

The District School Board of Indian River County met on May 31, 2016, at 9:00 a.m. The meeting was held in the Teacher Education Center located in the School District Office at the J.A. Thompson Administrative Center located at 6500 – 57th Street, Vero Beach, Florida 32967. District School Board Members attending were: Chairman Dale Simchick, Vice Chairman Shawn R. Frost, and Board Members: Matthew McCain, Claudia Jiménez, and Charles G. Searcy. Dr. Mark J. Rendell, Superintendent of Schools; and Suzanne D’Agresta, School Board Attorney, were also present.

**Minutes of
Administrative (Evidentiary) Hearing for Employment Termination SDIRC Case No. 2016-01
and a Special Business Meeting**

- I. Meeting was called to order by Chairman Simchick.
Chairman Simchick stated that the hearing would be audio recorded and would be recorded by a Court Reporter. She said that there would be 5-minute breaks every hour, on the hour, with a 30-minute recess for lunch.

- II. Introduction of the Parties to the Administrative Hearing regarding Termination of Xiomara DeLuke – Chairman Simchick
Dr. Mark J. Rendell, Superintendent of Schools, introduced his Council, Elizabeth Coke from Law Offices of Richeson & Coke, P.A.; and Dr. William Fritz, Assistant Superintendent of Human Resources/Risk Management.

Nicholas A. Caggia, from Law Office of Thomas Johnson, introduced himself and his client, Xiomara DeLuke.

- III. Introductory Statement – Chairman Simchick
Chairman Simchick read the following for the record: This was an evidentiary hearing on the recommendation of the Superintendent for the termination from employment of Xiomara DeLuke, SDIRC Case No. 2016-01. The hearing was held in accordance with School Board Policy 3140 and Florida Statutes §1012.33, and the Florida Administrative Procedures Act Chapter §120.569 and §120.57. This hearing involved disputed questions of fact.

A Court Reporter would transcribe the proceedings and administer the oath to all persons testifying as witnesses. The Superintendent had the burden of proof and would present his case first. The parties would be provided an opportunity to make an opening statement limited to not more than 10 minutes each; and, at the conclusion of all the evidence, the parties would be provided an opportunity to make closing statements limited to not more than 10 minutes each.

Once the evidentiary portion of this employee termination hearing had concluded, the School Board Members would deliberate and rule on the recommendation(s) from the Superintendent.

The School Board's attorney would explain to the School Board Members any evidentiary issues or questions of procedure, as these questions may arise during the course of the hearing. Finally, during the course of the hearing, there would be periodic breaks, and if necessary, a scheduled lunch.

Point of Order: Mr. Caggia requested that the witnesses be sequestered. Mrs. D'Agresta spoke to the Board regarding the request. She recommended the Board not exclude anyone from the public hearing due to the requirements of the Sunshine Law. Chairman Simchick, hearing no objection from the Board, continued the hearing.

Mrs. Coke requested that all minor students' names be referred to by their initials only. Mr. Caggia said he did not object and requested further that any other identifying student language be stricken from the record. Chairman Simchick agreed to allow the attorneys to address this between each other. Mr. Caggia spoke in private to Mrs. Coke, in the presence of Mrs. D'Agresta.

IV. Opening Statements. Limited to 10 minutes each.

A. Superintendent

Mrs. Coke, on behalf of the Superintendent of Schools, gave an opening statement.

B. Employee

Mr. Caggia, on behalf of his client, Xiomara DeLuke, gave an opening statement.

Responding to both attorneys, Chairman Simchick asked if all public files would have the names of the students redacted. Chairman Simchick asked Mrs. D'Agresta to address the identification of students. Chairman Simchick, hearing no objection from the Board, asked Mrs. D'Agresta to speak to the Court Reporter, after the hearing, to address how student identification and evidence would be recorded.

