



VISION:
To be a world-class school system

THE SCHOOL BOARD OF LEE COUNTY
Special School Board Meeting – M I N U T E S (Approved 11/6/06)
Tuesday—October 10, 2006 / 2:30 p.m.

Attendees: Mr. Steven K. Teuber, J.D., Board Chairman
Mr. Robert D. Chilmonik, Board Member (arrived 2:49 p.m.)
Dr. Jane E. Kuckel, Board Member
Dr. James W. Browder, Secretary & District Superintendent
Dr. Elinor C. Scricca, Vice Chair
Mrs. Jeanne Dozier (arrived 2:43 p.m.)
Mr. Keith Martin, Board Attorney
Mrs. Denise Mangus, Recording Secretary

I. CALL TO ORDER – The School Board of Lee County, Florida, met on Tuesday, October 10, 2006 in the School Board Meeting Room for a Special School Board Meeting. Chairman Teuber called the meeting to order at 2:35 p.m. It was noted that Good Cause Items III.A.1 and 2 have been added. *Motion by Dr. Scricca, and second by Dr. Kuckel, carried 3-0 to accept the agenda now presented as the Order of Business.*

II. PUBLIC COMMENT (Mr. Martin provided the Public Comment guidelines.) – none

III. SUPERINTENDENT’S RECOMMENDATIONS

A1. Good Cause—Agreement to Extend Timeframe for Action on Application for Charter School Status

Motion made by Dr. Scricca, and second by Dr. Kuckel, carried 3-0 for Board approval of the proposed agreement to extend the timeframe within which the Board will take action on the applications submitted by Advantage Academy of Lee, Inc., Hope Language Academy of Lee Inc., Richard Milburn Academy of Florida, Inc. and Goodwill Academies of Southwest Florida, Inc. until November 22, 2006..

A2. Good Cause—Personnel Recommendation/Administrative

*Motion was made by Dr. Kuckel, and seconded by Dr. Scricca, for Board approval of the transfer and change of assignment for Martin Mesch (Administrative-on-Assignment, Elementary Operations) to Principal, Gulf Elementary and transfer of Dr. Vicki Parks (Principal, Gulf Elementary) to Principal, Three Oaks Elementary—both effective October 11, 2006. Dr. Kuckel noted Gulf Elementary will welcome Mr. Mesch back; Dr. Scricca will miss him but anticipates a replacement as qualified. Mr. Teuber thanked Mr. Mesch for his A-O-A work as it provides huge assistance; he commended Dr. Parks for her spectacular work at Gulf and wishes her luck at Three Oaks. *Motion carried 3-0.**

B. Final Order on Administrative Law Judge’s Recommendation—Barry Nevins

Motion was made by Dr. Kuckel, and seconded by Dr. Scricca, that the Board reject Respondent’s exceptions, adopt the Administrative Law Judge’s (ALJ) Recommended Order and enter a Final Order terminating Barry Nevins from his employment with the Lee County School District effective end of the day, October 10, 2006.

Attorney Robert Coleman (Coleman & Coleman) spoke on behalf of Mr. Nevins. Mr. Coleman noted the exception filed to the ALJ’s order and commented these judges can make mistakes, as the case two weeks’ ago case, and in this one. He explained that Mr. Nevins was a High Tech Central teacher charged with not performing satisfactorily and consequently placed on performance probation. A specific Statute sets forth how the process is to occur. (Mrs. Dozier, Board Member, arrived.) Mr. Coleman, per his enlarged Statute copy, talked about the 90 days and work towards improving performance; he underlined pertinent

passages in the Statute and stated the teacher needs to be served notice. An evaluator is to meet with employee re unsatisfactory areas; once the process starts, Mr. Coleman continued that the educator has 90 days—not including school holidays and periods. The employee must be evaluated periodically and be provided assistance and in-service training to correct noted performance.

The ALJ treated the December 2004 letter as notification complying with Statute; Mr. Coleman says it does not as the letter doesn't set forth the nature of unsatisfactory performance. The Superintendent was putting Mr. Nevins on notice with the intensive assistance program January 13, 2005; Mr. Coleman noted the first month shouldn't be included in the time period—it didn't provide requisite notice, his client didn't meet with anybody or be told deficiencies, there was no opportunity to remediate performance and that one month of time shouldn't be included in the 90 days but the period should've begun January 13.

