

Wednesday, April 3, 2019

MINUTES OF THE SPECIAL MEETING OF THE
BRIDGEPORT BOARD OF EDUCATION, held April 3, 2019,
at Bridgeport City Hall, 45 Lyon Terrace, Bridgeport,
Connecticut.

The meeting was called to order at 6:01 p.m. Present were Chair John Weldon, Vice President Jessica Martinez, Secretary Joseph Sokolovic, Joseph Lombard, Hernan Illingworth and Maria Pereira. Sybil Allen arrived subsequently as noted.

Supt. Aresta L. Johnson, Ed.D., was present.

The first agenda item was on a letter of interest submission to the Commissioners Network for Barnum, Blackham, Bryant, Johnson and Waltersville Schools.

Dr. Johnson said correspondence was received three weeks ago asking superintendents across the state to submit a letter of interest for entry into the Commissioner's Network. She said the following Monday, March 18th, she met with Marlene Siegel and Nadira Clarke to discuss possible entry of district schools. A webinar was held on March 22nd with the identified five schools' principals. On March 29th, the letters of intent were due from the schools to the grants office for final review.

Dr. Johnson said the Commissioner's Network packets have grown over the years and require significant information and a significant review.

Dr. Johnson said Bryant was identified because of the leadership of Victoria Egri, principal. She said Ms. Egri has taken advantage of grant opportunities in the past.

Ms. Pereira said the district had never submitted more than two schools in a year for the Commissioner's Network. She said there had been little to no improvement in the five district schools entered into the Commissioner's Network. She said the proposal should be presented to the School Governance Councils (SGC) because they have a right to participate.

Ms. Martinez said she believed SGCs have nothing to do with the Commissioner's Network; a turnaround team is put in place for planning. Ms. Pereira said SGCs are referenced in the C.G.S 10-333 and they are supposed to assist the principals with anything academic or climate-related. Ms. Martinez said she was involved in the turnaround process at Marin School.

Ms. Pereira said she was concerned because once the letter of interest is submitted there is no mechanism to withdraw it. Dr. Johnson said if the school is selected for the network, then a turnaround committee is created.

Ms. Pereira said the SGC statute calls for the SGC to assist the principal in making programmatic and operational changes for improving the school's achievement. She said although there was not a large window, the state told her that the Commissioner's Network process takes place every March.

Ms. Clarke said in the last cycle Roosevelt, Bassick and Harding were proposed. Ms. Pereira said only Roosevelt came to the board. Dr. Johnson said there is no guarantee

the schools will be accepted into the network. Ms. Pereira said it was the state's sole discretion. She said the parents and staff should be engaged on a broader level before the letter is submitted.

Dr. Johnson said the BCAS and BEA unions were not contacted for the letter of interest. She noted when Roosevelt entered the network all the teachers and administrators remained in place. She said if replacing Ms. Egri was a determining factor in entering the network she would decline the opportunity.

Mr. Illingworth said he agreed with Ms. Pereira to a certain extent. He said he was always confused about the process where the request is made to join the Commissioner's Network and what role the board has after the application is made. He said he did not see the harm in trying to get the input and buy-in from staff and parents about whether they want to join the Commissioner's Network. He said it is frustrating because he just found about the issue yesterday and rushing to get things done bothers him. He said these types of matters should be brought to a committee first and a better job could have been done with this.

Mr. Sokolovic asked if the board is bound after the state approves the letter of interest. Dr. Johnson said she did not believe the board would be bound.

In response to a question, Ms. Egri said the Commissioner's Network process was started in 2013 for Bryant School. She said the plan was created and approved by the committee, but the state denied entry.

Ms. Allen arrived at the meeting.

Mr. Sokolovic said he was more concerned about being trapped in the network than being let in. Dr. Johnson said the letter of interest does not get us in. She said there is still time to vet the process with teachers and parents.

Ms. Martinez said during the Marin process she was not happy with the plan that was created, even though she believed the school needed the extra money.

Ms. Pereira said the statute indicated the commissioner can pick any of the schools in the lowest 25 percent in the state but can give preference to schools that volunteer. She said they can take up to five schools. She said the statute does not contain a mechanism to withdraw after the letter of interest is submitted.

Ms. Pereira said the principals of the schools were told two or three days ago to provide the information for the letter of interest and did not fully comprehend what it means to be part of the network.

Ms. Martinez said there were pros and cons to being part of the Commissioner's Network. She said the biggest problem is how we sustain things after three to five years once the money is gone.