A Board Member requested clarification from Mrs. D'Agresta as to the purpose of this hearing and whether or not it was to include a hearing on the employee's previous suspensions. Mrs. D'Agresta explained that the purpose of the hearing today was to address the recommendation for termination. Chairman Simchick said that the Board would address the question, regarding the suspensions hearings, at the end of this hearing.

V. Superintendent's Case

Chairman Simchick stated that, at this time, the Superintendent would present his case, call his witnesses, and introduce his exhibits. The Employee shall have the right to cross-examine witnesses and object to exhibits. The School Board Members would have the right to ask questions of each witness at the conclusion of each witness' testimony.

Mrs. Coke presented the Superintendent's case, presented exhibits, and called witnesses. The following witnesses were sworn in by the Court Reporter and gave testimony:

- Roxanne Decker, Principal at Gifford Middle School
- Craig Kinsley, Assistant Principal at Gifford Middle School
- R.C., Parent (for purposes of confidentiality, students and their parents are referred to with initials only)
- E.C., Student
- Dr. William Fritz, Assistant Superintendent
- J.T., Parent

Mrs. Coke presented Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, which were admitted into evidence. Mr. Caggia was given an opportunity to offer objections and to cross-examine the witnesses. School Board Members had an opportunity to ask questions.

VI. Employee's Case

Chairman Simchick stated that at this time, the Employee would present her case, call her witnesses, and introduce her exhibits. She stated that the Superintendent would have the right to cross-examine witnesses and object to exhibits. School Board Members would have the right to ask questions of each witness at the conclusion of each witness' testimony.

Mr. Caggia presented Mrs. Xiomara DeLuke's case, presented exhibits, and called witnesses. The following witnesses were sworn in by the Court Reporter and gave testimony:

- P.D., Student
- Dr. Mark J. Rendell, Superintendent of Schools
- Mrs. Xiomara DeLuke, Employee

Mr. Caggia presented Exhibits 1, 5, 8, and 13 which were admitted into evidence. Mrs. Coke was given an opportunity to offer objections and to cross-examine the witnesses. School Board Members had an opportunity to ask questions.

VII. Closing Statements. Limited to 10 minutes each.

A. Superintendent

Mrs. Coke gave closing remarks.

B. Employee

Mr. Caggia gave closing remarks.

C. School Board Members – any final questions

Chairman Simchick asked the Board if they had any final questions.

VIII. Close Evidence

Hearing no final questions, Chairman Simchick closed the evidence.

IX. School Board Member Deliberation and Decision – Chairman Simchick

Chairman Simchick noted that a majority vote of the membership of the School Board was required to sustain the Superintendent's recommendation. It was now time for the School Board to have its discussion and vote on the recommendations of the Superintendent, or it could reschedule and continue the discussions and have a vote at a later date, as long as all discussions and votes were conducted in accordance with §286.011, Florida Statutes. Mrs. D'Agresta was asked to speak to the Board regarding the hearing.

QUESTIONS DETERMINED BY THE SCHOOL BOARD

Chairman Simchick said that the next step in deliberation and decision was to go over the questions:

- a. Did Employee violate Rule 6A-5.056, Florida Administrative Code, and School Board Policy 3140, by committing acts which constitute misconduct in office?
Mr. McCain made a motion in the affirmative. Mr. Searcy seconded the motion and it carried unanimously, with a 5-0 vote.
- b. If no to question (a), find in favor of Employee on question (a), and move to question (f). N/A
- c. If yes to question (a), is such behavior a terminable offense?
Ms. Jiménez made the motion in the affirmative. Mr. Frost seconded the motion and it carried unanimously, with a 5-0 vote.
- d. If no to question (c), find in favor Employee on question (c) and move to question (f). N/A
- e. If yes to question (c), find in favor of Superintendent and move to question (f).

