

RECORD OF PROCEEDINGS

PEYTON SCHOOL DISTRICT 23-Jt BOARD OF EDUCATION SPECIAL MEETING November 16, 2016 7:00 P.M. Peyton Elementary School

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Board President Frohbieter called the meeting to order at 7:00pm.

II. ROLL CALL

Members present: Mr. Eckelberry, Mr. Frohbieter, Mr. Hanks, Mr. Holmes and Mrs. Lee.

Kelly Dude was present as legal counsel for the Peyton School District.

The Charter School presented a

III. DISCUSSION ITEM

A. Discussion of Legal Letter-11 Breach of Contract Items by The Career Building Academy

Mr. Wootten is no longer the attorney for The Career Building Academy. Eric Hall has been retained as their attorney but was not present for the meeting. Mr. Kistler suggested that we go through the line items one by one that has been in violation. Mr. Null introduced the Board of the Charter School (Mr. Null, President, Henry Allen, Vice President, Gerry Goutkier, Director, and Ferdale Huey, Director and distributed the Organization Chart of the Charter School. Mr. Allen was unable to attend. The rest of the TCBA Board and Mrs. Baumgartner were present. Mr. Null gave an Executive Summary; the Contract is with the Corporate Headquarters which provides support to the school. The school buys fees such as legal, rent, etc. They submitted their Certificate of Occupancy on October 4 and are waiting for approval. Their current enrollment is 61 students. They have two project sites. Nine students are on track to graduate in December. Their transparency has been updated, the audit completed, and posted to their website. All staff background checks have been completed.

The letter was delivered to The Career Building Academy (TCBA) -Peyton Charter School (PCS) Board, their attorney at the time Richard Wooten, and Mrs. Baumgartner

1. Set up a school, and, according to your October 3, 2016 memo, begun operations in a facility on a site (18005 US Highway 24) which has not been approved by the District's Board of Education. See Article 2.3:

The site needs to be approved per the contract. Mrs. Baumgartner replied that TCBA provided the Certificate of Occupancy to the Board to be voted on but they are still waiting for approval. Mr. Kistler stated TCBA looked at different sites and were first rejected, the second the Peyton School Board doesn't know too much about then TCBA was able to work with Mr. Kovitz and set a modular on his property. They came to the Peyton Board and asked them to approve the location without the Certificate of Occupancy in place; they stated no educational process going on at that facility. Their request was prior to the October Meeting Board Meeting, but the Peyton School Board (PSD) voted not to approve the site because the Certificate of Occupancy was not in place. They have not requested that the site to be approved as per the contract. Mr. Null stated they asked to approve the Certificate of Occupancy. Kelly Dude referenced page 10 of the response dated September 1, that an alternate site was ready to be approved. Mrs. Baumgartner said the Board made it clear that they were not approving the modular since TCBA did not have the Certificate of Occupancy. TCBA sent the Certificate of Occupancy to Mr. Kistler and have not heard anything in response. They submitted it in October and thought they would hear from the Board at the next meeting. Mrs. Baumgartner then asks to be added to the next Board Meeting's Agenda which would be November 21, 2016. Mr. Null did state that they did try to work with the church and with the site behind the post office then were able to work with Mr. Kovitz. Mr. Holmes said if there was an existing building and they asked to approve it then that it is one thing, but if it is a piece of land and TCBA came to the PSD School Board and said here is a piece of land would you approve the site? Well that never happened and now the building is on it. Mr. Holmes asked if they were operating a school at the US Highway 24 location. Mr. Kistler noted that the Charter School has to follow the same guidelines as a public school there can be no firearms, tobacco, and drugs. Is Mr. Kovitz aware of that? Mr. Holmes added, "you put the cart before the horse because you did not get the site approved". Mr. Null said the contract says the facility needs to be approved. Mr. Kistler referred to the contract which says the site must be approved. Mr. Kistler stated that there was no movement until D11 letter was issued then TCBA went to the church, then the second location and neither one was requested to be approved by the PSD Board of Education. Mrs. Baumgartner said it was not the intent for the Charter School to close and it was quite the surprise when the charter could not operate in Colorado Springs. It was not their intent to go behind the Board and find a place to serve the children. 48 of their children returned from the previous year. She went on to say that until July, Mr. Frohbieter and Mr. Kistler were at every TCBA Board Meeting then things broke apart. Mr. Null stated Mr. Dawson and Mr. Bond resigned from the Board in July, and he said they were going to get organized. Mr. Null and Mr. Kistler met and Mr. Null thought they were doing a good thing. Mr. Frohbieter added that to say that they did not know what they were

doing is inaccurate because Mrs. Morales-Cress sent out the email stating that she was not going to tell the PSD Board of Education where the school site would be because she thought the PSD Board of Education was trying to ambush what TCBA was trying to do. Mr. Null threw himself at the mercy of the Board again and thinks he has fixed the issues. He told Mr. Dude as of now; TCBA is not operating at the site on US Highway 24. Where are the 61 students attending? Mrs. Baumgartner and Mr. Null both replied at the Tia Juana Campus. Mr. Null added they had 16 referrals from D11 in the last 2 weeks. Mr. Null has proof that D11 approved Tia Juana as the satellite district last year.

