

**LITTLE ROCK SCHOOL DISTRICT
810 WEST MARKHAM STREET
LITTLE ROCK, ARKANSAS**

**MINUTES
SPECIAL BOARD MEETING
November 9, 2006**

The Board of Directors of the Little Rock School District held a special meeting on Thursday, November 9, 2006, in the Boardroom of the Administration Building, 810 West Markham Street, Little Rock, Arkansas. President Katherine Mitchell presided.

MEMBERS PRESENT:

Katherine Mitchell
Charles Armstrong
Melanie Fox
Larry Berkley
Dianne Curry
Robert M. Daugherty
Baker Kurrus

MEMBERS ABSENT:

None

ALSO PRESENT:

Roy G. Brooks, Superintendent of Schools
Beverly Griffin, Recorder of Minutes

I. CALL TO ORDER / ROLL CALL

Dr. Mitchell called the meeting to order at 5:56 p.m. Six members of the board were present at roll call; Dr. Daugherty arrived at 6:20 p.m. In addition, the student ex officio representative was also present, Kala Brown, student at McClellan High School. The teacher ex officio did not attend.

II. PURPOSE OF THE MEETING

- A. Update on Compliance Remedy
- B. Employee Hearings

III. ACTION AGENDA

A. Update: Compliance Remedy

At the request of the board, the PRE Department staff and the district's attorney, Mr. Chris Heller, were asked to provide a brief update on the district's compliance with the terms of the District Court's mandates. Dr. Brooks reminded the board that the final Quarterly Report was reviewed by the Board in August and filed with the court in September. Three of the four draft program evaluations have been filed with the court. The fourth evaluation draft will be complete and filed by November 15th.

Dr. DeJarnette responded to questions regarding a report that she submitted by e-mail to the board and other parties on Friday, November 3, 2006. Dr. DeJarnette summarized some of the concerns included in that report; Mr. Heller provided a response and reported that he had asked for an independent review of the allegations made by Dr. DeJarnette.

Mr. Heller introduced Attorney Steve Quattlebaum who was asked to conduct the independent review. Karen DeJarnette was represented at the board meeting by Attorney John Burnette.

After hearing briefly from Mr. Quattlebaum, the board asked for assurances that the findings of his investigation would be presented directly to the board, unfiltered and unbiased. Mr. Quattlebaum promised a full investigation of the issues presented, and he assured the board that his report would be based on the facts presented and on interviews of district administrators.

The board discussed their desire to hear and accept the report. Mr. Berkley called for a suspension of the rules to consider action on receipt of the report; Ms. Fox seconded the motion and it **carried unanimously**.

Mr. Berkley made a motion to hear the report from the Quattlebaum firm as soon as possible. Mr. Kurrus seconded the motion and it **carried 4-0-2**, with Dr. Mitchell and Mr. Armstrong abstaining. (*Dr. Daugherty had exited the meeting.*)

Mr. Kurrus asked that the record reflect the board's desire and the district's intent to provide full and complete information to the Office of Desegregation Monitoring and the Joshua Intervenors. He also asked that the district's team of administrators "get together and cooperate in a civil manner."

The board recessed at 7:30 p.m. and returned at 8:00 p.m. to conduct employee hearings.

B. Employee Hearings

Three employee hearings had been scheduled for this meeting; however, one was settled prior to the hearing with the employee agreeing to submit a letter of resignation.

Dr. Brooks reported that ***Employee 1*** was affected by the district's May 2005 reorganization, with reclassification of her position from a salary grade 51 to salary grade 48. Employee received the "soft landing" pay for one full year, with her adjusted salary becoming effective July 1, 2006. The approximate amount of the difference in salary was \$3,996.00. The employee requested reinstatement to her former salary grade and placement; Dr. Brooks asked for the board to uphold the action of the reorganization, to support reclassification of the position of contract specialist, and to affirm that Employee is properly placed on the district's non-certified pay schedule.

Attorney Khayyam Eddings represented the district; Employee was represented by Attorney Mike Wilson. Darral Paradis, Director of Procurement, was called as a witness. He provided information regarding the 1999-2000 salary study which reviewed all positions in the district. That study recommended downgrading the position of contract / invoice specialist to a grade 41. Employee held that position and was placed at salary grade 51; the position was never downgraded after the 1999-200 salary review.

