



# Wenatchee School District Appeal Hearing

Minutes of December 09, 2014  
District Office – 5:00 P.M.

## Board Members Present

Laura Jaecks, President  
Jesús Hernández  
Robert Sealby  
Jennifer Talbot  
Walter Newman, Vice President

## Staff Present

Brian Flonex, Superintendent  
Cabinet

### I. Appeal Hearing Opening 5 p.m.

Laura R. Jaecks, Board President, opened the meeting with the pledge of allegiance.

First segment is for open appeal meeting but not public open comment, it concerns with Policy No. 3210 Non-discrimination Policy. Ms. Jaecks read the following statement:

#### Opening the Hearing:

*This is an open appeal hearing and not an open public meeting so the school board will not be taking any comments from the audience.*

*In accordance with district policy# 3210 Nondiscrimination, this hearing is before the school board because the complainant remains aggrieved as a result of the action or inaction of the superintendent in resolving the complaint.*

*The hearing will be conducted as follows:*

- 1- The board will receive testimony and ask questions of the complainant regarding concerns that have not been resolved. (20 minutes)*
- 2- The board will receive testimony and ask questions of the respondent (school district) regarding the complaint and concerns that have not been resolved. (20 minutes)*
- 3- The school board will convene into executive session in accordance with school district policy 1410 with legal counsel to deliberate. The board will reconvene from executive session to announce how their decision will be rendered. (20 minutes)*

The hearing timekeeper: Jon DeJong

Complainant's Case Testimony:

#### Chelsea & Kyle Mahuika:

*Thank you for hearing our request. We are here requesting the board to fully support the Superintendent's recommendation and approve the implementation of the PBIS program by the 2015-16 school year requiring all aspects of the MYD programs stop at the end of the 2014-15 school year, as recommended by Superintendent Flonex, Lisa Turner, OSPI and the parents, staff and students we represent. We are requesting that the district put measures in place so students are no longer subjected to MYD policies and procedures while that transition is taking place. Specific actions mentioned as outlined in the MYD pamphlet also in Ms. Turner's report. Step Four and points will be no longer be used or enforced in the classroom in the 2014-15 school year. The district has not kept the discipline data as outlined by OSPI therefore cannot disprove discrimination or the disproportionality impact and loss of instruction time. If this formal complaint/appeal is not satisfied we have been informed there will be a full investigation due to the fact that there is no data collected for steps #1, 2 or 3, and if the appeal is not satisfied by the board the OSPI department of equity and civil rights will conduct an*

*investigation. We are sensitive that the implementation of this action will add additional work for all the staff, teachers and district. We have gratitude along with those who we represent for those who are willing to move forward for the betterment of our students and community. Experience from many others have proven that there is a better way for our students to learn reverence and respect for authority than standing alone to be humiliated in front of peers and teachers. We appreciate the Superintendent Fones in this process and Lisa Turner and her investigation and for their consideration in this complaint and appeal process. Thank you.*

Respondent's Case Testimony: **Lisa Turner, Executive Director Human Resources**

Ms. Turner wanted to look in more detail about investigation recommendation implementation of PBIS by the end of school year, starting next year. She asked the board to approve Superintendent's recommendation and to look at the investigation report that discrimination did not take place. The following are the guidelines used by the Office of Civil Rights to determine discrimination and the guidelines used by her investigation.

