



Memorandum

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To: Hon. Solomon C. Stinson, Chair
and Members, Miami-Dade County School Board

From: Christopher Mazzella, Inspector General
for Miami-Dade County Public Schools

CC: Alberto Carvalho, Superintendent, Miami-Dade County Public Schools
Luis Garcia, Interim School Board Attorney
Jose Montes de Oca, Interim Chief Auditor

Date: July 8, 2009

Subject: OIG Investigation into the Leak of Non-public Information Derived from the
January 30, 2009 Executive Session of the School Board, IG09-18SB

In February 2009, the Miami-Dade County Public Schools (M-DCPS) Office of the Inspector General (OIG) began an investigation after receiving information that one or more attendees of an executive session of the M-DCPS School Board (School Board) may have leaked non-public information obtained during the meeting to the media.

On January 30, 2009, the School Board convened an executive session, closed to the public, to consider collective bargaining issues. Twenty individuals were in attendance at the meeting. The attendees were all nine School Board Members, the Interim Board Attorney, the Superintendent, eight members of his staff, and Mr. Thomas A. Cerra, a consultant to the school district. During the executive session, Luis Garcia, the Interim School Board Attorney, informed all present that Florida law prohibited the disclosure of any information revealed during the meeting to members of the public.

However, despite Mr. Garcia's admonition, *WFOR-TV* broadcast a story on the same day, which revealed information that had been discussed in the executive session. A *WFOR-TV* reporter stated that "sources" had contributed to the story. Also that same day, the *Miami Herald* posted on its website an article that purported to describe the contents of the discussions held during the executive session and revealed the fact that a non-binding consensus vote was taken; the outcome of that vote; and the proposal of requiring teachers and other employees to take two days of unpaid leave before the end of the fiscal year, which would then be compensated for in the next fiscal year. The article's author cited, as sources, "four people with knowledge of the private discussions." (Exhibit 1) The article was published in the newspaper the following day.

Our investigation included interviews by OIG Special Agents of all twenty (20) attendees of the executive session under oath. Based upon the investigation to date, the OIG

has been unable to determine who leaked the specific events of the meeting as reported in the media although our investigation did reveal that several members of the School Board did have conversations with the media shortly after the executive session.

However, as to the specific facts revealed by the media (that a vote was taken, the outcome of the vote, and the proposed two days of unpaid leave) no attendees admitted to being the one who leaked this information.¹

Despite the fact that the OIG has not been able to determine who leaked the information derived from the executive session, it is still important for the School Board to understand the possible legal and perceptual consequences of this action, or those of future leaks.

The Sunshine Law, Section 286.001, Florida Statutes, generally requires that discussions, deliberations, and formal actions undertaken by the School Board must be conducted in a manner that is open to the public. However, some actions by the School Board, including meetings to discuss collective bargaining issues, have been exempted from Sunshine Law requirements and, as such, are closed to the public. Section 447.605(1), Florida Statutes, *Public meetings and records law; exemptions and compliance*, provides that:

All discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from the provisions of s.286.011.

Not only are such discussions closed and exempted from the Sunshine Law, Section 447.605(3) also exempts work products developed in connection with the discussions from the public's right to inspect and copy them:

All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s.119.07(1).

The Florida Attorney General issued an advisory opinion (AGO 2003-09) that addressed the very issue subsumed by this investigation:

May a participant disclose information obtained during a meeting regarding labor negotiations that is closed pursuant to Section 447.605, Florida Statutes?

¹ One board member told the OIG that he/she corrected the Miami Herald reporter that the 3 "no" votes were not "no" but were abstentions. According to this board member, it was clear that the reporter had already been leaked the information about the consensus vote, and the vote's outcome of 6-3. Other board members told the OIG that they spoke to the reporter but only stated their personal opinions on the matter and that no inside information about the executive session was revealed.

The advisory opinion distinguishes between information discussed in the closed door meeting versus the work products themselves, and concludes that while Section 447.605 does not prohibit the dissemination of information, “[t]here are, however, other Florida laws prohibiting the disclosure of such information or subjecting the person disclosing the information to penalties, under certain circumstances.”

Specifically, the AGO 2003-09 points to Section 112.313(8), Florida Statutes, *Standards of conduct for public officers, employees of agencies, and local government attorneys*, which states that:

A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

With respect to Section 112.313(8), it is quite conceivable that the leaking of non-public information, derived from an executive session about collective bargaining to the media, which is then publicly reported, may be found to have been leaked for the benefit of the labor union. The content of those discussions—whether they are proposals, positions, or negotiating strategies—now out in the open, eventually benefits the labor union in its negotiations and, therefore, the leaking of such information may be violative of Florida Statutes and subject to serious penalties.

