



## Special Executive Committee Meeting

5/20/2010

5:00 PM

6301 NW 5th Way, 4th Floor  
Fort Lauderdale, FL

**Members in Attendance:**

Jeffrey Dwyer, Chair, Andrew Bray, Marvin Dejean, Donna Korn, Britt Sikes via phone

**Members Absent:**

Cindy Arenberg Seltzer

**Staff in Attendance:**

Penny Westberry, CEO, Andrea Braynon, CFO, Lee Tirpak, CPO, Lisa Feeney, Senior ECE Program Specialist, Leticia Strasser, ECE Program Specialist, Janice Carter, CRRD Director, Debbie Bainton, Executive Assistant

**Others in Attendees:**

Burnadette Norris-Weeks, General Counsel, Valerie Kiffin Lewis, Special HR Counsel, Doreen Moskowitz, Dr. Barbara Weinstein, Ainsworth Geddes

Welcome and Call to Order

Jeffrey Dwyer, Chair, called the meeting to order at 5:10 pm  
Roll call was taken – quorum established

Approval of March 24, 2010 minutes

**Motion** made by Andrew Bray to approve the minutes of March 24, 2010. **Seconded** by Marvin Dejean. **Unanimously approved.**

**Action items:**

Keep minutes on file

**Person responsible:**

Executive Assistant

**Deadline:**

5/21/10

**Employee Complaint**

The Chair stated that an employee complaint was filed. The goal of this meeting is to charge the Compliance Officer with the initial stages of the investigation.

**Motion made by Donna Korn to move forward. Seconded by Andrew Bray.**

A transcript of the entire meeting is attached and made a part of these minutes.

**Unanimously approved.**

Allocation of Funds

**Motion** made by Andrew Bray to allocate \$20,000.00 to the first phase of the investigation with the caveat that it is not a limitation on the amount of money that could be spent and if more resources are required we will revisit that issue. **Seconded** Donna Korn

**Unanimously approved.**

Discussion on the allocation of funds is included in the attached transcript.

<b>Action items:</b>	<b>Person responsible:</b>	<b>Deadline:</b>
Move forward with investigation	Compliance Officer	5/21/10
Allocation funding	CPO	5/21/10

**Unfinished Business**

Penny Westberry stated that she would like to make a comment as the CEO I look forward to a full and fair consideration of all the allegations that have been presented to you and full and fair consideration with respect to all parties in the allegations

New Business – No discussion

Public Comment – No discussion

Next Meeting: June 9, 2010

Adjourn

The Chair thanked everyone for coming. The meeting adjourned at 5:45 pm

These minutes contain the action items of the Executive Committee meeting of the Early Learning Coalition. They do not include all facets of each issue discussed. A tape recording of the meeting is held in the Coalition office. Corrections from the committee members will be taken prior to approval at the next meeting.

**Submitted by**  
Debbie Bainton  
**Reviewed and Edited by**

Jeffrey Dwyer, Chair  
Penny Westberry, CEO

Early Learning Coalition of Broward County, Inc.  
Special Executive Committee Meeting  
6301 NW 5<sup>th</sup> Way, Suite 3400, Ft. Lauderdale, FL 33309  
May 20, 2010 – 5:00 pm

Transcript of Meeting  
Attached to minutes as part of the record

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Dwyer: Called the meeting to order – Deb would you take a roll call – would you mind

Bainton: Not at all - Roll call taken

Dwyer: Thank you all for coming on this special executive committee meeting that we brought forward. First thing on the agenda is the moval of the minutes from the March 24, 2010 meeting

Bray So moved

Dwyer Second

Dejean Second

Dwyer Thank you Marvin. Any additions, modification, changes to those minutes – hearing none – all in favor of moving the minutes.

Dwyer As was brought forward at the eve of the board meeting of last week an employee complaint was filed. I do not want to get into the specifics of the complaint I believe everyone has a copy of it. Our goal will be we have procedures and policies regarding anonymity compliance with that anonymity even though the name has been made public I don't think it is our position and counsel would you agree with me to make the name public.

