



Minutes

January 7, 2020 Executive Committee Meeting

📅 Tue January 7th, 2020

🕒 11:00am - 12:00pm EST

📍 Teleconference

👥 In Attendance

Hannah Brock, Megan Germain, Whitney Harris, Matt Holloway, Liz Loht, Eric Reed, Paul Tobin, Ben Welter

I. Opening

The January 7, 2020 Executive Committee Meeting was opened by Ms. Liz Loht.

a. **Verbal Authorization to Begin Recording**

No member presented an issue with the meeting being recorded.

b. **Call to Order**

Ms. Loht called the meeting to order at 11:00 AM.

c. **Roll Call**

Members in Attendance: Ms. Liz Loht, Mr. Paul Tobin, and Mr. Ben Welter

Staff in Attendance: Ms. Whitney Harris, Mr. Eric Reed, Mr. Matt Holloway, Ms. Megan Germain, and Ms. Hannah Brock

Members of the Public: Ms. Nancy Mashberg (did not speak, but was on GoToMeeting list)

d. **Establishment of Quorum**

A quorum was present.

II. Approval of Agenda

Ms. Loht presented the agenda for the January 7, 2020 Executive Committee Meeting.

a. **Category: Standing Item**

b. **Attachments: January 7, 2020 Executive Committee Meeting Agenda**

c. **Public Comment on any Agenda Item**

No public comment was made.

d. **Modifications to Agenda**

1. **The Committee will hear any modifications to the agenda under Agenda Item V.**

No modifications were made to the agenda.

e. **ACTION NEEDED**

Decision: Mr. Paul Tobin motioned to approve the January 7, 2020 Executive Committee Agenda as presented.

Decision: Mr. Ben Welter seconded the motion.

Decision: The motion passed without dissent.

III. **Approval of Minutes**

Ms. Loht presented the minutes from the December 2019 Executive Committee Meeting.

a. **Category: Standing Item**

b. **Attachments: December 2019 Executive Committee Meeting Minutes**

c. **ACTION NEEDED**

Decision: Mr. Tobin motioned to approve the minutes from the December 2019 Executive Committee Meeting.

Decision: Mr. Welter seconded the motion.

Decision: The motion passed without dissent.

IV. **Executive Director Discussion**

Ms. Loht turned the discussion of the Executive Director over to Mr. Tobin.

a. **Category: New Business**

b. **Attachments:**

1. **Memo from Mr. Paul Tobin**

2. **M. Daniels Vacation Leave Payout**

3. **M. Daniels Invoice (amount owed to FFAST)**

c. **Purpose/Statement**

1. **This agenda item is to discuss the resignation of the current FFAST Executive Director. A discussion will be had on the requested severance package, as noted in Mr. Paul Tobin's memo to the Executive Committee.**

Mr. Tobin opened by stating that he hoped everyone had reviewed Mr. Michael Daniels' requested. Mr. Tobin has not heard a response back from the Department of Education investigators in regards to their findings or a time table for the closure of the investigations. Mr. Tobin asked if there were any questions about what Mr.

Daniels is requesting. He feels that his opinion has been expressed via his memo. Mr. Welter felt that Mr. Tobin laid out the situation very well and agreed that we are in limbo in regards to guidance. Mr. Welter does not have anything to add at this time as FAAST awaits more information.

Mr. Tobin asked Mr. Eric Reed if he had spoken to FAAST's attorney's at Pennington, P.A. Mr. Reed sent them everything regarding the request for public records and shared that the attorney was looking into whether or not FAAST can release documents while there is an ongoing investigation. He has not heard anything back since Friday, January 3, 2020.

Mr. Tobin clarified the timing of the situation from September, as he knew that Ms. Loht was not a member of the Executive Committee at that time. He stated that he received the allegations from a staff member late on Friday or Thursday as he doesn't quite recall. Mr. Tobin felt that he spoke to the staff at what felt like the "eleventh hour" before the weekend and other activities FAAST had going on. He stated that FAAST did not hold an Executive Committee meeting prior to the recommendation from legal counsel to suspend Mr. Daniels with pay. Mr. Tobin stated that suspending an Executive Director is prudent business practice when the allegations made might have made some staff members a bit more vulnerable. At the time, it seemed the most prudent thing to do was to suspend Michael without pay immediately. Having Mr. Daniels removed from a situation where if the allegations prove true that he might be able to do some damage to either the FAAST organization or to any of those staff members by virtue of the alleged behavior. So what Mr. Daniels is requesting in terms of the minutes and the meeting, that didn't happen. Mr. Tobin stated that it did not happen because it was a conversation between myself, individual members of the Executive Committee and the attorney who made the recommendation that FAAST go through the Department of Education's Inspector General, which is exactly what was done. The attorney was the personal who notified Mr. Daniels of his suspension. In terms of Mr. Daniels' reaction to his suspension, Mr. Tobin does not understand why that would be the case. Mr. Tobin's initial reaction was that Mr. Daniels may be seeking an employment action against FAAST. Mr. Tobin would like to know if members of the Executive Committee believe that FAAST has any obligation or debt owed to Mr. Daniels while he is suspended. He would like to know if anyone felt that they were not doing what they should be or can be doing.

