

THE SCHOOL BOARD OF
ESCAMBIA COUNTY, FLORIDA

MINUTES, JUNE 5, 2013

The School Board of Escambia County, Florida, convened in Special Workshop at 4:30 p.m., in Room 160, at the J.E. Hall Educational Services Center, 30 East Texar Drive, Pensacola, Florida, with the following present:

Chair: Mr. Jeff Bergosh Vice Chair: Mrs. Linda Moultrie

Board Members: Mr. Gerald W. Boone
Mrs. Patricia Hightower
Mr. Bill Slayton

School Board General Counsel: Mrs. Donna Sessions Waters

Superintendent of Schools: Mr. Malcolm Thomas

Meeting was advertised in the *Pensacola News Journal* on May 31, 2013 - Legal No. 1599580

[NOTE: General discussion occurred throughout this workshop. Not all discussion is reflected in the minutes.]

I. CALL TO ORDER/ADOPTION OF AGENDA

Mr. Bergosh called the Special Workshop to order at 4:30 p.m. There was brief discussion regarding the order of business for this session. There being no objection from any School Board Member, it was agreed that individuals in the audience would be permitted to address the School Board as various issues and/or concerns with the proposed Student Rights and Responsibilities Handbook were discussed rather than having to wait until the end of the discussion or the public forum segment. Mrs. Waters cautioned those individuals who wished to address the School Board to be very careful not to disclose identifiable student information in their statements. Upon inquiry by Mr. Slayton, Mr. Bergosh clarified that individuals in the audience would also have an opportunity to address School Board Members on any topic involving public education during the public forum segment at the end of this session as well as the public forum segment of the special meeting immediately following this session.

II. DISCUSSION – STUDENT RIGHTS AND RESPONSIBILITIES HANDBOOK

(NOTE: *The School Board called this special workshop for the sole purpose of discussing issues and/or concerns with the proposed Student Rights & Responsibilities Handbook for the 2013-2014 school year. This workshop would be immediately followed by a special meeting at which point the School Board would consider approving the Student Rights and Responsibilities Handbook for advertising purposes.*) Upon inquiry by Mrs. Hightower, the Superintendent confirmed that a few adjustments had been made to the proposed Student Rights & Responsibilities Handbook that was initially submitted on the May 21, 2013 Regular Meeting agenda; those adjustments were reflected in the backup documentation that had been provided to School Board Members for this session.

Welcome Letter from the Superintendent

Mrs. Carolyn Spooner, Director of High School Education, said that Mrs. Hightower had brought to her attention that the initial version of the proposed Student Rights & Responsibilities Handbook that was submitted for the May 21, 2013 Regular Meeting agenda included two welcome letters from the Superintendent: one from last year (2012-13) and one for this year (2013-14). Mrs. Spooner said that the

welcome letter from last year (2012-13) had now been stricken to show that it would be deleted for the 2013-14 edition.

Page 7

Chapter 2: Attendance

B. Tardiness

Tardiness is the absence of any student when the official school day begins or when a student fails to report to any class during the school day before the class bell rings.

Mrs. Carolyn Spooner, Director of High School Education, said the initial version of the proposed Student Rights & Responsibilities Handbook that was submitted for the May 21, 2013 Regular Meeting agenda had only referred to tardiness as being late to school. At the request of Mrs. Hightower, Mrs. Spooner said the section regarding tardiness had now been expanded to include a reference to being late to class. Upon inquiry by Mr. Bergosh, Mrs. Hightower said that she was satisfied with the changes that staff had made to the verbiage under this section. There was no objection from any other School Board Member as to the revised verbiage under this section.

Pages 16 & 17

Chapter 5: Student Conduct

C. Serious Breach of Conduct (Elementary)

Every student must follow the rules on the bus, at the bus stop, inside the building, on the school grounds, at school-sponsored activities. Students must obey the principal, teachers, members of the school staff, school bus drivers, and anyone who is placed in charge by the principal. Some behaviors are so serious that students engaging in them are subject to suspension or expulsion, reassignment to an alternative educational program, or referral to law enforcement for criminal prosecution. Those behaviors include, but are not limited to, the following:

22. inappropriate use of cell phone or other electronic device ~~infraction~~.