Lewis I wouldn't at this point

Dwyer Okay okay alright Our goal then at this point will be to move forward and charge the Executive Committee will charge the Compliance Officer with moving forward with the initial stages of the investigation and I need a motion for that please

Korn I'll make a motion to move forward

Dwyer second

Bray I'll second

Dwyer Any discussion on that issue

Dejean Can I get a clarification of what we mean by

Dwyer Yes absolutely

Dejean when we are saying the compliance officer to look into investigating – are we looking at everything – the whole complaint

Dwyer The whole thing – if – listen – to me – this is my view this is clearly no one else's – if there is an issue, we need to address it, we need to find the solution to it, we need to resolve it, we need to remedy it and make a corrective action. That's the way I look at it. Our policy is no retaliation is that correct my general counsel and my HR counsel.

General Counsel  
Norris-Weeks  
& HR Counsel  
Lewis That is correct

Dwyer And we are going to adhere to our policies when the investigation is going on it is also my understanding that it is confidential – is that correct

Norris-Weeks  
& Lewis that's correct

Dwyer I have two head nods on that just want to clarify that for the record. I take these very serious I think everyone needs to take this very seriously – the first step my understanding based upon our policies and procedures in place is that this has to first be initially investigated to make sure rises to the level of coming forward to the board of directors Is that fair to say Burnadette – Valarie

Lewis rises to the level of a whistleblower complaint

Dwyer rises to the level of whistleblower complaint – thank you – see that's why you have an attorney. And that will be the first step in the process and with that process Sandra has been charged with whatever available resources she needs to use our General Counsel Burnadette Norris-Weeks in the assistance of the investigation our HR Attorney who has been brought on for this specific purpose, Valarie, our treasurer or strike that Finance Chair I am sorry, Andrew Bray and any other resources including our auditors in

order to make sure that this investigation is thoroughly put forth. Now you were asking some other questions I think also Marvin

- Dejean I think you clarified it so it has to rise to the level of a whistleblower complaint and if it does not it will come back to us and say that it does not meet this criteria.
- Lewis correct it will come back
- Dejean Do we have an estimated time frame
- Dwyer I would like this done as soon as possible I don't know that we have an estimated time frame yet I don't know that would be fair at this early stage
- Lewis no you always try to do any investigation promptly so obviously that's why it will be done it would dictated by what the investigation reveals and the need for additional resources ---- the goal is always to handle it promptly
- Bray Is the Compliance Officer in agreement with being charged
- Martinez My understanding of this role is that I would be coordinating this investigation and I am okay with that
- Bray Okay
- Korn I guess in having reviewed all the information I was just a little confused as to why this was considered at the level we thought it would be a whistleblower and it wasn't just something that we would potentially either just handle at the board level or something the CEO would. Because based on this there is a chain of command and so that my understanding again just from reading this is it was brought within staff and then it was staff – this may be inaccurate – it was at that point where was asked for a discussion and that staff asked for it to go to basically this level rather than necessarily the complainant who was asking for it to go to this level. So, I guess before spending the dollars on having an attorney why is it we couldn't try to first handle this in house
- Lewis Penny will respond to that and I will be happy to
- Westberry When we received the initial e-mail that had some words in it in terms of potential financial misexpenditures we referred that to our attorney who referred us to an HR attorney who directed us to follow the steps insuring that this was going to that this employee intended it to be a formal complaint or not we had that meeting with that agenda the employee did indicate that they wanted to make a formal complaint to the board at that time. The employee was offered many times by myself to meet and discuss

it at the administrative level and the condition that the employee put on that was that they would only agree to meet with me about this if it was tape recorded. I sought counsel from HR attorney who advised against that. So I was not able to do that.

