



April 15, 2015

Via email (MBeck@madison.com)

Molly Beck
Wisconsin State Journal
1901 Fish Hatchery Road
Madison, WI 53713

Dear Molly:

Enclosed herewith is the District's response to your recent request for "the minutes of closed school board meetings held on Jan. 5, Feb. 2, Feb. 23, March 9 and March 16."

Upon review you will note that we have hand-numbered the pages. We have also numbered each of the redactions. These numbers correspond with the numbers below. We have redacted information from the records for one or more of the following reasons.

Attorney- Client Privilege (Redactions 1, 3, 4, 5, 6)

The information contained in the above-listed redactions is subject to attorney-client privilege. See Wis. Stat. sec. 19.35(1)(a); see also, *GPS, INC. v. St. Germain*, No. 00-3126, unpublished slip op. at ¶15 (Wis. Ct. App. Aug. 7, 2001)

Personally Identifiable Student Information (Redactions 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19)

The information contained in the above-listed redactions either constitutes, or was gleaned from, an Education Record as defined by the Family Educational Rights and Privacy Act (FERPA) 34 CFR 99.3 and a Pupil Record pursuant to Wis. Stat. 118.125(1)(d).

In addition to being an Education Record, the requested records also contain "personally identifiable information." Pursuant to FERPA, an education record contains "personally identifiable information" if "information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the record relates" or "information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." (34 CFR 99.3). Pursuant to these definitions, the District has determined that the redacted documents contain information regarding very small populations (for example 1 student) and thus a "reasonable person in the school community" could identify the students who are counted in those exceedingly small counts.

In addition to the statutory authority cited above, we have separately conducted the "public records balancing test," and have concluded that, based upon the information presently available about the request and considering the provisions of the MMSD Board policies, the public interest in non-disclosure

of the redacted records outweighs the public interest in disclosure. For the public policy reasons enumerated below, as well as the other reasons cited herein, we must partially deny your request for disclosure of the redacted records at this time.

- (a) Disclosure of the requested records at this time would violate FERPA and Wis. Stats., § 118.125 which provide for the confidentiality of pupil records, except in cases where the parent/guardian or adult pupil is given clear notice and/or consent that disclosure will be permitted, or if otherwise authorized by those statutes. This request does not meet any of the statutory exceptions to the non-disclosure rule.
- (b) Disclosure of the requested records at this time would be inconsistent with Board of Education Policies 4156 and 4157.
- (c) Disclosure of personally identifiable student information has been viewed as increasingly invasive of student personal privacy, as reflected in the public policy that is evident behind the Wisconsin public records statutes. Disclosure of the requested records to any and all requestors may pose an unwarranted risk to the safety and privacy of students. The overriding public interest in preserving the privacy of student education records was fully articulated in the case of *Rathie v. Northeastern Wis. Tech. Inst.*, 142 Wis. 2d 685, 419 N.W.2d 296 (Ct. App. 1987). In *Rathie*, the Court noted that “the Act [referring to FERPA] represents a strong stand in favor of privacy and was enacted to provide broad limitations on third-party access in order to protect students’ privacy rights. Indeed, the provisions assuring privacy of student records were enacted in response to the growing evidence of abuse of student records across the nation.”

Thus, as to the records that would provide personally identifiable information regarding students, the balancing test clearly weighs in favor of the students’ interest in privacy. Furthermore, by providing you with the record with only limited redactions, the District is fully complying with Wis. Stat. 19.36(6).

Ongoing Contract Negotiations (Redaction 2)

The information contained in the above-listed redaction pertains to on-going contract negotiations. See Wis. Stat. sec. 19.85(1)(e). The disclosure of such information at this time could adversely impact the Board’s position in the negotiations. Although the closed session exceptions to Wis. Stat. sec. 19.83 are not express exceptions to the Public Records law, the Attorney General has opined that the Open Meetings Law exemptions may be used as the basis for denying access pursuant to a Public Records request when the authority, in this case the District, makes a determination that there is a need to restrict access. In this case, pursuant to the “balancing test,” the public’s interest in withholding this record outweighs the public’s interest in disclosure. Contract negotiations between the Board of Education and the Superintendent are of vital importance to the overall functioning of the school system. In order for such negotiations to be balanced, both sides must be able to maintain privacy with respect to their bargaining position. Disclosure of the Board’s position prior to the completion of such negotiations would obviously jeopardize, perhaps fatally, the Board’s ability to bargain or negotiate on behalf the District’s best interests. Ultimately, the public is better served by a balanced negotiation between the Board and the Superintendent than it would be by the premature release of the Board’s negotiating position.

