

MINUTES OF THE REGULAR BOARD MEETING OF THE BOARD OF DIRECTORS SCHOOL DISTRICT 4J, LANE COUNTY, OREGON

Date: May 10, 2023

The Board of Directors (BOD) of School District No. 4J, Lane County, Eugene, Oregon, held a regular BOD meeting at 5:05 p.m. via video conference and at the Education Center, 200 North Monroe Street in Eugene, Oregon. Notice of the meeting was mailed to the media and posted in the Education Center on May 06, 2023.

ROLL CALL

BOARD MEMBERS PRESENT:

Maya Rabasa, Chair
Michelle Hsu
Keerti Hasija Kauffman
Alicia Hays
Judy Newman

STAFF:

Andy Dey, Superintendent
Debbie McKim

I. REGULAR BOARD MEETING

II. CALL TO ORDER, AND ROLL CALL

Chair Rabasa called the regular meeting to order at 5:05 p.m. She said the names of board members who were present.

III. COMMENTS BY BOARD CHAIR

Chair Rabasa asked board members if there were any changes to the agenda.

There were no changes to the agenda.

IV. ITEMS FOR ACTION

IV.1. Determine Response to Three Complaints

Chair Rabasa stated that the board would determine their response to three complaints. Each complaint would be discussed based on the order that the complaints were received. The first complaint was received on February 14, 2023, the second complaint was received on March 08, 2023, and the third complaint was received on March 13, 2023. During the April 19, 2023, regular BOD meeting, the board voted to approve asking for an extension from all three of the complainants. The complainant from the February 14th complaint granted the extension, the complainant from the March 8th complaint granted the extension, and the complainant from the March 13th complaint did not respond, which meant that the BOD needed to determine their response by the original deadline per policy. The complainant from the March 13, 2023, complaint requested that the board process their complaint in a timely manner.

MOTION: Ms. Hsu moved, seconded by Ms. Kauffman to dismiss the February 14, 2023, complaint.

Chair Rabasa asked if there was any discussion.

Ms. Hsu said the content of the complaint did not comply with policy. The complaint was filed on behalf of someone else, which seemed unusual to her. In the last year or more, the number of complaints that came in were unprecedented. She thought it would be best to discourage these types of complaints from coming in by dismissing this one.

Ms. Hays said she agreed with Ms. Hsu in that the board should try to discourage complaints, regarding board behavior or clarity on policies. However, she was not sure if the board could dismiss this complaint because 4J Board Policy stated that the board would investigate complaints. She stated that the board need to change the policy, but until the policy was changed, the board needed to adhere to policy. Therefore, she would be voting against the motion to dismiss the complaint.

Ms. Newman asked if it were determined that someone could file a complaint on behalf of someone else.

Chair Rabasa said policy stated you could file a complaint on behalf of yourself or a 4J student you had legal guardianship over.

Ms. Newman said if that part of the policy were true, and the complainant was not making the complaint on behalf of someone whom they had guardianship over, the board should dismiss the complaint. If the policy did not state that, then she agreed with Ms. Hays in that the complaint should be investigated. She noted that she would like to figure out a way that the board could limit the number of complaints that the board was getting.

Ms. Hays asked if the board received legal counsel on whether the board should dismiss this complaint.

Superintendent Dey said no legal advice was sought or received regarding this complaint. He noted that there were conflicting standards in two policies. KL–AR stated that a person could only file a complaint on behalf of their self or a 4J student of who they had legal guardianship of. Whereas ACC stated that you could file a complaint on behalf of someone else.

Chair Rabasa read the following excerpt from 4J Board Policy KL–AR which stated:

Complainants may file complaints on their own behalf, or on behalf of their enrolled student, or about district policies or practices. Complainants cannot file complaints on behalf of another person or student.

Chair Rabasa read the following excerpt from section four of the policy titled Reporting and Administrative Action which stated:

Conduct a thorough, sensitive, and timely investigation. Should an investigation not be completed within 10 workdays, an update should be provided to impacted persons.

Ms. Hsu asked if that meant a district investigation.

