



The Helena Public Schools educate, engage, and empower each student to maximize his or her individual potential with the knowledge, skills and character essential to being a responsible citizen and life-long learner.

Board of Trustees – Policy Committee

May Butler Center
55 S. Rodney Ave

Tuesday May 7, 2019 – 12:00p.m.

MINUTES

Committee:

Luke Muszkiewicz, Committee Chair/Trustee
Sarah Sullivan, Board Chair
Sanjay Talwani, Trustee
Terry Beaver, Trustee

Others:

Tyler Ream, Superintendent
Josh McKay, Assistant Superintendent
Barb Ridgeway, Chief of Staff
Stacy Collette, HR Director
Elizabeth “Bea” Kaleva, Attorney

I. CALL TO ORDER / INTRODUCTIONS

Called to order at 12:11pm

II. REVIEW OF AGENDA

Luke noted Policy 1015 policy goals mission and vision on next meeting’s agenda – it will be added to agenda for next month’s board meeting.

III. GENERAL PUBLIC COMMENT:

No public comment

IV. REVIEW OF 4/2/2019 POLICY COMMITTEE MINUTES

Mr. Muszkiewicz inquired into previous discussion on criminal background investigations, noting there was a range discussion on the entire hiring process. According to Mr. Muszkiewicz, the last sentence on the minutes read ‘The hiring process 5125 will be brought back to be reviewed in next policy meeting,’ And 5125. Ms. Ridgeway added that is it actually 5025, which is the policy currently being discussed. Mr. Muszkiewicz requested that the change be reflected in the minutes and confirmed online.

V. PRESENTATION OF POLICIES FOR FIRST REVIEW

A. Policy 5025: Employment and Assignment

Ms. Ridgeway began by stating that this policy is actually a combination of ... and 2520 and has language from both since there was initially a concern that the employment and assignment language only applied to non renewal, and it might be no one thought to apply to certified staff. In fact, the policy applies to everyone. Ms. Kaleva offered that the applicable sentence is more akin to what the statute

says, which is the recommendation that the superintendent and the board has renewal or termination power over certified and classified staff. What is not included is ‘with or without cause’ or anything else covered by the statute. This is with the hopes to clarify that the board makes all decisions on hiring, not the superintendent. These decisions are based not on other policy, but on the recommendation of the superintendent. Mr. Muszkiewicz requested clarification of the last phrase ‘based on the recommendation’ and whether it meant they had to follow the recommendation. Ms. Kaleva confirmed that they did not have to follow the recommendations of the superintendent. The board is able to make a decision in line or not in line with the superintendent’s recommendation. The board has the caveat of being bound by contract to follow certain processes for termination.

Ms. Kaleva continued that if the board doesn’t follow the correct statutory process for terminating tenured or any classified staff covered by a Collective Bargaining Agreement (hereafter referenced as CBA) the termination will not hold up in court. Montana is not an at-will state, so all employees who are past the probationary period have some version of cause attached to their employment – a version of property right. Ms. Ridgeway asked if subs are considered at-will. Ms. Kaleva confirmed that technically subs are temporary employees, whom a district can choose to use or not use, as long as there is no discrimination in the process.

Mr. Muszkiewicz posed the question, “If there was a situation where the superintendent didn’t recommend a termination and board wanted to terminate?”

Ms. Kaleva said to terminate anyway.

Mr. Muszkiewicz expressed hesitation concerning that a terminated person would have the initial backup for a lawsuit if the superintendent hadn’t recommended the termination, referencing a situation that arose a few years ago, and the board wanted to proceed with a termination against superintendent

Ms. Kaleva addressed the issue by stating that because of all the time a superintendent recommends renewal to a non-tenured staff and the board voted no, that terminated person has recourse assuming it was not because of discrimination. The board potentially would have to deal with a litigation if a superintendent recommended renewal of a tenured teacher or someone covered by a CBA and the board said no, and there was no cause hearing pursuant to the situation.

Mr. Beaver requested a change to **Line 19**, reading superintendent provides assistant in transferring classified staff, inquiring why that does not include certified staff.