1. *The office of Civil Rights will look at the following areas to determine if a school has engaged in intentional discrimination – therefore, I looked at the same steps in determining that discrimination had not occurred.*
  - a. *Is the policy directly discriminatory in its nature, including explicit language requiring student groups be treated differently – NO policy 3210 –discrimination did not occur*
  - b. *Intentional discrimination can occur if the policy is neutral in its language and application, but similarly situation students are treated differently for the same circumstances. We completed this evaluation for each of the groups identified in the complaint. – There is no quantitative or circumstantial evidence to support that any group is treated differently for the same circumstances – Discrimination did not occur.*
  - c. *Intentional discrimination can occur if a school has selective enforcement of a program or policy. There is no quantitative or circumstantial evidence to support that teachers or school administrators are overlooking similar circumstances of any particular group, or selectively enforcing the program. – Discrimination did not occur.*
  - d. *Intentional discrimination can occur if it could be found that teachers or administrators we acting based on discriminatory motives. There is no quantitative or circumstantial evidence to support that teachers or administrators were acting based on any discriminatory motives. Discrimination did not occur.*
2. *From my investigation, I concluded that no intentional discrimination occurred. However, boys do choose step 4 at a higher rate than girls, therefore we must evaluate if a disparate impact has resulted in discrimination.*
3. *In her appeal, Ms. Mahuika affirms her claim is that the MYD program is discriminatory in nature through disproportionate impact.*
4. *In evaluating if disparate impact occurred, Again, I followed the guidance provided in the dear colleague letter, and the disparate impact flow chart to determine if discrimination occurred.*
5. *Since boys are choosing step 4 at a disproportionately higher rate than girls, we must answer yes to the first question and look at the second step.*
6. *Is the policy necessary to meet an important educational goal – We must answer yes, as it is necessary to meet strategy one (1.4 – Creating a positive and safe learning environment) of our Districts Strategic plan.*
7. *Since the policy is necessary to meet an important educational goal, we must determine if there are comparable effective alternatives policies or practices that would meet the school's stated educational goal with less of a burden or adverse impact.*
8. *We cannot answer yes to this question. Maybe PBIS would have a lower disparity on boys, but we do not have evidence or data to support that in our system. Additionally, as stated in the report from the Indiana Education Policy Center, "virtually every study presenting school disciplinary data by gender, boys are referred to the office and receive a range of disciplinary consequences at a significantly greater rate than girls." This is suggesting that even a change in program, may not change the disparity towards males, and affirms that we cannot answer yes to the final question.*
9. *Therefore, we must answer no to the final question and the Department would likely not find sufficient evidence to determine that a school had engaged in discrimination.*
10. *We ask that you affirm the Superintendent's conclusion that discrimination has not occurred.*

Board Questions/Answers:

- What is the remedy if we have disparity is it okay as long as we demonstrate growth. How do we fix this disparity if we do find evidence of it? How much is acceptable?
- There is no component or guidance from OSPI, they are trying now to address that and research but OSPI does not have an answer for what is acceptable or measurement of how much is showing progress.
- There is no measurement for high or low levels in a district either.
- There is no money reserved to address this in any district, the state passed the law but are not prepared to fund it.
- PBIS research does not show that there is disparity either we just don't know at this point, that is part of this whole the dilemma.
- Part of every year we will be looking at this, looking at discipline every year we need a mechanism to evaluate every single year, this will be a part of our system. We will evaluate ourselves as we progress.
- New laws but no evidence in state, no components and no guidance, record systems, law changed before OSPI had a mechanism in place to measure or even develop guidelines for districts to follow. It is a grey area and no one has definitive answers, they are working on this whole issue.
- No measurement of what high or low is and no indication that we have to pull resources to cover this.
- Indiana Study has not been recognized in this state but it is all that is out there to draw some comparisons.
- No program can prove or disprove what is above or below the norm at this point.

Comments:

Ms. Manhuika: *WA State does not recognize Indiana study or research. OSPI's concern is that no data has been kept for steps 1, 2 & 3, which would show there is more disparity of disproportionality if that data had been kept which is where the district is at fault.*

**Brian Flones, Superintendent statement and thoughts:**

*"We will be looking at disparity and disproportionality in our discipline data in our district in the future. That is all new in our state as far as rules and regulations are concerned. We will be looking at a mechanism to evaluate and measure therefore over time we will have some benchmarks to guide us. Another big push for our district is intervention. A component of the new state requirements is to try to reduce the suspensions as much as possible. The contention of this problem is that these students are falling more behind and not getting pointed into a new direction, to intervention, their behaviors are contributing to dropout rates as well as prison rates in our state. We, along with all state school districts, have to be looking at what we are going to do as a re-engagement plan for these students to stay or get back into school. Intervention before they go into suspension, this is going to be our big focus going forward to have the next steps in place for these new laws.*