Ongoing Investigation of a District Employee (Redactions 7, 8, 20, 21)

The information contained in the above-listed redactions pertains to one or more on-going investigation(s) related to a current District employee(s). The disclosure of such information is expressly prohibited by Wis. Stat. sec. 19.36(10)(b).

The current partial denial, in the form of redacted material, is subject to review in an action for mandamus under Wis. Stat. 19.37(1), or by application to the local district attorney or Attorney General. See Wis. Stat. 19.35(4)(b).

Please remit \$0.45 (\$0.05 per page) made payable to Madison Metropolitan School District.

Please feel free to contact me (608-663-1868) with any questions or concerns regarding the above.

Sincerely,



Dylan Pauly
General Counsel
Madison Metropolitan School District

**Madison Metropolitan School District
Madison, Wisconsin**

Jennifer Cheatham, Superintendent

BOARD OF EDUCATION SPECIAL MEETING Minutes

Doyle Administration Building
545 West Dayton Street, Room 103
Madison, Wisconsin

January 5, 2015

(Action in italics)

CLOSED SESSION

The Special meeting of the Board of Education was called to order by President Arlene Silveira at 5:02 p.m.

MEMBERS PRESENT: Mary Burke, Michael Flores, James Howard, Ed Hughes, Dean Loumos, TJ Mertz, Arlene Silveira
MEMBERS ABSENT: None
STAFF PRESENT: Jennifer Cheatham, Deirdre Hargrove-Krieghoff, Barbara Lehman—Recording Secretary

It was moved by Arlene Silveira and seconded by TJ Mertz to go into closed session pursuant to Wis. Stat. §19.85(1)(c) for the purpose of preliminary consideration of the employment and performance of district employees over whom the board has jurisdiction or exercises responsibility. Motion unanimously carried.

1. Preliminary consideration of the employment and performance of district employees over whom the board has jurisdiction or exercises responsibility, pursuant to Wis. Stat. Sec. 19.85(1)(c)

Dr. Cheatham reminded everyone about the process and about what would be brought to the board at the end of the month. Board would be notified about the recommended nonrenewal. (A memo was distributed to the board.)

Questions:

- How administrators are grouped as one-year or two-year contracts.
- General way the renewal process works, associated timelines, and alignment with the new evaluation system.
- Confirmed that there may be some specific things with principals, but no recommendations for nonrenewals.
-  ①
- Process is being redefined for how to gather input from superintendent's direct reports.

2. Adjournment

It was moved by Arlene Silveira and seconded by Mary Burke to adjourn the meeting at 5:26 p.m. Motion unanimously carried.

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Madison Metropolitan School District
Madison, Wisconsin

Jennifer Cheatham, Superintendent

BOARD OF EDUCATION SPECIAL MEETING Minutes

Doyle Administration Building
545 West Dayton Street, Room 103
Madison, Wisconsin

February 2, 2015

(Action in italics)

CLOSED SESSION

The Special meeting of the Board of Education was called to order by President Arlene Silveira at 5:02 p.m.

MEMBERS PRESENT: Mary Burke, Michael Flores, James Howard, Ed Hughes, Dean Loumos, TJ Mertz, Arlene Silveira
MEMBERS ABSENT: None
STAFF PRESENT: Jennifer Cheatham, Dylan Pauly, Kelly Ruppel, Barbara Lehman—Recording Secretary

It was moved by Arlene Silveira and seconded by Dean Loumos to go into closed session pursuant to Wis. Stat. §19.85(1)(c) for the purpose of preliminary consideration of the employment and performance of a district employee over whom the board has jurisdiction or exercises responsibility. Motion unanimously carried.

1. Preliminary consideration of the employment and performance of a district employee over whom the board has jurisdiction or exercises responsibility, pursuant to Wis. Stat. Sec. 19.85(1)(c)
(Packets included the redline and final versions of the contract and the amendment.)

Questions/Discussion Topics:

- Communications around the superintendent's contract extension.
- Use of outside counsel for superintendent's contract to prevent conflicts of interest.
- Changes to contract dates and other changes that were previously voted upon.
- Statutory regulations around length of superintendent contracts.
- How the contract extension process works and how it can be taken up.
- Discussion around auto-renewal provision.

Ms. Pauly left the meeting at this time.

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2. Adjournment

It was moved by Arlene Silveira and seconded by Michael Flores to adjourn the meeting at 5:26 p.m. Motion unanimously carried.

bl

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Madison Metropolitan School District
Madison, Wisconsin

Jennifer Cheatham, Superintendent

BOARD OF EDUCATION SPECIAL MEETING Minutes

Doyle Administration Building
545 West Dayton Street, Room 103
Madison, Wisconsin

February 23, 2015

(Action in italics)

CLOSED SESSION

The Special meeting of the Board of Education was called to order by President Arlene Silveira at 5:02 p.m.

