



Executive Committee Meeting

6/24/2010
 11:30 AM
 6301 NW 5th Way, 4th Floor
 Fort Lauderdale, FL

Members in Attendance:	Jeffrey Dwyer, Chair, Andrew Bray, Treasurer, Cindy Arenberg Seltzer, Secretary, Donna Korn
Members Absent	Britt Sikes, Vice Chair, Marvin DeJean
Staff in Attendance:	Penny Westberry, CEO, Lee Tirpak, CPO, Sandra Martinez, Accounting/HR Manager, Jessica Novak, ECE Program Specialist, Leticia Strasser, ECE Program Specialist, Debbie Bainton, Executive Assistant
Others in Attendance:	Gilbert Rincon, Dr. Barbara Weinstein, Reinier Potts

Welcome and Call to order

Jeffrey Dwyer, Chair, called the meeting to order at 11:36 am
 Thanked everyone for attending and confirmed that there was a quorum present.
 The Chair read into the record the ELC policy on public comment. He asked if the policy could be posted rather than reading it at the beginning of each meeting.

Minutes of May 20, 2010

Penny Westberry indicated that on page two under action items it should indicate the allocation of funding should be CFO not CPO

Motion made by Andrew Bray to approve the minutes as amended. **Seconded** by Donna Korn.
Unanimously approved.

Action items:	Person responsible:	Deadline:
Keep minutes on File	Executive Assistant	6/25/10

Unfinished Business

Employee Complaint -

A transcript of this discussion is attached to the minutes and made a part of the record.

The Chair informed the Committee that special counsel for this issue had to step down due to family issues. He stated that the Coalition’s General Counsel looked at the complaint and stated that it did not rise to the level of a whistleblower complaint. He stated that there is no need to go further in choosing another counsel.

The Committee discussed the following:

- Recognized no mandatory investigation is needed, however allegations are out there that need to be resolved in some way to take the cloud of suspicion away or act
- Did not see any management response
 - Management is in the process of responding – would like to have opportunity to be on record
- Questions were asked as to why a special attorney was engaged and was clarified noting that ground work needed to be done
 - ELC now has policy on whistleblower complaints
- If not a whistleblower complaint – not a full board action
- Want both sides of the story on the record – want everything to be documented and addressed
- Question raised regarding motion from last meeting setting aside money for investigation
 - CFO set up account will allocate to expenses and then rest will be reallocated to slots
- CEO indicated that she would be sending response to all board members since all board members received the complaint

Motion made by Andrew Bray stating that in light of the new information from general counsel, to formally terminate the prior investigation and direct management to prepare a response to the letter and bring that response back to the executive committee for further consideration. **Seconded** by Cindy

Arenberg Seltzer. Unanimously approved		
Action items:	Person responsible:	Deadline:
Place management response on next Executive Committee Agenda	CEO	TBD
New Business		
<u>2010-2011 Meeting Schedule</u>		
Penny Westberry stated that she is still waiting to hear from the State on the State's meeting schedule and will put together a calendar for ELC Broward when she gets the information.		
The Chair informed the Committee that the Wise Bill passed and becomes effective July 1. He stated that the Coalitions by-laws have to be changed suggesting that the by-laws be simplified by putting in language such that the read ELC follows statutes or AWI policies governing early learning coalitions. It was noted that the new statute makes every board member a voting member. Ms. Westberry indicated that she is working with the GC on the changes needed.		
The Chair stressed that the by-laws need to be narrowed down and to keep them simple so as not to have to deal with them year to year.		
Action items:	Person responsible:	Deadline:
Distribute Meeting schedule when it become available	CEO	8/2/10
Draft revised by-laws	General Counsel/CEO	8/30/10
Public Comment		
No comment		
Next Meeting		
TBD		
Adjourn		
Meeting adjourned at 12:20		

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 Coalition 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.
Executive Committee Meeting
June 24, 2010

Partial Transcript
Agenda Item – Unfinished Business

Employee Complaint

Dwyer Now the next issue that was coming up – we have unfinished business and that was regarding the employee complaint that was being looked into and Valarie – the initial reason for calling this meeting was that Valarie had to step down due to family issues. Subsequently my understanding is Burnadette looked into the issue of the employee complaint and in particular, I think – and I don't want to put words in your mouth but when you and I spoke that you looked into the whistleblowers act and it did not rise to the level of whistleblowers act is that correct

Norris-Weeks correct

Dwyer alright and it did not rise to the level of under the grievance procedure of 5.8 is that also

