with pay, which he said was a reward; or to just refer her to the Department of Education and if her license was pulled she would never work again in any district. A settlement for suspension without pay and a return to the classroom would be another option.

Atty. Dugas said lesser discipline is always possible, but in his opinion this is among the most serious infractions he could imagine a teacher creating short of the things we worry most about it. He said he did not believe he had ever seen this in his career. He noted the huge potential liability to the district under the special education laws.

Mr. Benejan said he had several questions. Atty. Dugas said he was not aware of any case where a teacher did this in his extensive experience in school districts.

In response to a question, Supt. Testani said he was not aware of other students who were in this situation. He said

this teacher was the case manager and the student has four teachers in the semester that teach the student. He said the case manager is responsible for the annual IEP for the student. He said observations of teachers are of their instruction and less so on completing their paperwork.

Dr. Fabian said he was challenged because he was only hearing one side of the story. He asked if the teacher could be invited to come before the board to present her version. Atty. Dugas said the teacher had the right by filing a request for a hearing within ten days of February 8th and she failed to do so. He said his advice is to move forward. The superintendent said the teacher was well represented by her union president and the CEA attorney.

Dr. Fabian said he had to be comfortable he was being equitable to the teacher and to the district, and the board is being put in the position of hearing one version of the story. He said even in one version he detected inconsistencies. He said he would agree to the termination if the teacher does not respond to the invitation to appear.

Supt. Testani said he disagreed and stated there was no inconsistency in the story and the district followed the letter of the law.

In response to a question, Atty. Dugas said the employee waived her right to a full-blown evidentiary hearing. He said if the board supports the superintendent's recommendation it ought to be approved.

Ms. Altro-Dixon said as the head of HR she has the responsibility to conduct an investigation. She said she is a lawyer by training and knows how to conduct investigations and is aware of standards of proof. She described the



process she relied on in this case, starting with the concerns of Dr. Raiola. She said the employee did not offer a defense. She then deemed it appropriate to hold her own meeting and investigation. Again, the employee did not give an adequate explanation and mentioned pushing the wrong button on the keyboard, which is not true. During follow-up to the meeting additional IEPs falsified were discovered. At a subsequent meeting the employee failed to prove that she was right in what she did. The employee falsely completed three IEPs. Students with IEPs are vulnerable students who are in need of these services.

Ms. Altro-Dixon said the teacher's deliberate actions occurred because she was running out of time and this was easy for her to do. She said the actions negatively impacted three students and opened up liability to lawsuits. She said she does not take termination lightly, but her job includes addressing staff who fall far below an adequate line of performance.

Ms. Altro-Dixon said the employee was given every chance to produce anything to refute the charges and the facts presented. She said keeping her on the payroll would be just sweeping it under the rug. She asked the board to take a stand on behalf of students in Bridgeport and any other district the teacher goes to.

Dr. Fabian said he wants to make an informed decision and he is only hearing one version, while inconsistencies remain in the explanation. He said he had concerns over the supervision of this teacher.

Supt. Testani said the supervisors did their job or we wouldn't be here.

Atty. Dugas cautioned Ms. Altro-Dixon about answering a question about the employee's mental health. Ms. Altro-Dixon said the teacher's demeanor during the meetings was blasé. She said she believed the teacher knew it was near a deadline and she saw an easy way to get the work done.

Mr. Sokolovic said he was confused why we are not in executive session, particularly because we're being told about the liability to lawsuits. He said there was something seriously awry with this whole procedure. He said he had never seen employee discipline in public session.

Dr. Fabian said he expressed concerns about a public session via e-mail.

Atty. Dugas said the board does not have to go into executive session. He said the employee had an opportunity to present their story and waived their right to have a hearing. He said this created a pro forma situation without having to get into even the level of detail we've gotten into.

Mr. Sokolovic said this might be a relatively easy decision if he had one more piece of information such as a teacher saying they were not at the meeting or the notes of the HR director. He said in the future he would like to see more evidence and documentation presented if a termination is requested. He said there was not enough meat in this case to even vote.

Dr. Fabian said he takes his duties seriously and was not here to rubberstamp anything. He said he took umbrage at Atty. Dugas's comment.

Mr. Lombard said he agreed and did not want to be seen as rubberstamping. He said he feels like the board was discounted to make us take the ownership.