Mr. Coleman, re his final exhibit, noted if the calendar's taken and the time period indicated is applied to both scenarios—even if using the Superintendent's December letter as notification—there's 112 total days of which 20 are school holidays and vacation, affording his client 84 days. Mr. Coleman noted that if the correct date used of January 13, comprised of 84 days and 12 school vacation days, there's 72 days to complete performance. Mr. Coleman's asking the Board to take exception at one finding that the Board complied with the statutory notice period and reject the recommendation for termination; and—as the law requires—Mr. Nevins be placed back in work as the Superintendent so determines, which can be in an intensive assistance program—with a remedy to being the full 90 days, demonstrating corrective action which Mr. Coleman's confident Mr. Nevins will do and be a productive teacher for the District. (Mr. Chilmonik, Board Member, arrived.)

For the Superintendent's rebuttal, Staff Attorney Robert Dodig was deferred to. He pointed to the ALJ's Order (outlined in Mr. Coleman's exceptions) where the ALJ wrote that the respondent was provided notice that he was placed on performance probation (December 16, 2004-April 6, 2005)—90 calendar days, excluding Dr. Martin Luther King holiday and others; the Board complied. Mr. Dodig secondly stated Mr. Coleman filed three exceptions to the Recommended Order—the first has to be rejected (by the Board) because Mr. Coleman didn't allege competent, substantial evidence; Mr. Coleman didn't allege these occurred. There were 4 days of testimony, 14 witnesses, and 1,075 pages of transcript. The ALJ took 8 months and wrote 115 pages of a recommended order. Mr. Dodig noted Mr. Coleman made the same argument to the ALJ once and maybe more; the ALJ rejected the argument and felt the case was proved re evidence of the incompetent teacher.

Mr. Dodig noted Mr. Coleman's second objection of 93 days—based on the ALJ's analysis, the employee was offered the appropriate days; notice is when the teacher is provided notice—there's nothing stopping a teacher, even in an intensive assistance program, to start fixing problems right away. The Statute doesn't say 90 days begins when the intensive assistance starts; Mr. Nevins was provided to the point that the process became routine—he was observed 2-3 times weekly and had notice of his being on probation. Because Mr. Nevins didn't get it, we're here today. Mr. Dodig noted Mrs. Georgianna McDaniel's (Personnel Director) comment of it being very rare that a teacher's put on intensive assistance and lose their job; for these reasons, support of the Dr. Browder's recommendations is sought.

Mr. Coleman respectfully noted Mr. Dodig didn't address this case's argument. Mr. Coleman noted, re looking at Statute, unsatisfactory performance notice must be given and asked how his client can begin to remediate if not told how; this cannot be included in the period of time in 90 day; Mr. Coleman noted Mr. Nevins must be evaluated periodically and assistance to begin to correct deficiencies—that didn't start until January 13. Mrs. McDaniel did what she was required to do but the notice didn't comply with Statute and the timeframe didn't take into account what needed to be done for his client to demonstrate correction. Mr. Coleman noted being sorry in being so adamant but it's very clear. Mrs. Dozier asked if the letter didn't mention intensive assistance; Mr. Coleman responded not, saying the letter didn't

describe performance has been deficient/unsatisfactory and that clock begins when told what's wrong. Dr. Scricca asked Mr. Dodig to reiterate the fact of reason given in the employee having notice the previous semester; Mr. Dodig said Mr. Nevins was notified officially on December 16; there's no doubt re carrying out professional responsibilities (of a teacher) and no doubt re what the intensive assistance team was going to do but to deny there's no notice out of the clear blue (is nay). Mr. Coleman said that's not what is being said—Statute says official notice is in writing and must describe deficiencies and unsatisfactory performance and that came on January 13; Mr. Martin noted Mr. Coleman's time was up. Mr. Dodig noted the judge was fully informed, with the latter producing 115 pages of recommendation.

