

MINUTES

RHODE ISLAND HIGHER EDUCATION ASSISTANCE AUTHORITY

BOARD OF DIRECTORS' MEETING

APRIL 20, 2012

The 310th meeting of the Rhode Island Higher Education Assistance Authority was held Friday, April 20, 2012 in the McKenna Conference Room, 560 Jefferson Blvd., Warwick, RI. Chairman Santoro called the meeting to order at 3:00 p.m.

Board Members in Attendance:

Dr. Anthony J. Santoro, Chairman

Dr. William Croasdale, Vice Chairman

Mr. John Howell, Secretary

Mr. Solomon A. Solomon

Ms. Faith LaSalle, Esq.

Mr. Christopher Feisthamel, designee for General Treasurer Gina Raimondo

Board Members Absent:

Ms. Patricia Doyle

Mr. Steven Archer

Also Attending:

Mr. Charles P. Kelley, Interim Coordinating Officer
Ms. Gail Mance-Rios, Deputy Director
Mr. Joseph Palumbo, Esq., Legal Counsel
Mr. Marc Lacroix, Chief Financial Officer
Mr. Peter Kerwin, Chief Program Development
Mr. Michael Joyce, Director Scholarship & Grants
Ms. Dana Peterson-Fatuda, Assistant Administrative Officer
Mr. Charles Miller, Chief Information Officer
Ms. Kathleen Sisson, Director, WaytogoRI
Ms. Linda Makhlouf, RIHEAA
Mr. Noel Simpson, RISLA
Ms. Clordine Cox, RIHEAA
Ms. Maggie Cote, RIHEAA
Ms. Carol Byrnes, RIHEAA
Mr. Louis DeSimone, Counselor for Mr. Kerwin
Mr. John Burns, Council 94
Ms. Winifred Antos, Union Steward RIHEAA
Ms. Gina Macris, Providence Journal
Mr. John Breguet, Esquire

1. Minutes of the Board of Directors' meetings held on January 20, 2012, February 17, 2012, and March 16, 2012 were deferred to the next regular Board meeting.

2. Chairman's Report: Dr. Santoro stated that he and Mr. Kelley have meetings scheduled with the Governor and Mr. Zannia for next week

and thanked Mr. Howell for getting those meetings scheduled. Dr. Santoro asked the board's permission to defer the seven agenda items, due to personnel matters that need immediate attention. Dr. Santoro entertained a motion to discuss two personnel matters under RI General Law 42-46-5 § (a) (7), seconded by Mr. Howell and Mr. Solomon.

Dr. Croasdale recused himself at 3:05 p.m.

Voted in Favor: Mr. Howell, Mr. Solomon, Ms. LaSalle, Mr. Feisthamel and Dr. Santoro

Voted against: None

Dr. Santoro stated that the first personnel matter involves Mr. Peter Kerwin, and asked Mr. Kerwin if he would like his matter heard in open session or closed session. Mr. Kerwin responded that the wanted to be heard in open session.

Dr. Santoro turned the matter over to John Breguet, counselor for the Board of Directors.

Mr. Breguet stated that he sent a summary to all members of the board and stated that there was a typo on the second page, the fourth paragraph, in the second line. It states that Mr. Lacroix promoted, it should read Mr. Hurry promoted. Mr. Breguet explained

that this is a Loudermill Hearing and public employees such as Mr. Kerwin, if there is consideration by the employer that the employee can be suspended or terminated must be given what is called a Loudermill hearing. That is advanced notice that the Board is considering disciplinary action the Board can not make a final decision on what discipline, if any, to impose prior to a Loudermill hearing. Mr. Breguet explained the requirements the notice of a Loudermill hearing that must be provided to an employee. Mr. Breguet distributed the Loudermill notice sent to Mr. Kerwin, and explained that the allegation is that Mr. Kerwin removed, made a copy and disseminated a letter dated March 17, 2011 written by Mr. Hurry about an employee at RIHEAA. Mr. Breguet explained the procedure to be followed during the hearing. Mr. Kerwin was sworn in by a stenographer. Mr. DeSimone asked to and did make some opening remarks. Mr. Breguet stated that Mr. Kerwin could make a statement and can say anything he wants, anything that he wishes the board to consider.

Mr. Kerwin thanked Mr. Breguet and stated that by his account it has taken three lawyers to get us here today. Mr. Kerwin stated that he doesn't know why Mr. O'Neil is not here today, but thought that perhaps, he looked at the facts, saw that it was ridiculous and walked away.