Ms. Pereira said even though she had never voted for a Commissioner's Network School, she voted for Roosevelt School entering because they came to the board and had a long conversation and there was support at the school.

There was a disturbance at this point. Albert Benejan approached the board and made charges against Ms. Pereira. Ms. Pereira asked Mr. Benejan to move away from her. Mr. Weldon asked Mr. Benejan to be seated.

Dr. Johnson said she wanted the board to have a level of comfort with the process and if the board wanted to wait until next March it was fine. She said a webinar explaining the process was held on March 22nd with all the principals and Ms. Clarke followed up with one-on-one meetings.

Mr. Sokolovic said there was a tight deadline. He suggested in next year's cycle there be a presentation to the Teaching & Learning Committee in January about proposed schools. Dr. Johnson said she was not aware the process takes every March and she could plan accordingly going forward.

Ms. Martinez said she loved Ms. Egri and was in support of the letter of interest, however, she was tired of the board being hit last minute with deadlines.

Ms. Pereira asked if Dr. Johnson would rank the five schools from most important to least important. Dr. Johnson said she was not doing so at this time. She said if Desi Nesmith at the state asked she would consult with Ms. Clarke and Ms. Siegel on which schools to prioritize.

In response to a question, Dr. Johnson said Roosevelt got up to \$50,000 for its planning year. Ms. Clarke said the money allocated to Commissioner Network's school has shrunk. She said Columbus has received \$630,000 this year. Ms. Egri said Bryant School had 353 students. Ms. Martinez said when Marin went in \$3 million was received for three years. Ms. Pereira said she had seen years in the past when the state only took only two schools statewide.

Mr. Illingworth said he would support the letters of interest. He said was bothered that we did not see the community buy-in ahead of time and with the rush to meet a deadline.

Dr. Johnson said she would reconvene with the principals to have conversations with the staff and parents about the letters of interest. She said if there is not enough support at the school even then we do not have to go forward with a plan. She said she could contact Mr. Nesmith and pull the letter off the table if necessary.

Ms. Pereira asked that the state statute on SGCs and the Commissioner's Network be provided to the principals. Dr. Johnson said there would be a planning meeting with the principals.

Ms. Pereira moved *"to approve the letters of interest for the Commissioner's Network for Barnum, Blackham, Bryant, Geraldine Johnson and Waltersville Schools."* The motion was seconded by Ms. Martinez and unanimously approved.

The next agenda item was a training session on the Connecticut Freedom of Information Act. Atty. Floyd Dugas and Atty. Bryan LeClerc of Berchem Moses were present. Atty. Dugas said Atty. LeClerc serves as assistant town attorney for Stratford and is a former moderator of the RTM in Fairfield.

In response to a question, Atty. Dugas said the board was not being charged for the presentation.

Atty. Dugas said the purpose of the Freedom of Information Act is so that the people's business takes place in the open and records are available.

Atty. Dugas spoke on the definitions of a meeting under the FOIA. He noted e-mails involving a quorum of the board must be handled carefully to avoid creating a meeting. He

said if a quorum of the board was physically present together a meeting would only be created if there was discussion of the matter over which the board has supervision, control or advisory powers.

Atty. Dugas said the term non-meeting sounds like oxymoron, but in order for the FOIA to apply there has to be a meeting. Such non-meetings would not have to be posted or be documented with minutes; examples are personnel search committee for an executive-level employment candidate; chance meetings or social meeting neither planned or intended for discussing official business; communications limited to notices of meetings; and strategy or negotiation with respect to collective bargaining.

Atty. Dugas said the regular meetings are those noticed to the town clerk by January 1st of any year. He said noted the board's policies call for greater notice of agenda items than required under the FOIA. He described special meetings, which require 24 hours notice; no other business than agenda items can be discussed. He noted that the board's bylaws indicate a majority of the members must agree to holding an emergency meeting; the discussion must be limited to the emergency topic and the minutes must be filed within 72 hours. He said such emergency meetings should be confined to literal emergencies.

Atty. Dugas then spoke on executive sessions. He said the law interprets exceptions to the FOIA for executive sessions very narrowly. He said the most common reason for an executive session is the appointment, employment, performance, evaluation, health or dismissal of an employee. Another reason for an executive session is strategy with respect to pending claims or litigation.

In response to a question, Atty. Dugas said the discussion has to be specific to a person, not discussion of elimination of a position.

