



NEW HAVEN PUBLIC SCHOOLS
Connecticut

Board of Education Committee
Special Meeting Minutes
January 21, 2021 via Zoom

I. Call to Order: The meeting called to order at 6:37 p.m. by Ms. Rivera.

Attendees: Present: : Ms. Yesenia, President; Mr. Matt Wilcox, Vice-President; Dr. Edward Joyner, Secretary; Mayor Justin Elicker, Dr. Tamiko Jackson-McArthur, Mr. Darnell Goldson, Mr. Larry Conaway.

Staff: Dr. Iline Tracey, Dr. Paul Whyte, Ms. Keisha-Hannans, Atty. Rossetti, Atty. Mooney, Atty. Patricia King, Atty. Elias Alexiades.

II. Pledge of Allegiance: Mr. Wilcox led the assembly in the Pledge of Allegiance

III. Discussion and possible action, including related motions by Board members, on a complaint concerning Board member conduct toward a Board employee.

Ms. Rivera appoints Atty. Mooney as parliamentarian for this meeting.

Atty. Mooney stated that he has presented his legal opinion on January 10, 2021 Meeting. If the Board wishes to preserve the confidentiality of his opinion, if so he advises the Board to convene into Executive Session, to preserve the confidentiality.

Mr. Goldson opposes the Executive Session due to the Tinley Report already publicized on the District Website; and states that Atty. Mooney’s findings of that report should also be made public.

On the Motion by Mr. Wilcox to move to Executive Session, seconded by Ms. Rivera, by roll call vote. (Motion Fail, Require 2/3 vote)

Mayor Elicker, Yes; Mr. Goldson, No; Dr. Jackson, No; Mr. Wilcox, Yes; Dr. Joyner, Yes; Mr. Conaway, No; Ms. Rivera, Yes.

On the Motion by Mr. Conaway to move to Executive Session and release Atty. Mooney report to the public, seconded by Mr. Wilcox, by roll call vote. (Motion Withdrawn by first and 2nd)

010-21
Release Atty.
Mooney Report for
Public; waving
ACP

On the Motion by Mr. Wilcox to waive Atty. Client Privilege on Atty. Mooney report, seconded by Ms. Jackson, by roll call vote. (Motion Passed)

Mayor Elicker, Yes; Mr. Goldson, Yes; Dr. Jackson, Yes; Mr. Wilcox, Yes; Dr. Joyner, No; Mr. Conaway, Yes; Ms. Rivera, Yes.



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011-21 Motion to discuss Atty. Mooney report prior to Atty. Rossetti report.

On the Motion by Mr. Goldson to first, discuss Atty. Mooney report, seconded by Dr. Jackson, by roll call vote. (Motion Passed)

Mr. Wilcox, Yes; Mayor Elicker, No; Dr. Joyner, No; Dr. Jackson, Yes; Mr. Goldson, Yes; Mr. Conaway, Yes; Ms. Rivera, No.

Atty. Mooney presented the findings in his report; he stated that Dr. Tracey was in her legal rights to investigate the matter of harassment brought to her by one of her staff.

Mr. Goldson stated that although the superintendent was within her rights to investigate the issue regarding her staff member; that does not constitute a full investigation into his conduct at Board meetings. Only the Board itself may launch an investigation into a Board Member, it is not the Superintendents responsibility. Atty. Mooney confirmed Mr. Goldsons statement.

Dr. Joyner asks Atty. Mooney what is the responsibility of an executive if an employee comes to them with an allegation of harassment. Atty. Mooney responds that they must act on it, and by taking no action, they would be in violation of their professional responsibility, which may expose the organization to a legal claim. Although this situation is more of a unique situation as Dr. Tracey is essentially an Agent of the Board and the investigation is concerning the conduct of a fellow Board Member.

Mr. Conaway makes a statement that all the Board members should always be respectful, and that in doing so we will be rid of the clear divide within the Board. Mr. Wilcox states that he hears what Mr. Conaway is stating and that he will redouble his efforts between board, public and staff to always be respectful. Mr. Wilcox states some consideration be made on whether we should be discussing the contents of the report based on the scope of the charge presented to Atty. Rossetti. He adds that Dr. Tracey will be evaluated before the end of the Fiscal Year and that if we find that the Superintendent exceeding her authority, we can bring it up at that time.