- Dwyer Any other questions – any public questions on this – no, hearing none okay Andrew
- Bray To clarify the roll of the Compliance Officer Sandra is going to coordinate the investigation and she will task the appropriate individuals to make whatever investigation she feels is necessary.
- Dwyer Sandra is not holding herself out to be for instance a Gramm Leach Bliley expert If it were to rise to that level we would bring in a Gramm Leach Bliley expert in to investigate that portion and also based upon my communication with Sandra she clearly is not going to hold herself out to be an expert in auditing thus we have an auditor who we will rely on and the same with any HR issues or legal issues that comes to those levels she will directly rely on either Valarie or Burnadette or in conjunction of both
- Dejean Another question not to you know to say anything about Sandra or anything. In order to make the process fair and equitable in terms of the Compliance Officer who is going to be leading the investigation
- Dwyer That's the wrong term I wouldn't say leading the investigation she won't be doing the investigation
- Dejean She won't be doing the investigation
- Dwyer No she is going to be gathering the information and we will have experts or whomever is needed at that next level or next juncture gather the information do the auditing do the investigation report back to Sandra who will then compile it and bring it forward to the board
- Dejean You answered my question okay
- Bray I guess the lawyer in me always sorta comes out – the thing I want to make clear because we are such a small organization such a small group obviously it leads in an uncomfortable zone of putting Sandra in a position of potentially investigating her boss but as I understand her role she would not be the one directly performing an investigation she would be consulting with others and she would be the coordinator and director of that
- Dwyer Clearly you are correct – that is my understanding – Burnadette

Norris-Weeks I didn't – let me put this on the record – I did not draft the policy, I did not participate in it – Valarie did – I can only tell you that I had some of the same concerns when I saw the policy now if what you are saying Mr. Chair my only question is what would happen in cases where Sandra is taking statements would she then take a statement from a staff person and then put that as part of the report and how would that get back to the Board

Lewis The procedure doesn't call for Sandra to particularly as the Compliance Officer to do the investigation it allows for her either to do it or for her to oversee the investigation and by that she can bring in who she needs who she believes has the necessary skills to accomplish the task and these individuals based on their expertise will report to her and she is pretty much just putting it into a summary and present it to the Exec

Dejean Maybe it's just me or maybe Andrea you have the same concern – my concern about that is we are using someone who is an employee at the ELC to gather even if information gathering to gather information on an investigation that is involved with another ELC staff and her boss her CEO – all three whether it is stated or not whether it is implicit – there is a gray level there – to me I would feel much more comfortable if there was a third impartial party who has no horses in this race

Dwyer I don't disagree with you on that and one of the things we already talked about Valarie already addressed this if it comes to that point where the investigation needs to go further bringing fourth names of individuals that can fulfill that third party role for us. Okay – but normally only in my experience the limited experience that I have in dealing with companies and non-profits –modeling looking at the CSC's policy and program and their set up and some of the other agencies I looked at for instance the HR manager at CSC is also the Compliance Officer and a number of my private clients it is the same model then the Compliance Officer then goes out does not do the investigation per se they go out and bring in the expertise and all they do then is report the information that is provided to them as a clearing house collection house. That is usually the safest office inside of an enterprise because of GLB issues in that they have to have the locked draws Gramm Leach Bliley issues. Employment files for instance are kept by the HR person that have nonpublic information that is usually the reason why it is done that way because you don't want any of the nonpublic information to get out to the public. So that is usually why that is the housing of it as are any HIPPA issues that come up inside employment any FMLA issues that arise in employment that is why they typically go through HR on those issues.

Dejean During a situation like this where the person gathering information – now because the CEO is involved in that whole thing is there a cone of silence is there a situation where that person

- Dwyer That's what we talked right up front just so we are clear while the investigation is going on it is confidential period. No one can inquire outside of how's it going what's going on – its confidential – it can be reported back to us correct
- Lewis Yes – while it is being investigated it is even exempt from public records act so no one can make a public records request and get that information
- Dwyer Its exempt from our CEO, it is exempt from the CFO, it is exempt from me it is exempt from you and it is exempt from anybody sitting here or any of our agencies anyone -- Cone of Silence as Maxwell Smart would say right
- Donna Korn Question just in terms of when it comes back to us once the investigation is done – it says here it comes back to the Board of Directors is that the entire board –
- Dwyer (sounds made in the positive)
- Korn So it doesn't come back to Executive first
- Dwyer It would come back through Executive
- Korn It will come back through Executive okay – Is there anything that states the recommendations have to be implemented as recommended or does the Board have full discretion as with any other
- Dwyer That's a great question, I don't have an answer for that
- Lewis The Board has full discretion – it is a recommendation and then you can decide whether or not it is appropriate
- Korn And with the recommendation would potentially come additional information if you did not accept this recommendation this would potentially then be the result of or that is something if that we disagree – would then have to go further. My next question is I would assume there is some cost associated with this investigation if we brought in a third party – within our budget is there a line item that allows for this is that something the board has to approve funds for do we have to get a budget for this particular – how do we spend money for this.
- Westberry Not knowing what the costs will be I can't tell you if we have the money in the budget already in consulting line or not – I don't know what it is going to cost