Chair Rabasa replied yes.

Ms. Newman said since there seemed to be disconnect between the two policies, she suggested seeking legal advice on how to proceed. If legal counsel confirmed that it was not necessary to follow through with an investigation, she would be the first person to suggest dismissing this complaint.

Dr. Dey said the language in the ACC policy connotes that it did not need to be the person who was the possible victim of harassment, and if a teacher or 4J staff member knew of harassment, they should take the appropriate steps as noted in policy. The complainant could not file a complaint on behalf of someone else according to the KL–AR policy, but according to the ACC policy, making a complaint on behalf of someone else was exactly what the policy said should be done.

Chair Rabasa said the person who filed the complaint was neither a teacher, nor a member of 4J staff. She asked board members if they wanted to make a friendly amendment to their motion since the complainant granted an extension on this complaint.

MOTION: Ms. Newman moved to table the vote to dismiss the February 14, 2023, complaint until legal counsel had determined whether someone could file a complaint on behalf of someone else.

Chair Rabasa asked Ms. Hsu if she accepted the amendment.

Ms. Hsu asked for clarification regarding the ACC policy, which seemed specific to harassment incidents that were within 4J schools.

Ms. Newman replied that the policy encompassed board meetings and anything school related.

Ms. Hsu asked if the February 14, 2023, complaint fell under the ACC or KL–AR policy.

Chair Rabasa said that would be the question for legal counsel.

Ms. Hsu clarified that her motion was based on KL–AR policies.

Superintendent Dey stated that the ACC policy stated that a complaint could be made anonymously, and in an anonymous complaint, the board would not know whether the student or the student's parent / guardian made the complaint. The board would be obligated to investigate. He added that the board could rely on the advice of legal counsel, but he would believe that given the language in the policies to date, the most prudent response would be to investigate, and then figure out a way to change the policy to eliminate the ambiguity.

Chair Rabasa said during their executive session, the board discussed the content of the complaint and suggested resolutions. Part of the complaint entailed that the board failed to protect a fellow board member by continuing to not implement recommendations provided by security, resulting in the board member feeling unsafe in their own home. The board implemented paid security for their fellow board member and offered mediation as methods of resolution. The board member rejected mediation. Chair Rabasa asked if it mattered that that the complainant said the board failed to protect a fellow board member by continuing to not implement recommendations provided by security when, in fact, resolutions were offered to remedy the situation. Even if the board fixed their policy, that question needed to be answered. She asked board members if they could revisit that after they got advice from legal counsel.

Ms. Hays was about to speak.

Ms. Hays noted that Ms. Hsu had spoken twice on her motion and per board policy, twice was the limit for board members to speak regarding a motion.

Chair Rabasa said Ms. Hsu, Ms. Newman and herself had spoken twice. She asked Ms. Hays or Ms. Kauffman in they would like to speak.

Ms. Kauffman said she was in favor of tabling the vote until they got advice from legal counsel.

Chair Rabasa asked if there was any objection to extending the discussion.

MOTION: Ms. Newman moved, seconded by Ms. Hsu to extend the conversation regarding the February 14, 2023, complaint.

Chair Rabasa asked if there was any discussion about extending the discussion.

There was no discussion. Chair Rabasa called for a vote.

The motion passed unanimously (5:0:0).

Maya Rabasa, Keerti Hasija Kauffman, Alicia Hays, Michelle Hsu, and Judy Newman voted in favor of extending the conversation regarding the February 14, 2023, complaint.

Ms. Hsu said when her and Ms. Kauffman first joined the board, they spent time working on complaints, especially complaints that involved allegations of racism. They did not seem like valid complaints, yet they were validated. The February 14, 2023, complaint was not one that she would invest any further time or money into. Dealing with such complaints took time and money. District funds were better spent on 4J students.

Ms. Newman said she was in favor of getting legal advice regarding third party complaints. Once the board had clarification on their policies, they could dismiss it, or an investigation could be done.

