

Saturday, January 27, 2018

MINUTES OF THE SPECIAL MEETING OF THE BRIDGEPORT BOARD OF EDUCATION, held January 27, 2018, at Housatonic Community College, 900 Lafayette Boulevard, Bridgeport, Connecticut.

The meeting was called to order at 9:20 a.m.

Present were Chair John Weldon, Secretary Jessica Martinez, Sybil Allen, Chris Taylor, and Joseph Sokolovic. Maria Pereira and Dennis Bradley arrived subsequently as noted.

Supt. Dr. Aresta L. Johnson was present. Gary Brochu of Shipman & Goodwin was in attendance

Mr. Weldon said the specified purpose of the meeting was to provide basic training for new board members.

Atty. Brochu said he viewed the training as at least intermediate level, not basic. He noted he distributed for board members a pretty thorough summary of Robert's Rules and Freedom of Information requirements on meetings.

In response to a question, Atty. Brochu said he was a partner in Shipman & Goodwin and a member of the school law group, which is his exclusive area of practice. He said he served on the board of education in his community for 19 years and was chair for 17 years. He said he regularly presents at CABA conferences and at the National School board Association.

Ms. Pereira arrived at the meeting.

Atty. Brochu said he received his undergraduate degree and MBA at the University of Connecticut. He said he went at night to the University of Connecticut Law School while working in the office at Bridgeport Machines on Lindley Street.

Atty. Brochu then discussed the statutory responsibilities of board members. He noted the right to a free public school education is a constitutional right, so the state is responsible for that. The state assigns responsibilities for doing that and enacting its statutes through the boards of education. The chief executive officer of a school district is the superintendent of school and is described as such in the statutes.

Supt. Johnson noted the importance of the board establishing what their goals are so there is coherence and alignment when the budget is developed.

Atty. Brochu discussed pursuing objectives that align with the missions of boards of education or other organizations because time and resources are finite. He described how yearly goals were established in his tenure on a board of education, which included objectives in those categories. Every year there was an evaluation cycle which included the superintendent and self-evaluation by the board.

In response to a question, Atty. Brochu said the city does the collective bargaining for noncertified employees of the district. The administrators and teachers bargain with the board. He said when the board approves a collective bargaining agreement, under Connecticut law it has to be filed with the city clerk and then the city has thirty days within which to reject it.

Supt. Johnson noted the board doesn't have a seat at the table in the negotiations with noncertified employees. Atty. Brochu described that as unique. Dr. Johnson said she believed we should have a say due to the impact on financial resources.

Ms. Pereira said the vast majority of NAGE union employees are employed by the board. The last contract negotiated by Mayor Finch was going to cost the city \$200,000 and cost the board \$2 million.

Atty. Brochu noted the Bridgeport city charter probably gives more power to the city than most city charters. He said he was not an expert on the city charter of Bridgeport. Ms. Pereira said she didn't

believe this was in the city's charter. Atty. Brochu said it's not uncommon for noncertified employees to be employees of municipalities.

Mr. Weldon asked if there was anything prohibiting the board from negotiating with NAGE and said perhaps changes to that could be explored.

Atty. Brochu said the costs of collective bargaining contracts can be kind of guessed at based on other settlements, and likewise with health benefits, however, the contracts themselves are typically quite lengthy about the grievance process, work rules, seniority and other issues which impact how the board runs the district.

Ms. Pereira said she wanted to see the NAGE contract negotiated to employ security guards for ten months, and the city went out and negotiated a contract that kept them employed for twelve months, which cost a lot of money.

Atty. Brochu noted the grievance process includes the board as a step in the process. Should the board choose to sit on such matters as expulsions, termination of a teacher under C.G.S. 10-151 or residency or transportation hearings, it must act as an impartial jury. At a grievance hearing the board is not impartial because it is a signatory to a collective bargaining agreement.

Dr. Johnson noted in a grievance action by BCAS, it was not BCAS vs. the superintendent, but BCAS vs. the board.

