

Approved in Open Board Meeting, January 25, 2011

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

January 11, 2011
Tuesday, 2:00 p.m.

MINUTES OF SPECIAL MEETING

The School Board of Broward County, Florida, met in special session at 2:12 p.m., Tuesday, January 11, 2011, in the Board Room of the Kathleen C. Wright Administrative Center, 600 Southeast Third Avenue, Fort Lauderdale, Florida. Present were: Chair Benjamin J. Williams; Vice Chair Ann Murray; Members, Robin Bartleman, Maureen S. Dinnen, Patricia Good, Jennifer Leonard Gottlieb, Laurie Rich Levinson, Nora Rupert, David Thomas; Superintendent James F. Notter, and Edward J. Marko, 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. Gottlieb, seconded by Ms. Murray and carried, the Agenda was approved and declared closed. (9-0 vote)

1. Selection of Interim General Counsel (Approved)

Motion was made by Mr. Thomas, seconded by Mrs. Gottlieb and carried, to Interview Internal Candidates for the Position of Interim General Counsel and Authorize the Board Chair to enter into Contract Negotiations with the Selected Candidate for the Interim General Counsel position. (9-0 vote)

At the December 14, 2010 Special School Board Meeting, the School Board authorized advertising for an Interim General Counsel from within the Office of the General Counsel. A memorandum advertising the opportunity was provided to each internal candidate. Interested candidates were given until January 4, 2011 to submit a resume and cover letter.

The intent of the Interim General Counsel is to serve the needs of the District by maintaining stability and continuity in the Office of the General Counsel until such time as the advertising, interviewing and selection process is completed for the General Counsel position.

There is no financial impact to the school district.

Mr. Williams thanked Mrs. Marilyn Batista-McNamara, Esq. and Mr. Robert P. Vignola, Esq. for their interest in the position of Interim General Counsel.

The Chair explained the procedure to be followed at this hearing.

Mr. Notter informed that candidates will be interviewed separately and will be asked the same questions. Mr. Notter stated that the hearing will not be web-streamed, as indicated in the advertisement notification of the hearing to the public.

The following questions were asked of each candidate by the Chair:

1. Provide an overview of your background and include the areas of specialty that you have handled for the School District. State why you believe that you are the most qualified candidate to serve as the Interim General Counsel.
2. What do you believe are the three (3) primary issues that need immediate attention in order to maintain a continuity and to protect the School District.

Mrs. Batista-McNamara responded that the delivery of legal services is the primary issue in maintaining continuity to the district and to the School Board. She stated that the view of the community of the legal department needs to continue and be maintained in the best light and in a positive image. Additionally, the continuity within the legal department is of major importance; maintaining highly qualified and fully committed attorneys and support staff.

Mr. Vignola responded that the district needs to work further in developing an internal Ethics policy and overall approach to address the ethics issue and to help instill greater confidence in the community. He stated, when successful this will bear a great deal of "fruit" for the district.

Regarding fiscal concerns, Mr. Vignola stated there may be a need for a bond issue that will require a greater amount of public confidence.

Mr. Vignola informed that the law in charter schools is changing and students are leaving the district. The legal office will do whatever it can to support and sustain the district's mission of providing education to students. He stated that public confidence is needed to maintain students and maintain the market share so that the mission of the district is supported.

Mr. Vignola further stated that another area of importance is policy development, revising policy procedure and refining policy that expresses the intentions of the Board, and how the district should be operated and in a manner that would sustain any scrutiny.

3. State a case when you represented the School District before the State Board and/or Other Judicial Body that demonstrates your comprehensive expertise and knowledge in litigation. Describe the case, and your role and responsibilities in handling the case. Include the outcome and impact to the School District.

Marylin Batista-McNamara, Esq.

Following responses to each question posed by the Chair, the Board Members asked additional questions.

Mrs. Bartleman inquired about her role in the management of staff.

Mrs. Batista-McNamara responded that she supervises two of the three Assistant General Counsels in the areas of Exceptional Student Education (ESE), and the Generalist handles all policies, public records requests, et cetera. This supervision is in addition to her work in federal litigation, employment, labor, and negotiations with the union.

Ms. Dinnen inquired about a case in the area of specialty that the candidate has litigated on behalf of the School Board.

Mrs. Batista-McNamara responded that she is proud of the litigation and resolutions that have been reached in several cases throughout her 17-year career, the most important being the Citizens Concerned About Our Children v. The School Board of Broward County, Florida. This case involved working with the community and district staff, administrators, and the Board; preparing depositions, Motions for Summary Judgment, and arguing cases and providing oral arguments before the federal judge. Mrs. Batista-McNamara stated that ultimately she was involved in the resolution phase of the case. Even though the district was successful in the judge dismissing the case on motions for Summary Judgment, the Board decided that the parties resolve the case amicably, with the CCC and the community, through mediation.

