OFFICIAL MINUTES FROM THE BOARD OF TRUSTEES MEETING OF THE
ARKANSAS SCHOOL FOR THE DEAF
ARKANSAS SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED

The Board of Trustees for the Arkansas School for the Blind and the Arkansas School for the Deaf met for a special called meeting on July 12, 2016.

Present: Mary Weeks, Chairperson; Dr. Doug Watson, Vice Chairperson; Faith McLaughlin, Secretary; Susan Pack, Board Member; Jeann Tribett, ASBVI Parent Representative; James Caton, ASBVI Superintendent; Jim Hill; Nga Mahfouz; Teresa Doan; Justin Rasnick; Beth Smith, Will Gorum and Eddie Schmeckenbecker, Interpreters;

Call to Order

Ms. Weeks called the meeting to order at 9:05 am. Ms. Weeks stated this was a special session called for the lawsuit case and to discuss possible responses to the lawsuit. She said the members received the lawsuit, their settlement agreement and an overview which is not a legal document, but something she had Sharon Berry write for her. She said they have a letter from the State Director of Special Education and Office of Public Instruction. Attorney Mahfouz said what Mary is referencing is a letter that was written to the state of Montana by the Federal Office of Civil Rights. She said this is an interpretation letter written by OCR regarding our Federal Statue. Ms. Weeks said it has to do with grades, Special Ed and other items. She said she knew they had not had time to read since they only received it today upon arrival. She said another document they had was from OCR and she wanted them to make a note of number 6. She said basically what it says is that letter grades should be given on goals and objectives if the student is in a Special Ed class or pulled into the Core Curriculum then a separate goal should be written, separate tests and grades associated with that goal. She said she didn’t know whether that spills over into – she asked Mr. Caton if he called to find out anything about the more severely handicapped and having to give grades. Mr. Caton said he did and the answer he was given was that there is not a black & white answer for that. Ms. Weeks said for the self-contained. Mr. Caton said either way, whether you are dealing with self-contained classroom or dealing with students from self-contained in a Gen Ed class. Ms. Weeks said civil rights group says you do have to have grades. Ms. Pack stated achievement or letter grade. Mr. Caton said there is nothing you can point to that he could find that either says it is okay or not okay. He said he thought the issue is that whatever you do in terms of grading that you have to be able to explain it and it has to be clear and meaningful. Ms. Weeks said as far as the self-contained classrooms as a unit where they go out for music and art, you don’t see that they have to have letter grades. Mr. Caton said you cannot get a clear answer on that one way or the other.
Attorney Mahfouz said she had spent quite a bit of time researching this issue because it was of special importance, not necessarily over this particular proceeding, but in general moving forward. She said she found a couple of things, one is the state’s statute mandate a unified grading system and it is the traditional letter grades and there are no exceptions or exemptions from that even with the ADE regulations that interpret that statute don’t exempt Special Ed classes or any type of student. She said the only two exceptions to that mandatory grading schedule are AP classes and classes offered under the IBP. She said she did a broader search but couldn’t find anything except that mandatory grading schedule. She said she looked at the Rehab Act which is like the ADA with respect to educational services – The Americans with Disability Act. She said she was looking for some federal cases or guidance that would speak to this type of grading system that some students would be given Pass/Fail grades but other students would be graded on the traditional letter grading system. She said she came up with this letter from OCR which is just as good as a federal case because courts will look to these letter determinations from civil rights in making decisions because OCR is responsible for interpreting. Mr. Caton said in terms of the Pass/Fail policy that we currently have under the grading policy in our handbook, it becomes a challenge for them to defend that and he can’t find anything one way or the other. He said when you look at the OCR letter and other documents it tends to lean toward letter grades. Attorney Mahfouz said she would tend to agree with that. She said when she does not find anything definitive and have two stacks, one is pros and one is cons and on one side of the stack I see Arkansas Statutes say mandatory letter grades with no exception unless you are AP or Baccalaureate Program and have a letter of determination from OCR saying whatever you do as a policy for grading make it applicable to all students. She said when she comes in to advise clients, she does not want the school to be a test case as to whether it is legal or not. Ms. Weeks said this pertains to 7th – 12th on letter grades. Attorney Mahfouz said it does and there is language in the statute that says it applies to the secondary education. Ms. Pack asked her to back up to