

STEAMBOAT SPRINGS SCHOOL DISTRICT

BOARD OF EDUCATION

EXECUTIVE SESSION

JANUARY 8, 2007

PRESENT:

Donna Howell, Superintendent

Denise Connelly, President

Jeff Troeger, Vice President

Jerry Kozatch, Secretary

John DeVincentis, Treasurer

Pat Gleason, Director

Richard Lyons, II (via telephone)

1 MS. HOWELL: I can do this very, very
2 quickly. I have an opinion from Mike Halloran, and
3 I'll just quickly review it and then you can take
4 it back.

5 In essence, it reviews the history by
6 which we find ourselves in this situation where we
7 have a reversionary interest in a lease agreement
8 with CMC.

9 I had mentioned to you before that Bob
10 Schooler basically had two attorneys look at this,
11 and offered \$300,000.

12 The lease is clear, they have the option
13 to purchase that reversionary interest for
14 \$144,000; that's very clear in the lease.

15 The other piece of it is, they were
16 supposed to pay us \$960 a month since 1993, and he
17 offered a total of \$300,000. I think what he did
18 was round it off, taking the \$960 times 13 years
19 and then adding that to the \$144,000.

20 What Mike suggested that we do is we do a
21 rental payment with interest compounded because we
22 would have been getting -- and he said, what,
23 usually you use eight percent. So I've done that,
24 and that would be \$240,979.

25 Now, basically what I'm looking for is

1 the ability to sit down with CMC to negotiate with
2 them some kind of a resolution. It's a very murky
3 lease, and Mike thinks we're probably on pretty
4 thin ice relative to it, and why Bob Schooler
5 presented it, he thought it would be better to
6 settle it by giving us the \$300,000, getting their
7 reversionary interest back, and not pay attorneys
8 on both sides.

9 So all I need from you is the okay to go
10 ahead and see what we can do. I'll definitely try
11 to maximize what we would be able to receive out of
12 the situation, but to go to litigation will be
13 costly and Mike doesn't feel we're even on good
14 ground. Yes?

15 MALE: So Mike is saying that we should
16 take the \$300,000, right?

17 MS. HOWELL: Well, he's saying take the
18 money definitely, but look to see if you can get
19 the interest also, because they haven't paid since
20 1993.

21 MALE: Right, but when you figured in the
22 interest, wasn't that only coming out --

23 MS. HOWELL: No.

24 MALE: -- to \$244,000, or is that without
25 interest?

1 MS. HOWELL: That's without interest.
2 It's \$144,000, plus it would be \$156,480 if you
3 didn't have interest in it, so that round up to
4 around \$300,000. That's how I figured he got the
5 \$300,000 figure. But if you --

6 MALE: So the interest would be like
7 another \$25,000 approximately?

8 MS. HOWELL: \$84,499. So the total with
9 compounded interest is \$240,979. So his suggestion
10 is we go in and we ask for the \$144,000 plus the
11 \$240,000 rather than the \$300,000.

12 And he also thinks that we should ask to
13 maintain reversionary interest, which I don't think
14 he's going to agree to. That's the whole purpose.

15 MALE: No, you're not going to get that.

16 MS. HOWELL: I don't think so.

17 MALE: You know, the deal is that, you
18 know, once they got tax dollars flowing in up
19 there, it's not going to go belly up again. I
20 mean, that was the whole --

21 MS. HOWELL: Well, it's interesting. The
22 lease, when he reviewed it and he and I sat down
23 and talked, at one point in time the reversionary
24 interest went back to the City. Then there was a
25 lease with us, and then so it's really not clear

1 who gets it, but the reversionary interest, the
2 whole purpose behind that was if it is dissolved
3 and it no longer is used for educational purposes,
4 then it would revert back either to the school
5 district or the City for educational purposes.

6 MALE: My thought would be to ask for the
7 \$144,000 plus the \$256,000, whatever it is, with
8 the interest included, go from there, and then give
9 up the lease.

10 MS. HOWELL: The reversionary interest.

11 MALE: Give up the lease. I mean, you
12 know, you're going to have to do something. Either
13 you get the interest and give up the lease, or else
14 you hold on to the lease and don't get the
15 interest, and that's going to be the end of it
16 because we're going to run out of time pretty
17 quick.

18 MS. HOWELL: Uh huh.

19 MALE: So it really doesn't mean
20 anything.

21 MS. HOWELL: The one thing that he added
22 in here, which he didn't share until today when he
23 looked it over, it says an original 1966 lease,
24 there's language concerning the payment of
25 additional rental amounts which would be paid to

1 the school district as a gift. Such rental amounts
2 were to be paid if the Yampa Valley College built
3 additional buildings.

4 We have no record of that, you know, in
5 terms of the additional building, so you can see
6 how convoluted this whole process is.

7 And I think in good faith, Bob Schooler
8 would like to clean this up, because he has had the
9 \$144,000 sitting in an account. He has another
10 gift from a donor in the area that he's going to
11 tap into to give the difference for \$300,000.

12 MALE: I mean, I'm comfortable with that,
13 so I mean, I don't think we can make a decision
14 now.

15 MS. HOWELL: Well, you wouldn't. All I
16 need --

17 MALE: Pursuing that avenue.

18 MS. HOWELL: Right.

19 MALE: Because you're going to -- if we
20 get the interest, you're going to have to give up
21 the leasehold interest.