Atty. Brochu said the board has a statutory responsibility to create a superintendent position and to hire a superintendent. He said the superintendent is the only employee of the board. Other employees are supervised by the superintendent.

In response to a question, Atty. Brochu said the board is required to evaluate the superintendent, but how it is done is up to the board. He noted the law calls for evaluation to take place every year, however, unfortunately some boards are sloppy about it.

Mr. Weldon said Dr. Johnson worked with the board on a rubric to

use as a basis for her evaluation. He said there needed to be a distinction between overarching goals and the day-to-day things an employee is evaluated on.

Atty. Brochu noted there are minimum levels for graduation set by the state, but the board can add additional requirements. Supt. Johnson said this was done recently with the creation of the graduation requirement for African-American and Caribbean-Latin studies.

Atty. Brochu said there are certain statutory requirements the board must do, so it must establish policy around that. Additional policies beyond those required by the state can also be created by the board.

Atty. Brochu said characteristics of good policies include providing some flexibility. He said boards get into trouble by trying to put too much into a policy, which should be a broader general statement, allowing for discretion.

Mr. Weldon said there is a difference between policy and procedures. Atty. Brochu said since the board is the only one who can change a board policy some policies can clog the ability of a policy to be flexible. He noted if the board is engaging in low-level activities, there's a vacuum for engaging in the high-level activities.

In the area of board member conduct, Atty. Brochu said board members do not have individual authority. They are a collective body whose authority runs when they act together. The board can authorize a specific action or individual to do something, but that is very unique. He said 10-35 provides indemnification and defense for employees if someone sues a board member. Board members are counted as employees for this purpose. The indemnification only applies if the person is acting in their capacity as a board member.

Mr. Sokolovic said recently there was a social media post that he wanted to ask about. Mr. Taylor said it was his post. Mr. Sokolovic said a parent posted something about an issue with a weapon, and board members commented on the matter and said they were committing to certain actions. He said he did not appreciate being tagged on the matter because he would not comment before he found out the facts from the superintendent.

Mr. Taylor said he was a very active resident and taxpayer. He said he did not give up his constitutional rights when he became a board member. He said he was speaking as a frustrated resident, not a board member. Ms. Martinez said she was the one who said we had to look into it.

Atty. Brochu said he agreed that while he served on his board he did give up his rights a parent, but board members should be conscious there is not a single moment you will be interacting with a teacher or staff member or a community member where they're not conscious you're on the Board of Education. He said public pronouncements on an issue that involves the board that is going to be seen by the public, rightly or wrongly, as a statement from the board. He said his point was to be conscious of that.

Atty. Brochu noted you don't have to do something wrong to be sued. He suggested board members be thoughtful and careful on social media, understanding that whatever you say will be perceived as coming from the board.

Mr. Weldon said he had seen social media used to share information in a well-intentioned effort to be transparent and open with the public, but he noted board members become privy to some information in reliance of it being kept amongst the board. He said there may be considerations at the administration level that the board is not aware of for why information is kept confidential. He said it's dangerous when board members presume to put that information forward because the information may not be accurate.

Atty. Brochu said board members should be particularly careful about things that don't fall into their wheelhouse because not everything in the school district is a board-level issue.

Mr. Sokolovic said commenting before he has all the information and assuming things are not being done would undermine Dr. Johnson, who may have been following through on an issue. Mr. Taylor said Mr. Sokolovic was misquoting him.

Ms. Martinez said we have an obligation to the community. She said

there is a gap of truthful knowledge and communication from the board to the community and vice versa.

Atty. Brochu said his job as a board member was not to solve community members' individual concerns because almost always the concerns are at an administrative or teacher level that is not privy to the board. However, the board member can listen to the concern and steer them in a way that's going to be more effective. He said an effective approach can be to refer the community member to the appropriate person to bring the concern to and to alert the person in question that they would be hearing from the community member.