where you said something about rehab. Attorney Mahfouz said the Federal Rehabilitation Act. Ms. Pack said if the student was a vocational student, are you saying you could do a Pass/Fail. Attorney Mahfouz said what she was saying according to the OCR interpretation of the Rehab Act they are saying if there is a school using a grading system that is not across the board uniformly applied to all the students then it might be suspect especially if the distinction that is made between the across the board grading system and the non-traditional grading system based on a person’s disability. She said if the reason you are giving a person Pass/Fail because they have x, y or z disability you might have a problem. Mr. Caton said the way it was put to him yesterday was if you are using a Pass/Fail, you have to be able to explain it very clearly. He said as to what that means if you are giving a “P” simply because the student is graduating on their IEP so you are making a distinction there.
Attorney Mahfouz said she has read a lot of cases that talk about assigning factors or measures of success based on completion of a student’s IEP that is not to mean it cannot be graded, meaning that just the “P” or “F” then you assigning letter grades on how successful that student was in the completion toward their IEP. Dr. Watson asked what the history of the Pass/Fail was at ASB and the history of how you determine who it applies to and not apply to. Ms. McLaughlin asked where the Pass/Fail come from. She asked if it was a state law or did the school decide they were going to go in that direction. Ms. Weeks stated she didn’t know because they didn’t use it when she taught at ASB. Ms. McLaughlin said so it has only come recently. Ms. Weeks said it has to be something that has evolved in the last ten years. Someone said it is in the policy. Mr. Caton said they would have to look back through the handbooks to see how long it has been in there. Ms. Weeks said a handbook is not a law – anything can be put in a handbook. Mr. Caton said true but it is the policy. Ms. McLaughlin asked Mr. Caton if he knew how long Pass/Fail has been. Mr. Caton said he would guess it has been in there quite a while. Ms. McLaughlin said like ten years. Ms. Pack said since you have been here. Mr. Caton said he knew that since he started teaching it was in there and that was in 2010. Attorney Mahfouz asked if it was true for the secondary as well. Mr. Caton said it was secondary. Ms. McLaughlin said it was in there when you started teaching so it goes way back. Mr. Caton said he thought it was probably in there before that. Ms. Doan said her best guess would be when IDEA was reauthorized in 2004 out of the No Child Left Behind when the federal law tells us you educate the child. She said when you have an IEP team the number one goal is to make sure that that child has an appropriate education and that their access to the general curriculum is appropriate. She said in order to have children that are lower functioning have access to that general curriculum we use to use the term mainstream and it was changed to full inclusion or inclusion. She said she thought that might be where that came from that we can put a child into a Gen Ed classroom that benefits them but also benefits the other children in the classroom. She said so when Gen Ed kids, even in private schools in Arkansas, if it is determined that it best meets that child’s needs to be served under Pass/Fail you can do that in Gen Ed, however, they do not get any quality points that helps them with their GPA. She said there are children sitting in Catholic High School getting “P’s” who might have some special needs because they are using more of an inclusion model. She said it also happens in some of the larger public schools for that very reason to give equitable access; equitable not equal, equitable and that is a very strong term. Ms. Weeks said she supports putting kids into core curriculum classes but have always felt they needed a specific goal/objective and separate tests reflective of that goal and objective. She said she didn’t know if that had been done or not. Ms. Doan said knowing this situation and this student one of the reasons you can put a child or keep a child in Special Education is functional skills, social and emotional. She said if you look at the student’s scores and at what he is doing communication wise it is very appropriate for him to be with his peers that do not have as a significant disability. She said the student asked us last year if he could go into African American History. She said he wanted to be in that class.