Mr. Martin was asked to provide the standard of review for the Board in making a decision. Mr. Martin explained this matter's already gone to an administrative hearing; there's an order in front of the Board from the ALJ who found valid basis for termination and to terminate—the Board can make a decision. As is Mr. Coleman's right, exceptions can be submitted for Mr. Nevins of which one was made to a finding of fact that employee was provided 93 calendar days. The second exception is to the conclusion of law—the School District complying with F.S. The third exception is to another conclusion of law re just cause to terminate; so there's a finding of fact and two conclusions of law exceptions. In order to reject the conclusion of law/LAJ, the Board must state particularity reason for rejecting and that as or is more reasonable than that being rejected. Re the finding of fact and the ALJ, the Board must review entire record and find that particular finding of fact to which Mr. Coleman made exception not based on competent, substantial evidence or proceedings which didn't comply with the law. Mr. Martin doesn't see anything to invalidate the proceedings nor the other scenarios of competent, substantial evidence. There are two options today—adopt the Superintendent's recommendation (submitted by Mr. Dodig)/the ALJ recommended order. If the exceptions submitted by Mr. Coleman, on behalf of Mr. Nevins are accepted, Mr. Martin—if desired—would assist in the drafting of what's needed for rejecting the finding of fact and conclusion of law. Mr. Coleman didn't provide an Order on this though invited. The motion can be proceeded to that's on the floor; if not, then there's a need to withdraw the motion.

Mrs. Dozier noted arriving late after the motion and asked if she should vote or reclus. Mr. Martin noted, as with Mr. Chilmonik, both should vote. She then asked if the Superintendent's recommendation is voted for, what's the next avenue for Mr. Nevins; Mr. Martin noted that should not be a matter entering in the Board decision today but the employee does have a right to appeal an order in the 2nd District Court. Mr. Chilmonik noted he will be reclusing from the vote today, as there's a personal relationship between Mr. Nevins and his daughter; he noted he didn't vote last time on this issue (Mr. Chilmonik then exited the room).

Dr. Scricca noted support of the Superintendent's recommendation re Mr. Dodig's explanation. Dr. Kuckel noted she's read the ALJ recommendation and concurs. Mr. Teuber noting having a problem with this as he's not convinced the statute was complied with; to really give the person 90 days and not count holidays, what to work to improve is needed. Evaluator shall notify the employee once low par, there's work and coaching up to that point but in the notice, it's required to describe unsatisfactory performance versus not doing good enough and you've 90 days to fix. Mr. Coleman's argument had that January 13th provided the points to fix. The District finds 90 days of help and Mr. Teuber feels a good job is done once getting into intensive program; the right thing was done but not long enough.

Dr. Scricca noted recognizing the problem and understanding legality; she noted Mr. Nevins knew he was on proverbial "thin ice" and she understands Mr. Teuber but concurs that employee had an understanding he was on "thin ice" from the beginning and something should've happened. Mrs. Dozier noted agreeing with Mr. Teuber re the statute describing unsatisfactory performance and notification of misgivings, with the 90-day period then. It was implored of Dr. Scricca that if she agrees with Mr. Teuber and the law, the Board has to abide by Statutes. Dr. Kuckel asked Mr. Teuber why he thinks the ALJ didn't take into consideration Mr. Coleman's arguments; Mr. Teuber thinks the ALJ came to the same conclusion that

there's performance probation on December 16 but no where did the ALJ address satisfying the Statute of what's in the notice. Mr. Teuber believes there was notice on December 16 but it has to be descriptive and Mr. Coleman made a valid argument. Dr. Kuckel noted very specific causes for concern were listed verbally and in writing up to the December 16 letter and doesn't that count as a description of unsatisfactory; Mr. Teuber noted those are the points the ALJ may have ruled the way he did but it's not right to him. Mr. Teuber noted there's a certain time when determination's made (having enough) with the 90-day notice starting to tick—when does that person know and what are the issues; there were a lot of issues addressed prior—which one rises to the level without the employee having to guess. Mr. Dodig feels there's 93 days from December 16.

Mrs. Dozier noted specifically saying school holidays have to be taken off and is there an argument showing we didn't do; the language may not be clear and may need to be changed. She agrees if there was anyone out in the system teaching and knew in October, it's less than acceptable and they should be aware of "thin ice." She noted the Board has an obligation as a body to legally provide the person though with their unsatisfactory performance. Dr. Scricca noted wanting to hear from Mr. Dodig on the 93 days; the ALJ said notice date was December 16 and how the days were counted under Statute. Mr. Teuber wants Mr. Dodig to address his feeling re the notice and carrying out professional responsibilities; Mr. Dodig said it's not knowing how to improve on December 16—a manual is provided to the employee which tells what will happen (observations, team recommendations, ways to improve—all process).