MEMBERS PRESENT: Mary Burke, Michael Flores, James Howard, Ed Hughes, Dean Loumos, TJ Mertz, Arlene Silveira
MEMBERS ABSENT: None
STAFF PRESENT: Jennifer Cheatham, Dylan Pauly, Kelly Ruppel, Barbara Lehman—Recording Secretary
OTHERS PRESENT: Sarah Zylstra, Boardman and Clark

It was moved by Arlene Silveira and seconded by Dean Loumos to go into closed session pursuant to Wis. Stat. §§19.85(1)(a), (c), (f), and (g); 118.125; and/or 120.13(1)(e) for the purpose of conferring with legal counsel concerning strategies related to currently pending litigation brought against the district by David Blaska and as set forth in the Demand for Arbitration by Velocity Technology Services; and consideration of employment, promotion, compensation or performance evaluation data of a public employee over which the governmental body has jurisdiction or exercises responsibility; and reviewing and receiving advice from counsel regarding disciplinary proceedings and decisions involving individual students. Motion unanimously carried.

1. Confer with legal counsel for the District who will render oral or written legal advice concerning strategies related to currently pending litigation brought against the District by David Blaska, pursuant to Wis. Stat. Sec. 19.85(1)(g)

Attorney Zylstra was present and provided an oral update [REDACTED]

(3)

Questions/Discussion Topics:

- ▼ [REDACTED]
- ▼ [REDACTED]
- ▼ [REDACTED]

(4)

2. Consideration of oral or written advice from legal counsel relative to strategy with respect to potential litigation set forth in the Demand for Arbitration by Velocity Technology Services, pursuant to Wis. Stat. Sec. 19.85(1)(g)

Attorney Pauly provided an oral update on [REDACTED]

(5)

(3)

Questions/Discussion Topics:

- [REDACTED] s.
- [REDACTED]
- [REDACTED]

(6)

3. Consideration of employment, promotion, compensation or performance evaluation data of a public employee over which the governmental body has jurisdiction or exercises responsibility, pursuant to Wis. Stat. Sec. 19.85(1)(c)

Attorney Pauly provide an oral report on the ongoing Sheriff's Department investigation [REDACTED]
[REDACTED]
[REDACTED]

(7)

Questions/Discussion Topics:

- [REDACTED]
- [REDACTED]
- [REDACTED]

(8)

Jennifer Cheatham and Kelly Ruppel left the meeting at this time.

4. Review and Receipt of Advice from Counsel regarding Disciplinary Proceedings and Decisions involving Individual Students pursuant to Wis. Stat. §§19.85(1)(a), (f), and (g); 118.125; and/or 120.13(1)(e)

[REDACTED]

(9)

(Packets included a Standard of Review Checklist, background/recommendation information from legal counsel (2/17/15), and Hearing Officer Documentation (2/6/15). Copies are attached to the original of these minutes.)

June Wilson gave an oral summary of the case.

Questions/Comments Topics from Board Members:

- Need to correct legal memo that has wrong year on it for date of early reinstatement recommendation (change to June 20, 2015).

It was moved by Michael Flores and seconded by TJ Mertz to approve the Hearing Examiner's recommendation along with the standard conditions but to correct the date of the early reinstatement to the beginning of the summer school session (on or about June 20, 2015).

Discussion continued:

- Impact on commitment to the RISE program if this student chooses RISE.

Follow up:

- » Board asked to be notified when the district is able to make contact with the student and/or his family.

Motion carried 6-0-1 with Dean Loumos abstaining.

THE MODIFIED ORDER, AS SUBSEQUENTLY PREPARED BY LEGAL COUNSEL, FOLLOWS:

(4)

1. That effective immediately, [REDACTED] ⁽¹⁰⁾ be and is hereby expelled from the Madison Metropolitan School District (MMSD) until the beginning of the second semester of the 2015-2016 school year (January 2016).

