

**Merrimack School Board Special Meeting
Merrimack School District
School Administrative Unit #26
March 12, 2018 (Monday)
Merrimack Town Hall – Memorial Room**

Present: Chair Barnes, Vice Chair Schneider, Board Members Guagliumi and Thompson, Superintendent Chiafery, Assistant Superintendent McLaughlin, Assistant Superintendent for Business Shevenell and Student Representative Puzzo.

Board Member Schoenfeld was excused from the meeting.

1. Call to Order

Chair Barnes called the meeting to order at 7:00 p.m. She introduced the board members and administration, legal counsel Attorney Kathy Peahl, Student Representative Puzzo and scribe Rose DeNucci.

Chair Barnes then provided an introduction for the night's meeting. She read from a prepared statement and cited New Hampshire law where it is stated that "local schools are permitted to hear appeals of citizens in certain circumstances, including circumstances where a parent disagrees with a decision by the district administration. In some cases the law requires the school board to grant parents a hearing. For example, local school boards are tasked with hearing a request for a change in assignment based on manifest educational hardship, or hearing an appeal of a student suspension or expulsion.

The board has convened a special meeting in response to a request from Mr. Bevill for a hearing regarding his complaint related to the district's homework policy. Mr. Bevill requested that the meeting be open to the public, and therefore it has been posted as a public meeting.

Mr. Bevill, although you have not identified any administrative decision from which you are appealing, tonight's meeting will be held in accord with state regulation ED 204.01 which sets forth due process procedures required to resolve disputes between individuals and the school system. However, I want to make clear that the fact that we are following the procedures of ED 204.01, does not mean that the board has formed an opinion, that you have a right to a hearing, or that there is a right of appeal to the New Hampshire Department of Education from this hearing.

There will be a recording made of this meeting and the recording will be made available to you upon your request. In addition our clerk will be taking minutes at this meeting.

The procedure is as follows:

The formal rules of evidence shall not apply. You will begin by providing the board with a description of your request, the evidence in support of your request and any argument in support of your position. You will be permitted to call witnesses in support of your presentation. The

Board will be permitted to ask questions after your presentation. You will be permitted to make a brief closing statement. Following your presentation the board will deliberate. Deliberation will take place in public session and the board may recess during this session to consult with its legal counsel.

The Board will then entertain a motion or motions on this matter to the extent it deems appropriate and any motion will be followed by a written decision or decisions on this matter.”

Chair Barnes then asked Mr. Bevill to make his presentation.

2. Presentation by Robert Bevill

Mr. Bevill began by first asking Chair Barnes for a copy of the statement that she had just read and noted that he was in disagreement with parts of the statement.

Chair Barnes will see that a copy of the statement is provided to Mr. Bevill.

Mr. Bevill referred to binders filled with materials that he had assembled in regards to this hearing. Board members found them at their places when they arrived at the meeting.

Mr. Bevill noted that he was unaware of the formal procedure required by law when he thought he had requested this meeting earlier.

He noted the large quantity of materials in the binder and stated that he would be referring to brief passages in them. He asked members to remove the list of exhibits found inserted on the cover of the binder and the timeline of events located in the front binder pocket.

Mr. Bevill read aloud chronologically from the assembled binder materials.

Exhibit A

In a letter dated February 26, 2018 and sent via certified mail, Mr. Bevill wrote to the Merrimack School Board:

“RE: Request for Public Hearing as per N.H. Admin. Rules, Ed 204.01

Dear Chairman Barnes and fellow Merrimack School Board Members:

This letter is to request a hearing, pursuant to N.H. Admin Rules, Ed 204.01, to resolve a dispute between Individuals and the School System.

It is my contention that the Merrimack School Board has violated:

1. N.H. Admin. Rules, Ed 306.14(a)(1), by not providing a written policy on homework, including its relationship to the grading system for each school that has an instructional program, which has been voted upon and ratified by a quorum of the board, after having been

provided notice by me at a regular meeting of the Merrimack School Board on 11/20/2017;
and

2. N.H. Admin. Rules, Ed 302.02(r), by not holding the Assistant Superintendent of Curriculum accountable to the implementation and review of school district policies, but rather the School Board has abdicated its responsibilities under Ed 306.14(a)(1) to the Administration. The regulations make clear that the Board adopt educational policies, and the Superintendent is responsible for implementing those policies.

I further request that this be an open hearing, as none of the stipulations per RSA 91-A:3,II(a) apply. *See* Ed 204.01(b)(3).”

Exhibit B

Excerpt from response letter from Superintendent Chiafery dated March 7, 2018 (paragraph four)

“Please be aware that the District’s protocol for public hearings will apply to this meeting. Accordingly, you may offer your objective criticism and disagreement with the subject matter of your “dispute”. However, the Board will not hear personal complaints about school personnel or complaints against a particular district employee in a public setting. There are other channels available for you to make such complaints.”

