

**Please Note: These minutes are pending Board approval.
Board of Education
Newtown, Connecticut**

Minutes of the Board of Education special meeting on November 11, 2015 in the Council Chambers, 3 Primrose Street, at 7:30 p.m.

K. Alexander, Chair	J. Erardi
L. Roche, Vice Chair	1 Staff
K. Hamilton, Secretary (absent)	18 Public
D. Leidlein	1 Press
J. Vouros	
D. Freedman (absent)	
M. Ku	

Item 1 – Call to Order

Mr. Alexander called the meeting to order at 7:34 p.m.

Item 2 – Discussion and possible action regarding disclosure of Board communications

Mr. Alexander thanked the Board members for attending. We were expecting six members tonight but earlier today David Freedman said he would not attend but sent a statement to be read.

Mr. Alexander summarized the Board concerns of shared information on Facebook. Attorney-client privileged information was posted on Facebook and our conversations have been around how it got there. A text message was posted along with it. We have held meetings after discussing this with an attorney and the Board decided to look into an investigation. The following day

Mr. Freedman said he distributed the email, not text message. At that point it seemed logical to have the Board discuss it again at last week's meeting. There was a second admission of responsibility from Kathy Hamilton saying she distributed the text message but would not share who it was sent to. That is why the Board further checked into having an investigation. The people responsible were not giving us the information we were looking for.

Dr. Erardi provided information on the timeline and costs regarding the investigation. We have detailed information from two firms with the investigation taking two to four weeks. They would research the Charter, minutes, policies, press articles, communications, emails and code of conduct information as well as conduct approximately 10 interviews. The rough estimate is between \$15,000 and \$20,000.

Mrs. Leidlein asked what would compel the two Board members to share information with the investigators.

Dr. Erardi said the premise of the investigation is based on cooperation. The Board will take a risk having the investigation with the possibility of not getting the information requested.

Mr. Alexander said we are trying to find the distribution list.

Mrs. Leidlein said there is a concern because information is being shared with other individuals whose goal is to make this Board follow what they believe is the right course of action. It is unfortunate that members of this Board are not showing allegiance to this Board and to the children of Newtown. Actions are being shown now that this has come to light of not being willing to work to move us forward which is alarming and one in which makes trust in this Board very difficult to have with Board members and the public. Based on actions of the seated Board

members the only action until we have answers to is to make sure we are protecting the students and the work the Board does. Confidential information will not be shared with those who should not have access to it and are not working for the betterment of the schools of Newtown.

Mrs. Roche agreed but the sad part is that the person making claims thinks that we are not following our goals but they are not following the same standard themselves. She spoke to Tom Hennick who said if we don't receive the information they are in violation of the law.

Mrs. Leidlein said we can limit the work of those individuals do who are not willing to follow FOI laws. There needs to be a limit to what information they are exposed to and consequences to their actions. She wants to know the information and questioned why it isn't forthcoming. What is the reason for not sharing to whom these communications were sent. She thinks it's to protect those with whom the information was shared. Attorneys have been hired. She wants an investigation. She is concerned the two board members will not share that information with the investigators and we will be spending that amount of money to come up empty handed.

Mr. Alexander stated that at the last meeting one member admitted sending the text but gave no answer as to who it was sent to. He asked Mr. Freedman who he shared the email with but did not get a direct response. He has not been here to ask that direct question.

Mrs. Roche said Ms. Hamilton stated she shared it with people several months ago.

Mr. Freedman's statement to *The Bee* was that he shared it but then clarified his statement saying he didn't share it with Carey Shierloh.

Mr. Alexander read Mr. Freedman's statement.

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Clearly the issues surrounding the email that was released to the public has created such a large distraction for my fellow board members. For that I am sorry because the children of Newtown and the community deserve the full focus of the Board of Education.

I have accepted responsibility for my actions. As I have explained to you, it was not an attempt to breach the privilege nor for it to go public as an attempt to undermine the board. I honestly thought that the communication at issue was no longer privileged (since the matter at issue had concluded, and since there is a final document reflecting that brief discussion contained in the communication at issue). I could have waited until after Election Day to come forward (or not come forward at all), but I chose to do the right thing to spare Newtown of the expense of an unnecessary investigation.

I am strongly urging the Board and its members to look at correcting their actions moving forward as opposed to spending their time looking backwards and seeking retribution, which only leads to a cycle of further accusations. Indeed, instead of seeking retribution for mistakes with regard to the attorney client privilege and the FOIA. With a new Board commencing in December, it would seem more productive to learn by way of the Board scheduling workshops by counsel, CABE and/or the Freedom of Information Commission (such as Tom Hennick) on the issues of attorney-client privilege, FOIA compliance and board roles and responsibilities. The Board has accomplished valuable work over the past two years and it has an opportunity to bond together to operate the best way possible and to look to the future of what is uniquely possible.