Ms. Hays said she could agree with Ms. Hsu about the time and money spent on complaints, but the board passed a poorly written policy. That did not mean the board did not need to follow the policy. It also did not mean an investigation was not necessary because certain board members did not think the complaint was valid. That would be contrary to why the board passed the policy. She agreed that the policy needed to be amended. She was in favor of getting legal advice to clarify the policy. She acknowledged that Ms. Hsu made good points.

Chair Rabasa said section four of the ACC policy was clear, but before the board could look at that, they needed to look at the policy from the beginning to review the policy's purpose, and scope, and the definitions, expectations, and consequences. She was unsure if the complaint fell under the scope and the purpose of the policy. The complaint specifically referenced safety at home.

Ms. Kauffman said suggested tabling the discussion until they heard from legal counsel. Without that, they had nothing to discuss. She was also in favor of spending the time and money of the district on teachers and students. She agreed with Chair Rabasa in that the board should review sections one, two, and three, before they took

into consideration section four of the ACC policy, to ensure the complaint was valid on those accounts as well.

Ms. Hays said the policy lists race and discrimination under Types of Complaints, harassment, intimidation, and cyber-bullying were listed under Bullying. It was as if the board expected complainants to be good writers, since the board seemed to want to pick apart the wording of the complaint. She asked if the board was going to judge what was written before an investigation were allowed to be moved forward. That made her nervous, particularly because the policy was specifically written to address racial harassment.

Chair Rabasa said the writing quality had nothing to do with any of the complaints. It was about the content of the complaints.

Ms. Hays clarified that when she said writing quality, she was referring to the content.

Chair Rabasa asked if the complaint would be valid if it was about someone's experience in their home.

Ms. Hays said if the board's behavior at a board meeting caused them to be fearful in their homes, then yes it would be.

Chair Rabasa apologized to Ms. Hsu because the discussion continued without Ms. Hsu indicating whether she accepted the friendly amendment made by Ms. Newman. She asked Ms. Hsu if she accepted the amendment to table the vote to dismiss the February 14, 2023, complaint until legal counsel had determined whether someone could file a complaint on behalf of someone else.

Ms. Newman said there were questions that needed clarification. The person making the complaint marked racial harassment, and cyber-bullying on the complaint form. The question was, could the board second guess that. There were three or four questions that needed clarification, but the motion was specifically about tabling the vote to dismiss the February 14, 2023, complaint until legal counsel had determined whether someone could file a complaint on behalf of someone else.

Ms. Hsu accepted Ms. Newman's friendly amendment to her motion. She noted she was hopeful that they could get legal advice as soon as possible, so it could be resolved. She emphasized that she was looking at more than number four on the policy.

Chair Rabasa called for a vote.

The motion passed unanimously (5:0:0).

Maya Rabasa, Keerti Hasija Kauffman, Alicia Hays, Michelle Hsu, and Judy Newman voted in favor of tabling the vote to dismiss the February 14, 2023, complaint until legal counsel had determined whether someone could file a complaint on behalf of someone else.

Chair Rabasa said complaint number two was filed on March 08, 2023. She asked if anyone would like to make a motion.

MOTION: Ms. Hays moved, seconded by Ms. Newman to follow the policy as written under racial harassment ACC and hire an investigator to investigate the March 08, 2023, complaint.

Chair Rabasa asked if there was any discussion.

There was no discussion. Chair Rabasa called for a vote.

The motion failed (3:2:0).

Maya Rabasa, Alicia Hays, and Judy Newman voted in favor of following the policy as written under racial harassment ACC and hiring an investigator to investigate the March 08, 2023, complaint.

Keerti Hasija Kauffman, and Michelle Hsu voted against following the policy as written under racial harassment ACC and hiring an investigator to investigate the March 08, 2023, complaint.

Chair Rabasa asked if someone would like to make a different motion regarding the March 08, 2023, complaint.

MOTION: Ms. Hsu moved, seconded by Ms. Newman to dismiss the March 08, 2023, complaint.

Chair Rabasa asked if there was any discussion.

Ms. Hsu said the board had previously dismissed complaints of similar nature. She believed this complaint was retaliatory.