Mrs. Batista-McNamara noted other cases, as noted in her resume, including Babicz v. The School Board of Broward County, Florida, et al., and Boy Scouts of America, South Florida Council v. Till. Mrs. Batista-McNamara stated that these cases are important because they show that at times the legal requirements may be very clear but there needs to be a sensitivity toward the requirements or the needs of the community.

Mrs. Rupert inquired about the procedure for assisting in drafting the newly-required course work for specialty certification.

Mrs. Batista-McNamara responded that she was appointed by the President of the Florida Bar Association as Chair for the Education Law Certification Committee. Informing that Florida will be the first state to offer a certification in Education Law, Mrs. Batista-McNamara stated that the Committee Chair and nine individuals will set the requirements for the examination, a six-hour multiple choice/essay examination, and review applications of the education attorneys who would like to be specialized in this area of law. The examination will be given in March 2011 and the first group of certified attorneys will be presented in June 2011.

Mr. Thomas inquired how the continuity of the legal department will be maintained following the selection of one of two candidates vying for the position of Interim General Counsel.

Mrs. Batista-McNamara responded that due to the collegial atmosphere in the General Counsel's office which is composed of a small group of attorneys and employees, she would offer her full support to Mr. Vignola. She stated that both she and Mr. Vignola have the skills and experience necessary in education law. Mrs. Batista-McNamara opined that she is better qualified to manage the office given her specific set of experiences and chosen area of expertise within education law, and she has had the opportunity to manage more attorneys than Mr. Vignola has managed throughout his career.

Mrs. Gottlieb inquired about the perception of the legal department and what steps would be taken to promote a positive image to the department.

Mrs. Batista-McNamara responded that she has already taken steps in that area, such as being invited to speak to the Diversity Committee last week. She stated that an effort must be made to attempt to improve the perception of accessibility of the School Board Attorney's Office. Mrs. Batista-McNamara further stated that accessibility would be made through the use of technology, via e-mail, and appearing before committees who felt they have not been given the required attention in the past.

Mr. Thomas asked about her vision in the role as Interim General Counsel and continuing in her role in litigation.

Mrs. Batista-McNamara responded that the legal department has a very strong team, has capable attorneys who litigate cases and who she currently supervises and mentors on an almost daily or weekly basis regarding their cases. Mrs. Batista-McNamara stated that she will continue to litigate, as she enjoys litigation, and that would be her role as Interim General Counsel. She said she would not want to give up the mentorship role with law students in the Law Clerk program at Nova Southeastern University or with the law clerk program in the Board Attorney's office.

Mrs. Good inquired about the district's use of cadre attorneys and whether any changes should be made.

Mrs. Batista-McNamara responded that the use of cadre attorneys is necessary due to the size of this district's legal department, even if there was additional legal staff. She noted that the legal staff in Miami-Dade and Palm Beach school districts have approximately 12 in-house attorneys and they use cadre attorneys. Mrs. Batista-McNamara stated that she worked with Mr. Marko in the allocation of the lawsuits to cadre lawyers; based on the work load, the amount of cases, and the expertise of the cadre attorneys versus the expertise of in-house attorneys. The legal department does as much as possible using in-house expertise and ESE cases are always handled in-house.

Commending Mrs. Batista-McNamara on her strengths, Mr. Thomas requested that she highlight her strongest weakness.

Mrs. Batista-McNamara responded that she is a perfectionist which can be a weakness because sometimes an inordinate amount of time is spent trying to make something as perfect as possible.

In closing remarks, Mrs. Batista-McNamara expressed gratitude for the opportunity to appear before the School Board. Mrs. Batista-McNamara stated that she was proud of the district's legal staff and looks forward to continuing to work with them. She is hopeful that she will be given the opportunity to work with them in the capacity of Interim General Counsel. Mrs. Batista-McNamara further stated that the attorneys are accustomed to following her leadership, and feels she has earned their respect and they would welcome her as the Interim General Counsel.

Mr. Robert Paul Vignola, Esq.

Following responses to each question posed by the Chair, the following Board Members asked additional questions.

Mrs. Rupert inquired whether he is certified in Education Law.

Mr. Vignola stated that Education Law is a new area of certification. He informed that the Education Law Committee was created in 2006 with the Florida Bar to spearhead education certification for lawyers and they launched a petition with the Florida Supreme Court to create an area of certification for Education Law; Florida being the first state to offer this certification. Mr. Vignola stated that he has a pending application for Education Law certification.