22 MS. HOWELL: Well, what Mike suggested is
23 I get the authority to go and talk to them and see
24 what we can do.

25 MALE: And negotiate whatever you can do.

1 MS. HOWELL: And whatever we can both
2 come to an agreement with, I would bring that back
3 to you.

4 MALE: You're going to have to bring it
5 back here for ratification anyway.

6 MS. HOWELL: Right.

7 MALE: Yeah, I would say yes, go talk to
8 them and tell them that you're figuring that it
9 comes out to \$340,000-something, but you would be
10 willing to settle for \$325,000.

11 MS. HOWELL: Well, we'll see. I'll do
12 the best we can with them. I would just as soon
13 let's settle it.

14 MALE: But see, they're also saying hold
15 on to the lease, and you give up the lease then or
16 die.

17 MS. HOWELL: Yeah.

18 MALE: I mean, you know, that's the deal
19 that you can fight that lease thing later.

20 MALE: But it says that -- but she's
21 saying the lease thing isn't very well grounded.

22 MS. HOWELL: Right, and once I have
23 something to come back with that they're
24 comfortable with, I will ask Mike to come, you
25 know, because it's a very convoluted lease

1 agreement.

2 MALE: Nothing but fun.

3 MALE: People try their best to do the
4 best things and somehow it doesn't work.

5 MS. HOWELL: And the other one, just
6 quick, Denise asked me to provide you with an
7 update.

8 I still haven't had anything come back
9 from the State regarding the complaint that was
10 filed from _____ in terms of a student
11 and the way the situation was handled, so I don't
12 have any information relative to that, and I
13 haven't heard anything from _____, and I got a
14 email from _____ today.

15 And basically, she was questioning Mike
16 because she has heard from two teachers but not the
17 other teacher, so she's asking for the teachers to
18 contact her. But that was the only update I have
19 on that one.

20 MALE: Yeah, okay.

21 FEMALE: Okay, great. So I guess the
22 next thing is just to call the attorney, and do you
23 not want to be involved in this?

24 MALE: No, I don't want to.

25 FEMALE: Okay.

1 MALE: No, because I don't believe it's
2 appropriate if, you know, the -- and I'll tell you
3 why.

4 FEMALE: Uh huh.

5 MALE: Because if there's something that
6 is evaluative in nature, and I think we all agree
7 with that, it can be done in public if they ask.

8 And I think, John, you were the one that
9 when we had the hearing with you, you were the one
10 that wanted it done in public, so there's --

11 MR. DEVINCENTIS: No, you guys, I left it
12 up to you and you guys decided that.

13 MALE: So there's -- no, there's
14 precedent for it, because we didn't care. So
15 there's precedent for it.

16 MR. DEVINCENTIS: You guys are the ones
17 that settled that.

18 MALE: That's fine. Anyway, so --

19 FEMALE: So you don't want to talk to the
20 attorney about anything?

21 MALE: No, I don't care whether you talk
22 to him or not.

23 FEMALE: Is that what you're saying?

24 MALE: I want to talk to --

25 MALE: That's fine.

1 FEMALE: Uh huh, okay.

2 MALE: Because that's where I want to
3 sit. So, excuse me.

4 FEMALE: Okay, I think I know how to work
5 this. Where's the number, it's (303)

6 And what we'll do is we'll have you in
7 here for part of the conference, and then we'll --

8 DIGITAL VOICE: Please enter account.

9 FEMALE: -- see if there's other
10 questions.

11 FEMALE: Okay.

12 (telephone call placed)

13 MR. LYONS: Hello?

14 MS. CONNELLY: Hi, Dick, this is Denise
15 Connelly.

16 MR. LYONS: Hi Denise.

17 MS. CONNELLY: Hi, we have four of the
18 board members here and Donna, John, Jerry, Jeff and
19 I are here. I guess Pat felt that he did not want
20 to be present because he wants to deal with this in
21 a public venue, is that right? Is that your
22 understanding?

23 MR. TROEGER: Dick, this is Jeff Troeger.
24 The other thing here is before we went into
25 executive session, the administrative staff read

1 two different statements. And after they read
2 those statements, Pat said that he wouldn't
3 participate in this portion of it, of the executive
4 session, feeling that we should be talking about
5 all of this in public.

6 I think we've got some real legal
7 questions here, so I'd like to keep you on the
8 phone here because I think we're going to have
9 quite a few questions.

10 MS. HOWELL: Dick, this is Donna. I just
11 -- one other piece of clarification, I think why
12 Pat said he didn't want to be in the room is
13 because both the instructional support specialist
14 and the administrators asked that it be discussed
15 in open session. And so I think that's --

16 MALE: Well, I'm not discussing. My
17 point is this: I'm not discussing advice from an
18 attorney. This is completely client-attorney
19 privilege, and I'm not going to discuss this in
20 public.

21 So, Dick, we've got several questions,
22 and Denise why don't you --

23 MS. HOWELL: And maybe just for clarity,
24 I'm not saying you should or shouldn't, but I just
25 wanted him to know that was part of what they

1 requested.

2 MR. LYONS: Sure, and was the motion to
3 go into an executive session to receive
4 [indecipherable].

5 MALE: Well, we went in for three
6 reasons: One was the lease agreement, which we've
7 already talked about. The second one was
8 24-6-4024(f) for discussing a personnel matter
9 involving access to information, which I assume is
10 what we're talking about right now.

11 And we've already -- there was a third
12 item which we've already talked about, and that was
13 documents relating to a student, 4024(g).

