

Special Board Minutes (Draft)

Termination Hearing: Jim Vaile

March 5, 2019 @ 5:00 p.m.

Present: Brian Gallup, Wendy Bremner, James Running Fisher, James Evans, Jess Edwards, Donna Yellow Owl, Rae TallWhiteman. **Absent:** Kristy Bullshoe.

Also Present: Corrina Guardipee-Hall-Superintendent, John Salois-HR, Jim Vaile, Mrs. Vaile, Thane Johnson-Attorney, Tony Koenig-MTSBA, Andrew Vigeland-MTSBA, Carlene Adamson-Secretary.

Mr. Vaile waived his right of privacy and asked for open hearing at 5:04 p.m.

Thane Johnson stated he received the letter stating notice of a meeting however he was never given any collaborating evidence or any other information which made it confusing. Mr. Johnson stated that he does not know what the hearing is about at this point.

Andrew Vigeland, attorney from MTSBA, stated on 12/19/18 he conducted an internal fact review. Students will be referred to as student #1, #2, #3, etc. Interview with student #1: Mr. Vaile and student were joking about the Cat/Griz game. Mr. Vaile approached her and twisted her arm and bit her. The bite did not break her skin but left a mark. The skin was yellowed around the bite mark and did not bruise. Mr. Vaile did apologize to the student later and to the parent. Mr. Vigeland spoke with student #2 who stated that during class on Monday (in September) student #1 and Mr. Vaile were arguing about the Cat/Griz game. Mr. Vaile supports the Cats and student #1 supports the Griz. Student #2 stated that Mr. Vaile grabbed student #1's arm, twisted it and bit student #1's arm, she was laughing saying quit. Student #1 indicated that there was a bite mark on student #1's arm and saliva on the arm. Student #3 was present in class but not aligned with either student #1 or #2. Mr. Vigeland asked the students #1 and #2 if there were other student/s in class who could collaborate the events. Mr. Vigeland spoke with the student who is listed as student #3 and the student said that they did not witness the biting incident because they had joined the class after the event occurred. Student #3 indicated that Mr. Vaile addressed the class about biting student #1; student #3 thought Mr. Vaile was explaining his conduct. Mr. Vigeland stated that he found student #2's statements and the statements Mr. Vaile made to student #1's mother highly credible as they matched student #1. Also Mr. Vigeland stated that he found sufficient information to support the complaint against Mr. Vaile on student harassment. Student #3 described the situation where Mr. Vaile spoke to the class about the incident. Mr. Vaile conclusively stated the date was in September. Mr. Vigeland stated that the perception at the school with most students is that Mr. Vaile has inappropriate interactions with female students. Based on these facts, Superintendent Hall made a recommendation to terminate Mr. Vaile, from his position, to the board of trustees.

Superintendent Hall handed out records from other incidents that had occurred with Mr. Vaile, i.e. misconduct 2/22/18, disrespectful interaction between teacher and students; breached confidentiality 3/5/18, talked to students regarding confidential information and was given a verbal warning and unprofessional conduct on 10/10/18. Superintendent Hall handed out professional code of ethics and MTSBA and board professional conduct policy.

Thane Johnson stated that he will have Mr. Vaile testify, then do a closing. Mr. Vaile's testimony will be in affidavit form, and it is important that he has sworn testimony. Jim Vaile was asked if he understands his statement will be in affidavit form and if caught lying it will be considered perjury. Mr. Vaile stated that he does understand. Mr. Vaile has been teaching for over 20 years; he taught in Geraldine for 2 years and Browning 20 years; he teaches 5 classes. Mr. Vaile stated that this has been the greatest opportunity for him to ever have; he teaches kids to overcome adversity and he has always wanted to help young kids do better than he did. Mr. Vaile is a Blackfeet tribal member and stated it is important to him to come back to the reservation to teach. Mr. Vaile does work with extracurricular: coaching football, girls basketball coach, softball coach. Mr. Vaile has coached softball for 6 years and was given high honors in softball being chosen to coach military team out of Belgrade. The other coaches choose 5 coaches to teach and he was placed with Air Force team because of his respect for young people. This is equivalent to the shrine game in football. Mr. Vaile knows student #1 as a student at the high school, grade 10. Mr. Vaile also taught student #1 as freshman in physical science, biology and advisory. Mr.

