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Email 1

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Mon, May 18, 2020 at 4:37 PM

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Good afternoon, Board members:

At the request of Board President Rivera, we provide the following guidance to the Board of Education concerning Mr. Goldson's Motion to Censure, sent by emails dated May 15 and May 16. We understand that there is a meeting of the Board's Governance meeting this afternoon, and we can provide the following guidance on Ms. Rivera's question on behalf of the Board: "whether this is an appropriate request for the governance committee to consider and the proper procedure for handling such requests."

As described below, we do not believe that the Motion to Censure is properly directed to the Governance Committee. Rather, we believe that the Motion should be addressed to the Board as a whole. In any event, we note that consideration of the Motion to Censure is not listed on the agenda for today's meeting of the Governance Committee. Therefore, the Committee should not consider this matter today unless the meeting this afternoon is a regular meeting and the Committee places the matter of the Motion to Censure on the agenda for today's meeting by a two-thirds vote.

Before addressing the question as to the proper procedures, we note Mr. Goldson's assertion that Ms. Rivera's request of us for guidance on the proper procedure for handling a Motion to Censure is somehow improper. Respectfully, we disagree. The Board President regularly seeks guidance from legal counsel on appropriate procedures, and this request for guidance is consistent with that practice. Board Policy 9400.1, which Mr. Goldson cites, refers to Board members initiating legal action. However, the email from Board President Rivera seeking guidance on the proper procedure for handling such requests is just that, and it is not related to initiating legal action.

As to the proper procedures, we conclude that a motion to censure is properly addressed to the Board as a whole, not to the Governance Committee. The charge of the Governance Committee is set out in Board Bylaw 9131.

The Governance Committee shall guide and prioritize the focus of the Board of Education, ensuring that the Board has effective systems of governance as a board both in committees and as a public forum for all stakeholders. The Governance Committee shall determine appropriate topics and data for discussion and action with the full Board of Education or with the Finance & Operations Committee or the Teaching & Learning Committee as appropriate. The Governance Committee shall also consider and recommend changes to bylaws and policies which enable current Board development and effective governance. The Governance Committee shall also, with the Superintendent, track and follow up on issues raised by the Board and public, whether for information, consultation, or for decision by the Board, including issues raised in public comment and those identified by the Superintendent or his/her staff.

Ultimately, we must leave to the Board how to interpret its Bylaws, However, we note that the description of the jurisdiction of the Governance Committee refers to "effective systems of governance," and to "consider[ing] and recommend[ing] changes to bylaws and policies which enable current Board development and effective governance." We note that Policy 9131 also refers to the Committee's "follow[ing] up on issues raised by the Board and public," which we infer must refer to matters of governance.

Read as a whole, we interpret Bylaw 9131 to mean that the Governance Committee is responsible for discussing and adopting specific procedures for Board operation. By contrast, the Motion to Censure relates to facts concerning actions by a Board member, not procedures. Therefore, we conclude that consideration of this Motion to Censure is the responsibility of the Board as a whole, and the appropriate procedure will be to place this matter on the agenda for a Board of Education meeting.

We hope that this brief response is helpful to you, the Governance Committee and the full Board. Given FOIA requirements, please do not comment further to all on this issue except in a properly posted meeting. Thank you.

Tom Mooney

Shipman & Goodwin

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Sent: Monday, May 18, 2020 3:25 PM

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