

**ROCHESTER BOARD OF EDUCATION**  
**Policy Review and Development Committee Meeting of the Whole**

**November 9, 2017**

**MINUTES**

**Attendance**

Commissioners – Commissioner Powell (Chair); Commissioners Adams (left at 8:21PM), Hallmark, Cruz, and Elliott (left at 8:36PM).

District Staff – Karl Kristoff, General Counsel

Community Members: Sujata Ramaiah, Empire Justice Center

Board Staff – Debra Flanagan; Kallia Wade, Coordinator for the School Climate Advisory Committee

Commissioner Powell called the meeting to order at 6:03PM.

**I. Review Proposed Amendments to the *Code of Conduct* (1400), based on Recommendations from the New York State School Boards Association (NYSSBA)**

Ms. Flanagan presented each of the proposed revisions to the *Code of Conduct*, noting that the changes are based on NYSSBA recommendations, changes in law/regulations, and for clarification of each parties' rights and responsibilities to ensure a common understanding and clear expectations. She reported reviewing these proposed changes with the members of the School Climate Advisory Committee in their October 25, 2017 meeting.

Ms. Flanagan pointed out a few areas in which input regarding policy options is needed from the School Climate Advisory Committee and the Policy Committee:

- Prohibiting students from bringing electronic devices into the classroom during any type of testing in the District, or only during administration of NYS assessments (required by NYS law)
- Establishing a minimum 30-day requirement for notifying the public of a hearing to gather input about proposed changes to the *Code of Conduct*

With respect to the 30-day notice of a public hearing, Commissioner Powell noted that the Board needs to hear from the public before discussing or considering any amendments to the *Code of Conduct*, and a 30-day notice could be managed in tandem with advancing the proposed policy to the Board as an Information Item. She pointed out that conducting the public hearing before the following month's Business Meeting would meet the 30-day notice requirement, and public input from the hearing could be considered by the Board when the proposed policy is presented as a Discussion Item.

Commissioner Adams pointed out that there is sufficient public interest and concern regarding student discipline and suspensions to warrant a requirement that a minimum 30-day notice be provided before a

public hearing. She contended that the District has not performed well regarding student discipline and community input is needed to inform policy and practice.

Commissioner Powell emphasized the importance of conducting a public hearing before the proposed changes to the *Code of Conduct* are discussed by the Board.

Commissioner Powell observed that there seems to be support for including a 30-day notice requirement in the *Code of Conduct*. She asked for her colleagues' input regarding a stipulation that the public hearing be held prior to the proposed policy being presented to the Board as a Discussion Item. Ms. Flanagan suggested conducting the public hearing before proposed revisions to the *Code of Conduct* are advanced to the Board, so that public input can be incorporated into the proposed policy. The Board would then review the final draft of the proposed policy, rather than changes to a proposal that has already been presented.

Commissioner Cruz asserted that the public hearing should be held before the proposed revisions to the *Code of Conduct* have been approved by the Policy Committee, so that public input can be incorporated into the proposed policy.

Mr. Kristoff stated that NYS law requires a public hearing to be held *every* time a change is made to the *Code of Conduct*. For this reason, he suggested presenting a final draft of the proposed revisions for consideration in a public hearing.

Commissioner Adams suggested conducting a public hearing after the proposed revisions to the *Code of Conduct* have been approved by the Policy Committee. If additional changes are needed to address concerns or incorporate suggestions from the public hearing, the public comment portion of the next Board Business Meeting could be used for the 2<sup>nd</sup> hearing regarding the additional revisions. Mr. Kristoff noted that this approach would meet the legal requirements for conducting public hearings to review proposed changes to the *Code of Conduct*.

**Motion** by Commissioner Adams to include a minimum 30-day notice prior to conducting a public hearing on changes proposed to the *Code of Conduct*. Seconded by Commissioner Cruz. **Adopted 3-0.**

With respect to law enforcement involvement in student disciplinary incidents, Ms. Flanagan explained that the proposed policy limits the grounds for which the police can search or question a student. The New York State School Boards Association (NYSSBA) recommended eliminating the provision allowing law enforcement to search or question a student if school officials have "invited" the police. The reason that NYSSBA recommends removing this provision is that it is too ambiguous and unclear whether there is sufficient cause for conducting a search or interrogation.

