

**Hesperia Community Schools
Board Personnel & Policy Committee Meeting
Board of Education
Grievance Hearing
August 5, 2013**

The Board Personnel & Policy Committee Meeting was called to order by Committee Chairperson, Mike Anderson at 6:00 p.m.

Present were the following committee members: Mike Anderson, Chairperson; Matt Joppich, Jeff Thome, and Kim McClernan.

Also present were the following board members: Lavin, Jacobs, and Good.

There were no board members absent.

All present gave the pledge of allegiance.

The purpose of the meeting is to hear the Hesperia Education Association (HEA) Grievance #2013 6/6. This is not to be considered a public meeting and there will be no public comments. If any action is taken, then a motion will need to be made and approved to have the action taken by the entire school board present.

The following people were introduced: Representing the District: Mr. Marshall Grate, Attorney from Clark Hill, Representing the Grievant: Mr. Bill Kuipers, MEA UniServ Director; and Mr. Mark Balcom, Hesperia Education Association (HEA) President. Grievant: Mr. Doug Baird.

The Hesperia Education Association (HEA) will present their information. The HEA was asked if they wanted the hearing in open or closed session. Response was that they would have the hearing in open session.

Mr. Bill Kuipers began the presentation with passing out several hand outs which included a copy of the Grievance #2013 6/6; excerpt information on child abuse; copies of the responses from the administration on the Grievance Hearings #2013 4/25a and #2013 4/25b; copy of School Board Policy #9570; information on the Seven Tests for Just Cause; highlighted information from the HEA Master Agreement dated (September 1, 2012 –August 31, 2013) that they feel will help validate the rationale for the grievance; copies of Mr. Doug Baird's Varsity Wrestling Coach Evaluation for the 2012-2013 season and the 2011-2012 season, letter from Mike Fosburg, Athletic Director/Dean of Students, which discusses several items for improvement, and a copy of the coaches handbook.

Mr. Bill Kuipers addressed several reasons for the grievance. He stated that there is a contract violation and that the process of Just Cause was not used. The board's action to not renew Mr. Baird's contract was without Due Process. Mr. Kuipers stated that there are two letters of reprimand that are not part of the hearing but are germane to the hearing and will be discussed later. He walked the board thru the highlighted portions of the HEA Master Agreement and spoke to Sections A – Teacher's Personal Life; Article 12 Section A; Page 15 – Article I – Just Cause. He stated that under the prohibited Subjects of Bargaining that the Just Cause clause is covered under the Teacher Tenure Act. He referenced the Letter of Understanding (LOU) that

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was included in the information, specifically the highlighted portion of Section 2, that coaching is a non-tenured position and that the process of "just cause" does apply to this grievance. Mr. Kuipers then went on to reference the Seven Tests of Just Cause (questions) as follows:

1. Did the company give the employee forewarning or foreknowledge of the possible or probably disciplinary consequences of the employee's conduct?
2. Was the company's rule or managerial order reasonably related to: (a) the orderly, efficient, and safe operation of the company's business and (b) the performance that the company might properly expect of the employee?
3. Did the company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the company's investigation conducted fairly and objectively?
5. At the investigation did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the company applied its rules, orders, and penalties even-handedly and without discrimination to all employees?
7. Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company?

Mr. Kuipers then proceeded to ask Mr. Baird questions to establish if the tests of "just cause" were met.

Mr. Kuipers: Were you notified prior to the May 23rd memo of the reasons for the non-renewal?

Mr. Baird: No.

Mr. Kuipers: Was there any discussion prior to the non-renewal by the board?

Mr. Baird: No.

Mr. Kuipers: Did you have any meetings to discuss the non-renewal?

Mr. Baird: Did have a meeting with Mr. Haase and Mr. Balcom to discuss why. Also with Mr. Fosburg to discuss why. Was told that the board wanted to go in a new direction.

Mr. Kuipers: Since the meeting have you been told the reasons why?

Mr. Baird: No, just what I have read in the newspaper.

Mr. Kuipers: You received an evaluation on April 19, 2013. What did you think of the evaluation?

Mr. Baird: It was not what I expected. Much lower than what I have had in the past. Especially concerned with the items that were rated with a number three. This is much lower than expected. In the past, I would not have received an evaluation like this.

Mr. Kuipers: One of the number three rating items was inspire players to achieve. Also number three rated items included organization and explanation and direction. How would you respond to that rating?