Mr. Bevill stated: “Nothing I am saying tonight is a personal attack on anyone. It is in a professional capacity and it is in the course of the responsibilities outlined in the state regulations.

Exhibit C

E-mail correspondence between Mr. Bevill and the State Department of Education Coordinator of Dispute Resolution and Constituent Complaints Stephen Berwick on the resolving of a dispute between individuals and the school board

“Currently the opportunity for Mr. Bevill would be through the Ed 204 appeals process. In that process the parent can file an appeal as a contested case with the local school board regarding the homework issue. Upon receipt of a final written decision from the school board, he can then appeal to the state board if he is dissatisfied with their response. The focus, in such a case, is the effect of the policy or lack thereof, on the student.”

Exhibit D

Excerpt from N.H. Code Admin. R. Ed 204.01

“(a) A local school board shall adhere to the following due process procedures prior to a party filing a dispute as a contested case with the office of legislation...”

(e) The decision of the local board shall at a minimum, include the following:

- (1) The date of the decision:
- (2) A description of the issue in dispute:

- (3) The board’s decision: and
- (4) The rationale for the board’s decision:

(f) The written decision shall be considered a final decision at the local level.”

Excerpt from N.H. Code Admin. R. 306.141

“(a) The local school board shall require no later than July 1, 2015, that each school has an instructional program which includes the following:

(1) A policy on homework, including its relationship to the grading system:”

Excerpt from N.H. Code Admin R. Ed 302.02

“The superintendent shall in addition to those duties outlined in Ed 302.01a;

(r) Be responsible for the implementation and review of school district policies.”

Exhibit E

Excerpts from NHSBA Training Document – School Board Roles and Responsibilities

II. Key Roles and Responsibilities of School Boards

“In addition to the Duties of School Boards listed in NHDOE Rule Ed303, the NHDOE also has rules that speak to the school board’s responsibilities with respect to the ‘Minimum Standards for Public School Approval’ found in NHDOE Rule Ed 306.

NHDOE Rule Ed 306 begins by stating that “In order to be an approved school, public schools, and public academies shall meet the applicable criteria established in these standards

They relate to various subjects such as absenteeism, promoting school safety, homework

IV. The Superintendent’s Role:

(1) Implement School Board Policy

- Ed 302.02(r) – Be responsible for the implementation and review of school district policies.

As these rules listed above indicate, and in conjunction with the Rules relative to school board duties and responsibilities covered earlier in earlier pages, the school board adopts policy and the superintendent implements board policy.”

Exhibit F

Excerpts from Serving on the Local School Board: An Overview of the Legal Responsibilities of a Board Member

I B 2 State Authority over the Local School Board (page 3)

“Practice Pointer: The local school board is subject to the regulatory authority of the state and the state department of education.

II The Oath of Office and Board Member Authority

A The Oath of Office

Board Members are bound to follow and uphold the law as part of the oath of office taken by a school board member. N.H. R.S.A. 92:2 requires public office holders who are required to take an oath of ‘make or subscribe the oath or declaration as prescribed by Part 2, Article 84 of the Constitution of New Hampshire’. This statute further provides that ‘any person who violates said oath after taking the same shall be forthwith dismissed from the office or position involved.’

Thus, the oath of office requires board members to adhere to and uphold the District’s policies and New Hampshire law governing the conduct of school boards, including any business conducted in a nonpublic session of the board.

The District’s policies include a code of ethics.....The code of ethics indicates that each Board Member will strive to improve public education and will:

- Remember that my first and greatest concern must be the educational welfare of the students attending the public schools;
- Recognize that I should endeavor to make policy decisions only after discussion at publicly held Board meetings;
- Work with other Board members to establish effective Board policies and to delegate authority for the administration of the schools to the Superintendent of Schools;

See Policy BCA-R, School Board Member Ethics

(Mr. Bevill noted that BCA-R has not been adopted by the Merrimack School District but that it is recommended by the NHSBA.)

III The “Right to Know” Law NH RSA 91-A (page 17)”

Exhibit G

Excerpts from

Case Name: Neal Kurk v Thomas Clow, et al

Case Number: 216-2018-CV-00086

Standing

Mr. Bevill stated that if this needs to go beyond the administrative process because he has not gotten the administrative relief that he is due then the next step would be for him to file a writ of certiorari with the Superior Court in the northern district of Hillsborough County. He needs standing to make this argument.

Under the Motion to Dismiss, Mr. Bevill read aloud "...Rather, 'standing under the New Hampshire Constitution requires parties to have personal legal or equitable rights that are adverse to one another, regard to an actual, not hypothetical, dispute which is capable of judicial redress.'" Id. At 642-43..."