Chair Rabasa said this complaint was another example of the board needing to review and fix their policy. The complaint came from one board member regarding another board member. The precedent thus far had allowed board members to be included in the standards of their policy. The board needed to clarify if that was the intention they wanted in their policy. Hiring an investigator to determine whether actions were taken with the intention of inflicting harm based on a protected status may be necessary. Policy resolution and Robert's Rules supported those types of actions.

Ms. Hays asked Superintendent Dey to ask legal counsel if section number four of the ACC policy superseded other sections of the policy, and noted clarity on that would be helpful.

Chair Rabasa agreed with Ms. Hays and said her question would be who would investigate whether actions made under policy were made with the intention of causing harm, and how they could come to an agreement on who could answer that question.

Ms. Newman said she had reviewed the policies and did not think there was anything there that would provide guidance on a complaint made by a board member regarding another board member who was deliberating on the complaint. She suggested getting clarification from legal counsel about that.

Chair Rabasa said that was a matter of developing a better policy in the future.

Ms. Newman agreed and that she would develop a better policy with legal guidance. That might not be relevant right now.

Ms. Kauffman said she voted to dismiss the March 08, 2023, complaint based on validity especially because an investigation would need to establish validity and she did not think validity could be determined. She did not want to spend time, money, and

resources on things that the board already agreed to and invalidated in the past and set precedent with.

Chair Rabasa made a friendly amendment to Ms. Hsu's motion.

MOTION: Chair Rabasa moved to dismiss the March 08, 2023, complaint, but with the follow-up action of amending the policy regarding how to manage complaints from board members made against board members.

Ms. Hsu accepted Chair Rabasa's motion to amend her motion.

Ms. Newman said the policy seeks to prevent and prohibit all forms of racially harassing conduct in district programs and activities even if the conduct did not include an intent to harm, was not directed at a specific target, or involved repeated incidents or tangible injuries. An investigation would not be looking for an intent to harm based on policy. The investigation would be looking at the actual claims made in the complaint.

Chair Rabasa said the claims could be substantiated by looking at Robert's Rules, which policy resolution supported. She asked Ms. Newman if she accepted the friendly amendment.

Ms. Newman accepted Chair Rabasa's motion to amend Ms. Hsu's motion.

Chair Rabasa asked if there was any discussion.

Ms. Hays said she would not vote in favor of this motion.

Chair Rabasa called for a vote.

The motion failed (3:2:0).

Maya Rabasa, Keerti Hasija Kauffman, and Michelle Hsu voted in favor of dismissing the March 08, 2023, complaint, but with the follow-up action of amending the policy regarding how to manage complaints from board members made against board members.

Alicia Hays, and Judy Newman voted against dismissing the March 08, 2023, complaint, but with the follow-up action of amending the policy regarding how to manage complaints from board members made against board members.

Superintendent Dey said because two motions failed, the board would be taking no action.

Chair Rabasa said there were two failed motions and no other motions. She asked board members if they wanted to make another motion.

There were no other motions made.

Chair Rabasa stated that the board was taking no action on the March 08, 2023, complaint.

Chair Rabasa said complaint number three was submitted on March 13, 2023. She asked board members if they would like to make a motion.

MOTION: Ms. Newman moved, seconded by Ms. Kauffman to investigate the March 13, 2023, complaint.

Chair Rabasa asked if there was any discussion.

Chair Rabasa said she needed more information on this complaint and was not sure if that meant an investigation or a hearing. She was not sure what would be investigated, and a hearing would allow the board to participate in asking questions. It would give the complainant and respondent the opportunity to expand on their input and responses. She asked board members why an investigation versus a hearing would be better.

Ms. Hsu asked if an investigation within the district occurred or not since this involved a board member.

Chair Rabasa said no investigation took place because the complaint came directly to the board. It was a complaint made by a 4J employee against a board member.

Ms. Hsu asked if anyone knew if either party would be willing to participate in a hearing.

Chair Rabasa said the board could make the decision to have a hearing and give the option to the complainant. If the complainant did not show up to the hearing, it would give the board the opportunity to deliberate more.

