

PLEASANTVILLE BOARD OF EDUCATION
Pleasantville High School/701 Mill Road/Cafeteria
SPECIAL BOARD MINUTES
Tuesday, April 26, 2016
6:00 P.M.
MINUTES

1. Call to Order -6:07 pm
2. Reading of the Open Public Meetings Act Notice – Carla Thomas

Statement-Board President

“This is to advise those present at this April 26, 2016 Special Board Meeting of the Board of Education of the City of Pleasantville, in the County of Atlantic, that Notice was given on April 21, 2016 of the 2016 Revised Annual Designation of the Regular Monthly Board Meetings, as required by the provisions of Chapter 231 of the Laws of 1975; Notice thereof has been distributed for publication in the Press, the Absecon/Pleasantville Current and the Mainland Journal, posted in the Administration Building and forwarded to the City Clerk of the City of Pleasantville, within the time required by said act.”

Roll Call – Board Secretary, Mr. Elisha Thompkins:

Member	Yes	No	Abstain	Absent
James Barclay	√			
Bernice Couch	√			
Tony Davenport	√			
Silvia Landron				√
Paul Moore				√
Sharnell Morgan	√			
Elysa Sanchez	√			
Ethel Seymore	√			
Carla Thomas	√			

3. Flag Salute and Moment of Silence- Carla Thomas
4. Public Comments. Please limit comments to (5) minutes and all comments should be courteous and respectful.
Rick Norris signed in for Public Comment but, was not present

Motion to go into Executive Session -**6:10pm**

5. Executive Session

Motion by Sharnell Morgan and Seconded by Ethel Seymore at 6:10 p.m., it is hereby resolved that the Pleasantville Board of Education may go into closed or private session from which the public shall be excluded in accordance with the provisions as set forth in N.J.S.A. 10:4-12 and 10:4-13. The following subjects shall be discussed on this date in the session of the Board closed to the public: PERSONNEL, PUPIL MATTERS, PENDING, AND ANTICIPATED LITIGATION. BE IT FURTHER RESOLVED that the discussion in closed session will be disclosed to the public at this time or a future meeting of the Board when it is no longer necessary to maintain the confidential nature of the items discussed.

Roll Call:

Member	Yes	No	Abstain	Absent
James Barclay	√			
Bernice Couch	√			
Tony Davenport	√			

Silvia Landron				√
Paul Moore				√
Sharnell Morgan	√			
Elysa Sanchez	√			
Ethel Seymore	√			
Carla Thomas	√			

SEVEN YES; MOTION PASSED

6. Motion to come out of Executive Session

Motion by: Elysa Sanchez Second by: Ethel Seymore Yea: √ Nay:

Roll Call:

Member	Yes	No	Abstain	Absent
James Barclay	√			
Bernice Couch	√			
Tony Davenport	√			
Silvia Landron				√
Paul Moore				√
Sharnell Morgan	√			
Elysa Sanchez	√			
Ethel Seymore	√			
Carla Thomas	√			

SEVEN YES; MOTION PASSED

Reconvene Board Meeting

Action taking after reconvene board meeting

Resolution to terminate Elva Thomas

Motion by: Elysa Sanchez Second by: Bernice Couch Yea: Nay: √

Roll Call:

Member	Yes	No	Abstain	Absent
James Barclay	√			
Bernice Couch	√	√		
Tony Davenport				
Silvia Landron				√
Paul Moore				√
Sharnell Morgan	√			
Elysa Sanchez			√	
Ethel Seymore			√	
Carla Thomas	√			

FOUR YES; MOTION DID NOT PASS

Board Approval of Workshop/Action Agenda Items:

7. Human Resource Agenda (Tabled until May 4, 2016 Board Meeting)

8. Human Resource Addendum (Tabled until May 4, 2016 Board Meeting)

Motion by: Elysa Sanchez Second by: James Barclay Yea: √ Nay:

Roll Call:

Member	Yes	No	Abstain	Absent
James Barclay	√			
Bernice Couch	√			
Tony Davenport	√			
Silvia Landron				√
Paul Moore				√
Sharnell Morgan	√			
Elysa Sanchez	√			
Ethel Seymore	√			
Carla Thomas	√			

SEVEN YES; MOTION PASSED

Resolution to enter into a mutual release and settlement agreement with interim Superintendent Dr. Leonard Fitts

Motion by: Sharnell Morgan Second by: Elysa Sanchez Yea: √ Nay:

Roll Call:

Member	Yes	No	Abstain	Absent
James Barclay	√			
Bernice Couch	√			
Tony Davenport		√		
Silvia Landron				√
Paul Moore				√
Sharnell Morgan	√			
Elysa Sanchez	√			
Ethel Seymore	√			
Carla Thomas	√			

SIX YES; MOTION PASSED

9. Motion to Adjourn the Meeting

Motion by: Bernice Couch Second by: Sharnell Morgan Yea: √ Nay:

Roll Call:

Member	Yes	No	Abstain	Absent
James Barclay	√			
Bernice Couch	√			
Tony Davenport	√			
Silvia Landron				√
Paul Moore				√
Sharnell Morgan	√			
Elysa Sanchez	√			
Ethel Seymore	√			
Carla Thomas	√			

SEVEN YES; MOTION PASSED

April 27, 2016

Pleasantville Board of Education
801 Mill Road
Pleasantville, NJ 08232

Dear Pleasantville Board of Education,

In accordance with N.J.S.A. 18A:7A-55(b), the state monitor is given the responsibility to provide direct oversight of a board of education's business operations and personnel matters. The statute grants the state monitor the authority to override a chief school administrator's action and a vote by the board of education on any of the matters set forth in this subsection, except that all actions of the state monitor shall be subject to the education, labor and employment laws and regulations, including the "New Jersey Employer-Employee Relations Act," P.L. 1941, c.100 (C.34:13A-1 et seq.) and collective bargaining agreements entered into by the school district.

At the Board's April 26, 2016 meeting, following executive session, the Board solicitor introduced a walk-on resolution to enter into a Mutual Release and Settlement Agreement with the Interim Superintendent, Dr. Leonard Fitts. The Board voted to pass the motion.

That evening, shortly after the meeting was adjourned, I emailed Nestor Smith, Benjamin Brenner, Dr. Fitts and Elisha Thompkins that the decision was being taken under advisement and that Dr. Fitts was to remain the superintendent until I provided further direction. I also asked counsel to provide copies of the resolution and agreement referenced, so that I could review those, since copies had not been provided during the meeting.

Having taken the Board's actions under review, there are several other documents that I have studied, including Dr. Fitts' contract agreement with the Board of Education, letters from The Carroll Law Firm (Carroll) dated April 13, 2016 and April 22, 2016, as well as a draft of a "Mutual Release and Settlement Agreement" that Carroll emailed to me, among others, on the afternoon of April 26. Copies of these documents are attached for the Board's reference, and through the rest of this letter, I note salient language in these documents and their bearing on my decisions regarding the Board's action.

First, I reference the contract between Dr. Fitts and the Board of Education. Dr. Fitts' contract term runs through June 30, 2016, and the contract includes specific termination language requiring "mutual agreement of the parties, unilateral termination by the Interim Superintendent upon thirty days written advance notice of the board, or thirty days advance written notice to the Interim Superintendent..."

The contract further includes compensation language, which reads in part, that Dr. Fitts "is not entitled to receive any benefits other than the per diem payment during the term of this agreement" and that the per diem rate is \$644.

The contract also "embodies the entire agreement between the parties and it cannot be varied except by written agreement between the undersigned parties."

Second, I reference a Carroll memo dated April 13, 2016, which stated, "It is our understanding the PBOE wishes to consider a resolution terminating Dr. Fitts' employment contract and giving him the

required thirty days' notice." Carroll included a resolution to terminate the contract with Dr. Fitts. I have found no evidence that the Board held discussions regarding termination of the contract at either an open public meeting or during an executive session.

On the afternoon of April 26, 2016, I was copied on an email from Carroll that included a "Mutual Release and Settlement Agreement" between Dr. Fitts and the Board of Education. I read the document and saw my name included in the document and on signatory lines, though I neither sanctioned nor endorsed the Board's actions.

This noted, I briefly met with Dr. Fitts on the afternoon of April 26. At that time, Dr. Fitts stated that he was in receipt of the April 22 memo and said he was amenable to leaving the district prior to his June 30 end-of-contract date. He further explained that there had been some negotiations regarding a financial pay-out between him and the Board since April 25 (Note that I was not in district on April 25). He stated that he was not attending the Board meeting on April 26, and in fact did not.

Having taken the matter under advisement in light of the issues presented herein, I am overturning the Board's action to enter into the Mutual Release and Settlement Agreement that was walked on to the April 26, 2016 Board agenda. While Dr. Fitts' contract affords an opportunity to agree to a mutual termination of the contract, the payment of 30 days compensation to Dr. Fitts is not in the financial interest of the district. Dr. Fitts is paid on a per diem basis, and if he would prefer to leave the district earlier than June 30, the district would not be obligated to make any additional compensation. Accordingly, the Mutual Release and Settlement Agreement is null and void.