Vaile never had issues with student #1, or family. Mr. Vaile does not know student #2. Mr. Vaile stated the date is not significant in this matter, just the day because of Cat/Griz conversation. The district has a Cat/Griz assembly every year a week before their game. Students were asking if Mr. Vaile was going to wear football costume and compete against another teacher; Mr. Vaile stated the Cats going to win. Mr. Vaile does not remember conversation date; the issue was on 9/10/18. Mr. Vaile stated the accusation was reported on 11/29/18; he recalls because of incident that occurred. Mr. Vaile stated he did not bite student #1 or any other student during his teaching career. Mr. Vaile knows he can be terminated if he was to bite a student. Student #1 was passing his class with average grades and Mr. Vaile communicated grades with student #1 and parents. Email was attached, between Mr. Vaile and counselor where student #1 asked to finish an assignment in another classroom and was told yes. Thane Johnson received exhibit a on 10/4/18. Exhibit b is a list of students that went on the Cadabra trip with Mr. Vaile to study human anatomy on 10/24/18 and 10/25/18 which was after the alleged incident of 9/10/18 where another high school counselor attended. Exhibit c email dated 11/15/18, Mr. Vaile stated the mother of student #1 emailed him about her student's grades and asked why she is not improving. Student #1's grades were flunking on 11/1/18 which is 15 days before she turned in the biting incident. Thane Johnson stated that there was never a picture of a bite mark or a medical report of a bite, there are no witness statements. Mr. Vaile had parent-teacher conference 11/6/18 with student #1 and father. There was no discussion of the incident; they discussed student #1's grades. Mr. Vaile acknowledged that he should not have made any comment about the manager, and he was disciplined. The incident with the Cowboy, Redskin incident Mr. Vaile stated the student was an incoming freshman and he was trying to build relationship with student and he did apologize to the student and parent. Mr. Vaile stated he did not try to make student uncomfortable but was trying to make a safe learning environment. Mr. Vaile was disciplined on softball prior to 2018, there is nothing else. Mr. Vaile will take a lie detector test on the accusation of biting a student because he did not bite her.

Mr. Vaile asked why so long before incident was reported by the principal and stated when an incident happens, if severe, is it not reported. Mr. Vigeland stated that in speaking with student #1's mother, there was a delay from reporting; the family first dismissed the incident and was okay with Mr. Vaile's apology then they determined to report the incident after discussions with other people at the school. Student #1 felt guilt over not reporting the incident sooner. The delay was partly attributed to student #1's parents. It was not over 5 weeks but not less than 2.

Wendy Bremner stated the mother and father tried to give Mr. Vaile the benefit of doubt and the board should not take the wait in time into consideration. Ms. Bremner stated there is more than 1 complaint against Mr. Vaile. A series of events led to the parent coming to the principal and the board should not look at this as a reason to dismiss the complaint.

Donna Yellow Owl agreed with Ms. Bremner and stated it is not about the timeframe of reporting something; sometimes a person is afraid of retaliation and won't report.

Thane Johnson stated he has no information from the mother or father on the incident and stated that this is all speculation; board hearings are challenging because it is trial by ambush that only occurs in schools. They do not get to read the information, they cannot cross examine, they can't do anything. Mr. Vigeland stated when he spoke with Mr. Vaile it was a flat denial of the incident and Mr. Vaile recalled that on 9/10/18 as a date with discussion of Cat/Griz. Mr. Vaile flatly denied biting student #1. Ms. Yellow Owl asked if students were interviewed separately. Mr. Vigeland stated yes.

Brian Gallup stated that it is school board hearings that Thane Johnson is referencing.

Roger Zentsis stated that he knows Mr. Vaile and they see each other every day. Mr. Zentsis stated he has never noticed inappropriate actions by Mr. Vaile. Mr. Zentsis stated he does know of the incident where 3 students wanted to go to the gym; he did not observe any bite marks on any student or hear any complaints.

Misty RidesAtTheDoor coaches softball with Mr. Vaile and stated that she has never witnessed inappropriate actions with the girls by Mr. Vaile.

Wendy Bremner asked Mr. Vigeland about the statement where he talked to several students that said Mr. Vaile's interactions are inappropriate in class. Mr. Vigeland stated that these are students #1, 2, and 3. Two students described Mr. Vaile's habit of making jokes about their mothers. All student/s interviewed appeared to be overly familiar with the female students, especially those Mr. Vaile coached.

Rae TallWhiteman stated that student #1 statement is dated 9/10/18 and signed by the principal and there were 5 other students. Mr. Vigeland stated he did speak with all those students. Ms. TallWhiteman stated another statement by one of the students witnesses the biting. Mr. Vigeland stated there were a series of students that he could not get in contact with, 5-6 students did not contact him back and he was only able to speak with student #1, #2, and #3 and he left voicemails and followed up multiple times with the other students. John Salois stated that student #1 has the interview dates the day after the alleged incident. Ms. TallWhiteman stated that one witness does not give a statement until 11/30/18 and states they did not know the actual date. Mr. Vigeland stated that 9/10/18 was not a conclusive date but Mr. Vaile identified it as the date that he had the conversation with student #1.

