

WCCUSD Subcommittee on Clay Investigation

Alvarado Adult Education Campus

July 7, 2015

Minutes

(Approved as Amended July 13, 2015)

I. Call to Order

II. Roll Call

The meeting was called to order at 6:34 PM by Chairperson Liz Block.

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

Other Attendees: Bruce Harter, Superintendent; Lisa LeBlanc, Associate Superintendent Operations; Phyllis Rosen, Clerical Staff; Harold Freiman, Attorney, Lozano Smith

MOTION: Ms. Cuevas moved to name Liz Block as Chair of this Subcommittee. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

III(a) Opportunity for Public Comment on Agenda Items

Dr. Harter recommended that the Board make it clear from the beginning that the Committee will accept public comment on all items on the agenda tonight.

MOTION: Ms. Block moved to accept public comment generally and specifically to each agenda item, for this meeting and all meetings for the duration of this Committee. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

Dr. Harter commented on a clerical error on the Agenda. He noted there are two Item III's which were renamed as Items III(a) and III(b).

Public Comment:

Anton Jungherr. Mr. Jungherr distributed a document entitled "WCCUSD Clay Investigation Subcommittee. Anton Jungherr's Remarks. July 7, 2015."

Mr. Jungherr requested those present at the dais introduce themselves.

Ms. Rosen said she is a retired employee of the school district, present to provide clerical support for the Subcommittee meetings.

Mr. Freiman said he is an attorney representing the school district to advise the Subcommittee as needed. Ms. Cuevas commented that she made a specific request to have someone present to advise her on the Brown Act.

Ms. Cuevas and Ms. Block introduced themselves as school board trustees, Ms. Ricco, as Chair of the Citizens' Bond Oversight Committee, as well as Lisa LeBlanc, Associate Superintendent for Operations, and Bruce Harter, Superintendent.

Mr. Jungherr said the Subcommittee should be a model for transparency, accountability and independence, and provided recommendations. He thanked the Committee for accepting public comment on all agenda items. He asked that backup documents for any agenda items be provided.

He recommended that any response to the Request for Qualifications dated June 22, 2015, be directed by staff to this Subcommittee Chairperson, not Board President Groves. Mr. Jungherr also inquired as to why only two law firms were emailed Requests for Qualifications. Mr. Jungherr also requested that the Request for Qualification process for the Forensic Auditor start this week so as not to lose any time getting the requests in and have the process started before the attorney is selected. He requested that the Clay Investigation icon now on the WCCUSD website be used for all documents related to this investigation. Mr. Jungherr proposed a timeline in which a Forensic Auditor recommendation would be made by August 10, 2015 and approved at the regular Board of Education on August 12, 2015. He added that while he is a member of the WCCUSD CBOC, the views expressed in his document are his alone.

Board Comment:

Ms. Cuevas thanked Dr. Harter for getting this Subcommittee to this point so far. She said that to eliminate any concerns regarding conflict of interest, she would like to ask this board to consider that they recuse Superintendent Harter from participating in this committee. She has asked Ms. LeBlanc to assume the organizational aspects.

Ms. Block stated that it was never the intention that Dr. Harter would be part of the selection and evaluation of the attorneys, and in the interest of the utmost transparency she believed it best that Dr. Harter be recused.

MOTION: Ms. Cuevas moved to recuse Superintendent Harter from participation in this subcommittee. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

Ms. Ricco inquired where the responses to the Requests for Qualifications are going. Dr. Harter said they were requested to be sent to Board President Groves, as they were prepared before this committee was formed.

Superintendent Harter left the meeting at approximately 6:52 PM.

Ms. Block stated that at this point, the submissions should be directed to this Subcommittee.

Ms. Ricco said she has not yet seen any documents that have been sent out, or any emails that have been sent, and requested the information.

Ms. Block apologized commenting that Ms. Ricco joined the committee after documents were distributed.

Ms. Cuevas added there was a delay because they needed counsel on providing documentation to Ms. Ricco to make sure they were in compliance with the Brown Act.

Ms. Ricco asked for all information that has transpired so far. Ms. LeBlanc indicated she would gather those documents for Ms. Ricco.

