

**Policy Committee Meeting
October 20, 2009
6:30 p.m.**

MINUTES

Attendance: Commissioner Elliott (Chair); Commissioners Brennan, Powell, and Williams.
District Staff: James Sheppard; Chuck Johnson; Board Staff: Debra Flanagan

Commissioner Elliott convened the meeting at 6:34 p.m. and requested a motion to approve the agenda. Commissioner Brennan requested that a proposal regarding establishing a cap on class sizes be discussed under “New Business”.

Motion by Commissioner Brennan to add item to agenda regarding establishing a cap on class sizes. Seconded by Commissioner Powell. **Adopted 3-0.**

I. Review and Approval of July 21, 2009 Minutes

Motion by Commissioner Brennan to approve the minutes of the July 21, 2009 Policy Committee meeting. Seconded by Commissioner Powell. **Adopted 3-0**

II. Policy regarding bidding requirements and M/WBE participation

Ms. Shanai Lee, M/WBE Coordinator, provided an overview of current State statutes governing the bidding process for public works projects and of the threshold at which the District can exercise discretion in purchasing goods and commodities. Ms. Lee explained that legislation has been proposed to increase the purchasing threshold from \$10K to \$20K per year. Raising the threshold would allow more opportunities for the District to exercise discretion in selecting vendors for purchasing goods and commodities, particularly M/WBE businesses. However, this legislation has not been advanced within the State legislature, according to Ms. Lee.

In terms of public works projects, Ms. Lee explained that State law currently allows the District to establish its own qualified bidders list. The list must be based on the prospective bidders’ experience in performing similar work and can also require compliance with equal opportunity and anti-discrimination laws and demonstrated commitment to work with minority- and women-owned businesses. Prospective bidders would be pre-qualified to bid on public works projects with the District, and bidding can be restricted to only those on the list. In this way, the District can ameliorate some of the discriminatory practices and systemic obstacles facing M/WBE firms. Ms. Lee recommended revising the Responsible Bidders policy (6725) to enable the District to establish its own qualified bidders list.

Commissioner Powell inquired whether current Board policy is based on “good faith efforts” of contractors to work with M/WBE firms. Ms. Lee confirmed this statement, stating that there currently is no definition as to actions that constitute “good faith efforts”.

Commissioner Williams described several issues facing subcontractors generally and M/WBE firms specifically: 1) since the contract is between RCSD and the contractor, the contractor does not have to make timely payment to subcontractors. Since most subcontractors are small businesses, they have to depend on timely payment and cash flow. 2) the subcontractor may perform the work and the general contractor may later fail to provide full payment. Since the subcontractor is typically not in a position to incur the expense and time involved in hiring an attorney, there is little recourse available to enforce the terms of the subcontract.

Commissioner Elliott inquired about alternatives for the District to have a more direct relationship with the subcontractors to prevent these situations from arising.

Commissioner Williams suggested requiring contractors to submit affidavits stating that timely and full payment will be provided to subcontractors.

Commissioner Powell expressed dismay that with all of the regulations imposed on public works by New York State and on the punch lists prior to final payment, contractor compliance in terms of ethical behavior is not adequately enforced.

Action Item: Board staff will invite the Supervising Director of the Office of Administration (Jim Fenton) to the next meeting to discuss the specific items required to be included in the punch list to close the contract.

Motion by Commissioner Powell to empower Ms. Lee to draft an amendment to the Responsible Bidders policy. Seconded by Commissioner Brennan. **Adopted 3-0**

Action Item: Ms. Lee will draft an amendment to the Responsible Bidders policy to establish a District qualified bidders list to redress systemic discrimination against M/WBE firms. Ms. Lee will present this policy amendment to the Policy Committee for consideration.

III. Review of Code of Conduct

Commissioner Elliott announced that a public hearing will be held tomorrow evening at 5:30PM regarding the Code of Conduct. She described developing the existing policy with Mike Looby to reflect the spirit of the law rather than to adopt a punitive disciplinary approach, and to emphasize teachable moments in assisting young people in becoming responsible adults.

Chuck Johnson, General Counsel, explained that regulations were developed last year to create uniformity throughout the District in the application of the Code of Conduct. He stated that the intent was to alleviate arbitrary and capricious use of disciplinary measures.

Mr. Johnson explained the statutory requirement for annual review and public hearing regarding the Code of Conduct, but stated that there is no requirement for revision or re-authorization. He advised removing the date timeframe from the title of the policy to clarify that the Code of Conduct is in effect until revised by the Board.

