



SPECIAL BOARD MEETING

City Council Chambers

14400 Dix Toledo, Southgate, MI 48195

**BOARD OF
EDUCATION**

PRESIDENT
REBECCA REED

DATE: April 18, 2016

VICE PRESIDENT
PAUL C. KNOTT

TIME: 6:00 P.M.

SECRETARY
DR. DARLENE L. POMONIO

BOARD MEMBERS PRESENT: Freitas, Knott
Kremer, Pomponio, Reed
Craig (arrived after the start of the meeting)

TREASURER

BOARD MEMBERS EXCUSED:

TRUSTEES
JASON CRAIG
NEIL J. FREITAS
MARK KREMER

ADMINISTRATION PRESENT: Hainrihar, McLachlan, Pastor

ADMINISTRATION EXCUSED:

The pledge of allegiance was recited.
The District Mission and Vision Statements were read.

REVISIONS/APPROVAL OF AGENDA

ADMINISTRATION

2015/16-117 Dr. Pomponio made a motion, supported by Mr. Knott
to approve the April 18, 2016 Special Board Meeting Agenda.

SUPERINTENDENT
LESLIE HAINRIHAR

YES: Freitas, Knott, Kremer, Pomponio, Reed
NO:

INTRODUCTION OF THRUN LAW FIRM

BUSINESS AND FINANCE
DIRECTOR
THERESA MCLACHLAN, C.P.A.

Ms. Reed introduced Martha Marcero-Thurn Law Firm, to the Board of Education
Members.

CURRICULUM/FEDERAL
PROGRAMS DIRECTOR
JILL PASTOR

Ms. Marcero has been with Southgate for approximately 8 years. Thrun represents
nearly 500 of the 550 school districts in the State of Michigan. Her area of
specialization is Labor/Employment Law. All attorneys at Thrun are expected to know
student issues, Open Meetings Act and FOIA. She has been with Thrun for 30 years.
She provided each board member with a binder from the April seminar covering a
variety of legal issues and updates that may impact districts.

HUMAN RESOURCES
DIRECTOR
MARY HILDEBRANDT

Ms. Marcero reviewed the role of the law firm and its relationship with the school
district. Thrun represents the school entity and no individual in relationship to the
school district. The firm will only take calls from the board president, the board
president is always presumed to have the authority to call the law office to ask
questions. The reason being the board president is the individual primarily responsible
for dealing with any issue on contract matters involving the superintendent as the
chief administrative officer. The firm will also take calls from the superintendent
because she is the administrator and they have to have the relationship in order for
her to speak freely. If individual board members were to call the law firm it would be
very expensive and the firm will not take the call unless the board president calls to

authorize the firm to speak with them. If any building level administrator or anyone other than the superintendent calls, unless there is authorization from the superintendent, she will not take the phone call. Calls are not taken from any parent or student or any other person in the school district. The firm's responsibility is to the board.

If there is ever an occasion that there is an issue or concern, the confidentiality of the attorney client privilege is held by the board and only the board can authorize disclosure in attorney client privilege. In general the board of education is the policy making authority and the administration/superintendent is the individual who is primarily responsible for administering whatever those policies are. The board determines the direction the district will go and the superintendent's responsibility is to assure that is direction the school district will work toward.

Open board meetings would make determinations, issue decisions or directions they want the superintendent to initiate and comply with. The board has to act in an open meeting to make those determinations, conduct deliberations unless it falls under one of the exceptions of the Open Meetings Act and enter closed session. The board would still have to come out of that closed session in order to take any action.

QUESTION AND ANSWER PERIOD WITH THRUN LAW FIRM

Mr. Knott inquired about Gun Free Zones. Ms. Marcero stated some school districts have established themselves as Gun Free Zones much like the Drug Free Zone's and have signage to state that.

Ms. Reed asked about the legal responsibilities of a board member. Ms. Marcero referred to the provisions under School Code Section-11 which outline what the board's powers are in relationship to the school district in its operations. The primary function of the board of education is to be policy makers. The board is also responsible to hire, evaluate, discipline or discharge the superintendent. They are responsible for sales of property and budgetary issues. Establishing or determining curriculum reviews. The board can also move forward in relationship to bond issues or millage elections.