- Korn I know we saved some money on the procurement attorney but obviously we have another attorney engaged and ultimately another third party vendor whatever so – is that something as a Board we would ask before we engage someone specifically unless there is room in the budget – how do we do that
- Dwyer That's a good question. This is new ground for all of us at this particular Board level I would think that we would have to have another meeting to engage that party as needed and to have the budget allocated for that to occur. I defer to my General Counsel on this – if you are familiar with it yet or not
- Norris-Weeks Well, I know that Penny has discussed with outside counsel a fee structure of some sort – and so I know that outside counsel is going prepare a bill
- Dwyer No no no not talking about outside counsel talking if we have to bring a third party in
- Norris-Weeks if you bring in a third party in yes that would have to be needs to be allocated some amount of money that you are going to allocate towards that function and figure out where that comes from – it does not have to be a lawyer – a third party can be someone independent person that you think that can collect facts now the other thing with this too you all been talking recommendations and it kinda begs the question of whether you are anticipating that Sandra is going to be making recommendations to the Executive Board before it goes to the Coalition and that is what I am not clear about and probably needs to be somewhat clarified so that she knows what she is reporting on and what her analysis is going to be whether if it is just information gathering this person said this this happened on this day - what is she going to do with that –is she just giving you the information on that – I'll give you an example of what I mean by that – right now I am doing a report and wouldn't want to do any report related to this issue – right now I am doing a report for the City of Tamarac, I was asked to brought in by their General Counsel to investigate an employment matter. So at the end of my report I will give a recommendation about what I believe the facts were are based upon my the interviews and so forth that I have done – now that report is a final report – this is my report – you are not going to change it you are not going – no one is going to do anything with my report – that is my report – so that's generally how that is done if it is investigation that is done for an HR issue there is a recommendation so what I think what you have to decide and I know this is a case of first impression sort of speak we never done – uncharted waters – for us – we have decide whether or not – you all have to decide whether or not you want Sandra to go that far you know or whether

Lewis Exactly, the procedure does not say that Sandra does not have to make a recommendation all she has to do is report back the conclusions

Dwyer the conclusions

Norris-Weeks The conclusions of what

Lewis Of the investigation

Norris-Weeks Which would be I interviewed five people or

Lewis And this is their findings and this is a summary of their findings and then bring it back to the Executive Committee okay and at that point a recommendation can be done or what they think based on their findings is appropriate to address

Dwyer Or we could charge the independent person or independent auditor to make a recommendation which I would prefer

Dejean I would prefer that

Lewis Then you might have several resources that you are dealing with you have several issues out there you might need HR you might need an auditor or whatever so who are you going to charge with the responsibility of doing the recommendation

Norris-Weeks That's the issue that I think you have – I think if you are going to have a process – this is just my personal opinion – if you are going to have a process I think you ought to make it here we are going to have three people we choose from and we select these and they are going to collect the facts and they are going to do all the stuff. I don't know how internally you know if it really makes sense because when she gets to a point when she collected all, interviewed whoever she going to interview then you are still going to be in a fact finding role of doing what you didn't want to do from the beginning.

Dejean Right, right gathering all that information

Dwyer Okay the first step is to find whether if this rises to the level of a whistleblower okay everything else is beyond that we don't even know if it's gotten to that level okay once we get to that level now we are getting to new and more uncharted waters where we have to make a determination My impression and my feeling and based upon what you are saying also Burnadette is that whomever then we charge on each level of investigation if it does rise to that level that they come back to us with not only facts but recommendations so then the Board can be brought forward and told it rose

to the level of whistleblower – here’s why – here are the recommendations here what they suggestion we amend our policy and procedures to correct this action and maybe the auditor on a financial matter maybe our HR attorney if it is an HR issue