Mr. Baird: I don't agree. I have do have the ability to help players to achieve as evidenced by the success of several of the players. I review each players matches and give them guidance where needed.

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Mr. Kuipers: What is the outlook for the team for next year?

Mr. Baird: We do have three seniors that should place well. Other than that, I do not know what is going on as I have not been included.

Mr. Kuipers: What goals do you set for the program as a coach?

Mr. Baird: I set a goal that each player will reach their maximum potential. I help them do that by taking notes on their matches, filming the matches, and giving the players feedback. I also run a strenuous summer camp to help the athletes get ready for the season.

Mr. Kuipers: What would you normally get for an evaluation?

Mr. Baird: In past years, I would usually get a rating of higher than a four. Typically a 4.5 to 5.

Mr. Kuipers: Is the evaluation you received a reduction?

Mr. Baird: Yes.

Mr. Kuipers: At any time during the course of the year were you given any indication that you were not meeting expectations?

Mr. Baird: No, I do not recall any notice of this type.

Mr. Kuipers: Did you receive any correspondence relative to your evaluation?

Mr. Baird: No. I did ask Mr. Fosburg to help me understand the evaluation and give me 2-3 things on the number three rated items that I could improve upon.

Mr. Kuipers: After asking for suggestions of items that you could improve upon, you did receive a letter from Mr. Fosburg outlining some of the items that you could improve upon. Were any of these issues raised during the course of the year?

Mr. Baird: No.

Mr. Kuipers: Would you say that the number of times that your wrestling program went to State typical of other schools?

Mr. Baird: I think we have a more respected program than other schools in the State and have had that for many years. Not sure what is meant by going in a different direction.

Mr. Kuipers: What is your relationship with the athletes?

Mr. Baird: I have had 20 years of good relationships. Many athletes keep in touch with me. I am constantly talking with students and giving them advice. I have an open door policy and try to give them my best heartfelt advice.

Mr. Kuipers: Do you have written district goals for your program?

Mr. Baird: We have had a revolving door of administrators. Yes and no for written goals. Don't recall any specific goals for this past season. Personal goal was to place better than last year, which we did. I feel we exceeded the goal for special activities, such as supporting cancer causes and other community type programs.

Mr. Kuipers: Was there any time you were told you were not going in the right direction?

Mr. Baird: No.

Mr. Kuipers: Were you asked at any time if you were willing to take the program in a different direction?

Mr. Baird: No.

Mr. Kuipers: Did you expect to be let go?

Mr. Baird: No. Was told that I did not have all of the board members votes for renewal of contract due to some domestic issues. I have always received a 7-0 vote in the past on the renewal of coaching contracts. Went to talk to several board members in the parking lot and was told that due to the grievances that had been filed that it was not a good time to talk and they were not interested in chatting with me.

Mr. Kuipers: Two grievances have been filed. Let's talk about the Roger City incident. What were you told about this?

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Mr. Baird: That as a result of this, there was not enough votes to renew the contract and that the domestic issues were not helping the situation. Last year was not a good year. Son was suspended from school. Mr. Haase stated that I was not the person he thought I was.

Mr. Kuipers: You received the reprimand in mid-March on the Roger City non-reporting incident. When did you know this was one of the reasons that your contract was not being renewed?

Mr. Baird: When the media stated that I was let go for discipline reasons. The Oceana Herald had stated that the board wanted to go in a new direction. Sunday's Chronicle indicated that there were two discipline reasons. The Traverse City Eagle also had an article on this.

Mr. Kuipers: On the Roger City incident what was the reprimand about?

Mr. Baird: That students were left without adult supervision on an overnight trip and an incident had occurred. The allegation was that the incident was not reported timely.

Mr. Kuipers: Did you report the incident?

Mr. Baird: Yes.

Mr. Kuipers: A reference was made to the excerpt from the coaches' handbook that violations of the athletic code are made to the athletic director within five days of the infraction.

Mr. Kuipers: Does the district policy speak to the extent of the supervision?

Mr. Baird: No

Mr. Kuipers: Did you have adult supervision?

Mr. Baird: Yes. Myself, the assistant coaches, and other adults.

Mr. Kuipers: Where were the student athletes?