*In my complaint response I stated that I agreed with Ms. Turner's conclusions on the discrimination investigation that the district has not discriminated against boys, ESL students, minorities, autism spectrum students, all special needs students, and children with outgoing and talkative personality types.*

*It was also noted in the investigation that we do have a disproportionate number of boys who received Step 4's over girls in Make Your Day over the past three years.*

*In my response I also addressed the "corrective measures" outlined in the complaint. While I did not agree to make the changes requested in the complaint, for immediate removal of Make Your Day, I did acknowledge that the school district can make improvements to our behavior management and intervention program. My recommendation to address the corrective measures is:*

*I am taking steps over the next few months to begin the process of moving towards full implementation of PBIS by the start of the 2015-16 school year.*

*That transition has started with conversations with our principals and staff to eliminate Step 4's in the Make Your Day program and create a process for classroom removal of students that is aligned with the revised discipline laws and regulations.*

*The rest is going to be difficult we are going to have to provide our teachers with the tools and strategies in times of addressing behavior issues in classroom, our staff is incredible if you give them some challenges they will come up with some productive solutions to the problems they are faced with. That transition has started by eliminating step 4 in the classroom. As we make the transition to PBIS we need to have some strong commitments by fall for a solid transition, we have moved up our timeline considerably so we need to be together on this transition. I would like the board to know that I still want to stick to my plan of finishing out the 2014-15 school year as we are now and implementing PBIS into the classroom for the 2015-16 school year. Give the support needed to our teachers and classified staff to train them to be prepared in this transition.*

*Full implementation of PBIS in 2015-16, training starting with Principals, teachers and then classified staff by January 2016."*

Robert Sealby asked Ms. Mahuika to clarify her changed request at this hearing as compared to her original request that MYD be immediately discontinued in the classroom in the 2014-15 school year.

She responded that she understands it is difficult to abruptly make the change and understands now how the transition will take place so she adjusted her request in verbiage accordingly after meeting with Superintendent Flones.

Board President Laura R. Jaecks read the following executive session statement:

*The board will enter into executive session in accordance with policy 1410 Section G to discuss with legal counsel representing the district matters relating to district enforcement actions, or litigation or potential litigation to which the district, the board, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the district. Legal counsel will be present.*

*The executive session is scheduled for 20 minutes and the board will reconvene to the public hearing to announce how their decision will be rendered.*

Board President returned after the 20 minute closed session. The meeting was reconvened in open session and announced that the executive session would be extended for 15 minutes and the board meeting would start late. Ms. Jaecks closed the session again for an additional 15 minutes.

**Hearing Re-opened at 6:05 pm:**

The board thanked everyone for the cooperation and professionalism shown during this appeal process.

Ms. Jaecks asked for a motion:

**MOTION MADE:** Robert Sealby made the motion to affirm and approve the recommendation of Superintendent Flones in his letter dated November 13, 2014 to Ms. Mahuika.

**SECONDED:** By Walter Newman

**UNANIMOUSLY PASSED**

President Laura R. Jaecks read the following statement:

*The district acknowledges that the investigation reflects disproportionality. However, we cannot find that the disproportionality is discrimination. As a result, we find the district has not engaged in discrimination.*

*The district is committed to address the disproportionality. We have been in the process of incorporating the PBIS program for the last 2 years. We will continue this transition.*

*To this end, the Board is directing the Superintendent to take the steps necessary to implement PBIS throughout the District by the beginning of the 2015-16 school year and to terminate MYD at the end of the 2014-15 school year.*

*We further direct the Superintendent to implement procedures to track the impact of the PBIS on the issue of disproportionality. We will issue a written decision in a timely manner to both parties.*

**II. Hearing Adjourned**

**APPEAL HEARING ADJOURNED:** President Laura R. Jaecks adjourned the meeting at 6:10 p.m.

\_\_\_\_\_  
President

\_\_\_\_\_  
Superintendent

\_\_\_\_\_  
Date