Atty. Mooney states the May 18, 2020 memorandum Mr. Goldson references in his discussion if his complaint be brought to the Governance committee or the full board; but then ignored. Atty. Mooney states that his memo was about the scope of authority, an issue of censure would be up to the Board. The Board concerning censure is one to consider in relation to one of its Board members.

Mr. Goldson clarifies that he understands the memo was in regard to the Board policing its own members. Which is why a few months later he does not understand why Dr. Tracey would launch such an investigation, in conjunction with the Board President and Vice President. As the Superintendent must notify the board of a complaint by an employee against a board member at the next board meeting after the complaint is filed. Atty. Mooney states he was quoting a Bylaw in that instance.

Ms. Rivera wants to clarify that she never met with Atty. Rossetti and the only dialogue they had was a phone conversation after the investigation already commenced; where Atty. contacted all the Board members.



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Mr. Goldson adds that although you may not have had a direct conversation with Atty. Rossetti regarding the investigation. Atty. Mooney's memorandum on page 2 states by email to Atty. Rossetti dated 7.28.2020 states "after consultation with Board President Rivera, Asst. Atty. Alexiades described the scope of engagement."

**Discuss Atty.
Rossetti Report.**

Atty. Rossetti would like to start the discussion with answers to some of the questions that were raised first, in regard to the retention at the Tinley Firm and the scope of the investigation.

Letter dated 6.29.2020 when then Acting Chief Operating Officer Michael Pinto requested on behalf of the Board of Education to investigate the claim of harassment by an employee of the Board of Education. In regards to the scope of the investigation (Page 3 of report) and directed to conduct a factual investigation of the circumstances underlying the complaint received by the Boards Chief Financial Officer Philip Penn of harassment by Board Member Mr. Darnell Goldson. They were also asked to provide an opinion into the conduct found to have been committed constituted as harassment or violated any of the federal, state or statutory common law obligations of the city, any provisions of the city charter ordinance sections of the city's code of ethics and Board of Education bylaws. Lastly, it was asked that they perform an assessment of the city's obligation to protect its employee Mr. Penn from the conduct and if the city was obligated to inform the city of what steps should be taken to fulfill its obligation.

Atty. Rossetti, Atty. Mooney and the Atty. representing Mr. Goldson all agree that Dr. Tracey had the authority and the duty to investigate Mr. Penn's claim of harassment. It is not a 'right' it's a 'duty', which is legally significant.

The provisions of the Board of Education's own policies govern the particular issue Section 4101 of these policies suggest, "If an employee experiences any harassment he/she should promptly report it to his or her supervisor. If the employee believes it's inappropriate to discuss that with their supervisor they may bypass the supervisor and go directly to the Superintendent of schools, who will undertake an investigation."

In addition, pursuant to that Section 9125 "The Superintendent of schools may confer with the Districts legal counsel at his/her discretion" therefore, they have the right to do so. Section 9310 "The policies of the Board of Education shall be broad and general and shall indicate a line of action to be taken by the Superintendent of schools in dealing with specific problems and issues." That section is important as it takes those Board policies and says "pursuant to the bylaws that the superintendent is required to carry out her duties pursuant to those policies."



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Dr. Tracey was in her legal obligation to see to the investigation as she is Mr. Penn's supervisor and the Superintendent and to make sure the investigation is reasonably thorough and complete. In our view a reasonable and complete investigation of the complaint of "harassment" which is not by its term limited to harassment as defined by EEOC in the employment context.

In our report, it lists several examples of where employer's failure to undertake a reasonably thorough investigation of the harassment complaint has led to the liability of that employer can be seen as actually condoning the conduct as it occurred.

The Board policies have mentions of the word harassment throughout its bylaws, but the policy does not define the term harassment as it's used and therefore it is appropriately left to the Board to define such term on how it wishes to define 'harassment' and whether the particularly alleged conduct constitutes harassment as so defined.

