

**Facility Schools Board
Minutes of Meeting February 6, 2009
Warren Tech, Founder's Room
13300 W. 2nd Place, Lakewood**

In attendance:

Board Members: Kay Cessna, David Molineux, Steven Ramirez, Brad Schultz, Barb Taylor, Laura Writebol
Staff: Ellen Hunter, Kama Linscome
Assistant Attorney General: Tony Dyl
Members of the public

1. Election of Chairman Pro-Tem

Steven Ramirez nominated Kay Cessna as the chairman pro-tem.
The motion was seconded by David Molineux.
There were no other nominations.
A motion was made by Steven Ramirez to elect Kay Cessna as the chairman pro-tem.
The motion was seconded by David Molineux.
Kay Cessna was elected chairman pro-tem by acclamation.

2. Approval of Agenda

A motion was made by Barb Taylor to approve the agenda as printed.
The motion was seconded by Steven Ramirez.
The agenda was approved as printed by acclamation.

3. Election of Officers

Tony Dyl, Assistant Attorney General, provided information regarding duties of the officers.

- Generally a Chairman and Vice Chair are elected. Basic duties of the Chairman are to run the meetings, recognize motions and seconds, call for votes.
- The chairman is the official spokesperson of the board if one is needed and would generally work with staff to set agendas for meetings.
- The Vice Chair serves when the chairman is not available.
A motion was made by Steven Ramirez to nominate Kay Cessna as the Chairman.
The motion was seconded by both David Molineux and Barb Taylor.
There was no further discussion.
Kay Cessna was elected Chairman by acclamation.

A motion was made by Steven Ramirez to nominate Barb Taylor as Vice Chairman.
The motion was seconded by Brad Schultz.
There was no discussion.
Barb Taylor was elected Vice Chairman by acclamation.

4. Open Meetings Requirements

Tony Dyl presented information regarding requirements of the Open Meetings Law including, duties as members of the Facility Schools Board, responsibilities as members of a public board and information on legal counsel and attorney client privilege (see Board Legal Orientation document for details).

- If the board requests legal advice, Tony will provide it in the form of a memo which has attorney client privilege. It will be up to the board to decide whether they wish to release or distribute the information.
- An individual member of the board cannot request legal advice, only the board as a whole and the request should go through the chair or the Facility Schools Unit.
- Board members have a duty of care – to act as a reasonable and prudent person would.
- Board members have a duty of loyalty – to act in the interest of the board and not in their own interest
- Open Meetings Act – Colorado has some of the most stringent rules in the country regarding open meetings. Any meeting of two or more board members to discuss business by phone, e-mail or any form of communication is considered a meeting and has to be open to the public.
- E-mail communications are considered part of the board records and are therefore open to the public. Keep all official business e-mails so that you have a record of them.
- Anything that is within the boards responsibilities is public business.
- A quorum is a majority of the board members. If there is a quorum, there must be public notice of the meeting.
- Notices of the meetings, including the time, place and agenda, must be posted in a public place. The board will need to decide where.
- While the agenda must be posted, it can be changed at the meeting.
- The same requirements apply to committees or constituted bodies – work groups or task forces appointed by the board.
- Open meetings regulations do not apply to chance meetings or social gatherings.
- Executive sessions are a closed meeting that can only be held for specific reasons such as for legal advice if there is pending or imminent litigation or if there is information that should be kept confidential.
- The reason for the executive session must be announced by the chair and must be approved by at least a 2/3 vote.
- The board cannot stray from the announced topic and cannot vote or even take a straw poll in the closed session. Voting must occur in a public session
- Any decisions made outside of a public meeting would be void.
- Barb Taylor asked about the implications for board members who will have regular contact at other meetings. Tony responded that reporting about what happened at prior board meetings is probably O.K., but any planning or discussions of future board action would not be.
- Kay Cessna asked for clarification as to whether discussions with staff are considered public meetings. They are not.

- Kay Cessna asked about the relationship between the Facility Schools Board and the State Board of Education and the Facility Schools Unit. The Facility Schools Board as a Type 1 board has independent authority as set by H.B. 08-1204. The Facility Schools Board does not supervise the Facility Schools Unit, the State Board of Education ultimately does. However, the Facility Schools Unit serves as staff to the Facility Schools Board and has the responsibility to implement the decisions the Facility Schools Board makes.

5. **H.B. 08-1204**

Kama Linscome – Facility Schools Unit reviewed the charge given to the Facility Schools Board by the legislation H.B. 08-1204 (see H.B. 08-1204 document for details).

- Creation of the Facility Schools Board
 - 7 member board
 - Representation of the board members
 - Collective expertise
 - Three year terms
- Duties of the Board
 - Adopt curriculum
 - Adopt accountability measures – including academic performance measures
 - Award high school diplomas
 - Make recommendations regarding:
 - The process for public placements and methods for improving the involvement of school districts
 - The process for private placements and methods by which a school district might be involved
 - Methods and strategies for improving the quality of education services
 - Methods for recruiting and retaining highly qualified teachers and paraprofessionals
 - The provision of appropriate services for students with disabilities
 - Methods of reimbursing approved facility schools for excess costs
 - The liability of the school districts of residence for providing a Free Appropriate Public Education
 - The oversight and monitoring of approved facility schools
 - And other issues
 - Promulgate rules for:
 - awarding high school diplomas
 - graduation requirements
 - the creation and maintenance of the list of approved facility schools including, the procedures by which a facility school may apply to be approved, information to be provided, reporting requirement, criteria for approval

6. **Operating Procedures**

Tony Dyl reviewed the draft Operating Procedures for the Facility Schools Board (see Draft Facility Schools Board Operating Procedures document for details).

