

As stated in Findings of Fact Number 2 above, the discussion at the February 25, 2008 SBDM council meeting consisted of Principal Rector presenting the council with a revised policy which reflected a name change and withdrew some previous language. There was no indication that Principal Rector shared the legal opinion of Mr. Chenoweth with the council. Additionally, there was no indication in the council minutes that the council voted or reached a consensus to adopt the changes made by Principal Rector. Likewise none of the council members interviewed could recall a discussion of the legal opinion given to the Board nor, had they received a copy of the written legal opinion of Mr. Chenoweth.

Ms. Rector did provide a copy of Mr. Chenoweth's letter to the council in June 2008.

CONCLUSIONS

1. The investigation revealed that the computer lab manager position was posted as required by Frankfort Independent Board Policy 3.22. The position was posted on January 3, 2008. The fact that the vacancy was posted does not support the claim by Principal Rector that there was an emergency situation. Further, the investigation revealed that there was only one applicant for the position. KRS 160.345(2)(h) requires the principal to consult with the school council prior to selecting personnel to fill vacancies. Additionally, the hiring/consultation policy for FHS is very detailed and even includes a timeline for the hiring/consultation process. The policy requires the council to meet for consultation within two (2) weeks of the completion of the interviews. The policy further provides that if a quorum of the council fails to attend the meeting the principal has the option of calling another meeting or consulting with those present after declaring an emergency. Finally the policy allows the principal to proceed without consultation when council members are not available or an immediate commitment is necessary. While all council members advised that they believed they were consulted prior to the hiring of the applicant, the council minutes do not so reflect. Neither do the council minutes reflect that there was an attempt to meet to consult about filling the computer lab manager vacancy. The computer lab manager vacancy was filled during the school year which would indicate that the council members were available to consult. In fact, the Board minutes from January 15, 2008 announced that a person was hired for the position, but the council minutes did not reflect any mention of the person until February 25, 2008. A council is a public body that can only speak

- through its minutes. Opinion of the Attorney General 80-421; Gentry v. Ressenier, 437 S.W.2d 756,757 (Ky. 1969). OEA can only conclude that the SBDM policy was not followed and the statutorily required consultation did not occur.
2. The investigation revealed that Principal Rector discussed with the council the need to amend the existing athletic policy at the February 25, 2008 council meeting. However, the minutes do not reflect that the council approved the revision. The council did vote in June 2008 to continue with a rental fee policy. Any such policy is subject to Board Policy 9.33 and KRS 158.290 which prohibit compelling students to participate in fund raising activities and Board Policy 9.15 and KRS 160.330 which require a process for the waiver of fees for students who qualify for free and reduced lunch services.
 3. It is unclear from the minutes of the Frankfort Independent Board of Education meeting of February 19, 2008 whether or not Principal Rector was required to give the council a copy of the legal opinion rendered by Mr. Chenoweth. It is clear that the Board intended that the opinion be communicated to the council in some form. The minutes of the council for February 25, 2008, state that the policy name needs to be changed and that certain language needs to be removed in order for the policy to be in compliance with the law. This does not reflect a clear explanation of the legal opinion of Mr. Chenoweth. In fact the council members had no real understanding of why the policy was being changed. The council minutes reflect that Principal Rector does not have a clear understanding of Mr. Chenoweth's opinion. However, the evidence is insufficient to find a clear violation of the Board's desires or an intentional misrepresentation of the state of the law by Principal Rector to the council.

RESOLUTIONS

1. Principal Rector will immediately begin complying with KRS 160.345(2)(h) and the SBDM Council's policy on consultation. Principal Rector will demonstrate compliance with statute and policy by providing documentation to OEA of consultation for all individuals hired under her principalship from May, 2008 through December, 2008, either of Frankfort High School or any other school at which she serves as principal.

2. Principal Rector has provided the FHS council an opportunity to decide if it wishes to revise or abolish the athletic fee policy. The council has opted for a rental fee policy, which is subject to applicable law requiring the waiver of such fees for economically disadvantaged students.
3. No resolution is necessary for this allegation, as the evidence was inconclusive about the matter.

A copy of this Final Report will be provided to the FHS SBDM Council.