Mrs. Hightower did not understand why number 22, *inappropriate use of cell phone or other electronic device*, would be considered a serious breach of conduct at the elementary school level. Her thought was that a teacher could handle whatever a child was using inappropriately in the classroom, whether it be an electronic device, a computer, a pencil, a pair of scissors, etc. Mrs. Linda Maletsidis, Director of Elementary Education, said that at the elementary level, some students had a tendency to call home during the school day without permission; she said such inappropriate use of a cell phone would eventually become a serious breach of conduct if the behavior continued after contacting the parent, meeting with the parent, etc. The Superintendent said that number 22 was referring to a student's use of a cell phone or other electronic device in an inappropriate manner (i.e., sexting); and if the reference was not included in this list, then the School District "would not have something to fall back on when trying to give a consequence to a student." By including number 22 in this list, he said the School District was trying to make it clear to parents and students that if a cell phone or other electronic device was used inappropriately, such as to transport pictures, materials, or information, then it could be considered a serious breach of conduct. Mrs. Hightower wanted to know why it was necessary to have something additional to the Acceptable Use of District Information Systems document ("Acceptable Use Policy") which already addressed the appropriate and inappropriate use of cell phones and other electronic devices. The Superintendent said that including this reference in the list that was reviewed with student just made it a little clearer to them because it was not buried into another document that they may or may not understand. It was noted that every parent received a copy of the Acceptable Use Policy and it was also accessible via the School District's website; however, the Superintendent pointed out that the Student Rights & Responsibilities Handbook was typically the document that a parent or student would reference if they wanted to know about the infractions for inappropriate conduct. Mrs. Hightower did not see where a reference to inappropriate use of cell phones and other electronic devices was listed under Section D, Serious Breach of Conduct (Secondary) [Pages 17 & 18]. She wanted to know why such an infraction would be considered a serious breach of conduct for elementary students but not for secondary students. Mrs. Spooner clarified that the inappropriate use of cell phones and other electronic devices was listed under Section D,

Serious Breach of Conduct (Secondary) in number 24, *use of any unauthorized ~~electronic wireless communication~~ device from the opening bell to the dismissal bell of the school day* and number 25, *failure to keep an unauthorized cell phone or other electronic ~~wireless communication~~ device off and in a non-visible location*. Mrs. Hightower felt like the references in the secondary section did not say the same thing as the reference in the elementary section. She suggested that it would be helpful to parents if the language was consistent at both the elementary and secondary levels.

It was determined that the following revisions should be made so that the reference in number 24 under Section D, Serious Breach of Conduct (Secondary) would parallel the reference in number 22 under Section C, Serious Breach of Conduct (Elementary):

- number 24, *inappropriate use of cell phone or other electronic device; use of any unauthorized ~~wireless communication~~ device from the opening bell to the dismissal bell of the school day;*
- number 25, *failure to keep an unauthorized cell phone or other electronic ~~wireless communication~~ device off and in a non-visible location from the opening bell to the dismissal bell;*

Upon inquiry by Mr. Bergosh, Mrs. Hightower said that she was satisfied with the revisions that would be made to the verbiage under this section. There was no objection from any other School Board Member as to the revised verbiage under this section.

Page 32

Chapter 8: Discipline Strategies

A. Due Process

All students will be given the right of due process, the course of legal proceedings established by the legal system of a nation or a state to protect individual rights and liberties. Due process is a student right and is not to be confused with a parental right. Parental notification is not required prior to questioning a student or to obtaining the student's statement. Certainly there is an obligation to the parents/guardians, but this obligation is limited to the evidence and the charges against the student. The school will make a reasonable attempt to notify a parent/guardian at the conclusion of the due process procedure and document that such an attempt was made.

(NOTE: Mrs. Moultrie previously addressed her concern with this section at the May 17, 2013 Regular Workshop.) Mrs. Moultrie suggested that the entire first paragraph under this section be stricken and the following “softer” language inserted: All students will be given the right of due process. Due process is the legal procedure established by our nation's legal system, giving the student the opportunity to respond to allegations against them. During the initial investigation and fact finding procedures, parental notification is not required. However, the District recognizes the obligation to parents/guardians regarding disciplinary sanctions and therefore a school administrator will notify a parent/guardian of these actions.