Atty. Mooney has interpreted our report as "The product of an investigation or policing of Board Members compliance with the BOE bylaws". Which respectfully, the investigation was not. The Tinley report reflects the results of the investigation of a complaint of harassment, which under the BOE policies is the express duty of the Superintendent to take and in the course of that action and the course of this investigation we considered and pointed out all the rules of conduct that would apply and adopted by this organization. If harassment as defined by this organization has occurred. Atty. Mooney concludes that Robert's Rules governs this process, and that under Roberts Rules an investigation of a board member is a violation of bylaws is to be taken as the Board as a whole.

While we agree that would be the case in most instances Roberts Rules would apply, in this instance of harassment by an employee that is specifically delegated to the superintendent by the boards written policies. The boards' bylaws read as follows "The rules of Roberts Rules newly revised, shall govern the proceedings Board of Education in all instances in which they are consistent with the bylaws of the Board, State and Local law." Therefore, that provision indicates that there are some instances where there will be exceptions to that rule. The rules of precedence articulated in Roberts Rules that they are subordinate to any express provisions of the Boards own bylaws or other applicable rules followed by the organization. Therefore, by those terms the Boards own policies will prevail over Roberts Rules.

Mr. Goldson calls point of order as the findings Atty. Rossetti is presenting to the board he does not see in his packet and feels he cannot follow along with her if the document is not provided in advance of the meeting. He would like the record to show he objects to the continuance of her discussion.



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Atty. Rossetti continues, as the bylaws dictate that Dr. Tracey must follow board policy and those bylaws then require that she must undertake an investigation pursuant to that board policy. She added that it was required of her to do so by the board itself and the scope of the investigation as it was tasked to our office in examining all of the laws, rules and policies, which may bare on or inform the conclusion of whether this harassment actually occurred. We believe it was entirely appropriate, as it was her mandatory duty.

The report has been misconstrued through various commentary and I would like to clarify the findings. Firstly, we did not find that the conduct was not harassment, we simply found that we could not determine whether it constituted harassment as defined by the EEO because it was not conduct of the employer; but rather conduct of an individual board member. We further stated that it would appropriate for the board to define harassment or the related terms as it uses in its own policies bylaws then determine if any action is necessary. Second, conduct or commentary that creates an inference of racial animus that is known or proven to be false; is recognized by our law as defamatory in nature. It is not the law that the defamatory comment must be explicit but rather if an inference can be reasonably drawn, may still be actionable.

Lastly, the firm has provided a list of recommendation to the Board of possible actions to be taken (if any) but should be done so by the Board itself, it is not required that the board partake in the recommendations of our office; as it is up to the board to decide which course of action to take.

Mr. Goldson asks for clarification regarding if harassment had taken place or not, Atty. Rossetti stated that in the report it states that the Board as whole will need to define harassment prior to making that determination. Mr. Goldson asked what comments specifically made that created an inference of racial animus. Atty. Rossetti quotes several instances from her report that display the inference as stated earlier in the report.

Mr. Goldson asks in reference to a communication including himself, Mr. Penn, and 10-11 other persons, where you suggested I harassed him for emailing him at 11am. Atty. Rossetti states she did not state you harassed him but she knows the situation that he acknowledges in the preface of his question. He asks if it is not considered harassment then why is it included in the report. Atty. Rossetti states that is up to the Board to define harassment. Mr. Goldson wants it known for the record the email in question was in response to an email that Mr. Penn sent to Mr. Goldson seven minutes earlier. Atty. Rossetti states she can only go based on the emails that were provided to her for her investigation, and states that Mr. Goldsons Atty. had the opportunity to provide documentation in addition to what was provided for review of the investigation.



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Mr. Wilcox asks Atty. Rossetti as you are characterizing some of these questions in the report as I am gathering and reading through the transcripts and findings. Mr. Penn and Mr. Pinto were explaining repeatedly the nature of what was happening, which was unencumbering funds in a not to exceed contract for services, and to move said funds to apply to other categories of legal services where we had issues. In the report the vast experience that Mr. Goldson has a long-standing board member and former President, and would know the nature of the not to exceed contracts were. There was an example of the similar unencumbered funds being moved, as the Snow contracts. It did not snow as much the previous year so funds were unencumbered not moved or taken as the money is not the firms unless services were needed and provided. Am I correct of interpreting the findings and facts?

