

From: Michael Chiumento III michael3@legalteamforlife.com

Subject: RE: Re:

Date: March 12, 2023 at 12:15 PM

To: Gavin, Kristy gavink@flaglerschools.com, Paul Peacock jppeacock@juno.com

Cc: mittelstadt@flaglerschools.com, massaroc@flaglerschools.com, chongc@flaglerschools.com, furryw@flaglerschools.com, conklin@flaglerschools.com, hunts@flaglerschools.com, messina@fsba.org



Mrs. Gavin,

In an effort help Mr. Peacock in this effort, I am advising him on the process to ensure his due process rights are preserved. I briefly reviewed your email below. My comments are as follows.

- a. **The Rules:** I noticed you outlined with great specificity the process during this appeal. You cite to Policy 649. However, when I read that policy or other policies, it does not outline the process as you described. For example, you stated that the Board is not the “**trier of fact**” but then go on to talk about the submission of evidence. I am confused. Is the Board looking at evidence and if so, are they not determining if Mr. Peacock should be awarded his requested compensation? In addition, you stated that the Board will determine whether the “**Superintendent misapplied policy, administrative rules or statute**”. I have reviewed the Board Policies and cannot find any policy, administrative rule or statute adopted by the District to protect their employees from these situations. If possible, can you direct Mr. Peacock to such policies, administrative rules or statutes which he should be familiar with. Moreover can you provide him with those policies you assert govern this matter. Again, I apologize in advance if I missed anything. Also, it seems as if you are trying to describe the legal process similar to a petition of certiorari where a court would hear an appeal based on (i) abuse of discretion, (ii) due process and (iii) substantial competent evidence. If that is so, please direct me to the “policy, administrative rule or statute” that governs this matter so that Mr. Peacock can follow the law.
- b. **Conklin Conflict:** Mr. Peacock suggested that Mrs. Conklin has a conflict of interest and should not be part of this appeal. I refer you to Florida Statute 112.3134 which has been in place for years. If you “Google” this statute, I think you will find clear guidance from Attorney General Opinions and other tertiary publications about this issue. In that light, I do not think Mrs. Conklin has a legal conflict of interest. However, there may be a perceived conflict of interest given the factual background relied upon by Mr. Peacock. For example, Mrs. Conklin could be called as a witness to provide background on her communications (text, emails, etc) with the Superintendent about Mr. Peacock’s employment. It would be hard to suggest that Mr. Peacock could get a “fair shake” knowing Mrs. Conklin’s text messages directing the Superintendent to remove him from his position and telling the Superintendent that...”Paul is a nightmare”. Please remember that Mr. Peacock was removed from his position as directed by Mrs. Conklin about a month after her directive to the Superintendent. In that light, Mr. Peacock is concerned about Mrs. Conklin’s involvement in this process. I am sure you can understand his apprehension. In summary, I assert that Mrs. Conklin does not have a LEGAL conflict but may have a perceived one.
- c. **Deadlines:** I will advise Mr. Peacock about the deadlines you assert govern this process. However, as noted above, please direct me to the

policies, rules or statues that govern this to ensure Mr. Peacock complies with the them in an effort to avoid any distraction from the issue at hand.

As always, I greatly appreciate your help on this

## Michael D. Chiumento III

*Managing Partner*



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**From:** Gavin, Kristy <[gavink@flaglerschools.com](mailto:gavink@flaglerschools.com)>

**Sent:** Saturday, March 11, 2023 7:46 PM

**To:** Paul Peacock <[jppeacock@juno.com](mailto:jppeacock@juno.com)>

**Cc:** [mittelstadt@flaglerschools.com](mailto:mittelstadt@flaglerschools.com); [massaroc@flaglerschools.com](mailto:massaroc@flaglerschools.com); [chongc@flaglerschools.com](mailto:chongc@flaglerschools.com); [furryw@flaglerschools.com](mailto:furryw@flaglerschools.com); [conklinc@flaglerschools.com](mailto:conklinc@flaglerschools.com); [hunts@flaglerschools.com](mailto:hunts@flaglerschools.com); Michael Chiumento III <[michael3@legalteamforlife.com](mailto:michael3@legalteamforlife.com)>; [messina@fsba.org](mailto:messina@fsba.org)