Ms. Block said the Request for Qualifications is on the website, which was sent out to various publications.

Ms. Block asked Mr. Freiman whether the Brown Act applied for Subcommittee members meeting outside of the meeting. Mr. Freiman said in his opinion this is a Brown Act body. The difficulty with a three-member committee is that you cannot have a quorum of two discussing anything outside of the committee. He recommended that members should only communicate through staff. Ms. Cuevas inquired further and Mr. Freiman responded that it is permissible only to discuss availability for a meeting.

Ms. Block said she would like Ms. LeBlanc to assume the role of everything Superintendent Harter had been doing, including setting up the meetings, and Ms. LeBlanc agreed.

Ms. Cuevas recommended they adhere strictly to the rules of the Brown Act, and asked that staff email the committee and communicate with Mr. Groves.

Additional Public Comment:

Antonio Medrano strongly recommended that to be totally transparent all documents related to this committee be printed out and available to the public at every meeting, not just on the website.

Board Comment:

Ms. Block said she agreed that all documents on the website should be located in one place. She directed Ms. LeBlanc to move all documents on the website to one location.

Ms. Cuevas asked to break to make copies of the Request for Qualifications.

A break was taken at 7:10 PM to make a copy of the Request for Qualifications for Ms. Ricco and members of the public. After it was determined a copy machine was unavailable, the meeting was resumed at 7:15 PM.

Ms. Block indicated that it is the intention of the committee going forward to have paper copies of all documents related to the agenda present at the meeting. If a document is very lengthy or in a binder, it will be located on the webpage.

MOTION: Ms. Block moved that the meeting to go forward without a paper copy of the Request for Qualifications. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

III(b) Review of the Board's Charge to the Subcommittee

Ms. Block said that this Subcommittee has been assembled with the charge of selecting an attorney who will help select an independent auditor for the Clay allegations that have come up.

Board Comment:

Ms. Cuevas said the outcome is to find recommendations that will go to the full board for the selection of an attorney.

Ms. Block agreed that the committee will not be making the final selection, it will be the full school board. She understands that the subcommittee will recommend a short list of people who they will then be interviewed.

Ms. Ricco asked how many candidates would be interviewed.

Ms. Block said she does not think it should be more than four.

Ms. Cuevas recalled that the subcommittee was charged with assisting the school board to make a choice, and so nothing would preclude the committee from making recommendations.

Ms. LeBlanc said her recommendation would be for the subcommittee to screen proposals, select and interview candidates, and make a recommendation to the board.

Ms. Block said that makes sense at this stage, that they have a three-session timeline to make a recommendation to the board by the July 21st board meeting.

Ms. Ricco said she got the sense this subcommittee was going to take it all the way through to selecting an auditor. She said she thought Mr. Jungherr's timeline is very aggressive.

Public Comment:

Mr. Todhunter said that this subcommittee should be making the recommendation to the board on who to select. He asked who sent the two Request for Qualifications to the two law firms.

Ms. Block said they were sent at the direction of the President of the Board.

Mr. Todhunter questioned that action and recommended that any response from either of those law firms be removed from the process.

Ms. Lozito said she has observed that there is a precedent where other district subcommittees made their recommendation to the board and that should be followed. She expressed concern that the process would otherwise get bogged down.

Mr. Jungherr recommended they craft a scope of a couple of sentences and submit it to the board. He hopes the subcommittee oversees the investigation to its completion. Mr. Panas said he agrees with the model where the subcommittee goes to the board with a recommendation for an attorney.

MOTION: Ms. Block moved to make a selection for an attorney and go to the board for their July 21, 2015 meeting. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

Ms. Block spoke about clarifying the future role of the subcommittee at the July 8, 2015 Board meeting. Ms. Cuevas asked Mr. Freiman to comment. He suggested that at the July 8th meeting, when the minutes of the June 24th meeting come up for approval, to pause to make sure the minutes reflect what everyone understands is the scope of the subcommittee and seek clarification to make sure the minutes are accurate. They could at that time mention they would like to discuss whether to extend the scope at the following board meeting.

Ms. LeBlanc commented that the attorney to be appointed at the July 21st meeting could provide advice on the subcommittee's scope as well.