2. Engaged in commingling of its funds with those of its CEO and his plumbing business in violation of Article 2.5;

Mr. Kistler stated that looking through the Check Registers on TCBA's website there are loans mentioned to Mr. Johnson and reimbursements to Tia Juana Properties. (Item number 4 of the procedure also ties in with this item.) Mr. Kistler asked if they had any comments on loan payments made to Mr. Johnson. Mrs. Baumgartner said, "unfortunately no". Mr. Null stated that there was no plumbing business. There was a Johnson Plumbing and Heating business but it closed in 2014. Mr. Null stated to their knowledge, and he spoke to Mr. Johnson extensively, no exchange or mixing of money occurred. Mrs. Kirchner referenced their website that loan payments were made out to Mr. Johnson. Mr. Null said Mr. Johnson is CEO of Corporation. He received checks. Mr. Kistler asked doesn't Mr. Johnson's son work for the plumbing business, and if not when did he stop? Mrs. Baumgartner said that he does not anymore. Mr. Null said he has not since he has been on the Board. Mr. Kistler said the time frame we are looking at is 2015-2016. Mrs. Baumgartner said the Johnson Brothers do still have a business. The phone rings at their Tia Juana location and then is forwarded to another location. They also use the trash receptacle; but other than that they are not there. Mr. Kistler said that Mr. Johnson's son had a desk in Mr. Johnson's office in 2015-2016. Mrs. Baumgartner responded, yes. Mr. Holmes said there were also questions about use on the credit card which was used in Buena Vista and Salida which are not part of Peyton School District. Mr. Null said that he looked at this extensively. Mrs. Kirchner shared there were charges on the credit card for Walsenburg; Mrs. Baumgartner said it was because they had Peyton students at the campus in Walsenburg. Mrs. Kirchner shared it was after it closed (July 2016). Mrs. Baumgartner said she could not explain that one. Mr. Null said it is laid out in detail in the audit. Mr. Holmes replied the bottom line is this is before their time and they have no idea. Mr. Kistler stated on September 25th there is a reimbursement to Tia Juana Properties. Mrs. Baumgartner said it was for rent paid by Mr. Johnson and that Tia Juana paid rent to get caught back up. Mrs. Kirchner asked doesn't Mr. Johnson own Tia Juana Properties? Mrs. Baumgartner said she has not figured that out, she does not know.

3. Transported students on vehicles that do not comply with state standards in violation of Article 3.2E;

Mrs. Baumgartner spoke with Mr. Kistler. She thought she corrected everything in July. She had the CDOT form which is the wrong form, so TCBA was out of compliance. Tim had to ask her for it twice. Tim told she was still not in compliance. She had a 5.5 hour meeting with CDE. As of yesterday, they have not transporting students since she found out they were out of compliance. She received correct form and documentation yesterday. Mr. Kistler stated to tie in what Mr. Null said if they are not transporting students then how are students working at the project facilities that Mr. Null presented at the beginning of this meeting? Mr. Null replied no physical work has been done out there yet. They have taken core samples. The students are working at the Tia Juana Campus. Mr. Kistler asked how many students are in each class. Mrs. Baumgartner replied 11 construction, 23 automotive, some beginning culinary-not cooking just serve safe and several that are academic only because they dropped automotive. Mr. Kistler asked how that equals 61. Mr. Dude asked no students are being transported? Mrs. Baumgartner said, "no, we are not transporting students". What is van used for since they don't transport to and from school? Mrs. Baumgartner replied it is to take students from the school to the construction job site and from the Tia Juana campus to the Peyton school site. Mr. Eckelberry asked if no kids have been to job site. Is where they are the building the site? Mrs. Baumgartner answered they have been to that site. They were transported, but had the wrong form (CDOT) when transporting them.

4. Made loans to or received loans from third parties (Rick Johnson, see TCBA Check Registers dated September & October 2015 and January and April, 2016) in violation of Articles 8.6, 8.9, and 8.11;

Mr. Kistler-number four is covered in item 2.