**Subject:** Re:

Paul

Faul,

As previously stated in my earlier emails to you, in accordance with School Board Policy 649, if a complainant is not satisfied with the resolution by the Superintendent, he/she shall have the right to appeal the Superintendent's decision to the Board; provided the request for placement on the agenda is filed within 10 days. This is not a hearing, it is an appeal of the prior decision. The Board will not be sitting as a trier of fact, merely to review whether the Superintendent misapplied policy, administrative rules or statute when determining whether you were entitled to be paid a stipend; whether she misstated facts when applying the policy, rule or statute to the matter that resulted in an improper determination; or whether she abused her discretion in not granting your request to be paid a stipend for the 2022-2023 fiscal year. This is not a hearing and as a result, no new evidence will be permitted for submission to the Board. You will be provided 15 minutes to present your appeal to the Board. If you want to reserve up to 5 minutes for closing (a final statement to the Board you may do so). The Superintendent will also have 15 minutes to present her position on the matter being appealed. She will also be afforded the opportunity to reserve up to 5 minutes for a closing statement. The Board may have questions and you and the Superintendent will be able to respond to those questions. As previously outlined the deadline for the documentation is listed below.

#### Documents

As this is an appeal the Board will only review documentation you provided to Ms. Moore during the Level 1 grievance or documentation you attempted to provide to her during the level 1 grievance; and the Board will only consider the documentation you provided to Superintendent Mittelstadt during the level 2 grievance or attempted to provide to Superintendent Mittelstadt during the level 2 grievance.

Superintendent Mittelstadt may submit for the Board's consideration any additional documentation reviewed by Ms. Moore in rendering her Level 1 decision and any documentation reviewed by Superintendent Mittelstadt in rendering her level 2 decision.

This documentation is due by **5:00 p.m. on March 14, 2023**. When submitting your documentation to the undersigned please copy Superintendent Mittelstadt. Any documentation Superintendent Mittelstadt is placing before the Board for consideration must also be submitted to the undersigned with a copy to you by **5:00 p.m. on March 14, 2023**.

#### Rebuttal Documentation

You and Superintendent Mittelstadt will each have the opportunity to submit documentation believed to rebut the information submitted on March 14, 2023. This documentation must be received by the undersigned by **5:00 p.m. on March 20, 2023**. Again, any documentation that is submitted to the undersigned for consideration by the Board must be shared with the other party (Mr. Peacock/Superintendent Mittelstadt).

As set forth above the matter will be taken up by the board as an action agenda item at the **March 28, 2023 6:00** board meeting. I trust this clarifies any questions you may have on how this matter will be handled.

As to your question regarding board member Conklin; your email indicates you are claiming protections under the Whistleblower's Act. I have attached Flagler County School Board Policy 674 which has been adopted pursuant to Florida Statute 112.3187. The Whistleblower's Act, contained in sections 112.3187-112.31895, Florida Statutes, is intended to prevent agencies, or independent contractors of agencies, from taking retaliatory action against an employee who reports violations of law on the part of a public

retaliatory action against an employee who reports violations of law on the part of a public employer or an independent contractor. It protects any individual "who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer or employee." In order to qualify as a whistleblower complaint, particular information must be disclosed to certain statutorily designated officials. The act provides that for disclosures concerning a local governmental entity, such as a county or a school district, the information must be disclosed to a chief executive officer as defined in Section 447.203(9), Florida Statutes, or "other appropriate local official".

Further, pursuant to FS 112.3187(7), employees and persons who disclose information on their own initiative **in a written and signed complaint**; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity are protected. When a complaint is made to the Flagler County Official a determination has to be made as to whether it is the type of information described in the Whistleblower's Act. The following is taken into consideration, whether the complaint contains allegations conforming to section 112.3187(5)(a) and (b). More specifically, whether the complaint contains allegations alleging the following:

- a) "any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a **substantial and specific danger to the public's health, safety, or welfare.**" (emphasis added)
- b) "any act or suspected act of **gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty committed by an employee or agent of an agency or independent contractor**"

In addition to the above, when considering whether protection under the whistleblower's act is necessary, the source of the information as well as whether the information demonstrates reasonable cause to suspect a violation of the law.