Ms. Cuevas and Ms. Ricco opened the discussion to describing the full scope of the subcommittee. Ms. Cuevas asked Ms. Ricco to summarize what they believe the scope is.

MOTION: Ms. Ricco moved that this subcommittee is charged with 1) identifying and recommending a special counsel, 2) with the help of the special counsel identifying and recommending a forensic auditor, and 3) with the forensic auditor to create a scope for the audit and be part of that investigation with the forensic auditor through the process. (This motion was never voted upon.)

Ms. Block questioned whether they would be a part of the investigation. Ms. Ricco thought that the subcommittee and public may want to ask questions. Ms. Block said she would want the attorney and auditor to have the independence to do their work, and wondered if they would be receiving information from them during the investigation. Ms. Cuevas asked for clarification about what was agreed upon as the scope. She asked to have the motion reread minus the investigation part. Mr. Tom Panas read from the Request for Qualification, Part II. Role. Section E. "Assist the audit firm in combining the findings from the forensic audit with a report of legal findings to the Board of Education." He said that suggests that envisions a significant role beyond picking the auditor. Ms. Ricco suggested the language "to continue to monitor and be engaged in the process" rather than be part of the investigation. Ms. LeBlanc indicated that their role may change as they work with the attorney and auditor. Ms. Block asked for the motion to include the language from the Request for Qualifications.

The prior motion was amended as follows:

MOTION: Ms. Ricco moved that this subcommittee is charged with 1) identifying and recommending a special counsel, 2) with the help of the special counsel identifying and recommending a forensic auditor, and 3) assisting the audit firm in combining the findings from the forensic audit with a report of legal findings to the Board of Education. Ms. Cuevas seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

IV. Discussion / Approval of Scoring Guide for Attorney Selection

Discussion:

Ms. Linda Lozito commented on the scoring guide. She would like the conflict of interest portion to be changed to be more explicit.

Ms. LeBlanc said that being new to this committee she did not know the source of the scoring criteria, however, she believed it referenced very common criteria for scoring. Any attorney candidates would have to provide a statement regarding their conflict of interest.

Ms. Block asked for an example of attorney qualifications supporting proposals.

Mr. Jungherr said he would look for an attorney who has worked with a forensic auditor.

Ms. Block said to perhaps change the wording to “do the qualifications support the role of the proposal.”

Ms. Block suggested to go through each section, make comments and then go back and vote. She said meeting the submittal requirements refers to the “basic” requirements.

Mr. Jungherr said he thought it would be difficult for them to estimate costs.

Ms. Block questioned whether it would be better to obtain information regarding attorney rates.

Ms. LeBlanc said that generally attorneys would provide an hourly rate and overall cost. She added that the guide typically aligns with the request for proposals.

Mr. Panas read out loud from the Request for Qualifications, Section II. Description of Role. He commented that he believes the first section of ‘meeting the requirements’ is overweighted.

Ms. LeBlanc said she thought it would be a good idea to review the weighting. She added this guide was set up for paper screening to determine who will be selected for interviewing.

Ms. Block asked if the committee agreed the Submittal Requirements should be as high as 25 points.

Ms. Cuevas suggested the discussion focus on which items should be weighted the highest.

Mr. Freiman commented that the Request for Qualifications does not include anything on how the work is going to be performed, and that a lot of these questions seemed to be linked to the interview. He interpreted the first category, meet the submittal requirements, as having 25 points, and then they would earn the 75 points once they got to the interview. Although the submittal requirements sounds like a checklist, you could still assign different values from 0 to 5 to each item.

Ms. Block moved that the committee agree on how to use the submittal requirements criteria and use that for screening the initial applicants and then decide whether or not to discuss these other areas tonight.

Ms. Ricco said she is concerned about the timeline and spoke in favor of deciding everything tonight.

Ms. Block asked what would happen if they had to change the numbers based on the interview.

Ms. LeBlanc recommended using the guide throughout the process, and giving them to her to hold.

Mr. Todhunter said to keep in mind proposals are to eliminate people. The first two criteria can be evaluated to a certain extent and then when you are in the interview process you start with the second criteria again, verify there is no conflict of interest and continue with the others.

