

To: Johnston County Schools Board of Education
From: Maura O’Keefe, Tharrington Smith LLP
Re: Code of Ethics Issue: Allegation of Secret Recording of Closed-Session Meeting
Date: August 24, 2022

Investigation Overview

Johnston County Public Schools (“JCPS”) Board Chair Todd Sutton¹ asked our firm to investigate an allegation that Board member Ronald Johnson secretly recorded a discussion among Board members, during a closed-session meeting of the Board, about the topic of administrator salaries, and then played a portion of that recording for an employee after the Board meeting. We were also asked to determine whether the alleged conduct, if substantiated, constitutes a violation of Board Policy 2120, Code of Ethics for School Board Members.

The weight of the evidence obtained, including information provided by Board members and JCPS staff, supports a finding that Mr. Johnson secretly recorded a portion of the Board’s closed-session meeting on May 31, 2022, and after the meeting, played a portion of the recording for Employee A. Further, Mr. Johnson acknowledged that he has recorded Board members on approximately ten occasions since January 2022, without telling them he was recording, and that one discussion he recorded pertains to JCPS business. These findings support the conclusion that Mr. Johnson violated Board Policy 2120, which prohibits Board members from making secret recordings of JCPS meetings or in connection with JCPS business.

Summary of Information Obtained

During my investigation of this allegation, I interviewed all Board members, JCPS Superintendent Dr. Eric Bracy, three staff members (including Employee A), and a JCPS senior administrator.² I also consulted Board meeting agendas for the Spring 2022 term and Board Policy 2120 and took other appropriate steps to investigate the allegation.

During my interviews with Employee A, Employee A said that Mr. Johnson called Employee A after a Board meeting in late May 2022 and indicated that Employee A should be concerned about the employee’s salary. Employee A said Mr. Johnson then drove to Employee A’s home, told Employee A he had a recording related to this issue, and played for Employee A an audio recording approximately ten seconds in length. Employee A recalled hearing multiple voices on the recording, including one Employee A believed to be the voice of Board member Kay Carroll. Employee A said that Mr. Johnson did not state that the recording he played was from the closed-session meeting of the Board, but Employee A assumed it was, in part because of the timing of their conversation in relation to the Board meeting.

¹ Policy 2610 authorizes the Board Chair to decide when to seek legal advice or assistance on school matters.

² All information noted below was provided by Board members and JCPS employees to me during individual witness interviews. Names of some JCPS employees interviewed have been withheld to preserve confidential information.

I interviewed another staff member, Employee B, who reported that on the night of a Board meeting or the next day, Employee A called Employee B and told Employee B that Mr. Johnson had contacted Employee A regarding Employee A's salary. Employee B recalled that Employee A also said that Mr. Johnson had recorded something.

I interviewed each Board member as part of my review, and the clear weight of the evidence provided by Board members during separate, individual interviews supports a finding that the topic of administrator salaries was discussed at the closed-session meeting held on May 31, 2022. Further detail from Board members regarding that discussion is not provided in this memorandum because the discussion occurred in a closed-session meeting.

Four Board members³ recalled discussing the topic of administrator salaries and/or Employee A on at least one occasion outside of a closed-session meeting of the Board. Each of the four Board members said that those conversations were among smaller groups (not a quorum of the Board) and that Mr. Johnson was not present for those conversations. Ms. Andrews said Mr. Johnson called her within a week of the Board meeting held on May 31, 2022, and asked her what she thought of the salary issue.

During my interview with the JCPS senior administrator ("administrator"), the administrator stated that the administrator was present for the closed-session meeting held on May 31, 2022, and that Board members had discussed administrator salaries. Dr. Bracy also recalled a discussion of administrator salaries occurring in a closed-session meeting of the Board, and his account of the discussion aligned with that of the majority of Board members. He did not recall the exact date of the meeting.

Dr. Bracy, the JCPS senior administrator, Mr. Sutton, Ms. Sessoms, Ms. Andrews, Mr. Carroll, Mr. Byrd, and Mr. Wooten reported that on no occasion since January 2022 had Mr. Johnson said or otherwise indicated that he was recording a meeting or conversation in which they participated.