Thank you to everyone for giving me the opportunity to serve and to contribute to the education of our children.

Sincerely,

David

Mr. Vouros said the investigation is not going to get us the information we want. Other attorneys have been consulted. There is another route that doesn't involve investigation. Michaela Hurley McMorrow, is a former student and now an attorney in New York City. He asked her how to get information about who the text was sent to. She said you have to get a subpoena for the phone company first and then file a complaint. The FOI complaint has been filed so we have to see if there was a violation before we can get a subpoena for the phone company.

Mrs. Roche stated that the way to get this information is if the three people speak to what they did so we can move on.

Mr. Alexander said the statement from Mr. Freedman indicates he has said all he will say. Mr. Alexander feels an investigation wouldn't get us any further. The statement from Ms. Hamilton said there would not be compliance in an investigation. He doesn't think an investigation will supply the Board with what they want.

Mrs. Ku feels it's not just the legal implications but how the Board works together as well as trust issues. The Board needs to correct their actions as to what we are doing that might be incorrect. When these were shared the two members felt what we were doing was not correct. Instead of bringing this to the Board they released information. How can you work with Board members on committees and not be concerned about them sharing additional information?

Mrs. Leidlein said they were shared to make Mrs. Ku look bad. That is unacceptable. We should be working together.

Mrs. Roche feels they should spare the Board the expense of an investigation. The two people did not show up when we met with our attorney when these questions could have been addressed.

Mr. Alexander said the FOI Commission makes the final decision if Board member actions are questioned. They need to take responsibility for what they did. The issue is if we are going to get this information from an investigation. We don't want to spend the town's money on this. He proposed that we decide if we are willing to move forward with an investigation at the existing cost.

MOTION: Mrs. Leidlein moved that we continue to hire an investigator in order to investigate the current sharing of Board communications with outside sources. Mrs. Roche seconded.

Mrs. Leidlein asked what the ramification would be if we continue with an investigator and the member who shared information will not answer. Have they been asked by our Board attorney?

Mr. Alexander said not by our attorney but that he made the request.

Mrs. Leidlein asked if there were any communications between our Board attorney and the Board member's attorney.

Mr. Alexander said yes there were.

Mrs. Leidlein said if that doesn't compel a Board member to release that information, and if an investigator doesn't have the power to ascertain that information, it looks to her that we would be spending money for possible but not guaranteed information. There may be an alternative method which would cost less and allow us more legal pressure to get that information.

Mr. Alexander said not hiring an investigator now doesn't stop us from doing so in the future.

Mrs. Roche said if the Board files an FOI complaint and is found in violation they would have to produce the document.

Mr. Vouros said if there is no violation there can be no subpoena.

Mrs. Roche stated that we can also file an ethics complaint and FOI complaint as a Board. The Board member cannot be forced to leave office.

Mr. Alexander said the Connecticut Statutes states that for elected positions the Board can't take away that right of the people who elected them. Connecticut has no recall provision.

Mr. Vouros doesn't want to hire an investigator.

Mrs. Ku said that if an investigation gives us all of the information we want and the outcome is that we can't remove a member, how does that help us move on.

Mrs. Leidlein said we have the information to move on now. She is concerned about making a decision that will make it impossible for us to say we did everything we could and didn't come up with any information.

Mr. Alexander said it is possible for us to refer this to the ethics commission. If they come back with any result the Board would be able to say it was an insufficient decision and we can hire an investigator. He looked at Ethics Code 27.6 regarding the disclosure of confidential information which follows.

27.6: Disclosure of Confidential Information

Because of their position in Town administration, officials and employees have access to information that may not be in the public domain. Delicate balance exists between the public's right to know about Town affairs and the actions of elected and appointed officials and officers on the one hand, and the rights of the individual to privacy with respect to matters that are not in the public domain on the other hand.

Additionally, during the course of certain preliminary procedures, such as Town negotiations with bargaining groups, the premature disclosure of specific positions would be detrimental to the public interest. Such information as is cited above is confidential. Confidential information is any information not in the public record and which is obtained only by reason of an official's or employee's position. Therefore, the interests of the public, the Town, and the individual must all be preserved and maintained in proper harmony with one another.

A.

No official or employee shall, without prior formal authorization of the public body having jurisdiction, disclose any confidential information or divulge personal matters pertaining to others that do not bear upon the official's or employee's discharge of official duties.

B.

Whether or not it shall involve disclosure, no official or employer shall use or permit the use of confidential information to advance his or her financial or personal interest or to advance or to damage the financial or personal interest of any other person.