14 So we're on 4(f).

15 MR. LYONS: Okay. All right, so if it's
16 4(f), which is personnel matters, then it needs to
17 be recorded. If it's not, if it was to receive
18 specific legal advice, then it need not be recorded
19 because it would be attorney-client privileged.

20 MALE: Yeah, that's my point, too.

21 MS. CONNELLY: But I think what you could
22 do is you could choose to discuss this under that
23 client-attorney privilege after the executive
24 session.

25 MR. TROEGER: No, I want to talk -- I

1 want this whole thing under -- this is Jeff again.
2 I want this whole thing under attorney-client
3 privilege so that we can talk and get information
4 here, because I'm very concerned this whole
5 situation is spiraling very quickly out of control.

6 MR. LYONS: Okay, then when we get to
7 that particular portion, you know, where I'm giving
8 you legal advice, you can shut the recorder off and
9 I will send a certification that during that
10 portion I was providing legal advice. Okay?

11 GROUP: Thanks, Dick.

12 MS. CONNELLY: Well, and I guess that I
13 did give everyone the information that you sent me
14 about the legislation, and that we would be talking
15 about, and also I guess we did get -- everybody got
16 the letter, I think from the case attorney. Jerry,
17 did you?

18 MR. KOZATCH: Yes.

19 MS. CONNELLY: Okay, so I guess do we
20 want to recap on where we stand, or what do you
21 think we want to do here? Jerry, I think you were
22 the one that had the most questions.

23 MR. KOZATCH: Well, I don't have -- I
24 mean, I'm not ready really to say anything yet. I
25 don't have specific questions. I'm still trying to

1 understand the process, and I -- you know, I don't
2 know personally, you know, for myself, I don't know
3 if I really think that this is, you know, the place
4 to fight this big battle.

5 But, I think we should -- I think that
6 for those who have specific questions, we should
7 move on to them.

8 MS. CONNELLY: Okay, I guess I did have a
9 question, Dick.

10 We have two different opinions: The one
11 from Case that Donna solicited, and then also the
12 other administrators, and it seems to be somewhat
13 in conflict with what you are telling us.

14 So I guess that I'm wondering at this
15 point if we should -- what we do? The suggestion
16 has been made by Donna and by the administrators
17 that we basically put it on the back burner, I
18 guess, and let the two different sets of attorneys
19 kind of hash it out and come with us to a final
20 deciding opinion of whether we can see this or not.

21 MR. LYONS: Okay, well, that's certainly
22 one option. I have read over Alex's opinion, and I
23 think there's certain thresholds that I need to
24 point out to you.

25 The first is the assumption that these

1 were -- the surveys were done in conjunction with
2 the evaluation process, and I think he has two
3 disclaimers in there, you know, he says "assuming,"
4 I think he does that twice, that the survey
5 information was collected for use in preparing the
6 evaluation report.

7 And my recollection with the conversation
8 with Denise and with John and with Donna prior to
9 Christmas, there was a question as to that fact,
10 okay. So I think that is a factual issue.

11 Then assuming that it was in conjunction
12 with the evaluation process, which he assumes, I
13 mean, he's making that assumption, then the next, I
14 guess, fork in the road or decision tree, I think,
15 analysis is does that statute, the next statute,
16 which says that it's available, it remains
17 confidential but it's available to the duly elected
18 and appointed public officials who supervise his
19 work, I think the next decision, a point on that is
20 what does that mean? Does that mean direct
21 supervision or does that mean general supervision?

22 If it is direct supervision, then why did
23 they include -- the legislature include the elected
24 officials, you know, so I mean, there's some
25 questions on the -- that he answers that in a

1 certain manner, and I'm not so sure that I would be
2 that quick to answer that on that. I think it is a
3 little ambiguous.

4 But then he very quickly dismisses the
5 third statute, which is the access to school
6 records statute, and I think he just simply says
7 that he doesn't believe that it's applicable
8 because the definition of public records, he says,
9 it seems doubtful there's a meaningful difference
10 between them and school records.

11 So he's saying that school records is the
12 same as public records, and therefore, he back
13 tracks back to the very beginning.

14 And I guess that's where we disagree.
15 You know, it's a very simple question and that is:
16 What is the meaning of the statute that says each
17 school director shall have access to all school
18 records at all times.

19 You know, it either applies or it doesn't
20 apply, and so we've got two different attorneys;
21 one saying it does apply and one saying that it
22 doesn't apply. I guess that, you know, I mean,
23 that in a nutshell is the real question, because I
24 can follow his reasoning, although I disagree with
25 his second stage in his reasoning.

1 Even if I did agree with the second stage
2 of his reasoning, I still think the third one
3 trumps it.

4 But I think of greater import is the two
5 assumptions that he makes, and I think that you all
6 have to make a determination as to whether or not
7 these were, in fact, done in conjunction with the
8 evaluative process or whether they were
9 board-initiated just to get a cultural -- a sense
10 of the culture and climate in the schools.

11 And I think that's a question I can't
12 answer because -- and that's a question that Alex
13 can't answer. That's a question that only all of
14 you that are sitting there in the room can answer.

15 MS. CONNELLY: Well, and I guess one -- a
16 couple of things that I've been thinking about
17 since we talked about that question, is you know,
18 we last year really tried to say that we needed
19 some more information and to -- then the Harris
20 survey came about.

21 One of the problems that we found with
22 that was that there were no open-ended responses,
23 no questions that were open-ended and where we
24 could get real responses.