Mr. Paradise reported satisfaction with Employee's job performance, but agreed that the current placement at a grade 48 was appropriate for her current responsibilities. He noted that her responsibilities were no greater than others in the Procurement department, and that Employee held no supervisory responsibilities. All other similarly placed employees in that department are placed on the salary schedule at a grade 48 and the salaries in the department are now equitable.

Mr. Wilson questioned Mr. Paradis regarding Employee's performance evaluations and noted that she had consistently rated superior in all areas assessed. On questioning by Mr. Wilson, Employee testified that she had never received written notice regarding her salary reduction, but had been told verbally by Mr. Paradis. Her personnel file contained a copy of a letter sent by certified mail to the correct home address but Employee stated the letter was never delivered. Postal notices in the personnel file indicated that the letter was unclaimed. The employee stated that she had agreed to accept additional responsibilities assigned by Mr. Paradis in order to retain her former salary.

Mr. Eddings closed by reminding the board that the district's transition team made reorganization recommendations that had been approved by the Board. In addition, Employee's supervisor agreed that current placement on the salary schedule was appropriate and commensurate with her levels of responsibility. He asked the board to uphold the administration's recommendation and affirm that the employee is properly placed on the salary schedule.

Mr. Wilson suggested that the district could have settled the issue with mediation instead of a board hearing and he apologized for bringing the action to the board. He stated that the reduction in pay, approximately \$3,900, was significant to the employee and he requested the board's consideration to reverse the decision to reduce her salary.

Board members asked for clarification regarding the testimony and then convened an executive session to deliberate at 8:52 p.m. The board returned at 9:02 and reported that no action was taken in executive session. Mr. Berkley moved to uphold the administration's recommendation; Ms. Fox seconded the motion. The motion **carried 5-0-1**, with Dr. Mitchell abstaining.

Dr. Brooks provided background information regarding the second hearing and reminded the board that a previous hearing had been held, in January 2006, for **Employee #2**. Employee #2 was employed in the Procurement Department as a laborer driver when he was involved in a work-related accident. As required by routine policies and procedures, Employee #2 was drug-tested when he was treated at Baptist Medical Center.

At that time, Employee #2 tested positive for marijuana use. He voluntarily submitted to a second screening a few days later which also returned positive results for marijuana use. A copy of the minutes from the Board hearing on January 26, 2006, was provided for the board's review.

The Board's previous action allowed Employee #2 to return to work as a laborer in the procurement department, but without driving privileges. His return to work was based upon a verbal agreement by Employee #2 and his attorney that he would submit to random drug testing as a condition of his return to work.

In early October 2006, Director of Procurement Darral Paradis requested that Employee #2 submit to a drug test. He indicated his desire to return the employee to a position which includes the responsibility of driving a district vehicle. Employee #2 refused to submit for a drug test when requested, and the administration recommended termination of his employment with the District.

The district was represented by Attorney Khayyam Eddings; Employee #2 was represented by Ed Adcock.

When called as a witness, Employee admitted that he had agreed to enter a drug treatment program and to be drug tested. He disagreed that he had offered "random" testing. He agreed that he had refused to submit for a drug test when asked to do so by his supervisor, but stated that he did not feel his return to work should be conditional upon drug testing.

Mr. Adcock addressed the board and stated in defense of the employee that the requested drug test was not precipitated by cause - - that there was no suspicion of use at work and no reason to believe that the employee was not able to perform his job duties. Mr. Adcock agreed that if the employee had consulted him, he would have recommended that he present himself to take the drug test when requested.

Mr. Adcock questioned the employee regarding his reasons for refusing to take the drug test when requested. Employee stated that he felt the reasons for testing him were related to his supervisor's desire to hire another driver - -one who has been working as a temporary employee. He denied using or abusing drugs of any kind.

Mr. Paradis was questioned about his reasons for requesting the drug test. Mr. Paradis stated that the position held by Employee #2 was for a driver / warehouseman and that he was being paid at the salary for that position. He further stated that the work load in the Procurement Department necessitated warehouse workers also be able to drive a truck. He hired the temporary employee to drive because Employee #2 could not drive. He requested the drug test in hopes of a negative test result so that the employee could return to his full job responsibilities as a driver / warehouseman.

