

Policy Committee Meeting of the Whole
July 21, 2009
6:30 p.m.

MINUTES

Attendance: Commissioner Elliott (Chair); Commissioners Evans, Campos, Brennan, White (arrived at 6:31PM), and Williams (arrived at 6:55PM). Commissioner Powell absent. District Staff: Chuck Johnson; Board Staff: Debra Flanagan

Commissioner Elliott convened the meeting at 6:29 p.m.

I. Review and Approval of June 16, 2009 Minutes

Motion by Commissioner Brennan to approve the minutes of the June 16, 2009 Policy Committee meeting. **Adopted 2-0**

II. Overview and Discussion of Legal Issues and Policy Proposal regarding Disclosure of Student Directory Information to Military Recruiters

Mr. Chuck Johnson, District General Counsel, provided an overview of the legal issues involved with current Board policy and options for its amendment. Mr. Johnson explained that the No Child Left Behind Act (NCLB) and the National Defense Authorization Act require school districts to provide student directory information (name, address, telephone number) to military recruiters upon request. This law states that student information is to be provided unless the parent or student has denied permission to share this information. Mr. Johnson emphasized that current Board policy fails to comply with these provisions of the law by only providing student directory information if the parent or student provide consent, thereby acting in direct opposition to the law. He also cited lack of student involvement in the decision-making process as a limitation of current Board policy. While NCLB does not explicitly state the consequences of non-compliance, it does describe a system of notification at increasingly higher levels of governmental authority (i.e. letter from a level of Colonel or of higher rank, notice to the Governor, and then a report to Congress). On March 27, 2009, the District received a letter from Colonel Gawkins regarding noncompliance with NCLB due to current Board policy with respect to disclosure of student directory information to military recruiters.

Mr. Johnson presented a policy proposal on behalf of the Administration, which is based on the policy adopted by the San Francisco School Board and allows students the opportunity to be involved in decision-making. He described a two-step process: 1) sending letters to parents with a form to indicate their choice; 2) having principals distribute the form to students at school and having students complete and return the form the same day. He explained that the intent of this policy proposal is to maximize the response rate by including students in the decision-making, with the goal of obtaining all responses by October 1st and providing student directory information to the military by October 15th.

Mr. Johnson emphasized the need for a policy change in light of contact from military authorities, indicating that there is increased risk of losing federal funds not only for the current year but retroactive to 2005 when this Board policy was adopted. This would lead to reduced funding for Title I to New York State and the State would then determine how this penalty would be passed on to the District.

Commissioner Brennan inquired as to the way in which this policy proposal differs from the proposal put forth by Commissioner Powell. Mr. Johnson replied that Commissioner Powell's proposal does not address the problem of parents not responding to express their choice and therefore does not address the non-compliance issue.

Commissioner Brennan expressed interest in terms of involving students in making these decisions and offering opportunities to observe the way in which legislation directly affects their lives. Mr. Johnson stated that the law does allow students to make these decisions, which seems only fair because of the potential consequences to their life.

Commissioner Brennan asked whether any sanctions have been imposed on a school district to date for non-compliance with this provision of the No Child Left Behind (NCLB) law. Mr. Johnson stated that his understanding from discussions with members of the Defense Department is that the Berkeley School District came close to losing funding for non-compliance, but the Board modified the policy to prevent this loss.

Commissioner Brennan inquired as to the similarities between the current policy proposal and the modified policy in Berkeley. Mr. Johnson stated that he was not familiar with the Berkeley policy, but has examined policies in San Francisco and Santa Cruz. He reported that while military authorities have contacted RCSD many times, no action has yet been taken but the District cannot assume that this will not occur. Commissioner Brennan stated that he was not convinced of the legal position on this issue because of the fact that no action has been taken despite a number of contacts and sanctions have not been imposed on any school district in the eight years for which NCLB has been in effect. He requested a copy of the policy modified by the Berkeley School Board, since they were the only district nationally that encountered the risk of sanctions.

Action Item: Mr. Johnson will provide a copy to the Board of the military recruitment policy modified by the Berkeley School Board.