Mrs. Bartleman inquired why he is the best qualified to be the Interim General Counsel.

Mr. Vignola responded that his extensive experience is diverse which may be of value to the district.

Mr. Thomas inquired whether his experience includes other county experience.

Mr. Vignola responded that his entire practice has been in Fort Lauderdale.

Referring to question 3, Ms. Dinnen inquired about any cases within his area of specialty.

Mr. Vignola responded that a number of arguments have been made before the Charter School Appeal Commission in Tallahassee, and before its current configuration those matters went directly to the State Board of Education. There has been success in bringing this School Board's recommendations for disposition of charter school denials and terminations, illustrating that the School Board has taken a prudent approach in how it deals with issues where there is often support and sympathy for the charter school in question. Mr. Vignola stated that convincing arguments were made that the Board's actions have been well reasoned and within the law, and that the procedures that were necessary for the interest of all parties have been followed.

Mrs. Good inquired about the district's use of cadre attorneys and whether anything should be changed about their use.

Mr. Vignola responded that the use of cadre attorneys is important because there are areas of expertise that the district will not have enough work to make it worthwhile to hire an attorney in that area. Mr. Vignola stated, at present there has been good use of cadre attorneys to supplement in-house staff. As the district's needs are growing there are some areas that the Board may consider increasing district staff as opposed to reliance upon some of these areas of specialty.

Commending Mr. Vignola on his strengths, Mr. Thomas requested that he highlight his greatest weakness.

Mr. Vignola stated that part of that would be the limitations as to some areas of his expertise, as the district's work is a large spectrum of work and some areas are not within his emphasis. He stated that although he has attended many attorney-client sessions, the area of collective bargaining and personnel are areas not within his concentration.

In closing remarks, Mr. Vignola expressed gratitude for the opportunity to appear before the School Board. Mr. Vignola stated that working for the district is very rewarding; being a product of the Broward school system, and his father was a teacher and his mother was a media specialist. He stated that he views his job as a way to support the School Board and teachers of the district, as they perform an important mission. Mr. Vignola further stated that this is a chance to do rewarding work and support those who do so much for students.

Mr. Notter informed that both attorneys, regardless of who is chosen, will remain in both their positions. The Interim General Counsel's contract will be negotiated and there may be some additional costs in the use of cadre attorney during the interim period.

Remarking that this is one of the most difficult decisions she has had to make, Ms. Dinnen stated that it shows the quality of the two individuals who are applicants to the Interim General Counsel position. Ms. Dinnen stated that no matter what decision is made today it does not preclude either candidate from applying for the permanent General Counsel position, nor is it an indication that one person has an advantage over the other person. All applicants will be viewed with an open mind regardless of former employment.

Concurring, Mrs. Rupert stated that there is no prejudice as to who is selected today and encouraged both candidates to apply for the General Counsel position.

Mrs. Good welcomed the opportunity to listen to the candidates' backgrounds, stating that they are both quite impressive. Mrs. Good commended both candidates for stepping forward and submitting their applications to the Board.

Mr. Williams directed the Board to review their ballots and mark either Option 1 or Option 2, and signed and submitted to Ms. Gracie Diaz, Associate Superintendent, Human Resources, for calculation.

(A pause in the proceedings was held to tally the votes).

Following the ballot tally, Chair Williams announced seven (7) votes for Mrs. Marylin Batista-McNamara, Esq. and two (2) votes for Mr. Robert P. Vignola, Esq.

The Chair, on behalf of the School Board, congratulated Mrs. Batista-McNamara.

Motion (Carried)

Motion was made by Mrs. Gottlieb, seconded by Mr. Thomas, to proceed with the action provided by the School Board, approve the process and selection of candidate Mrs. Marylin Batista-McNamara, Esq. (9-0 vote)

Mr. Notter stated that the action to be voted on is to authorize the Chair to enter into contract negotiations with Mrs. Batista-McNamara, to be brought back to the January 25, 2011 Regular School Board meeting. Mr. Notter stated that the Chair has requested the Board to vote on the Requested Action, to authorize the Chair to enter into negotiations. The Superintendent will continue in his role administratively to sit with the Chair as that occurs.

Mr. Williams, on behalf of the School Board, thanked both candidates for their interest in the Interim General Counsel position and for their commitment and dedication to the school system.

Responding to Mr. Thomas' inquiry, Mr. Notter informed that once the Request for Letters of Intent are submitted the Board is not allowed to talk to the candidates for the General Counsel position.

Adjournment This meeting was adjourned at 3:25 p.m., by way of motion by Mrs. Gottlieb and seconded by Mrs. Bartleman (no vote taken).

RT