Norris-Weeks Um – that is correct

Dwyer alright which – uh – and for the record just so I am also clear and that we'll also bring this to the board you are also saying that this does not rise to the level of being investigated further by the board

Norris-Weeks that is correct

Dwyer That's correct okay. So, that being the case and I want some discussion on this from the executive committee of course that being the case it would indicate to me that we don't need to go forward in choosing another attorney to then help in the investigation process if our general counsel has already concluded that it does not rise to that level. So that's where we are at today then and that is the reason behind our meeting um and what further action that we deem needs to be done that would be appropriate I don't know if any further action needs to be done and Burnadette maybe I can defer to you on that

Norris-Weeks not in my opinion

Dwyer not in your opinion – okay so that is where we are

Arenberg-Seltzer I have a question

Dwyer of course no that's

Arenberg-Seltzer okay if I understand what you just said for purposes of the federal whistleblower

Dwyer Yes

Arenberg-Seltzer it does not rise to that level and therefore there is no mandatory investigation is that correct

Dwyer Yes

Arenberg-Seltzer but in terms of internally there are allegations hanging out there that cast some fairly serious aspersions upon our management team that seems that we need to resolve in some way to take the cloud of suspicion either away or act. Is that

Dwyer I do not disagree with that statement either

Norris-Weeks Not technically I mean– Penny is in charge of her own staff however she runs or manages or unless it is something obviously the board wants to get involved in terms of dealing with the executive director you all would necessarily have to do anything unless you want to so there is no

Arenberg-Seltzer legal obligation – our legal obligations are satisfied

Norris-Weeks Right

Arenberg-Seltzer I am comfortable with that and I am glad to hear it and I have no question – there is no question in my mind that Penny is capable of managing her staff. However, I am concern for Penny that the letter itself raises uses some verbiage that is quite concerning that if it is not answered and perhaps I am missing it but I did not see any management response to date to those allegations and I think it leaves a cloud of suspicion I'd like to hear from Penny to what she thinks but in my mind you have serious allegations hanging out there that the back-up doesn't necessary support the language in the letter that we have not heard any response and I think they need an opportunity to respond

Westberry It has been management's intention to respond and we will and are in the process of preparing a response we didn't want to interfere in any with any investigative process of the board. We would like the opportunity to just to have something on record just clearing up issues or showing other sides of issues for the very reason that you just discussed. We would only distribute to the folks who got the first complaint

Dwyer That's sounds reasonable also

Bray Jeff – just so – as I understand it from what Burnadette's opinion is now is that previously we were proceeding along the outside investigation track but now that Burandette's opinion is that the complaint doesn't rise to the necessary threshold we feel safe in abandoning that but we are not going to leave that letter unaddressed we are now going to turn to management and ask management to respond so that we will have some form of formal closure to this event that the board can considered.

- Dwyer I think that is appropriate I do believe that to be appropriate also
- Korn And so since it was originally brought to the executive committee is it the executive committee that will then see the response from management would there be any input from the executive or it would just be basically a notification of this is what was done in a response to – in other
- Dwyer I don't know the answer to that I don't think we have a procedure there I think that is something we need to make a decision on with assistance of our counsel and follow through on – I don't believe we have a policy or procedure that addresses that issue at this point in time
- Korn I'm sorry just as a follow up – I'm a little confused as to – it was brought to us because we thought that it rose to a whistleblower
- Dwyer No
- Korn Okay
- Dwyer We don't make the determination as to whether it rises or not that's not
- Korn but every letter that Penny gets does not comes to us with that question so just back up
- Westberry sure, sure – to back up a little bit you may recall that there was an initial e-mail that initial e-mail was shared in terms of some concerning language that could be – we didn't know what the complaint was at the time but that a complaint was pending that could rise to a whistleblower we consulted our GC who referred us to the HR attorney who said under your policy you need to notify the board of this. We didn't know what the complaint was going to be until the complaint came and the next step as you all determined was to determine if that complaint rose to whistleblower and that is where we are now
- Korn I guess then along those same lines I am a little concern cause our last meeting we had two attorneys we had an attorney who was specific to this particular issue and yet our – and Burnadette now that you are telling us - we engaged a different a specialty attorney and yet we are not getting this direction from that specialty attorney so I am a little confused why would ever engage this specialty attorney if we are getting our direction from our general counsel
- Norris-Weeks The – if you would look at – a part of your back-up the minutes from the last meeting. The minutes of the last meeting and a direction of this Committee, was that the Sandra would work along with either myself and/or an HR attorney who was here. Subsequent to that as Jeff laid out in the very beginning of the meeting, the Chair laid out, that attorney due to personal reasons can't go along go on in terms of looking at this issue. I have however spoken with that attorney about these very same issues and it just does not meet the criteria. It doesn't take, I do employment law in other areas of larger agencies than this. So In looking at the statutory guidelines, the case law and everything else that is available it just doesn't meet the basic four corners of what you'd look at and it doesn't require a specialized, specialty outside special counsel attorney to determine that. A part of what we've been doing in the past is when these issues come up issues that we can't handle, I am the first to say we can't handle it and please let's get someone you know involved in this engaged in this. This was something that I felt