Mr. Taylor said he objected to Ms. Altro-Dixon, who is a licensed attorney in New York, speaking about how an IEP impacted the student when she is not an educator. He said she led him to believe she held credentials of an educator. Ms. Altro-Dixon said when an IEP is done incorrectly or not done at all it has an impact on a student's education. She said she did not do an IEP of the student.

Dr. Raiola said he would have to check with other administrators to determine if the issues had been rectified already or whether the process was still ongoing. He said he did not know if the services in the new IEP were different than the prior one.

Mr. Taylor said we don't even know if the IEPs are different and the point might be moot. Dr. Raiola said we're legally responsible to hold the PPT yearly and meet with the family. Mr. Taylor said he wants to know if the IEP has been done and the results versus what the teacher submitted. He suggested tabling the matter and getting the teacher in for further review. He said he was not happy with Ms. Altro-Dixon indicating the teacher caused the students harm.

Mr. Benejan said he agreed with Mr. Taylor. He said the board members were trying to do the best they can. He said he would like to hear from the teacher. He supported tabling the matter. He said more proof was needed.

Mr. Sokolovic suggested a motion to postpone for a period of two weeks.

Mr. Weldon said we are getting lost in the weeds in the discussion of the teacher's past performance and whether she deserves. He said the employee broke the federal law in the course of doing their job and they admitted to it. He said it was really that black and white. He noted liability concerns and potential investigation by the state Department of Education and threats to the district's funding. He noted the teacher was given every opportunity to state her case and she basically withdrew herself.

Mr. Weldon asked if the employee thought about what would happen to the students if no one ever caught it. He said this was about as egregious of a situation short of improper contact as you get. He said he would lose his job if he falsified a legal document.

Supt. Testani said he had a responsibility here and he was not going to jeopardize his job or certification or Dr. Raiola's certification. He said we have an obligation to report this and to take action. He said a report to the state certification board has been discussed. He said himself, Dr. Raiola, the HR department, and the special education department take their responsibilities to children and families very seriously.

The superintendent said there was a team of people here saying the same thing, and he felt that some folks, including himself, have been discounted tonight. He said he would stand by the recommendation of termination. He said he would consult with Atty. Dugas on his ability to take action.

Ms. Brown said she agreed there should be more presented to the board.

Ms. Allen said this was very serious and the board should give great consideration to the matter.

Mr. Benejan said if the teacher does not want to speak, we should respect that decision. If she broke the policy, he understood she should be terminated. He said Supt. Testani was trying to do the best he can for the district.

Mr. Weldon said the board can only take action on agenda items in a special meeting. Mr. Sokolovic said he would like to bring an ancillary motion. Mr. Weldon said another option is to take no action and the superintendent can decide on further steps. He said it seemed a majority of the board members did not want to take action to terminate the employment.

Dr. Fabian said the actions alleged are serious, but he has not been provided with anything other than “hey, trust me.” He said he wanted more information to make an informed decision.

Supt. Testani said he will regroup with the HR department and send a notice to the employee for another special meeting. He said the employee will not go back into a school building until that meeting is held.

Mr. Sokolovic said he was leaning towards termination, but he was looking for constructive notification of the refusal to attend the meeting and something in writing from a teacher or a parent who was falsely listed as attending the meeting. Several board members said they agreed.

Mr. Taylor asked why it wasn't reported to the state board the moment it happened. Supt. Testani said because we were trying to work with the individual and perhaps not prevent her from having a fresh start somewhere else.

Mr. Taylor said it sounded like an extortion effort if the employee was now going to be reported because the board didn't terminate her. He said to report it now was a retaliatory action.

Mr. Taylor said he would second Mr. Sokolovic's motion to table.

Mr. Weldon suggested counsel be consulted regarding reporting to regulatory bodies. Mr. Taylor said the board should get the students' IEP right away. Mr. Weldon said Dr. Raiola should be ready to speak to that next time.

Mr. Sokolovic said his motion was to postpone the matter to another meeting to be held in the future. The motion was unanimously approved.

Ms. Brown moved to adjourn the meeting. The motion was seconded by Mr. Benejan and unanimously approved.

The meeting was adjourned at 8:09 p.m.

Respectfully submitted,

John McLeod

*Approved by the board on March 22, 2021*