

Baltimore County School Board Nominating Commission (BCSBNC) Meeting
May 19, 2022, 6pm
BCPS Greenwood Campus, Building E, Room 114

Attendees: Cindy Sexton (Chair); Tony Campbell (Vice Chair); Leslie Weber (Secretary); Aisha Austin; Katherine Bloom; Eugene Clark; Michael Darenberg; Marietta English; Rachel Didovicher; Deborah Hopp; Kelly Krupinski; Steve McIntire; Julie Sugar; Judy Wagner; Terri Williams; Jeannette Young

Not Present: William Burke; Samantha Warfel; one vacancy

Call to Order, Welcome: Quorum established, meeting called to order at 6:06pm by Chair Sexton. Announced that commissioners must return flashdrives and other materials per law when time comes.

Consideration of Agenda: Agenda called for approval of 12/13/2021 minutes, which were approved at 2/23/2022 meeting. Agenda item added to approve 2/23/2022 minutes.

Approval of Minutes: Chair Sexton shared minutes from 3/16/22 meeting ahead of meeting. Secretary read 2/23/2022 minutes. **Motion made, seconded** to approve both sets of minutes. **Vote taken, motion carried.** Minutes from 4/20/2022 Executive Session minutes to be approved during Executive Session after Open Meeting.

Discussion: Not all commissioners picked up flashdrives with interviews. If didn't watch interview, can't vote on that candidate. Technical issues with some flashdrives, there are extras. Some commissioners had trouble opening emails from Chair Sexton.

New Business:

Chair Sexton noted need to address Dr. Clark's allegations of illegality of application questions and illegitimacy of application and appointment processes.

- 1. Application Questions:** At 12/13/21 meeting, Dr. Clark first raised allegation regarding questions' legality. Chair Sexton emailed commissioners on 12/15/21 regarding modeling questions after Anne Arundel County's (AACo) hybrid school board nomination process. Questions considered appropriate by previous commission chair and vetted by legal counsel. After Dr. Clark raised issue again at 4/20/22 meeting, Chair Sexton, via email, asked Dr. Clark for specifics on legal issues tied to allegation. Dr. Clark responded via emailed letter dated 5/6/22 addressed to Chair Sexton, not commission. Dr. Clark less concerned about questions on issues subject to background check, more concerned about question regarding applicant having had discrimination complaint filed against him/her as this would violate Equal Employment Opportunity (EEO) and Title VII of Civil Rights Act of 1964. Dr. Clark believes question created "chilling effect" since many minorities have filed EEO complaints, asserted commission should not be asking Governor's questions (Governor's Appointments Office (GAO) poses same questions to Board of Education applicants). Dr. Clark spoke with Civil Rights Commission attorney, who said application questions, under Title VII, would be illegal, but since they're appointments, Governor could ask questions if he chose.
- 2. Application Process:** Dr. Clark, per his 5/6/22 letter, sought to close current application process and re-announce due to "chilling effect" of questions on applicant pool. Withdrew request since commission had sufficient number of African-American applicants; in Dr. Clark's opinion, current

questions can stand, but commission could deal with changing/reviewing questions during future applicant cycle.

3. **Appointment of Commissioners:** Based on Dr. Clark's questioning of how some commissioners were appointed, Chair Sexton sought to confirm if appointment of some commissioners was appropriate. She was assured by GAO Director Jennifer Barker all were handled properly and appropriately appointed. If there are issues, please share with her.
4. **Governor Appointments:** All commissioners received copy of letter from Assistant Attorney General (AAG) of Maryland to Sen. Charles E. Sydnor, III, who raised issue of which Governor would make appointments. Chair Sexton sought legal counsel, needing to make sure our process was impeccable. Dr. Clark clarified that BCSBNC is state commission, so legal advice should come from AG of Maryland's office; inappropriate for local/BCPS/BOE/union legal counselors to advise. Based on case law, current "lame duck" Governor can't appoint. Commission will go forward with process of sending list of nominees to GAO by BCSBNC deadline (per COMAR) of 10/1/22. Unfortunate that 1/3 of school board will be empty at 12/1/22 swearing-in. Dr. Clark noted statute calls for 4 appointees to remain in place until successors are sworn in, so there will be no vacancies. Commissioners raised concern that some appointed members will step down on 12/1/22, also questioned why appointment issue (i.e., who would appoint) did not come up sooner. Chair Sexton noted legislation put forward in January 2022 to address "lame duck" issue did not pass. Dr. Clark stated commission can't send nominees' names until after general election. Many commissioners disagreed; AAG letter offered that opinion, but it isn't law. Difference between nominations and appointments.

Motion made that upon completion of commission's nominations of the applicants that this information be "parked" and sent to the GAO in the last week of September. Speaking to the motion, skepticism raised that no African-Americans had been appointed to board. Number of commissioners weighed in; since current Governor can't appoint nominees, doesn't matter when names go to GAO. Number of commissioners concerned that applicants deserve timely notification of their name going forward or not, and if going forward, that he/she won't be appointed for some time. After discussion, **motion withdrawn**.

Motion made to send names to the GAO within 2 weeks after the commission selects them, then notify the people who have been selected by letter, clarifying that they may be appointed by the incoming Governor sometime after his/her inauguration. **Motion seconded. Discussion.**

Regarding District 2 candidates, Governor has 30 days after receiving names to decide. Dr. Clark made Point of Order on having to wait until after general election to send nominations, noted statute is clear about when nominees go forward. Chair Sexton noted that appointments can't be made, but nominations can. Chair Sexton did not accept Point of Order.

Chair Sexton will draft two letters; one for applicants not selected, another for those whose names will go forward. Dr. Clark questioned why commission is doing what AAG said not to do; i.e., sending names before 7/19/22 for offices that aren't vacant. Dr. Clark warned of lawsuit for putting forward names where there aren't vacancies. Vice Chair Campbell noted that AAG letter doesn't say commission can't do its job, doesn't say what we're doing is illegal. Dr. Clark afraid that current Governor may not listen to AAG, urged commission not to send names before 7/19/22. Chair Sexton asked if there was objection to closing debate on motion on floor. **Vote taken, 10 in favor, 5 opposed. Motion on floor carried.**

Recess: 7:09pm

Move to Executive Session: Chair Sexton ended recess at 7:18pm. Vice Chair Campbell made motion to move to Executive Session. Motion seconded. Vote taken to convene Executive Session. All in favor, motion carried. Executive Session convened at 7:22pm.

Respectfully submitted by Leslie Weber, Secretary

Next meeting tentatively scheduled for 5/31/22 at 6pm, location TBD