25 So, and they said that, you know, you

1 need to follow-up and get more information. We
2 talked about doing, you know, a mid-year survey and
3 Donna put on this -- we just have this, you know,
4 our packet here, the retreat follow-up, and you
5 know, mid-year February she said perception
6 surveys, but then, you know, what people were
7 starting to say was there were too many that the
8 staff was getting surveyed out.

9 So, you know, I figured that, well okay,
10 this -- we're taking this off and then we're going
11 to do this open-ended survey to get more
12 information.

13 You know, so I guess that Donna feels
14 that she initiated this. I guess we feel, I'm
15 thinking, that it is -- and I think this is what
16 Pat said before, too, in executive session, was
17 that, you know, this was a way for us to get more
18 specific information, you know, out of our whole
19 initial implementing of surveys because I can't
20 remember when the last survey was of staff in the
21 last, you know, 10 years that I've, you know, been
22 working here, so.

23 MR. TROEGER: Dick, this is Jeff Troeger.
24 I remember it the same way. I remember it the same
25 way as Denise.

1 I've talked with Tom Miller, Frutel past
2 president, he remembers it the same way. John, I
3 think John is in agreement.

4 So we've either got four or we've five
5 board members who do not think this was part of the
6 evaluation process, but this whole getting off on
7 this issue of evaluation process seems very strange
8 to me.

9 I mean, I read this "shall be available
10 only to the licensed person being evaluated and to
11 the (1) duly elected," which is this group, and
12 then where it says "and," and then what I would say
13 is "(2) the appointed public official who
14 supervises work."

15 I can't -- perhaps you can help me here,
16 I can't think of any reason why you would allow a
17 supervisor to have access to something but not his
18 or her boss. It strikes me as a situation where a
19 supervisor and an employee could be making a deal
20 and it would be kept from the antiseptic of open
21 sight, of overview.

22 I just -- this just doesn't -- I keep
23 reading this and trying to think what in the world
24 this could mean, and it just doesn't -- I don't see
25 this as the main point. To me, the main point is

1 public officials, the board has access to all
2 records at all times, and I can't understand for
3 the life of me why a superintendent would be
4 allowed to look at results of a survey, but the
5 elected officials who hire this person would not be
6 allowed to.

7 I just -- it doesn't seem to me like the
8 sort of situation the legislature -- I can't figure
9 out what the legislature -- what purpose that would
10 be.

11 MR. LYONS: Yeah, and I struggle with
12 that, as well, because I think that it does -- you
13 have to read what the legislature didn't do, and
14 what the legislature didn't do is they did not use
15 the word "or," they used the word "and," and so I
16 think that it -- you could make the argument that
17 if the legislature had it to only be for the
18 person's immediate supervisor, which would be the
19 superintendent, then it would say "the elected
20 board or the appointed person who," one or the
21 other, whoever is the supervisor.

22 But it does use the word "and," and you
23 know, which I think kind of fits into the general
24 concept of the board having general supervision
25 over all of the affairs of the District, including

1 the appointment or at least the employment of
2 principals so that when the superintendent comes to
3 you next spring and says "here's the employment
4 contract for Principal Jones, please renew it," the
5 board could say "well, wait a minute, we want to
6 see the evaluation, we want to see the documents
7 attached to that because we're not sure we want to
8 employ that person."

9 So long story short, Jeff, I would agree
10 with your analysis on that because I think if you
11 think it through, there is a very logical reason
12 for having the board have access to it.

13 Now, certainly having the board have
14 access to it does not convert it into a public
15 record.

16 MR. TROEGER: Yeah, and that's an
17 argument that seems to be we are hearing -- we just
18 heard a statement, and that was the impression that
19 I got was that if the board of education was
20 allowed to look at this, that suddenly it became
21 open game and open document for anyone and
22 everybody in the community.

23 And that seems absurd to me. I don't --
24 that's quite a leap to me.

25 MR. LYONS: Correct, and I think you have

1 to start off at the very beginning. Was it board-
2 initiated or superintendent-initiated in
3 conjunction with the evaluation.

4 If it's board-initiated, then all of this
5 that we've been talking about goes out the window,
6 and it very well could be a public document. In
7 fact, I think I would have to render opinion that
8 it is a public document and that everybody gets to
9 take a look at it.

10 If, in fact, it is in conjunction with
11 Donna's evaluative process, then that takes it out
12 of the realm of a public document, but in my
13 opinion, the board still would have ability to take
14 a look at it as the elected board and appointed
15 person who are the supervisors.

16 So, you know, maybe that's the
17 compromise. Are the administrators willing to have
18 the board, but not the public, take a look at this?

19 And, again, just because the board has
20 the right doesn't mean they have the obligation.

21 MS. HOWELL: Dick, I have a couple of
22 questions relative to the situation.

23 If the board initiates it, which is what
24 there is on the opinion, then in fact -- well, if
25 I'm hearing you correctly, if the board initiated

1 it, then it's public information.

2 If I initiated it, your opinion is that
3 even if it's part of the evaluation process, the
4 board still has access to it?

5 MR. LYONS: But it's confidential with
6 respect to the public.

7 MS. HOWELL: But it's confidential.

8 Now, --

9 MR. LYONS: And not only confidential
10 with respect to the public, but confidential to all
11 other school personnel, only the superintendent and
12 the duly appointed and elected, as Jeff just read.

13 MS. HOWELL: And then the other piece
14 that I need to understand, if in fact say I
15 initiated it and it's still -- your opinion is that
16 there's an access, the board has access to view it.
17 There is an opinion from the Case attorney that the
18 board does not have access to it.