Commissioner Powell agreed with this recommendation, pointing out that each policy should indicate the dates of revision, re-adoption, and review. She noted that the Superintendent

regulations regarding the Code of Conduct do not accompany the policy online or in the written manual provided to each school. Commissioner Powell emphasized the importance of having the Superintendent regulations accessible to parents and to school staff.

Action Item: Law Department staff will ensure that the Superintendent regulations will accompany the Code of Conduct policy on the website and in the written manuals provided to schools.

Commissioner Williams noted that while the Code of Conduct is to apply to students, parents, and District staff, some of the penalties are much harsher for students than for adults. He cited an example of a student being caught with a weapon, which would result in arrest and prosecution. He noted that this would not be imposed on an adult for the same infraction. Mr. Sheppard replied that this depends on whether the employee is authorized to carry a firearm legally, such as for individuals having a permit. He stated that if an employee or adult were found to be in illegal possession of a firearm, they would also be arrested and prosecuted.

Commissioner Elliott pointed out that District employees have unions as advocates, but students do not. She emphasized the importance of reviewing collective bargaining agreements to ensure that the terms of these agreements are consistent with Code of Conduct.

Commissioner Brennan stated that some individuals have referred to “academic guardianship” of a student, and questioned whether this is incorporated into the Code of Conduct. Mr. Johnson explained that “guardianship” is a legal term authorizing an adult to act on behalf of the child and is not restricted to academic matters. Mr. Sheppard noted that the Family Educational Rights and Privacy Act (FERPA) limits the information that can be disclosed about students, particularly their academic records, to parents and legal guardians.

Commissioner Brennan stated that the heart of the matter is to ensure accuracy of records to provide access ONLY to those authorized. He inquired whether the District has the capability and procedures to provide these assurances. Mr. Sheppard confirmed that these procedures are currently in place and that the Chancery database indicates the individual(s) legally responsible for the student.

IV. School Naming Policy

Commissioner Elliott explained that this policy has been included in the agenda because some of her colleagues have suggested that the naming of District facilities should be a function of the Board.

Mr. Johnson described developing the proposed amendment with Ms. Doyle (Chief of School Innovation) to enable the Board to have greater input and involvement earlier in the naming process than allowed under the existing policy. He stated that the existing policy delegates all of the steps to the Superintendent and the Board is only consulted in the final stage of the process in voting in favor or against a particular name that has been selected. Mr. Johnson stated that the proposed amendment would provide for an Evaluating Committee appointed by the Superintendent, and this Committee would submit five names to the Board Excellence in Student

Achievement (ESA) Committee for consideration. The Board ESA Committee would forward three names to the full Board for the final selection.

Commissioner Elliott asserted that Board members should be able to generate names initially and this would not be allowed under the proposed amendment.

Commissioner Powell noted that Board members could certainly communicate their suggestions and preferences to the members of the Evaluating Committee.

Commissioner Elliott stated that naming of facilities should be a Board right exclusively, with provision for community input.

Commissioner Powell replied that the original intent of the policy was to encourage community input and involvement, and asked whether the proposed amendment needs to stipulate that the ESA Committee may add names to the list.

Commissioner Williams inquired whether the Board would be obligated to use one of the names from either the Evaluating Committee or ESA Committee list. Mr. Johnson replied that the proposed amendment would not require the Board to use one of these names, as the final decision is vested in the Board. He stated that the Board can certainly direct the Evaluating Committee to generate other names for consideration. Mr. Johnson offered to add a provision to the proposed amendment to clarify that the Board can reject all names presented and/or choose a different name.

Action Item: Mr. Johnson will revise the proposed amendment to the Naming Facilities policy to stipulate that the Board may reject all names presented and/or may select another name.

V. Cap on Class Sizes

Commissioner Brennan explained that he wanted this issue added to the agenda because there was some discussion about proposing a cap on class sizes, and he wanted to know the current status of this proposal.

Commissioner Elliott replied that she has not received such a proposal, but would be willing to consider it in a future Policy Committee meeting.

Commissioner Powell commended the work of community organizations such as AQE (Alliance for Quality Education) in researching this issue, and stated that she would support consideration of a policy proposal to establish a cap on class sizes.

Commissioner Elliott stated that she is not in favor of a cap on class size at this time because of severe budget constraints, but that she would certainly support discussion of such a proposal. She stated a preference for improving the District's infrastructure first, which would clarify the need for limits on class size and the impact on academic achievement.

Motion to adjourn by Commissioner Brennan. Seconded by Commissioner Powell. **Adopted 3-0**

Meeting adjourned at 8:06PM.

Next Policy Committee Meeting: November 17th at 6:30PM