Atty. Dugas said issues involving security and discussions for the lease or sale of real estate can also qualify for executive session. He said discussion of public records that can't be disclosed would also qualify, including legal opinions.

Atty. Dugas discussed the requirements for conducting business in executive session. He said when going into executive session the business has to be identified, along with who is invited to participate. In response to a question, he said if a member leaves the executive session there does not need to be another vote to approve it.

Atty. Dugas said a member participating via a speaker phone is permissible unless the board's bylaws prohibit it. Mr. Weldon said it is not prohibited by the bylaws. Atty. Dugas said straw votes are not allowed in executive session.

In response to a question, Atty. Dugas said members of the same political party may caucus together, but not invite anyone else into the caucus.

In response to a question about the Ad Hoc Committee on Males of Color, which contains only one board member, Atty. Dugas said he did not believe work sessions of the committee had to be noticed.

Mr. Sokolovic said he viewed the ad hoc committee as designed to get a consensus of the members, with himself being the only member to vote on issues and bring them back to the board. Mr. Weldon described the committee as

a joint board-staff effort with Mr. Sokolovic serving effectively as a moderator. Mr. Sokolovic said because of the number of community volunteers who are not elected officials it is harder to compel attendance.

Ms. Pereira said the committee's meetings include votes. Atty. Dugas said typically a subcommittee is a designated number of people. Mr. Sokolovic said perhaps he would keep the membership down to three and have everyone else referred to as participants.

Atty. Dugas said it would qualify as a proceeding of a public agency and the meetings must be noticed.

Atty. Dugas said the general rule is that any record of the board or any public agency are subject to disclosure with some exceptions. He said the public can be charged for copies. He noted personnel files are subject to disclosure, however, medical information is not.

Atty. Dugas said the FERPA law prohibits the disclosure of personally identifiable information regarding a student.

In response to a question, Atty. Dugas said probably the reason the district has to release names and addresses of students to charter schools is because it is considered directory information. He said there may also be a statute relating to this. He said he would look into that issue.

In response to a question, Atty. Dugas said board members had the same rights to personnel files as members of the public, but evaluations of teachers and administrators are not disclosable. Evaluations of the superintendent and non-certified staff can be requested by the public.

Atty. Dugas described the process for providing records to the public. The employee and their union have to be notified if it is believed the request violates the privacy of the employee. He said the same process would apply to a former employee.

Ms. Pereira said the board was copied on a FOIA request from a Fairchild Wheeler parent. She said the superintendent's office directed him to the city's portal. Atty. Dugas said he would defer to the city attorney's office on this issue. Mr. Weldon said if the city has a mechanism for requests it is appropriate to redirect requests to the city. Ms. Pereira said the board should create its own portal.

Atty. LeClerc said any electronic device used for communication purposes by board members would be eligible for a FOIA request.

Atty. Dugas discussed FOIA aspects of retention of records. He described transitory and formal and permanent communications as defined by FOIA.

In response to a question, Atty. Dugas said he did not see anything on the retention schedules about video. Atty. LeClerc said he was not aware of any requirement for the board to retain recordings of meetings after the minutes are created.

Ms. Pereira said she believed that only people who are offering testimony or serving as a witness have a right to enter executive session. She said this has been a constant problem with this board. She said Mr. Chester, chief talent officer, participates in executive sessions and does not say anything. Atty. Dugas said someone may participate in an

executive session if the board feels they are needed for opinion or testimony.

Ms. Pereira said the FOI commission has ruled that non-committee members may not enter executive sessions of committees. She said the Personnel Committee of three members is now meeting in executive session and making recommendations for the superintendent, which is problematic because this should be done by special meetings for the board, which is appointing agency.

Mr. Weldon said the board's policies say the board interviews and passes a recommendation on to the superintendent for positions of principal and above.

Ms. Pereira said when the policy was created all board members were allowed to participate in the interviews. Atty. Dugas said the board had the right to delegate authority to subcommittees.

Ms. Pereira said School Governance Councils are required to notice their public meetings, however, the board has the right to request an exception for them. She said this is something that should be done because if the SGCs meet without a notice they are violating the law. She said there's no urgent pressing reason to have SGC meetings noticed with formal meetings.

In response to a question, Atty. Dugas said a letter claiming the board committed slander would be considered formal notice.

Ms. Pereira said a board member requesting documents from the municipality cannot be charged.

Ms. Pereira noted the votes of the board are required to be posted in the superintendent's office within 48 hours.