* * *

- f. Did Employee violate Rule 6A-10.081, Florida Administrative Code, and School Board Policy 3210, by failing to make reasonable effort to protect a student from conditions harmful to learning and/or a student's mental and/or physical health and/or safety?
Mr. Frost made a motion in the affirmative. Ms. Jiménez seconded the motion and it carried unanimously, with a 5-0 vote.
- g. If no to question (f), find in favor of Employee on question (f) and move to question (k). N/A
- h. If yes to question (f), is such behavior a terminable offense?
Mr. Frost made a motion in the affirmative. Mr. Searcy seconded the motion and it carried unanimously, with a 5-0 vote.
- i. If no to question (h), find in favor of Employee on question (h) and move to question (k). N/A
- j. If yes to question (h), find in favor of Superintendent and move to question (k).

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- k. Did Employee violate Rule 6A-10.081, Florida Administrative Code, and School Board Policy 3210, by intentionally exposing a student to unnecessary embarrassment or disparagement?
Mr. McCain made a motion in the affirmative. Mr. Frost seconded the motion and it carried unanimously, with a 5-0 vote.
- l. If no to question (k), find in favor of Employee on question (k) and move to question (p). N/A
- m. If yes to question (k), is such behavior a terminable offense?
Ms. Jiménez made a motion in the affirmative. Mr. McCain seconded the motion and it carried unanimously, with a 5-0 vote.
- n. If no to question (m), find in favor of Employee on question (m) and move to question (p). N/A
- o. If yes to question (m), find in favor of Superintendent and move to question (p).

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- p. Did Employee violate School Board Policy 5517.01, by retaliating against any person who reported, is thought to have reported, filed a complaint, or otherwise participated in an investigation or inquiry related to a complaint of aggressive behavior and/or bullying?
Mr. Frost made a motion in the affirmative. Mr. McCain seconded the motion and it carried unanimously, with a 5-0 vote.
- q. If no to question (p), find in favor of Employee on question (p) and move to question (u). N/A

- r. If yes to question (p), is such behavior a terminable offense?
Mr. McCain made a motion in the affirmative. Mr. Frost seconded the motion and it carried unanimously in favor of the motion, with a 5-0 vote.
- s. If no to question (r), find in favor of Employee on question (r) and move to question (u). N/A
- t. If yes to question (r), find in favor of Superintendent and move to question (u).

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- u. Did Employee violate School Board Policy 3140 by committing acts which constitute gross insubordination?
Mr. McCain made a motion in the affirmative. Mr. Frost seconded the motion and it carried unanimously in favor of the motion, with a 5-0 vote.
- v. If no to question (u), find in favor of Employee on question (u) and move to question (z). N/A
- w. If yes to question (u), is such behavior a terminable offense?
Mr. Frost made a motion in the affirmative. Mr. McCain seconded the motion and it carried unanimously in favor of the motion, with a 5-0 vote.
- x. If no to question (w), find in favor of Employee on question (w) and move to question (z). N/A
- y. If yes to question (w), find in favor of Superintendent and move to question (z). Mrs. D'Agresta advised the Board that there was no further need to continue with the questions. She said that it would be appropriate to move on to item X to establish the schedule and preparation of the Final Order.

End of Questions.

- X. Establish Schedule for Preparation of Final Order and Approval by the School Board – Chairman Simchick
Mrs. D'Agresta stated that her office normally prepared the Final Order for Board review that would be placed on the June 14 or the June 28 business meeting for approval.

As per Exhibit 13, a Board Member asked if the Board was required to schedule a hearing on the suspension matter. Mrs. D'Agresta said that the Superintendent and Human Resources would address the request. Ms. Jiménez moved approval of the process for preparation of Final Order on or before June 28, 2016. Mr. Frost seconded the motion and it carried unanimously, with a 5-0 vote.

- XI. Adjourn the Administrative Hearing – Chairman Simchick
Chairman Simchick adjourned the Administrative Hearing at 4:14 p.m.

Chairman Simchick called for a break.