The board recessed at 9:28 p.m. for deliberations, and returned at 9:39 p.m. to report that no action had been taken. Mr. Berkley moved to uphold the superintendent's recommendation for termination. Ms. Fox seconded the motion. The **motion failed** on a tie vote, with three in favor of the motion and three abstentions.

Mr. Kurrus made a motion in addition to the vote that a transcript of the oral waiver that was provided in the January 2006 board meeting be made a part of the record of this hearing. Ms. Curry seconded the motion, and it **carried unanimously.**

Mr. Armstrong made a motion to stipulate that the employee agree to a drug test tonight or as soon as possible. His return to work would be conditional upon a negative test; if the test returns a positive result, for marijuana or any other drug, he would be dismissed. Ms. Curry seconded the motion and it **carried unanimously.**

Employee left the hearing with District Security Officers who accompanied him to a medical testing facility for a drug screening. The administration was notified that the results would be available within a few days; the board was informed that they would receive the results once they are submitted to the district's Safety and Security office. A supplemental report will be attached to these minutes once the results are received.

IV. ADJOURNMENT

There being no further business before the Board, the meeting adjourned at 9:46 p.m. on a motion by Mr. Kurrus and seconded by Mr. Berkley.

APPROVED: 11-16-06

Originals Signed by:
Katherine P. Mitchell, President
Melanie Fox, Secretary

ADDENDUM

In compliance with the motion approved as part of these minutes, a verbatim transcript of the waiver provided in a previous hearing for employee is made an attachment to these minutes.

Partial transcript - January 26, 2006 / Conclusion of Employee hearing

TR: Mr. President, I move that we uphold the district's finding of facts that Employee tested positive for marijuana.

KM: Second

(Discussion and clarification among the board members regarding the intent of the motion.)

Motion carried.

TR: I move to not uphold the administration's recommendation for termination.

KM: Seconded.

Discussion:

BD: This is an observation. You are getting a second chance - - or you may be getting a second chance. You should take heed. This doesn't happen often.

LB: I have a question relating to if we give him a second chance. Can you put an employee in a condition such that random drug testing is legal?

Adcock: We would agree to a regular schedule of drug testing.

LB: That's not the question. I appreciate that but, that's not the question. Is there a status that we can put an employee that random drug testing is legal? He has tested positive for drugs. Mr. Eddings, do you know is there a status we can put an employee in whereby it is legal to do random drug testing?

MD: If he is a probationary employee . . .

Eddings: Random testing is allowed for certain job titles, I don't think we have a policy where you would test all employees.

LB: Not all employees. Can we put this employee in a status whereby random drug testing is legal?

MD: Mr. Berkley, I think that based on our policies, if there is a suspicion of illicit drug use . . .

LB: Based on behavior or based on previous drug testing?

MD: Well, it's reasonable suspicion.

TR: Mr. Adcock, if your client is willing to sign for regular scheduled testing, could he sign for random testing?

Adcock: I am his attorney and I am telling you that legal or not, regardless of the Constitutional ramifications, we will waive any Constitutional problems and we will agree, as a term and condition of his continued employment, to submit to regular drug tests at the complete arbitrary whim of management whenever they want it.

LB: That's legal?

Adcock: If we waive any possible action against the District, then legal or not we don't have a cause of action against you and nothing's going to happen bad to the District as a result.

Eddings: May I make another recommendation? I discussed this with Dr. Brooks. I'd feel real good if we found something else for Employee to do other than operating District owned motor vehicles.

TR: That's not unreasonable.

Adcock: You have rights to do that - - any employee, any generalized employee - - you can assign them to particular jobs.

LB: Yeah, but as you know they have a right to sue us too.

Adcock: Simply assigning someone to a particular job is not going to give rise to a cause of action that I would take if someone came to

(comments from board members talking)

Adcock: . . . a lawyer and I would lose my mind.

LB: Well, I could name one right now who would do it.

MD: Please signify your vote.

LB: Affirmative vote means he reinstated.

BD: Mr. Rose' motion was that we not uphold the district's recommendation.

SS: Yeah, but do we make a recommendation.

LB: We don't make the recommendation.

SS: We rejected the (recommendation for termination).

The motion carries.

Done deal.