

WORKSHOP/SPECIAL MEETING - NOVEMBER 9, 2000

The School Board of Okaloosa County met in Workshop Session on November 9, 2000, in the Fort Walton Beach Administration Building, 120 Lowery Place, SE.

PRESENT: Cindy Frakes, Vice-Chairman
Don Gaetz
Howard Hill
Lloyd Taylor

Walter Gordon, Superintendent
C. Jeffrey McInnis, Esq., Attorney to the Board

ABSENT: Rodney Walker, Chairman

The Vice-Chairman called the meeting to order at 9:00 a.m., the purpose of the meeting being to review Agenda items, thereby expediting the Regular Meeting. Items may be considered in random order to accommodate visitors and presenters. Routine items not discussed during the Workshop were reviewed prior to the meeting with no further questions or comments from the Board.

Mr. Gaetz requested two items be added to the Agenda for consideration during the Special Meeting. He asked that these items be taken as emergency matters due to the schedule of Board meetings which will not allow the public hearing to take place until January unless approved at the Special Meeting. The first item is a request to advertise a public hearing for revision of School Board Policy 9-6(B) regarding the bumping procedure for administrative and managerial personnel. The second item is a request to advertise a public hearing for adoption of job descriptions for Assistant Superintendent-School Operations and Chief Officer-Quality Assurance & Curriculum and revision of the job description for Chief Officer-Finance. Mrs. Frakes approved the addition of these items to be considered during Special Meeting based upon the timing consideration and the Board's modified meeting schedule for the remainder of the year.

Mrs. Frakes also approved a request by Mr. Gaetz to recognize Ruckel Middle School for being designated a Blue Ribbon School during the Visitors portion of the November 13 Agenda.

Mrs. Frakes recessed the Workshop and called to order the Special Meeting at 9:05 a.m.

Mr. McInnis stated that the Board was in Special Session to take final agency action regarding the Recommended Order issued by the Florida Division of Administrative Hearings in Case No. 00-1180. Rickey Joe Henderson, who was formerly employed in the School District's Maintenance Department, appealed the Board's decision to terminate his employment. An Administrative Hearing was conducted and the Administrative Law Judge has issued his Recommended Order. The Board will need to determine if it will accept the Findings of Fact, Conclusions of Law and recommended penalty in this Order or if there are changes the Board would make to any section of the Recommended Order.

Mr. McInnis asked for confirmation from each Board Member that they have received a complete transcript of the Administrative Hearing and a complete copy of all matters of record in that preceding, and have reviewed those records. Each member present gave an affirmative response.

Mr. McInnis stated that this is not a full evidentiary hearing but it would be appropriate for the Board to receive a brief statement from Counsel for the Superintendent and Counsel for the employee as to their respective positions regarding the final action that the Board should take.

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Mr. McInnis noted that the Superintendent, through his Attorney and in accordance with procedures, has filed an Exceptions document to the penalty section of the Recommended Order. The Exceptions document sets forth the Superintendent's position regarding changes he believes would be appropriate by the Board regarding the penalty phase only of the Recommended Order.

Mr. Joe Hammons, Counsel for the Superintendent, stated that originally the Superintendent had recommended termination of the employee for misconduct, that was properly noticed to the employee, which included failure to complete a work assignment, being untruthful when confronted, and making racially derogatory statements about another employee. The Hearing Officer concluded as much based upon the evidence as presented by the School District with one exception regarding the employee actually reporting to the work assignment. After considering all the circumstances, the Hearing Officer did conclude that the penalty was too severe. The Hearing Officer recommended the employee be suspended without pay from the date of his original suspension through the date of the administrative hearing which was May 17, 2000. This recommended penalty would entitle the employee to reinstatement and back pay.

The Superintendent has filed an Exception to that Order and is now recommending the Board accept the Findings of Fact and Conclusions of Law in the Order but that the Board modify the recommended penalty and suspend the employee without pay from the date of his original suspension, February 15, 2000, through the date of this hearing. This recommendation would reinstate the employee but would not entitle him to any back pay.

Mr. Hammons outlined the requirements of Chapter 120, Florida Statutes, to the Board should it choose to reject or modify the Findings of Fact and/or the recommended penalty. He stated that should the Board choose to accept the recommendation of the Superintendent, the Board must state with particularity the reasons for its actions and cite justification from the record for the modified penalty.