Ms. Pereira said the board policy is clear that parents would go to a teacher first, then to the principal, and then to the assistant superintendent. She said the board members all are approached about issues in schools. She said board members have to call the superintendent first to notify her that you are reaching out to an administrator such as Mr. Wallack or Mr. DiDonato.

Ms. Pereira said she had seen board members post terrible fights in our schools on their social media page.

Atty. Brochu said he did not publicly criticize a superintendent because he wanted to be effective in his dealings with the superintendent. He said an evaluation of a superintendent can be positive or negative, but it should be done in a way to be effective as a board.

Ms. Pereira said the superintendent does not work for any one of us, but for nine of us collectively. She said a board member cannot tell the superintendent or a staff member what to do.

Atty. Brochu said the concerning thing is when individuals on the same board have different understandings. Mr. Sokolovic said there was a difference between talking to somebody and giving them a direct order.

Mr. Weldon said Mr. Taylor said he hated an administrator at a public meeting and there would be a potential problem if the person lost his job. Mr. Taylor said he hated Alan Wallack, didn't like the guy, and would

recuse himself on any vote that pertains to him. He said he was very honest and was not going to change the way he is. He noted he had been sued a million times.

Mr. Weldon said he only brought it up to be aware and people can ultimately say what they want.

Atty. Brochu then spoke on board member conduct. Board members cannot be removed by a vote of the board. Elected officers can be removed from their positions. Committee members, generally under Robert's Rules, can be removed from committees. The board can vote to censure a member. All these things should have some basic due process.

Atty. Brochu said the primary conflict of interest consideration is statutory. A board member cannot be employed in any manner by the Board of Education. Any board member who works for and is paid by the board by law is automatically removed from the board. He said he would provide the specific number of the statute to Dr. Johnson

Atty. Brochu said it was an unresolved issue if conflict of interest provisions in a city ordinance, not the city charter, can apply to board members. The board itself can create specific ethics provisions. The right of recusal lies with the member; the board can't force a member to recuse themselves. However, if a member who is not impartial participates in a decision, there could be an appeal based upon that.

Atty. Brochu said the general rule of thumb is, if a member votes on an issue and the issue is going to be not what the decision is, but the fact that they voted, that's generally a reason not to vote. He urged the board members not make themselves the issue.

Ms. Pereira said she recused herself from the termination matter of Carmen Perez-Dickson because Ms. Perez-Dickson called her and gave her her version. She added board member Ken Moales recused himself for the same reason. Ms. Pereira said she didn't think highly of Ms. Perez-Dickson due to past experience and it was best that she did not participate.

Atty. Brochu said by law the board has to have a chairperson and a

secretary. The board policies should outline the duties and responsibilities of the chairperson. The chair usually conducts the meetings, develops the board agendas, acts as the board's spokesperson, acts as the parliamentary officer in a meeting, and is the conduit in terms of dealing with the superintendent. The chair could be authorized to act on behalf of the board subject to a specific authorization, such as signing a contract.

Atty. Brochu quoted a writer, John Carpenter, who said that boards tend to be incompetent groups of competent people. He said governance is about how members work together effectively.

Atty. Brochu said the board has collective authority when it meets in a public meeting. The board's meetings are the most visible aspects of its work and communication with public. He noted the time and focus of district leadership is the most finite resource in a district. Boards must distinguish between leadership and management. He said the board is not capable of managing a district meeting twice a month for a few hours.

Atty. Brochu said a meeting is whenever a majority of the board is gathered to discuss board business. He said a meeting does not include an executive search committee or gathering at a social event or sporting event. If the board is discussing strategy related to collective bargaining, it is not a meeting. If parties conduct a caucus, it is not a meeting. He said a caucus can generally include only include board members.

Atty. Brochu said per Freedom of Information there are three types of meetings: regular, special and emergency. An emergency meeting would be less than 24 hours notice. He said if you ever think you have an emergency, call your attorney.