that I could handle, I could look at I could make the determination I didn't need you know someone necessarily come from outside with specialized legal services and you guys pay a higher rate to make that determination when it is clear from the case law and everything else that is available that was not required in this case. That is why – I didn't make a recommendation – here we look at somebody else as opposed to hey we go through this let me look at the case law let me look at what the elements are and be able to report to you all here today– it doesn't – nothing in the complaint meets the level of whistleblower

Korn Okay – I can certainly appreciate all that again to get back to the why - why did we then have someone else at the table the first time. If you are saying Burnadette you are comfortable

Norris-Weeks I can tell you initially

Korn So Burnadette did not look at the complaint before we engaged another attorney

Norris-Weeks Initially what happened in backing up this was before anything was filed at all. So Penny wanted some advice as to what we do. I was actually leaving town that day Penny said if I would feel more comfortable if I could get somebody to look at this because I am really anxious about this and I want to get at it right away. I said well Penny if it can't wait here is a person I'd refer you to Penny was in touch with the other person and things went along and that person contacted Valarie contacted Penny and they came up with a procedure and various other things to put in motion a foundation for how you all will deal with these kind of complaints because we never faced this issue before. Now, in the meanwhile, we got we received the complaint which we didn't have. So I think all of it was necessary now you have a policy which you didn't have and you know and Penny was able to get on that immediately which was a concern. So

Korn That is more information that I had

Dwyer And that was – when it first came up – the whole idea – some of our policies say that we will respond to certain items within 20 days – we will investigate other items within 5 days – when the topic came up we didn't know what it was going to be regarding but we knew it had to be jumped on immediately – you were unavailable for a brief period of time but you have been subsequently and working with Valerie subsequently so it had to be responded to immediately – even though we didn't know what it was going to be - oh we don't want to put the cart before the horse but we have to have some ground work in place and that was where Penny went and I think that is where Valarie came in and I think Burnadette was in assistance with that also – that was the basis for all that

Arenberg-Seltzer I guess I have a motion but I will explain it first. I think that under normal circumstances following our policies and procedures that exist for Penny to manage the staff makes sense. When allegations are made against the management team its unfair to the management team and I think to the organization to just leave it within their hands I think they deserve and the complainant deserves to have it look at a higher level but not at a level that would you know broadcast it across the universe. So I would like to move that management's response the complaint and management's response and any handling there be brought back to the executive committee for review and if nothing else just for review and some sort of blessing of the handling of the issue and not be brought to the full board.

- Dwyer As you can glean from the minutes of our last meeting I think we had to be and I was very thorough that we had to be very fair to our employee who raises the complaint but I think we also have to be just as fair to our management team and allow them to respond accordingly. And I think it has to be open and honest and I think thus if it does come back to exec it goes into the minutes so that it can be gleaned from for any board member to see and then we can report to the board this is what has happened this is what occurred these are the results and then the board can then come forward and say we would like additional action or not it's the board's choice
- Arenberg Seltzer I am not sure it is necessary to go to the board. If it is not a whistleblower then I don't know why it needs board full board action. This would seemingly be within the purview of the executive committee to handle and not make it a federal case since it is not a federal case
- Norris-Weeks The only issue that remotely addresses your concern is
- Arenberg-Seltzer Whose concern mine or Jeff's
- Norris-Weeks Your concern Cindy Procedures for reporting violations it does say the compliance officer who would be Sandra at the conclusion of the investigation shall report the findings to the board of directors. So whatever those findings are and I don't know who all consider this additional investigation part of it additional findings that relate to the issue of a whistleblower
- Arenberg-Seltzer My understanding was from your comment that this not whistleblower and therefore does not require an outside investigation so there is no we are not in a reportable condition
- Dwyer I would agree
- Norris-Weeks That is true – what I am saying to you is if you consider all of this part to be a part of the overall package of you know – this is investigation – you are going to take I guess what Penny says and I don't know whether you are going to compare or invest, I don't know what you are doing with that but whatever you decide to do but if you consider this a part of the complaint process then this would seem to suggest that it would go to the board but obviously you know you all
- Arenberg-Seltzer I guess what I am saying if I could just clarify. My understanding we are no longer under that so we are not doing an investigation we are merely trying to make sure we have a thorough record that has both sides of the story on the record and we can see if there is anything perhaps it would have to go to the board if there is anything in there that we are concerned about – if the management team answers and we see some discrepancies that are concerning to us then we would have the ability to raise that to a higher level - if it comes back and we say okay it looks like everything is documented and addressed just make sure the record is thorough and let's move on with life
- Norris-Weeks The only issue that I would bring up to you all – you could for all practicable purposes accept or reject any opinion that is brought to you – in any event I am telling you that I do not believe that any of this meets whistleblower standards. You could have said you know Burnadette that is very nice but I think we want to do an investigation anyway because we think
- Arenberg-Seltzer I don't want to