2. That [REDACTED] ⁽¹¹⁾ may apply for early readmission at any time subsequent to the effective date of this Order, but the earliest date upon which he may be readmitted early is the summer session following the 2014-2015 academic year (June 22, 2015). The behavior education leadership team will determine whether [REDACTED] will be readmitted early and whether he will be assigned to an alternative or regular educational program, if he meets the following conditions: ⁽¹²⁾

- A. Participates in and complies with, or is in the process of complying with, an alcohol/other drug assessment; and
- B. The Superintendent or her designee determines that the student does not at the time of early readmission pose a threat to himself or to others in an educational environment; and
- C. If the student has not completed a recommended alcohol/other drug treatment program by the time of early readmission, the student must remain in the program until its completion, or the early readmission privilege may be revoked and the original period of expulsion may be reinstated; and
- D. The student commits no violation of the Student Behavior Education Plan which relates to the reason(s) for the student's expulsion in the case involving this early readmission, or the early readmission privilege may be revoked and the original period of expulsion may be reinstated.

[REDACTED] ⁽¹³⁾
(Packets included a Standard of Review Checklist, background/recommendation information from legal counsel (2/19/15), and Hearing Officer Documentation (2/17/15). Copies are attached to the original of these minutes.)

June Wilson gave an oral summary of the case.

It was moved by TJ Mertz and seconded by Michael Flores to approve the Hearing Examiner's recommendation with a modification to provide Off-Campus services.

Questions/Comments Topics from Board Members:

- Issues with providing off-campus services; [REDACTED] ⁽¹⁴⁾
- [REDACTED] regardless of whether or not he chooses to be part of the RISE program.
- Good case for training around 4400.

Motion carried 6-0-1 with Dean Loumos abstaining.

THE MODIFIED ORDER, AS SUBSEQUENTLY PREPARED BY LEGAL COUNSEL, FOLLOWS:

1. That effective immediately, [REDACTED] ⁽¹⁵⁾ be and is hereby expelled from the Madison Metropolitan School District (MMSD), with services as determined by his IEP team, until the beginning of the second semester of the 2015-2016 school year (January, 2016).

2. That [REDACTED] ⁽¹⁶⁾ may apply for early readmission at any time subsequent to the effective date of this Order, but the earliest date upon which he may be readmitted early is the beginning of the summer session following the 2014-2015 academic year (June 22, 2015). The behavior education leadership team will determine whether [REDACTED] will be readmitted early and whether he will be assigned to an alternative or regular educational program, if he meets the following conditions: ⁽¹⁷⁾

- A. Participates in and complies with, or is in the process of complying with, an alcohol/other drug assessment; and
- B. The Superintendent or her designee determines that the student does not at the time of early readmission pose a threat to himself or to others in an educational environment; and
- C. If the student has not completed a recommended alcohol/other drug treatment program by the time of early readmission, the student must remain in the program until its completion, or the early readmission privilege may be revoked and the original period of expulsion may be reinstated, subject to review by the student's IEP team; and
- D. The student commits no violation of the Student Behavior Education Plan which relates to the reason(s) for the student's expulsion in the case involving this early readmission, or the early readmission privilege may be revoked and the original period of expulsion may be reinstated, subject to review by his IEP team.

5. **Adjournment**

It was moved by Arlene Silveira and seconded by Dean Loumos to adjourn the meeting at 5:57 p.m. Motion unanimously carried.

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Madison Metropolitan School District
Madison, Wisconsin

Jennifer Cheatham, Superintendent

BOARD OF EDUCATION SPECIAL MEETING Minutes

Doyle Administration Building
545 West Dayton Street, Room 103
Madison, Wisconsin

March 9, 2015

(Action in italics)

CLOSED SESSION

The Special meeting of the Board of Education was called to order by President Arlene Silveira at 5 p.m.

MEMBERS PRESENT: Mary Burke, Michael Flores, James Howard (arrived 5:12 p.m.), Ed Hughes, Dean Loumos, TJ Mertz, Arlene Silveira
MEMBERS ABSENT: None
STAFF PRESENT: June Wilson, Barbara Lehman—Recording Secretary

It was moved by Arlene Silveira and seconded by TJ Mertz to go into closed session pursuant to Wis. Stat. §§19.85(1)(a), (c), (f), and (g); 118.125; and/or 120.13(1)(e) for the purpose of reviewing and receiving advice from counsel regarding disciplinary proceedings and decisions involving individual students and for the purpose of considering the employment, promotion, compensation or performance evaluation data of public employees over which the governmental body has jurisdiction or exercises responsibility. Motion unanimously carried by those present.

1. Review and Receipt of Advice from Counsel regarding Disciplinary Proceedings and Decisions involving Individual Students pursuant to Wis. Stat. §§19.85(1)(a), (f), and (g); 118.125; and/or 120.13(1)(e)

 (18)
(Packets included a Standard of Review Checklist, background/recommendation information from legal counsel (3/5/15), and Hearing Officer Documentation (3/2/15). Copies are attached to the original of these minutes.)

June Wilson gave an oral summary of the case.