KENTUCKY GENERAL ASSEMBLY
Office of Education Accountability

MEMORANDUM

TO: Rita Rector, Principal
Frankfort High School

FROM: Marcia Ford Seiler, Director
Office of Education Accountability

RE: **SBDM Final Report**

DATE: March 14, 2008

The Office of Education Accountability ("OEA") has completed an investigation into allegations of improper School-Based Decision Making practices by Rita Rector, principal of Frankfort High School. This office is empowered to investigate complaints dealing with School-Based Decision Making issues [KRS 7.410(2)(c)4, KRS 160.345(9)(b)]. This agency is to have access to all public records in the course of an investigation, [KRS 7.410(2)(d)]. Following the investigation, OEA is mandated to resolve the conflict, if possible, or to forward the matter to the Kentucky Board of Education [KRS 160.345(9)(b)].

The complaint investigated in this case focused on the following allegations:

1. Principal Rector violated statutory law and Board policy by implementing an athletic fee assessing all students participating in sports to pay a \$30.00 fee to play.
2. Principal Rector violated statutory law and Board policy by mandating that nonpaying students work concessions and fundraisers in lieu of payment.
3. Principal Rector violated council policy when she suspended enforcement of the eligibility policy and allowed students to participate in games when they were academically ineligible.

On November 16, 2007 & January 8, 2008 two (2) staff members from the OEA visited Frankfort High School and the Frankfort Independent Schools Board Office and requested school council and school board documentation such as policies and minutes, financial account information and other pertinent materials from Principal Rector and Finance Officer Tena Hartley. OEA staff members also interviewed council members, board members, the finance officer and the principal regarding the allegations. The following represents the **FINDINGS OF FACT, CONCLUSIONS, and RESOLUTIONS** by the Office of Education Accountability:

FINDINGS OF FACT

1. Principal Rector and the athletic director Craig Foley decided to implement a "pay to play" policy for students interested in participating in the athletic programs during the 2007-2008 school year. The purpose of the fee was to help defray costs of supporting those programs. Parents of student athletes were notified in July 2007 of the new policy for participation in athletic programs. One parent who is also a board member raised the issue of the fee at the following board meeting. She asked several questions of Principal Rector about the fee. All board members advised that Principal Rector asserted that she had authority to implement the fee. Several board members disputed Principal Rector's authority stating that the setting of fees in the district was a matter for the local board. No action was taken by the board at that meeting regarding fees. On August 1, 2007, board member Jina Greathouse sent an email to Principal Rector, Superintendent Cobb, fellow board members and other interested parties in the district. The email contained a response from Steve Kirby, Director of Legal Services for the Kentucky School Board Association (KSBA). Mr. Kirby advised the following:

"First, fees are a matter of the budget and district financial matters and the budget is clearly a board function, KRS 160.290 & 160.470. Second, the state reg on waiver of school fees speaks of the "district" providing for the waiver but it requires the district to adopt a policy and process for the waiver, and of course it is the board that adopts policy, 702 KAR 3:220. See also KRS 160.330 for similar language. Third, there has been a string of AG opinions over the years that recognize the authority of a local board to set within reason and statutory limitations student

fees, OAG 75-619 and OAG 77-574 for example. There is no statute, reg or opinion that seems to grant the authority to set student fees to an administrator as that would be inconsistent with the authority of the board over the budget and financial matters of the district."

The statutes and regulations put the responsibility for assessing student fees clearly on the shoulders of the board of education for the district. Principal Rector, in spite of board member reservations and the email opinion, continued to move forward with the "pay to play" policy.

At the August 21, 2007 Frankfort Independent Board of Education meeting, the issue of the "pay to play" policy was placed on the agenda. After much discussion, in which board member Greg Miklavcic provided the results of his informal survey as to which districts had board policies regarding student athletic fees, Mr. Miklavcic's position was that the board did not need to implement a policy. He disagreed with Mr. Kirby's response because none of the statutes or regulations he cited made any mention of athletic fees. The board concluded the discussion by taking no action to change its current policy 9.15 which permits fees to be charged for items which are to remain the property of the student and allows a rental fee for activities beyond board requirements. The board took no action delegating to Principal Rector the authority to assess the "pay to play" fee. Despite board policy 9.15, KRS 160.290, KRS 160.330 and KRS 160.470 and the Frankfort Independent Board's decision not to make any changes to that policy, Principal Rector proceeded with the implementation of the "pay to play" policy. Principal Rector advised the school council that since the board had taken no action that the council was free to do so. The school council adopted a "pay to play" policy proposed by Principal Rector on September 17, 2007. The fee is currently being assessed and students who have not paid the fee are being advised not to attend the banquet for their sport.