Donna Yellow Owl stated that the mother actually states she saw the bite when she went to her student's class and states the incident happened sometime in September; the mother's statement says she clearly saw the bite mark.

Mr. Running Fisher asked if when a serious incident happens are they reported. John Salois stated that he was not informed of the incident until the date noted in the packet.

Jess Edwards asked Mr. Vigeland if when Mr. Vaile was interviewed did he sign anything about the conversation held. Mr. Vigeland stated when he spoke to Mr. Vaile, he indicated that he was represented and his counsel was present during the interview and recorded. Mr. Edwards asked if Mr. Vaile remembers the bite. Mr. Vigeland stated no, Mr. Vaile denies that he bit student #1.

Donna Yellow Owl stated that they are not just talking about the bite issue but confidentiality in regards to students name that were mentioned while Mr. Vaile was speaking about a student to others. Ms. Yellow Owl stated that is part of Mr. Vaile's problems, he should not talk about students to other students or to teachers.

No closing statement from administration.

Thane Johnson stated that the board's decision today will save or destroy a man's livelihood; there are no prior incidents, did not leave determination, these are not determinable defenses. Mr. Johnson referenced an incident with a devastating fire that destroyed the livelihood of ranchers which he stated was similar to this case today in that it destroyed everything ranchers had worked for. The difference was the cause and the evidence. There is no evidence here and there is not enough to charge Mr. Vaile. If Mr. Vaile bit a student, the incident should have been reported to the law. Student's #1's mother is an employee of the school district. It was her duty as an employee to report Mr. Vaile's actions. There are no photos; no medical evidence and bites are distinct and leave bruising for a long time, there is no evidence; no sworn evidence. Note exhibit c, right when student #1 has failing grade, it is time to get the teacher in trouble; there is the motive. In order to terminate Mr. Vaile, there must be cause. If Mr. Vaile bites a student, fire him, and prosecute; there is no cause, no evidence; he did not bite anyone, it is a barbaric act. If accusing Mr. Vaile of assault, get the evidence and fire him. Mr. Johnson stated there is no cause here, not any good cause. Mr. Johnson asked the board to deny the request to terminate Mr. Vaile's employment.

Wendy Bremner stated that the board has plenty of cause to say the evidence is factual. The board is not here to protect persons working with students. The board has a child who says they were bit and have been made to feel uncomfortable in class due to continuous actions of the teacher. Student #1 had to reach out to a counselor to get class assignments and Mr. Vaile went to the mother's class and told her he did bite her student; he admitted this to the mother and now adamantly denies it. If Mr. Vaile had said it did happen and he was joking it would be better than a flat out lie when many people say it did happen. Ms. Bremner asked the board to support the student in this matter and stated that this should be reported and prosecuted in a court of law.

Jess Edwards stated that the high school principal had knowledge of this incident that should have been reported. There is an officer that handles strictly juvenile issues and could have dealt with this. Mr. Edwards stated that the district knew this was going on and asked why did the police not know; why was this not reported. Mr. Edwards stated that the school failed and if they were concerned about the students, then someone should have called the incident in to the police.

Brian Gallup agreed and stated that MTSBA did investigate the incident and the investigation is pretty gray. Mr. Gallup stated that the parents have the same rights to go to law enforcement and they did not. Mr. Vaile has 17 years of evaluations and has no issues and stated that he has an issue with ruining a persons' career over an incident that can be corrected; Mr. Vaile has admitted to the other incidents.

Donna Yellow Owl stated that the board is elected to protect students and stated that we are not a district without the students. Thane Johnson throws loudness out there defending his client Ms. Yellow stated and felt that the board does have cause no matter how long it took to report the incident. The district needs to protect the students from individuals such as Jim Vaile. What about the student and what happened, and the other incidents that were presented. Ms. Yellow Owl stated her disbelief of the board having to be in a hearing for something like this and asked the board to do the right thing for the student.

