



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.

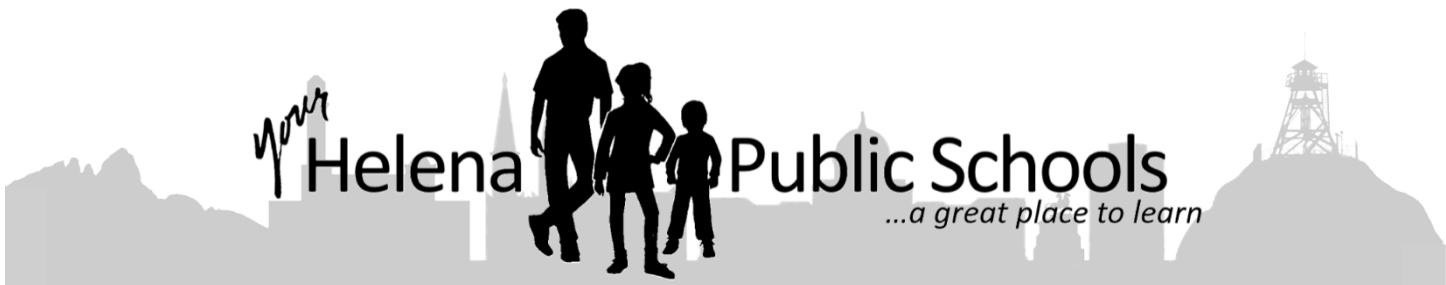
Board of Trustees – Policy Committee

May Butler Center | 55 S. Rodney Ave
Tuesday June 4, 2019 – 12:00p.m.

AGENDA

- I. CALL TO ORDER / INTRODUCTIONS – Welcome New Members
- II. REVIEW OF AGENDA
- III. GENERAL PUBLIC COMMENT: *This is the time for comment on public matters that are not on the agenda. Public matters do not include any pending legal matters, private personnel issues or private student issues. Please do not attempt to address such issues at this time or you will be ruled out of order. The Board cannot enter into a discussion during General Public Comment.*
- IV. POLICY COMMITTEE PROCESS
 - A. Number of Readings Before Policy Committee and Full Board
 - B. Public Posting
 - C. Policy Manual Overview
- V. APPROVAL OF MINUTES
 - A. 5.7.2019 Policy Committee Minutes
- VI. PRESENTATION OF POLICIES FOR SECOND REVIEW
 - A. 5025 Employment and Assignment
 - B. 5255 Disciplinary Action
- VII. PRESENTATION OF POLICIES FOR FIRST REVIEW
 - A. 2080 – Grading, Progress Reports, and Promotion*
 - B. 2090 – Credit Transfer Assessment for Placement Policy*
- VIII. CONTINUE REVIEW OF POLICY MANUAL: Series 2000 and 3000
- IX. BOARD COMMENTS
- X. ADJOURNMENT

Next Meeting:
August 6, 2019 | MBC Conference Room



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Board of Trustees – Policy Committee

May Butler Center | 55 S. Rodney Ave

Tuesday May 7, 2019 – 12:00p.m.

MINUTES - DRAFT

Committee:

Luke Muszkiewicz, Committee Chair/Trustee
Sanjay Talwani, Trustee
Terry Beaver, Trustee

Others:

Sarah Sullivan, Board Chair
Tyler Ream, Superintendent
Josh McKay, Assistant Superintendent
Barb Ridgeway, Chief of Staff
Stacie Collette
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 it 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 referenced previous discussion on criminal background investigations, noting there was a broad discussion on the entire hiring process. According to Mr. Muszkiewicz, the last sentence on the minutes reads, ‘The hiring process 5125 will be brought back to be reviewed in next policy meeting.’ Ms. Ridgeway added that it is Policy 5025 that is 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 two policies and has language from both since there was initially a concern that the employment and assignment language only applied to non renewal rather than all certified staff. In fact, the policy applies to everyone.

Ms. Kaleva stated that the applicable sentence is more akin to what the statute says, which is the recommendation that the Superintendent and the Board have 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. The Board is the final authority on hiring. Their decisions are based on the recommendation of the Superintendent. Mr. Muszkiewicz requested clarification of the last phrase ‘based on the recommendation’ and asked 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 bound by contract to follow certain processes for termination based on the CBA.

Ms. Kaleva continued that if the Board doesn’t follow the correct statutory process for terminating tenured certified staff 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. Ridgway asked if subs are considered at-will. Ms. Kaleva confirmed that technically subs are temporary employees, and a district can choose to use or not use them as long as there is no discrimination in the process.

Mr. Muszkiewicz asked if the Board could recommend the termination of an employee even if the Superintendent recommended rehiring? Ms. Kaleva stated the Board makes the final decision.