Mr. Baird: We drove thru a blizzard on the way to Roger City. We arrived at 10:00 p.m. at the hotel. The group was hungry and we decided to go to McDonald's. We were going to make a quick trip over and be back. McDonald's was about three miles from the hotel. Service was slower than we expected, they were short staffed and had shut the grills down. They had to restart the grills for us as it was so late. We had checked on the students before going and checked on them on the way back. Everything was ok.

Mr. Kuipers: Is there an adult in every room?

Mr. Baird: No. We normally get a room for the coaches and put 3-4 athletes in a room. We do not mix adults with students.

Mr. Kuipers: When did you report the incident of the marijuana smoking?

Mr. Baird: I believe the report was made with three days of my learning of the incident. My grandma had passed away during this time and I had taken some extra time off.

Mr. Kuipers: You did report the incident when you returned to work?

Mr. Baird: Yes.

Mr. Kuipers: Were you aware that this was a violation of protocol?

Mr. Baird: No. I have not seen the protocol.

Mr. Kuipers: We will talk about the second grievance which involves not reporting a reportable child abuse incident. This grievance is on its way to arbitration.

Mr. Kuipers: Did you report the incident?

Mr. Baird: No, the assistant coach did.

Mr. Kuipers: Board received copies of the excerpt of the child abuse and reporting information. Mr. Kuipers pointed out the highlighted information.

Mr. Kuipers: You were supportive of the report to the district.

Mr. Baird: Yes, I was sure everyone knew.

Mr. Kuipers: You are aware as to what child abuse situations are reportable offenses.

Mr. Baird: Yes.

Mr. Kuipers: After reviewing what is a reportable situation did you feel this incident was reportable?

Mr. Baird: No.

Mr. Kuipers: The situation involved a former student and current student on an outside school campus. This would not meet the reporting requirements.

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Mr. Kuipers: Do you feel that the non-renewal without just cause violated board policy?

Mr. Baird: Yes. Just cause and due process should have been available to me. Yes, I filed a grievance as it was part of my due process. This position I have taken deeply saddens me. It is just a shame. Wish people could heal and get pass this.

Mr. Kuipers: Doug was not afforded union representation at the grievance hearing. Mr. Balcom will speak to this.

Mr. Balcom: The board did have a date for the hearing. The union was unable to be there on that date. We were hoping to have the hearing rescheduled. This did not happen.

Mr. Kuipers: In summary, I would like to thank the board for its time. This has been a significant issue for Mr. Baird. Part of the rationale for the grievance is that the non-renewal is without "just cause" and there has been no due process. Mr. Baird has not been given written goals. He believes his evaluation does not reflect that he did have a successful season and has met the standards and goals. He was not told of any problems during the season. He did ask for additional information on the non-renewal. He felt he has done what has been expected. His failure to report the child protection issue was due to the fact that he thought that the district knew of the incident and that the statutes that he was aware of did not require the incident to be reported. He has been committed to the wrestling program, and felt he has met the goals.

Mr. Marshall Grate, Attorney with Clark Hill passed out several hand-outs. At issue is whether the district violated Mr. Baird's contractual rights under the Collective Bargaining Agreement (CBA) and Board Policy. Mr. Grate outlined the district's position as follows:

This step in the grievance process represents an appeal from the Superintendent's decision. The HEA has presented its case first in an open session. Under Step 4 of the CBA, the Board/personnel committee has 20 working days following the date of the grievance to make a final written determination on the grievance.

The administration's argument is as follows:

A. Not Subject to Arbitration. This grievance does not involve discipline. It involves a question of nonrenewal. The Board and District's practice has been to assign coaching positions based on one year arrangements which are at will. There is not been an understanding that a teacher has a contractual entitlement to serve as a coach.

The educational landscape has changed and is still changing. This grievance must be considered in the legal and factual context of new rules that govern the parties' relationships.

1. The CBA was dates from September 1, 2012. This date is important because the CBA is subject to all the legal restrictions that apply to collective bargaining. On July 19, 2013 PA 103 took effect. It transformed several topics into what we call prohibited subjects of bargaining. Two are important here: (reference was made to handouts)

One is (j) which speaks to Placement of Teachers. The Grievant is a teacher who is subject to the Teacher Tenure Act. His assignment as a coach involves a placement decision, and thus is outside the reach of the CBA and any arbitration.