Norris-Weeks I understand but what you are doing at this point when you say well we are going to look at it and we may compare and if we think there is anything else – that is still a part of it would seem to be a part of this overall complaint process that you are looking at which would according to your procedures then go to the board. Now if you are saying you're not you want for the record Penny's response to that so that you have a record and you are able to have something she can fall back on and say I did respond to this and I reject those allegations that were made and that is the end of it then maybe it is fine to stay here

Arenberg-Seltzer What you are quoting to me is that the whistleblower or is that our handbook

Norris-Week Procedure for Handling and Retention of Whistleblower Complaints received by the Coalition

Arenberg-Seltzer So we haven't got that we're not there I am in our regular Policy and Procedures for for

Westberry Board Oversight

Arenberg Seltzer Board Oversight and and Human Resources Issues. It is not whistleblower –take that away – you told me that does not apply and I am not applying it. I am just doing regular board governance issue of an HR complaint. It is our responsibility to manage the CEO. She manages her staff and it is our responsibility to manage the management

Bray Cindy I don't think your motion got seconded so don't know if this is a friendly amendment or not but what I would suggest – I might suggest that we alter the motion that in light of the new information from general counsel, to formally terminate the prior investigation and direct management to prepare a response to the letter and to bring that response back to the executive committee for further consideration.

Arenberg-Seltzer That was said much better – well done

Laughing

Dwyer Do we have a second for that

Arenberg-Seltzer I will second that

Bainton the wording on that

Bray I will rely on the tape for that

Arenberg-Seltzer Beautifully done

Dwyer I would agree that that is the proper process and we should end it and let management because I am going to be perfectly candid with you, I want to double check that the auditors are doing their job and if something is wrong with the auditing that we fix it okay and you know the computer issue also I want to make sure we're following – I don't think we are right now and I think we need to probably amend a procedure regarding computers and copiers that all the disks making sure that all the disks are destroyed

Westberry yeah sure we are

Dwyer I didn't see it with copiers only saw it with computers that discs are destroyed

Arenberg-Seltzer discs are destroyed?

Dwyer Hard drives are destroyed

Westberry discs are destroyed per OEL policy if you're disposing them

Several conversations

Dwyer May I please copiers do not make copies any longer they scan and then print – they all have memory chips in them the memory chips have got personnel information that has to be destroyed before those copiers can leave our possession and I don't know that I saw that in our procedures and I know that is not the issue that was raised by the complaint but that is where I am going with it okay – so I want to make sure we are doing everything regards to making sure that we are not letting any of our computer information hard drives the discs that go with those hard drives get out into the public alright and have to address that on the memory sticks – I don't know if we are using memory sticks here are not – alright so that's where I want that's the next step I want to go that's my process – so you made a motion

Bray right

Dwyer Actually you made the motion

Arenberg-Seltzer No he made it, I'll second it

Korn Her's was never seconded

Arenberg-Seltzer It was never a motion I explained it and I never put it into words

Dwyer Motion made by Andrew – Second – discussion any further discussion on this

Korn The only thing I just wasn't sure that we need to tie into this or just kind of we leave it alone and it goes away. A motion was made at our last exec meeting about setting money aside for the investigation Does because we are no terminating per this motion we are terminating the investigation I would think then money that was set aside was terminated but I would think some dollars were spent. Is there something we need to do to address that or not

Norris-Weeks I don't think so – I think some dollars were spent you draw down I guess Andrea is going to set up a separate account based on a previous motion and you draw down from that and that is already out there so

Korn it's just done

Norris-Weeks it's just done

Korn okay

Westberry if we need it

Korn that money is not just sitting in a pot

Dwyer it will move back to slots – some of it would be drawn down for this initial

Westberry Certainly appreciate the motion and I appreciate the discussion about whether this would go to the board or not. I will tell you that personally I intend to give a response to all the board members because all the board members received the complaint so on a personal basis you direct me on a personal basis I have been advised by my personal attorney to give the response to the folks who received the initial complaint.