Ms. Cuevas said she thinks there are two separate things, the process and using the tool. She thinks they are in agreement about the first two items, but there should be continued discussion on the other items.

Ms. Block said she thinks the 25 points is a good number for the submittal requirements.

Mr. Panas expressed concern about how you screen people for conflict of interest.

Mr. Freiman said he believes the conflict of interest part is set up as a screening tool. He said the firm will search for any conflict using names provided by the district.

Ms. Block said they would go as deeply as they could for potential conflicts.

Mr. Jungherr suggested sending a list of names ahead of time.

Mr. Freiman commented that their process would likely be different depending on how many responses they got.

Ms. LeBlanc recommended that when the committee goes through the submittal requirements, it can narrow it down to who you want to look at further, rather than send out a conflict of interest list to someone who doesn't meet the criteria.

Ms. Linda Lozito provided a handout with four points: 1. A forensic audit is not an examination. Ms. Lozito indicated that the school board continually referred to it as an "examination," and an examination is more of a third-party review. 2. Ms. Lozito provided a broad list of what is considered scope of work from a reputable source. 3. The scope needs to specifically address the allegations and the auditor should express opinions. 4. The forensic auditor needs to help with the scope.

A break was taken at 8:23 PM. The meeting resumed at 8:30 PM.

MOTION: Ms. Block moved to try and get through the entire agenda by 9:00 PM, that they will adjourn by 9:00 PM, and if not finished by 9:00 PM they will schedule another meeting before the next meeting date which is July 13th. Ms. Cuevas seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0.

Ms. Block returned to the scoring guide for discussion and approval.

Ms. Cuevas said she is comfortable with all the descriptions including the first two.

Ms. Block said she thinks they are all important points and agrees with them all.

Ms. Ricco said now that she has a clearer understanding this is a "guide" it seems like a good guide.

Ms. Block said the purpose of the next meeting is to evaluate the candidates.

Ms. LeBlanc said the proposals are due on Friday, and the next meeting is Monday, July 13th and the subcommittee members will do the scoring on your own and bring it back.

MOTION: Ms. Cuevas moved to accept the scoring guide. Ms. Block seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0.

V. Discussion of Scope of the Forensic Investigation

Ms. Block said Ms. Lozito made important points earlier. She said the way she sees the scope is to also respect the knowledge of the professionals to move forward and not make the final determination about the scope without their input.

Ms. Cuevas said the final scope should be preceded by a discussion of the subcommittee with the attorney.

Ms. Block asked what does scope in an investigation really mean? Is there anything we need to know about how that's defined?

Mr. Freiman said you will have an attorney versed in these topics, so that if you begin with broader, general topics, the attorney could help you coalesce them into something that would go farther.

Ms. Cuevas spoke about starting the conversation about scope with what we hope in general.

Ms. Ricco spoke about having the conversation with the attorney with the issues raised and the data.

Ms. Block said we certainly want to know about the financial component and whether the number we have can be trusted, that it contains all the information, and whether the board had the opportunity to vote on these things.

Ms. Cuevas said we needed to have the attorney and the auditor review all the data Mr. Clay has compiled and from there we have a discussion before we can go further.

Mr. Freiman agreed that typically you describe what the problem is so the attorney and ultimately

the auditor can help define what the scope is.

Ms. Block said the initial investigation would stem from the allegations that were made, so we would want those to be addressed and want the attorney to decide how to get to the information.

Mr. Freiman said the attorney would get the process started with the auditor and he will come up with the documents and confirm with the committee and the attorney in a staged process.

Ms. Block asked whether we cannot make a final determination as to the scope now.

Ms. Cuevas suggested that for now agree upon what we describe as a protocol, the steps and who would be involved in the steps and memorialize that.

Mr. Panas inquired whether some component of this is appropriate for closed session.

Ms. LeBlanc said the attorney would provide guidance regarding determining any closed session items.

Mr. Freiman remarked that this is a 'discussion only' item, and so no action can be taken.

Ms. Cuevas said that we may need to place as an action item on our next agenda to memorialize our intent that the attorney and the forensic auditor help us to determine the official scope.

