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To be a world-class school system.

THE SCHOOL BOARD OF LEE COUNTY
Special School Board Meeting - MINUTES
(School Board Meeting Room, 2855 Colonial Blvd., Fort Myers, FL)
Wednesday, September 22, 2010

Attending

Mr. Steven K. Teuber, J.D., Chairman	Dr. James W. Browder, Secretary and District Superintendent
Dr. Elinor C. Scricca, Vice Chairman	Mr. Keith B. Martin, Board Attorney
Mrs. Jeanne S. Dozier, Member	
Dr. Jane E. Kuckel, Member	Mrs. Donna Lesansky, Recording Secretary

I. Opening Exercises

A. Call to Order

The School Board of Lee County, Florida, met on Wednesday, September 22, 2010, in the School Board Meeting Room for a Special School Board Meeting. Board Chairman Steven Teuber presided and called the meeting to order at 3:35 P.M.

Mr. Teuber explained that he called this Special Meeting so that the Board could address the resignation tendered on September 20, 2010, by Dr. Browder. He stated that by scheduling the meeting so quickly, the 48-hour notice to Board Members and the Superintendent, as required by Statute, was not met. Mr. Teuber asked the other Board Members and the Superintendent if they would consent to waiving the statutory requirement. He received agreement from all.

Motion by Mrs. Dozier, seconded by Dr. Kuckel, and carried 4-0 to adopt the agenda as the Order of Business.

II. Public Comment

Sue Jacobse: appointment of interim superintendent and permanent replacement

Donna Mutzenard: appointment of interim superintendent

John Traube: severance payment

Patti Lochner: appointment of interim superintendent

Jim Veraldi: seating of new Board

Tom Scott: appointment of interim superintendent and permanent replacement

Bob Rushlow: relationship between School District and Bargaining Units

Mary Fischer: fulfillment of employment contract

Kathleen Cherisia: fulfillment of employment contract and appointment of new superintendent

Steve Powers: fulfillment of employment contract and severance payment

Mr. Teuber thanked the speakers for their input and addressed their comments.

III. Consent Action Items (None)

IV. Unfinished Business/Tabled Items (None)

V. Superintendent's Recommendations (None)**VI. Attorney's Recommendations****A. Address Notice of Termination from Superintendent Dr. James W. Browder.**

Mr. Martin recommended that the Board Members discuss and take any action they deem necessary with respect to the Notice of Termination submitted by Dr. Browder.

***Motion** by Dr. Scricca and **seconded** by Dr. Kuckel to allow Dr. Browder to exit as Superintendent of Schools effective at midnight, September 24, 2010, with salary ending at exit.*

In response to Mrs. Dozier's question, Mr. Martin explained that, with regard to termination of service, Dr. Browder's employment contract requires that either party provide a 60-day notice. He further explained that at this point, the School Board has the right to receive Dr. Browder's service for 60 days beyond the date that he tendered his resignation and Dr. Browder has the right to 60 more days of employment beyond that same date. He added that in light of Dr. Browder's request to exit earlier than the 60 days, the Board has two options: the first option is to revise Dr. Browder's employment contract to allow an earlier exit date; the second option is to hold Dr. Browder to the 60-day notice requirement and for him to continue with the District until that time.

Mrs. Dozier asked Mr. Martin to define the terms of the contract in Paragraph 10. Mr. Martin noted that this paragraph is entitled Other Employment and reads as follows: "If the Superintendent seeks other employment by submitting an official application, he shall notify the School Board of such action." At this point, Mr. Teuber stated that this discussion would be beyond the realm of the motion currently on the floor.

***Motion** by Mrs. Dozier and **seconded** by Dr. Scricca to move the previous question. **Motion failed 2-2**, with Dr. Kuckel and Mr. Teuber casting the votes in opposition to the motion.*

Dr. Browder, in response to Mr. Teuber, explained that for the good of the District he has requested that the Board release him from his contract as soon as possible. He stated that he feels it is critical that the District get beyond the uncertainty of the current situation and be allowed to move on until such time that the new Board can have input with regard to a permanent superintendent.

