

WCCUSD Subcommittee on Clay Investigation

Alvarado Adult Education Campus

July 13, 2015

Minutes

Approved July 20, 2015

A. OPENING PROCEDURES

A.1 Call to Order

The meeting was called to order at 6:35 PM by Chairperson Liz Block.

A.2 Roll Call

Committee Members Present: Liz Block, Valerie Cuevas, Ivette Ricco

Staff Attendees: Lisa LeBlanc, Associate Superintendent for Operations; Phyllis Rosen, Clerical Staff; Harold Freiman, Attorney for the district.

Committee Members and Staff formally introduced themselves to the members of the public in attendance.

A.3 Approval of Agenda

Public Comment:

Mr. Anton Jungherr commented that at the last meeting there was approval to allow public comment on all items. He would like to include A.3, A.4, and C.1 for public comment.

Board Comment:

Ms. Block agreed there would be public comment on all items.

Ms. Cuevas suggested removing all asterisks and assuming public comment on every item.

Ms. LeBlanc said the asterisks were routinely used for subcommittees, and they could be removed.

There was consensus among committee members to remove the asterisks and assume public comment on every item of the agenda.

MOTION: Ms. Cuevas moved to approve the Agenda, as amended, allowing public comment on all items. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

A.4 Approval of Minutes: July 7, 2015

Board Comment:

Ms. Cuevas corrected a typographical error and made additional edits to clarify her comments. Ms. Ricco noted her name was erroneously left off of the introductions.

MOTION: Ms. Cuevas moved to approve the minutes of the July 7, 2015 meeting, as amended. Ms. Block seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

B. DISCUSSION / APPROVAL ITEMS

B.1 Discussion / Approval of special legal counsel to be selected as “finalists” to be interviewed on July 20, 2015 to assist the committee on behalf of the Board of Education to identify a forensic audit firm that can review and make findings on the Dennis Clay allegations.

Ms. LeBlanc said the district received two proposals and the law firm names have been posted on line. The two firms are Rehon Roberts, a firm out of San Jose, and Kawahara Law, out of Los Angeles.

Ms. Block said that the committee received the proposals and had the opportunity to review them over the weekend.

Ms. Block then requested to renew the discussion on whether to keep the proposals confidential. Ms. LeBlanc said the decision had been to keep the proposals confidential. She suggested that the discussion proceed tonight regarding the scoring criteria and then review whether the proposals will be made public prior to the interviewing on July 20th. Ms. Cuevas said it is more appropriate to release the proposals closer to the scheduled interview to try to maintain some confidentiality and not have one firm see the other’s proposal.

Ms. Ricco added that the two proposals are very different from one another.

Ms. Block said she agrees to keep them confidential for now.

Mr. Freiman also agreed and expressed concern that if both were selected for the interview, they would have an opportunity to see the other proposal which could influence the interview, especially if the proposals were published well in advance of the interviews.

Ms. Block said they would return to this topic under B.2. Next Steps.

Ms. Cuevas requested a discussion on how the guide is used as a tool as they go through the process.

Ms. LeBlanc said the interview process will be that each attorney will have one hour consisting of a 30 minute presentation followed by questions from the committee.

Ms. Block asked how will the attorneys know what to talk about.

Ms. LeBlanc clarified that the law firms need to present their qualifications, experience and their approach as outlined in the Request for Qualifications.

The committee members noted that on their scoring guide they referred to Kawahara as Law firm #1 and Rehon Roberts as #2.

Public Comment:

Mr. Antonio Medrano asked whether the public would be able to ask questions on the 20th.

Board Comment:

Ms. LeBlanc commented that in addition to prepared questions, often the presentation will trigger additional questions.

Ms. Block said she liked idea of the public asking questions, but that she is not sure how it would happen logistically.

Ms. Cuevas asked whether there was a Brown Act requirement.

Mr. Freiman said it was more of a logistic issue, as it is the conduct of their meeting in front of the public. He has seen it done where the public may submit questions they want to see asked in advance, but the committee members would not be obligated to ask.

Ms. Ricco inquired about the referral process and who would be contacting the referrals.

Ms. LeBlanc said that staff will call the references.

Ms. Block said they will continue this discussion under B.2. Next Steps.

Public Comment:

Mr. Ben Steinberg said he appreciated the transparency of the minutes. He said it was important that the attorney selected is beyond any reproach and is a quality individual with no appearance of any conflict of interest, and that the process is thorough and fair to everyone and emphasizes quality.