Ms. Newman asked if the hearing would need to be public and what that would entail. She made the motion for an investigation to involve someone with expertise, so it could be done discreetly. She was not familiar with the process of a hearing and did not know what she would be getting by voting to approve a hearing.

Chair Rabasa said the board member would be part of the hearing because there was not policy to prohibit them, and board members had been involved with all the deliberations surrounding their complaints.

Ms. Newman said she would not be in favor of a hearing.

Chair Rabasa said an investigation could lead to a hearing.

Chair Rabasa asked if there were any more discussion.

There was no further discussion.

Chair Rabasa called for a vote.

The motion failed (3:2:0).

Maya Rabasa, Keerti Hasija Kauffman, and Judy Newman voted in favor of investigating the March 13, 2023, complaint.

Alicia Hays, and Michelle Hsu voted against investigating the March 13, 2023, complaint.

Chair Rabasa asked if anyone would like to make a different motion.

MOTION: Chair Rabasa moved, seconded by Ms. Hsu to hold a hearing regarding the March 13, 2023, complaint.

Chair Rabasa asked if there was any discussion.

Chair Rabasa said it would be unfortunate if the board decided not to process this complaint given that it was an employee complaining about a board member. It would not send a good message to 4J employees, specifically because one of the listed items within the complaint was a direct violation of policy. She encouraged the board to not let this complaint go unprocessed.

Ms. Kauffman agreed that more information was needed. She asked if the complainant would get the opportunity to speak.

Chair Rabasa replied that the complainant would have the opportunity to speak, and the board would be able to ask questions. It would give the employee the chance to be heard.

Ms. Kauffman said the employee should be given the opportunity to be heard.

Ms. Hays said the board had a practice of not doing that. Current board members may not have been on the board at that time, but there was a similar situation, and the board did not investigate, and they did not have a hearing. She could not move forward with the motion considering how the last similar complaint was treated.

Ms. Newman asked if two motions failed and no action were taken as a result, would that mean no action would be taken and the board was done with it.

Chair Rabasa said yes. She said the board did act on the other complaint that Ms. Hays was referring to, and the board deliberated over it repeatedly. This complaint had not been given the same amount of attention. She noted a hearing was scheduled in that situation, but it did not happen. The deliberation for that complaint took place in executive session, which is why the board should not be talking about that complaint.

Ms. Hays said why was that one discussed in executive session but not the March 13, 2023, complaint.

Chair Rabasa replied that the interpretation of the law shifted since then. That complaint involved agreements and a short claims notice. There were legal concerns and employment actions connected to that complaint.

Ms. Newman said they had legal advice on how to proceed with that complaint. She thought if the complainant requested a hearing, then they would get a hearing. The March 13, 2023, complaint stemmed from conversations within a private Facebook group and apparently, no one else saw the conversations between the complainant and the board member. She did not know if that was another factor in how that played into policy.

Chair Rabasa said the policy stated that when using social media and other websites, board members would treat and refer to other board members, staff, students, and members of the public with respect. The thing that is similar with this complaint and the March 08, 2023, complaint was that the complainant was an employee and a board member in both instances. The previous complaint was specifically about employment. It cited a hostile work environment.

Ms. Hsu said the only similarity was that it was a complaint made by an employee against a board member. The board should not make false equivalences because the

situation was different. Regarding precedence, what happened last year was muddy and messy, and the board did have legal counsel at that time.

Chair Rabasa asked if there were more discussion on the current motion. If so, the board would need to vote to extend the discussion.

There was no further discussion.

Chair Rabasa called for a vote.

The motion failed (3:2:0).

Maya Rabasa, Keerti Hasija Kauffman, and Michelle Hsu voted in favor of holding a hearing regarding the March 13, 2023, complaint.

Alicia Hays, and Judy Newman voted against holding a hearing regarding the March 13, 2023, complaint.

Chair Rabasa asked if anyone had another motion to put on the table.