The board votes to adopt its schedule for the year and files the regular meetings schedule with the secretary of state. Because the regular meetings are posted beforehand, items can be added to the agenda of a regular meeting with a two-thirds vote.

Atty. Brochu said the basic difference with a special meeting is it's not a regularly scheduled meeting, which means you can add an item to

the agenda.

Atty. Brochu said board agendas have to set forth what you're going to be doing at the meeting. Broad categories are not appropriate; the agenda items have to be specific enough to tell the public what will be talked about. He said there's probably more violations of FOI about just putting "personnel matter" on an agenda than any other subject.

Atty. Brochu said if someone brings a complaint within thirty days of a violation, the matter goes to the FOI commission. A hearing will be assigned before an FOI officer, who will issue a draft written decision. Then the Freedom of Information Commission will decide whether to accept or reject or modify the proposed decision. If a violation is found, if it's a first violation it's generally an admonition to not do it again. The commission can also order training. Fines can be imposed for intentional or repeated failure to follow FOI, which only occurs a handful of times a year. An action that was taken in violation of the FOI law can be invalidated. The thirty days would be calculated from when knowledge of the violation occurred such as in the case of a secret meeting.

Atty. Brochu talked about the circumstances under which the location of a meeting can be changed, including posting a notice in the room the meeting was scheduled to take place in.

Atty. Brochu said an executive session is a way to address an agenda item. A two-thirds vote is needed to go into executive session.

Ms. Pereira said it was very rare that the board must go into executive session. She added the board could disuse every litigation matter in public, which she said may not be a smart thing to do. Atty. Brochu said due to the provisions of the Federal Education Rights and Privacy Act, the general rule is any student information cannot be released without permission of the parents, which may be another reason for an executive session.

Atty. Brochu said there were a handful reasons the board could meet in executive sessions. It has to be an agenda item, the board has to specify who comes into the executive session, if anyone; the board

cannot take action in executive session, nor can there be a straw vote. He said board members are not to disclose what occurs in executive session outside of executive session. He reminded the board of the necessity to be respectful of the public in regards to executive session.

Atty. Brochu said the reasons for holding an executive session includes attorney-client privilege. If the board is discussing an individual matter of personnel, the person has to be identified and you have to contact the person ahead of time. The employee can basically veto the matter being handled in executive session and request a public session. He does not have the right to insist on the matter being in executive session; he does not have the right to make the board go into executive session. He has the right to make the board hear the matter in public session.

Atty. Brochu said other reasons for which executive sessions are permitted include documents related to collective bargaining; confidential information, which can also include students; discussion of security issues or pending litigation. For litigation, the litigation has to be identified and it actually has to be a letter threatening to go into litigation or the actual suit or claim.

Atty. Brochu then spoke on electronic communications. He said there was a recent FOI decision which ruled that a meeting between a board chair and a city council chair was an illegal meeting because FOI concluded they were meeting with the authority of their agencies. He said one board member texting another board member during a meeting is a discussion outside the hearing of the public and not permitted. Ms. Pereira said that would apply to passing notes. Atty. Brochu said that would be the case if it's about board business.

Atty. Brochu said one of the most common FOI violations are committed by board members in electronically communication when e-mail chains include a quorum of the board members.

Atty. Brochu said individual phone calls to a quorum of members would likely be found a violation by FOI.

He urged board members to be thoughtful about it.

Atty. Brochu said discussions of scheduling and timing of meetings is appropriate among board members electronically and would not be a violation of FOI. Discussion of a substantive nature of board business on e-mail involving a quorum of members is an illegal meeting. The same would apply to forwarding articles or items in support of an agenda item.

Atty. Brochu said you're just nuts if you use "reply all" on e-mails because at some point there will be a violation.

Atty. Brochu said board members' communications either on personal computers or district e-mail are subject, if it involves board business, to the public getting a copy of it. He gave an example of another community where a request was made for personal emails covering a year and a half. One of the remedies for deleted e-mails would be the need to pay someone to restore the deleted e-mails. A board might refuse to cover the cost and place the responsibility on the member who deleted the e-mails.