Mr. Jungherr suggested that a conflict of interest search be obtained prior to next Monday's interviews that included all board members, their family members and current and past staff members. He urged making the proposals open to the public on the Friday before the interviews. He approved of having questions submitted by the public.

Ms. Teresa Harrington asked where the two names are located on the website. Ms. LeBlanc said they were posted on the meeting agenda site for this subcommittee.

Board Comment:

Ms. Block commented on balancing complete transparency and possibly jeopardizing the interview process. Ms. Cuevas recommended discussing this when they discuss next steps.

Ms. Block asked Mr. Freiman whether they could decide what to talk about in item B.2.

Mr. Freiman said that the agenda item is stated broadly enough to allow them to decide on what actions to take around the process.

Discussion on Scoring Guide:

Ms. Ricco said based on the two proposals, both should be interviewed.

Ms. Cuevas suggested talking about the scores by asking should they be interviewed.

Ms. Block said she envisioned going through each item and comparing the two firms.

Ms. Cuevas said the conflict of interest item could only be answered after they run the search.

Ms. Block agreed the guide has flaws, but will work for their purpose.

1. Meeting the Submittal Requirements:

Ms. Block said she thought both firms met the requirements.

Ms. Ricco said both met the requirements but that Rehon Roberts had more background information. Ms. Block agreed and commented on their specific experience.

Ms. Cuevas said she scored the two firms equally because they both met the minimum requirements, and agrees that Rehon Roberts went above what was asked for.

Ms. Block and Ms. Cuevas scored both firms 25. Ms. Ricco scored Rehon Roberts 20 and Kawahara 15.

2. Clear of Conflict of Interest:

Ms. Block said that Kawahara had no comment regarding conflict of interest, whereas Rehon Roberts plainly stated he had no prior experience that could be a conflict of interest.

Ms. Block commented that it appeared Mr. Kawahara would be doing the work himself.

Ms. LeBlanc clarified that Rehon Roberts would be assigning Mr. Ruiz in that firm who has tremendous background in forensics investigations.

Ms. Ricco commented that they cannot accept Rehon Robert's statement until the committee provides the database to them. Ms. Block agreed they will need to do more searching.

Ms. Block and Ms. Cuevas scored each firm 25 points. Ms. Ricco scored Kawahara 15 and Rehon 20.

3. Relevant Experience (Kawahara):

Ms. Ricco commented that the Kawahara firm has relevant experience and worked with LA Unified School District, and investigated contract expenditures, especially change orders.

Ms. Block said she thought Mr. Kawahara had excellent relevant experience, however, he did not provide dates. She rated him 10 points in relevant experience working with school boards, and 15 points directing forensic auditors.

Ms. Cuevas said that his work with LAUSD, which has one of the biggest bond programs in the state, made him very relevant. She gave him 15 because his work was from auditing as opposed to advising a school district client. She also gave him 15 for his work with forensic auditors.

Ms. Ricco scored Kawahara 10 for both relevant experience sections.

3. Relevant Experience (Rehon Roberts):

Ms. Ricco pointed out again that the firm had some areas specific to what they are searching for. She scored 15 in both relevant experience sections.

Ms. Block also scored 15 in both sections and added she was very impressed.

Ms. Cuevas scored 15 (Part I) and 10 (Part II), commenting she saw more generality directing the work of the forensic auditors and examiners.

Ms. Ricco, Ms. Cuevas and Ms. Block spoke about the specific experience of Mr. Ruiz.

Ms. Cuevas said that at least for now she agrees both firms have relevant experience.

Ms. Block said that Rehon Roberts clarifies they will be assigning attorney Rogelio Ruiz who will be supported by a principal, Mr. Rehon, as needed.

Ms. Linda Lozito requested to comment on Mr. Rogelio Ruiz, indicating he may be the same attorney connected to a law firm by the name of GCR. She said that Mary Hernandez of GCR has made contributions to district campaigns.

Ms. Block said they will need to clarify that information and for now recommended conducting an internet search.

4. Qualifications:

Ms. Block said she gave Kawahara 20 points, slightly lower than Rehon Roberts, although she might want to change that based on these discussions.

Ms. Cuevas said we should be comfortable with the initial assessments, and recommended not to change their scores during this discussion.

Ms. LeBlanc commented that this is a scoring guide for the subcommittee to help bring a recommendation to the board on obtaining special counsel for the investigation.