Ms. Hays said Chair Rabasa brought up good points about the investigation and the employee. She said the board needed clarity to understand if a policy violation could occur in a closed group. She was unsure if it would take an investigation or the collective wisdom of the board to determine that. She did not know if an inquiry from an attorney could determine that.

Chair Rabasa said she did not know how the board could say that the policy was not violated regarding the March 13, 2023, complaint. The board just spent time reviewing the racial harassment policy. How could the board disregard this complaint knowing a board member violated that policy.

Ms. Hays said the board just did that regarding the complaint made on March 08, 2023. She was in favor of investigating that and other board members disagreed. She would like to figure out how to move something forward, or the board could let it go and let the complainant utilize other options.

Chair Rabasa said the board just told an employee that it was okay that they were disrespected on social media.

Ms. Hays said unfortunately, the board had been telling employees that for the last year-and-a-half and asked why precedence mattered now.

Chair Rabasa said the reason precedence mattered is because it can stop past patterns of behavior.

Ms. Hays said she would back track and vote for an investigation on this. The board was struggling to figure this out, and she hoped employees could understand that.

Chair Rabasa said it made her uncomfortable to continue discussions without another motion on the table.

MOTION: Chair Rabasa moved, seconded by Ms. Hsu to issue a statement of censure.

Chair Rabasa spoke first because she made the motion. She would have liked to have managed this in a different way, but she was not sure how else to communicate that the board was not okay with the policy's continued violations.

Ms. Newman said she was out of her league with these types of complaints. They were issues of free speech, and people interpret the policy in different ways. Sometimes the policy seemed clear, other times it did not. This complaint fell into a grey area because the complaint stemmed from conversations inside a closed group. She was out of her league and needed clarity. That was why she said hiring an investigator with expertise could be beneficial. Therefore, she could not support issuing a statement of censure because she did not know what door that would open.

Ms. Hsu asked if this could be exclusively between the complainant and the respondent. She did not want to silence the employee, who had presented a clear case.

Chair Rabasa made a friendly amendment to her motion.

MOTION: Chair Rabasa moved, seconded by Ms. Hsu to table issuing a statement of censure until legal counsel had been received regarding if the policy was violated.

Chair Rabasa said regardless of precedence, the board should be able to grow and learn from their mistakes and make better decisions in the future that may be different from the precedence of the past.

Ms. Kauffman said she would be in favor of getting advice from legal counsel.

Ms. Hays said she was okay with getting advice from legal counsel, but that she was not okay with a censure sitting on the table.

Ms. Kauffman asked Chair Rabasa to repeat the motion.

MOTION: Chair Rabasa moved, seconded by Ms. Hsu to table issuing a statement of censure until legal counsel had been received regarding if the policy was violated.

Ms. Newman asked if the board could vote that down and make a new motion to get advice from legal counsel. She did not feel comfortable having a censure on the table.

Chair Rabasa said she believed that would be okay. The vote would die if no one were in favor of it. She noted legal counsel may offer more options that the board did not consider, which could be more effective. She asked if she could revise her amended motion to remove issuing a statement of censure and include only to seek legal advice regarding the complaint and policy. She said it was a revision to her friendly amendment, and since it was coming from her it would be permissible.

Chair Rabasa revised her friendly amendment.

MOTION: Chair Rabasa moved, seconded by Ms. Hsu to table a decision on the March 13, 2023, complaint pending advice from legal counsel to determine if the policy was violated.

Chair Rabasa asked if there was any more discussion.

There was no discussion. Chair Rabasa called for a vote.

The motion passed unanimously (5:0:0).

Maya Rabasa, Keerti Hasija Kauffman, Michelle Hsu, Alicia Hays, and Judy Newman voted in favor of tabling the decision on the March 13, 2023, complaint pending advice from legal counsel to determine if the policy was violated.

Chair Rabasa stated that the next regular board meeting was scheduled for May 17, 2023. At 7 p.m.

There were no other comments or questions.

V. ADJOURNMENT

Chair Rabasa adjourned the meeting at 6:23 p.m.



Andy Dey
District Clerk



Maya Rabasa
Board Chair

(Recorded by Diana Tisdale, LCOG)