Commissioner Elliott stated that she does not see a problem with allowing the police to become involved in an investigation at the school if they've been invited by the school administration.

Commissioner Adams explained that this issue arose in discussions about the School Resource Officers' (SRO) contract because SROs presence in schools was interpreted as a standing invitation, allowing police officers to question or search any student in the school without probable cause or reasonable

suspicion. The fact that these officers (SRO) are stationed in schools has been interpreted to mean that they have been invited and therefore are able to search or question any student on the premises.

Ms. Flanagan reported that the NYSSBA policy updates stipulate that a student cannot be questioned or searched by the police if the student's parent or guardian cannot be reached, unless the student is aged 18 or older. She stated that it is no longer acceptable to simply attempt to contact a parent/guardian, and parents must be notified before students are subjected to law enforcement involvement.

Commissioner Adams inquired whether there have been recent changes to the law regarding parental notification and student protections when law enforcement officials become involved. She reported having advocated for these types of protections for students in the past, but that she was informed that NYS law only required that an attempt be made to contact parents before the police could proceed with questioning or search of a student. Mr. Kristoff replied that a recent Supreme Court case upheld these additional protections for students. He also noted that official opinion from the NYS Education Department has stated that the police are supposed to conduct their business at the precinct and not in the school. Mr. Kristoff stated that he does not see a problem in making this revision to the *Code of Conduct*, as long as it is clear that it is not construed as prohibiting school officials from inviting the police to intervene. He noted that there are certainly exigent circumstances in which law enforcement should be contacted to intervene.

Commissioner Elliott voiced concern about the particular circumstances in which staff are allowed to invite or involve law enforcement to become involved. Mr. Kristoff asserted that school administrators must be able to exercise judgment and discretion in assessing each situation and determining how to respond.

Commissioner Adams asked about incorporating the proposed policy changes into the SRO contract, once the policy proposal has been adopted by the Board. Mr. Kristoff explained that the District will have to continue operating under the current SRO contract provisions, even though the *Code of Conduct* has been changed. He stated that adherence to the revised policy would have to be addressed when the SRO contract is up for renewal.

Commissioner Adams expressed concern about members of the Rochester Police Department who do not agree with the protections provided in the proposed policy, such as informing students of their rights before being questioned or searched. She added that some members of the Police Department have even claimed that racism does not exist in their department, despite evidence to the contrary. Mr. Kristoff asserted that any police officer planning to interview an individual suspected of criminal misconduct must immediately inform that person of the allegations against them, their right to remain silent, right to counsel, and the circumstances under which those rights may be waived. He emphasized that there are **no** exceptions to these legal requirements.

**Action Item: Mr. Kristoff will check the current contract for School Resource Officers to determine the timeline for the contract renewal to ensure that changes to the *Code of Conduct* are incorporated into the new contract.**

Commissioner Elliott pointed out that the District's collective bargaining agreements also need to be reviewed to identify changes needed to comply with policy changes. Mr. Kristoff stated that this will have to be addressed when the collective bargaining agreements are renegotiated.

Commissioner Adams noted that changes are made to collective bargaining agreements via memos, and do not necessarily require waiting until the entire agreement is renegotiated. Mr. Kristoff replied that a Memorandum of Agreement (MOA) would substantively change the terms of the agreement, but would also be subject to a ratification vote by a majority of union members. If the MOA also involves expenditure of funds, additional approval would have to be obtained from the Board of Education. He clarified that a Memorandum of Understanding (MOU) pertains to implementation of an *existing* contract.

Mr. Kristoff presented additional recommendations for revisions to the *Code of Conduct*:

- Under the section regarding “Students’ Rights and Responsibilities”, change the verbiage from having the right to “present their version of events to school staff to take into account in situations in which disciplinary action is being considered” to “present *one’s* version of events *for* school staff to take into account in situations in which disciplinary action is being considered”. He stated that changing “their” to “one’s” is consistent with the other language in this section of the policy. Mr. Kristoff also asserted that the revision from “to school staff” to “for school staff” encourages greater consideration of the student’s perspective in disciplinary matters.
- Under the section regarding “Parents’ Rights and Responsibilities”, change “Collaborate with the District to optimize their child’s educational opportunities” to “Collaborate with the District to optimize their *children’s* educational opportunities” for consistency with the other language in this section of the policy.
- Guidance regarding allowing strip searches to be conducted, with the following options: 1) prohibit strip searches altogether; 2) allow strip searches only if school staff have probable cause; or 3) allow strip searches if school staff have reasonable suspicion of a threat to safety.