Mr. Johnson was interviewed on August 1, 2022. He generally recalled discussion among Board members about the topic of administrator salaries. Mr. Johnson said he did not recall recording a closed-session meeting of the Board between April 2022 and June 2022, and he did not recall talking with an individual or playing a recording for an individual whose salary was discussed by the Board in closed session during that time frame. Mr. Johnson acknowledged that he had recorded discussions among Board members on approximately ten occasions since January 2022. Mr. Johnson said that these conversations were never among a quorum of the Board. He said he had not told Board members he was recording them or held out a recording device on any such occasion. He said one recording he had taken pertained to JCPS business but did not involve personnel.

Mr. Johnson declined to answer any questions regarding specific employees, or to mention specific employees, during his interview on August 1, 2022.⁴ On August 2, I asked Mr. Johnson

³ Those four Board members are Mr. Sutton, Ms. Sessoms, Ms. Andrews, and Mr. Carroll.

⁴ All communications referenced hereafter occurred in 2022 unless otherwise indicated.

to let me know by August 8 whether he was willing to speak with us⁵ again and provide more specific information relevant to our review. I also asked him to provide a copy of the recording he described relating to JCPS business. On August 8, Mr. Johnson indicated that he planned to meet with an individual he identified as an attorney and would follow up with me once he spoke with the attorney. On August 10, I followed up with Mr. Johnson but did not hear back.

On August 16, I contacted Mr. Johnson again about our pending requests for further information relevant to our review. I informed Mr. Johnson that, at that time, the preponderance of evidence available to me weighed in favor of a finding that he did secretly record a conversation among Board members, the conversation was during a closed-session meeting of the Board in May 2022, and that the night of the meeting, he played a portion of the recording for Employee A at the employee's home. I asked, again, that Mr. Johnson provide one of the ten recordings he acknowledged taking of Board members (the recording that pertained to JCPS business) and that he also provide any other recordings he had of conversations among Board members and/or JCPS staff regarding JCPS business. Mr. Johnson responded that afternoon, saying he had not had a chance to speak with the individual identified as an attorney regarding this matter and that he planned to do so on August 19. I responded that same afternoon and proposed scheduling a phone call for 12:30 p.m. on Monday, August 22, and set a deadline of 5 p.m. on August 22 for Mr. Johnson to provide substantive responses to my pending requests, in order to accommodate his prospective timeline for talking to an attorney. I did not hear back from Mr. Johnson. I wrote to Mr. Johnson a final time on August 19 and stated that if I did not hear back from him by the August 22 deadline, I would proceed with my review based on the information available to me at that time.

Board Member Code of Ethics

JCPS Board Policy 2120, Code of Ethics for School Board members (“Code of Ethics”),⁶ articulates the code of ethics to which all Board members must adhere. Pursuant to the Code of Ethics, Board members specifically commit to “not make secret recordings, in any format, on school system property, at school- or Board-related events or meetings, or otherwise connected to the business of the Board or the Johnston County Public Schools.” 2120(B)(7).

The Code of Ethics was most recently reviewed and adopted at the Board's meeting on July 13, 2021. Mr. Johnson was present for the meeting and voted in favor of approving the policy in its current form.

⁵ My colleague, attorney Jonathan Blumberg, participated in the August 1 interview with Mr. Johnson and was included in subsequent communications with Mr. Johnson.

⁶ For ease of reference, Board Policy 2120 is attached as Exhibit A.

Findings

With respect to the specific allegation, the greater weight of the information described above supports the following findings:

- (1) Mr. Johnson recorded Board members discussing the issue of administrator salary without telling them or indicating that he was recording.
- (2) This discussion occurred during the closed-session Board meeting on May 31, 2022.
- (3) After that meeting, Mr. Johnson played for Employee A some portion of the recording of the discussion.

These findings support a conclusion that Mr. Johnson violated Section (B)(7) of the Code of Ethics, which prohibits Board members from making secret recordings at Board meetings or otherwise connected to the business of the Board.

Further, the greater weight of the information described above also supports these additional findings:

- (4) Since January 2022, Mr. Johnson has recorded Board members on approximately ten occasions, and he acknowledged that one of these recordings pertains to JCPS business.
- (5) Mr. Johnson did not tell or indicate to Board members that he was recording them on any of these ten occasions.

As Mr. Johnson has admitted that he recorded Board members on at least one occasion while they were discussing JCPS business, then irrespective of the allegations about a recording of a closed-session meeting, Mr. Johnson has, by his own account, violated Section (B)(7) of the Code of Ethics.