Atty. Brochu said a general thumb is, if you put anything in writing, understand that it could be published.

Mr. Weldon said there were issues around social media, including discussions or tagging. Atty. Brochu said if you're discussing board business with another member on social media, you're acting as a board member.

Atty. Brochu said FOI has not decided the issue if there's a long comment thread on social media and five board members comment on the matter.

Atty. Brochu said FOI is not friendly for us as public agencies; they err on the side of finding for the complainant

Atty. Brochu said if board members in person or electronically are discussing board business and there is a quorum it's going to be found to be a meeting. He said the same rule would apply to a board committee. Letters to the editor would be considered a one-way communication and not a violation.

Mr. Bradley arrived at the meeting.

Concerning public comment, Atty. Brochu said you don't have to have it. The board is required to meet in public; it is not required by law to have the public participate. He said regulation of public comment has to stop on the content of the speech. Content-neutral things like time limitations, allowing only residents or only residents and parents, allowing only comment on agenda items; or prohibiting comments about personnel are allowed. But the restrictions must apply to positive or negative comments.

Atty. Brochu said if a member of the public says something libelous, that's their problem; not the board's.

Atty. Brochu said the board can't have a discussion about an item brought up in public comment if it is not an agenda without adding to the agenda by a two-thirds vote.

Atty. Brochu noted public comment is not the only way to engage the public. Public forums, committees, or surveys could be used to gather input from the public. He said public comment should not be used to avoid the proper channels and procedures. Board members could explain to the public where they should go.

Ms. Pereira said after a young lady spoke about a matter at a recent meeting, Mr. DiDonato spoke with her privately because it involved a special education issue. She said the person who's appropriate should be talking to that person.

Atty. Brochu said there is always going to be a hot issue every week, however, the board is the leadership team and it should worry about which direction you're heading in.

Atty. Brochu quoted Peter Drucker, who said there is nothing so useless as doing efficiently that which should not be done at all. He said agendas should be filled up with things that are important, while minimizing votes and discussion that aren't necessary, trivial or best addressed at the non-board level.

Mr. Taylor asked why do the board's agendas include plays and

presentations by students. He added he loves to see the kids. Atty. Brochu said as a board chair he tried to have recognitions oriented towards the theme of the meeting.

In response to a question, Atty. Brochu said committee reports could be written out ahead of time. He suggested relating agenda items to the goals and mission of the board, eliminating unnecessary items and votes.

Regarding consent agendas, Atty. Brochu said most boards take one vote to authorize the superintendent to hire teachers because the board does not interview teachers or have expertise in hiring them. He said as board chair he did not vote on resignations because a board could vote against accepting an employee's resignation. He suggested looking at the agendas as a year-long process. He suggested focusing a meeting on one topic.

Atty. Brochu said boards should make sure everyone has the information needed. He said he hated as a board member discussing something at a board meeting that he was uninformed about it. He said uninformed conversations were not only useless, but dangerous.

Ms. Pereira said no one was more guilty of not providing documents in advance of meetings than Ms. Siegel. She said it was very difficult to absorb large amounts of written materials just as the meeting is starting.

Atty. Brochu said the job of a board is to have informed, civil conversations about something important and to try as best as possible to make a good decision about it.

Mr. Weldon said where he works he has to submit things for board approval by a designated time or it will not be considered.

Atty. Brochu said most decisions board have to be make do not require immediate action the night of the meeting.

Mr. Weldon said when the board is presented with something in a compressed time frame, it sometimes give the taste of someone trying to pull a fast one and makes the board members reluctant to

act. He said it comes down to proper time management.

Mr. Weldon said he wondered how much the board deals that is truly necessary. Atty. Brochu said you'd be surprised how much you could get away with not dealing with items at the board level.