Mrs. Spooner suggested that the phrase “of these actions” in the last sentence of Mrs. Moultrie’s proposed language should be revised to “regarding any disciplinary action taken against a student.” Mr. Ross suggested that the reference to “school administrator” be expanded to “school administrator or designee.” The Superintendent thought it important to also mention in the verbiage that a school administrator (or designee) would document their attempts to notify the parent/guardian regarding any disciplinary action taken against a student. Mrs. Spooner said the revised verbiage would read as follows:

All students will be given the right of due process. Due process is the legal procedure established by our nation's legal system, giving students the opportunity to respond to allegations against them. During the initial investigation and fact-finding procedures, parental notification is not required. However, the District recognizes the obligation to parents/guardians regarding disciplinary sanctions; therefore, a school administrator or designee will notify a parent/guardian of any disciplinary action taken against the student and document that the notification was made. Upon inquiry by Mr. Bergosh, Mrs. Moultrie said that she was satisfied with the revisions that would be made to the verbiage under this section. There was no objection from any other School Board Member as to the revised verbiage under this section.

The following individuals requested to address the School Board regarding the verbiage under Chapter 8: Discipline Strategies, Section A, Due Process:

James Nims, Jr., speaking as an individual, addressed the School Board regarding the topic of due process. Mr. Nims said he did not understand the wording under this section and wanted to know “who was standing up for the student?” He believed that the process described under this section was “almost intimidation” rather than due process.

Sharon Pettaway, speaking as an individual, said she believed that the parent/guardian should be notified at the beginning, not the conclusion, of the School District’s “so-called due process procedures” (i.e., initial investigation and fact-finding procedures).

Page 30 & 31

Section 7: Safe Schools

D. Law Enforcement

If any officer wishes to question a student at school, a suitable place will be provided after the officer has presented proper identification. The principal/designee may be present during the interview at the request or authorization of the student. The conference area will be so located as to create as little attention as possible to the matter.

If the officer decides to take the student from the school grounds, he/she will be permitted to do so only on the basis of a warrant of arrest, court order, or statement of the officer that he/she is placing the student under arrest or taking the student into custody. The officer shall be asked to sign an affidavit accepting custody for the student before removing him/her from the school grounds. Affidavit forms are available in the school’s front office. The school shall make a reasonable effort in a timely manner to notify the parent(s)/guardian(s), when appropriate, that the student has been questioned or has been placed under arrest.

Mr. Bergosh said he continued to have concerns with the verbiage under Chapter 7: Safe Schools, Section D, Law Enforcement. [NOTE: Mr. Bergosh had previously discussed his concerns with the School Board and the Superintendent on multiple occasions (see minutes: May 21, 2013 Regular Meeting, May 17, 2013 Regular Workshop, December 14, 2012 Regular Workshop, June 26, 2012 Regular Meeting, June 21, 2012 Regular Workshop, April 12, 2012 Special Workshop, November 9, 2011 Regular Workshop.).] Once again, he reiterated his belief that it was not appropriate for a student to be questioned at school by a law enforcement officer without prior notification to the student’s parent/guardian. He believed that there was a need to change the School Board’s current policy to specify that a parent/guardian would be notified prior to a student being interviewed by law enforcement. He narrated a brief PowerPoint [presentation](#) which addressed his reasons for wanting the current policy changed. Mr. Bergosh noted that he had previously provided three (3) separate draft policies for the School Board’s consideration during the May 21, 2013 Regular Meeting. He proceeded to explain that [Option I](#) from the Illinois Council of School Attorneys was his preferred option, [Option II](#) from the School Board of Santa Rosa County, Florida, would be his second preference, and [Option III](#) which was based on a policy from a school district in Farmington, Michigan was essentially a compromise of the other two options. Mr. Bergosh believed that each of the three (3) options he had provided balanced the need for orderly and safe schools with a respect for student and parental rights. He suggested that the School Board seriously consider the policy outlined in Option III as he had edited the language so that it was applicable only to students 13 years of age or younger.

