

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE SUPERINTENDENT

July 5, 2017
Wednesday, 10:00 a.m.

MINUTES OF SPECIAL MEETING

The School Board of Broward County, Florida, met in special session at 10:01 a.m. in the Board Room of the Kathleen C. Wright Administrative Center, 600 Southeast Third Avenue, Fort Lauderdale, Florida. Present were: School Board Members Abby M. Freedman, Chair; Nora Rupert, Vice Chair (absent); Robin Bartleman (absent); Heather Brinkworth (via teleconference); Patricia Good; Donna P. Korn; Laurie Rich Levinson; Ann Murray; Dr. Rosalind Osgood; Robert W. Runcie, Superintendent of Schools; and Barbara J. Myrick, Esq.

Call to Order The Call to Order was followed by the Pledge of Allegiance to the Flag of the United States of America.

Close Agenda Upon motion by Mrs. Good, seconded by Dr. Osgood and carried, the Agenda was approved and declared closed. Mrs. Bartleman, Mrs. Rich Levinson, and Mrs. Rupert were absent for the vote. (6-0 vote)

Purpose of Meeting For The School Board of Broward County, Florida to discuss and recommend a plan of action for H.B. 7069 relating to constitutional issues affecting The School Board of Broward County, Florida, and any other items the Board deemed necessary.

Superintendent's Recommendation

1. **Authorization to Challenge the Constitutionality of HB 7069 by Filing Legal Action with Other School Districts** (Approved as Amended)

Motion was made by Ms. Korn, seconded by Dr. Osgood and carried to authorize the Superintendent and General Counsel to enter into an agreement to file legal action with other school districts to challenge the constitutionality of HB 7069. **This motion was superseded by a Motion to Amend (page 6).** Mrs. Bartleman and Mrs. Rupert were absent for the vote. (7-0 vote)

The Chair received audience input on this item.

This meeting was held as a result of House Bill 7069 and to discuss whether the Board wanted to proceed with legal action pertaining to three (3) Florida Constitution Articles in which the legislation was in violation: Article IX, Section 1(a), Section 4(b), and Section 6; Article II, Section 6; and Article VII, Section 9(a).

Dr. Osgood thanked the District's General Counsel for her work on this critical issue, as well as the involvement of Florida representatives, the Broward Delegation, the President of Broward Teachers Union (BTU), and the thousands of citizens. She expressed her outrage on the attack and assault on the public education system. She stated she supported Charter schools that worked but did not support the ones that did not work. She supported the authorization to aggressively fight this Bill.

Mrs. Good concurred with her colleague and said if ever there was a time to support public education, now was the time. She thanked the General Counsel, Florida representatives, the Broward Delegation, teachers, parents, and residents. She wanted further clarification on the sharing of Discretionary Capital Millage with Charter schools. She indicated the issue of sharing dollars with private entities was troublesome when the District, as a public educational system, was not getting sufficient dollars for its schools.

Ms. Myrick replied the District's Capital Budget was based on need. One of the problems with how this money would be shared was that there would be no assessment of the need for Charter schools. It would purely be based on a Full-Time Equivalent (FTE) count. She said there was no where in legislation that would require Charter schools to do any type of assessment of their facilities to determine what their needs would be.

Mrs. Good wanted to know if the number was known of non-profit agencies that owned their own property. She was aware of one (1) in her district in Pembroke Pines. She asked if everyone was going to be lumped in this challenge or were there exclusions for municipality-owned Charter schools.

Ms. Myrick responded the statute already allows the District to share its millage dollars with any Charter school it may choose. She suggested the way for the District to consider them would be to make them part of the District Educational Facilities Plan (DEFP) and add them in the 5-year Plan, as with any other school. She said the Legislature currently gives Charter schools Capital money and would not preclude it from giving more money to Charter schools through Capital. She indicated the state would make the calculations and determine how much the District would have to give to each school. If the District did not receive the revenue expected through its tax base, it would have to come up with that money for the Charter schools. She said no one was against assisting Charter schools; however, they must be quality Charter schools.

Mrs. Good commented the state had not adequately funded public education; they developed a Charter school model that was supposed to be innovative and self-sufficient, which it was not; and it should not be taking dollars from traditional public schools, which received less and less each year. She said the focus should be that it was based on need and not per student. She believed the issue with Schools of Hope was just a label the state came up with to siphon public dollars to private entities and it was extremely troublesome. She had concerns if the public-Charter school was to be lumped in with the others in the challenge it would not get the needed funds.

Ms. Myrick stated it would be her request to retain counsel in conjunction with other districts for a legal opinion. If they determined a way to keep the public-Charter school out of the challenge it may require the District to share its millage with them.