Sincerely,



Constance J. Bauer, Ed.D.
State Monitor

Cc: David Hespe, Commissioner of Education
Glenn Forney, Director Office of State Monitors, Department of Education
Sydney Sayovitz, Counsel for State Monitor
Richard Stepura, Executive County Superintendent of Schools
Leonard Fitts, Pleasantville Interim Superintendent of Schools
✓ Elisha Thompkins, Pleasantville Board Secretary
Nestor Smith, The Smith Legal Group
James Carroll, The Carroll Law Firm
Benjamin Brenner, The Carroll Law Firm

April 29, 2016

Pleasantville Board of Education
801 Mill Road
Pleasantville, NJ 08232

Dear Pleasantville Board of Education,

In accordance with N.J.S.A. 18A:7A-55(b), the state monitor is given the responsibility to provide direct oversight of a board of education's business operations and personnel matters. The statute grants the state monitor the authority to override a chief school administrator's action and a vote by the board of education on any of the matters set forth in this subsection, except that all actions of the state monitor shall be subject to the education, labor and employment laws and regulations, including the "New Jersey Employer-Employee Relations Act," P.L. 1941, c.100 (C.34:13A-1 et seq.) and collective bargaining agreements entered into by the school district.

At the April 26, 2016, Board of Education meeting, the walk on resolution that served to terminate the employment of Ms. Elva Thomas for received 4 yes votes, 1 no vote and 2 abstentions, with two members absent for the vote. Note, PBOE policy 0165-Voting states, in part, that majority of the full membership of the Board is required for removal of non-certificated staff members, per NJSA 18A:25-1, 27-1. With regard to the personnel matter addressed in the resolution, the case involving Ms. Thomas has been taken under review.

First I summarize the review of the information available on the case. The fact that the district did not remit timely payments as required by the Internal Revenue Service (IRS) has been established through IRS records and confirmed through subsequent investigations conducted by the Board Secretary and The Carroll Law Firm. There is evidence that the delinquency in payments occurred on multiple occasions, going back to the tax period ending December 31, 2011, resulting in owing the IRS for back payments, as well as fines incurred, the sum of which exceeds \$200,000.

Carroll Law's investigations reveal that Ms. Thomas "had failed to file the proper returns and then covered up the same..." (attached letter dated April 21, 2016). The District continues to seek relief of the penalties assessed by the IRS, and this involves incurring legal costs, as Mr. Thompkins' efforts in this regard (beginning in September 2015) have been unsuccessful to date. Note that the penalty notice received on July 13, 2015, required a payment of \$63,557.35, for "Failure to make a proper federal tax deposit". Additionally, the issue resulted in TD Bank, N.A., being served a Garnishment Order on the Pleasantville Board of Education account, in the amount of \$24,432.15.

Secondly, given these facts, I summarize the actions taken by the district in response. It has been established that Ms. Thomas' duties and job roles included the responsibility of remitting the IRS payments. Upon realizing that the district was in arrears and facing penalties,

Dr. Fitts, placed Ms. Thomas on suspension in September. She has remained on paid suspension since that time. Once the investigations concluded, the Superintendent provided Ms. Thomas an option to execute a last chance agreement with the district rather than be terminated. Since January, Ms. Thomas has had the opportunity to execute the last chance agreement.

Carroll Law continually attempted to bring closure the matter. On January 26, the matter was scheduled for executive session, but that meeting was deferred since the Superintendent was not present. Since the agreement had not been returned by Ms. Thomas, the Board, through resolution at its March meeting, set April 19 as the deadline for Ms. Thomas to submit the agreement or face termination. However, on April 19, the Board tabled all personnel items until the next meeting, scheduled on April 26. On April 26, Ms. Thomas was afforded an opportunity to appear before the Board, at which time she did so during executive session. Ms. Thomas did not sign the agreement, and the Board vote did not support the termination motion.

In light of the facts noted herein, I find that that Ms. Thomas' termination was an appropriate recommendation. As such, the Board's vote is overturned.

Ms. Thomas' termination date is April 26, 2016.

Sincerely,

Constance J. Bauer, Ed.D.
State Monitor

Cc: Glenn Forney, Director Office of State Monitors, Department of Education
Garnell Bailey, Assistant Superintendent of Schools
Elisha Thompkins, Pleasantville School Business Administrator
Nestor H. Smith, Solicitor, Pleasantville Board of Education
Benjamin Brenner, The Carroll Law Firm