

WORK STUDY MEETING (Thursday, June 13, 2019)

Generated by Patricia Wright on Wednesday, June 26, 2019

**HEMPSTEAD PUBLIC SCHOOLS
BOARD OF EDUCATION
WORK STUDY MEETING
JUNE 13, 2019
MINUTES**

The work study meeting of the Hempstead Public Schools was held in the high school auditorium, 201 President Street, Hempstead, New York 11550. The meeting was called to order at 7:10 P.M. All of the Board Members were present. The Acting Superintendent offered remarks and congratulated the fifth grade moving up classes. She also commended the girls track team on their success with moving to the Nationals competition in North Carolina. The Board proceeded with the agenda.

A. MEETING OPENING**BOARD MEMBERS PRESENT:**

LaMont Johnson, President
Carmen Ayala Vice, President
David B. Gates, Trustee
Patricia Spleen, Trustee
Randy Stith, Trustee
Jack Bierwirth, Trustee Ex-Officio

STAFF MEMBERS PRESENT:

Regina Armstrong, Acting Superintendent
Rodney Gilmore, Ed. D., Associate Superintendent for Human Resources
James Clark Assistant Superintendent for Special Projects
Djuana Wilson, Assistant Superintendent for Special Education
Patricia Wright, District Clerk
John Sheahan, General Counsel
Johnathan Scher, Labor Counsel
Monte Chandler, Special Counsel

Procedural: 1. Pledge of Allegiance

Procedural: 2. Moment of Silence

B. PRESIDENT'S REMARKS**C. ACTING SUPERINTENDENT'S REMARKS****D. COMMENDATIONS/PRESENTATIONS****E. OTHER AGENDA ITEMS****F. BOARD OPERATIONS**

Trustee Ayala moved, seconded by Trustee Spleen to convene to executive session at 8:29 P.M. to meet with the Internal Auditor, personnel discussion of personal a particular individual and legal counsel advice.

MOTION**YES 5****MOTION CARRIED**

To convene to executive session

Trustee Stith moved, seconded by Trustee Spleen to reconvene to open session at 12:16 A.M.

MOTION**YES 5****MOTION CARRIED**

To reconvene to open session

Trustee Ayala moved, seconded by Trustee Johnson to approve the First Student contract extension as indicated.

G. BUSINESS & OPERATIONS

1. RESOLVED that the Board of Education approves the Acting Superintendent's recommendation to approve contract extensions with First Student in accordance with the First Student letter dated 6/5/19.

MOTION**YES 5****MOTION CARRIED**

To approve the First Student contract extension

STIPULATION OF SETTLEMENT PULLED**H. STIPULATION OF SETTLEMENT**

WHEREAS, the Acting Superintendent of Schools, by Labor Counsel for the District, has negotiated an agreement resolving certain administrative proceedings as between the District, and the Board, on the one hand, and Employee Number 1393, on the other hand, and

WHEREAS, the Board has concluded, based upon the recommendation of the Acting Superintendent that it is in the best interests of the District to resolve said administrative proceedings by means of the negotiated Stipulation of Settlement, which was executed by said Employee on June 11, 2019; be it

RESOLVED, that the Board hereby approves and adopts the Stipulation of Settlement, and with it the resolution of the administrative proceedings concerning said Employee, which Stipulation of Settlement shall be kept on file in the District's Office of Human Resources, pursuant to its terms and it is

FINALLY RESOLVED, that the Board hereby authorizes the Board President or authorized designee to execute the Stipulation of Settlement on behalf of the District and the Board.

Trustee Stith moved, seconded by Trustee Johnson to approve the use of facilities as amended

I. FACILITIES

1 . RESOLVED, that the Board of Education approves the Acting Superintendent's recommendation to grant use of facilities to the organization listed below. The group **requests a waiver** of the specified fee, which is based on the "Fee Schedule" in Board of Education Policy.