Dr. Osgood agreed with her colleague and pointed out there was another publicly-owned Charter school in Coral Springs that was run privately. She wanted to ensure an assessment was made to determine what other public-Charter schools were in the District. She indicated she supported municipality-owned Charter schools that were run publicly, but had an issue with publicly-owned Charter schools that were run privately.

Ms. Korn said there was a distinction between being owned and managed. She did not think Charters should be separated for the reason that there were publicly-owned and managed Charters that were still not successful. She stated it should be left as it was and believed the District should take the first step as to what the parameters should be in terms of sharing millage with Charters. She indicated the discussion should not just be about tax dollars but also the success of education that followed those tax dollars and ensuring that those dollars were safeguarded. Ms. Korn inquired what the parameters were of the action being requested and whether or not it could be amended.

Ms. Myrick replied these were the areas that she and other district general counsels had received legal opinions from law firms and were the areas where the constitutional issues could be addressed within legal action. The focus was on the contracts, the Schools of Hope, the millage, and the local education agency designation. There were different opinions regarding the Single Subject Requirement under the Constitution for this Bill. In addition, there were different case laws that stated if it related to education it could be brought as a Single Subject, and other case laws that indicated otherwise. This was the scope and a complaint would address the Charter school contracts, the Schools of Hope, local education agencies, and the millage. Ms. Myrick was not sure they would include the Single Subject issue. She did not have a complaint that she could give the Board at this point. She said the District was the first out of the box to discuss this and other districts would be discussing it within the next two (2) weeks. She did not anticipate this challenge to be filed sooner than the end of the month; however, legal experts had indicated the sooner the better.

Ms. Korn stated she wanted to ensure that her vote in support of this was based on this general scope and if it was further reduced/refined she would still support it. Her concern was if it expanded beyond this scope, it should come back to the Board. She said if this was unconstitutional then it was the Board's responsibility to do something about it.

Mrs. Rich Levinson agreed with everything that had been discussed. She believed the lawsuit should include all Charter schools. She said the Board could discuss at a later time how to handle the one (1) municipal entity. She conveyed she fully supported this and believed it was unconstitutional. She questioned why the adequate funding piece had not been included. She pointed out there had been two (2) millage cuts since 2008 and this would be the third time it was cut. In addition, there was a report from Moody as to what it would do to the District's rating, as well as a teacher crisis in the nation so when the state has continued to take away from the same pot, it has created many issues that districts have had to face. She asked how there could be a lawsuit without addressing the unconstitutional piece of not funding education properly.

Ms. Myrick responded as part of the millage argument, they could address the adequate funding of Capital. She indicated there had been some strong case law that the legislature had provided the funding. She believed it was something to review and it could be a second lawsuit. She recommended as they moved forward that they focus on this one (1) House Bill and the many aspects of it. The issue of adequate funding of Capital could certainly be part of that Bill, given the fact that it had been reduced.

Mrs. Rich Levinson stated with this being based on enrollment and not on need, was a tremendous problem that meant larger schools would get everything and the smaller ones would receive nothing. In addition, knowing who the Local Education Agency (LEA) was would be challenging in determining who would assess the need. She said someone made a statement on "how" it was being done, but the "what" needed to be included as well. She said this had been a pattern that started with Charters, in which there were 100 Charter schools in Broward County where many were not needed. The Virtual schools then followed in the shift from private to public. Mrs. Rich Levinson strongly believed the Board had to stand up and fight against public dollars going to private hands. She indicated there also needed to be a stronger application process for the Charter school contracts. The Charters were supposed to be innovative but nowhere on the existing Charter application did it ask what they were doing that was innovative. If they were truly about innovation, they needed to be innovative; and if they were truly public schools, then every public school should be treated the same. She said the Schools of Hope fell into the same conversation. In closing, it was just as important as to who would be hired and she wanted to know how counsel would be determined to take up this challenge.

Ms. Myrick replied that she and Miami-Dade had spoken to 2-3 law firms. Two (2) firms in Tallahassee declined due to conflicts with other state and governmental agencies. She said they were talking with some local firms that had a presence in Tallahassee because this suit would be filed in the 1st District Circuit Court. She said as a group they would have to narrow choices based on fees, what the firm would be asked to do, and how the firm would respond to how it would handle the suit. She indicated the districts still needed to discuss if they would need a Memo of Understanding (MOU), if each district would have different retainer agreements, or if fees would be based on the number of students in each district, or some other way that was fair.

Mrs. Rich Levinson thanked the General Counsel for all her work, as well as the Broward Delegation, parents, and communities.