Ms. Block added that it will not be carried forward as a number in a grand total.

Ms. Cuevas said she gave each firm a score of 20 as well, just considering the basics.

Ms. Ricco scored Kawahara a 10, indicating there was not enough relevant information. She gave Rehon 20 because of their experience in bond programs. She said Kawahara mentioned LAUSD, but did not mention to what extent.

5. Approach – Part I

Ms. Block said she would not know how to determine whether the firm could effectively work with a Board subcommittee.

Ms. Ricco said that Kawahara, with respect to their time commitment, could be understating the extent of this process. She gave them a 5, and Rehon Roberts a 10.

Ms. LeBlanc commented that the RFQ did not necessarily ask for an approach, so perhaps this item could be left for the interview process.

Ms. Cuevas said she gave both firms an 8, because they both gave some indication of how they would address the problem. She said neither firm wouldn't be able to fully understand the approach until they were hired.

Ms. Block said she agrees with 8 points for both firms.

5. Approach – Part II

Ms. Block and Ms. Ricco gave both firms a 5. Ms. Cuevas gave Kawahara 5, and Rehon Roberts 4.

5. Approach – Part III

Ms. Block said this part raised the issue of use of litigation to obtain information from third parties. She thought they would be only looking in the records to see if they supported the allegations.

Ms. Ricco said the Kawahara outline was a very basic approach that they will probably have to amend.

Ms. Cuevas agreed with Ms. Ricco and said she was not ready to score either firm on this item until she speaks to them.

Ms. Ricco scored Kawahara 1, and Rehon Roberts 5. She said that while they may have overstated it, they appear closer to what the committee expects.

Ms. Block said she gave Rehon Roberts a 5, but she gave Kawahara a big question mark, because she really didn't know.

Ms. Ricco scored Kawahara 1 and Rehon Roberts 5.

6. Other Factors

Ms. Ricco scored Kawahara 1 and Rehon Roberts 5.

Ms. Cuevas gave Mr. Kawahara 8 based on his experience with the Inspector General's office. She scored Rehon Roberts higher because of the FCMAT experience.

Ms. Block questioned whether obtaining cooperation of outside contractors would be outside the process. Ms. LeBlanc said the attorney along with the audit firm would identify the scope. Ms. Block said Kawahara clearly had good experience and gave him an 8.

Ms. Block said she did not fully understand what was meant by "has the strengths not captured by other categories." Ms. LeBlanc said an example would be do they have the capacity to be able to work on this type of issue.

Ms. Block said she thinks it is a good thing that Rehon Roberts defines itself as part of a Bay Area community.

Ms. Cuevas asked whether they will be adding up the numbers, which would be over 100.

Ms. Block said rather than pay attention to the numbers answer the question of whether we want to bring one or both to the interview. She believes both should be interviewed.

Ms. Ricco said both should be present for the interviews because there are still many unanswered questions.

Ms. LeBlanc said the RFQ reads "the completion of the interview process will result in the attorneys being numerically ranked," so the numbers could be reviewed and revised up to that time.

MOTION: Ms. Cuevas moved to invite both firms to be interviewed. Ms. Block seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

B.2 Discuss / Approval of next steps

Public Comment:

Mr. Tom Panas thanked the subcommittee members for their careful consideration of the potential attorneys. He said that if expecting the attorneys to make a presentation they should be told how long; if the attorneys have not receive the two Dennis Clay documents, they should receive them immediately; to make sure their attorneys clearly understand the anticipated scope; and that each subcommittee member needs to have carefully thought out

their three or four most important questions, to make sure to ask the same questions to each firm.

Board Comment:

Ms. Cuevas and Ms. Block raised the issue of whether to provide the Clay documents. Mr. Freiman said if the documents have been made publicly available already then there is no issue. He has seen this handled different ways. By not providing it, it could be seen as a test to see if they've sought it out. By providing it in advance, you could ask what exactly would you have us do. There are plusses and minuses to both.

Ms. LeBlanc clarified that it is not on the district website, but it is out there.

Ms. Block thinks it is best to have them come in and explain how they would handle the complaint, even if we told them to find it.

Mr. Freiman clarified that if the district has not made it available, this committee probably does not want to, as there may have been specific reasons why the district did not do so.

Ms. LeBlanc said she did not know the reasons for not placing the complaint on the district's website. She clarified that according to the RFQ, the main focus of the attorney's role is to review the complaint to find a forensic audit firm to do the investigation, not do the investigation themselves.