Atty. Brochu said people are looking at the board members as the leadership of the district, so they should give them confidence when they come to you that you conduct yourself in a way to show that their children are in good hands.

Atty. Brochu said Robert's Rules are a procedural framework in which to conduct a meeting of a group. Concepts of Robert's Rules include dealing with one thing at a time, allowing for different viewpoints and/or a negative vote, with the majority prevailing. He said the rules enforce decorum.

Business is brought before the board by a motion. Absent a motion, the board cannot take action. Once the matter is before the board, it has to be dealt with in one way or the other.

Atty. Brochu said he had seen in the board minutes that the board had been sloppy because the chair did not restate the motion after it had been made and seconded. He said to keep in mind what you're voting on is the exact wording that's presented before the board. Ms. Pereira said currently all the board's motions are now being typed word for word in the minutes.

Atty. Brochu said a motion can't be presented that is essentially the same as a motion that was rejected in the same meeting. A motion is out of order if it contradicts something that's still in place. There can't be a motion to have the board refrain from doing something because if a negative motion is defeated, it is not clear what is approved.

Atty. Brochu said members may abstain from voting. Abstentions count as nothing, not for or against anything. He said there are statutory and policy exceptions where more than a majority of those present voting is required. The hiring of a superintendent requires a majority of the entire board by statute. In that circumstance, an abstention is effectively a no vote. Under Robert's Rules and statute

a two-thirds vote may be required for some motions.

Atty. Brochu said when the vote is done, the chair should announce the result. Until the announcement is made, people can change their vote. Under state law it is important the minutes indicate who voted how.

Atty. Brochu said under Robert's Rules the maker of the motion has the opportunity to be heard first. Courteousness is called for by Robert's Rules. He said the point of debate is to listen and to ask legitimate questions of one another. He said he'd rather disagree for the right reason than simply not understand another board member.

Atty. Brochu said a point of order is a way for a board member to claim the board is varying from the procedures. A point of order does not need a second. It must be raised when the breach occurs. A point of order is not debatable; it goes to the parliamentary officer, the chair. A motion to appeal the chair's ruling is debatable.

Atty. Brochu said a motion to rescind is an attempt to undo a vote that was done already. It is debatable. There are rules around motions to rescind – if there is no notice of the motion to rescind, it would require a two-thirds vote. If there is notice, it would require a majority.

Atty. Brochu said a motion to reconsider applies to an action at the same meeting. The person making the motion to reconsider needs to be someone who voted in the majority.

Atty. Brochu said there cannot be a motion to rescind about something that has already been put into effect, for example, hiring the superintendent or approving the teachers' collective bargaining agreement.

A motion can be put forward to postpone an item indefinitely. The merits can be discussed because it is essentially killing the motion. There can also be a motion to postpone something to a specific time.

Atty. Brochu said a motion to table is often misused. Such a motion should be used when an item is taken out of consideration temporarily with the intention it will come back on in that same

meeting.

He said Robert's Rules are a tool to help you do your work in an organized, efficient manner. It shouldn't get in the way of what you're trying to do. He said he had seen Robert's Rules used by members as a club to beat into submission those who disagree with them.

Atty. Brochu said the board's meetings, what is said, how you go about it and what you're talking about, communicates to the district what's important.

Atty. Brochu suggested board members not spend time on administrative stuff or single out and criticize individual employees at the meetings because there are other, more appropriate ways and channels to do that. He suggested board members not use their time in a meeting that can be addressed elsewhere.

Atty. Brochu suggested the board's agendas not just be filled up unnecessarily or allow the meetings to distract you from your mission. He urged the board members be professional and use it raise the bar. The power to be good is the power to be bad; the power to be smart is the power to be stupid.

Atty. Brochu said he was available to provide more information from follow-up questions. He noted the conflict of interest information he was asked to provide.

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

The meeting was adjourned at 12:10 p.m.

Respectfully submitted,

John McLeod

Approved by the board on February 12, 2018