Commissioner Campos asked about the age at which students can provide permission to withhold their student directory information from military recruiters. Mr. Johnson replied that there is ambiguity among the different laws in this respect: NCLB refers to "secondary students" while the Defense reauthorization law states that this applies to students in 11th and 12th grades. In any case, he stated that the consent form is not restricted to students of majority age.

Commissioner Campos inquired whether the student directory information would have to be disclosed to military recruiters for high school freshmen through seniors. Mr. Johnson explained that NCLB requires provision of this information for "secondary students" and this could include freshmen and sophomores. He stated that the consent form would only have to be completed once and would be kept on file, unless a parent or student decides to change their decision.

Commissioner Campos suggested conducting a broadcast call to follow up with parents after the letters have been sent to maximize the response rate and to promote their awareness of the significance of the letter and the ramifications of their choices. She emphasized the need to involve parents as much as possible in this process to ensure that they are primary in the decision-making process.

Commissioner White questioned the consequences of students disagreeing with their parents in disclosing information to military recruiters, and asked who would prevail in these situations. Mr. Johnson replied that the wishes of the parents would prevail unless the student is of majority age. Commissioner White expressed concern regarding the practical logistics of matching up parent and student consent forms to determine which should prevail, noting that this could present problems in ensuring that parents' wishes are followed. Mr. Johnson stated that historical trends have shown parental response to be quite low, which is the reason for involving students in decision-making. He speculated that there would be a rather small subset of parents and students who disagree in this matter. Commissioner White responded that the response rate of parents is likely to increase by following Commissioner Campos' suggestions to use several mechanisms to notify parents.

Commissioner White pointed out that the Federal Education Rights and Privacy Act (FERPA) requires annual notification of parents and students of their right to privacy and to provide consent to share information, but the proposed policy would not require an annual renewal of the consent form. Mr. Johnson replied that the legal requirements under NCLB are distinct from those under FERPA, so that annual notification and provision of consent forms would not be mandatory for military recruitment.

Commissioner White asserted that the Obama administration is not supportive of these provisions of NCLB and not likely to reauthorize this aspect of the law. He inquired as to the sunset date for reauthorizing NCLB, noting that it may not be reasonable to modify Board policy at this point if these provisions are soon to expire. Mr. Johnson stated that he has read of many suggested revisions to NCLB and there is no way to predict which will ultimately be adopted. He reported a conversation earlier today with Dennis Drogos; Assistant Director, Office of the Under Secretary of Defense for Personnel and Readiness/MPP; who stated that a letter will be sent to Governor Patterson if the Board does not take action to modify the existing policy by July 31st.

Commissioner Evans stated that his contacts in Washington, DC have informed him that reauthorization of NCLB is not currently a high priority because of concerns about the economy and efforts to pass health reform legislation.

Commissioner White expressed concern that parents are able to take a leadership role in this process, particularly in view of the historically low response rate. Mr. Johnson suggested several possible avenues for improving parent notification: through the new District newspaper *Rochester Educator* and with the new District website, which will improve access to Board policy and regulations.

Commissioner Williams also emphasized the need to ensure parent involvement in this decision-making process, noting that the District may appear to be undermining parental authority by adopting an approach which allows students to make this choice regardless of their age.

Commissioner Campos suggested establishing a two-week lag between notification of parents and distribution of the consent form to students. In this way, parents would be given the first opportunity to make the decision and students would have additional time to consider the information, discuss with their parents, and formulate their own decision. She also recommended enabling parents to complete the form on the RCSD website.

Action Item: Mr. Johnson will modify the policy proposal according to Commissioner Campos' suggestions: to send the letter and consent form to parents first, followed by a broadcast call; notify students of these NCLB requirements and provide the forms to them two weeks after provided to their parents.

Commissioner White stated that problems have arisen in the past because the District has not taken enough initiative to notify parents, contending that this policy proposal by the Administration is adopting the most convenient approach by maximizing the response rate by distributing the information and consent form to students as a captive audience. He also suggested requiring annual renewal of the consent form to ensure that parents' wishes are followed. He emphasized that the classroom approach gives priority to students by giving them greater opportunity to obtain and complete the consent form; this approach contradicts the fundamental principle that minors are not considered capable of making these decisions and providing consent. Commissioner Elliott clarified that the primary consideration of the Policy Committee has been to maximize the response rate to honor parents' wishes.

Commissioner Elliott inquired as to the amount of funding that is at risk if sanctions are imposed. Mr. Johnson replied that RCSD receives over \$72m per year under Title I and IDEA and another \$32m under NCLB, so the minimum amount in jeopardy would be \$104m but could be substantially greater if the Defense Department decided to impose sanctions retroactive to 2005.

Commissioner Evans stated that his primary concern is to comply with the law, noting that he is the only Board member present who had voted for the current policy adopted in 2005. He explained that he approved the current policy because of concern for privacy rights, but the proposal under consideration would accommodate both concern for privacy and compliance with NCLB. He urged Board members to act, given the tight timeline with the July 31st deadline given by military authorities. Commissioner Evans objected to a view implying that parents and students of this District are not capable of making informed decisions or are more subject to coercion because they are African American and impoverished.

Commissioner Williams surmised that the real issue in this entire discussion is the District having to establish an opt-out policy in which parents and students have to deny consent to avoid having information disclosed. Mr. Johnson confirmed this assessment of the current situation.

Commissioner White responded to Commissioner Evans' objections by emphasizing that these provisions of NCLB present a constitutional issue of disparate treatment under the law because more affluent districts do not need to comply due to their relative lack of reliance on Title I funds, whereas impoverished districts have no choice but to comply. He stated that he opposes any form of coerced disclosure of information, but does not want RCSD to be out of compliance with the law. Commissioner White noted that he may abstain because he may want to pursue

litigation regarding the constitutional issues involved and this would present a conflict of interest.

Commissioner Evans agreed that these provisions of NCLB represent discriminatory treatment under the law. He urged his colleagues to advocate for a change in the law and working within the legal and political process, emphasizing the importance of upholding the law for the time being.

Commissioner Brennan pointed out that this policy change would shift the burden from preserving privacy to following a mandate to share information. He contended that these provisions have no place in education law and this legal position is indefensible and cannot be sustained; he also stated that the disparate treatment of more affluent suburban and impoverished urban districts is offensive. Commissioner Brennan inquired as to whether a vote is expected tonight at this meeting. Commissioner Elliott confirmed that the intent is to have a vote to determine whether to advance the policy proposal to the full Board at the July 23rd Business meeting. She also requested that Mr. Johnson attend the Policy Committee Meeting of the Whole in September to report on the status of implementing this policy proposal, if adopted by the full Board on July 23rd.

Action Item: Mr. Johnson will attend the Policy Committee meeting in September and report on the status of implementing the military recruitment policy, if this proposal is adopted by the full Board.

Commissioner Williams expressed concern that the policy proposal would undermine parental authority, particularly since parent approval is required for other school activities such as field trips but would not be required for the more serious issue of military recruitment. Commissioner Elliott stated that the intent was to allow student to have input into a decision that significantly affects their lives, yet parents would have the final determination in that their wishes would still supersede students' decisions if they disagree.

Commissioner Williams also voiced concern regarding the potential for teachers to influence students' decisions, particularly with the time pressure of having to complete and return the consent form the same day. Mr. Johnson replied that he shares this concern, but considered the short timeframe critical to increasing the response rate to honor the wishes of parents and students.

Motion by Commissioner Evans to advance the policy proposal to the full Board with recommended modifications of providing the information and consent form first to parents, following up with a reminder and explanation as to the significance of these materials, and providing the consent forms to students two weeks after given to their parents. Motion seconded by Commissioner Campos. **Adopted 4-2, with Commissioners White and Brennan dissenting, and Commissioner Powell absent.**

Motion by Commissioner Brennan to adjourn.

Adjourned at 7:58PM.

Next Meeting: August 18, 2009 at 6:30PM