Ms. Reed spoke about NEOLA and the initiation of our policies and procedures which are on our website. She asked about the rights and responsibilities as they relate to our policies and procedures. Ms. Marcero said the board has the obligation under certain circumstances to hear student expulsion hearings. Under NEOLA in relationship to disciplining staff members the board has the obligation to proceed on tenure charges if they are looking at filing tenure charges. In the instance where an employee is suspended for more than a day or a suspension without pay, it gives the authority to the board president whether or not to bring that matter to the board for a hearing.

With NEOLA, areas need to be looked at to see what the language is in order to see what the board's authority is under certain circumstances.

Ms. Reed referred to MCL-380.1201 with regard to outlining the power and authority of school districts and how it relates to educating students, providing for safety, accounting for curriculum, adopting by-laws, being the policy holders/creators. Ms. Marcero stated the board's responsibility is broader than just evaluating the superintendent and it is required by law to be that.

Dr. Pomponio asked about negotiations. Ms. Marcero said some districts do have board members on negotiating teams. Up to 3 board members can be a part of the negotiations as long as we do not exceed a quorum.

Ms. Reed asked about the board's role in relation to hiring. Ms. Marcero said it depends on the positions. Some school districts establish that the superintendent has the authority to hire support staff and any professionals go to the board of education for approval. It would depend on how our district has established that and the size of the district. The superintendent has the authority to terminate any support staff but does not have the authority to terminate any professional staff members. Anybody of a professional nature has to come to the board of education whether it is a social worker or a psychologist. You cannot terminate teachers, you move to proceed on tenure charges and it goes to the Tenure Commission. This is covered in our NEOLA policies.

Thrun Law Firm covers all areas of law except for Workers Comp, Tax Law, Divorces and Drunk Driving.

Ms. Reed asked about the process for getting legal advice from Thrun. Ms. Marcero stated if the board is seeking a legal opinion they would ask for that from the lawyer that specializes in the area of concern. The written opinion will be given to the board president. It is covered under attorney client privilege. All board members would have access to that opinion but it needs to be protected as confidential information. Disclosure of confidential communications by a board member under the Open Meetings Act or FOIA is a misdemeanor. The board would have to vote to waive the attorney client privilege in order to disclose the information.

If the superintendent asked a question of the firm the written opinion would go back to the superintendent. If for instance, it involved a student issue, that may eventually go to the board; the board would serve as the "trier of fact" or jury, and the board's impartiality needs to be maintained until the hearing is scheduled.

Ms. Reed asked about the board's litigious responsibility. Ms. Marcero stated under certain circumstances correspondence with the superintendent would be sent to the board president at the same time. If the nature of the question is something that would come to the board at a later date, it would come to them at that time. If the board president tells Ms. Marcero she wants to be cc'd on all correspondence between the superintendent and herself, she will presume the president has the authority to do so until she is told by 4 board members that the president does not have that authority.

Dr. Pomponio said we have new policies that are law driven and we are trying to get back on track and organize everything. So she feels we need more legal consultation if there are any issues with processes and what the policies are. Ms. Marcero cautioned the board the NEOLA policies are so extensive, involved and complex and encouraged them to read those policies and ask how they are going to affect our day to day operations. The policies can be amended if they do not work for us. NEOLA is very good at updating the policies when there are statutory changes.

Ms. Marcero said it has never been the policy of Thurn Law Firm that the board cannot have communication with the firm. The board of education is their client.

Ms. Reed asked what constraints the board of education has. Ms. Marcero stated the board has no authority to investigate employees or student issues. They cannot sit in on Special Education meetings unless it was their child. They cannot go through personnel files or student files. Wherever confidentiality attaches, board members have no authority outside of a board meeting. They can only act as a board. Individual board members are no different than any other member of the public outside of the board meeting. The only time they have authority is in the board meeting. The board president has a little bit more authority because the president has to, outside of the board meeting.