Mr. Coleman feels Mr. Dodig and ALJ, in using December 16, was his client to know how to improve (materials for assistance given in January) and that the December 16 letter didn't say Mr. Nevins had a required period of time to shape up or ship out or describe the deficiency. Mr. Coleman said 93 days are not arrived at—the judge didn't include weekends (there are weekends sandwiched in between Christmas break and Spring break) and to exclude those holidays. Statute doesn't exclude weekends (Legislature didn't state weekends to be excluded)—just school holidays and vacations. Mr. Dodig noted Mr. Coleman's same passion to the ALJ in arguments. Mr. Coleman said it was wrong and that it's an ordeal for the ALJ and they don't always get it right; he agrees with Mr. Teuber's argument. Dr. Scricca and Mrs. Dozier noted having no comment. Dr. Kuckel noted it's a matter of interpretation—hearing it both ways. She noted being provided notice with unsatisfactory performance, there is a description there. Upon delivery, the following things must happen; if one interprets there was a description, there's notice delivery. The evaluator must confer with the employee and make recommendations—by letter of the law, it appears they all took place to the degree expected. Dr. Kuckel doesn't have a question that the processes took place—they did. If weekends not included/excluded, the 93 days does hold. *Dr. Kuckel moved to table and talk with their attorney.* Withdrawing the original motion was noted.

Mr. Coleman noted, re Dr. Kuckel's comments, to look at Statute—three things to comply with. Notice must be unsatisfactory performance but must include procedural requirements (December 16 letter didn't). Dr. Kuckel noted her interpretation of the intensive assistance team next semester. By letter of the law, Dr. Kuckel sees what the problem is and next steps/assistance (Mr. Coleman noted he didn't receive such until January 13 with Mrs. McDaniel). The letter does not state a required period of time and evaluator must confer with the employee. Mr. Coleman respectfully disagreed with Dr. Kuckel, noting the letter not saying what's needed for remediation and Mr. Nevins can't meet such in 90 days if 30 days into it (January 13—no evaluations, discussion, performance deficiencies in the first 30), leaving 60 days to comply. Mr. Martin noted Mr. Dodig didn't receive his addition three minutes.

Mr. Dodig noted the process/manual Mrs. McDaniel takes them through. This case is about incompetence of a teacher. If signing for a manual on January 13, that doesn't say the 90 days starts then. Mr. Martin noted that Mr. Dodig or Mr. Coleman can give more information but to go to the record. Mr. Martin noted he cannot give advice to interpret the facts; the Board has to do as trier in the case. Mrs. Dozier was notified by Mr. Martin that the Board had everything the ALJ did for evidence. (There was

not a motion to withdraw the original motion by Dr. Kuckel to support the Superintendent's recommendation.) *Dr. Kuckel called the question and made a motion to limit discussion (which Mr. Martin noted requires a vote with 2/3 majority), and Dr. Scricca seconded; motion failed 2-0, with Mr. Teuber and Mrs. Dozier dissenting (discussion continues).* Mrs. Dozier asked where the information in the packet is contained re Mr. Nevins signing for his info packet; Mr. Coleman helped by noting finding of fact—ALJ Order pg. 44, paragraph 71: the IAP-held team (Ms. Mutzenard present with respondent), Mrs. McDaniel's role as coordinator—this is when meeting occurred, client received materials.

Dr. Kuckel believes in Section D, there was a description of unsatisfactory performance and believes in Section 1, upon delivery, criteria met (given notice, assistance to be provided on January 13 to correct) and 90 days began in December. School holidays were addressed in ALJ's paragraph 185; Dr. Kuckel feels comfortable with that description and weekends are not included. She personally noted it's a matter of degree (evaluation and progress appraised) and feels provisions met. Mrs. Dozier noted appreciation of this but the Board Members are constitutional officers and they have a better understanding maybe than the ALJ since dealing with it daily; she doesn't believe letter of the law followed but noted anyone in a classroom teaching that begins to have low performance evaluations should be an alert to the individual. The law protects those individuals to make sure the Board's responsibility is to give the person every possible way to improve deficiencies they may have and the law is clearly on the side of the employee; Mrs. Dozier noted having to go against the Superintendent's Recommendation. Dr. Scricca noted one word she listened to: "interpretation." Mr. Martin said application is better.