Ms. Weeks said she was asking if a goal was written specific to his needs and tests reflecting the goals. Ms. Doan said she would have to look back into the records. Ms. Weeks said she did not think it was. Ms. Doan said she would look at functional behavior. Ms. Weeks said that has to be. She said if you have a kid in whatever class it is - she said I think there is just supposed to be one goal for core kids because they are Special Ed. She said as long as they have one goal that is the way it used to be. She said if the kid is in that classroom and the teacher wants all the kids to recite all the presidents of the United States then for a lower functioning kid according to his ability then his goal would be name the current president or the last two presidents and when the others are tested on the maximum he is tested on his own personal goal and should be given a letter grade. Ms. Doan said she understood that but now you don’t have a specific goal for everything. She said Justin can speak to this as well. She said if the child is a Gen Ed academic kid they might have a goal in Language Arts that can be served throughout the entire curriculum. She said you don’t write 75 goals anymore. Ms. Weeks said one goal is supposed to be for the student that doesn’t have deficiencies but when you have a child that is not going to be able to do what the rest of the kids in the class are but will be able to gain education then it needs to be clear what the child will be graded on and a goal written and approved at the IEP meeting so that you can grade them with a letter grade. She said the school was going to have to use letter grades. She said she was not willing to say the school was going to use Pass/Fail when the Civil Rights say not to use. She said private schools may be doing it and in some public schools but right or wrong on how we feel each of us will have differences of opinions. Ms. Doan said if we are going to have kids that are in Gen Ed classes then we have to use some type of a co-teaching model so that the Special Ed component is addressed. She said they had to have Special Ed helping the Gen Ed teacher. Dr. Watson asked in the four years this student was in high school how many other students had the Pass/Fail and how did it play out. He asked if this was a unique case or did you have multiple and they each had their own justification documented. Ms. Doan said yes through the IEP. Ms. Pack asked what sparked this and said the reason she was asking this question was because it was so similar to when they did ?? and ASD was the test case. She said all through it she didn’t think the parents had the knowledge to do that and wondered who was behind it. She asked if they thought there was someone behind this sparking it to make it a test case. Ms. Weeks said she didn’t know if it was that. She said there was a meeting in March and she thought the parent didn’t like how they were talked to (they thought they were talked down to). Dr. Watson asked who they were. Ms. Weeks said the parents. She said when you take a parent who has a child graduating and find their kids coming home sometimes they panic because they don’t know what they are going to do with the child. She said they have let it go all these years, history shows the parent wasn’t interested enough to come to many meetings even though repeated letters were sent out.
She said she thought the parent got upset over the meeting and went to a lawyer. She said when you go to a lawyer they start looking at everything and they landed primarily on the grading system. Dr. Watson asked if it was a problem with the transition that didn’t happen like helping them plan a post-secondary, training or whatever it was. Ms. Doan said she was very confident with the student’s transition plan. She said they called the Department of Ed in, Bonnie Boaz, who coordinates the transition for the state and she was very pleased. Ms. Weeks asked what the transition was. Dr. Watson asked if the parent was satisfied with what was happening. Ms. Doan said they thought she was satisfied but before that March meeting she was mad before that meeting started. She said the mom was mad before she got to the meeting and wouldn’t respond, wouldn’t speak, wouldn’t talk to anyone including the classroom teacher. She said all she would say finally was that she wanted a meeting and she put it in writing which was very odd. She said she wanted a meeting and she was bringing someone with her. Ms. Doan said it was the dad who had not been involved. She said the student’s parents had never been married although the dad is married to the niece of one of our teachers. Ms. Doan said at one point in the meeting the dad asked why he wasn’t included in any of the meetings. She said she opened up the binder and told him that it said N/A for father and it had for the last seven years. She said she asked him if he would like to be included and we put his information down. Dr. Watson asked if the mom was agreeable to him being involved. Ms. Doan said the mom was the one who invited him. Ms. Pack said she would like to ask Jeannie a question. Ms. Pack asked Jeannie (as our parent rep) have you felt any sense of anything like this among parents. Ms. Tribett said no. She said her boys were a lot younger. She said they all come up screaming from time to time but I have never felt that we were ever turned away. She said she thought that parents either fight for what their kids need or they are indifferent. Ms. Pack asked if she had ever heard parents talk about Pass/Fail. Ms. Tribett said she had never been in that situation but she did not know many of the parents in the secondary or Special Ed. She said she is not around those parents too often. Ms. Weeks said let’s go back. She said there was no doubt in her mind that this school provides individual training for all of the kids but that from this day forward no Pass/Fail. She