Day: Sunday's

Date: September 8, 2019-
November 10, 2019

Hempstead Raiders, Inc.
7 Seaman Avenue
Hempstead, NY
Contact: Keith Newton-
Smith
516-902-1675

Middle School Field for
Nassau-Suffolk Youth
football League

Time: 9 am to 5pm

Cost: \$ ~~21,190.00~~
\$11,000

Insurance: On file
Principal Approval: Approved

MOTION

YES 5

MOTION CARRIED

To approve the use of facilities
as amended

J. PUPIL PERSONNEL SERVICES

Trustee Ayala moved, seconded by Trustee Stith to ratify the approval of the field trip.

K. FIELD TRIPS

RESOLVED, that the Board of Education approves the Acting Superintendent's recommendation to permit four students (The Girls Track Team) and three chaperons to go to Greensboro North Carolina to participate in the 2019 New Balance National Outdoor 29th Edition Outdoor Nationals, which they qualified for last week. This will be funded from the high school activity fund at a cost of \$4,250. Two of the chaperones have paid their own way.

MOTION

YES 5

MOTION CARRIED

To ratify field trip approval

Trustee Johnson moved, seconded by Trustee Ayala to approve the tenure recommendations as indicated.

L. PERSONNEL

TENURE RECOMMENDATIONS

1. RESOLVED, that in compliance with the provisions of Section 3012 of the Education Law and Part 30.3 of the rules of the Board of Regents and upon the recommendation of the Acting Superintendent of Schools that **Jamise Valentine**, a probationary Elementary Teacher in the Elementary Education tenure area, it having been shown that Jamise Valentine holds a valid New York State Certification No. (on file in the Office of Human Resources) to serve in the aforementioned tenure area. It further having been shown that the probationary period of Jamise Valentine to serve in the district will expire on 10/25/19. The Board of Education of the Hempstead Public Schools does hereby grant tenure and appoint to tenure, Jamise Valentine, effective **10/25/19** to the position of **Elementary Teacher** in the **Elementary Education** tenure area

2. RESOLVED, that in compliance with the provisions of Section 3012 of the Education Law and Part 30.3 of the rules of the Board of Regents and upon the recommendation of the Acting Superintendent of Schools that **Natalie Lindo**, a probationary Elementary Teacher in the Elementary Education tenure area, it having been shown that Natalie Lindo holds a valid New York State Certification No. (on file in the Office of Human Resources) to serve in the aforementioned tenure area. It further having been shown that the probationary period of Natalie Lindo to serve in the district will expire on 8/30/19. The Board of Education of the Hempstead Public Schools does hereby grant tenure and appoint to tenure, Natalie Lindo, effective **8/30/19** to the position of **Elementary Teacher** in the **Elementary Education** tenure area..

3. RESOLVED, that in compliance with the provisions of Section 3012 of the Education Law and Part 30.3 of the rules of the Board of Regents and upon the recommendation of the Acting Superintendent of Schools that **Tannya Sparacio**, a probationary Bilingual Elementary Teacher in the Bilingual Elementary Education tenure area, it having been shown that Tannya Sparacio holds a valid New York State Certification No. (on file in the Office of Human Resources) to serve in the aforementioned tenure area. It further having been shown that the probationary period of Tannya Sparacio to serve in the district will expire on 8/30/19. The Board of Education of the Hempstead Public Schools does hereby grant tenure and appoint to tenure, Tannya Sparacio, effective **8/30/19** to the position of **Bilingual Elementary Teacher** in the **Bilingual Elementary Education** tenure area.

4. RESOLVED, that in compliance with the provisions of Section 3012 of the Education Law and Part 30.3 of the rules of the Board of Regents and upon the recommendation of the Acting Superintendent of Schools that **Delmy Bermudez**, a probationary ENL Teacher in the ENL Education tenure area, it having been shown that Delmy Bermudez holds a valid New York State Certification No. (on file in the Office of Human Resources) to serve in the aforementioned tenure area. It further having been shown that the probationary period of Delmy Bermudez to serve in the district will expire on 8/31/19. The Board of Education of the Hempstead Public Schools does hereby grant tenure and appoint to tenure, Delmy Bermudez, effective **8/31/19** to the position of **ENL Teacher** in the **ENL Education** tenure area.