Atty. Rossetti states that on Page 29 where not to exceed contracts are discussed, and that your assessment is correct that as an outside viewer for these particular meetings I was asked to examine them and make factual findings. I was left with a reasonable inference that was based upon comments I identified earlier; taken into context at these meetings that they were with regard to racial animus, that both the COO and CFO had and that is why these decisions were made. Which these statements should have been knowingly false, based on Mr. Goldson background and various positions within the Board and its committees.

Atty. Rossetti states that he is correct, and that although it is the Boards duty to ask the tough questions, I'm stating that the way in which it is done as what Mr. Conaway had previously stated it must done in a respectful manner. It should be in the form of a question and not an accusation; the difference being one is attempting to find out more information rather than defaming an individual.

Mr. Wilcox adds that it is also his understanding that not only does the Board have to abide by the bylaws, but it has also been recommended that we educate ourselves on them.

Mr. Conaway states he wants to add transparency to the board's additions, as there were many times where he was left out of the loop and things were discussed without him.

Mr. Goldson wants to revisit the comment about the snow contracts, and wants the record to reflect that he had no issue with those contracts when the funds were re-allocated where needed. Mr. Goldson asked what her comment in the report regarding the nature of tenure of what was said, how she would be able to determine that. Atty. Rossetti stated that although usually they're aren't able to confirm nature of tenure of what is said as they would typically be a deposition transcript, this situation was unique due to the meetings are video recorded and publicized for review. Where you are able to feel like you are in the room and feel the tension and tone of what is being said.



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On the Motion by Mr. Goldson a Resolution to acknowledge the inaccuracy and inappropriateness of the Tinley Report, and to remove said report the New Haven Public Schools Website. File a copy of the report with the Goldson May 18th 2020 request for the motion to censure the board members from misconduct, and the Goldson December 12th 2020 original response to the Tinley Report, the Atty. Mooney Memos of May 18th 2020 procedures for board misconduct November 17th 2020 Recommendations for the response to the Tinley report and the January 10th 2021 authority for investigations of a board member and any board meeting minutes where this investigation was discussed; including any and all subsequent discussed after this motion. Seconded by Mr. Conaway, by roll call vote. (Motion Fails)

Dr. Jackson discusses that she does not understand the disrespect on this board and is very disappointed with the Board. Mr. Wilcox states that he cannot support the resolution because he does not believe it to be inaccurate. Although the situation is unfortunate, but Mr. Goldson was the one that demanded, all the memos and reports be made public at many points throughout the process.

Mr. Goldson, Yes; Dr. Jackson, Yes, Dr. Joyner, No; Mr. Conaway, Yes; Mr. Wilcox, No; Mayor Elicker, No, Ms. Rivera, No.

On the Motion by Dr. Jackson to remove the report from the Districts website, seconded by Mr. Goldson. (Motion Amended)

Mayor Elicker had a question for Atty. Mooney if the removal of the documents violate any FOIA regulations on a state level, prior to the vote. Atty. Alexiades brings up the Governors executive order regarding the posting of materials for the public. Atty. Mooney states that he would have to look into the specifics of the Executive Order in question.

**012-21
Motion to remove the Tinley Report from the District Website (pending legality review).**

On the Motion by Dr. Jackson, to remove the report from the Districts website unless its determined we are legally required to keep it on the website, seconded by Mr. Goldson. (Motion Passed)

Mr. Goldson, Yes; Dr. Jackson, Yes, Dr. Joyner, No; Mr. Conaway, Yes; Mr. Wilcox, Yes; Mayor Elicker, Yes, Ms. Rivera, No.