5. Failed to conduct criminal background checks as required by Article 9.2 and C.R.S. 22-30.5-110.5;

Mrs. Baumgartner stated that all staff has been fingerprinted and has been quick checked. They are fine to work for the Charter School. They do not have their cards back from CBI yet. She has not heard back from CBI. Mr. Kistler asked that she print out the quick check, she printed the receipt and will have Mr. Kistler go look at the background checks in their office for security reasons. Mr. Holmes asked if the background checks have been done before. Mrs. Baumgartner said there were two students and one gentleman that were not. She did not know who the gentleman was and students do not have to be checked. She found all fingerprints including staff from their other schools. Mr. Kistler will go by to review the background checks for TCBA PCS. Mr. Hanks asked what is the criteria for checking backgrounds. Mr. Dude cited the School Law Book 22-30.5-110.5

(1-1c) that charter school applicants must be checked once to the department (CDE) and once in by criminal background check. Mrs. Baumgartner said they have done all that. Mr. Kistler will review the records when he goes to the school. Mr. Dude asked if these checks were done prior to their hiring? Mrs. Baumgartner, their fingerprinting was done in August. It is Mrs. Baumgartner's standard. Mr. Eckelberry said if that is what you do beforehand then why is the report dated November the 4th? That is the date Mrs. Baumgartner pulled the invoice. Mr. Eckelberry asked wouldn't it be better to show the dates the reports were pulled? Mrs. Baumgartner stated the fingerprint cards are dated that is all she can tell us. Mr. Hanks were the fingerprints done last year? Mrs. Baumgartner replied they have not done it on all contractors. She has spot checked files and has found them. Mr. Kistler asked Mrs. Baumgartner when you say contractors, were they responsible for instructing and were other paid instructors with them? Mrs. Baumgartner replied by all history an instructor was with them. Mrs. Baumgartner stated she has a Goodwill volunteer who was fingerprinted. She added she is great; she told Goodwill that she would be over to sign the affidavit and get a copy of the background check. Mrs. Kirchner stated that background checks are not transferrable. The district checks their volunteers. Mrs. Baumgartner said she did not do that and would have it done tomorrow.

6. Consistently been behind in its payments to PERA in violation of Article 9.5 and state law; Mr. Kistler said TCBA has caught up on somethings. Mrs. Baumgartner said the accountant would not upload the PERA report until they could pay the bill. Last month should have been in compliance completely, but since the overpayment to Peyton from the prior year they were short. They should be in compliance in December. Mr. Kistler noted 3 times TCBA has been current on their payments to PERA. 14 times they have been late and therefore have been assessed late fees. Mrs. Baumgartner replied we are trying the best we can. Mr. Holmes stated it seems to me that we have the wrong people sitting in front of us. The people who know the answers to the questions are Mr. Johnson and Mrs. Morales-Cress, and they are not even here. Mr. Kistler replied that there is a consistent theme in all of this. Mr. Holmes said so the answer to number 6 is yes TCBA is still behind in payments to PERA.

7. Operated a school without a majority of the school's pupils, other than on-line pupils, who "will" reside (clearly an ongoing requirement) in the Peyton School District or in districts contiguous to it, in violation of C.R.S. 22-30.5-104(2)a:

(TCBA-PCS and The PSD Board agreed to disagree on the interpretation of this law.) Mr. Kistler stated TCBA's remarks are a little different than what the law states. The law states that the students must reside in the district or its contiguous districts. TCBA's claim is that they attended TCBA last year. The law is that the students must reside in Peyton or its contiguous boundaries. There is one Peyton Student and four Falcon Students attending TCBA. The majority of the students are from D11, Harrison, and their contiguous boundaries. Mrs. Baumgartner replied 48 are returning students, so this is an area that we will agree to disagree. They read the law that once they start in the school (of choice) that they have an open enrollment and choice opportunity. Mr. Kistler agreed to disagree because lawyers that PSD has checked with and the Colorado Department of Education state that we are looking at it correctly. Mr. Holmes asked Mrs. Baumgartner, you currently have 61 students how many have been previously expelled? She replied 2. They were expelled prior to last year. Mr. Null said that he spoke with a couple of lawyers and League of Charter Schools and they used the term qualified for the first year. He said their response regarding student enrollment after the first year then they are free and clear. (regarding student population and boundaries issues)

8. Consistently been late in updating its financial data to the Colorado Department of Education as required by state law (C.R.S. 22-30.5-111.7);

Mrs. Baumgartner said she is current. Mr. Kistler said to answer Mr. Holmes question though they have been consistently late? Mrs. Baumgartner replied yes. Mr. Kistler asked how will you stay in compliance. Mr. Null responded they have a new accountant and new Board Treasurer who will be watching the Transparency page.