Ms. Pereira said the board had always established the regular meetings schedule in November because there is a thirty-day waiting period from the day when it is filed to when the first meeting can be held.

Ms. Pereira asked if board members could have side lengthy conversations off the record with other members while a meeting is in session. She said this has been a big issue in New Haven. Atty. Dugas said he did not want to discuss specific situations, but it is a practice that should be discouraged. He said he believed a note passed between board members would be transitory and not have to be preserved.

Ms. Pereira said Atty. Mooney told the board that it could hold an informational session of a committee when a quorum is not present. Atty. LeClerc said he would not advise boards to do that. Ms. Pereira said the board's various law firms had provided conflicting answers to the question. Atty. Dugas said he was not aware of anything that required a quorum of a subcommittee to do business.

Ms. Martinez said this situation came up because the public and press were present and she wanted them to hear information, even though decisions are not being made.

Atty. Dugas said unless the bylaws require a quorum for a subcommittee meeting the definition of a meeting is any proceeding of a public agency, which does not require a quorum.

Atty. LeClerc and Atty. Dugas said the case law is not clear on this. Atty. LeClerc said the Freedom of Information Commission has delivered inconsistent opinions over the years.

Ms. Pereira asked that the attorneys report back with an opinion.

Atty. LeClerc said the minutes are only required to state the date of the meeting, the time of the meeting, who was there, and the recorded votes. He said he advises this practice. Ms. Pereira asked if that was fair to the public. Mr. Weldon noted it was what the law requires. Atty. LeClerc said otherwise the minutes are very subjective. Several board members said the person preparing the board's minutes does a very good job.

Ms. Pereira said Atty. Brochu indicated the board would lose at the Freedom of Information Commission if the board conducted individual communications such as e-mails. Atty. LeClerc said Mr. Hennick at the state has indicated that individual conversations are technically illegal meetings, including things such as conversations in the parking lot. He said there are rulings that go both ways on this situation.

The next agenda item was on Robert's Rules.

Atty. LeClerc said Henry M. Robert, a captain in the U.S. Army, created rules of parliamentary procedure in 1876. He said the rules allow bodies to have democratic rule. The majority decides, but the minority has rights. He said in general the body can make a bad decision, but it has to be done correctly.

Atty. LeClerc noted the board has certain bylaws that supersede Robert's Rules.

Atty. LeClerc discussed some general rules. Members can only address the motion on the floor. Members can't speak unless they are recognized by the chair. He said a request to move the question yelled out is not in order. He suggested members not refer to themselves by first name which brings things to a personal level.

Atty. LeClerc said chairs have to be impartial. He said it is up to the chair to pick who they are going to call on. He said the chair should state the motion as he understands it. He said every member has the right to debate. He said debate on motions have to be germane to the motion. He said the chair should announce the results of the motion.

Atty. LeClerc said a two-thirds vote is required to move the question and the speaker cannot be interrupted.

Ms. Martinez left the meeting.

Atty. LeClerc said motions to table require a majority vote and are not debatable. He said tabling is different from postponing to a date certain.

Atty. LeClerc said privileged motions are motions that don't relate to pending business such as fixing a time to adjourn or to recess. He said under Robert's Rules the chair can call a brief recess or ask the body to stand at ease. He said subsidiary motions to move the question or limit or extend debate require a two-thirds majority. He described incidental motions such as dividing a question and appealing the ruling of the chair.

Atty. LeClerc said it was important to state the exact language of the motion. He said long motions could be put in writing before being read.

Atty. LeClerc said the chair has the duty to make sure the motion is in order and is correctly phrased. He said the chair should restate the motion.

In response to a question, Atty. LeClerc said it was appropriate for the chair to state the language of a motion and have a member state "So moved." He said this commonly comes up when the chair senses confusion in the body.

Mr. Weldon said the chair is allowed to make a motion on his own in the board's bylaws. He said he typically refrains from it.

In response to a question, Atty. LeClerc agreed the purpose of Robert's Rules is to allow the minority to be heard. Mr. Illingworth said he did not like the word "minority" because the members are not minorities. Atty. LeClerc said the statutes talk in terms of minority party representation. Mr. Sokolovic said he thought of it as minority opinions regardless of party affiliation.

Mr. Illingworth said members who know they are going to be on the losing side of a motion can engage in lengthy talking and hold the meeting hostage. He said he always thought that discussion is stating why he is in favor of something or not in favor of something, but at some point we purposefully do it to hold things up.