Dwyer And that is fair too – that is management’s prerogative that issue but I think the follow-up we are still taking care of here when we are concluded – obviously the investigation is over we’ll report that no finding was found – so I’ll report that to the board - there won’t be any backup on that because it is just a verbal correct

Norris-Weeks uh – that’s right

Dwyer No written draft on this

Norris-Weeks Only that I have – I haven’t distribute to anyone

Dwyer Internal memo

Norris-Weeks Yes

Dwyer And that doesn’t need to go out because that is attorney work product okay so that is fine – so that is all we need to do now – any other comments on the motion

Arenberg Seltzer I am confused about that last exchange, I guess because I miss last, if we already brought to the board that this complaint was made and that we were having the investigation as to whether or not it rose to whistleblower than why would we not include in the packet our attorney’s opinion that said it was not

Dwyer There is no written opinion there is only a verbal opinion]

Arenberg Seltzer no she just said she had a written opinion

Norris-Weeks I do have a written opinion however in this case I don’t know it is necessary to distribute at this point it is not legally required because I have not given it to anyone except for the attorneys in my firm so so you know we could make a report to the board similar to what we are doing here today – just to say that no finding – there has been no finding – it’s been investigated and that is the end of it. I don’t know that you necessarily want something as part of the record - we have it but I don’t know that you want that as part of the record

Arenberg-Seltzer Why

Dwyer I guess look at it this way – anything that can be a part of the record is always good. If nothing has been finalized in draft mode and we've got an oral opinion they why pay to have finalize it – unless you want to pay to have a finalized written report done. The initial investigation was done – internal memos were written in her firm between attorneys in her firm correct

Norris-Weeks that's correct

Dwyer but nothing formalized to give to us to say here is our written opinion the opinion is a verbal opinion that is sufficient as a matter of law that is on our record to say that it does not rise to the level – so for the board purposes all we have to do is relay that information and inform the board it does not rise to the level and Burnadette can say that it does not rise to the level

Westberry It is also a part of your official exec minutes

Arenberg Seltzer I guess I misunderstood Burnadette's when you had the little exchange about it being internal I thought it was internal work product of ours – and I didn't know why we would not share that. If it is just internal within her firm then fine

Dwyer You're good

Arenberg Seltzer I'm good

Dwyer You're good

Bray No we have not voted

Dwyer we haven't voted

Korn We haven't voted we just have a second

Dwyer I haven't seen anyone sign up for public input on this topic – anyone on public input – no okay - all those in favor of this motion

Committee aye

Dwyer any opposed – none – passes unanimously - now management you are going to get a response from us

Westberry we are

Dwyer We don't need a motion for that I don't believe

Committee We did – that's why we needed that repeated

Korn just a question – the handbook for staff when responses will be – there is a timeliness in term of responses

Westberry not for management no the handbook speaks to whistleblower act it does not speak to

Korn internal complaint okay

Westberry I will tell we'll get the response as soon as possible I will also tell you that it is taking research as back as far as three years chuckle

Dwyer Yeah, I understand

Westberry chuckle

Dwyer Now Sandra

Westberry it's taken a while

Dwyer Will Sandra need to address the board regarding this issue

Norris-Weeks That's what your procedure says but I don't think it is necessary because that is only in the case of whistleblower and there is no findings

Dwyer no findings okay – so Sandra you are off the hook

Laughter

Dwyer alright okay - that was my feelings on that also. I don't know if I have any other areas that need to be addressed on this topic anyone else have any questions, concerns that you feel need to go to an outside an outside investigation – I'm fine and I rely on our corporate attorney's opinion on this – anyone

Bray I'm fine

Dwyer staff

Korn There wasn't a request from the complainant for it to be a whistleblower correct – it was just a complaint I don't think there was ever an intention to go to this level to begin with

Dwyer I don't want to put words into the complainant's mouth but I would probably concur that that may be appropriate but I think it is appropriate that we look into these issues

Korn Okay

Dwyer Okay – I have nothing else – New business – update on new meeting schedule