5. RESOLVED, that in compliance with the provisions of Section 3012 of the Education Law and Part 30.3 of the rules of the Board of Regents and upon the recommendation of the Acting Superintendent of Schools that **Lorna Strachan**, a probationary Elementary Teacher in the Elementary Education tenure area, it having been shown that **Lorna Strachan** holds a valid New York State Certification No. (on file in the Office of Human Resources) to serve in the aforementioned tenure area. It further having been shown that the probationary period of Lorna Strachan to serve in the district will expire on 10/18/19. The Board of Education of the Hempstead Public Schools does hereby grant tenure and appoint to tenure, Lorna Strachan, effective **10/18/19** to the position of **Elementary Teacher** in the **Elementary Education** tenure area.

6. RESOLVED, that in compliance with the provisions of Section 3012 of the Education Law and Part 30.3 of the rules of the Board of Regents and upon the recommendation of the Acting Superintendent of Schools that **Lisette Velez**, a probationary Guidance Counselor in the Guidance Counselor tenure area, it having been shown that Lisette Velez holds a valid New York State Certification No. (on file in the Office of Human Resources) to serve in the aforementioned tenure area. It further having been shown that the probationary period of Lisette Velez to serve in the district will expire on 8/31/19. The Board of Education of the Hempstead Public Schools does hereby

grant tenure and appoint to tenure, Lisette Velez, effective **8/31/19** to the position of **Guidance Counselor** in the **Guidance Counselor** tenure area.

7. RESOLVED, that in compliance with the provisions of Section 3012 of the Education Law and Part 30.3 of the rules of the Board of Regents and upon the recommendation of the Acting Superintendent of Schools that **Arlise Carson**, a probationary Elementary Principal in the Elementary Principal tenure area, it having been shown that Arlise Carson holds a valid New York State Certification No. (on file in the Office of Human Resources) to serve in the aforementioned tenure area. It further having been shown that the probationary period of Arlise Carson to serve in the district will expire on 9/27/19. The Board of Education of the Hempstead Public Schools does hereby grant tenure and appoint to tenure, Arlise Carson, effective **9/27/19** to the position of **Elementary Principal** in the **Elementary Principal** tenure area.

8. RESOLVED, that in compliance with the provisions of Section 3012 of the Education Law and Part 30.3 of the rules of the Board of Regents and upon the recommendation of the Acting Superintendent of Schools that **Kelly Fairclough**, a probationary Elementary Principal in the Elementary Principal tenure area, it having been shown that Kelly Fairclough holds a valid New York State Certification No. (on file in the Office of Human Resources) to serve in the aforementioned tenure area. It further having been shown that the probationary period of Kelly Fairclough to serve in the district will expire on 8/23/19. The Board of Education of the Hempstead Public Schools does hereby grant tenure and appoint to tenure, Kelly Fairclough, effective **8/23/19** to the position of **Elementary Principal** in the **Elementary Principal** tenure area.

MOTION

YES 5

MOTION CARRIED

To approve the tenure recommendations as indicated

Trustee Stith moved, seconded by Trustee Spleen to approve hand carry #1 waving policy 2342 as indicted.

HAND CARRY # 1

RESOLVED, that the Board of Education approve to waive policy # 2342 "Agenda Preperation and Dissemination" for the meeting of July 13, 2019.

MOTION

YES 5

MOTION CARRIED

To waive policy #2342

Trustee Stith moved seconded by Trustee Spleen to approve hand carry # 2 as written.