The second one is (m) Arbitrary and Capricious. The standard of Arbitrary and Capricious must apply. If this grievance is a discipline grievance, then the legal standard is not Just Cause; it is arbitrary and capricious. Under item (4) Note that Article 6D is italicized. Also note that Article 13 I is italicized.

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Refer to the last three pages of item 4. This is a LOU (Letter of Understanding) that recognized the application of PA 103 and addressed the issues of prohibited subjects. These provisions have no application to teachers subject to the Teacher Tenure Act.

This grievance is not subject to arbitration:

Extra duty jobs are not protected by the Teachers' Tenure Act. MCL 38.91.

There is no specific contractual entitlement to an extra duty job. Remember that Mr. Baird is not being terminated. He is being non-renewed regarding an extra duty assignment. In fact, the Board renews or non-renews coaching assignments every year. There is no contractual or legal entitlement to be a coach.

At least three distinguished Michigan Arbitrators (Daniels, Paul Glendon and Long) have held that non-renewal of an extra duty position is within the administrative discretion of the School District and not subject to the just cause standards of discipline or discharge. In one case, Arbitrator Long ruled that a school district's failure to renew a contract of a teacher who had 37 years basketball coaching experience was not reviewable by the arbitrator.

B. Specific Rationale:

Mr. Baird claims he had no notice regarding this decision or the reasons behind it. Yet he admits that he was told that there was not Board support for him to continue as the Wrestling coach. The decision to non-renew his coaching assignment occurred only a few weeks after the second reprimand on April 15, 2013. He could easily connect the dots that his reprimands played a part in the Board's decision.

1. Mr. Baird has not been a successful coach or exemplary for this past year. He was the subject of written reprimands that reflected very poorly on his judgment as head coach. The decision to non-renew was not made in a vacuum.

a. Rogers City incident—left student athletes unsupervised. As a consequence one student possessed and smoked an illegal substance. Rogers City wrestling finals. This matter was reported by a concerned parent, not by Mr. Baird. One of the students involved has left the District and transferred to Fremont Public Schools. Actually, Mr. Baird interfered with the District's investigation.

b. Failed to report an incident of suspected child abuse received in person from a student. He never reported to the principal, to the superintendent or any other administration staff member. The underlying facts fit within the mandatory reporting requirements of the Child Protection Act.

Even absent a mandate, reporting this matter was essential so the District can help decide how to process the information.

The Administration concluded that the above two written reprimands demonstrated a negative effect upon the development of the character of the athlete.

No principle of just cause applies. The Board exercised its discretion to non-renew the coaching assignment. The Board was aware of the Grievant's disciplinary problems. The Board's action was not

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arbitrary and capricious, and even if just cause applied, which it does not, there was just cause to non-renew the contract.

It should be noted that the Grievant's judgment has been held to account. His inability to properly manage students is also reflected in his evaluation as a teacher which was ineffective. The two reprimands were not isolated incidents, but reflect on a pattern of behavior that has exhibited inadequate supervision and disdain for his superiors. His teaching evaluation cited him for among other defects, for not reporting to work on time; allowing students to leave class during instructional time; leaving his prep period without any notification, sending students on personal errands during the school day; and demonstrating a lack of respect.

Jeff Haase, Superintendent, provided additional information regarding the two reprimands and pattern of behavior. Mr. Baird received two written reprimands outlined as follows:

First Written Reprimand – March 20 (Roger City Incident)

Mr. Baird was given a written reprimand on this date for two items 1) he did not contact administration or athletic director once he was made aware of this incident, 2) lack of supervision. Mr. Baird contacted me the next morning concerning the first item in the written reprimand as the Coaches Handbook states an incident must be reported in five days from notification. I told Mr. Baird that I would review the information with the athletic director and get back to him. After further review of the Coaches Handbook, I removed the first point and issued a revised reprimand letter (April 11, 2013). Per the investigation through our School Resource Officer, you will notice the information that was shared between Mr. Baird and the parent who reported it to him about keeping it at an "informal level" in effort to minimize any potential consequences or scrutiny from the public or media. This shows a lack of morals and ethics.