Ms. Cuevas said if they are smart enough they will find it. She would rather this not be held up because we released something we shouldn't.

Ms. Block said she agrees.

Ms. Cuevas said she would like the references they provided to be vetted for conflict of interest.

Mr. Freiman said that is a logistical issue, as a client of the firm would already exist in the firm's database that would not necessarily be a conflict of interest.

Ms. LeBlanc provided a recap regarding the next steps: 1. She would notify the attorneys of the interview on the 20th. 2. Check references of the attorneys prior to that time. 3. Proposals could be available on line either at the time of the agenda or a different time. 4. Provide a conflict of interest list. 5. The interviews would be held on the 20th, and then 6. There would be a recommendation of the subcommittee on the attorney selection to the Board at the July 21st meeting.

Ms. Block said she realized there was still work to be done regarding preparing the questions.

Ms. Cuevas asked if they could all agree on the items listed by Ms. LeBlanc. Ms. Block and Ms. Ricco agreed.

Ms. Cuevas suggested they look within each item and decide what work needed to be done.

Proposals:

Ms. Block suggested to begin the discussion with when to provide the proposals.

Mr. Freiman said that typically it would be provided with the agenda, although there is an unsettled matter since the subcommittee does not have a dedicated website. He believes it is open to see how the committee wants to do it.

Ms. Cuevas said to post it with the agenda on Friday.

Ms. Block agreed.

Ms. LeBlanc added that there would be an opportunity for the Board to see the proposals for the July 21st board meeting.

Conflict of Interest:

Ms. LeBlanc said the challenge is how far to go. With family members it might be challenging to identify. She understands former trustees and staff members. However, she

does not know how they would identify any family members or relatives of trustees.

Ms. Block asked about SGI?

Ms. LeBlanc said it could be.

Ms. Cuevas questioned whether it is sufficient to name primary principals and if that would have led them to the first attorney who recused himself. She asked if we provided the list of primary principals and add a disclaimer placing the burden on them to show us what they've looked at.

Ms. Block said not to rely on what they say alone, and that we would be doing a search on our own.

Ms. LeBlanc said there could be a list, recognizing it is not a full comprehensive list, which could be provided to the attorneys.

Mr. Panas said he believes there is a list of campaign contributors.

Ms. LeBlanc said if she received that in 24 hours, she could include it.

Ms. Ricco said she is confident the public will respond with any potential conflicts.

Ms. Cuevas said it is the committee's intent to find an attorney who has the utmost level of integrity around conflict of interest and asked to what extent within ourselves can we make that clear.

Ms. LeBlanc said that in inviting them to the interview, we could ask that part of the presentation would be to demonstrate how they have determined they have no conflict of interest to the school district.

Mr. Freiman agreed that the burden should be placed on the firm. He described the steps the law firm would need to take to complete the search.

Ms. Block said she approved having the firm demonstrate how they made the determination.

The committee agreed Ms. LeBlanc would include the request in the letter inviting the law firms to the interview.

Preparation for Interviews

Ms. LeBlanc recommended that the committee members have prepared questions in advance, but note also that questions may come up during the presentation. She is in favor of a fluid presentation and question and answers.

Discussion continued regarding the process of identifying the prepared questions.

Ms. LeBlanc suggested she could collect the questions and hand them out at the interview. She commented that at most 10 questions would be sufficient.

Ms. Cuevas asked for a deadline for the public to provide questions. Ms. LeBlanc said by this Thursday.

Mr. David Block commented not to rely only on the information that was submitted, to be prepared to ask additional questions.

Mr. Freiman suggested this could be handled in the same manner as public comment at a regular board meeting. Any member of the public can email a question to a Board Member, which they may or may not address.

Ms. Ricco suggested they each have their own questions and have members of the public email them directly with their questions, and decide what we will ask. She was against a consolidated list that would be posted with the agenda.

Ms. Block expressed appreciation for the contribution made by the public and asked that they email their suggested questions to them directly. She asked how members of the public not present at the meeting would know to submit questions.

Mr. Freiman said the option is available to the public, and it is a matter of whether to advertise it. He compared it to how a regular school board agenda works.

There was consensus that there did not need to be a deadline for submission of any questions by the public.

Ms. Ricco asked how they will make the selection process following the interviews.

Ms. Block asked Ms. LeBlanc for clarification on the process.