Mr. Teuber noted a problem with this—if they're truly a Board, good teachers are wanted and bad ones removed. If the Statutes of the Legislature are 90 days, they get this to shape up or ship out; he feels the Statute's intent is tell what's to be fixed, how long, resources, and then after 90 days—you're done—but the letter didn't say the clock starts ticking today. Mr. Teuber noted his interpretation would be 2nd semester since noted. Dr. Kuckel noted 18 days waived in December (after the 16th). Mr. Teuber noted, re common vacation in business—for overtime purposes/equalization, weekend before and after vacation not counted. Mrs. Dozier inquired of Mr. Martin re a deadlock if an equal number of Board Members can't move. Mr. Martin noted that if it can't come to a majority, Mr. Chilmonik's given opportunity and if the parties agree to waive any form of conflict in this issue. *A vote was taken to support the Superintendent's Recommendation; motion failed with Mr. Teuber and Mrs. Dozier dissenting. Dr. Kuckel made a motion to table this decision to October 24, 2006 at a Special Board Meeting; Dr. Scricca seconded with the motion failing as Mr. Teuber and Mrs. Dozier dissented.* Dr. Scricca noted the Board interpreting as constitutional officers and using judgment, and following as interpreted by the courts. Mr. Teuber noted if the facts live up to the particular level of the Statute; he doesn't see the December 16 letter as doing such (noted crystal ball needed to see need on how to improve and or clock was ticking).

Dr. Kuckel noted that if deadlocked (since majority vote needed and only four voting right now), she would want to air on the side of the employee re the Superintendent's Recommendation and *made a motion to vote on the Superintendent's Recommendation; Mrs. Dozier seconded.* Mr. Martin advised that before proceeding with the vote, if the Superintendent's Recommendation was not passed, then there'd need to be a motion for the second option discussed. *Motion failed to accept the Superintendent's Recommendation, with Dr. Scricca dissenting.*

A motion was made by Dr. Kuckel, with Mrs. Dozier seconding, to adopt the exceptions presented by Mr. Coleman, for an Order to be drafted by Mr. Coleman (with assistance by Mr. Martin) that the Board would support and be submitted for sharing/signature on an Order that addresses all statutory requirements re objections to findings of fact and conclusions of law. Mr. Martin noted it would be reinstatement for the employee as well; *Dr. Kuckel agreed to this addition of the wording for her motion.* Dr. Kuckel asked what the next steps are—proceeding with technical assistance, employee assistance and then up to the Superintendent at that point and it would be the Superintendent's decision of where we go

next. *Motion carried 4-0 to the motion by Dr. Kuckel (phrased by Mr. Martin) 4-0.* (Mr. Chilmonik returned to the table.)

C. Exclusive Authority to Authorize Charter Schools

*Motion was made by Mrs. Dozier, and seconded by Dr. Scricca, to approve the proposed resolution seeking to retain exclusive authority to authorize charter schools within geographical boundaries of the Lee County School District. Re the FSBA court case, Mrs. Dozier’s talked with Mr. Martin re exclusivity; last week when she was in Tampa, there was much discussion around this and her understanding from the FSBA Executive Director is that lawmakers are encouraging Boards to pursue as they don’t feel the intent of the law is having the Board’s powers superseded. There’s a great deal of support per Dr. Scricca’s question, and Mrs. Dozier further noted several have already passed this or it’s on their current agendas (can’t say if all 67 counties will pass resolution). *Motion carried 5-0.**

IV. OTHER BUSINESS

A. Board Members’ Comments/Reports – none

B. Attorney’s Comments/Reports – none

C. Superintendent’s Comments/Reports – none

D. Next Scheduled Meetings of the Board (today): School Board Briefing (next) and 6:30 p.m., School Board Action Meeting.

V. ADJOURNMENT – There being no other business, Chairman Teuber adjourned the meeting at 3:54.

/dwm

MINUTES BOOK NO. 41 - FY07

Steven K. Teuber, J.D., Chairman

ATTEST:

James W. Browder, Ed.D., Secretary and District Superintendent

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