***Motion carried 3-1**, with Mrs. Dozier casting the vote in opposition to the motion.*

Mr. Martin stated that with that being the Board's action, he would suggest that it be memorialized in a document today. He added his suggestion that the best way to approach that would be for Mr. Teuber to call a recess to allow him [Mr. Martin] an opportunity to negotiate the document with Dr. Browder and his counsel.

At Mrs. Dozier's request, Mr. Teuber allowed discussion prior to calling a recess. Conversation ensued among the Board Members regarding Dr. Browder's notification to them as a School Board that he was seeking other employment (§10, Other Employment) and the manner and time in which severance payment must be made (§11, Termination of Agreement).

In response to Mrs. Dozier's request, Mr. Martin stated that the School Board exists when all Board Members are seated as a body in an official meeting. He added that the technical

reading of the provision of the contract states that notice shall be given to the School Board, which would require that the School Board meet. He explained that the Superintendent could have called a special meeting or, in the alternative, could have provided written notice to each of the School Board Members; however, that compliance does not occur until all School Board Members have received that notice.

In response to Mr. Teuber's question, Dr. Browder stated that it was his belief that he had formally notified each Board Member.

Although the Board Members stated that Dr. Browder had engaged in individual conversations with them, Mr. Teuber stated that there was consensus that Dr. Browder did not notify the School Board at a School Board Meeting and, therefore, there had been a breach of contract.

Mrs. Dozier suggested that as Mr. Martin has discussions regarding releasing Dr. Browder from his contract, the breach be considered.

Mr. Martin was directed to work with Mr. Bob Coleman, attorney to Dr. Browder, to negotiate a document ending Dr. Browder's employment with the School District effective Friday, September 24th, with payment of salary through that date.

Mr. Martin clarified that a contract is in place that addresses a severance payment. He stated that unless the Board takes other action, he would advise that the severance be made in one payment at the time of termination.

Motion by Dr. Kuckel and ***seconded*** by Dr. Scricca to pay Dr. Browder the severance due him pursuant to his employment contract in one payment on November 19, 2010.

Following discussion, ***motion failed 2-2***, with Mrs. Dozier and Mr. Teuber casting the votes in opposition to the motion.

Motion by Mrs. Dozier that the Board Attorney, while negotiating resolution of the contract, take into consideration that Dr. Browder breached his contract with regard to Paragraph 10, Other Employment.

Motion failed for lack of a second.

Recess: 4:48-5:22 P.M.

Mr. Teuber stated that Mr. Martin and Mr. Coleman had developed an Agreement in Resolution of Employment Contract. Mr. Martin distributed copies to the Board Members and read the Resolution into the record.

**AGREEMENT IN RESOLUTION OF EMPLOYMENT CONTRACT
BETWEEN JAMES W. BROWDER, III AND
THE SCHOOL BOARD OF LEE COUNTY, FLORIDA**

This agreement made and entered into this 22nd day of September 2010, by and between the School Board of Lee County, Florida, hereinafter referred to as School Board and James W. Browder, III, hereinafter referred to as Superintendent.

WHEREAS, the parties entered into a contract of employment on December 9, 2008.

WHEREAS, that contract at paragraph 11 TERMINATION OF AGREEMENT, states: "either party, the Superintendent or School Board,

may terminate this agreement at any time upon providing written notice at least 60 days before the desired termination date.” and,

WHEREAS, Superintendent submitted a notice of termination pursuant to this provision on September 20, 2010 and,

WHEREAS, the Superintendent and School Board desire that the Superintendent’s last day of employment with the Lee County School District be established as September 24, 2010, rather than 60 days after the date of the submitted notice.

NOW, THEREFORE, the School Board and Superintendent for the consideration here and specified, agree as follows:

The Superintendent’s last day of employment with the Lee County School District shall be September 24, 2010. The Superintendent shall receive payment of his salary and benefits through the date of termination. All other terms of the December 9, 2008 contract shall remain in full force and effect.