HAND CARRY #2

WHEREAS, on April 27, 2017, the Board adopted a resolution appointing Shimon Waronker, Ed.D. ("Waronker") as Superintendent of Schools commencing on July 1, 2017, pending and conditioned upon the completion of contract negotiations over the terms of his compensation and other terms and conditions of employment; and

WHEREAS, on May 11, 2017, the Board adopted a resolution hiring Waronker as Superintendent of Schools commencing on July 1, 2017 and authorizing the then president of the Board of Education

("BOE" or "Board") to executed a four (4) year contract with Waronker, for a term commencing July 1, 2017 and ending on June 30, 2021; and

WHEREAS, on May 31, 2017, the Board adopted a resolution changing Waronker's start date of his employment with the District from July 1, 2017 to June 2, 2017; and

WHEREAS, on June 2, 2017, Waronker commenced his employment with the District; and

WHEREAS, pursuant to Commissioner of Education Decision #14,185, namely, Application of Karpen, 39 Ed Dept Rep 98 (1999), each and every school superintendent must take and file a timely oath of office subsequent to the Superintendent's appointment to hold the office of Chief Executive Officer of the School District pursuant to NYS Education Law §1711(2)(a); and

WHEREAS, on November 8, 2015, the Commissioner of Education re-affirmed the 1999 holding set forth in the seminal case, Application of Karpen, in the Commissioner of Education Decision and Order in the Buffalo Schools receivership case entitled, In the Matter of the Resolution of Unresolved Issues Regarding a Receivership Agreement Pursuant to Education Law § 211-f(8), finding that the Superintendent of Schools had taken and filed his oath of office to hold his seat as Superintendent of Schools, and stating, in footnote 9, that, "I note that Public Officers Law § 30(1)(h) requires that a public officer execute and file his or her oath of office within 30 days after commencement of the term of office to which he or she has been appointed or elected."; and

WHEREAS, pursuant to N.Y. Public Officers Law § 30.1.h., a Superintendent of Schools must take and file an oath of office within thirty days after his appointment to the position; and

WHEREAS, pursuant to N.Y. Public Officers Law § 30.1.h., the failure to file an oath of office with the District generally, and more specifically with the District Clerk, automatically creates a vacancy in the position of Superintendent of Schools by operation of law; and

WHEREAS, pursuant to Matter of Scro v. Board of Education of Jordan-Elbridge Central School District, 87 A.D.3d 1342, 1343 (3d Dept 2011), if the person appointed to hold an office for which an oath is required fails to timely take and file an oath of office for said appointment, then the office to which the person is appointed "automatically becomes vacant" and no hearing on charges is required to dismiss him/her from such office deemed vacated; and

WHEREAS, pursuant to Comins v. County of Delaware, 66 A.D.2d 966 (3d Dept 1978), New York law provides that the "[f]ailure to file an oath of office within the time prescribed by section 30 of the Public Officers Law vitiates the appointment and the office becomes vacant"; and

WHEREAS, pursuant to People ex rel. Walton v. Hicks, 173 A.D. 338 (3d Dept. 1916) New York law provides that: "[t]he statute is emphatic and unequivocal. It does not seem possible that it can be misunderstood. In case a person appointed to office neglects to file his official oath within [thirty] days after notice of appointment or within [thirty] days after the commencement of the term of office, the office becomes vacant, ipso facto, That is all there is to it. No judicial procedure is necessary; no notice is necessary; nothing is necessary. The office is vacant, as much so as though the appointee were dead; there is no incumbent, and the vacancy may be filed by proper appointive power"; and

WHEREAS, pursuant to Greene v. McGuire, 683 F.2d 32, 35 (2d Cir. 1982), New York law provides that the filing of an oath of office is a condition of the job of Superintendent of Schools, which was not within the control of the District, but a "limitation as explicit as a clause in [his/her/the Superintendent of School's] contract."; and

WHEREAS, pursuant to *Toro v. Malcolm*, 44 N.Y.2d 146 (1978), New York law provides that the failure to file a timely oath of office means that the office is automatically vacated and does not authorize an award of back pay; and

WHEREAS, based upon discovery demands made by Waronker in connection with the contract and the District's intended course of action to terminate his contract of employment, the District's General Counsel recently discovered, as he prepared to be questioned as a witness by Waronker, that Waronker failed to file an oath of office with the District Clerk at any time from June 2, 2017 to the present date; and

WHEREAS, the District's General Counsel uncovered the fact that Waronker did not file an oath of office with the District Clerk only after he was identified by Waronker as a person to be deposed and examined regarding his emails, inasmuch as in the course of his preparations for being questioned and his testimony taken in advance of the arbitration between the District and Waronker, the District's General Counsel realized that he never witnessed Waronker taking an oath of office; and