said that was over with and X it out in the handbook. She said from this day forward it has to be based on goals and objectives and grades associated with it. Mr. Caton said if he couldn’t call the Special Ed Department and can’t get a clear answer that concerns him. Ms. McLaughlin asked if the OCR was the only document that says that. Attorney Mahfouz said yes. She said it is the office that is in charge of overseeing the Rehabilitation Act. She said the reason she found this ruling was there were a couple of court cases in the northeast that cited this letter ruling. She said they are the office that is in charge of enforcing this federal statute. She said by law we are required to refer to them. Ms. McLaughlin said all the federal guidelines in the laws that operate the whole Special Ed Department OCR would overshadow that. She asked if that was correct.
Attorney Mahfouz said there are two major federal laws that govern what’s going on here and one is going to be the IDEA. She said IDEA really has nothing to do with this grading issue. She said the reason she started looking at the grading issue was because it came up when we were prepping for the hearing and then in meetings with Mr. Caton and Mr. Hill there was some concern about this process and whether or not it was appropriate under our current legal system. She said Mr. Caton asked her to look into it. She said she did because of that and also the parents’ attorney made it very ?? that she wasn’t really interested in the outcome of the hearing itself meaning you have to go through this exhaustion procedure you can’t just go file a federal lawsuit you have to have a hearing first. She said what she said to her was if we lose at the hearing she was filing a federal lawsuit because that is where she would be able to bring up the Rehabilitation Act you can’t do that in a hearing. She said if she had filed a federal lawsuit first without a hearing it would have been dismissed immediately. Ms. McLaughlin said if she is not satisfied with the settlement she is automatically going to federal. Ms. Weeks said going to a hearing first because she knows she has a federal lawsuit. Attorney Mahfouz said that would be extraordinary costly for the school. She said if you look solely in terms of the attorney fees let’s look at the monetary aspect. She said if she was successful in federal court then you could be out all attorney fees. She said she was probably in her 70th hour of time to this case – that is not your staff that has worked with me prepping for the case and teachers, etc. Ms. Pack said on the settlement that we got are you fairly confident that their attorney is going to accept this. Attorney Mahfouz said she had to be fairly confident because this essentially what they proposed. She said there was a lot of discussion with the parents, their attorney and their consultant and she got the impression that there were probably some modifications so she thinks this would be acceptable to them. She said it was nothing we proposed. Ms. Pack said they are next on the line too because they could be paying big dollars if they lost it so that is why she is wondering where it is coming from. Attorney Mahfouz said there is an assumption that is being made here and she doesn’t know if it is true or not. She said when she worked in private practice her focus was employment law and if she took a plaintiff’s case it was always on contingency so if she lost she ate it. Ms. McLaughlin asked if they could go through what specifically the settlement is. Ms. Weeks said that is the next step. She said they had established the fact letter grades will be attached until we know something different from the Office Civil Rights. She said going back to what they wanted. She said look at what came in the mail. Ms. Weeks said she did not want to take a risk. She said some of the things they asked for are not quite reasonable but some might be considered. She said on the consultant they wanted 12 hours a year for three years and wanted Dr. ???. Ms. Pack asked if this issue is cut down would they be agreeable. Ms. Weeks said she thought so. She said the reassessment could be done at an IEP session with a consultant for that year in there.
Ms. Doan said her concern is that if we don’t have a buffer almost like a mediator from ADE or wherever we could be right back here next year. Ms. Weeks said she was saying hire a consultant. Ms. Doan said three years because what happens in year two if we don’t have a consultant and the mom gets mad again and refiles a lawsuit. Ms. Weeks said on a functional assessment she paid $350 and Faith looked it up and it says a parent is entitled to a separate test if the parent wishes and they will not be responsible for paying for it. Dr. Watson asked if the assessment was external. Attorney Mahfouz said she thought they requested it external. Ms. Weeks said she thought it came back the same as the school. Ms. Doan said they have the right to do whatever they want to. She said they were not having an evaluation at that time. Mr. Rasnick said right. He said he thought that was the one caveat that if we are doing a formal 3-year re-eval or the parent requests a re-evaluation then IDEA allows them to get an independent evaluation at school