David Lagasse, speaking as an individual, addressed the School Board regarding his concerns with regard to the questioning of students younger than thirteen (13) years of age.

Sheriff David Morgan, Escambia County Sheriff’s Office, said that his office did not agree with, nor did they want to have any further diminution of the authority and powers of the School Resource Officers (SRO) within the school system. He concern was that the “further hobbling or handcuffing” of law enforcement would impact their ability to do their job. He wanted the School Board to be aware that any time a student asked for their parent to be contacted, law enforcement was required to honor that request and contact or attempt to

contact the parent. He did not believe that it was necessary to rewrite policy when existing Florida law and the SRO contract with the School Board was more than sufficient.

Gerald E. Champagne, attorney for Escambia County Sheriff's Office (ECSO), noted that each of the three (3) options that Mr. Bergosh had presented indicated that there was "something" that needed to be done before law enforcement would be able to question a student and that "something" would be a further impediment to getting to the truth of a situation. He noted that the primary role of a School Resource Officer (SRO) was getting to the truth which was what the questioning process was all about. He clarified that law enforcement officers questioned every individual, including students, in accordance with the limits of the United States Constitution.

Brian Shorette, Investigator, Escambia County Sheriff's Office-Special Victims Unit, cited several examples where notifying a parent/guardian before interviewing a student could be detrimental to a law enforcement investigation into possible situations involving sexual abuse and/or child abuse where the parent/guardian or a family member could be the subject of the investigation.

James Nims, Jr., speaking as an individual, addressed the School Board regarding its due process procedures. He requested that if the School District was going to suspend a student that the parent/guardian should be notified.

Sharon Pettaway, speaking as an individual, referred to the signature page near the end of the Student Rights & Responsibilities Handbook which students were asked to sign acknowledging that they had received the handbook and that they were responsible for adhering to the rules outlined in the handbook. She suggested that a statement be added to the signature page making students aware that they had a right to request their parent/guardian be contacted during any disciplinary proceeding. She also suggested that two copies of the signature page should be included in the handbook, both should be signed by the student, one should be retained by the student for his/her records and the other should be torn out and retained by the school. Mrs. Moultrie agreed with Ms. Pettaway's suggestion that a statement should be added to the signature page making students aware that they had a right to request that their parent/guardian be contacted during any disciplinary proceeding.

Commander Dale Tharp, Escambia County Sheriff's Office (ECSO), clarified that law enforcement's questioning of a student would cease immediately if a student requested his/her parent/guardian. Upon inquiry by Mr. Bergosh, Commander Tharp said that he would have no issue with the School Board codifying that standard practice in the School District's Student Rights & Responsibilities Handbook. Mr. Bergosh said his issue would be resolved if law enforcement's standard practice was codified in the School District's Student Rights & Responsibilities Handbook. Commander Tharp clarified however, that it was more than a standard practice; rather it was a law in that just like an adult invoking their right to an attorney, a juvenile could ask for his/her parent/guardian and law enforcement was required to honor that request and immediately cease the interview.

During the discussion, Mrs. Waters took a moment to outline the changes that were being considered by the School Board and the Superintendent:

- Page 31, under Section D, Law Enforcement, at the end of the paragraph, the following statement would be added: Law enforcement officers will cease questioning immediately if a student requests that a parent/guardian be contacted.
- Page 59, the following statement would be added near the bottom of this signature page: The student has a right to request that a parent/guardian be contacted during any discipline proceeding.

It was noted that there were two separate issues being addressed with the changes on Page 31 and Page 59. With regard to the change on Page 59, the Superintendent clarified that for discipline proceedings, the student would have the right to request that a parent/guardian be contacted; however, that request would not prohibit school officials from moving forward with questioning the student. He said that a school staff member (i.e., school secretary) would contact the parent/guardian while the school administrator proceeded to question the

student. Upon inquiry by Mr. Bergosh, Commander Tharp said he did not have an issue with the proposed language on Page 31 because it was what law enforcement was already doing in that as soon as a student requested that his/her parent be contacted, questioning by law enforcement would cease.