19 If the board and I asked if they want --
20 I would want to see a directive in writing and the
21 means by which they want me to give it to the
22 board, so I have documentation because I think
23 hindsight one of the things that we should have
24 done was made sure we had it in writing in terms of
25 who was initiating it, because I think there's a

1 disagreement in terms of who initiated it.

2 And so in the future, I definitely would
3 like it in writing.

4 But again, the next thing that I would
5 like to know is if the board directs me and I give
6 them the survey and the administrators pursue it,
7 will the board basically back me in terms of --
8 because I'm the custodian of the records, am I not?

9 MR. LYONS: Correct.

10 MS. HOWELL: You know, so again, if they
11 contend and say "let's just take it the next step,"
12 and they take it before a judge and a judge agrees
13 with Alex, then am I automatically indemnified?

14 MR. LYONS: If a judge rules in favor of
15 Case, then end of story.

16 MS. HOWELL: But if I have already given
17 it, then have I violated -- my concern through all
18 of this is I felt like I'm put in the middle. I'm
19 the -- the administrators are feeling that
20 basically they should be confidential. The board
21 is saying they want to see it, and I'm put in the
22 middle.

23 So I need to know whether or not if they
24 pursue it and there's a judgment that in fact it is
25 confidential and I have complied with the board's

1 directive to provide it to the board, does the
2 board protect me from any potential suit?

3 MR. LYONS: Correct, yes.

4 MS. HOWELL: They do?

5 MR. LYONS: But I don't know what the
6 basis of that suit would be, but.

7 MS. HOWELL: Well, I'm just taking it to
8 that step.

9 MR. LYONS: Yes, the direction, if the
10 board gave you that directive, then your actions
11 and conduct in pursuing that directive or
12 fulfilling that directive would be within the scope
13 of your duties and performance of your duties, and
14 therefore, that would be just as with any other
15 employee who may be sued or whatever the claim be
16 made. Yeah, it would fall under that same
17 doctrine.

18 MS. HOWELL: Okay.

19 MR. LYONS: That is correct, but again,
20 if you remember, I said that the board may have the
21 right but not the obligation to review it. I mean,
22 you know, if we're looking for solutions, one thing
23 would be to (a) deem it to be
24 superintendent-initiated to take it out of the
25 public record, (b) then it's cloaked with

1 confidentiality and then only Donna can take a look
2 at it and, in my opinion, the board, but (c) the
3 board can choose not to, you know, exercise their
4 right.

5 You know, just because the board may have
6 that right doesn't -- the statute -- the director
7 having access doesn't say "and they have to look at
8 it." You don't have to, so I don't know.

9 And the next question I have is what is
10 the urgency of it? You know, is this -- is there
11 something that is -- well, I don't know. I won't
12 ask the questions because I don't know the factual
13 background, and that kind of goes back to what we
14 talked about earlier is why was it initiated and
15 who initiated it and for what purpose and how is it
16 going to be utilized.

17 MR. TROEGER: So Dick, if we had a -- if
18 the board made a policy that the superintendent
19 would direct surveys every year of the
20 administrative staff and any other constituents
21 group that we would want her to do, then that would
22 be a standing public record, right, where anyone
23 in the community would have access to it?

24 MR. LYONS: Yes, unless you said "to be
25 utilized in conjunction with the evaluative

1 process."

2 MR. TROEGER: But if we just left that
3 part out and said she will or he will "do a survey
4 every year" so that we have a view point of where
5 our staff is on many issues, then that would
6 automatically be a public document?

7 MR. LYONS: Yes, if it's not going to be
8 utilized in the evaluative process, that's correct.
9 Donna could then do, as a superintendent, as the
10 statute does require her when she's evaluating
11 principals now, she does have to include input from
12 the teachers and so that would imply a survey or
13 some, you know, some -- I don't know what you want
14 to call it, but she is required to include input
15 from the teachers and may include input from
16 parents and whatever, and then it does say that the
17 district, which would mean the board, shall specify
18 the manner in which the input from the teachers or
19 from students and the parents if it is collected
20 and how it's going to be, you know, maintained as
21 anonymous and confidential.

22 MS. HOWELL: Another question I have in
23 terms of board initiation, it doesn't only have to
24 come through a board policy, that could happen that
25 way, but the board did take action on the strategic

1 plan, and in the strategic plan was to gather
2 input.

3 Let me back track with the context. At
4 one point in time, we had in the policy that we
5 would gather input from students and eventually
6 parents for teachers, and that was transferred into
7 a strategic plan which the board took action on, so
8 in essence that's another way that the board would
9 be able to direct the surveys and then they would
10 be public in nature; is that correct or am I not
11 thinking through that?

12 MR. LYONS: No, I think you're correct,
13 Donna.

14 MS. HOWELL: So it doesn't only have to
15 be policy, it could be part of a long-range plan,
16 you know, in a direction and so forth?

17 MR. LYONS: Sure.

18 MS. CONNELLY: Okay, well I guess we'll
19 end this first part of the conference call.

20 MR. TROEGER: I do have one more
21 question. Dick, legally the administrative team and
22 the instructional supervisors are trying to get us
23 to discuss this issue in public, and I'm reluctant
24 to do it because I don't see that we're talking
25 about particular -- could you give us some advice

1 -- legal advice, in terms of how to handle in terms
2 of what has to be done in public and what we can
3 talk about?

