

MINUTES

Kansas State Board of Education
Special Meeting (on Zoom)
Friday, May 24, 2024



(00:04:13)

Call to Order

Chair Melanie Haas called the meeting to order at 10:00 a.m. Friday, May 24, on Zoom.

Roll Call

The following board members were present:

Mrs. Betty Arnold
Mrs. Melanie Haas, Chair
Mr. Dennis Hershberger
Mrs. Cathy Hopkins
Dr. Deena Horst
Mrs. Ann Mah
Mr. Jim Porter, Vice Chair
Mr. Danny Zeck

Mr. Jim McNiece and Mrs. Michelle Dombrosky were absent.

Chair Haas explained the context of today's special meeting. There is only one item on the agenda which is for the board to consider the request of USD 115 to present oral arguments at the June board meeting. During the Citizen's Open Forum on May 14th, the board was served with a motion for oral argument by USD 115 Nemaha Central, in the matter of the motion to transfer territory from USD 113 (Prairie Hills) to USD 115 (Nemaha Central). This special meeting of the board was called for the sole purpose of considering the request of the board to allow oral argument of the parties after the hearing officer issues the report and recommendation and prior to the board taking action on the petition for land transfer.

By way of background, the following publication of notice pursuant to statute, There was a public hearing held in Bern, which lasted 4 hours, which the board will receive, as well as the hearing officer's recommendation. The petition asks that in addition to this information, the legal counsel for USD 115 should be given a chance to present oral argument in front of the state board at the June 2024 meeting. Chair Haas noted that the tape of the hearing, the recommendation of the hearing officer, and all the data will be available to the board on or about May 30th. At the June meeting the board will

decide the land transfer case. The Chair compared the process to the monthly Professional Practices Commission (PPC) meeting which hears cases and then brings them to the board with a recommendation. In addition, the board will hear from the Board Attorney Mark Ferguson.

Mark Ferguson gave an overview of the situation. There is a great deal of data which will be available to the board prior to a decision: the tape from the hearing, the recommendation of the hearing officer Scott Gordon, the many pages of information, the letters, and other documents that the board will be able to review and consider. It will also be made public at that time, on or about May 30th. This is the normal board process for these types of situations. Today the only issue is whether to allow the oral arguments of the legal representatives to be heard at the June board meeting.

Chair Haas asked Attorney Ferguson what the responsibility of the board is in terms of state statute. Mr. Ferguson shared the actual Kansas statute 72-532 starting with sub part c. In part c, he noted the steps for publication of the public hearing and the hearing itself were followed. Sub part d has 11 non-exhaustive list of which factors that the board shall consider prior to issuing an order. Sub part e notes that within 90 days after the hearing the board shall issue its order, either approving or disapproving such transfer petition or approving the same with such amendments as it deems appropriate. The board is the ultimate decider of land transfers. The statute allows the board to appoint a hearing officer, which happened in this case. This doesn't replace the board's ultimate authority, but it is a process that bring the information to the board.

Commissioner Watson thanked Mr. Ferguson for the excellent overview. He explained that on Tuesday of the June meeting the board will hear from the hearing officer and the board attorney and then the vote will take place on Wednesday. There will be time to reflect on these issues. If the board decides to hear oral arguments, those would take place on Tuesday as well.

Mrs. Mah asked Mr. Ferguson for his opinion of the legal arguments in the petitioner's motion for oral argument.

Mr. Ferguson noted that the motion for oral argument asks for an opportunity to present oral argument after the hearing officer's recommendation is made public and before the board is scheduled to vote. So, he noted, it could be held at a special meeting, and not necessarily required during the regular board meeting schedule. In terms of the petition, he responded that the fundamental legal steps were correct and providing a time for oral argument was within the law. There is nothing in the statute that would require the board to allow oral argument; nor is there anything in the law to preclude adding oral argument. In terms of due process, adequate and sufficient due process has been provided to the parties and the statutes and board

policy have been complied with. This additional step of oral argument is simply another piece of information, not a requirement in statute, but within the scope of gathering data to assist the board in deliberations.