Motion by Dr. Kuckel and ***seconded*** by Dr. Scricca to move the Agreement in Resolution of Employment Contract Between James W. Browder III and The School Board of Lee County, Florida.

Mrs. Dozier stated that she felt it was in the best interests of the District for Dr. Browder to leave. She added that although she was not pleased with the issue of the severance payoff, she would support it because it was in the best interests of the District to move on.

Motion carried 4-0.

Motion by Mrs. Dozier and ***seconded*** by Dr. Scricca to appoint Donald Bryant as Interim Superintendent for the period September 25, 2010, through November 16, 2010.

Subsequent discussion among the Board Members concerned the guidelines for considering individuals for the position of interim superintendent, i.e. whether or not to consider someone who might be interested in applying for the permanent position and whether it might be best to consider an individual who has been a member of the Superintendent’s cabinet and has, therefore, been privy to ongoing discussions regarding all aspects of District operations. During the discussion Dr. Greg Adkins [*Chief Human Resources Officer*] and Dr. Connie Jones [*Chief Academic Officer*] were introduced as possible candidates for the interim superintendent position.

Motion failed 2-2, with Dr. Scricca and Dr. Kuckel casting the votes in opposition to the motion.

Motion by Dr. Kuckel and ***seconded*** by Dr. Scricca to appoint Dr. Greg Adkins as Interim Superintendent for the period September 25, 2010, through November 16, 2010.

Following discussion, ***motion failed 2-2***, with Mr. Teuber and Mrs. Dozier casting the votes in opposition to the motion.

Mr. Teuber requested a brief recess to allow him an opportunity to confer with Mr. Don Armstrong, Board Member-elect for District 4, who was in the audience.

Recess: 6:26-6:35 P.M.

Upon returning to the table, Mr. Teuber explained that he queried Mr. Armstrong and Ms. Fischer, candidate for District 1 seat, who was also present, as to whether or not they

would be inclined to retain the interim superintendent chosen by the current Board should that person be doing a good job. He reported that both indicated that they would.

Motion by Dr. Kuckel to appoint Dr. Charles Luckey as Interim Superintendent for the period September 25, 2010, through November 16, 2010.

Motion failed for lack of a second.

Mr. Martin proffered the advice that the Board could work into the employment contract of the individual chosen, that that person may be provided notice of termination within an established number of days. He explained that by doing so, a decision whether or not to retain that person in the interim superintendent position would not have to be made as soon as the new Board Members assume office, which would be at the November 16th Board Meeting

Motion by Mrs. Dozier and **seconded** by Mr. Teuber to appoint Donald Bryant as Interim Superintendent effective September 25, 2010, and to include in his employment contract the proviso that he may be terminated by the School Board with a five-day notice and without cause.

Following discussion, **motion failed 2-2**, with Dr. Scricca and Dr. Kuckel casting the votes in opposition to the motion.

Dr. Kuckel requested a recess.

Recess: 6:55-7:04 P.M.

Motion by Dr. Kuckel and **seconded** by Dr. Scricca to appoint Michael McNerney as Interim Superintendent effective September 25, 2010, through November 16, 2010.

Following discussion, **motion failed 2-2**, with Mrs. Dozier and Mr. Teuber casting the votes in opposition to the motion.

In response to discussion regarding continuing this evening's meeting until tomorrow, Mr. Martin informed the Board that the Attorney General has provided an opinion that, in the event a public body, such as a school board, continues a public meeting, it must still give appropriate notice under the Sunshine Law for that continued portion of the meeting. He expressed concern that should the Board continue the meeting to tomorrow, it would be very difficult to provide that notice.

Recess: 7:46-8:20 P.M.

Motion by Mrs. Dozier and **seconded** by Dr. Scricca to appoint Dr. Larry Tihen as Interim Superintendent effective September 25, 2010, and to include in his employment contract the proviso that he may be terminated by the School Board with a five-day notice and without cause.