- Norris-Weeks So is Sandra then making the recommendation as to whether it rises to a whistleblower level
- Dwyer Sandra is going to start the investigation and go directly with our HR Attorney on the next step
- Norris-Weeks Okay so the HR Attorney is going to make the recommendation as to whether it rises to the whistleblower level and then it comes to the Executive Board okay
- Dwyer okay that is the first process
- Norris-Weeks You will need to put that in this process
- Dwyer I think it is laid out that any – didn’t you lay it out so that anybody can make that recommendation not necessarily the HR Attorney but it could be the auditor
- Lewis whatever resources
- Dwyer whatever resources it was laid out that way for that reason so that and it could be our finance chair on finance issues it could be whomever the resource is will be laid out that way okay good
- Now the only other thing that came up that maybe we need to start the process on is to allocate resources for this function. That is the only issue that I have heard so far that I think maybe we will need a second motion on to bring forward to the Board to allocate resources out of the budget for this function. I wouldn’t know the value, I wouldn’t know the amount and I have no idea what it is going to cost. That I don’t know. So its kinda we’re going to be a pie in the sky on that and I think a best educated guess from the collective representatives that are sitting before Exec
- Westberry The other thing, Jeff , that the Board meets June 28<sup>th</sup> so are you saying resources aren’t spent until the Board meets and allocate them – we might have resources
- Dwyer No I think Exec can spend resources as we need in the interim period
- Westberry okay so you’re not saying

- Norris-Weeks      You have the authority to make that decision
- Dwyer                We have the authority under our by-laws to make that decision so I think that is the next thing we have to do also as needed. Britt do you have any input on anything you're heard so far
- Sikes (via phone)    No I don't think I can add anything that hasn't already been battered around I don't have the silver bullet for these issues we are wrangling with but I agree with you I think there are two stages to this and obviously we get started with the first stage and if it reaches a certain level between now and then and if we agree it does that we will all have a collective mind going to what's next
- Dwyer                Okay any other issues
- Dejean                I know that we are dealing with uncharted territory here has any other ELC dealt with any of these kind of issues before
- Dwyer                Not that I know of – ELAC is in a week I will be present I'm going to make a goal of going there – I wasn't necessarily going to go to this one but – I will go and will attend and invite anyone else on this particular issue to attend also if you want to raise this and address it at the ELAC committee, I think it is in Tampa
- Westberry            Tampa in June
- Dwyer                So I will also raise it and ask inquire there
- Korn                  Do we need to call this do we have to vote on this motion so that we can then go to the next motion
- Dwyer                Yes yes – is there any more discussion on this issue
- Bray                  No just the record will reflect that we are charging Sandra with the duty to coordinate and that she should be mindful of the appearance of impropriety or the arising of a conflict of interest and we would encourage her to seek outside and independent resources at the first instance where she feels it is necessary
- Dwyer                Absolutely 100% and Sandra just so – I want to be fair – I believe that's the conversation you and I had yesterday also on this issue correct
- Martinez             Yes

- Dwyer That is my concern that was Sandra's concern obviously it is your concern I believe its Donna's concern it's everyone's concern. We want to make sure all the resources are available to make sure this is done properly okay
- Korn Just one other question – and Sandra has a direct connect to our HR Attorney
- Dwyer and to Burnadette – absolutely
- Korn Okay
- Dejean So – I'm sorry – just want to make sure we are all on the same page – as she gathers information she has outside counsel for resources – so you guys are going to be the ones for the first step okay – got it – thank you
- Dwyer yes – any other questions – anyone okay – all in favor of charging this to the Compliance Officer
- Committee aye
- Dwyer Any apposed
- Sikes aye
- Dwyer Unfortunately Britt I don't think you can vote – I am sorry about that our by-laws don't allow for committee members to vote across the telephone and now that we are in an open public form I sure would like to change that - but anyway hearing all ayes any nays -- no nays – the Motion so passes
- Second then I think we need to bring a motion forward to do we need to allocate funding or do we have reserve fundings for this type of issue
- Braynon No we do not do not – we can do an amendment 20,000 -25,000 best guess or reallocate from underexpenditures from other line items and can present that to the Finance Committee on the 9th
- Dwyer I understand that everyone thinks that's a lot of money we can take the money back – it is a lot easier to have it there and not use it then not have it there and come back again and call you all in for another emergency meeting for money okay that is my feeling – Donna I know you are going to have a feeling on this
- Korn I will – I think when there is a nice size pot of money we're don't we're not necessarily as concern how much we spend because we know there is a lot of resource sitting there I think if we got 10 or \$15,000, and would have to

go back to the board – I would defer I am very concerned – we could get a lot of slots for that money – that concerns me

Dwyer Listen I agree with you. My position is this If, not if, we need to do this in such a manner that it is done properly that if there are any issues found that they are remedied and that all available resources to find whether it be a whistleblower issue or some impropriety that is found and then remedied and we find a solution to that. And as much as I would like to keep the cost down to nothing – I don't know if that is realistic – I don't know whether it is fair to the employee either who is bringing this forward and I think we have to be fair and cognizance of that fact also.