**013-21
Motion to add Atty. Mooney Memo to the Tinley Report prior to the removal District Website.**

On the Motion by Mr. Goldson would like to add Atty. Mooney Memo and my response to the report to the Tinley report on the website to show alternative information and be removed at the same time when the report is removed, seconded by Mr. Conaway. (Motion Passes)

Mr. Goldson, Yes; Dr. Jackson, Yes, Dr. Joyner, No; Mr. Conaway, Yes; Mr. Wilcox, Yes; Mayor Elicker, No, Ms. Rivera, No.



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On the Motion by Mr. Goldson for a Resolution to review, the process used to launch the investigation, by either the Governance Committee or Full Board; and develop a report and recommendation for policy changes for Board acceptance, seconded by Mr. Conaway. (Motion Withdrawn)

Mr. Wilcox, countered that he would make a motion to leave it up to the Attys. to draw up the policy changes for the board regarding the situation at hand, to avoid it in the future. Dr. Jackson states she believes that it would have to be the full board and not Governance, but is curious to what the process is in starting a investigation as proposed.

On the Motion by Mr. Wilcox to seek legal assistant on the proper procedures on the situation, and present to the board for revisions if needed and eventually become a bylaw, seconded by Mr. Goldson. (Motion Withdrawn)

On the Motion by Mr. Goldson for Resolution to pay Mr. Goldson Attorney fees, when invoices related to the investigation when submitted, seconded by Mr. Conaway. (Motion Withdrawn)

Atty. Mooney states that in his opinion that this motion in particular is premature in nature. Mr. Wilcox, states that he does not support the motion as he does not feel comfortable writing an unknown blank check regarding the fees.

On the Motion by Mr. Goldson to remove the current corporation counsel as the Boards parliamentarian as well as legal counsel for the New Haven Public School System for negligence as well as ineffective counsel, seconded by Dr. Jackson. (Motion Fails)

Mr. Goldson cites two instances he believes the Corporation Counsel Parliamentarian representative failed at his duties assigned by the Board. As well as providing advice to the Board President that, they could exclude a Board Member from attending Board Meetings. Mr. Wilcox and Dr. Jackson state they would agree that we should hire a separate Parliamentarian but as this call displays three attorneys with a difference of opinion on things, but not in agreeance with the position and believes it should be a Board position and not a city position; isn't that a conflict of interest. Atty. Mooney states Boards are bound by charter, the law on the respective authority and independence of boards of education is complicated in CT, but the Boards serve in a dual status they serve as town officials and agents of the State. However, over the years there are political issues and the Boards of Ed and municipality that charter provisions. Corporation Counsel is charged with interpreting the Charter by law.

Mr. Goldson, Yes; Dr. Jackson, No, Dr. Joyner, No; Mr. Conaway, Abstain; Mr. Wilcox, No; Mayor Elicker, No, Ms. Rivera, No.



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**014-21
Motion to arrange
for training for
Board to educate
on Roberts Rules
of Order and
bylaws.**

On the Motion by Mr. Wilcox that the Board President, Superintendent or his/her designee arrange for training to be provided through a Board retreat to educate the Board on Roberts Rules of Order and bylaws and the responsibility of Board Members to follow rules maintain order and decorum and expedite meetings, seconded by Ms. Rivera. (Motion Passes)

Mr. Conaway and Dr. Joyner state the retreat to attempt to bring the board together during this time seems much needed, and will be voting in favor of the motion.

Mr. Goldson, No; Dr. Jackson, Yes; Dr. Joyner, Yes; Mr. Conaway, Yes; Mr. Wilcox, Yes; Mayor Elicker, Yes; Ms. Rivera, Yes.

Adjournment:

On the Motion by Mr. Goldson to adjourn, seconded by Dr. Jackson, it was voted by roll call to adjourn at 10:42 p.m.

Mr. Goldson, Yes; Mr. Wilcox, Yes; Dr. Jackson, Yes; Mr. Conaway, Yes; Dr. Joyner, Yes; Mayor Elicker, Yes; Ms. Rivera, Yes. Motion Passed.

Respectfully Submitted,

Salina Manning

Salina Manning
Executive Administrative Assistant

“A video of this meeting is available on the NHPS website, NHPS.net, Public Meetings”