Mr. Vouros said the board of ethics and FOI complaint can be filed simultaneously. Where are we if the ethics board says there was no violation?

Mr. Alexander said if the board of ethics decides it is an ethical violation he was not sure what we would do next. The motion should be to move the issue to the board of ethics rather than an individual to the board of ethics.

Mrs. Roche said we need clarification from an attorney to see if we can file a complaint. She asked Dr. Erardi how much we have spent so far.

Dr. Erardi said we have not received a bill from legal counsel yet. We also have the cost of central office labor as there have been over 600 pages collated of FOI requests.

Mrs. Leidlein called the question which could be ended with information from two people.
Vote: 5 nays Motion fails.

Mr. Vouros said when he spoke to Attorney McMorrow she offered to work with our attorney pro bono. If proceeding with the subpoena route we can contact her.

Mr. Alexander said the Board has an attorney and he was not sure of the details about hiring another attorney even at a zero cost.

Mrs. Leidlein asked if the Board attorney spoke to the benefit of filing an FOI complaint against the Board members in question.

Mr. Alexander said that generally we don't discuss attorney recommendations although they are available to Board members and he was not sure if it had ever been asked.

MOTION: Mrs. Leidlein moved that the Board of Education as a whole file an FOI complaint against the two said Board members with regards to the disclosure of a text message and email. Mr. Vouros seconded.

Mr. Vouros said when he mentioned Attorney McMorrow he did not imply we were hiring her. He was looking for alternative steps. He asked why our attorney hasn't suggested this.

Dr. Erardi asked that since the Board reconvenes on Tuesday that they allow the administration to work with counsel to be specific around the conversation pertaining to FOI and additional options. He will bring sequencing events from legal counsel.

Mrs. Ku suggested asking counsel if the referral to the board of ethics will still work if Mr. Freedman is no longer a member.

Mrs. Leidlein's concern is that if we wait until Tuesday to get information we are again six days out. She is frustrated that it takes time and we have a sitting Board member who will not have the trust of the other Board members. She prefers to move forward and put in the FOI complaint regarding behavior under the law. We can also ask the board of ethics to look at it at the same time.

MOTION: Mrs. Leidlein moved to amend the motion to include file the FOI complaint and refer the entire issue to the ethics commission as counsel recommends. Mr. Vouros seconded.
Vote: 5 ayes Motion passes.

Mr. Alexander would contact the lawyer tomorrow. The two outstanding motions on member conduct should be held until we have a result from these efforts.

Mrs. Roche said the FOI complaint could take months.

Mrs. Leidlein prefers to have a conversation sooner than later especially with a sitting Board member to give them a chance to share the information publicly prior to upcoming elections within the Board.

Mrs. Ku said these Board members are still insinuating something is wrong on our Board without sharing what to do to fix it. She is not sure that having the individual discussions of Board member conduct will change whether a person is on a committee or serves on the Board. We need to remember that whatever the outcome we still have to work on the Board with this person.

Mr. Alexander was concerned about conversations on Board conduct before we have more information. He would be more comfortable if the Board would postpone those conversations. Mr. Vouros asked what happens if they don't show up.

Mr. Alexander has information on how to handle discussing Board members conduct if they don't attend the meeting.

Mrs. Leidlein asked Mr. Alexander to make a request for this information in a public meeting as it may cover us under FOI.

Mr. Alexander formally requested that David Freedman, in order to help the Board understand his disclosure, tell who he shared his email with. He made a similar request to Kathy Hamilton to provide us with the names of people she shared the text message with. Both requests are based on the email requests that they have already admitted partial admittance.

Mrs. Roche asked Mr. Alexander to read what he sent to Ms. Hamilton and her response. Mr. Alexander preferred to not have it read and reminded the Board that one of our jobs when we get lost is to go back to how this would benefit students. That information could be requested.

Mrs. Leidlein said we are discussing behavior and their deterrent of us doing our work. She suggested getting legal counsel as to whether that email can be read.

Mr. Vouros felt it was important for the public to understand that our responsibilities to the children have not stopped.

MOTION: Mr. Alexander moved that the Board of Education temporarily put a hold on the discussion of Board member conduct until such time the Board wishes to pick it up again. Mrs. Ku seconded.

Vote: 2 ayes, 3 nays (Mrs. Roche, Mrs. Leidlein, Mr. Vouros) Motion fails.

Mrs. Leidlein said that if no one comes forward as of the end of the Tuesday Board meeting this issue will be discussed. She wants give them a chance to respond.

MOTION: Mrs. Roche moved to adjourn. Mr. Vouros seconded. Motion passes unanimously.

Item 3 – Adjournment

The meeting adjourned at 9:10 p.m.

Respectfully submitted:

Keith Alexander
Chair