Mr. Hammons entered into the record Petitioner's Exceptions to Recommended Order (District's Exhibit 1 for this hearing) as filed by the Superintendent through legal counsel, which recommends a modification to the recommended penalty as previously stated and states with particularity the reasons for these actions and cites justification from the record for the modified penalty.

Mr. Hammons responded to questions from Board members regarding previous disciplinary steps, past practice in disciplinary matters, due process, and conclusions by the Hearing Officer.

Mr. Glenn Swiatek, Counsel for Rickey Joe Henderson, entered into the record as Employee's Exhibit 1 for this hearing an excerpt from Florida Statute 120.57 and four (4) cases from Florida Courts regarding employment matters.

Mr. Swiatek stated that he disagreed with Mr. Hammons' position on what action the Board can take. It was his position that the Board cannot deviate from the Recommended Order of the Hearing Officer unless the Board finds that the findings of fact were not grounded in competent evidence. He also took the position that the Board could not change the recommended penalty because it is not a board, such as a medical review board, that sets the standards of competency. He stated that deviating from the Recommended Order would be grounds for appeal and he urged the Board to accept the Recommended Order of the Hearing Officer.

Mr. Swiatek offered further explanation of his position upon questioning by Board Members. He cited case law (Respondent's Exhibit 1) to substantiate his opinion.

Directing the question to Mr. Swiatek, Mr. Gaetz asked if it was his position that no Florida School Board can deviate from an Administrative Hearing Officer's recommended

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penalty for any employee and that to do so would be unlawful. Mr. Swiatek confirmed that it was indeed his position.

Mr. Gaetz then directed the same question to Mr. McInnis. Mr. McInnis disagreed with Mr. Swiatek stating that it is his position that the Board has the right to change the Recommended Order based on the provisions of Chapter 120, Florida Statutes.

Mr. McInnis advised the Board that it would need to take final agency action to accept the Recommended Order as prepared by the Administrative Law Judge or accept portions of the Order and make changes to the penalty phase as is recommended by the Superintendent and his counsel. If the Board chooses to make changes, to meet the standards of Chapter 120, F.S., the record will need to state with particularity items from the record the Board believes supports any change to the Order.

Mr. Gaetz stated that he believes measurable standards of discipline would be of benefit to the district as suggested by Mr. Swiatek. But he stated that he disagrees with Mr. Swiatek's position that the Board does not set the qualifications. The Board has set the qualifications in the job description, which lists minimum qualifications, and in the Board's Policies and Procedures.

Mr. Gaetz stated that relying on Mr. McInnis' advise that the Board is acting lawfully in taking action with respect to the penalty including action that might deviate from the Administrative Law Judge's recommendations so long as the Board measure itself to the standards of Chapter 120, he offered the following motion:

That the recommendations of the Superintendent that the Respondent be suspended without pay from the date of the original suspension (February 15, 2000) through the date of this hearing (November 9, 2000) and that the Respondent be reinstated without back pay (effective November 10, 2000) be approved by the Board and that the following be entered into the record as reasons why the Board's action complies with Chapter 120, Florida Statutes:

- 1) The Respondent was untruthful regarding his work activities. (Petitioner's Exhibit "1")
- 2) The undisputed racially derogatory statements made by the Respondent in reference to an African-American school district employee which are explicitly set forth and in evidence through Petitioner's Exhibit "2".
- 3) The disrespect shown the Respondent's supervisor when Respondent was confronted about his misconduct and his lack of remorse as reflected in Petitioner's Exhibit 3. Furthermore, having been caught lying with regard to his whereabouts, the Respondent blamed his supervisor for checking up on him noting that had he not done so, everything would have been dropped and over with.
- 4) The Respondent called a school principal and assistant principal a "dam liar" when, during the investigation of this matter, the Respondent's supervisor presented him with statements by these employees that they had not seen him at his work assignment. (Petitioner's Exhibit "1")

That the Board acknowledges agreement with the Findings of Fact and Conclusions of Law as cited in the Recommended Order of the Administrative Law Judge.

The motion was seconded by Mr. Taylor and carried 4-0, Mr. Walker absent. Vice-Chairman Frakes directed Mr. McInnis to prepare a Final Order in this matter. (All documents pertaining to this hearing are on file as School Board Exhibit 00-700.)