"...In each of those cases, the Court properly found no standing because none of the plaintiffs could demonstrate a specific, concrete injury caused by the defendants' actions. Here, on the other hand, plaintiff has established that he will personally face an increased tax burden as a direct result of the increased default budget.

...While plaintiff's injury here is shared by the other taxpayers in Weare, it is a specific, concrete injury that is sufficient to provide him standing to bring the present complaint."

Mr. Bevill stated his complaint that he has a seventeen year old daughter who has been directly harmed by this incident. In one of her classes her cumulative grade was a 64. She missed passing the class by one point. If there had been any factoring of her homework with that, she would have gotten a bump of more than a point but at least a point to pass it. She now has to go to summer school to make up that English class.

Exhibit H

Policy Adoption

Samples from various school districts

Mr. Bevill noted that only Bedford and Windham have written their own homework policies. None of the over 30 district policies he researched address changing the grading system as it relates to homework. Additionally, none of the other districts are currently proposing changing the homework grade to not factor into the GPA.

Exhibit I

Timeline of Homework Policy Events: Excerpts of when homework was written, discussed and/or mentioned are highlighted in Exhibits J-Y. The excerpts taken from school board minutes are not written here but are available on the district website.

Exhibit J

School Board Minutes from October 3, 2016

Agenda Item #3, Update on K-12 Science Curriculum Development

Exhibit K

School Board Minutes from January 2, 2017

Agenda Item #11, Other a) Correspondence

Exhibit L

School Board Minutes from January 17, 2017

Agenda Item # 3, Quarterly Curriculum Review

Exhibit M

School Board Minutes from May 15, 2017

Agenda Item #7, Update on the Homework Committee's Progress

Exhibit N

Merrimack High School, Parent/Teacher Handbook 2017-2018

Exhibit O

School Board Minutes from September 5, 2017

Agenda Item #9, New Business

Exhibit P

Letter from Assistant Superintendent McLaughlin to parents explaining the homework policy and the homework protocol.

Exhibit Q

School Board Minutes from September 18, 2017

Agenda Item #6, Homework Protocol Implementation

Exhibit R

PowerPoint presented by Assistant Superintendent McLaughlin on the revised homework protocol.

Exhibit S

Robert Bevill's Freedom of Information Act/Right to Know (FOIA) (RTK) request to Assistant Superintendent McLaughlin

Exhibit T

Robert Bevill's advertisement to hold a No homework-grade policy public meeting on October 13, 2017

Exhibit U

Copies of materials reviewed by Robert Bevill and Assistant Superintendent McLaughlin at their 2-hour meeting.

Exhibit V

PowerPoint presentation by Robert Bevill at the public meeting held on October 13, 2017.

Exhibit W

School Board Minutes from November 20, 2017

Agenda Item # 3, Opportunity for Parent Feedback on School District's Homework Protocol

Exhibit X

Statement from which excerpts were read into the record of the November 20, 2017 School Board meeting.

Exhibit Y

School Board Minutes from February 19, 2018

Agenda Item #2, Public Participation

Exhibit Z

Empirical research utilized by the School Board during the Homework Summit and posted on the school district website. These items were inadvertently omitted from the materials provided to Robert Bevill in response to his FOIA/RTK request.

Mr. Bevill stated his conclusion. "The school board never voted to delegate its authority to the administration for a radical change in the grading system. The school board never adopted or rejected the administration's proposed homework policy change. However, under the fiduciary duties as chairman of the Merrimack School Board, under her fiduciary duties as president of the New Hampshire School Board Association NHSBA, Mrs. Barnes knew, or should have known, the proper procedure for adopting a major policy change to the homework policy and its impact on the cumulative grading system to the school board, to the school district. IKB homework policies across the multiple school districts read almost the same, however, none of their

implementations involve the elimination of homework in the cumulative grading system. Such a radical change in the grading system should be discussed and voted upon by the school board as it has put Merrimack students at a significant competitive disadvantage to an equal educational opportunity afforded to other New Hampshire high school students, such as scholarships, college acceptance, and future job placement. “

Mr. Bevill then formally submitted his complaint to the school board and read it aloud into the record.