James Running Fisher stated that any court will ask for proof. Mr. Running Fisher agreed that is in the best interest of the superintendent and board to look out for the best interest of the kids. There is no proof, no pictures, no evidence. Mr. Running Fisher related to an incident on 1/20/19 where Mr. Vaile walked through and the cheerleaders and other kids almost jumped on him they were glad to see him. Mr. Running Fisher stated that he had 3 kids in Mr. Vaile's classes and his student at Stanford says that Mr. Vaile joked a lot with the kids, says Mr. Vaile is sincere and loves kids; his daughter loved Mr. Vaile; he teases a lot and the kids love him. Mr. Running Fisher stated that Mr. Vaile has been here for 20 years and he was born and raised here; he buys tennis shoes for needy kids and groceries for kids and families that don't have food. Mr. Running Fisher stated that there is not enough evidence here to end Mr. Vaile's career, there is hearsay, no evidence, no pictures. Mr. Running Fisher stated that he agrees with Mr. Edwards that if this incident is that important the school or the parents should have reported it to law enforcement or hired a lawyer. Mr. Running Fisher stated that it bothers him that they took so long to report to the school and it is not right to end Mr. Vaile's career over something that is not that serious.

Rae TallWhiteman stated that looking at the evidence, she can see both sides and stated that if this was one of our kids and they had waited for days to report, would we not feel as strongly about it. Ms. TallWhiteman stated that in some parts the district dropped the ball and did not do their part in protecting the student. All teachers should know that if anything is discussed or said or a teacher bites a student they are a mandatory reporter.

James Evans stated that he is unsure. If a kid got bit and reported it then the school should have reported it to law enforcement.

Wendy Bremner stated that the board needs to separate law enforcement stuff from this hearing. We don't know that information. The family can still pursue if they choose to. The board is here to say if the student is telling the truth. We can go into a court of law with one eyewitness, that is evidence; we have the injury information and statements.

Superintendent Hall asked Mr. Edwards and Ms. Bremner if they have had anything reported over 80 days later. Mr. Edwards has not and stated that the juvenile officer picks up those cases. Mr. Edwards stated that from here on out he wants these things reported.

Wendy Bremner stated that she handles child abuse complaints daily. Children do not have a set time when to tell someone something. In this case the student did tell the mother. The mother felt that she could work this out with Mr. Vaile but chose to come forward instead; they have legitimate statements. Ms. Bremner stated that she does not support the issue with the student's grades and she does not care how popular a person is if they target children.

Jimmy Running Fisher stated that he was trying to explain the kind of character Mr. Vaile has. Mr. Running Fisher stated that he served on a jury and after 5 hours, the case was thrown out because there was not enough evidence and they did ask for pictures.

Brian Gallup stated that they have deliberated and asked if the board is prepared to make a motion. Thane Johnson asked to make a deal and if not sufficient will adjourn meeting, if sufficient basis, hearing moves into penalty, nothing to modify it.

Tony Koenig stated that phase 1 asks does the board, or majority, believe the incident occurred or not. What is the appropriate level of discipline. There are a lot of past incidents which punishment has already been imposed and those are not relevant only for an appropriate level of discipline. That is the only level of relevance of determination. The board needs to decide did this happen as alleged or not. The Board does not need to vote on the first phase if comfortable they can move forward and take board action.

Superintendent Hall stated that there was an outside investigator. In his investigation he found enough evidence to bring this forward to give the board the choice to move forward or not. Superintendent Hall stated that she trusts Mr. Vigeland's decision or would not have brought this issue forward.

Thane Johnson stated that if it comes down to it, the district will have sworn testimony from Jim Vaile but not from the student; let law enforcement investigate and if anything is found Mr. Vaile will resign. Mr. Johnson stated he is committed to Mr. Vaile's truthful assertion that he did not bite the student and there was no evidence found. Student #1s mother is an employee and she is required to report an incident like this and she did not. The mother of student #1 did not do her job as a reporter.

Brian Gallup asked each trustee if they felt there was sufficient basis for termination: Wendy Bremner, yes; Donna Yellow Owl, yes; Jess Edwards, yes; James Evans, no; James Running Fisher, no; Rae TallWhiteman stated that she is struggling with sufficient basis and felt that this would be supported in court.

Tony this is not court of law and is an informal hearing. In court it would be necessary for any eyewitnesses to be sworn in and would require an entirely different burden of proof; different levels of burdens of proof and if criminal, would be about civil case higher burden of proof, here is preponderance which is very low burden; the burden of proof here is lower. Mr. Koenig stated that he would encourage the district to have much more evidence than is here. If Ms. TallWhiteman doesn't feel there is sufficient actual basis then that is her choice. There were 5 witnesses and could only get one 80 days later.