4 MALE: And let me ask one more question
5 on the topic.

6 MR. TROEGER: Maybe I didn't say that
7 right.

8 MALE: If this ends up being related to
9 the superintendent's evaluation, it would seem to
10 me that talking about it in public would be talking
11 about somebody's possible evaluation in public, and
12 I wonder about that, too.

13 MR. LYONS: Yeah, while I -- the best way
14 to look at it is all business should be conducted
15 in public unless there is a specific exemption
16 contained in the open records act.

17 And the only exemption that there is to
18 discussing it in public would be under a personnel
19 matter, but there, it has to be a particularized
20 person. It cannot be just --

21 MR. TROEGER: A group of administrators
22 standing up with a hypothetical?

23 MR. LYONS: Correct. In other words, if
24 in fact they want to discuss the school climate and
25 culture and, you know, what's going on in the

1 district, that's public business that should be
2 conducted that way.

3 If it's going to be a discussion of
4 whether Principal Smith is held in very low regard
5 by all of his teachers because of X, Y and Z, then
6 that should be conducted in personnel in executive
7 session to discuss that result, you know, that's a
8 personnel matter.

9 MALE: Right, and Dick, to me, this seems
10 like to also have become a board-superintendent
11 relationship problem, and my concern is then you're
12 discussing something that should be done in
13 executive session.

14 Again, I think that can lead to some kind
15 of evaluative summary at the end.

16 MR. TROEGER: Dick, I'm concerned how the
17 superintendent has handled this whole situation. I
18 want a franked conversation with the superintendent
19 about this particular matter, can we do that or do
20 we have to parade this out for the newspaper and
21 everyone to read about it?

22 MR. LYONS: No, you can handle that
23 discussion with Donna in executive session under
24 personnel matters with her being there present. I
25 mean, that's, like you said, you have a concern

1 with Donna, and that's a personnel matter between
2 the board and Donna that can be in executive
3 session.

4 I think the bigger is what they're
5 clamoring for out there outside, if I understand it
6 correctly, they want you to make a decision as to
7 whether or not it's going to be (a) a public record
8 or (b) a confidential record, and (c) whether
9 you're going to take a look at it if it is a
10 confidential record. I think they want you to make
11 those decisions and have those discussions in open
12 session, and I would agree with them on those
13 issues.

14 MALE: But based on what you're saying,
15 and it's my belief, too, if I'm correct in what
16 you're thinking, is this is not a public record.
17 This is a school record.

18 MS. HOWELL: But what I was hearing, and
19 just for clarity, that it is not a public record,
20 it's a school record if I initiated it as part of
21 the evaluation process; is that what I heard?

22 MR. LYONS: Yes, and let me re-state it.
23 If it is part and parcel of the evaluation process,
24 then it is not open to the public and it is, in
25 fact, to be utilized as performance evaluation,

1 then it is not a public record and it is a
2 confidential document.

3 But, in my opinion, and I agree with Alex
4 up to that point, but we just --

5 MS. HOWELL: Disagree on the next piece.

6 MR. LYONS: -- disagree, but the next
7 statement, and my statement is that even if it is
8 confidential that the board, as the elected
9 officials, they have access to all school records.
10 But the board could, if it so chose, to take a look
11 at those confidential documents.

12 MS. HOWELL: And my point was that if the
13 board does not want it to be a public record viewed
14 by everyone, then it would seem to make sense that
15 there would be some consensus that it was initiated
16 by the superintendent, it's a personnel -- part of
17 the personnel process, and it is only accessible to
18 the board.

19 MR. LYONS: Correct.

20 MS. CONNELLY: Well, and could we say
21 that it was part of the -- to give more definition
22 to the climate survey that we initiated last year,
23 but is also to be used as part of the evaluation
24 process? Can we have it both ways?

25 MR. LYONS: Yeah, as soon as you mention

1 the word evaluation, then it's cloaked with
2 confidentiality.

3 MS. CONNELLY: Okay, so it could be for
4 both purposes.

5 MALE: But that would be, again, there
6 are four board members of the five who were here
7 last year who agree that we had directed this
8 survey and so if the board said it was a survey for
9 this purpose and evaluation, that would be up to
10 the discretion of the board changing what the true
11 intent of that was.

12 And so my concern is it's kind of -- the
13 way I see this, Dick, right now is it's like "oh,
14 it could be worse than what it is," so "maybe we'll
15 concede the point of it's for evaluation and the
16 board and I directed it, but now I'll let the board
17 see it," and that's my concern. All of the sudden
18 we're playing this "okay, which is the worst damage
19 to the administrative team and to the ISS?" and for
20 me right now, I would want to hold to "we directed
21 this and it is a public document without the
22 evaluation purposes."

23 And so for me, it's kind of at this point
24 if we agree that it was a -- that we directed it,
25 then we can go right back out and say to the

1 administrators that not only that, but anyone who
2 lives in this community can come in and see the
3 results of this, is that right?

4 MR. LYONS: Yes, I think that is correct.

5 MS. HOWELL: And is that -- I guess so
6 I'm clear, is that what you want to support?

7 MALE: I'm only one person, Donna, but
8 what I'm saying is I don't like the backing off. I
9 don't like the wishy-washy. I'm not there.

10 MR. TROEGER: I'm not willing.

11 MALE: That isn't the way I want to work
12 with the superintendent.

13 MR. TROEGER: Dick, can I ask one more
14 question?

15 MS. HOWELL: I didn't hear that.

16 MALE: That's not how I want to work with
17 the superintendent.

18 MR. TROEGER: Dick, if the board asks to
19 see something, a record, the fact that the board
20 asks to do this doesn't magically somehow make it a
21 public record?