Special Business Meeting Agenda

- XII. Called Special Business Meeting to Order
Chairman Simchick called the meeting to order at 4:37 p.m.
- XIII. Pledge of Allegiance to the Flag
- XIV. Public Comment
No requests were received to speak.
- XV. Special Business Meeting Agenda Item
 - A. Approval of Resolution #2016-11 to Levy 0.50 Mills for Essential Operating Purposes, to be presented to Voters at the August 30, 2016, Election in Indian River County – Mr. Morrison**

Section 1011.73(2), Florida Statutes authorized the School Board, pursuant to a resolution adopted at a regular meeting, to direct the County Commissioners to call an election at which the electors within the School District may approve an ad valorem tax millage as authorized in Florida Statute 1011.71 (9) Florida Statutes. Such election may be held at any time, except that not more than one such election shall be held during any 12-month period. Any millage so authorized shall be levied for a period not in excess of 4 years or until changed by another millage election, whichever was earlier. If any such election was invalidated by a court of competent jurisdiction, such invalidated election shall be considered not to have been held.

The essential operating millage, if approved by the voters, shall be levied for essential operating needs in order to provide high quality educational opportunities, retain highly qualified teachers, purchase and upgrade technology and supporting infrastructure, and implement and maintain Career and Technical programs, beginning July 1, 2017, and ending four fiscal years later. The School Board determined that it was in the best interest of the students in Indian River County to share the revenue generated by the 0.50 essential operating needs millage with the charter schools in Indian River County on a pro rata basis, established initially by the recalibrated unweighted full time equivalent (FTE) projection for each charter school and adjusted based upon the recalibrated October and February student survey counts of unweighted full-time equivalent (FTE) students, for each charter school to be used as described in the preceding paragraph. If approved, this millage would replace the existing voter approved 0.60 ad valorem millage that expired June 30, 2017, with annual reporting. Superintendent recommended approval.

Dr. Rendell gave a short introduction to this item. Mr. Morrison talked about the part dealing with funds that would be shared with charter schools. He noted the meetings held with the charter schools and that they gave full agreement of the Resolution. Chairman Simchick called for a motion. Mr. McCain moved approval of Resolution #2016-11 to Levy 0.50 Mills for Essential Operating Purposes, to be presented to Voters at the August 30, 2016, Election in Indian River County. Mr. Frost seconded the motion.

Board Members discussed the motion and made recommendations. Dr. Rendell stated that charter schools would be required to use their funds for the same usage as the School District, as would be stated in the newspaper. Mr. Morrison noted that there should be approximately \$1 million of the Levy given equally, per FTE student count, to charter schools, based on the 0.5 millage allocation. Dr. Rendell noted that Indian River would be the first School District to share the voter approved 0.50 mills with charter schools using a per student FTE count, pro rata. Mr. Morrison clarified that charter school students make up about 12.76% of the total student population. Mrs. D'Agresta stated that any change to the ballot language would require that they go back and rework the resolution. She said that she had received an email from the Charter Schools' attorney that the ballot language was accepted.

With no further discussion, the Chairman called for a roll call vote as follows:

Mr. Searcy	No
Mr. McCain	Yes
Ms. Jimenez	Yes
Mr. Frost	Yes
Chairman Simchick	Yes

The motion carried with a 4-1 vote.

B. Approval to Increase School Year 2015-2016 Estimated Expenditure for RFP #2015-29 to Multiple Vendors for a Continuing Contract for the Installation of Tile Flooring – Mr. Morrison

A request for Proposal (RFP) was promulgated for a continuing contract with flooring contractors for projects on an as needed basis. This RFP was presented and awarded on 6/23/2015 Agenda Item VII.B. The estimated financial impact for School Year 2015-2016 was estimated to be \$330,000. Due to a gap in tracking procedures that had now been identified and corrected, this approved amount was exceeded by \$146,284.00. This exceeded amount related to unforeseen District wide flooring needs. In addition to this overspent amount, there were seven additional pending projects totaling \$416,544.24. Superintendent recommended approval.