Following discussion, **motion carried 4-0**.

Mr. Martin clarified that the Board was directing him to work with Mr. Teuber to negotiate an employment contract with Dr. Tihen and that it would be brought to the Board for approval at the October 7th Board Meeting. In response to his request for guidelines for the contract, the Board Members expressed confidence that Dr. Tihen, Mr. Teuber, and Mr. Martin would bring forward a contract that is in the best interests of the District.

In light of the fact that a contract was not being put in place this evening, Mr. Martin suggested and received consensus from the Board that until such time as a contract is approved at the October 7th Board Meeting, Dr. Tihen continue to be compensated at his current salary, and that any increase in salary reflected in the contract could be made retroactive to his assuming the position.

With regard to the Oath of Office, Mr. Martin explained that Dr. Tihen may be sworn into office at any time prior to his assuming the responsibilities of the superintendent, which occurs on Saturday. He added that the swearing in does not need to occur at a public meeting of the School Board. Dr. Kuckel agreed to represent the Board at the Oath of Office ceremony on Friday, September 24th. Mrs. Dozier observed that there is nothing that would preclude Dr. Tihen from being re-sworn into office at the October 7th Board Meeting, with all of the Board present.

Motion by Dr. Scricca, seconded by Mrs. Dozier, and carried 4-0 to authorize the Board Chairman [Steven K. Teuber] and the Interim Superintendent [Dr. Larry Tihen] to sign checks issued on all School Board of Lee County bank accounts.

Motion by Dr. Scricca, seconded by Mrs. Dozier, and carried 4-0 to authorize the continued use of Dr. Browder's facsimile signature until a facsimile of Dr. Tihen's signature is ordered and received.

VII. Other Business

A. Board Members' Comments

Mrs. Dozier: thanked everyone for the work put forth this evening; thanked the public for their input; thanked Dr. Browder for his service to the District and outlined some of the accomplishments under his leadership; stated that she totally supports Dr. Tihen and looks forward to working with him.

Dr. Kuckel: stated that Edison State College is very fortunate and thanked Dr. Browder for all that he has done; opined that Dr. Tihen will do a great job and thanked him for agreeing to take on this position.

Dr. Scricca: thanked Dr. Browder for his leadership and stated that she looks forward to wonderful things occurring during his tenure at Edison State College; opined that Dr. Tihen will do an excellent job; observed that although a lot of things were said this evening in the "heat of battle", the Board Members respect each other and have comprised a successful team.

Mr. Teuber: thanked Dr. Tihen for stepping up to serve as the Interim Superintendent; told Dr. Browder that he has done a wonderful job and that he will miss him.

B. Board Attorney's Comments

Mr. Martin: congratulated Dr. Tihen; told Dr. Browder that it has been a pleasure working with him.

C. Superintendent's Comments

Dr. Browder: expressed appreciation for the honor of serving the District and the Board; told the Board that they are a high-performing Board that has done a great job for the District and its students; stated that he is proud to have worked in the District.

D. Next Scheduled Meetings of the Board:

- October 7, 2010, 2:30 p.m., School Board Special Meeting

- October 7, 2010, 2:30 p.m.*, School Board Briefing Meeting (**immediately following conclusion of School Board Special Meeting*)
- October 7, 2010, 3:00 p.m., School Board Action Meeting

VII. Adjournment

Motion by Dr. Scricca, *seconded* by Dr. Kuckel, and *carried 4-0* to adjourn the September 22, 2010, Special School Board Meeting.

The meeting adjourned at 8:45 P.M.

Steven K. Teuber, J.D., Chairman

ATTEST:

Lawrence D. Tihen, PhD., Secretary and District Interim Superintendent

An audio-visual recording of this meeting has been produced to provide a verbatim record of the proceedings and may be viewed on the School District's Website at www.leeschools.net/stream. Members of the public wishing to obtain a copy of the recording of this or any meeting of the School Board must make a request through the District's Communications Department at (239) 337-8327.