Mr. Breguet stated to Mr. Kerwin that you are here today to rebut the factual allegations.

Mr. Kerwin stated that part of that rebuttal is the fact that the lawyer brought in by Mr. Palumbo to handle the situation, ran away from the situation. He stated that he suspected that after advising Mr. Palumbo that it was an ill advised effort. Mr. Kerwin stated if you had something from him (Mr. O'Neil), it would be brought before the board. The board should consider that Mr. James O'Neil, an esteemed colleague and former attorney general walked away from this case.

Mr. Kerwin stated that he was given this letter by Bill Hurry on March 17, 2011, it was a Friday, and believed that it was St. Patrick's Day. He stated that Mr. Hurry asked him to read it, because he (Mr. Hurry) considers Mr. Kerwin a wordsmith. He stated that Mr. Hurry wanted me to take a look at it; it was very painful for him to write the letter, so he (Mr. Kerwin) did. Mr. Hurry left his office and Mr. Kerwin made a copy of the letter. He said he thought at some point, considering the behavior of the board or some members of the board, that it might be important to have. He stated that it is clear that some things in the letter were some serious things that were discussed at the senior management level. According to Mr. Kerwin, at least one of the issues was brought to a board member and nothing happened with it.

Mr. Kerwin stated that he filed an Open Meetings complaint against this Board last July. Mr. Kerwin stated that if board members have

not read the complaint they can't take action against him today, because if they have not read it, they don't know what is going on here. Mr. Kerwin distributed five affidavits that were presented as part of a response by Mr. Palumbo to the Open Meetings complaint. The affidavits were from Dr. Santoro, Mr. John Howell, Dr. Croasdale, Mr. Palumbo and Mr. Lacroix. He stated that the affidavits refute the facts that were laid out in the Open Meetings complaint. He stated that throughout his affidavit Dr. Santoro references six or seven meetings that took place in April 2011 and in May 2011. Mr. Kerwin stated that the one day that he can't seem to remember and which he doesn't reference in the affidavit is the date that the CFO made allegations about the executive director. He stated that no one seems to remember the date that Mr. Lacroix made charges against Mr. Hurry (the executive director). Mr. Kerwin suggested that the affiants did know the date, but don't want to reveal it. He stated that the story that the affidavits want to tell is that Mr. Hurry's letter, the letter that I am here before you on, the letter came as a response to Mr. Lacroix's complaint. He said there is not a shred of documentary evidence to support that. He said you can review Mr. Palumbo's legal bills, and suddenly on March 23, 2011, you start seeing conversations begin to happen after Mr. Hurry's letter was sent. Mr. Kerwin stated that he released the letter as part of an adjudicative process to the AG's office. He said he released it in response to the phony affidavits that were submitted by Attorney Palumbo as part as the adjudicatory process. He said he wanted the Attorney General to know that he was being misled, that he was being provided with

deceitful information, which is why the letter was released. He said it would not have been done otherwise, if Mr. Palumbo, at the direction of the chairman, had not gone out and throw dirt on Mr. Hurry.

Mr. Breguet asked if Mr. Kerwin released the letter to the news media, house and senate staffers and the Department of Education.

Mr. Kerwin stated yes, in response to their inquiries and part of his concerns about some of the activities of the board. Mr. Kerwin stated that he has provided the letter as part of his submittal to the AG, to the Consumer Financial Protection Bureau, the Federal Trade Commission and the U.S. Department of Education.

Mr. Breguet asked Mr. Kerwin if he had informed Mr. Hurry that he was releasing the letter, Mr. Kerwin responded no. Mr. Breguet asked if Mr. Kerwin gave the letter to any employees, Mr. Kerwin stated that to the best of his recollection he did not. Mr. Breguet asked if Mr. Hurry was aware that he made a copy of the letter, Mr. Kerwin stated no. Mr. Breguet asked if the letter was signed when he took and copied it, to which Mr. Kerwin responded that it was. Mr. Breguet asked Mr. Kerwin if he knew that the letter was supposed to be placed in Mr. Lacroix's file, to which Mr. Kerwin responded yes. Mr. Breguet asked Mr. Kerwin if he had ever indicated to anyone that he was concerned that Mr. Hurry would not act on it, and Mr. Kerwin stated that he was concerned that due to the nature of the letter, that Mr. Hurry would have second thoughts and it would be important to

have a record of what was happening at the time. Mr. Breguet asked the board if they had any questions.