Mrs. Hopkins asked whether “closing argument” is a more precise way of understanding what this request is? Mr. Ferguson responded that in a trial setting, an “opening statement” is a prediction of what you are going to hear, a “closing argument” is a persuasive summation of all the information heard. In this situation the petitioner is asking to provide a “closing argument.”

Mr. Zeck shared this situation is within the district he represents; he knows these two school districts well and understands their history. He would like to see them come before the board and have a chance to present their arguments.

Dr. Horst shared this was her district prior to the state redistricting process. She understands the dynamics and she is leaning towards giving them an opportunity to express their arguments to the board. She referred to the PPC process, which is similar, and she feels this is one last time for the districts to state their case.

Mr. Hershberger stated that in reading the petitions for oral argument, three points arose: distance/transportation, representation on a local board, and taxation. If the boundaries changing affect those three things, then he feels it is important to allow the legal representatives for each district to be heard. This is the American way, he noted. He sees this as part of a democratic process.

Mrs. Mah has no strong feelings one way or the other. She supports the hearing officer and knows he does quality work. However, whatever the board decides in June is going to make some people unhappy and she suspects there will be an appeal. She asked Mr. Ferguson what an appeal would look like.

Mr. Ferguson answered that his primary concern is to make sure there is adequate due process provided to the parties. His legal position is that there has been no lack of due process even if there is no opportunity given for oral argument in June. All the other steps have been complied with: notice and opportunity to be heard. The decision of the board (either way) would withstand a legal challenge to that specific request for oral argument. The procedure of appeal would be an appeal to the district court to reconsider the decision of the board.

Mrs. Mah wonders if having a time for oral argument might add to the “we did everything we could” when it came to an appeal. Mr. Ferguson feels that the board is

doing a great deal, scheduling a special meeting, following all the steps in statute, and he feels that even if the board decides against hearing oral arguments, there has been a great deal of effort put into the land transfer petition. He doesn't feel saying no to oral arguments will jeopardize the board in an appeal process.

Mrs. Arnold expressed that the board members are elected. Regardless of how the vote goes today, constituents want to be heard. This request is primarily constituents wanting to have a voice. As an elected person she has always welcomed listening. She offered to make a motion that the board accept oral argument.

Chair Haas asked Mr. Ferguson about having a separate meeting after the public release of the hearing officer. Mr. Ferguson responded that the oral argument does not have to be during the June meeting. Based upon the specific request of the parties, it needs to be after the hearing officer recommendation and prior to the vote of the board.

Mr. Porter feels he could argue either side of this debate. One side is that there is a precedent and procedure that has been followed by the board historically. The second is that the board has been asked to hear additional information. He always wants to err on the side of transparency. He sees no downside in listening to the oral arguments. There may be unintended consequences to everything they do. He is concerned about the time allocated for the open forum, if 100 people show up, and there may be a need to limit the time. He would second Mrs. Arnold's motion to accept oral argument.

Chair Haas asked about how, if the request is granted, it would be handled. Commissioner Watson answered that the board would offer 30 minutes to both sides during the June meeting because that is when the members would all be available. Mrs. Hopkins asked whether the vote has to be on June 12th? The Commissioner answered that this affects the coming school year and it would be needed by the end of June so the schools could prepare. Mr. Ferguson noted that it is 90 days from the public hearing, he is not sure of the actual date of the public hearing. There was a discussion about the details of when to work this into the agenda if the board votes yes.

Mrs. Arnold moved that the Kansas State Board of Education allow oral arguments from the legal representatives of USD 113 and USD 115, for 30 minutes each, at the June meeting. Mr. Porter seconded the motion. The motion carried 8-0.

Chair Haas adjourned the meeting at 10:51 a.m.

Motion
(00:47:05)

Melanie Haas, Chair

Deborah Bremer, Board Secretary