

APPROVED IN OPEN BOARD MEETING, AUGUST 5, 2003

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

**June 17, 2003
Tuesday, 10:00 a.m.
MINUTES OF SPECIAL MEETING**

The School Board of Broward County, Florida, met in special session at 10:10 a.m., Tuesday, June 17, 2003, in the Board Room of the Kathleen C. Wright Administrative Center, 600 Southeast Third Avenue, Fort Lauderdale, Florida. Present were Chair Lois Wexler, Vice Chair Carole L. Andrews; Members (Judie S. Budnick was absent), Darla L. Carter, Beverly A. Gallagher, Stephanie Arma Kraft, Esq., (Dr. Robert D. Parks was absent), Marty Rubinstein, Benjamin J. Williams; Superintendent Franklin L. Till, Jr.; and Edward J. Marko, Esq.

Call to Order The call to order was announced by the Chair.

Close Agenda Upon motion by Mr. Rubinstein, seconded by Ms. Gallagher and carried, the Agenda was approved and declared closed. Mrs. Budnick and Dr. Parks were absent. Mrs. Kraft had not yet assumed her seats on the dais. (6-0 vote)

1. **Hearing Upon the Step 5 Grievance of Employee Mark Commiskey**
(Decision upon the Grievance: Awarded \$2,509.26)

Motion was made by Mr. Rubinstein, seconded by Ms. Gallagher and carried, to conduct a hearing upon a grievance appealed to The School Board by employee Mark Commiskey pursuant to Step 5 of the grievance procedures under School Board Policy 4015, Section III, Article E; to make a decision upon the grievance which decision shall be set forth in writing and shall be final.

Mrs. Wexler stated that Mr. Commiskey will present his case to the Board, followed by staff and Board Members' questions.

Mr. Commiskey, who summarized the facts of his grievance, presented a time line of events leading to the grievance beginning with the mold and mildew audit release on January 2002. Mr. Commiskey stated that he was subpoenaed to testify before the Grand Jury on the mold and mildew issues pertaining to Broward County Schools. He stated that he requested to meet with a School Board Attorney to have his rights explained to him in regard to a subpoena that would lead to an appearance before the Grand Jury. Mr. Commiskey stated that Mr. Jeff Moquin, Director, Risk Management, advised him that the Board had directed Mr. Marko to review the procedure on how an individual is provided an attorney. Mr. Commiskey stated that four requests were made and a response from the Board Attorney was not forthcoming.

Mr. Commiskey stated that he made a decision to hire an attorney to assist him during the deposition proceedings. He said that he was informed at the deposition by the State Attorney that he was not a target of an investigation. Mr.

Commiskey stated that he submitted five invoices for legal services and no response was provided from Mr. Moquin. Five months later, on July 25, 2002, Mr. Moquin submitted a response from Mr. Marko denying the request for legal representation.

Mr. Commiskey further stated that a formal Step 3 Grievance was submitted to Ms. Kalpana Mistry, former Associate Superintendent, Human Resources. A meeting was subsequently held with Mr. Dave Hinkin, Ms. Mistry's designee, during which an offer of \$2,000 was made for payment of attorney's fees which was rejected. A formal Step 4 Grievance was filed with the Superintendent of Schools, and a response was provided by Mr. James Notter, Deputy Superintendent, Office of the Superintendent, that a factual basis was not determined for granting the appeal.

Mr. Commiskey informed the Board that the School Board policy in the state indicates that general liability insurance must be purchased to protect public employees. Mr. Commiskey cited School Board Policy 4306, Liability Protection.

Mr. Commiskey requested that he be reimbursed for \$3,969.13 which he incurred for attorney's fees.

Mr. Moquin responded that he had a discussion with Mr. Marko regarding the subpoena and Mr. Commiskey's request to be provided counsel, and Mr. Marko indicated if the employee feels he needs an attorney someone from his office would sit with him and advise him of his rights. He stated that he advised Mr. Commiskey of Mr. Marko's advice; that it was a conflict of interest and that he should hire his own attorney due to the Board Attorney's responsibility to the Board Members, and he needed individual counsel due to the documents in his possession which would be detrimental to the School Board's position regarding mold and mildew issues.

Subsequently, Mr. Commiskey indicated to Mr. Moquin that a formal decision has not been made by the Board Attorney's office and that he would need to hire an attorney and submit the bills to the School Board for further action. Mr. Moquin stated that he did not give authority to Mr. Commiskey to retain counsel, and that Mr. Commiskey would need to proceed in a manner that he felt was appropriate.

Ms. Gallagher indicated that the School Board policy indicates that an employee will be provided with legal counsel to defend employees covered under any suit brought against them. Ms. Gallagher stated that there was an investigation of the school district regarding mold and mildew.

Mr. Marko responded that there is no written policy as to how to contact the attorney for the School Board's office, and if it is an administrative problem the employee will be referred to the administrator. If an employee has a subpoena, the Board Attorney will discuss with the employee their rights and entitlement.

Voicing concern that the employee did not receive an answer in a timely manner, Mrs. Wexler requested the Attorney to consider having a timely response procedure, a standard operating procedure, in place when an individual

requests legal counsel. Mrs. Wexler stated that the State Attorney indicated on the record, at the request of the employee's attorney, that the employee was not a target of an investigation.

Responding affirmatively, Mr. Commiskey responded that he did not know that he had sovereign immunity until his attorney told him.

Mr. Marko concurred that an employee has sovereign immunity if they are subpoenaed, as indicated in Florida Statutes.

Mrs. Wexler informed the Board that there are three options under which to proceed in this matter to resolve the grievance: uphold the administration's decision, reverse the administration's decision and grant relief requested by Mr. Commiskey, or decide the grievance in some other manner that the School Board deems appropriate.

Responding to Mrs. Kraft's inquiry, Mr. Marko stated if the School Board Corporate is a party to a case, there is always an attorney present during any legal proceedings.

Motion (Carried)

Motion was made by Mrs. Kraft, seconded by Ms. Carter and carried, to award \$2,509.26 in the Step 5 Grievance proceedings. Mrs. Budnick and Dr. Parks were absent. (7-0 vote)

Mrs. Andrews inquired under whose authority did Ms. Mistry offer the employee \$2,000.

Dr. Till responded that Ms. Mistry indicated that a compromise offer was appropriate.

Mrs. Andrews stated that a misunderstanding may have occurred, and that more clearly defined rules for employees should be established for the future.

Concurring, Mr. Williams stated that the Board cannot assume anything and this is an opportunity for the Board to look for immediate direction regarding these issues.

Dr. Till stated that with the exception of Mr. Commiskey, the process is working very well and that a misunderstanding does not mean a flaw in the system.

Mrs. Wexler reiterated that guidelines should be available in each department for employees requesting legal counsel, and available in a timely manner.

Mrs. Kraft stated that procedures need to be in place because employees cannot know every procedure.

A vote was taken on the Motion.

Adjournment This meeting was adjourned at 11:25 a.m.

RT