9. Operated a complete education program outside the territorial limits of the Peyton School District in Colorado Springs School District 11 without the written consent of that district's board of education in violation of C.R.S. 22-32-109(2) and despite being advised to ceasing doing so by School District 11;

Mrs. Baumgartner stated the answer is yes. Mr. Holmes said all 61 students are at the Tia Juana campus. Mr. Dude referred to previous responses that the students were attending in Peyton, Mr. Null replies that they are awaiting the Board approval for the site on Highway 24. Mr. Holmes said I understood no one was in that building. Mr. Kistler addressed Mr. Null and said that Mr. Null stated no one was in that school (on Highway 24). Mr. Null you said that the students were in the building to put some stuff up in the building. Mrs. Baumgartner agreed with Mr. Kistler. If only 9 construction students come to Peyton, then you still do not meet the percentage requirement. Mrs. Baumgartner stated the intent will be that academics will be in Peyton. Mr. Kistler questions that TCBA will transport all students out to fill the 15 chairs you have (in the modular) to do the academics rather than at the Tia Juana Campus. Mr. Eckelberry had a question for Mr. Dude. Under C.R.S. 32-109-2 the Charter School being advised of ceasing and desisting in School District 11 boundaries, is this willful violation of state law? And if so, what are the ramifications to the Peyton School District? Mr. Dude said they are in defiance of state law. What School District 11 decides to do he does not know. They could file with the State. How would that impact Peyton?

Could we be named in the lawsuit? Mr. Dude, it is a violation of law, and it is potential grounds for revoking the charter. Mr. Null stated it is a request not a cease and desist order. In the letter, School District 11 even offered to meet with every student in order to provide him/her with information on the wide variety of D11 programs available. Mr. Null said TCBA would not be in this position if they had approval. He spoke with Mr. Gustafson from D11 and right now TCBA needs a place to put these kids until they get their modular. Mr. Holmes asked what is the maximum capacity of the modular? Mrs. Baumgartner replied 32. The students do academics two days a week. Mr. Kistler said even if students were out here, construction would still be at the Tia Juana Campus. Mr. Null said they have the two construction sites and have negotiated and signed the contract for the students to work. Students have visited the site. Mr. Kistler noted that Mr. Null just said that you were not transporting students. Mrs. Baumgartner agreed that Mr. Null did say that.

10. Failed to provide the District with reliable data upon which to accurately and confidently transfer per pupil revenue to TCBA;

Mr. Kistler-letter went beyond reliable data. TCBA had a 21 year old student enrolled in their program and tried to count them. They had 4 students enrolled in TCBA, but attending other schools. Mrs. Baumgartner said 21 year old is true. She turned 21 in July. 2 students who were enrolled with her and with Goal Academy, and one student who was at Spring Creek. She had them before and after the count days. Mr. Kistler said we have requested a CDE audit just to verify where we are and to clear away last year and this year.