Mr. Kristoff requested that the members of the Policy Committee include a requirement in the *Code of Conduct* that school staff consult with the Law Department prior to taking any action involving searches of students, particularly if strip searches are allowed on the basis of probable cause or reasonable suspicion.

Commissioner Powell asked about the perspective of the School Climate Advisory Committee with regard to strip searches. Kallia Wade replied that the proposed amendments to the *Code of Conduct* were just presented to the Advisory Committee two weeks ago, and there has not been sufficient opportunity for review or to prepare recommendations. She added that the initial response seemed to be in favor of prohibiting strip searches altogether.

Commissioner Adams inquired whether any strip searches of students have been performed. Mr. Kristoff confirmed that strip searches have been done, but not in the Rochester City School District. Ms.

Wade reported that her review of long-term suspension appeals indicates several cases in which students were strip-searched in the District.

Commissioner Powell contended that the *Code of Conduct* must include a definition of “strip search” to distinguish it from other types of searches. She asked whether a student being asked to reveal a cell phone hidden in her bra strap would constitute a strip search. Ms. Wade cited an incident in which a student was told to drop his pants as part of a search for drugs, and a bag of marijuana was found. Ms. Wade added that the student had informed school staff that he had marijuana in his possession. She concurred that the policy should contain a clear definition of “strip search” and of students’ rights in these situations.

Commissioner Adams stated that she would prefer to prohibit strip searches altogether.

Commissioner Elliott expressed concern about humiliating students by allowing strip searches, emphasizing the need to demonstrate respect and to protect their dignity.

Commissioner Powell noted that if the *Code of Conduct* prohibits strip searches, then school staff can contact law enforcement if there is a perceived threat to safety. She stated that the police can conduct this type of search in the precinct rather than the school.

Commissioner Elliott objected to having the police conduct strip searches of students, even if these searches are conducted in the precinct. Mr. Kristoff pointed out that defining or restricting the actions of law enforcement is beyond the authority of the Policy Committee or the Board of Education.

Commissioner Powell discussed the need to consider situations in which a student may have a concealed weapon and pose a serious danger to other students and staff in the school.

Commissioner Cruz emphasized the importance of allowing school staff to exercise judgment and discretion because the policy cannot anticipate all of the different circumstances that may arise. He stated that an absolute prohibition of strip searches would leave school staff subject to a lawsuit if they proceeded with this type of search in an effort to protect the safety of other students and staff. Commissioner Cruz also expressed concern about who is making the determination of “probable cause” or “reasonable suspicion” for conducting a strip search.

Commissioner Powell observed that prohibiting strip searches would still enable school staff to involve law enforcement if there is a threat to safety.

Commissioner Elliott discussed the sensitivity of these issues in light of Jim Crow laws, mass incarceration in the African American community, and white rage. She asserted that federal policy allows the police to search individuals for any reason and/or to take lethal action if an officer feels “threatened”. Commissioner Elliott expressed great concern about involving law enforcement in student discipline situations because of the recent history of police interactions in the African American community.

Commissioner Powell contended that from the standpoint of institutional racism, the actions of a school administrator can potentially create the greatest harm to students because of their ability to exercise

discretion in involving law enforcement. She pointed out that school administrators are the gatekeepers in terms of students' contact with law enforcement.

Commissioner Adams noted that it may be more protective of students to allow school staff to have some discretion in conducting strip searches, but only if there is probable cause to suspect a real threat to safety. She stated that she would prefer having a school administrator or a teacher familiar to the student conduct a strip search with the parent present to having the police strip search the child. Commissioner Adams asserted that the full Board of Education supports the most protective approach for District students, who are predominantly children of color.

Commissioner Elliott expressed concern about the disproportionately harsh treatment by law enforcement toward City residents and people of color.

Commissioner Adams pointed out that prohibiting strip searches altogether will lead to law enforcement involvement. She emphasized that using a probable cause standard, requiring school staff to consult with the Law Department prior to taking action, and consulting with the student's parent would be more protective of the child than a complete prohibition of strip searches.

Commissioner Elliott noted that managing these situations in the school will also provide an opportunity to teach students about the implications of their actions, rather than merely penalizing them.

Commissioner Cruz inquired about the professional development provided to School Resource Officers regarding the RCSD *Code of Conduct* and use of restorative practices. He emphasized the necessity for incorporating these provisions into the SRO contract to ensure that School Resource Officers (SRO) and their supervisors are aware of expectations of the way in which they are to respond to student disciplinary incidents.

Commissioner Adams noted that the professional development requirements for School Resource Officers has been included in their contract for a number of years, but she is not certain of the extent to which these requirements have actually been implemented.

Commissioner Powell requested that Ms. Wade convey the issues and concerns discussed in this evening's Policy Committee meeting to the members of the School Climate Advisory Committee regarding strip searches. She stated that she specifically would like the School Climate Advisory Committee to be informed of the reasons that adopting an approach allowing strip searches with probable cause may be more protective of students than an outright prohibition.

**Action Item: Ms. Flanagan will add the following recommended revisions to the proposed *Code of Conduct*:**

- **Require school staff to consult with the Law Department and the student's parent before taking any action that could potentially involve a strip search of a student.**
- **The due process provisions and protections for students described in Appendix E, "Law Enforcement", will be included in the section of the *Code of Conduct* regarding student questioning and searches.**

Commissioner Powell stated that the School Climate Advisory Committee's recommendations with regard to the proposed changes to the *Code of Conduct* will be discussed in the next Policy Committee meeting.

## **II. Discuss Proposed *Student Harassment and Bullying Prevention and Intervention* Policy (0115)**

Commissioner Powell asked whether the School Climate Advisory Committee has had an opportunity to review the new proposed *Student Harassment and Bullying Prevention and Intervention* policy. Ms. Wade reiterated that the Advisory Committee needs more time to fully vet the proposed policy, but primarily expressed concern at this point that the *Student Harassment and Bullying Prevention and Intervention* policy be consistent with the proposed changes to the *Code of Conduct* and with all other related District policies.

**Motion** by Commissioner Adams to table consideration of the proposed *Student Harassment and Bullying Prevention and Intervention* policy until the December meeting to allow additional time for the School Climate Advisory Committee to review and provide input. Seconded by Commissioner Cruz. **Adopted 3-0.**

## **III. Review and Discuss New Proposed *Equity and Educational Excellence* Policy**

Mr. Kristoff presented a draft proposed *Equity and Educational Excellence* policy, which was developed with considerable guidance from the Superintendent and Deputy Superintendent for Teaching & Learning, and comparison with similar policies in other school districts.

Commissioner Elliott commended the Superintendent and her team for creating a policy to address inequities in the District.

Commissioner Adams concurred with the provisions in the proposed *Equity and Educational Excellence* policy, expressing concern about translating it into practice. She noted that there are many barriers within the District that a policy will not address, and the primary consideration is the way in which this policy will be operationalized.

Mr. Kristoff asserted that the proposed policy is valuable in providing a foundation and justification for a wide range of District initiatives.

**Motion** by Commissioner Cruz to approve the proposed *Equity and Educational Excellence* policy to advance to the Board. Seconded by Commissioner Adams. **Adopted 3-0.**

Commissioner Elliott suggested composing an editorial to publicize the proposed *Equity and Educational Excellence* policy.

Commissioner Powell recommended preparing the editorial in collaboration with the Superintendent.

Commissioner Cruz suggested inviting the District's collective bargaining units to co-sign the letter. Mr. Kristoff recommended that the Superintendent reach out to the unions.