Mr. Freitas asked what issues they should be made aware of i.e. weapons, drugs. Ms. Marcero stated many times most superintendents will notify board members regarding situations with weapons in the school and that it would be presented to the board depending on whether it will be an expulsion recommendation. Mostly because these kinds of things spread through a community like wild fire and the board is made aware so they are not hearing it from the news. The same would apply to personnel matters, many of those would come to the board by virtue of a dismissal or tenure charges, so the board may know something is pending, but it will come to them at the later date when it is presented to the board. This is to protect the board as the "triers of fact" or jurors.

Dr. Pomponio asked what a board, in a deficit district, can do that they wouldn't otherwise be able to do, that an emergency financial manager would do. Ms. Marcero said and EFM has a lot of authority, they hold the purse strings. They can make good and bad decisions. With regard to the district, the board has the obligation to ensure the budget is appropriate and to make the decisions for whatever reductions are necessary in order to get us aligned financially. The board has the ability to declare "impasse" for collective bargaining purposes. To say we are in deficit we have to declare impasse under these circumstances and are done with negotiations.

Mr. Kremer asked about the constraints for attending events in the district. Ms. Marcero stated if it is during a school day, outside of a board meeting you are like any other visitor coming to the building. In relationship to any other social event like a play or athletic event and members wish to attend, as long as it is social and not being used to circumvent the Open Meetings Act they can certainly attend. She would advise they do not all sit in the same row together. The events are open to the public and board members are members of the public.

Ms. Reed asked about walk-throughs in the buildings. Ms. Marcero stated the board members would follow the visitor policy for that building. Calling the building administrator to see what is a permissible time.

Mr. Knott inquired about the legal liabilities for the board. Ms. Marcero said the superintendent, board and board president have what is called 'absolute governmental immunity' in relationship to TORT actions; defamation, slander, assault and battery, negligent claims only to the extent they did not act with gross negligence. For statutory violation claims; discrimination based on sex, race, national origin and Title 9 violations, the board has liability if they engaged in part of the wrong that was done. However, if for example a student claimed they were violated against based on their gender, the board members-unless you acted on individual capacity, would not have individual liability. For constitutional violations, violations of due process; for example we discharge someone without giving them an opportunity for a hearing and deprive them either procedural or substantive due process or violated their freedom of speech, as long as we acted in good faith, consistent with what the board's duties and responsibilities are then the board has qualified or good faith immunity. If the board acted upon advice of legal counsel, they would have qualified for good faith immunity.

Mr. Knott asked what would happen if the board did not follow the advice by law, would Thrun have an obligation to defend us. Ms. Marcero said it would go to our insurance counsel; the district would have errors and omissions carriers as well as general liability carrier.

Ms. Reed asked about not following written legal advice. Ms. Marcero stated the only people that would know that was not followed would be legal counsel and the client. If it is a policy decision, that falls within their perimeter. If it is a law and the board is given legal advice based on the law and they do not follow the statute, they will open themselves up to liability.

Ms. Reed asked about the role of school board members who also have children in the district. Ms. Marcero stated that if it were to involve their student being brought up on an expulsion hearing, the board member would have to exclude themselves from that vote. If by virtue of being a parent, a board member receives information of a relevant or important nature, they should contact the building administrator. That is the chain of command if the board member was a parent under any other circumstance.

Ms. Reed inquired about procedures that may not be followed properly and closed session regarding the improper following of procedures. Ms. Marcero stated if it was specific to an employee, the employee would be the one to request a closed session. If it is regarding process, that can be spoken of in an open session.

Ms. Reed asked Ms. Marcero to speak on the general rights of how a public school works under the regulations of FOIA. Ms. Marcero said that FOIA is the statute which is designed to allow for the public to have information in relationship to the operation of the district or the public entity. Under the statute there are very specific reasons why you can exempt the information from disclosure. Social Security, student info must be exempted. Depending upon the circumstances you may be required to redact certain information contained in the document that may not be subject to disclosure. The specific section of FOIA has to be identified that the exemption is based upon and give that information as well as the right for review information.