22 MR. LYONS: No.

23 MR. TROEGER: Okay, I just wanted to make
24 sure everyone understood that.

25 MALE: I understood that.

1 MR. TROEGER: Because the feeling I'm
2 getting from the administrators is they don't have
3 all of the facts, they don't -- they have part of
4 what happened, but not all of it, and I sort of
5 feel like they're being stampeded or used in a
6 situation to put pressure on the board and the
7 public.

8 MALE: In public -- in a public setting,
9 in a public venue, where we were confronted this
10 evening without having prior knowledge, and I
11 thought we agreed as a staff or as a superintendent
12 and a school board that we would not ambush.

13 MR. TROEGER: No surprises.

14 MALE: And we tonight were ambushed by
15 two different groups, and this isn't the first time
16 we've been ambushed. Jerry did that earlier again
17 this year, and so this is the second time, and
18 that's why I see this as a real evaluation problem
19 here for the board and the superintendent, and so
20 to discuss these kinds of things publicly, I see it
21 as very damaging to what we're trying to do.

22 We try to keep this concealed and work
23 behind the scenes, and this was brought publicly to
24 us by the administrators, by teachers, and also my
25 feeling is the superintendent, in one of the EO

1 policies, is supposed to make sure those kinds of
2 things don't happen, and this has happened.

3 And not only that; but a superintendent
4 can say to her staff, "you know what, this is a
5 board superintendent relationship problem. This is
6 for me to deal with. When it's something on
7 curriculum or when it's something on discipline, or
8 when it's something on this or that, then you guys
9 have a right to say and speak up and interject
10 yourselves, but when it's between the board and
11 myself, you need to stay out of that."

12 They are at-will employees; our
13 superintendent has a three year contract.

14 MS. HOWELL: Just one point of
15 clarification, I think John what you're alleging is
16 basically that I have total access in terms of what
17 they're doing.

18 I have removed myself from it. I have
19 not been involved in what their plans have been,
20 and so I mean, doesn't an employee have a right to
21 choose, you know, their behavior?

22 I mean, I guess I think --

23 MR. DEVINCENTIS: I think the EO policy,
24 and I can pull that out for you if you want to have
25 it highlighted, I can pull that out saying -- you

1 know, telling how that has to be.

2 The other thing that I got right here in
3 this meeting, Dick, was a threat from the newspaper
4 that they would have access to this executive
5 session.

6 One of the things that concerns me is
7 that we have a director who works very closely with
8 the superintendent whose husband is the editor, so
9 I have a lot of concerns about what's happening
10 here, and how it's being directed and the fact that
11 this was brought out in the open without any of our
12 notification.

13 So at this point, I have some questions I
14 want to ask you about.

15 MR. TROEGER: I do too, Dick, because I
16 want to get into issues about board confidentiality
17 and whether the superintendent has a duty to, based
18 on a conversation in executive session, to
19 disagree, claiming a higher ethical standard and
20 having to go and tell her administrative staff that
21 a board member or board members want to look at
22 something.

23 A lot has been said about
24 confidentiality. I feel that the board's
25 confidentiality has been violated here, and so I --

1 MR. DEVINCENTIS: So anyway, I have some
2 questions --

3 MR. TROEGER: This is a mess.

4 MR. DEVINCENTIS: -- that I want to ask
5 without Donna in here right now.

6 MS. HOWELL: And you certainly can ask
7 all the questions you want without me, but if you
8 recall, when basically we had the discussion in
9 executive session in terms of access to it, I had
10 indicated to the board that I had told the
11 administrators that it would be confidential and
12 that before I would give it to the board, that I
13 felt I had an obligation to the administrators to
14 let them know that there was a request. So you
15 knew I was going to go to them and indicate that.

16 MR. DEVINCENTIS: But you never sought
17 legal opinion before you went and did that, and we,
18 in executive session, raised concerns saying "we
19 don't like this, we think there are problems with
20 this," and you did not seek legal opinion.

21 You've sought legal opinion when our
22 attorney has basically come up with things that are
23 contrary, and this --

24 MS. HOWELL: No, no, no, let me just
25 finish.

1 MR. TROEGER: Donna, you've set something
2 in motion here by including the administrative team
3 that was --

4 MS. HOWELL: Again, you can have your
5 opinion and I respect that.

6 MR. DEVINCENTIS: Could we talk with Dick
7 right now without Donna in here?

8 MS. HOWELL: Yes, you can, but I would
9 like to at least have the opportunity to say a few
10 things before you have your discussion with Dick.

11 MR. DEVINCENTIS: I think we need to
12 finish this up.

13 MR. TROEGER: Before we get to those two
14 things, should we go out and tell the people that
15 we're going to be longer than a half hour, that
16 we've got the attorney and we have to talk.

17 MR. DEVINCENTIS: Donna can tell them.

18 MR. TROEGER: I would prefer that Denise
19 go out there, just as a courtesy, and tell them
20 that it might be a little while, because we have a
21 lot of legal questions with our attorney.

22 MR. LYONS: And that would be, I think
23 not only politic to do, but while you're out there,
24 I think you would say "now we're going to readjourn
25 back into an executive session for the express

1 purposes of receiving legal advice from our
2 attorney."

3 MR. TROEGER: Okay, well, Denise has left
4 the room. I think I'll grab her.

5 MR. KOZATCH: Dick, this is Jerry Kozatch
6 speaking. One of the other questions that we've
7 been discussing is what the actual term "access"
8 should mean in these particular situations, and
9 we're sort of struggling with the idea of what that
10 -- how that should be defined.