Your email to me on March 8, 2023 sets forth you are seeking "protection under the whistle blower (sic) act for reporting unethical and hostile behavior by a school board member and that you believe you could be the victim of retaliation". Please advise who you filed your written, signed whistleblower complaint with at the School Board. As Policy 674 states, the information shall be disclosed to the appropriate entity having the authority to investigate, police, manage, or otherwise remedy the violation or act. As noted above, according to 112.3187(6) the information is to be disclosed to a chief executive officer as defined in Section 447.203(9). F.S. 447.203(9) sets forth that the "chief executive officer" for other public employers shall mean the person, whether elected or appointed, who is responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer.

The only attachment to your March 8 email was 8 pages of text messages. It does not appear you filed a written, signed complaint as required. Therefore, the protections afforded when a whistleblower complaint is made does not appear to exist. If you did in fact file the complaint, you failed to attach the complaint to your email. Could you please advise who you filed your initial written, signed whistleblower complaint with in Flagler Schools.

As to Dr. Conklin being disqualified from the appeal, I want to remind you she is 1 of 5 board members. You are requesting she be disqualified from the appeal based on the text messages you attached to your email. I have reviewed the text messages and contrary to your claim, the text messages did not direct the Superintendent to do

anything, but Dr. Conklin did express her frustration and provide her opinion on the incident that took place. As far as a Board member voting on an action, if a board member is present they are required to vote on any and all matters placed before them unless they have a conflict of interest that requires them to abstain from the vote. I will be providing a memorandum to the Board based upon AG opinions and case law. Please provide to the undersigned any case law that you believe applies to a case like this, where a board member needs to abstain from voting on a matter before them. It will be Dr. Conklin and the Board's decision on whether she should abstain from voting on the appeal. Therefore, as stated above if you have any case law you would like the Board and Dr. Conklin to consider please provide it to the undersigned by March 20. Regards,

Kristy J. Gavin  
School Board Attorney  
1769 East Moody Blvd., Bldg 2  
Bunnell, FL 32110  
(386)437-7526

On Wed, Mar 8, 2023 at 5:14 PM Paul Peacock <[jppeacock@juno.com](mailto:jppeacock@juno.com)> wrote:

Good afternoon Kristy,

I understand my request to have a board member disqualified from these proceedings is probably without precedence therefor I am seeking clarification for when a decision on Colleen Conklin being disqualified will be heard and decided. The text messages, obtained under the Freedom of Information Act, clearly demonstrate inappropriate and hostile communication, including the directive issued by Colleen Conklin to Cathy Mittelstadt to remove me from the bargaining team as the Chief Negotiator, which further demonstrates Ms. Conklin's prejudice toward me. Ms. Conklin has abused her power and created a hostile work environment (pages 1 - 3 attached). Ms. Conklin directed Ms. Mittelstadt to remove me from bargaining and made libelous statements about me (pages 4 - 6 attached). Ms. Conklin made unprofessional and hostile statements (pages 7 - 8 attached). Ms. Conklin's text messages are shaded.

I do not have confidence that I will receive a fair hearing of my grievance if Ms. Conklin is allowed to participate. I have dozens of documented events where Ms. Conklin, as a single board member, has inappropriately communicated and made demands in personnel and operational decisions that were carried out by Superintendent Mittelstadt as directed.

I seek protection under the whistle blower act, for reporting unethical and hostile behavior by a school board member, and believe I could be the victim of retaliation.

For clarification purposes please outline the appeal procedure scheduled to go before the board on March 28, 2023. I understand I have until March 14, 2023 to provide documentation to support my position. Please notify me of the decision regarding Ms. Conklin's participation in this process. If she is allowed to participate and my appeal is denied it is my understanding I would have the right to appeal the board's decision through the Division of Administrative Hearing in front of an administrative law judge.

Sincerely,  
Paul Peacock