Ms. LeBlanc will invite the two firms for the interviews. The subcommittee will make a recommendation on one firm. The recommendation will go to the Board for approval. At the time of the meeting, the selection will be read into the record, and enter into a contract for attorney services, which may include some back and forth communication.

Agenda for July 20th Subcommittee Meeting

Discussion continued on whether the attorneys will be available for the interviews.

Ms. LeBlanc said she would contact the firms via telephone and check on their availability and will let the committee members know if there is a conflict.

Mr. Freiman said that since they will be taking action, there needs to be an opportunity for public comment on that action. He suggested that the interviews take place with the public present, the interviews will then be closed, and then move to the action item, have public comment, make a motion and recommendation with discussion and action.

There was consensus among subcommittee members to have public comment after the interviews.

Mr. Freiman clarified that technically there only needs to be one public comment.

Ms. LeBlanc recommended the meeting start at 1:00 PM as planned, with opening procedures and the first interview beginning at 1:15, followed by the second interview, and then public comment.

There was consensus among committee members there will be public comment during opening procedures. Ms. LeBlanc said she will send a proposed agenda to Chairperson Block.

MOTION: Ms. Cuevas moved that the next steps include the following process: 1. The RFQ responses will be released with the agenda packet to the committee. 2. Staff letter inviting the firms to interview will include an instruction to inform the committee how the firm has determined that they have no conflict. 3. Committee members will prepare their own questions, and will consider any proposed questions submitted by the public. 4. Public comment will be allowed after interviews and before a recommendation is made. Ms. Block seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

Ms. Cuevas inquired about the wording of the discussion/approval item for the July 21st meeting.

Ms. LeBlanc suggested the recommendation to the board would be “to select special counsel to be recommended to the Board of Education.”

Ms. LeBlanc clarified that once the board approved the attorney she had authorization to sign the contract and begin working with the attorney prior to board ratification.

Ms. Cuevas recommended that in addition to the board recommendation for the attorney that they also recommend the next steps for the committee.

Ms. LeBlanc said that could be a question during the interview process – how soon would the attorney be in a position to have a meeting to understand the next steps.

Ms. Cuevas suggested setting a date for the next meeting.

Ms. Block said the Board gave the committee the charge to select an attorney and now we want the board to extend our responsibilities further along in the process.

Ms. Cuevas suggested adding that the Board now charge the committee to start working with that attorney to identify the forensic auditor.

Ms. LeBlanc commented that authority has already been given. She believes it is the intent of this committee to be working with the attorney at least through the selection of the forensic investigation.

Ms. Block suggested setting a date for the next meeting and asked for availability on Monday, July 27, at 6:30 PM.

Ms. Ricco said she would confirm her availability as soon as possible.

Ms. Block set the next meeting for July 27, pending Ms. Ricco's availability.

Ms. Block inquired about an alternative location for the interviews, and Ms. LeBlanc said she would inquire about another location.

Mr. Jungherr urged the committee to have the Board, at the July 21st meeting, clarify and lay out what is the charge of this subcommittee and where the costs are coming from.

Ms. LeBlanc said the costs will be charged to the general fund, not the bond fund.

Ms. Block said that she would like to have a discussion about the role they will play during the investigations. Ms. LeBlanc suggested that discussion for the meeting when the attorney is on board.

Ms. Block said she agrees we need to be clear about their continued responsibilities, but she is not ready to say now what they are going to be.

Ms. Cuevas said she is fine with just making sure we have that agenda item on the 20th, to have a conversation after we pick our choice to clarify what we are taking back to the Board not only as our choice but also recommendations of how the committee will continue to meet its goals. She added the scope has already been identified in the motion in the minutes of the last meeting.

Ms. Block and Ms. LeBlanc clarified that for the July 21st board meeting, they will be recommending a special counsel to the Board and "confirming" to the Board the continued scope of the committee as going forward with the special counsel to identify a forensic auditor, and then assisting the audit firm in combining the findings from the forensic audit firm with a report of legal findings to the Board of Education, as was previously indicated in the motion on scope at the subcommittee meeting of July 7, 2015.

Ms. Cuevas thanked Ms. LeBlanc for following through and getting the proposals to them, and thanked the committee members for moving the work forward.

Ms. Block commented that working with the public members has been very helpful and valuable.

C. FUTURE MEETINGS

C.1 Next Meeting: July 20, 2015 at 1:00 PM

D. ADJOURNMENT

Chairperson Block adjourned the meeting at 9:28 PM.