Of greater concern than legal consequences, however, is the negative perception created by the leak, namely, that the School Board cannot be trusted. Clearly, Florida law requires public access to School Board meetings to insure its actions are transparent. In very limited circumstances, however, the School Board by law can convene in secret session, thus removing its actions from public scrutiny, so that it can hold candid discussions about how it plans to negotiate with its labor organizations. When someone in attendance leaks the events of the secret meeting to the public via the media, as in this case, the question must be raised of whether the meeting should have been held in secrecy in the first place. In other words, if an attendee(s) cannot be constrained from divulging the events of secret meetings to the press or any other member of the public, then there should be no secret meeting at all.

Moving forward, it is recommended that any attendee of a School Board executive session who is asked any questions about the meeting by the news media, or any other member of the public, to simply answer with “NO COMMENT.” In short, any person who decides to attend an executive session, regardless of whether they believe it should or should not be held in the Sunshine, should be bound to the admonitions expressed by the School Board Attorney not to disclose any information acquired from the executive session to the public.

MiamiHerald.com

Posted on Fri, Jan. 30, 2009

Miami-Dade School Board considers freeze on worker raises

BY KATHLEEN McGRORY

Miami-Dade public school employees -- among them more than 40,000 teachers -- would have to wait one year to get raises and would be forced to take two days off without pay, according to a plan that got tentative approval from the School Board on Friday.

Meeting behind closed doors, the board voted to delay the raises -- which were due last July -- until the beginning of the fiscal year that begins July 1, sources told The Miami Herald.

Six of the nine board members voted for the plan and three abstained.

The meeting was exempt from open-records laws, which make an exception for sessions to discuss collective bargaining strategy. The district interprets state law to mean that neither board members nor staff are permitted to discuss what happens.

But four people with knowledge of the private discussions said board members decided the district doesn't have enough money in its current budget to pay employee raises, which would amount to \$72 million.

Teachers and other employees would also have to take two unpaid days before the fiscal year ends to save money, but the board said the employees would be compensated for those two days once the new fiscal year rolls around.

The board's vote Friday is not final. Board members must take an official vote in public and can change their minds. The next regular board meeting is scheduled for Feb. 11.

"Whatever the board decided behind closed doors is going to have to take place in public," said Karen Aronowitz, president of United Teachers of Dade. "We'll see who supports teachers and who has their priorities straight for children."

Sources said the meeting was to discuss Superintendent Alberto Carvalho's plan to cut more than \$50 million from the district's current budget by the end of the fiscal year.

District spokesman John Schuster said he was not permitted to discuss the session, but he did say the administration is exploring ways to deal with the \$50 million budget cut mandated by state lawmakers in the recent special legislative session.

"We are looking at ways of protecting the workforce and avoiding layoffs, stabilizing our economic picture and protecting educational programs for our students," Schuster said.

Board Chairman Solomon Stinson, Vice Chairwoman Marta Pérez, and board members Agustín Barrera, Wilbert "Tee" Holloway, Martin Karp and Perla Tabares Hantman supported Carvalho's initiative to trim the budget and hold off on the raises, according to sources.



Board members Renier Diaz de la Portilla, Larry Feldman and Ana Rivas Logan abstained from voting.

The salary increases were promised to teachers as part of a three-year contract signed in 2006. They range from \$190 to \$9,000 per employee, depending on tenure.

In June, former superintendent Rudy Crew said the district had not received enough funding from the state to pay for the increases. The School Board agreed and voted to open negotiations with the teachers' union.

District officials and union leadership went to the bargaining table in early July. But after several intense sessions, the union declared an impasse.

For months, teachers conducted rallies and gathered outside School Board meetings, urging board members to "honor their promise." Union leaders suggested dozens of money-saving measures.

Meanwhile, the district's financial crisis deepened. Carvalho identified an additional \$123 million deficit in the district's budget. And the state continued to slash education funding.

On Thursday, a special magistrate said the district should not have to fund the salary increases because of its dire financial situation.

The raises may become a Tallahassee issue.

Earlier this week, Republican state Sen. Alex Villalobos of Miami and Democratic state Rep. Luis Garcia of Miami Beach proposed legislation that would force state school districts to honor teacher contracts and pay the raises.

Members of the teachers' union celebrated the bill. But members of three other Miami-Dade schools labor unions argued that the proposal ignored bus drivers, maintenance workers, district police officers and other employees.