Ms. Kaleva clarified that certified staff are covered by anything described in their CBA. That is something that will have already been negotiated. Superintendent must follow what’s laid out by CBA.

Ms. Collette added there there is relatively loose language in the CBA addressing transfers and what includes a building or not building and within which building they can be transferred to. However, there are also nonorganized employees – ie administrators and independents – who need to be included in this policy.

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Ms. Kaleva added that there is language just above **Line 19** stating classified employees covered by a CBA will be covered by the CBA and will be subject to their terms and conditions of the CBA. Anything covered by the CBA takes precedent; the default for everyone else is this policy which states the superintendent has control over transfers.

Mr. Muszkiewicz asked why the policy would explicitly say classified staff rather than including everyone. Ms. Kaleva answered by saying there are no certified staff who are not covered, except principals and administrators. Since this is the board's own language so it can be changed to 'superintendent may assign/reassign/transfer positions and duties of all staff,' or remove everything else.

Mr. Muszkiewicz inquired into the sentence reading, 'nothing in this policy prevents reassignment of staff member during the school year.' Ms. Kaleva said it was superfluous language, and Mr. Muszkiewicz asked if the committee concurred.

Mr. Beaver asked if there was anything lacking in the policy that would allow a reassignment to be challenged, and Ms. Kaleva confirmed that it could not be challenged unless pursuant to a CBA. Mr. Beaver asked if the district currently has a reassignment being challenged. Dr. Ream clarified that there is nothing currently being challenged. Ms. Collette confirmed that there has been one challenged, but it was a discrimination issue. Ms. Kaleva clarified that anyone can make challenge outside the system. Under Montana law, employees can give supervisors any discretion they want. If they execute that discretion with discrimination, then the employee could challenge the decision.

If person wanted to file a complaint against district under policy 1075 or 1700, they could have said there was discrimination. The assignment isn't an issue; it's the act. The remedy is to undo assignment, technically, but we maintain discretion under management rights to assign or reassign because it's in our statutory management rights.

Ms. Collette requested to go back to last sentence, asking if there was any reason to not include in the policy that we can make reassignments during the year. Ms. Kaleva clarified that it will always be subject to the provisions of the CBA, but that it could be included in the policy just to confirm to teachers that reassignments are not limited to just the end of the year. Ms. Kaleva make the recommendation to strike the last middle sentence and last sentence.

Mr. Muszkiewicz raised the issue that there has been a heightened discussion among staff regarding non-renewals and requested clarification that Dr. Ream stated in a previous meeting that he is recommending a staff member not be renewed, it is because of performance issues. Dr. Ream confirmed that what he said was 'we should not use nonrenewal as a process for reduction of staff. That we have a specific reduction of staff policy to follow if we are reducing staff in accordance with all of the reasons. I'm only familiar with performance as being the rationale for the the reduction of staff. There may be others.'

Ms. Kaleva discussed the option of a fantastic teacher maybe wasn't a great employee. It was decided that reason fell under poor performance.

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Ms. Kaleva continues on the importance of an effective evaluation and how it should the surprise out of a nonrenewal if the employee can see it on paper. The best case scenario would be an evaluation that specifically sets out areas in which an employee is not performing and lays out options to get them into a position where they can perform. Sometimes an evaluation may not be as strong as it should be, so in that case, a conversation needs to be had.

Mr. Muszkiewicz raised the question if, based on statute, what are the rules on what the board can and cannot do. Ms. Kavela said that it all based on non-discrimination. Mr. Muszkiewicz clarified that if someone says they are non-renewed because of budget cuts or lack of enrollment, the board says no, that is not how nonrenewal is used. If the board needs to make a reduction in force, we have a procedure for that. He asked what the state statute delineated on this. According to Ms. Kaleva, under Montana Statute 20-4-206, the board can renew or non-renew with or without clause but only for probationary employees. There are no statutory guidelines past that, so case law has to be examined. There is no avenue through the CBA for non-tenured nonrenewal; most challenges in Montana have been through the Human Rights Commission or because the CBA was not followed.

Dr. Ream confirmed that when the board reviewed the current list of nonrenewal recommendations, that's what they were looking for. Ms. Kaleva added that when asking about whether a staff member should be nonrenewed, you have to ask if there is a legitimate business reason for nonrenewal. Then reason is analyzed.

Mr. Muszkiewicz asked if the reduction in force language in the policy takes into consideration longevity. Ms. Colette confirmed that it does. However, there is no longevity considered until a teacher has been tenured. It also takes into consideration natural attrition and resignations.

Clarification was made on what was included on longevity and what had to be taken into consideration. Mr. McKay said it is all in the CBA and is determinate on number of years teaching a certain subject.

Mr. Muszkiewicz expressed concern that some people suspect the district is nonrenewing teachers because of budget reasons, clarifying that he wasn't asking if we were doing it, he was asking if it made sense and if it would save us more money. Ms. Collette said it would not make fiscal sense because more funds would have been spent on professional development and rehiring.

Mr. McKay added that if the district has non-renewals and it's using natural attrition, the timing is off. One key indicator on whether the position will be refilled is whether the post is listed and/or filled. Dr. Ream recommended that when asked that question, an appropriate response would be no because that would create a larger pool of natural attrition. Nonrenewals, resignations, and retirees all go into a group with the question 'are we going to refill.' Mr. Muszkiewicz asked for confirmation that if the board nonrenews a position, the district may not rehire that position. Dr. Ream confirmed that might happen. The only way to avoid this would be to hire someone else and then hire that position. This doesn't make sense either fiscally or logically. Mr. Muszkiewicz emphasized that if a nonrenewed teachers evaluation is examined, there should be a clear reason for the nonrenewal.

Mr. Muszkiewicz wrapped up the conversation by saying that when it comes to nonrenewals, it raises red flags, people are going to talk, and it's going to test the trust in what the board is doing. There have

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been a lot of questions about whether the board can add anything into the policy to make it more clear on what nonrenewals are used for what what they are not. Ms. Colette answered by saying that the board can't forget that these are probationary employees. The board and the district don't want to give away their management right to exercise our right to part ways with employees, and the board is going to do so without setting it in writing and setting a precedent.

Dr. Ream mentioned that in nearly all nonrenewal situations, there's an individual who has the ability to tell the story as he/she sees fit. Sometimes it doesn't reflect the reality of the situation, but we as administrators and board trustees can't ever comment to the contrary. By nature, this results in only one side of the issue being heard and can create a sense of mistrust. It can sound like the board and administration is hiding something, but in reality, 'We can't violate employees' rights – even if they violate their own.'

Mr. Muszkiewicz added that if someone approaches the board regarding nonrenewals, the answer is that it is never used for a reduction in force. If the board nonrenew someone, it's because of performance. He expressed concern that this sounds like this is the practice, but there is hesitation to put it into policy. Ms. Kavela emphasized that it's because it's a fluid concept. If we put it into policy, teachers get to fall back on it for their CBA. Ms. Sullivan offered that sometimes it's easier to say something is not a policy because it is more encompassing. Ms. Collette added that all of this was evaluated by the Helena Education Association (hereafter referenced as HEA) and was approved. The board has to trust in the process. This was asked for by HEA, and it was granted. The administration and board are following that request.

Mr. Beaver made a suggestion to move forward with the policy to the full board, and it was agreed. Ms. Ridgeway confirmed that one sentence will be removed.

B. Policy 5255: Disciplinary Action

Ms. Ridgeway opened by noting that this is a new policy. Ms. Sullivan added that this is a policy the board should have had in place before because it describes 'just cause.' This is step one of giving notice and describes if an employee conducts his/herself a certain way either on or off job, that employee will be subject to discipline. It is defined as 'reasonable job related grounds based on failure to satisfy performance or job duties, a disruption of district operations, or other legitimate reasons.' For suspension, the supervisor or his/her designee has authority to discipline an employee under his/her control. For example, In AA districts, the assistant superintendent may determine if it is necessary for a principal to suspend an employee unless it's an emergency. There cannot be any suspension without pay without the superintendent's approval.