cost. Ms. Weeks said on tutoring services she felt it unjust for a student to have to sit for 9½ hours per day to extend two hours each day. She said she would not agree to that for the child’s sake. She said she thought that tutoring should be done during the regular school day. She said in the summer how would it be incorporated. Ms. Doan said he would have to miss something. Ms. Pack said they want the VR so reading might not be a point of contention with them. Ms. Weeks said it says 6 weeks during the summer. Ms. Weeks asked if they could incorporate half of that in Jump Start by pulling him out of something. Ms. Doan said the mother would not want us to do that. Mr. Rasnick said the tutoring they wanted during the school year if any hours were missed they also wanted to roll that over into the summer. He said there were several stipulations but it could end up being more hours in the summer. Ms. Weeks said a very accurate account would have to be kept. Ms. Weeks said she thought there had already been an agreement that the student could come back to be in the core classes on an IEP with letter grades till graduated. Attorney Mahfouz asked if they were just reviewing now and deciding at the end. Ms. Weeks said they were getting information. Ms. Weeks said at the end of the year with an evaluation from the consultant it would be determined whether the student would come back for another year. Attorney Mahfouz said she felt it would be helpful to have someone in this process that both parties trust. She said if we are using their consultant and that consultant is making the recommendation what would there be to complain about. Ms. McLaughlin said the parent has to trust the consultant whoever it is. She said if they totally trust that person they are going to be positive and listen to the consultant. Ms. Doan said she thought it would be wise to bring Bonnie Boaz from ADE Transition in which is part of her job to help us. Mr. Hill said he thought the board was on the right track. He said he thought there were some variables in there like hours rolling over to the summer. He said the parents were not reliable at getting the child to do what they are supposed to do. He said he thought they would have to say we would provide whatever number of hours a day and the child is expected to be there and if he misses it will not accrue in the summer. He said there needs to be safe guards in there so they cannot live up to their part during the school year and load us down in the summer. Dr. Watson said accountability on both sides.
Dr. Watson said what does the student want? Attorney Mahfouz said he is 18 but the mother is the legal guardian and has Power of Attorney. Ms. Pack said what we do with this is setting a precedent. Attorney Mahfouz said you have three options: Reject the settlement, Accept at face value or Counter Offer. She said if there is a counter and it is rejected then this offer is off the table and we go to a hearing. Ms. Pack said if they accept this do they have a right to come back and file an OCR complaint. Attorney Mahfouz said it is against the law to sign away a first (coughing) ….. She said you can’t negotiate a way or someone’s right to file a future type of discrimination. Dr. Watson said he had a related issue going through his head. He said 40 years going in rehabilitation he knows from experience that deaf kids, hard of hearing kids, deaf/blind and blind that often they do much better if they leave the school and go into an adult vocational career training that includes everything you are talking about. Ms. Weeks said the mom doesn’t want that. Ms. Doan said that is what we have been doing and that is what Jump Start is. Attorney Mahfouz said the mother expressed very strongly that she doesn’t want him to live in a dormitory environment.

16-J-008 Motion to Accept Settlement Agreement with Additional Clause

Ms. Pack made a motion to accept the settlement agreement with the addition of a clause that requires transportation by the parents beyond the normal bus schedule during the academic school year and with the change that the consultant would be a one year contract to be reviewed each year. Ms. McLaughlin seconded the motion. The motion passed unanimously.

Dr. Watson asked Mr. Caton if he thought what they were agreeing to could happen. Mr. Caton said it will be a challenge for us but think we have to meet that challenge to satisfy the needs of the student. He said beyond this particular case we have to look at our policy and make sure that each policy we have whatever it might be in whatever area it is that we can defend it. He said he thought they had to look at the program itself. He said he was committed beyond this particular case to evaluate that program. He said it is a specialized setting for a subset of our students and we have to evaluate it. He said he was hoping to meet with a consultant next week with the possibility of helping us. He said he felt there was a need for the teachers to be better trained and better documentation of what is going on in the classroom in terms of curriculum for the student and how they are assessing that curriculum.

Ms. Weeks adjourned the meeting at 11:00.
Mary Weeks, Chair

Dr. Doug Watson, Vice-Chair (Secretary Absent)