Mr. Muszkiewicz expressed concern that a terminated person would have the basis for a lawsuit if the Superintendent hadn’t recommended the termination, referencing a situation that arose a few years ago, when the Board wanted to proceed with a termination against Superintendent

Ms. Kaleva addressed the issue by stating if a Superintendent recommends renewing a non-tenured staff member and the Board voted no, that terminated person may have legal recourse assuming it was not because of discrimination. The Board potentially would have to deal with 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 assistance in transferring classified staff, inquiring why that does not include certified staff.

Ms. Kaleva clarified that certified staff are covered by the CBA. That is something that will have already been negotiated. The Superintendent has to follow what has been agreed to in the CBA.

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

Ms. Kaleva added that there is language just above stating classified employees covered by a CBA will be covered by the CBA and will be subject to the terms and conditions of the CBA. Anything covered by the CBA takes precedent; the default for everyone else is this Board Policy which states the Superintendent has authority 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 by a CBA,

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except principals and administrators. Since this is the Board's policy 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 violation of the 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 challenge, but it was a discrimination issue. Ms. Kaleva clarified that anyone can challenge decisions outside the system. Under Montana law, employees can give supervisors any discretion they want. If they execute that discretion and discriminate, then the employee could challenge the decision.

If person wanted to file a discrimination complaint against district 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 is there was any reason to not include in the policy that we can make reassessments 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 reassessments are not limited to just the end of the year.

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. We have a specific reduction of staff policy (RIF) to follow if we are reducing staff in accordance with other reasons. I'm only familiar with performance as being the rational for the the nonrenewal of staff. There may be others.'

Ms. Kaleva described a scenario where a district may have a fantastic teacher but a poor/bad employee. This would be a reason to nonrenew for performance.

Ms. Kaleva emphasized the importance of an effective evaluation and the nonrenewal of an employee shouldn't be a surprise if there has been an effective evaluation process in place. 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 asked, based on statute, what are the rules describing what the Board can and cannot do. Ms. Kavela said that all action is based on non-discrimination. Mr. Muszkiewicz clarified that if

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someone says they are non-renewed because of budget cuts or lack of enrollment, the Board would be correct in stating that is not how non-renewal works. If the Board needs to make a reduction in force, we have a procedure for that. He asked how the state statute defines 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 Coalition or because the CBA was not followed.

Dr. Ream confirmed that this was the process used when the current non-renewals were reviewed. 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 determined based 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 replace?' 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 RIF someone else and then hire that position. This doesn't make sense either fiscally or logically. Mr. Muszkiewicz emphasized that if a nonrenewed teacher's 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 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 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 ability 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 trustees can't ever comment to the contrary. By nature, this results in only one side

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of the issue being heard and it can create a sense of mistrust. It can sound like the Board and administration are 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 nonrenews 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. Ridgway confirmed that one sentence will be removed.

B. Policy 5255: Disciplinary Action

Ms. Ridgway 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. Ridgway 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 an 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 or without pay.’ An agreement was made.

Mr. McKay asked the typical length of suspension and Ms. Collette 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 define 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

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conservative and employees can 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. Muszkiewicz requested a change to Line 16: with or without.

Mr. Talwani stated staff members have plenty of rights, options, and 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 they 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. Members agreed.

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 mirrors what the Department of Justice requires. 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. Ridgway confirmed that she will be adjusting Line 32 to accomodate 'district property' vs. 'school building.'

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's approval.

Mr. Muszkiewicz suggested the policy proceed for final approval.

B. 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

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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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1 Helena School District 5025

2 PERSONNEL

3 Employment and Assignment

4 Each certificated employee will be employed under a written contract, subject to the terms and
5 conditions of the collective bargaining agreement and District policies. ~~Renewal and nonrenewal~~
6 ~~will be determined by the Board after receiving a recommendation from the Superintendent and~~
7 ~~in conformance with law. The Board, after receiving the recommendations of the~~
8 ~~Superintendent, will determine the non-renewal or termination of certified and classified staff, in~~
9 ~~conformity with state statutes, and applicable District policy and Collective Bargaining~~
10 Agreements.

11 Classified employees whose positions are covered by a collective bargaining agreement will be
12 employed subject to the terms and conditions of the collective bargaining agreement. Classified
13 employees whose positions are not covered by a collective bargaining agreement will be subject
14 to a one year probationary period, after which their employment is governed by the District's
15 policies and procedures. The District reserves the right to change employment conditions
16 affecting an employee's duties, assignment, and/or supervisor, subject to collective bargaining
17 language.