Ms. Sullivan questioned the last sentence reading 'the superintendent or designee is authorized to suspend an employee with pay in a non disciplinary matter,' and why it was included in the policy. Ms. Ridgeway said it was in model, and Ms. Sullivan asked for a description of 'non disciplinary manner.' Ms. Collette clarified that it means a suspension without loss of pay during the course of investigation as 'non-disciplinary action.' There is no policy to make a suspension with or without pay for any staff member, but the district does and has suspended with pay. Ms. Sullivan requested the language be changed to 'superintendent or designees authorized to immediately suspend any staff member with our without pay.' An agreement was made.

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Mr. McKay asked the typical length of suspension and Ms. Sullivan replied that it is dependent upon whether an employee is part of a CBA or not, but it's no longer than two weeks for a teacher. It also depends on whether it's a safety issue. The court will ask if it's 'reasonable or not.' There is no statutory guidance on the issue, but after two weeks, the district ought to proceed with disciplinary action. Most CBAs require how long an employee can be placed on leave.

Mr. Talwani inquired into the number of times each year an employee is suspended. Ms. Collette answered that action has been taken twice this year. She added if there is an allegation a teacher has acted inappropriately, the district must remove the adult and not the child. The district is very conservative that employees only suspend without pay right before termination occurs. Ms. Collette concurred that suspension without pay has been very rare and in both instances this year, neither suspension was challenged.

Mr. Beaver requested a change to line 5 should be to line 5. Change to ways that they affect school.

Mr. Muszkiewicz requested a change to Line 16: with or without.

Mr. Talwani discussed staff's have plenty of rights, options, opportunities here. This policy allows administration to use judgement on taking action. There's a sense out there that there's no recourse for tenure teachers. Ms. Kaleva mentioned that there have been some bad experiences with teachers, but she believes the pendulum will swing back again. She believes unions are great to work with when someone is unable to perform, and the work really hard to find someone another job. The bad cases are the exception, not the rule.

Mr. Talwani inquired into how buyouts figure into this policy. Ms. Collette answered that the district has engaged in a number of settlements based upon what the district believed was in the best interest of students. When someone isn't able to serve, it's important to know the district has options. Sometimes these options are included in a CBA.

Mr. Muszkiewicz asked if the committee was comfortable advancing to board for approval. It was concurred.

VI. PRESENTATION OF POLICIES FOR SECOND REVIEW

A. Policy 5122: Criminal Background Investigations

Mr. Muszkiewicz suggested the district change 'drivers license' to 'government issued id.' Ms. Collette said the district requires what it does to mirror what the Department of Justice requires. It's their rule and the district is respecting it. Mr. Muszkiewicz recommended changing the language to 'government issued id and another form of id.'

Mr. Beaver, in reference to Line 2, asked why the background investigation is limited to schools, and recommended the language be changes to district property.

Ms. Ridgeway confirmed that she will be adjusting Line 32 to accomodate 'district property' vs. 'school building.'

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Mr Beaver requested clarification on Line 82-85, regarding convicted felons occasionally speaking at assemblies. Discussion was held on the topic, and it was agreed that it is legitimate because they aren't allowed alone with children. The case-by-case basis is also subject to superintendent approval.

Mr. Muszkiewicz suggested the policy proceed for final approval.

Policy 2333: Participation in Commencement Exercises

Mr. Muszkiewicz requested a change to line 21-22: 'will.' Barb agreed to make the change. Policy will be given to board for approval.

VII. CONTINUE REVIEW OF POLICY MANUAL: Series 2000 and 3000

Neither were discussed

VIII. BOARD COMMENTS

Ms. Sullivan wished to emphasize the importance of continually evaluating the rehiring of problem teachers. Evaluations are for employees being able to evaluate their own success, too. Thanks was given to Mr. Talwani for his dedication to the committee.

IX. ADJOURNMENT

Chair Luke Muszkiewicz adjourned at 1:11pm

**Next Meeting:
June 4, 2019
MBC Conference Room**

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