11. Failure to timely provide an audit to the District. See Article 8.7;

Mr. Kistler stated the audit is not matching our data. We requested it early, so we would have time to merge it with our audit. Mr. Kistler asked, "a timely audit what happened"? Mrs. Baumgartner replied there questions from the Board on their audit. Their Board sent the audit back three times and asked for items to be rectified. It went back and forth. It was not scheduled early enough (August 25). The auditors were there for a week then came back pulled more samples then audit came back and items were not correct. There were 9 prior audits with TCBA. The Forensic Audit opened up all items including line items that said Peyton Charter for the Forensic audit. The Forensic Audit opened the audit up to the Foundation's records. Mr. Kistler believed that it was because of payments not being made in Pueblo is where some of the funding was leaving. He was not certain of this though!! Their auditors were there for two weeks. Mr. Null saw the audit and sent it back three times and said they need to amplify the audit. Their new Board had a lot of questions on the audit. Mr. Eckelberry asked Mrs. Baumgartner, the Forensic Audit identified Peyton Charter School? I assume that was information not forwarded to Mr. Kistler and PSD Board of Education. He believes there is a responsibility there to notify the District of that information. Mr. Kistler says it is in the contract. Mrs. Baumgartner said she will forward Mr. Kistler a copy of the Forensic Audit. Mr. Eckelberry asked if their Financial Assurances are final. Mr. Eckelberry wanted to know the background and assumed Mr. Null read and understood the audit and with experience on D11's Board of Education that he understands the basic premise of an audit. It is the responsibility of management and they are responsible for what is or is not in it. On page 11 of their audit what is or is not in it concerns him and that it may be a violation of state statute. Mr. Eckelberry went on to say the Board of Education is saying that this audit is in compliance with GAAP. He cited the Note on Item 5 page 22 and referred any pending lawsuits. Mrs. Baumgartner said they were only served a notice of intent. Mr. Null checked with Sheriff's Office today. Mr. Null stated they did not need to include, and asked if Peyton School District discussed it with our auditor which we did. Mr. Eckelberry stated under GAAP's Full Disclosure Principle-you have to be careful how you disclose the information, but you have to disclose it. Mr. Dude referenced Colorado Governmental Immunity Act which states if he (Mr. Dude) knows a notice of intent has been filed then the district has a period of time he always advises the auditor to disclose the pending lawsuit. It is your responsibility to notify the auditor of these items. Mr. Null would be willing to research it. Mr. Eckelberry referred page 24 of their audit, Note 9 the Peyton School District Site location. He cited GAAP's Going Concern Principle and lacking the disclosure of the material breaches of contract. Without that Charter then the school doesn't exist, and the users need to know that. In violation of 2 GAAP Principles, Mr. Eckelberry stated in his option this audit does not meet GAAP. Mr. Null said the ball is in the PSD Board of Education's court regarding the site. Mr. Eckelberry added that the concept is if a business is ready to fail, then all the financial information is disclosed. Audit also has to be SAS. The audit is a product of management. Mr. Kistler asked what the timeline is that we need their audit completed. Mrs. Kirchner gave a quick summary of the audit process through data pipeline and assurances timelines through December 31, 2016. Mr. Null asked if we were addressed on the lawsuit and will it be in our audit? We did notify Mr. Dude. We also notified our insurance, and our insurance company has stated that we do not have liability in the claim. Mrs. Kirchner needs to ask Mr. Mayberry may include; he may not, but insurance has stated we are not liable. Mrs. Morales-Cress spoke about the lawsuit today with Mrs. Baumgartner and stated that she needed to speak with Mr. Kistler. Mr. Null is concerned about the 61 students. He said there is an entire process to go through to close the school. On behalf of the TCBA Board and staff, they want students to get their education and will fix what is broken. Mr. Kistler said that Peyton School District is concerned about the students as well, but we also have to follow the law. Mr. Kistler will call Mr. Null with the Board vote after the meeting tonight, and Mr. Dude will issue formal letter to the school.

Mr. Frohbeiter requested that Mr. Rea and Mrs. Kirchner along with Kelly Dude enter into Executive Session. Mr. Holmes made the motion to move into Executive Session. Mr. Eckelberry seconded the motion. All Board Members voted "aye".

Entered executive session at 8:40pm

- III. EXECUTIVE SESSION-Legal-** C.R.S. 24-6-402 (b)
Exited Executive Session 9:03 pm

IV. ACTION ITEM

A. Vote on Revocation of Charter

Mr. Frohbieter made the motion to revoke the charter of The Career Building Academy of the Peyton School District of the Charter Authority and to have Mr. Dude write the letter outlining the Board's Position. Mr. Holmes seconded the motion. Mr. Eckelberry wanted to be clear about the safety of the students. There are issues with transportation and background checks. There are issues with State Statutes. They do not seem to be important to TCBA. The TCBA-PCS Board is accountable to the taxpayers receiving public funds and has fiduciary responsibility and is clearly not addressing issues and they continue on and on. Mr. Kistler asked, do you see any issues that they have completed? The only one was the van which now is not a continual violation. They also have their Certificate of Occupancy. Mr. Frohbieter stated they do have their Certificate of Occupancy; however, they built on site that was not approved prior to them placing it there. Mr. Holmes said they have occupied it with students which contradicts what they have told us in the past. Mr. Frohbieter asked Mrs. Kirchner to track her time spent on TCBA related items since 10/25 and it has been 52 hours at least half her time has been spent on items regarding TCBA which are not reimbursable to the district. Mr. Frohbieter said their method is always to get things done on the day of meeting like they did tonight walking in with this large rebuttal at the last second with no time for the PSD Board to have time to review. All Board Members voted "aye". The motion passed.

ADJOURN- A motion to adjourn was made by Mr. Holmes and seconded by Mr. Eckelberry. All Board Members present voted "Aye". The motion passed.

The meeting adjourned at 9:10 pm.

MINUTES APPROVED December 13, 2016 at Regular Board Meeting.

President

Secretary