The Special Workshop was recessed at 6:40 p.m. and reconvened at 6:50 p.m., with all School Board Members, the Superintendent, and Mrs. Waters present.

Mrs. Waters said that during the break she had met with law enforcement officials and the Superintendent and they discussed that there were some exigent circumstances (i.e., suspected child abuse by a parent/guardian) where even if a student requested that a parent/guardian be contacted during a law enforcement interview, Florida law did not require that the parent/guardian be notified. Rather than attempting to list every exception that might exist, Mrs. Waters suggested the following statement that would simply specify that law enforcement would follow the Florida law and the United States Constitution in all circumstances:

- Page 31, under Section D, Law Enforcement, at the end of the paragraph, the following statement would be added: Law enforcement questioning of students will be conducted in compliance with Florida Statute and the United States Constitution.

There was no objection from any School Board Member, any law enforcement official, or the Superintendent as to the changes suggested for Page 31 and Page 59.

Page 54

Chapter 13: Legal Notices

F. Family Educational Rights and Privacy Act (FERPA) Notice for Directory Information

The Family Educational Rights and Privacy Act (FERPA), a Federal law, requires that the Escambia County School District (ECSD), with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child's education records. However, ECSD may disclose appropriately designated "directory information" without written consent, unless you have advised ECSD to the contrary in accordance with ECSD procedures. The primary purpose of directory information is to allow ECSD to include this type of information from your child's education records in certain school publications. Examples include:

- a playbill, showing your student's role in a drama production;
- the annual yearbook;
- honor roll or other recognition lists;
- graduation programs;
- sports activity sheets, such as for wrestling, showing weight and height of team members.

It was noted that "school website" would be added as a bulleted item under this section.

The Superintendent reviewed the following changes that he would be recommending to the proposed Student Rights & Responsibilities Handbook based on the discussion that occurred during this session:

- Page 18, the following revisions would be made under Chapter 5: Student Conduct, Section D, Serious Breach of Conduct (Secondary): number 24, inappropriate use of cell phone or other electronic device; use of any unauthorized wireless communication device from the opening bell to the dismissal bell of the school day; and number 25, failure to keep an unauthorized cell phone or other electronic wireless communication device off and in a non-visible location from the opening bell to the dismissal bell;
- Page 31, the following statement would be added to the end of the second paragraph under Chapter 7: Safe Schools, Section D, Law Enforcement: Law enforcement questioning of students will be conducted in compliance with Florida Statute and the United States Constitution.

- Page 32, the following revision would be made to the first paragraph under Chapter 8: Discipline Strategies, Section A, Due Process: ~~*All students will be given the right of due process, the course of legal proceedings established by the legal system of a nation or a state to protect individual rights and liberties. Due process is a student right and is not to be confused with a parental right. Parental notification is not required prior to questioning a student or to obtaining the student's statement. Certainly there is an obligation to the parents/guardians, but this obligation is limited to the evidence and the charges against the student. The school will make a reasonable attempt to notify a parent/guardian at the conclusion of the due process procedure and document that such an attempt was made.*~~ *All students will be given the right of due process. Due process is the legal procedure established by our nation's legal system, giving students the opportunity to respond to allegations against them. During the initial investigation and fact-finding procedures, parental notification is not required. However, the District recognizes the obligation to parents/guardians regarding disciplinary sanctions; therefore, a school administrator or designee will notify a parent/guardian of any disciplinary action taken against the student and document that the notification was made.*
- Page 54, "school website" would be added as a bulleted item under Chapter 13: Legal Notices, Section F, Family Educational Rights and Privacy Act (FERPA) Notice for Directory Information
- Page 59, the following statement would be added near the bottom of this signature page: *The student has a right to request that a parent/guardian be contacted during any disciplinary proceeding.*

III. PUBLIC FORUM

Mr. Bergosh called for public forum; however, there were no speakers.

IV. ADJOURNMENT

There being no further business, the Special Workshop was adjourned at 7:30 p.m.

Attest:

Approved:

Superintendent

Chair