James Running Fisher stated that one thing is that Mr. Vaile is willing to take a lie detector test, and they don't lie. This is about a man's career, it is serious and if he fails, he will resign. Mr. Running Fisher stated he's been on the board for 4 years and does not fire anyone. The district is short staffed, and teachers are hard to find and this gentleman loves our kids.

Wendy Bremner stated that you don't fire anyone because we are so desperate. If Mr. Running Fisher is bias against firing than weigh this incident as to whether it occurred or not.

Donna Yellow Owl stated that she knows this is a hard decision to make but doesn't feel the administration would have brought this forward if there was not significant evidence and they are doing the right thing. The bottom line is that it was presented, in writing. This is not a court of law this is the board of trustees. Ms. Yellow Owl felt that there is cause, in writing.

Mr. Gallup stated that the decision is 3-3 without the chairs vote. If the vote fails there will not be a choice to consider any modification. Mr. Gallup asked the board to entertain a modification before a motion, if the vote fails there is no modification.

Superintendent stated that she worked with Mr. Vaile for many years and likes him as an individual but this is not about how anyone feels about Mr. Vaile. As superintendent stated that she has an obligation to keep kids safe,

teachers not talking about them or telling them stealing money, etc. the superintendent is obligated to make sure teachers are not biting kids. Superintendent Hall stated that she supports the recommendation for termination.

Brian Gallup stated that Mr. Vaile is not on a plan of improvement. The superintendent gave verbal warnings and written reprimands and this step can be termination or leave without pay depending on enough evidence. In all cases, there are ways to keep Mr. Vaile employed and protect the students.

Rae TallWhiteman stated that she was union president for classified and has issues with not following the progressive discipline plan. If she had been the representative, she would have caught where this was not followed; there is no written, verbal, first warning, second warning. If bringing other issues into play Ms. TallWhiteman stated that she would have said they are only dealing with this one issue and there is no progressive discipline or plan of improvement, and felt that this has be in place. There is a bargaining agreement and something that protects teachers from this type of that needed to be in place.

Wendy Bremner stated that by saying there is not enough to go forward, it is saying the students and witness are lying. Ms. Bremner stated that she would rather see Mr. Vaile go to a classroom with some protection in place and stated she will agree to a modification.

James Evans asked if they modify does that mean they will be putting another person in the classroom.

Tony Koenig stated that it would be a lower level of discipline. A plan of improvement is not disciplinary it is training to correct unwanted behavior and noted that he has seen progressive discipline in Mr. Vaile's file, oral and written, and would go to written and leave without pay or modification recommendation, leave without pay, and plan of improvement, etc.

Rae TallWhite stated that Mr. Vaile could grieve that, you cannot put them together, progressive discipline. Tony Koenig stated that progressive discipline is similar occurrences or imposing discipline that is appropriate to the steps; can go to termination.

James Evans stated that he sees that Mr. Vaile has a sense of humor that is not appreciated and wants to see some professional development; see a sense of humor, and joking being a continuing thing.

Wendy Bremner read the statement from the father of the student that says "trust, etc." he is not asking for M. Vaile to be fired but disciplined for his behavior; they just want to know that their daughter is safe in school. Ms. Bremner wants to see leave without pay, and modification for plan of improvement when he returns and training, such as sexual harassment.

Donna Yellow Owl asked, what about the kids in the packet and stated that she feels for those kids.

Brian Gallup stated that is not why the board is here and stated that what this man did to the kids is in this packet.

Wendy Bremner stated that any retaliatory actions taken by Mr. Vaile toward students or staff is to be reported immediately and brought to board and asked for 10 days suspension without.

Superintendent Hall stated leave without pay for 10 days and plan of improvement monthly, any unprofessional conduct as teacher, unsafe actions toward students or staff will be brought back for termination.

James Evans supports any type of retaliation M. Vaile would be fired.

Rae TallWhiteman recommended that Mr. Vaile be vigilante about how he behaves toward kids and staff or he will be fired.

Jess Edwards and Donna Yellow Owl disagree with recommendations.

Motion by Mr. Running Fisher to modify the recommendation to terminate Jim Vaile and suspend for 10 days without pay. Mr. Vaile will be on a plan of improvement. Mr. Vaile's softball coaching contract is cancelled. Second by Mr. Evans. Motion passed 5-2 with Brian Gallup, Wendy Bremner, James Running Fisher, James Evans, Rae TallWhiteman voting for. Jess Edwards and Donna Yellow Owl voting opposed.

Hearing concluded at 7:00 p.m.

Respectfully submitted:

_____ Carlene Adamson, Board Secretary

_____ Brian Gallup, Board Chairperson

_____ Stacy Edwards, District Clerk