- **Article 3 – Officers**

- The Facility Schools unit is appointed as secretary for purposes of taking minutes, doing postings, etc.
- The Chair and Vice Chair are elected.
- Describes how vacancies are to be handled.
- Lists the duties of the officers.
- A Chair pro tem is elected if there is not chair or vice chair.
- The Board may appoint members to serve on other boards or functions.

- **Article 4 – Powers and Duties of the Board**

- The duties of individual board members are listed.
- Generally, in the rule making process, the unit staff drafts the regulations. The board may choose to have task forces or other input on the content, but the unit staff does the drafting.

- **Article 5 – Meetings**

- The draft operating procedures state that the board will meet at least quarterly. This allows the board to meet as often as needed, but not less than quarterly without having to change the operating procedures.
- The regular schedule of meetings is decided by the Board and published.
- The Board can decide where to post the public notice of meetings. It can be posted at CDE since the Board is related to the Department of Education rather than at the actual meeting location.
- The chairman is responsible for the oversight of the agenda. The agenda is prepared by unit staff.
- If board members want something on the agenda, let Kay or the unit know at least 48 hours prior to the meeting.
- Each meeting will have an opportunity for the public to address the board.
- Voting is generally by roll call, but can also be accomplished by a show of hands if preferred.
- Kay Cessna asked if it is important to keep a record of how each person voted. For an elected board it is important for constituents to know how their representative voted, but for an appointed board it is not legally required. The Board may choose to keep track if they wish or if they believe it would be important.
- There is no voting by secret ballot except for the election of officers.
- The official record of the meeting will be the written minutes which are prepared and disseminated by the unit.
- Members can attend meetings by phone or video conference as long as they can hear, be heard and participate in the meeting. A member cannot just call in to vote, but can participate in a meeting and vote as part of the meeting.
- Absentee or proxy votes are not allowed.
- In the rule making process, the staff will draft the rules, at least one hearing must be conducted before adopting permanent rules.

- There is also a provision for adopting guidelines, which do not carry the same weight as rules, but can be used to share information about best practices and recommendations.

Discussion of Operating Procedures:

Voting:

Brad Schultz suggested that the Board use a roll call vote so that everyone has a voice.

A motion was made by Brad Schultz and seconded by Steven Ramirez to use a roll call for all votes.

The motion passed unanimously.

Public Notice:

A motion was made by Barb Taylor and seconded by Brad Schultz to post notices, minutes and other information on the web page, to send notices by e-mail, to physically post notices at CDE and to send notices through the "Scoop".

Discussion:

Staff offered the clarification that we can ask about the Scoop, but others make the decisions about what types of information are included.

Steven Ramirez asked the chair to entertain comments from the audience.

The general response from audience members was that e-mail was a good communication tool.

Brad Schultz asked Laura Writebol about how to notify social services personnel who might be interested. Unit staff will add them to the e-mail distribution list.

Barb Taylor restated the motion to post notices, minutes and other information on the web page, to send notices by e-mail to facilities, districts, social services liaisons and other interested parties, to physically post notices at CDE and to request staff to check into including notices in the "Scoop". The motion was seconded by Brad Schultz,

The motion passed unanimously.

Adoption of Operating Procedures:

A motion was made by Steven Ramirez to adopt the draft operating procedures and to thank Tony Dyl and Ellen Hunter for their work in preparing the draft. The motion was seconded by David Molineux.

Discussion:

Staff asked about the official record of the meeting. The draft operating procedures say that written minutes would be the official record. Does the board prefer written minutes or an audio record? Tony Dyl clarified that for rules hearings there must be an audio record. Brad Schultz stated that he would prefer a written record to refer to.

There were no amendments offered.

The motion to adopt the draft operating procedures was passed unanimously.

Schedule and Location of Regular meetings:

A motion was made by Steven Ramirez and seconded by Brad Schultz to schedule regular meetings at Warren Tech on the first Friday of the month unless there is a need to make an exception, from 8:00 until the agenda is completed – generally about 2:00.

The motion passed unanimously.

The following schedule for the remainder of 2009 was agreed to:

March 6

April 3

May 1

June 5

July 10 – instead of July 3

Aug 7

Sep 4

Oct 2

Nov 6

Dec 4

Conflict of Interest:

Kay Cessna asked Tony Dyl for clarification regarding conflict of interest.

Generally there would be a conflict of interest if a person's financial benefit would be impacted by a decision of the board. If that were the case, then the person should recuse themselves from that vote. Working on a part time contract through CDE to do training with facilities or on other projects, would probably not be a conflict of interest – decisions made by the board would not generally impact the contracted activities.

If as a facility representative, a decision will be made about the facility that the board members works for, then the board members should recuse themselves.

If the decision will apply to all facilities, then there is no problem. The board members themselves make the decision to recuse themselves.

Lunch break

7. Discussion of Priorities:

The legislation states that the board “shall” adopt curriculum, accountability measures and award high school diplomas. It “may” make recommendations about other issues.

The board members reviewed and discussed the other issues that are listed in the legislation, including:

- Placement procedures
- Improving educational services
- Recruitment and retention of qualified teachers
- Provision of services to students with IEPs
- Liability of schools districts

A motion was made by Kay Cessna and seconded by Barb Taylor to adjourn the meeting.

Meeting adjourned.