Korn I don't disagree with that – I made my comment – I will just let the rest of the Committee then

Bray I agree, I hate to allocate that amount of money in a lump sum up front – though I am mindful that it very well may take that amount of money and more to get this thing done – I am wondering if there isn't an interim step that we can take because we are going to be meeting at the end of June I would hope that we wouldn't spend the \$25,000 in the next say four weeks maybe we could allocate a lesser sum with the understanding and realization we're likely to come back

Dwyer The other solution is we could also bring this at Finance to reallocate as needed – no it has to come out of Exec okay so

Bray What I guess I am saying – what I am trying to think about is that – we have a two step process and so if it doesn't rise to the level of whistleblower I am hoping we will spend far less than \$25,000 if it does rise to the level of whistleblower I think we would be lucky to get away with spending less than \$50,000

Dwyer I would agree

Bray So I think that it might be – maybe we could say allocate \$20,000 for the first stage with the realization that we'll have to allocate more if we get to the whistleblower stage that might be a better way to do it – even though I hate to put a 2 on it \$19,999 but 20 is the budget number

Dwyer okay

Dejean I don't think there is anything said here that I don't disagree with – this is the process – we have written down this process – there's gotta be an area where whoever is conducting this type of investigation has the impartiality and their hands aren't tied where they have to come either to a CEO -- look we need more money – no there should not be that kind of hamstring

situation. Unfortunately it is what it is and any situation we would have to allocate funds in order to get this done. So, I think Andrew is right we allocate a certain amount that we guesstimate at this point will help determine this first level and if it calls for it to go to the second level then we do what we need to do. I think there has to be a level of impartiality

Dwyer Britt – Britt – can you hear me – Britt did I loose you I lost him

Committee laughter multiple comments

Dwyer public input – none

We need a motion on this – I guess I would agree in line with what you are suggesting 20 or 25 is no hill of beans for me on that issue my guesstimate was 20 – 25 and that is what Andrea said anyway so

Bray I would move to reallocate \$20,000 for the initial phase of the investigation

Dwyer with the caveat of

Bray with the caveat that we may need to come back and revisit it if it is found to rise to the whistleblower level

Dwyer I don't like that and I will tell you why and the motion is not seconded yet – because you are saying \$20,000 with the caveat if it comes back as a whistleblower complaint if it requires more than \$20,000 before it comes back and I don't want a hamstring

Bray - Okay I understand we can amend the motion in that fashion

Dwyer Okay

Bray you said it so you can recite it (laughter)

Bray Will initially allocate \$20,000 to the first phase of the investigation with the caveat that that is not a limitation on the amount of money that is to be spent and if more resources are required we will revisit that issue.

Dwyer Second

Korn/Dejean Second

Dwyer Dueling seconds

Korn Marvin got it

Dwyer Any discussion any further discussion on this issue – Yes Andrea

Braynon Just as a comment we must also remember that expense has already been incurred that has not been billed

Dwyer We understand - thank you, thank you very much-- any other comments on this - hearing none – all in favor signal by saying aye

Committee aye

Dwyer any opposed – hearing none the motion passes unanimously

Dwyer Any unfinished business that needs to be addressed – Yes

Westberry I would like to make a comment for the record as the CEO I look forward to a full and fair consideration of all the allegations that have been presented to you and full and fair consideration with respect to all parties in the allegations

Dwyer Thank you we will be very mindful of that of everyone who has been named also. Any new business - hearing none - public comment - Ainsworth got anything there

Ainsworth Can I vote (laughter)

Dwyer Alright – next meeting June 9<sup>th</sup> 2010 – I believe they are going to move it a little earlier for Finance for the RFP – so I need a motion to adjourn

Korn Motion to adjourn