Chairman Simchick called for a motion. Mr. McCain moved approval to increase School Year 2015-2016 estimated expenditure for RFP #2015-29 to multiple vendors for a continuing contract for the installation of tile flooring. Mr. Frost seconded the motion. Board Members discussed the motion. Mr. Morrison said that they were asking for the funds now in order to start the summer projects, due to the shortened summer. He explained how the District exceeded the 2015-2016 budgeted amount and how the issue would not occur in the future. The Board voted unanimously in favor of the motion, with a 5-0 vote.

C. Approval of Personnel Recommendations – Dr. Fritz

Attached was a list of personnel recommendations that included personnel additions, terminations, and/or changes. Superintendent recommended approval.

It was noted that the header on the attachment should have been stated that it was an Action Item. Mr. McCain moved approval of the personnel recommendations and Ms. Jiménez seconded the motion. Board Members discussed the motion. The Board voted unanimously in favor of the motion with a 5-0 vote.

Added on 5/26/2016:

D. Petitioner’s Motion to Strike Respondent’s Exceptions or, in the Alternative, Motion to Extend Time to Respond to Respondent’s Exceptions in the matter of Indian River County School Board versus Brian Krystoforski (Employment Termination) DOAH Case 16-0271TTS – Chairman Simchick

The attached Petitioner’s Motion to Strike Respondent’s Exceptions or, in the Alternative, Motion to Extend Time to Respond to Respondent’s Exceptions was received May 20, 2016. The document was attached to this agenda item as #1. The attorney for the Petitioner/Superintendent requested the School Board strike the Exceptions to Recommended Order submitted by the Respondent/Employee.

The Exceptions were attached to this agenda item as #2. In the event the School Board did not strike the Exceptions, the attorney for the Petitioner/Superintendent had requested an extension of time until June 10, 2016, to prepare a response to the Exceptions.

Florida law provided that once a Recommended Order was issued by an Administrative Law Judge (ALJ), the parties to the matter had 15 days from the date of the Recommended Order to file any exceptions or objections to the Recommended Order. In this matter, the Recommended Order issued by ALJ Robert L. Kilbride was dated and filed May 2, 2016. The 15 day deadline for either party to file exceptions expired at the close of business on May 17, 2016. The Respondent/Employee apparently sent his exceptions by facsimile to the attorney for the Petitioner/Superintendent on May 20, 2016, after the close of business.

The first question for you to decide was whether you would grant the request of the attorney for the Petitioner and strike the Respondent's exceptions for being untimely.

If you grant the request to strike the exceptions, no further action was required at this time. If you deny the request to strike the exceptions, the attorney for the Petitioner had requested that she be allowed additional time to prepare and file a response to the exceptions. Under Florida law, if exceptions were filed to a Recommended Order, the opposing side had 10 days to prepare and file a response. In this matter, the Respondent's exceptions were filed with the attorney for the Petitioner on May 20, 2016. The 10 day deadline for the attorney for the Petitioner to file a response expired May 30, 2016, which was a holiday, so the deadline occurred the following business day, May 31, 2016. The attorney for the Petitioner had requested additional time for the reasons set forth on page 3 of her motion (#1 attached to the agenda item). Accordingly, the second question for you to decide was whether you would grant the request of the attorney for the Petitioner, and allow additional time for the Petitioner to prepare and file a response to the exceptions.

Mrs. D'Agresta stated that Mr. Krystoforski requested to postpone this item to the next business meeting. She said that she was in agreement to postpone due to the fact that he was scheduled to give a deposition for the School District on another matter. Mrs. D'Agresta said that she had confirmed that the starting time was 3:30 p.m. on this date. Chairman Simchick called for a motion. Mr. McCain moved approval to postpone until June 14, 2016. Ms. Jiménez seconded the motion and it carried unanimously, with a 5-0 vote.

- XVI. Adjourn Public Meeting
Meeting adjourned at approximately 5:31 p.m.