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The Vice-Chairman concluded the hearing at 10:00 a.m. and stated that the remaining business of the Board would be considered at this time.

Motion was made by Mr. Gaetz that a public hearing be advertised for the revision of School Board Policy 9-6(B) regarding the bumping procedure for administrative and managerial personnel. The motion was seconded by Mr. Taylor. (Exhibit 00-701)

Mr. McInnis explained that the proposed revision clarifies the intent of the current policy that for an individual to move to another position the individual must meet the qualifications for that position as outlined in the job description.

The motion carried 4-0.

Motion was made by Mr. Gaetz that a public hearing be advertised to consider adoption of new job descriptions for Assistant Superintendent-School Operations and Chief Officer-Quality Assurance & Curriculum and revision of the job description for Chief Officer-Finance. The motion was seconded by Mr. Hill and carried 4-0. (Exhibit 00-702)

There being no further business, Vice-Chairman Frakes adjourned the Special Meeting at 10:07 a.m. and reconvened the regular Workshop Meeting.

Bill Smith reported that he was able to resolve the problem with purchasing stadium lights for Crestview High and Destin Middle Schools by using concrete poles instead of steel poles. The concrete poles meet the wind load requirements and can be purchased within budget. The lights will be the same as those installed at Choctawhatchee.

Mr. Smith also reported that the necessary arrangements have been made to proceed with the exchange of property in Niceville as the Board directed at an earlier meeting. He requested this item be added to the Discussion Agenda for approval. Mrs. Frakes approved the request.

Mrs. Frakes stated that she had questions regarding Budget Amendment #1; therefore, this item (Consent #2) would be moved to the Discussion Agenda (#5).

Referencing the contract with the YMCA, Mr. Hill questioned the payment of coaches. Mrs. Spence responded that the contract is referring to the supplement paid to swim team coaches by the district.

Mr. Hill asked if the applications for Reading Enhancement Grants was for the Reading Recovery Program. Mary Gunter responded that these were not Reading Recovery but grant funds made available to individual teachers.

Mr. Hill asked which students were being referred to in the Health Services Agreement for CPR training. Liz Cavanah stated that these are adult students or better stated school district employees.

Mr. Hill asked who would administer the ESE Alternative Assessment. Jeff Roser responded that it is a portfolio assessment administered by teachers.

Mrs. Frakes asked why the Therapy Services Agreement included speech therapists. Ms. Cavanah responded that the district is in need of physical therapists and occupational therapists but the contractor offers speech therapist services.

Mrs. Frakes also questioned the term of the Agreement. Mr. McInnis responded that he recommends this be a one year contract and the automatic renewal clause deleted. He also recommended the Personnel Covenant clause be deleted.

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Mr. Gaetz stated that compensation to therapists as employees is being negotiated and there was a claim made earlier that it would be a savings to the district to employ therapists rather than contract the services. He requested this item be moved to the Discussion Agenda and that a financial impact statement be provided. Mrs. Frakes moved this item to Discussion Agenda #6.

Mr. Gaetz requested Consent #17, Educational Services Agreement with Victoria Wilson, be moved to the Discussion Agenda for the purpose of laying the agreement on the table. Mrs. Frakes approved the request.

Vice-Chairman Frakes approved the following additions to the Agenda:

Consent Agenda: 23A(5), Bid #01-B32 Water & Sewer Lines for OATC; 23A(6), Bid #01-B33 Used Trucks for Maintenance South; 26) Acceptance of donation to Kenwood Elementary; 27) Acceptance of donation to Elliott Point Elementary; 28) Surplus Property List #01-3

Construction Program: 2) Submission of the Program Status Report for October 2000

Mr. McInnis stated that the GMP for Task Order No. 4, Northwood Elementary School Renovation and Addition, with Sverdrup/Delta is being submitted for approval. The Cost Verification Report has been submitted by Hanscomb, Inc., and verifies that the proposed budget is within reasonable market range. He noted that this Task Order does not have a shared savings clause because the funds are site specific and project specific. He further noted that the scope of work has been increased with no increase in price as indicated in the letter attached to the Budget Limitation Proposal.

There being no further business, the Workshop was adjourned at 10:25 a.m.

Teresa Epperson, Recorder

WALTER C. GORDON
SUPERINTENDENT AND
EX-OFFICIO SECRETARY

CINDY FRAKES
VICE-CHAIRMAN OF THE BOARD