WHEREAS, the Board has considered that Waronker may have had a religious objection to taking an oath, but after reviewing the Waronker's N.Y. Municipal Law § 50-h hearing transcript of Waronker, where Waronker affirmed to the truth of his statements, the Board has determined that Waronker did not file with the District Clerk any affirmation in lieu of an oath of office, and thus failed to satisfy the obligation of taking and filing an oath of office with the District Clerk; and

WHEREAS, the District Clerk maintains the books and records of all oaths taken and filed with the District, and has reviewed the District's records and confirmed the District's General Counsel determination that Waronker failed to take and file an oath of office for him to serve as the District's Superintendent of Schools with the District Clerk at any time from June 2, 2017 to the present date.

NOW THEREFORE, the Board:

RESOLVES, that the office of the District's Superintendent of Schools is deemed vacant pursuant to N.Y. Public Officers Law § 30.1.h., and pursuant to Commissioner of Education Decision #14,185, namely, *Application of Karpen*, 39 Ed Dept Rep 98 (1999), as affirmed on November 8, 2015, by the Commissioner of Education, in the case entitled, *In the Matter of the Resolution of Unresolved Issues Regarding a Receivership Agreement Pursuant to Education Law § 211-f(8)*; and further

RESOLVES, that the office of the District's Superintendent of Schools, held by Waronker, is declared vacant; and further

RESOLVES, that the contract between the District and Waronker is hereby determined to be void, nullified, and of no force and effect, because Waronker failed to timely file his oath of office pursuant to N.Y. Public Officers Law § 30.1.h., as required by Commissioner of Education Decision #14,185, namely, *Application of Karpen*, 39 Ed Dept Rep 98 (1999), which requires each and every school superintendent to take and file a timely oath of office subsequent to the Superintendent's appointment to hold the office of Chief Executive Officer of the School District pursuant to NYS Education Law §1711(2)(a), and as required further by the Commissioner of Education's re-affirmation of said requirement of office, in the case entitled, *In the Matter of the Resolution of Unresolved Issues Regarding a Receivership Agreement Pursuant to Education Law § 211-f(8)*, dated November 8, 2015; and further

RESOLVES, that inasmuch as the contract between the District and Waronker is hereby determined to be void, nullified, and of no force and effect, Labor Counsel is directed to notify the hearing officer in the presently pending proceeding at JAMS, of the Board's determination to declare the vacancy

and its act to declare the contract with Waronker null and void for his failure to timely take and file his oath of office, and seek the termination of the hearing by the Hearing Officer; and further

RESOLVES, that the District's Business Office is directed to stop paying Waronker his salary and benefits, commencing on and effective from June 14, 2019; and further

RESOLVES, that Regina Armstrong is appointed Interim Superintendent of Schools, commencing on and effective immediately.

MOTION

YES 5

MOTION CARRIED

To approve hand carry # 2
as written.

***** The District Clerk administered the oath of office to Regina Armstrong as Interim Superintendent of Schools.**

**Trustee Johnson moved to adjourn the meeting at 12:19 A.M.
Adjournment failed due to lack of a second.**

There were a series of questions being brought forth by the President directed to Labor Counsel, the recommendation from General Counsel was to call for another executive session.

Trustee Stith moved, seconded by Trustee Johnson to convene to executive session for the 2nd time at 12:27 A.M. for advice of Labor Counsel

MOTION

YES 5

MOTION CARRIED

To convene to
executive session

Trustee Ayala left the meeting at 12:57 A.M.

Trustee Gates moved, seconded by Trustee Spleen for reconvene to open session at 1:18 A.M.

MOTION

YES 4

MOTION CARRIED

To reconvene to
open session

N. ADJOURNMENT

Action: 1. Adjourn

Trustee Stith moved, seconded by Trustee Johnson to adjourn the meeting at 1:19 A.M.

MOTION

YES 4

MOTION CARRIED

Meeting adjourned

Respectfully submitted:

Patricia Wright
District Clerk