Second Written Reprimand – April 15 (Failure to report child abuse and/or neglect)

Mr. Baird didn't exercise sound professional judgment with information that was provided to him per a student in his sixth hour class. Michigan law requires that you must file a report when you have reasonable cause to suspect abuse or neglect. This is an extremely low legal standard. We ARE NOT required to whether abuse or neglect HAS actually occurred. Mr. Baird shared this information with an assistant wrestling coach and the district has learned that Mr. Baird shared this information with additional staff members. Mr. Baird failed to provide any of this information to his immediate supervisor and/or the superintendent. Mr. Baird and district employees were provided with professional development on January 16th by Bryan Burgess on Mandated Reporting and provided with a handout and booklet. (Attachment).

Mr. Baird was issued two written reprimands for not exercising professional judgment. He tried to interfere with the first investigation by contacting students and not allowing the administering to conduct their investigation. Mr. Baird was made aware by Superintendent in April that he did not have board support for his wrestling position. Mr. Baird composed a resignation letter that he shared with student athletes during class and staff members.

Extra duty coaching assignments are within the Board's discretion and made each school year. The Board exercised its discretion not to renew the coaching assignment. There is no right of notice or warning with

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respect to coaching assignments. Each year (attachment) the board of education approves coaches. These positions are non-tenure and "At-Will" employees.

There are additional items that have established a pattern of behavior as follows:

During the 2011-2012 school year, Mr. Baird was given a day off last year due to lack of supervision in his classroom when a fight broke out.

During the 2012-2013 school year, Mr. Baird was given verbal reprimands by the high school administration for the following: Not reporting to work on time; allowing students to leave class during instructional time to run errands in the community; (this is a closed campus); leaving during his prep period without any notification to office staff and/or administration; and sending students to Wesco to pick-up coffee for a staff member in the middle school.

Mr. Baird received an "Ineffective" teacher evaluation from the high school administration based on the following criteria:

- Lack of purposeful planning which entails the use of assessment data and standards based unit plans.
- Leadership areas lacking in seeking professional skills and knowledge and engaging families in student learning.
- Core professionalism areas lacking due to on-time arrival and respect for superiors.

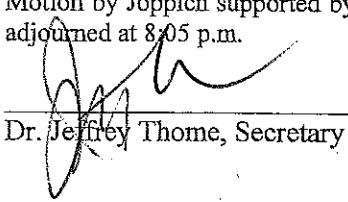
Mr. Grate summarized the district's position as follows: Student athletes are held to a higher standard. They must have passing grades. They represent the District. The same higher standard applies to coaches. They hold a position of trust which requires the exercise of impeccable judgment regarding issues affecting student athletes. Mr. Baird's judgments were found lacking. The failure to immediately report an incident of suspected sexual abuse is especially troublesome and if there was harm that resulted could expose the District to significant liability.

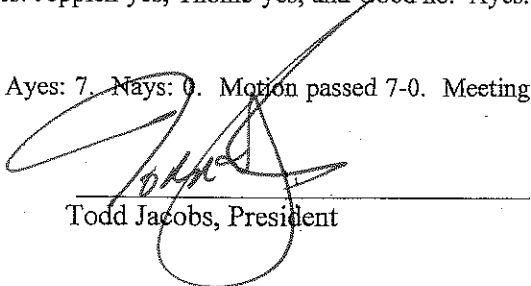
Mike Anderson, Committee Chair, asked if there were any other questions. Mr. Kuipers stated that several of the allegations presented have not been heard before. Mr. Grate responded and said that the process of renewing or not renewing coaches' contracts has been a past practice in the district. The issues that have prompted the non-renewal have been a pattern of behavior and that the consequence of the behavior should not have represented an element of surprise to Mr. Baird.

Mike Anderson, Committee Chair, asked for a motion to go into a meeting of the entire board for the purpose of acting on the grievance. Motion by Joppich supported by McClernan to go into a meeting of the entire board for the purpose of acting on the grievance. Ayes: 7. Nays: 0. Motion passed.

Motion by Joppich supported by McClernan to deny the grievance. Discussion. Good stated in his opinion that the non-reporting of the alleged sexual abuse was not a violation of the child protection law. Roll call vote: Anderson-yes; Lavin-yes; McClernan-yes; Jacobs-yes; Joppich-yes; Thome-yes; and Good no. Ayes: 6. Nays: 1. Motion passed 6-1. Grievance was denied.

Motion by Joppich supported by McClernan to adjourn. Ayes: 7. Nays: 0. Motion passed 7-0. Meeting adjourned at 8:05 p.m.


Dr. Jeffrey Thome, Secretary


Todd Jacobs, President