A request for an employee personnel file cannot include medical records or discipline that is more than 4 years old (under the Bullard-Plawecki Act), so you would have to site why the items are being exempted.

Ms. Reed asked about how a board member or parent can access a teacher file. Ms. Marcero said a board member cannot just ask to see personnel files, the request would be made based on FOIA. The file would need to be sorted, redacted and a copy is given. The employee is notified of the disclosure of their file. Redaction is done by the Superintendent as the FOIA director or HR would do the redactions.

Ms. Reed asked about the evaluation process and review of the evaluators. Ms. Marcero spoke about compliance and the evaluation process. The board would be looking at the evaluations from that year, not entire personnel files. The names would be redacted; they are only reviewing the process.

Ms. Reed asked what would happen if it was discovered that legal advice was given and not followed. Ms. Marcero said discipline could result if someone did not follow determinative legal advice.

Ms. Reed commented to the public that FOIA on teachers is public knowledge as they are working as a public servant.

Ms. Marcero reminded everyone that personnel files are not the only materials subject to FOIA, emails and other communications are subject to FOIA as well.

Mr. Craig asked about attorney client privilege and if a question is summarized. Ms. Marcero stated that if the question is being framed to formulate an answer that is desired, she will re-formulate the question so she does not violate attorney client privilege.

Ms. Reed asked about censorship, what it means and the process. Ms. Marcero said a censor of a board member is primarily used in the instances when a member has acted beyond or inappropriately outside of their authority. It has no legal implications; a board member does not lose their office nor does it mean they are ostracized. A board member that is brought up on censure can request a hearing or respond to the censure. The censure has to be supported by a majority of the board that is sitting.

Ms. Reed asked about the role of board members and speaking to the community. Ms. Marcero said the board needs to ensure and assure they are keeping the confidentiality that comes by virtue of the position of board member. If board members receive information from community members they should refer the individual back to the appropriate administrator to address.

Mr. Knott asked about editorials in the paper and the fact the paper will link them to their board position. Ms. Marcero stated, absent of sitting in a board meeting board members do not have authority to bind the school district to speak on behalf of the board of education. Unless there is an issue and the board president is identified as the spokesperson.

If a board member is asked to write a letter of recommendation, as a board member you can only speak on your own individual behalf and cannot take district letterhead to write a letter. Board members do not have that authority. They can speak as a community member but not as a board member.

Ms. Reed asked about a void of power in a district. Ms. Marcero said in her experience people will step in and assume responsibility. You need to ensure you have people that are willing and capable of making decisions and who the district can rely upon.

CITIZEN'S COMMENTS

None

Ms. Reed asked if there were any other question from the board.

Mr. Craig asked if a board member is required to abstain from approving board minutes if they were not in attendance at the meeting those minutes were generated from.

Ms. Marcero reviewed abstentions; Abstention in general is only recognized where a conflict of interest exists. Under statutory provisions there are limited conflicts of interest. It should not be relied upon for making tough decisions.

Ms. Reed asked about property sale questions. Those questions will be forwarded to the firm to be answered by the attorney that specializes in that field.

Ms. Reed asked if there were any other questions from the board. She thanked Ms. Marcero for the informative meetings they have had and appreciated Ms. Marcero's time. She said the board of education has learned a lot over the last year and felt Ms. Marcero has helped the board become more cohesive.

Mr. Knott also thanked Ms. Marcero and stated the board was very open to having this meeting and it is important for the board to know where they stand and what the level of their authority is. He complimented the teaching and administrative staff for what they do and being in attendance.

Ms. Marcero said her school clients are among her best. The dedication of the administrators and board members amaze her. She said the one thing that unifies a community is the school district.

ADJOURNMENT

2015/16-118 Ms. Reed made a motion to adjourn the meeting at 7:32 p.m., supported by Mr. Kremer.

YES: Craig, Freitas, Knott, Kremer, Pomponio Reed

NO:

Respectfully submitted by: Theresa Grzechowski

Dr. Darlene Pomponio-Secretary
Board of Education