18 Assignment, Reassignment and Transfer

19 The Superintendent may assign, reassign, and/or transfer positions and duties of all staff, subject
20 to any provisions contained in the collective bargaining agreements. ~~The Superintendent will~~
21 ~~provide for a system of assignment, reassignment, and transfer of classified staff, including~~
22 ~~voluntary transfers and promotions.~~ Nothing in this policy prevents reassignment of a staff
23 member during a school year.

24 Legal References: § 39-2-904, MCA Elements of wrongful discharge
25 § 39-2-912, MCA Exemptions (wrongful discharge)
26 10.57.601a, ARM Definition of Immoral Conduct

28 Cross References:

29 Policy History:

30 Adopted on: 8.13.2013

31 Revised on:

1 Helena School District 5255

2 PERSONNEL

3 Disciplinary Action

4 District employees who fail to fulfill their job responsibilities or to follow reasonable directions
5 of their supervisors, or who conduct themselves on or off the job in ways that affect school
6 operations, may be subject to discipline. Behavior, conduct, or action that may call for
7 disciplinary action or dismissal includes but is not limited to reasonable job-related grounds
8 based on a failure to satisfactorily perform job duties, disruption of the District's operation, or
9 other legitimate reasons.

10 Discipline will be reasonably appropriate to the circumstance and will include but not be limited
11 to a supervisor's right to reprimand an employee and the Superintendent or building principal's
12 right to suspend an employee, without pay, or to impose other appropriate disciplinary sanctions.
13 Disciplinary sanctions, including all forms or reprimands, will be documented and placed in the
14 employees personnel file accordance with Policy 5040. In accordance with Montana law, only
15 the Board may terminate an employee or non-renew employment.

16 The Superintendent or designee is authorized to immediately suspend a staff member, with or
17 without pay, in a non-disciplinary manner.

18

21 Policy 5040 Personnel Records

22

23	Legal Reference:	§20-3-324, MCA	Powers and duties
24		§20-4-204, MCA	Termination of tenure teacher services
25		§20-4-207, MCA	Dismissal of teacher under contract
26		§39-2-903, MCA	Definitions
27		§45-8-361, MCA	Possession or allowing possession of a weapon in school building – exceptions – penalties – seizure and forfeiture or return authorized – definitions
28			
29			

30 Policy History:

31 Adopted on:

32 Revised on:

1 Helena Public Schools 2080

2 STUDENT INSTRUCTION

3 Grading, Progress Reports and Promotion

4 The administration and professional staff shall establish a system of grading and develop
5 procedures for reporting academic achievement to students and their parents. The system shall
6 also determine when promotion and graduation requirements are met. The decision to promote a
7 student to the next grade level shall be made by the building administration with consideration
8 given to a variety of educational factors including but not limited to; successful completion of
9 the curriculum, attendance, and District assessments.

10 Legal References:

11

12 Cross Reference:

13

14 Policy History:

15 Adopted on: 2.28.2012

16 Revised on:

1 Helena Public Schools **2090**

2 STUDENT INSTRUCTION

3 Credit Transfer Assessment for Placement Policy

4 High School

5 Requests for transfer of credit or grade placement from any non-accredited, nonpublic school
6 will be subject to examination and approval before being accepted by the District. The credit
7 review will be conducted by the Principal or designee. The reviewer may seek assistance from
8 content/subject area instructors.

9 The reviewer will:

1. Document that a student has spent approximately the same number of classroom hours in home school as would have been spent in a regular class in the District;
 2. Document that a student followed a curriculum essentially similar to that of a course for which credit is requested;
 3. Document that in the event of a credit request in a lab, industrial arts, or music course, equipment and facilities were sufficient to meet required learning activities of the course;
 4. Require that a student has satisfactorily passed, in all courses in which a final exam normally is given, a final exam prepared and administered by a staff member in the District.

The District will give credit only for home schools, which have met all requirements as specified in Montana law. The school transcripts will record courses taken in home schools or nonaccredited schools by indicating title of the course, location where the course was taken, and grade. For the purpose of calculation of class rank, only those courses taken in an accredited school will be used.

Grades 1-8

Requests from parents of students in non-accredited, nonpublic schools for placement in the District school system will be evaluated by the Principal or designee. The Principal or designee will take into account the following when recommending grade placement:

1. Documentation that the non-accredited, nonpublic school has provided a comparable number of hours as the child would have attended in a public or private school;
 2. Documentation that the child followed a similar curriculum as would have been provided in an accredited public or private school;
 3. Demonstrated proficiency on school and district assessments. If a parent is not in agreement with the placement of the child, he/she may request a hearing before the Superintendent.

39

2090 Continued

40 Legal References: 20-5-110, MCA School district assessment for placement of a child
41 who enrolls from a non-accredited, non-public school

42 10.55.701, ARM Board of Trustees

43 Cross References:

44 Policy History:

45 Adopted on: 2.28.2012

46 Revised on: