

ROCHESTER BOARD OF EDUCATION
Policy Review and Development Committee Meeting

December 7, 2017

MINUTES

Attendance

Commissioners – Commissioner Powell (Chair); Commissioners Adams, White (left at 6:30PM), and Hallmark (arrived at 6:08PM).

District Staff – Karl Kristoff, General Counsel; Josh Mack, RCSD Teacher

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

Commissioner Powell called the meeting to order at 6:02PM.

I. Feedback from the School Climate Advisory Committee regarding proposed changes to the *Code of Conduct (1400)*, based on Recommendations from the New York State School Boards Association (NYSSBA)

Kallia Wade presented comments and suggestions from the School Climate Advisory Committee regarding the changes that have been proposed to the *Code of Conduct*. She stated that the main concern is for consistency between the provisions of the proposed *Code* and the new draft *Student Harassment and Bullying Prevention and Intervention* policy.

Ms. Wade reported that the members of the Advisory Committee accepted most of the proposed updates to the *Code of Conduct*, which are based on the recommendations of the New York State School Boards' Association (NYSSBA). She stated that a few additional changes were suggested by the Advisory Committee:

- Ensure consistency in language throughout the proposed *Code of Conduct*
- Correction needed to the section regarding long-term suspension appeals: 1) a parent or student is allowed to submit a written appeal within 30 days from the date of the Superintendent's letter announcing the long-term suspension; and 2) a decision regarding the appeal will be made by the Board within 30 school days of submission of the written appeal.
- Addressing the use of strip searches in the policy: Ms. Wade noted that three options were identified by NYSSBA: 1) Prohibit strip searches altogether; 2) Allow strip searches if there is probable cause; or 3) Allow strip searches if there is reasonable suspicion.

She stated that this issue was discussed at length, and the School Climate Advisory Committee recommended prohibiting the use of strip searches in the District.

- Adding a clause stating that parents/guardians are to be contacted and notified by school staff before involving law enforcement in student discipline cases, except where there is an imminent threat of violence.

Ms. Wade reported that the language within the proposed *Code* needs to be aligned with regard to law enforcement, interview and search processes.

Karl Kristoff noted that the Executive Cabinet reviewed the proposed revisions to the *Code of Conduct* and unanimously agreed that strip searches should be prohibited.

Commissioner Powell sought confirmation that the Policy Committee had expressed a clear preference in last month's meeting for prohibiting strip searches. Debra Flanagan stated that there was considerable discussion on this issue in the last Policy Committee meeting, with questions being raised regarding the advantages and disadvantages of involving law enforcement. She recalled that concerns had been expressed about prohibiting strip searches altogether and relying on law enforcement to handle these situations, specifically with regard to the police protecting students' rights. Ms. Flanagan noted that the concerns raised in the last meeting centered on the approach that would be most protective of students.

Commissioner Adams noted that Mr. Kristoff had recommended in the last Policy Committee meeting that the *Code of Conduct* require school staff to consult with the Law Department, if strip searches are to be allowed in the District based on "probable cause" or "reasonable suspicion". She stated that there was discussion about relinquishing District oversight of a search to the police. Commissioner Adams explained that she raised the question as to whether it might be preferable to notify parents, offer them the opportunity to be present during a search, and have the search conducted by a known administrator or teacher rather than prohibiting strip searches altogether and leaving this to law enforcement. She stated that prohibiting strip searches also seems reasonable.

Commissioner Powell observed that all parties appear to be in agreement about prohibiting strip searches in the District.

Ms. Wade reiterated the Advisory Committee's recommendation that parents be notified before contacting law enforcement, and that parents be given the opportunity to be present during search of a student. Ms. Flanagan pointed out that the proposed *Code* does stipulate that parents must be notified prior to conducting a search or questioning of a student, citing the appendix referring to law enforcement involvement.

Commissioner Adams inquired whether the Advisory Committee's concerns would be addressed if the provisions regarding law enforcement involvement in questioning or searching students are included in the policy, as well as the appendix. Ms. Wade confirmed that this change would be sufficient.

Commissioner Adams requested a definition for the term "imminent threat" because this is used as the basis for waiving due process protections and for involving law enforcement. She emphasized the need to balance safety concerns with protection of students' civil rights. Mr. Kristoff responded that some standards require the use of discretion, and "imminent threat" is one of them. He pointed out that it would be difficult to find a definition of "imminent threat" that would treat all of the various circumstances that may arise. Mr. Kristoff noted that the courts have not even agreed on the circumstances or factors that constitute an "imminent threat".

Ms. Wade reported that the members of the Advisory Committee suggested examining the *Code of Conduct* used in other school districts to determine how they have defined “imminent threat”.

Commissioner Adams stated that a “reasonable person” standard cannot be used to indicate “imminent threat” because numerous studies have documented racism, particularly in terms of a common fear of black males. She emphasized the need for guidance, examples, and/or case studies to indicate what constitutes an “imminent threat”. Commissioner Adams asserted that this provision is critical in the *Code of Conduct* and *Student Harassment and Bullying Prevention and Intervention* policies.

Commissioner Adams also pointed out that the most common situations related to strip searches in the District involve asking students to remove clothing (e.g. pants) to search for drugs. She noted the importance of delineating these types of searches so that staff know specifically what is prohibited. Ms. Wade added that the Advisory Committee definitely wants to define and distinguish strip searches from other types of searches. Mr. Kristoff replied that a definition of “strip search” is available, and could be included in the regulation accompanying the *Code of Conduct*. He stated that the School Chiefs have provided him with a designated amount of time in each principals’ meeting, and issues related to search and seizure are one of the topics that he addresses.

Action Item: Debra Flanagan will incorporate the suggestions provided by the School Climate Advisory Committee into the proposed *Code of Conduct* to present in the February 2018 Policy Committee meeting and for distribution to the members of the Advisory Committee.

Commissioner Powell called for a recess from 6:30-6:35PM.

Mr. Mack inquired about the provision in the proposed *Code* that requires parents/guardians to be notified before a student can be searched or questioned, if the student is under the age of 18.

Ms. Flanagan explained that recent enactment of a NYS criminal law prohibits minors from being charged as adults. For this reason, additional legal protections are given to youths under the age of 18, such as requiring that parents be notified before proceeding with searches or questioning.

Mr. Kristoff pointed out that the effect of this law is that the police will take a student into custody, if they have probable cause to intervene and the District does not allow questioning or search of the student (i.e. if the parent/guardian cannot be contacted). He added that most police departments have a requirement to contact parents when a minor is involved, although he does not know about the policies of the Rochester Police Department.

Commissioner Powell stated that some of the long-term suspension appeal cases have indicated that parents were not contacted when the police became involved, even after their child had been taken to the precinct.

Commissioner Cruz suggested reaching out to the Rochester Police Department to learn of their policies and practices in these types of situations, so that this can be incorporated into the *Code of Conduct*. He added that this communication would also serve to notify the Rochester Police Department of changes in District policy.

Action Item: Ms. Flanagan will contact Rochester Police Chief Ciminelli to obtain information about police policies and practices with regard to conducting searches or questioning RCSD students.

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

Ms. Wade noted that the new *Student Harassment and Bullying Prevention and Intervention* policy is intended to comply with the requirements of the NYS *Dignity for All Students Act* (DASA), which mandates that school districts designate a DASA Coordinator. She stated that the Rochester City School District has designated Assistant Principals as the DASA Coordinator for their school, but not all of them have been trained to address student harassment and bullying or are prepared to assume these responsibilities. Ms. Wade reported that the members of the School Climate Advisory Committee recommended that each school have the opportunity to designate the staff member to serve as the DASA Coordinator to ensure that they will be able to fulfill these responsibilities.

Ms. Wade pointed out that students must be aware of the protections provided under the proposed *Student Harassment and Bullying Prevention and Intervention* policy. As part of implementation, the Advisory Committee recommends providing a version of the policy that is comprehensible at each grade level.

Another significant issue identified by the Advisory Committee is cyberbullying, which should be included in the new proposed policy. Addressing cyberbullying will necessitate expansion of the policy beyond school grounds, programs, events, activities, and buses.

Finally, the members of the Advisory Committee suggested that the data in the quarterly report provided to the Board not only provide detail by school and demographic group, but also of the type of bullying involved (e.g. physical, verbal, social, cyberbullying).

Ms. Flanagan requested clarification of the Advisory Committee's recommendation to ensure that the *Student Harassment and Bullying Prevention and Intervention* policy is consistent with the *Code of Conduct* in being "culturally responsive and tailored to student groups impacted". She asked about the specific aspects of the *Student Harassment and Bullying Prevention and Intervention* policy to which this recommendation refers.

Ms. Wade stated that this recommendation reflects a general concern that all policies related to the *Code of Conduct* contain similar language regarding cultural responsiveness.

Action Item: Ms. Flanagan will incorporate the suggestions provided by the School Climate Advisory Committee into the proposed *Student Harassment and Bullying Prevention and Intervention* policy to present in an upcoming Policy Committee meeting and for distribution to the members of the Advisory Committee.

III. Review and Discuss Sample Policies regarding Students' Use of the Internet and Electronic Devices

Commissioner Powell recalled that Iman Abid from the ACLU had provided the members of the Policy Committee with a sample policy entitled *Student Internet and Computer Use* in last month's meeting. She stated that the sample policy attempts to balance educational use of technology with student privacy protections, including due process provisions when a student has allegedly violated District policies. Commissioner Powell stated that General Counsel Karl Kristoff had been asked to review the sample policy and provide recommendations to the Policy Committee.

Mr. Kristoff stated that the first page of the sample *Student Internet and Computer Use* is consistent with existing District policies and practices, and contains exemplary language that he would like to use in a regulation to accompany the policy:

“Students shall not use the school network or school technologies to:

- Intimidate, threaten, harass or bully anyone;
- Distribute or access pornography;
- Plagiarize, cheat, or otherwise violate the school's academic code of conduct; or
- Intentionally infect the school's network or any school device with malware (malicious software).”

Mr. Kristoff reported that the remainder of the ACLU sample policy is problematic because it is very restrictive and contrary to current regulation, which preserves the District's right to monitor students' use of District-issued electronic devices and/or the District network. He explained that the Chromebooks issued by the District to students were funded by a government grant, which requires monitoring of students' use of technology. He emphasized that use of District technology and network is a privilege, not a right. Mr. Kristoff reported that monitoring has prevented harassment, fraud in student assessments, and obstruction of investigations related to student discipline. He stated that District monitoring utilizes software that flags words inimical to a person's well-being, with the intent of warding off this type of misconduct rather than to scrutinize students' use of equipment. For these reasons, Mr. Kristoff stated that he would not recommend using any of the provisions in the sample policy beyond those on the first page.

Mr. Kristoff also discussed sample policies provided by the New York State School Boards Association (NYSSBA), such as *Computer Use in Instruction* (4526) and *Students and Personal Electronic Devices* (5695). With respect to the *Computer Use in Instruction* policy, he pointed out that the existing *Acceptable Use of the District Network* policy (1950) is more comprehensive. Mr. Kristoff explained that the source of funding for purchasing District-issued electronic devices is significant because government grant funding requires monitoring student use, while general funds would not involve this requirement. He stated that monitoring by the District extends beyond simply blocking students' access to websites containing violent or offensive material, and includes reviewing their use of the technology to address bullying and harassment issues.

Commissioner Adams contended that monitoring students' use of technology is an issue because it is required when the District provides electronic equipment to students. She pointed out that students in wealthier suburban districts tend to have their own personal devices and therefore are not subject to

monitoring. Commissioner Adams discussed the irony in the District providing electronic devices to students to promote equity in utilizing technology and accessing information, while the monitoring requirements and practices create inequities.

Mr. Kristoff noted that suburban districts have similar policies to the District's *Acceptable Use of the District Network* policy because this governs students' use of the school district's network, regardless of whether they are using their own personal electronic device or one provided by the district.

Mr. Mack inquired about the possibility of blocking students' access after detecting their efforts to obtain harmful or offensive material through monitoring their use of the technology or network.

Commissioner Powell pointed out that students using the District network are not able to access social media because these websites are blocked. She stated that a student would have to be off of school property or find a way to use a different wireless connection to be able to access social media. Mr. Kristoff noted that the Chromebooks provided to students by the District have Lightspeed software installed, which blocks their access to websites containing violent, offensive, or obscene material.

Commissioner Adams asserted that students are quite savvy in terms of technology, citing an example of students in the Los Angeles school district dismantling protections and programs that had been installed on electronic devices issued to them by the school district. She stated that the students rendered these devices useless for educational purposes. Mr. Mack reported that students are quite capable of getting around the restrictions in the District network.

With regard to the Mr. Kristoff stated that there is little of relevance in the NYSSBA sample policy *Students and Personal Electronic Devices* (5695) because the District has not adopted the practice of allowing students to bring their own device to school to access the network.

Commissioner Adams contended that the District should not attempt to access all of students' activities online. She compared online use with that of the library, noting that students have the right to use the library and select material in which they are interested. By the same token, every online activity performed by students should not be subject to District surveillance. Mr. Kristoff indicated that this would not be constitutional, and would likely be considered by the courts as a violation of 4th amendment rights.

Commissioner Powell asked if Mr. Kristoff was recommending using only the first page of the sample ACLU policy as the basis for the District's policy governing students' use of technology. Mr. Kristoff replied that he recommends continued reliance on the existing *Acceptable Use of the District Network* policy (1950). He stated that he plans to incorporate the above-cited section of the ACLU sample policy into the regulation accompanying this policy (1950-R).

Action Item: Mr. Kristoff will incorporate a provision similar to the following from the sample ACLU policy, *Student Internet and Computer Use*, into the regulation accompanying the existing *Acceptable Use of the District Network* policy (1950-R):

“Students shall not use the school network or school technologies to:

- **Intimidate, threaten, harass or bully anyone;**

- **Distribute or access pornography;**
- **Plagiarize, cheat, or otherwise violate the school’s academic code of conduct; or**
- **Intentionally infect the school’s network or any school device with malware (malicious software).”**

IV. Review and Discuss Proposed Revisions to the *Education of Homeless Students* policy (5110)

Commissioner Powell recalled that the members of the Policy Committee were presented with proposed changes to the *Education of Homeless Students* policy in the last meeting, but a clean copy was required to ensure the accuracy of the language in the revised policy.

Commissioner Cruz sought clarification that the proposed revisions to this policy reflect the changes made to the federal *McKinney-Vento Act*. Ms. Flanagan explained that the policy revisions reflect changes to the federal *Every Student Succeeds Act (ESSA)* that affect the *McKinney-Vento Act*. She reported collaborating closely with Elizabeth Reyes, the RCSD McKinney-Vento Coordinator, to incorporate changes in federal law into the District policy. Ms. Flanagan noted that Ms. Reyes submitted the proposed *Education of Homeless Students* policy to an attorney with EngageNY and to the NYS McKinney-Vento Coordinator for review.

Commissioner Powell pointed out that a question was raised about whether seat capacity in a school could limit school choice of the parent/guardian or the homeless student, if an unaccompanied youth. She asked about the rights of a homeless student if a particular school is chosen and the classrooms in that school at that grade level have no capacity. Mr. Kristoff responded that this is an ambiguous area within the law, but he has not seen any information that would require the District to displace a student to create space for a homeless student to attend the selected school.

Commissioner Powell noted that displacement is not the only option. She reported that the *Parent Preference/Managed Choice* policy reflects a commitment to allow a child to attend the same school through the terminal grade, as long as their family does not move out of the zone. Commissioner Powell pointed out that the current contract with the Rochester Teachers’ Association (RTA) stipulates that the District will add a Teaching Assistant or Paraprofessional if class size exceeds a specified threshold. She questioned whether the proposed *Education of Homeless Students* policy would require the District to admit a homeless student to their chosen school and add additional staffing if the class size threshold is thereby exceeded.

Mr. Kristoff replied that this is not a valid analogy because the law clearly states that the District determines classroom capacity. He suggested that it would be useful to incorporate this clarification into the proposed policy, especially since the issue is not addressed in the law. Mr. Kristoff asserted that if the District was subject to a legal challenge on this issue, the court is likely to note that the law is ambiguous in this area and therefore likely to uphold District policy. He recommended inserting a clause in this section of the proposed policy to read:

“In the event of a dispute regarding school selection **and to the extent that seats are available**, the child is entitled to attend the school in which enrollment is sought by their parent/guardian or by the unaccompanied youth and to receive transportation services to this school until final resolution of the dispute, including all available appeals.”

Motion by Commissioner Adams to approve the proposed revisions to the *Education of Homeless Students* policy (5110), with the additional changes recommended by Mr. Kristoff. Seconded by Commissioner Hallmark. **Adopted 3-0.**

V. Discuss Draft Resolution to Rescind the *Day Care* policy (4324.1)

Commissioner Powell pointed out that rescission of Board policy does not require the same three-step process as for policy adoption (i.e. introduction as an “Information Item”, “Discussion Item”, and then vote for adoption). She stated that the resolution could simply be presented to the Board for a vote, or the process could be extended to allow time for public notification and response.

Mr. Kristoff noted that the resolution could be introduced in an upcoming Board meeting, and a motion could be requested to table it to allow for further discussion and consideration.

Commissioner Powell announced that she would prefer to follow the three-step process used for policy adoption to allow time for public notification and feedback regarding rescinding the *Day Care* policy. Mr. Kristoff stated that the same three-step process used for policy adoption could certainly be used for rescinding the policy to address these concerns.

Commissioner Cruz suggested that the Board Governance Committee address the issue regarding protocols for rescinding Board policies in considering changes to the *Board Bylaws* (2300).

Meeting adjourned at 7:27PM.