It was moved by Ed Hughes and seconded by TJ Mertz to approve the Hearing Examiner's recommendation.

Questions/Comments Topics from Board Members:

- » Disagreement with implications of violence.
- » Discussion about how principals' testimony should interpret board policy and speak to why an offense is expellable.
- » Clarified that Chief of Schools-Operations makes the recommendation, the Hearing Officer then establishes the Findings of Fact and the Board considers whether there is a threat to the health and safety of the school environment.

Motion unanimously carried with James Howard absent.

Follow up:

- » Looking for consistency such that everyone up for expulsion should be informed about the disposition and option of the RISE program.

James Howard arrived at this time.

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[REDACTED]
(Packets included a Standard of Review Checklist, background/recommendation information from legal counsel (3/4/15), Hearing Officer Documentation (2/20/15), and an Expulsion Off-Campus Instruction Form (3/4/15). Copies are attached to the original of these minutes.)

June Wilson gave an oral summary of the case.

It was moved by Ed Hughes and seconded by TJ Mertz to approve the Hearing Examiner's recommendation.

Questions/Comments Topics from Board Members:

- » Some discussion about making sure the student has the option of choosing the RISE program. It was indicated that the social worker had started on the conditions and was waiting for the board's decision as to the expulsion.
- » Continues to be some inconsistency around interpreting the BEP among the schools.

Motion unanimously carried.

June Wilson left the meeting at this time.

Jennifer Cheatham, Dylan Pauly, Kelly Ruppel, Heidi Tepp, and Luis Yudice joined the meeting at this time.

2. Consideration of employment, promotion, compensation or performance evaluation data of public employees over which the governmental body has jurisdiction or exercises responsibility, pursuant to Wis. Stat. Sec. 19.85(1)(c) 20

Two general employee updates were provided: 1) Black Hawk weekend happenings; 2) [REDACTED]

Anonymous communications have stopped and there is no perceived threat of violence. The superintendent would be speaking to the principal at Black Hawk and would keep the board apprised of how things go. 21

3. Adjournment

It was moved by Arlene Silveira and seconded by TJ Mertz to adjourn the meeting at 5:57 p.m.
Motion unanimously carried.

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**Madison Metropolitan School District
Madison, Wisconsin**

Jennifer Cheatham, Superintendent

BOARD OF EDUCATION SPECIAL MEETING Minutes

Doyle Administration Building
545 West Dayton Street, Room 103
Madison, Wisconsin

March 16, 2015

(Action in italics)

CLOSED SESSION

1. Call to Order

The Special meeting of the Board of Education was called to order by President Arlene Silveira at 5:07 p.m.

MEMBERS PRESENT: Mary Burke, Michael Flores, James Howard, Ed Hughes, Dean Loumos, TJ Mertz, Arlene Silveira
MEMBERS ABSENT: None
STAFF PRESENT: Jen Cheatham, June Glennon, Deirdre Hargrove-Kriehoff, Lisa Kvistad, Kelly Ruppel, Barbara Lehman—Recording Secretary

It was moved by Arlene Silveira and seconded by Michael Flores to go into closed session pursuant to Wis. Stat. Section 19.85(1)(c) for the purpose of considering the employment, promotion, compensation or performance evaluation data of public employees over which the governmental body has jurisdiction. Motion unanimously carried.

2. Consideration of employment, promotion, compensation or performance evaluation data of public employees over which the governmental body has jurisdiction or exercises responsibility, pursuant to Wis. Stat. Sec. 19.85(1)(c)

(Handouts included all the existing organizational charts and a list of reductions/reclassifications, general guidelines related to staffing and surplus process for schools and central office. Copies are attached to the original of these minutes.)

Dr. Cheatham noted that this was an informational meeting on the central office staff reductions. She reviewed the list and how the impacts would be managed. Organizational charts would be updated at the appropriate time. A timeline was distributed and reviewed in detail.

Questions/Comments Topics from Board Members:

- Confirmed that surplussed or laid-off staff stays for the rest of the school year.
- Clarification of the structural change to the OMGE division and supports left for the schools.
- Total positions/total savings with programmatic reductions.
- Response to guidance from last Operations Work Group meeting. Cuts this year are much heavier on the people side than last year.
- Confirmed that postings do not go up until surplussed teachers have been placed. New this year is the principal rating scale for surplussed teachers.
- More clarification questions about how surplus works. More surpluses mean less open positions.

Follow up:

- » Administration will update the board around April 17 on the status of staffing.

It was moved by Arlene Silveira and seconded by Ed Hughes to go into open session. Motion unanimously carried.

MEETING CONTINUED IN OPEN SESSION