COMPLAINT

ED 204 APPEAL

*Merrimack School Board – Special Meeting
03-12-2018*

After having been notified by [Parent] of the school board’s responsibility under N.H. Admin. Rules, Ed 306.14(a)(1) to provide a written policy on homework, including its relationship to the grading system for each school that has an instructional program; AND

By the school board failing to adopt a new homework policy, by a public reading of the new policy and ratification by a majority of the quorum present; AND

By failing to hold accountable the Superintendent’s Office for the implementation and review of the new homework policy, per N.H. Admin. Rules, Ed 302.02(r); AND

By allowing the unauthorized actions by the Assistant Superintendent of Curriculum to alter the weighted value of homework in its relation to the cumulative reported grading system, without a vote by a majority of the school board present at a regularly scheduled meeting; AND

By the intentional, or unintentional, collusion by the Chairman of the School Board with the Assistant Superintendent to delay any action on the matter until after mid-terms and feedback from teachers; AND

By the intentional inaction by the Board to act on the matter, after the mid-terms and feedback from both parents and teachers;

THEREFORE, ‘by the effect of the policy, or lack thereof’ the School Board and Superintendent’s Office has caused a specific and concrete injury to [Student C.B. – daughter of Parent] and to her fellow Merrimack High School students, by denying them an Equal Educational Opportunity afforded to other high school students within the New Hampshire public school system, such as future merit scholarships, acceptance and admission by the top-tier college of their choice, and future job prospects.”

Based on information Mr. Bevill provided publicly prompted Board Member Thompson to ask what actions Mr. Bevill and/or his daughter took prior to receiving the failing grade of 64%. Did either speak with the teachers to ascertain other options available to show competency.

Mr. Bevill replied that his actions are irrelevant to this section. He stated his willingness to discuss the matter outside of this meeting.

Board Member Thompson disagreed on the matter of relevancy.

Chair Barnes made a point of clarification on Mr. Bevill's comments on the letter to parents and guardians from Dr. McLaughlin, located in section P of the binder. She read item #1 into the record.

The district homework policy, provided below, is unchanged. I have highlighted in yellow those areas of the policy that should serve as the basis for your understanding of its role in the totality of the educational environment."

Chair Barnes reiterated that there is a homework policy and that the instituting of it is the change.

Mr. Bevill stated that the homework policy has changed and that the homework protocol is a contrived statement to get around the change.

Chair Barnes recessed the meeting at 7:43 p.m. in order for the Board to consult with legal counsel.

Chair Barnes re-convened the meeting at 8:10 p.m.

3. Board Deliberation

Chair Barnes addressed the complaint by its sections.

Section One of the complaint was deemed to have no merit.

Board Member Thompson stated that the district does have a written policy in regards to each school because it is blanket for the district. It also clearly states that the teachers are to explain the association of homework in relation to their grade.

Section Two of the complaint was addressed by Board Member Guagliumi. The board has not adopted a new homework policy. The existing policy has been in place for several years and is still active.

Section Three of the complaint was deemed baseless as there is no new homework policy.

Section Four of the complaint was addressed by Vice Chair Schneider. There has never been a formal written weighted value for homework, therefore nothing was altered.

Board Member Thompson added that there was no set weighted value of homework across the district and there may have been inconsistencies with the weighted homework.

Section Five was addressed by Chair Barnes. There has been no change in the policy. The change is in the protocol and vetted at prior school board meetings. The importance of data to the decision making processes was noted. There was no collusion at all.

Board Member Thompson added that this conversation has been ongoing throughout the school year. This is an acknowledgement that the board is taking action in regards to the protocol and learning and expanding on it.

Student Representative Puzzo asked for the difference between the policy and the protocol.

Chair Barnes responded that the policy is the regulation or the law. The protocol is the practice or the implementation of the policy.

Section Six was addressed by Vice Chair Schneider. The statement that there has been inaction is inaccurate. The board is gathering enough data to take the proper action and not do it in a way that does not have the adequate information needed.

The final section was addressed by Chair Barnes. There has been no quantifiable specific and concrete injury to date. Based on the live testimony, the district is looking to put out students who are more prepared to be successful at college. Mastery of material in high school provides for a better college readiness.

Student Representative asked to have a survey put out for students.

Chair Barnes responded that this is no longer allowed due to recent changes in state law. However, school board members are available to speak to the student council and are also available through email and other means to listen to student concerns.

Board Member Guagliumi moved (seconded by Board Member Thompson) that based on the discussion this evening and our findings, the school board has not violated N.H. Admin. Rule Ed 306.141(a)(1). In addition, the Superintendent and the Assistant Superintendent have complied with N.H. Admin. Rule Ed 302.02(r) by implementing school board policy IKB through the homework protocol. And finally, that the board authorizes its Chair with the assistance of legal counsel, to draft a decision consistent with this motion.

The motion passed 4-0-0.

Mr. Bevill asked the board to vote on paragraph C that a statement that the local school board has complied with the Right to Know laws.

Attorney Peahl responded that this was not addressed in the written complaint.

Mr. Bevill responded that his request is a procedural point.

Chair Barnes stated that the board has followed the Right to Know laws and is in compliance.

Chair Barnes closed the public hearing at 8:24 p.m.