Atty. LeClerc said a motion to move the question could be used and the chair could indicate the member is done

speaking. If the member does not like it, they can appeal the ruling of the chair. Ms. Pereira said the board was presented with 51 pages of bylaw changes without amended copies to compare. She said she was the only recognized speaker and was in the middle of going through the changes before anyone else had an opportunity to speak. A board member interrupted to move the question. Ms. Pereira said she responded she had the floor and the chair did not take action. She said it was outrageous to interrupt someone when one of us has the floor.

Ms. Pereira asked, if you have a supermajority, what are you worried about. Atty. LeClerc said he would not opine if there was going to be litigation. Ms. Pereira said a case has not been filed yet, but work is being done on filing one.

Atty. LeClerc said Robert's Rules indicates someone cannot interrupt a speaker who has the floor, however, if the chair states they did not interrupt the member the member has to appeal the decision of the chair. He said it's up to the body to rule on the chair's interpretation of Robert's Rules.

In response to a question, Atty. LeClerc said the chair has the right to call on members to speak.

Atty. LeClerc said amendments have to relate to the main motion. He said the amendment should be voted on before voting on subsequent amendments.

Atty. LeClerc said the chair should state the results of the vote.

Atty. LeClerc said the maker of a motion can always withdraw its motion at any time. Ms. Pereira said if the motion is seconded, the withdrawal has to be seconded.

Atty. LeClerc said there is no such thing as a friendly amendment; it is an amendment, period.

Atty. LeClerc said the point of order is often misused. He said a point of order relates to a violation of a rule or a bylaw of the body. He said often items that should be brought out in debate are stated as part of a point of order.

Ms. Pereira said there was a big problem on the board with members interrupting the speaker because they don't like their point of view or perspective.

Atty. LeClerc said the chair can always adjourn a meeting if there's no business.

Atty. LeClerc said a member making a motion to reconsider must have voted on the prevailing side. He said if action was taken on a motion, it can't be taken back.

In response to a question, Atty. Dugas said a motion to rescind requires a two-thirds vote unless it is in the notice of meeting.

Atty. LeClerc said members may only speak once on a motion to appeal the ruling of the chair. The chair gets to speak twice on such an appeal. He said the chair is allowed to vote on an appeal of his decision.

Atty. LeClerc said a vote of no confidence is not allowed under Robert's Rules. He said once the question has been stated to the body by the chair, no further amendments are allowed.

Atty. LeClerc said minutes capture what was done, not what was said. Atty. Dugas said that doesn't mean you can't do more in minutes.

Ms. Pereira asked if an ancillary motion is required to be on the agenda in order to take action. Atty. LeClerc said such motions did not have to be on the agenda because the public is on notice of the meeting.

In response to a question, Atty. LeClerc said an agenda item to approve the minutes of February 25th could not proceed if the minutes on the agenda were listed as February 24th. Ms. Pereira noted approving minutes would not be an urgent matter.

Atty. Dugas said Atty. LeClerc's answer to Ms. Pereira was in relation to Robert's Rules, but we have to remember we're always dealing with the FOIA. He said if someone is raising a question in a special meeting that is not on the agenda it is not a procedural question under Robert's Rules; it's raising a substantive question that's not on the agenda.

Ms. Pereira said appealing the ruling of the chair is not required to be on the agenda because it is an ancillary motion. Atty. Dugas said he knew the meeting in question. The issue was not appealing the ruling of the chair because Ms. Pereira's motion included a substantive ruling that wasn't on the agenda. Ms. Pereira said she made a motion to appeal the ruling of the chair and there was a subsequent debate. She said when she asked the chair to rule, Atty. Dugas interjected and said a vote was not allowed under FOIA because it was not on the agenda.

Atty. Dugas said Ms. Pereira wanted the chair to rule on whether he violated the Freedom of Information Act. Ms.

Pereira said she would be going to the Freedom of Information Commission to get a ruling on the issue.

Mr. Weldon said the vote was on whether the chairman had done something wrong, which was not on the agenda. He said it was not stated as an appeal of the chair. Ms. Pereira said it was stated as an appeal and she has the transcript.

Atty. Dugas said appealing the ruling of the chair is one thing, but calling for a sanction or a ruling about the chair is another.

Ms. Pereira moved the meeting be adjourned. The motion was seconded by Mr. Sokolovic and unanimously approved.

The meeting was adjourned at 8:55 p.m.

Respectfully submitted,

John McLeod