Since the initiation of this investigation, Sara Call, Frankfort Independent Board chairperson, requested an opinion from attorney Robert Chenoweth about the board's responsibility in the area of student fees. Mr. Chenoweth provided Ms. Call with a written memorandum advising that it is the duty of the board to determine student fees and to provide for a waiver of the fees for students unable to pay them.

2. The "pay to play" policy adopted by the Frankfort High School Council is essentially an agreement that each participant agrees to pay a \$30.00 fee to participate in the athletic programs at the high school. It contains provisions allowing the fee to be paid in installments and requiring that if a participant is unable to pay the fee, he/she can work off the fee by working at fundraising activities for the athletic programs. KRS 158.290 and Frankfort Independent Board of Education Policy 9.33 specifically prohibit compelling students to participate in fund raising activities.
3. On September 13, 2007 Principal Rector sent an email to the members of the school council, the superintendent and others suspending the enforcement of the athletic eligibility policy for participating in extracurricular programs. She stated as her reason that since the school is now on a seven (7) period schedule, she did not feel it was fair to impose the policy that was adopted for a six (6) period schedule. She further stated in the email that she would be asking the school council to adopt a new policy for athletic eligibility. Ironically, this decision was made just prior to an in county game for which one of the more talented basketball players would have been ineligible. Suspending the policy allowed these individuals to play in the game. Principal Rector consulted with the council after the fact. She advised them that there were many gray areas in the existing policy. When Principal Rector was asked about suspending the athletic eligibility policy, she responded that the policy had not been followed for some time. She acknowledged that she is not enforcing the policy. The council is reviewing a new policy which conforms with the guidelines of the KHSAA, allowing a student to be failing in two (2) classes and still be eligible to play.

CONCLUSIONS

1. The investigation revealed that Principal Rector intentionally violated existing Frankfort Independent Board policy 9.15 regarding student fees by implementing a "pay to play" policy for student participation in the high school athletic programs. She violated the policy despite being made aware on August 1, 2007 via an email in which the general counsel for the KSBA states that only the board has authority to set student fees in the district. Her actions show a disregard for board authority. She continued her actions even though the board specifically chose not to make changes to its existing policy.

2. The investigation revealed that Principal Rector intentionally violated existing board policy 9.33 regarding fund-raising activities by including in the "pay for play" policy that those not paying the \$30.00 fee will work at fund raising activities for the athletic program. This provision also violates KRS 158.290 which states, "No student shall be compelled to solicit or meet any kind of quota in a fundraising activity. Solicitations by students shall be on a completely voluntary basis and no grade changes or any other sanctions shall be imposed for refusal or failure of a student to engage in any solicitations or other fundraising activity. No public school shall promote or engage in a schoolwide fundraising project without the prior approval of the local board of education."
3. The investigation revealed that Principal Rector violated council policy and KRS 160.345 when she suspended the athletic eligibility policy on September 13, 2007. The suspension of this policy benefited one student who otherwise would have been ineligible to participate in a basketball game. KRS 160.345(2)(i)8 invests the authority for setting eligibility requirements for extracurricular activities in the school council. The council had adopted a policy as required by statute. If Principal Rector felt there was a problem with the current council policy, she should have addressed it with the council. Principal Rector has no authority to unilaterally suspend the policy adopted by a duly constituted council. In fact, KRS 160.345(2)(c)1 requires the principal to "...administer the policies established by the school council and the local board." In this specific case, Principal Rector clearly refused to administer a council adopted policy.

RESOLUTIONS

It is clear from her actions that Principal Rector has difficulty discerning her authority and duties from those of the board and school council. To rectify this difficulty, Principal Rector must receive at least twelve (12) hours of training focused on the duties and authority of the local board of education; the duties and authority of the school council and her role as principal in interacting with both groups. This training must be conducted by an approved KDE Endorsed SBDM trainer. Proof of completion of the training must be provided to OEA by the close of business on March 31, 2008.