#### **IV. Discuss Feedback Received from the District-Wide Wellness Task Force regarding Proposed Changes to the *Wellness* Policy (5405)**

Ms. Flanagan reported receiving feedback from the co-chairs of the Wellness Task Force, Carlos Cotto and Audrey Korokeyi, about the proposed revisions to the *Wellness* policy:

- Ensuring that all vendors and organizations on school property are required to abide by the guidelines for the sale of food outside of the school meals program;
- Prohibiting outside fundraising from selling food items during the school day;
- Requiring staff to be “mindful” of labels and logos on the food consumed in the presence of students, and consider including a link to a website regarding marketing of food products;
- Requiring a minimum of 30 minutes for lunch;
- Ensuring that water is provided to students during meals;
- Establishing a Youth Food Advisory Council to provide input on menus and the food served in schools;
- Ensuring that physical activity is offered to all students, including those with disabilities and/or special health needs;
- Ensuring that the policy includes the condom availability program; and
- Considering specific food restrictions to accommodate students' needs (e.g. nut-free foods to address allergies, gelatin-free foods due to religious prohibitions against consuming pork products)

Committee members decided to incorporate these recommendations, except for stipulating a specific time allotment for students to eat meals. Instead, the decision was to require school principals to ensure that students have adequate time to eat meals after obtaining their food.

Ms. Flanagan reported that she later received additional comments from Dina Faticone with Common Ground Health organization. Ms. Faticone was unable to attend the Wellness Task Force meeting, and provided the following recommendations in writing:

- Clarify that all organizations/vendors on school property must adhere to the guidelines for the sale of food outside of the school meals program, including before- and after-school programs, evenings, and weekends. All food sold on school property should be required to meet USDA Smart Snack Nutrition Standards (<http://www.regulations.gov/docket?D=FNS-2011-0019>).
- Require a minimum of 20 minutes for students to eat lunch and 10 minutes for breakfast, after students have obtained their food.
- Encourage schools to use fundraisers not involving food, and provide link to website for additional fundraising ideas (<https://www1.nyc.gov/assets/doh/downloads/pdf/cdp/fantastic-fund-hs.pdf>)
- Provide professional development to all staff to support integrated nutrition education that is culturally relevant for the District's student population;
- Provide health and wellness classes for all students and parents;



- Have teachers model healthy behavior by participating in exercise breaks during class with their students;
- Assign at least one staff member at each school to be responsible for monitoring compliance with the *Wellness* policy and for reporting progress to the Wellness Task Force on a regular basis; and
- Limit celebrations involving food to a maximum of one party per class per month.

Members of the Policy Committee voiced concern about imposing additional restrictions and mandates on school staff, who are already challenged with numerous mandates and requirements. Committee members decided that the initial set of recommendations presented by the co-chairs of the Wellness Task Force established clear guidelines and expectations, while allowing a degree of flexibility on the part of school administrators and teachers. The members of the Policy Committee also noted that Ms. Faticone’s recommendations had not been vetted by the Wellness Task Force, since she had not attended the meeting in which the proposed policy changes were discussed.

With regard to the new section of the *Wellness* policy entitled, “Family Life/Sexual Health”, the members of the Policy Committee decided that the curriculum and materials should be available for review by parents and posted publicly on the District website prior to the beginning of the school year to allow parents to decide whether to allow their child to participate in this educational program.

Additional questions were raised by Committee members regarding the current curriculum, and the extent to which the curriculum and materials vary by school.

**Motion** by Commissioner Cruz to approve the proposed revisions to the *Wellness* policy, incorporating the recommendations of the co-chairs of the Wellness Task Force and in accordance with the amendments proposed in this evening’s Policy Committee meeting. **Adopted 2-0.**

#### **V. Review of Proposed Revisions to *Suspected Child Abuse & Neglect* Policy (5460)**

Ms. Flanagan explained that revisions had been proposed to the *Suspected Child Abuse & Neglect* policy, reviewed and approved by the members of the Policy Committee, and advanced to the full Board. At that point, additional recommendations prepared by an attorney in the Law Department were discovered.

Ms. Flanagan reported that Cara Briggs had reviewed the current policy and prepared recommendations for revision. She noted that Ms. Briggs’ recommendations addressed the need for guidance and clarification of two distinct situations: 1) suspected child abuse requiring reporting to Child Protective Services; and 2) suspected child abuse in an educational setting by a District employee or volunteer. Ms. Flanagan added that Ms. Briggs had prepared two separate regulations to accompany the policy revisions to address each of these situations.

**Motion** by Commissioner Cruz to approve the proposed amendments to the *Suspected Child Abuse & Neglect* policy. **Adopted 2-0.**

Meeting adjourned at 8:47PM.