VI. Discussion of Timeline for completing the Investigation

Mr. Jungherr said he is proposing to get the auditor in place by August 12, by getting the request for auditor out this week and having three Clay Subcommittee meetings on July 27, August 3 and 10.

Mr. Freiman asked whether to get the attorney on board first to help craft the RFQ.

Ms. Ricco said we needed to first go ahead with the counsel and have him or her help us prepare the RFQ for the auditor.

Ms. Cuevas asked if we got the attorney on board on July 21, how much time would it take for him to do an RFQ?

Ms. Ricco said it would really hinge on the counsel they selected or whether they will be readily available.

Ms. LeBlanc said she wanted the subcommittee to be aware that there are alternatives such as the Fiscal Crisis Management Team and the County or Office of Education or the State, which is part of AB-139.

Ms. Cuevas said she wants to get the attorney first and do our due diligence first.

Ms. Block commented she would hope they could do this within Mr. Jungherr's timeline.

Ms. Cuevas said we should be committed to a sense of urgency to our approach.

Ms. Block said she agrees with Ms. Cuevas.

Mr. Jungherr made a plea to get a request for proposal out to auditors in advance of the attorney.

Ms. Cuevas said she did not want to get locked into a scope that is not effective or appropriate without the advice of the attorney.

Ms. Block agreed that the committee should first work with the attorney.

Mr. Panas suggests waiting until the attorney is in place. He said if Mr. Jungherr's schedule is based on the month gap between board meetings, perhaps they could schedule another board meeting to get things done.

Mr. Todhunter said it was necessary to have counsel in place before the proposals are sent for the auditor and that it is more important to get it right than fast.

Ms. Cuevas asked for quick conversation regarding what will be on the next agenda.

Ms. Block said that scope could be a discussion item again.

Mr. Jungherr suggested all items be action items on the next agenda. Mr. Freiman recommended use of "Discussion / Approval" as the best approach.

Mr. Jungherr said he would like to see the RFQs submissions as part of the agenda package.

Ms. Block raised the issue of what documents should be made available for the next agenda and noted the Request for Qualification and the Scoring Guide.

Mr. Todhunter said none of the RFQs should be made available until they are all in.

Ms. Block suggested the subcommittee members receive the RFQ submittals on Saturday, review and score them and have them ready for Monday's meeting.

Ms. LeBlanc recommended that if your action item on the next meeting is to select legal counsel to interview, then you will need to review all the proposals individually before that time and do the scoring individually.

Ms. Block said she would like to do that and mentioned she will be gone from July 14 – 19, although she could be available remotely.

Ms. Cuevas confirmed with Ms. LeBlanc that she would deliver copies of the submissions to the Subcommittee members, and Ms. LeBlanc agreed.

Mr. Freiman said that they have the option of not making the RFQ submissions public and the reason for that is as soon as you put them on the website, each of the competitor sees them and is able to adjust their thinking and approach. So, the committee is not legally compelled to make those available because they are part of a competitive process.

Ms. Block asked about making part of them public.

Ms. LeBlanc spoke against making any portion of them public until you decide who you will select.

Mr. Todhunter spoke against putting the RFQ submissions on the webpage.

Ms. Cuevas asked about creating a list of names of those firms who submitted RFQs for the public.

Ms. Block said that was the purpose of the meeting on Monday to share the information publicly.

She proposed they receive the documents on Saturday, review them prior to the meeting on Monday, and the purpose is to discuss in a public way the rankings of the individuals. She asked if there is any portion of a submission we want to share? Mr. Freiman said they could identify the law firms who have responded, which would not provide a competitive advantage.

Ms. LeBlanc said they could come forward individually with a recommendation of which firms they want to interview.

Ms. Cuevas said they need to find a fine line between integrity and transparency, and complete transparency in this case could jeopardize the process. She said she would make a motion to list the names of the firms.

Mr. Jungherr reiterated his position that the submissions are public documents, although counsel has advised differently. He requested the subcommittee state formally what it is doing with regard to the submissions.

Ms. Cuevas responded that this is a discussion only item, and no further action can be taken at this time.

VII. Adjournment

Chairperson Block adjourned the meeting at 9:18 PM.

The next regularly scheduled meeting will be on July 13, 2015.