Ms. Murray reflected in 2009 the School Board had \$82 million in unfunded mandates and if the state successfully implemented HB 7069, that number would change to \$150 million in unfunded mandates. She said the District has continued to do what it had to do with less and less and was at fault for allowing it to happen. She stated the situation in Tallahassee was not about the children or voters, it was about the money and this lawsuit was not only justified, but it was long overdue. She indicated there were some excellent Charter schools but they would not put the District out of business. She believed Charter schools were a choice and that every parent had the right to choose a public, private, or Charter school for their child(ren). Ms. Murray said it was time to say, "enough is enough" and move forward.

Mrs. Brinkworth thanked the Superintendent, General Counsel, staff, the Broward Delegation, and the community members that lobbied against HB 7069. She said local control was a huge concern for everyone, as well as the sharing of tax dollars. She agreed this needed to be challenged now and do what was in the best interest for the students and community. She inquired if the requested \$25,000 spend would be sufficient or would it need to come back for additional authorization.

Ms. Myrick replied she may have to come back depending on the number of districts that come forward and how it would be split. This amount would definitely get through the first filing in the judicial circuit but if there was an appeal then she might have to come back to the Board. She indicated this was already in her budget for outside counsel given what the expenditures were this last year.

Mrs. Brinkworth concurred with her colleague regarding the scope that was being voted on today and that it could be reduced but not expanded. She said the Superintendent and leadership within the District have worked to turn around schools and create opportunities that work for students, so the idea of Schools of Hope was insulting. She reiterated that this suite absolutely had to move forward.

Mrs. Good inquired if staff had an overview from the funding implications this would have as to what the impact would be on the District.

Judith Marte, Chief Financial Officer, responded there would be two (2) immediate impacts to the District. The first one was in regards to the loss of Capital funding, which could be as high as \$123 million, depending on what legislative action may reduce Public Education Capital Outlay (PECO) from Charters further than the number it had already been reduced to, which was \$50 million. So if they zeroed that number out, the impact would be \$123 million. The second impact would be to the debt service cost that could result in the tens of millions of additional dollars. Right now the District had one of the higher credit ratings of any school district in the state, but could be down-graded.

Mrs. Good thanked staff and stated this would be detrimental to the District and had ongoing implications that were not yet known. She asked the Chief of Staff to ensure this message would go out to everyone in the community through the Communications department. She reiterated she would support this item.

Dr. Osgood thanked her colleague for the question. She referred back to the funding and would be interested in looking at other possibilities, including another lawsuit, in taking a stronger stance with addressing the pattern of funds continuing to be cut. The more the funds are cut, the less impact the District had with less resources to meet the needs of the students. She stated she would like to come back and have a discussion on the impact of the funding overall and how to take a stronger stance. She commented that same rules for all Charter schools should apply across the board and that something needed to be done to fight against this Bill.

Mrs. Freedman stated education was what makes America. She questioned what was the purpose of the School Board if students were not properly educated. She believed this House Bill deprived students to equal access. She said her colleagues brought up some excellent points and agreed it was time to move forward with some action. She thanked those in Tallahassee working on behalf of the District, as well as the General Counsel's collaboration with other school districts to move this forward. It is the School Board's responsibility to ensure the laws being imposed upon the people were constitutional.

Ms. Murray inquired if there was a date or timeline in which this had to be filed.

Ms. Myrick replied no, but the sooner the better in order to get an injunction so none of this would be instituted at all. The timeline for the Single Subject Requirement was six (6) months.

Ms. Murray requested that the Board be kept updated and apprised daily of the process.

Ms. Myrick stated she had a motion for the Board to consider but first she wanted to be clear that the Board wanted to move forward with other school districts collaboratively and not alone.

Ms. Freedman answered in the affirmative on behalf of the Board.

Mrs. Rich Levinson commented that definitely the power in numbers was very important and equitable financing of the lawsuit.

Ms. Myrick read the motion to be considered by the Board.

Motion to Amend (Carried)

Motion made by Dr. Osgood, seconded by Ms. Korn and carried to authorize the Office of the General Counsel and the Superintendent to retain outside counsel in collaboration with other schools districts for the purpose of filing a legal challenge to HB 7069 within the scope of the information presented in this Agenda Item and the amount of the legal cost and fees would not exceed \$25,000 without further School Board approval. Mrs. Bartleman and Mrs. Rupert were absent for the vote. (7-0 vote)

A vote was taken on the Motion to Amend.

A vote was taken on the item as amended.

Adjournment A motion was made by Dr. Osgood, seconded by Ms. Korn and carried to adjourn this meeting. The meeting was adjourned at 11:40 a.m. Mrs. Bartleman and Mrs. Rupert were absent for the vote. (7-0 vote)

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