



MEMORANDUM

To Dr. Tim Mills
Superintendent, Bellevue School District

FROM Rob McKenna and Brian Moran

DATE July 29, 2016

RE Review of the Washington Interscholastic Activities Association (WIAA) Report and KingCo Principal Executive Board (KPEB) Decision

I. Summary

This memorandum discusses (1) how the WIAA investigators' approach to the investigation produced a skewed report; (2) how the KPEB's Decision has given unjustified credence to the WIAA Report as the definitive take on the investigation; and (3) why the investigators' and KPEB's allegations that Bellevue School District (BSD) administrators somehow obstructed the investigation and did not adequately cooperate with it are not supported by evidence either within or outside the Report or Decision.

II. Independent Review of the WIAA Report

We reviewed the WIAA Report, dated March 22, 2016. We also reviewed thousands of pages of documents that the BSD produced upon WIAA's request, along with other relevant materials such as hundreds of emails between BSD and the investigators.

Our review assessed the WIAA investigators' claims that BSD administrators did not cooperate with the WIAA investigation and, at times, interfered with or obstructed it. We find these claims of BSD obstruction and inadequate cooperation to be inaccurate and unfair but, unfortunately, they are repeated by KPEB in its Decision without any independent verification or analysis of the claims.

For reference, we attach an index which categorizes and summarizes allegations that the investigators made in the WIAA Report. In the same index, we comment on each allegation and provide alternative considerations. Reading the Report alongside (1) the underlying evidence; (2) ongoing extensive communications from the investigation; and (3) the guidelines provided for WIAA investigations, our view is that the investigators assumed an advocacy role when they should have maintained one of a neutral fact-finder. We also conclude that any objective, thorough review of the Report's evidence and of the BSD administrators' communications with the investigators



Yet another example involves the investigators insisting on interviewing all physical education teachers. Since the investigators had provided no reason for the need to disrupt so many teachers, none of whom likely had any relevant information, Mr. Harrison suggested that the investigators pick one physical education teacher to interview. The investigators called Mr. Harrison's suggestion "interference."

The Report enshrines the investigators' interference accusations. Presumably, the Report incorporates such accusations to try to support the investigators' adverse-inference approach. The evidence, however, does not support (and at times contradicts) the Report's obstruction, interference, and lack of cooperation accusations. The attached index identifies specific evidence which contradicts these accusations. We include a few examples here to illustrate the point.

First, we reviewed hundreds of emails between the investigators and BSD employees, primarily Mr. Harrison. Each of the emails we reviewed from Mr. Harrison and other BSD employees was professional, helpful, and responsive. Where BSD and the investigators disagreed, however, no matter how professionally BSD expressed its disagreement, the investigators deemed the questions they raised as obstruction and interference.

Second, from the start, BSD understood that it would work with WIAA to define the investigation's scope. The investigators' claim that WIAA told them to look "under rocks, under rocks, under rocks" might accurately describe a conversation or email between WIAA and the investigators. The investigators' claim that BSD attempted to narrow the investigation's scope, and consequently interfered with the investigation, gets the order wrong, however. We think it is clear that BSD's acceptance of WIAA's recommendation that BSD request an investigation was based on the *Seattle Times's* "Diploma Mill" article from August 22, 2015. That article covers the same five general areas that John Harrison thought the investigation would cover. Compare Report, Ex. 1 with *id.* Ex. 3. While it appears that the newspaper article's subject matter drove BSD's request that WIAA investigate, it also appears that WIAA simply disregarded BSD's original scope request.

Both evidence and common sense, then, support the conclusion that the investigation was supposed to cover specific areas of concern and not become essentially boundless. The Report nowhere addresses BSD's and WIAA's original understanding about the investigation's scope, which is both important and relevant to the investigation's and the Report's legitimacy and helpfulness. Further, at least acknowledging that a genuine misunderstanding existed about initial impressions of the investigation's scope may have prevented accusations that BSD was trying to narrow the investigation's scope. Such an acknowledgment, however, would have cut against the investigators' preferred theme that BSD interfered with the investigation.

III. Review of KingCo Principal Executive Board Decision

We were pleased to attend the KPEB hearing on June 16, 2016, to explain BSD's concerns with the WIAA investigators' process and its disagreement with the KingCo Self-Report Committee's findings and sanctions from June 7, 2016. We are disappointed, though, with the KPEB decision's (Decision) reasoning and outcome. Initially, we were pleased that the KPEB asked many questions

and carefully listened to the responses at their June 16 hearing, which appeared to be the first time during this process that BSD and BHS had an opportunity to present their views in any meaningful way. However, the gulf between the hearing itself and the Decision is wide enough that it almost appears as if one group heard the appeal and someone else wrote the Decision. We suspect this disparity might be the latest reflection of a flawed review process that had to rely on a biased investigation and report.³

No one has critically examined this tainted investigation process's fundamentally unfair foundations. Rather than scrutinize the Report, the Decision (1) extensively and uncritically relied on the Report; (2) chastised one of us for "disparaging" the investigative report's authors when we simply tried to explain why the Report failed as an even-handed, independent factual review; and (3) dismissed the importance of a fact-finding procedure that the WIAA has retained for many years.

As noted above, the WIAA's fact-finding procedure has not disappeared, and it has never been a mere suggestion. At the June 16 hearing, we referred to the WIAA's fact-finding procedure as "Appendix 11," because that is how the WIAA labeled the fact-finding procedure in the 2014-2015 WIAA Handbook. In June 2015, the WIAA moved the fact-finding procedure from the WIAA Handbook to the WIAA Executive policy book. We cannot see, then, how the Decision could conclude that Appendix 11 was removed from the WIAA Handbook several years ago, and that Appendix 11's fact-finding procedure is not used by the WIAA when the WIAA moved the fact-finding procedure from the WIAA Handbook to its policy book just one year ago. *See* Decision at 11. And to say that the fact-finding procedure "is not relevant and does not apply to this investigation or appeal" further supports our view that this process continues to move along a predetermined path that is unalterably adverse to BSD and its officials and is gaining momentum as the Report unjustifiably is treated as a neutral, objective document. *Id.*

Even more difficult to understand is the Decision's characterization of Appendix 11 as "merely a guideline suggesting a course of conduct and not a set of rules mandating a course of conduct." *Id.* While the first sentence of Appendix 11 from the 2014-2015 WIAA Handbook refers to the fact-finding procedure as a "guideline," isolating that word places Appendix 11 out of context, given that it otherwise details a comprehensive fact-finding procedure. Indeed, if one were to parse Appendix 11 word-by-word and ignore the detailed procedure it describes, one would still see that Appendix 11 mandates that a "formal investigation process involving a WIAA Fact-Finder *will* occur in the following manner . . ." (emphasis added). The Decision's treatment of guidelines versus rules is important. Aside from the fact that applying Appendix 11 (or not) at a fact-finder's discretion would likely produce wildly different results in any given WIAA investigation, it is also worth asking why anyone would insist on accepting the investigators' word when they never followed any neutral fact-finding procedure. Accepting the results of an investigation that followed no procedure, other than what the investigators decided was appropriate at any given time, legitimizes an unfair process.

In affirming the allegations that BSD challenged in its appeal, the Decision simply repeats much of the Report; it cites, for example, directly to the Report to affirm the KSRC on Allegations 2, 5, 9,

³ We do not discuss the KingCo Self-Report Committee's (KSRC) consideration and issuance of sanctions, because as we understand it, the KSRC asked no questions during BSD's presentation before it.