Mr. Kerwin stated for the record, the letter was not provided by itself, the letter was provided as part of a package of the record that was filed with the Attorney General's office, as part of the adjudicatory process. He stated that he provided the media with his own files as well as Mr. Palumbo's file.

Ms. LaSalle asked Mr. Kerwin if he provided the house and senate committee members with the same information and Mr. Kerwin replied yes.

Ms. LaSalle asked Mr. Kerwin if he has any Human Resources experience/background. Mr. Kerwin stated no.

Mr. Kerwin stated that he feels like he has done the right thing and done his job effectively.

Ms. LaSalle stated that Mr. James O'Neil interviewed some employees at RIHEAA, where you interviewed, and did you refuse to speak with him? Mr. Kerwin stated, no. Mr. Kerwin explained that he told Attorney Palumbo that he would speak to the attorney that was the cheapest for the agency. In the end, Mr. Kerwin did speak with Attorney Palumbo.

Mr. Howell asked Mr. Kerwin, you stated in your testimony that you made a copy of the letter, given the behavior of the board, what was the behavior? Mr. Kerwin responded that there is one person sitting at this table that made a complaint to a board member, and nothing was done about it. Mr. Kerwin referenced Mr. Hurry's letter.

Mr. Breguet stated that they do have a letter from Attorney O'Neil stating his refusal to be interviewed. Mr. Kerwin stated that he is willing to share email exchanges between he and Mr. Palumbo about how they came to that, and never received a request from Mr. O'Neil, it was handled by Mr. Palumbo.

Mr. Breguet asked Mr. Kerwin if he had anything else he wanted the board to consider.

Mr. DeSimone asked Mr. Kerwin to address the allegation of how he surreptitiously removed this communication from a file. Mr. Kerwin stated that the letter was not surreptitiously removed from any file; it was not placed in an envelope. Mr. Hurry had written it, signed it, but not yet sent it, he was still uncertain about it, and wanted Mr. Kerwin to review it. Mr. Kerwin made a copy of the letter at that point. Mr. Kerwin stated that he doesn't know if Mr. Hurry shared the letter with anyone else.

Ms. LaSalle stated that the contents are definitely a personnel matter.

Dr. Santoro made a motion to go into Executive Session pursuant to RIGL 42-46-5 § (a) (1): Mr. Breguet stated that they will only discuss legal issues, and minutes will be kept in closed session.

The motion was seconded by Mr. Solomon.

Voted in favor: Mr. Howell, Mr. Solomon, Ms. Lasalle, Mr. Feisthamel and Dr. Santoro.

Voted Against: None

Public Session resumed at 4:20 p.m.

Dr. Santoro announced that no votes were taken on the closed session.

Dr. Santoro entertained a motion to seal the minutes of the closed session, motion made by Mr. Howell and seconded by Mr. Solomon.

Voted in favor: Ms. LaSalle, Mr. Feisthamel, Mr. Howell, Mr. Solomon and Dr. Santoro.

Voted Against: None

Dr. Santoro turned the meeting back over to Mr. Breguet. Mr. Breguet explained the legal options; discipline and the type of

disciple, suspension or termination, and the dates in which it would be effective.

Mr. Howell made a motion to terminate Mr. Kerwin's employment, effective May 1, 2012, seconded by Mr. Feisthamel.

Voted in favor: Mr. Howell, Mr. Feisthamel and Dr. Santoro

Voted against: Ms. LaSalle and Mr. Solomon

Mr. DeSimone asked about the appeal process to the board. Mr. Breguet stated that as a classified employee under 36-4-42 Mr. Kerwin can appeal to the personnel appeal board.

Dr. Santoro stated that the second personnel matter involves Mr. Lacroix and asked Mr. Lacroix if he would like open session or closed, and Mr. Lacroix stated closed.

Dr. Santoro entertained a motion to go into Executive Session pursuant to RIGL 42-46-5 § (a) (1) Personnel Matters, motion made by Mr. Howell, and seconded by Ms. Lasalle.

Voted in favor: Dr. Santoro, Mr. Howell, Mr. Feisthamel, Ms. LaSalle, and Mr. Solomon.

Voted against: None

The board came out of closed session. Dr. Santoro announced that no voted were taken in the closed session and entertained a motion to seal the minutes of the closed session. A motion was made, seconded and passed unanimously.

There being no further business to come before the Board of Directors, the meeting was adjourned.

Adjournment was at 7:00 p.m.

Mr. John Howell
Secretary