11 MR. LYONS: Well, you know, that's a very
12 good point. Access, the statute just uses the word
13 access, it doesn't say what that means, does it
14 mean copies, does it mean inspection, does it mean
15 just review, you know, what does it mean? Does it
16 mean full board, does it mean each individual
17 director, does it mean at a board meeting in an
18 executive session, if it's confidential.

19 You know, you're right. There is nothing
20 -- no guideline with respect to that.

21 MR. KOZATCH: So if we would prefer that
22 access meant that documents were here at the
23 district office for inspection but not to be take
24 away or copied or whatever, the newspaper then also
25 would seek access, and once someone has seen

1 whatever these documents may be, what legal
2 constraints are there that they keep that knowledge
3 confidential?

4 MR. LYONS: Well, if the word access
5 implied to me access to everything, whether it's
6 confidential or not confidential.

7 If it is, in fact, a confidential record,
8 if it, in fact, is an evaluation, you know, like
9 we've just been arguing through the points there,
10 then if you read something that is confidential
11 that is not a public record, then it would behoove
12 the board member not to disclose that information
13 and make it public.

14 It still is confidential, even if you've
15 read it.

16 MS. HOWELL: The one thing that I would
17 like to mention prior to your private conversation
18 is just to correct things. I did not contact and
19 attorney until after I was threatened and I was
20 told I couldn't talk to Dick.

21 I was hoping to get further clarity,
22 because I was approached when I shared the
23 information with the administrators that I was
24 violating their right to confidentiality and also
25 one of them mentioned that in reality the board

1 can't direct you to do something illegal.

2 And so I felt I needed to get clarity and
3 I was basically told that no more communication
4 should occur between me regarding this particular
5 situation.

6 MR. DEVINCENTIS: Dick, you know, I'm the
7 one that wrote that message, and basically I said
8 it seems like Donna is using our attorney, meaning
9 the school board's attorney, to argue against us.
10 And to me, you know, beyond that, seeking counsel,
11 I don't care if she wants to go ask Case or
12 whatever else, that should have been done, from my
13 point of view, in private, because we have been
14 keeping it private and we have been keeping this
15 confidential, which is very ironic to me.

16 We've been keeping this confidential and
17 it hasn't been confidential. I was in the schools
18 today and I heard lots and lots about this issue,
19 and not only that, I heard exactly why everybody
20 was pulled from staff in the building.

21 So everybody knew it was a cover up for
22 one person, and that was the discussion in the
23 administrative team, and that's what I heard today.

24 MS. HOWELL: A cover up? May I ask
25 clarity for that?

1 MR. DEVINCENTIS: Yeah, meaning that this
2 was done because you didn't want to single out Mike
3 Mezerich and so everybody did it, and that came
4 from a teacher in the middle school, and that
5 person said everyone in the middle school knows
6 that.

7 MS. HOWELL: Oh, that's unbelievable.

8 MR. DEVINCENTIS: Well, what I'm talking
9 about is confidentiality, Donna, and that isn't
10 coming from your group nor, as far as I'm
11 concerned, you. But that's another story.

12 Where I would like to be is like getting
13 on with this with Dick and -- because there's no
14 point in us arguing over this.

15 MR. TROEGER: Dick, could you repeat your
16 advice to us about Denise going out and
17 re-convening? The newspaper reporter stood up and
18 basically said "we're going to have access to
19 everything here."

20 MR. LYONS: Well, what I was trying to
21 protect you from is that if, in fact, there was not
22 a motion made to go into executive for the
23 additional reason of receiving specific legal
24 advice from your attorney, that if you're going out
25 there to make that announcement that you're going

1 to be a little bit longer, then I would like to --
2 it would just be really great if you could all just
3 step outside, make that quick motion to receive
4 specific legal advice from the attorney, and then
5 come back in.

6 That way, you can shut off the recorder,
7 and everything that is said at that point, I
8 certify it as attorney-client privilege. Up to
9 now, I think we've been discussing a combination of
10 the personnel matters, you know, viz-a-viz Donna
11 and how that affects and all of that.

12 I think that if you want specific legal
13 advice, then it would be great to go out there and
14 make --

15 MR. TROEGER: What's the wording, Dick,
16 that Denise should say? How should she present --
17 we'll come out there and we'll be out of executive
18 session, we'll go out of executive session, do we
19 go back into our public meeting and then somebody
20 makes a motion to go into executive session for
21 further discussions with our attorney?

22 MR. LYONS: Right, 24-6-4024, and it
23 would be (b).

24 MR. TROEGER: 24-6-2042(b), and that is
25 we tried to give a little more than just stating

1 the statute.

2 MR. LYONS: Right, so it's consultation
3 with your attorney on specific legal questions. I
4 mean, there's no detail in the statute and so the
5 board is certainly free to draft a policy as to
6 exactly what that means, the terms and conditions,
7 how it would be handled.

8 If the board is not going to receive it
9 as a group, then maybe individual members could
10 meet at Donna's office and review it in her office,
11 and it does remain confidential. You're absolutely
12 correct.

13 There is only one rule of
14 confidentiality, and it applies to both the board
15 and the superintendent.

16 MS. HOWELL: Thanks so much.

17 MR. TROEGER: We'll be right back.

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 2) ss. CERTIFICATE
 3 COUNTY OF DENVER)
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