Ms. Loht asked to clarify that Mr. Daniels' leave is with pay. Mr. Tobin stated that that was correct. Mr. Tobin there was a small hiccup with the payroll company in the beginning but that was immediately resolved and had no financial impact on Mr. Daniels. Ms. Loht felt that things have been handled appropriately, discreetly, and fairly. She appreciates the frustration that things have not resolved sooner, but understand the nature of government and of justice. Ms. Loht feels that as trustees of public money, FAAST is not in a position to grant him a severance package under these circumstances. Ms. Loht felt that even if FAAST paid Mr. Daniels his vacation leave, which he is entitled to, and he is cleared of charges then he had been paid a benefit that he still would have. She feels that as long as that action would still be playing out, she does not feel that there is anything actionable for the Executive Committee to do. Ms. Loht would be interested to hear what FAAST attorneys think if there is any vulnerability that FAAST has mishandled something because she does not see that FAAST is.

Mr. Welter stated that in his opinion, FAAST has done everything prudent and

respectfully for Mr. Daniels as well as staff. He felt that the Executive Committee didn't have any other opinions on these issues to this point. He agrees that when it comes to potentially severance or paid vacation that any funds paid to Mr. Daniels would need to be settled after the results of the investigation before the Executive Committee draws any conclusions.

Mr. Tobin asked if the Executive Committee wanted to make a motion that they would not consider any severance or payout until the conclusion of the investigation. Mr. Reed interjected to read a statement from Mr. Daniels' contract. In section 11 of Mr. Daniels' contract with FFAST, under Termination of Employment, it states that, "The employment of the Executive Director may be terminated by either the Executive Director or by FFAST Board upon two (2) weeks written notice. The Executive Director will also be paid for accrued time up to 200 hours as well as one-month salary and benefits."

Mr. Tobin asked if this statement was regardless if Mr. Daniels was terminated for cause. Mr. Reed stated that the only thing referencing that is the "Executive Director may be terminated by either the Executive Director or by FFAST Board". Mr. Welter clarified that "accrued time" referenced that that was already put in. Mr. Reed stated that "accrued time" was Mr. Daniel's accrued vacation time. Mr. Daniels is still accruing vacation during his suspension with pay. Mr. Welter thought the language was strange that Mr. Daniels would still receive one month's severance even if he resigned. Mr. Tobin clarified that there was no termination for cause clause in the contract. Mr. Reed stated that there was not, and then read the next section of Mr. Daniels' contract.

Section 12, Hold Harmless states that "FAAST will hold harmless the Executive Director from any claims, liabilities, lawsuits, of any sort whatsoever arising out of Michael J. Daniels' performance of his role as FFAST Executive Director. The FFAST will hold Michael J. Daniels harmless from any attorney's fees and/or claims that may be asserted against his/her due to his/her function as FFAST Executive Director, or her attendance or participation in FFAST functions or activities. This agreement to hold harmless shall not apply if the Executive Director is reasonably believed to have committed gross negligence or fraud or criminal activity".

Mr. Tobin suggested that FFAST forwards this contract to the attorney and get clarification to make sure that the Executive Committee is reading that properly and that there is nothing in Florida law that supersedes it. Mr. Tobin stated that he can't imagine FFAST attorneys would have approved the language in Mr. Daniels' contract. He felt that if this is the "black and white" letter of the contract, then it might be time to terminate because Mr. Daniels is requesting to resign, which he can do at any time. Mr. Tobin stated that if FFAST moves forward to hiring a new Executive Director, he recommends not using this contract as the language is not appropriate for a nonprofit organization.

Mr. Welter clarified that FFAST has not received official word from Mr. Daniels that he is resigning. Mr. Tobin stated that Mr. Daniels was hinting that he would resign if FFAST provided him with a severance package, which under Mr. Daniels' contract he would receive a month of pay, a month of benefits, and his vacation pay. Mr. Tobin believes that the prudent thing to do is to not extend any benefits beyond what is contractually obligated.

Ms. Loht stated that she agreed with most of Mr. Tobin's statements. She agrees that FFAST should not give away severance just to bring this issue to a conclusion. Ms.

Loht felt that this hinges on whether or not the Executive Committee feels that as an organization, they suffer by being in limbo, but believes that FFAST is getting along just fine currently. Ms. Loht stated that in her point of view, this needs to play out. The Hold Harmless clause is something to consider and she thinks that FFAST should be keeping track of what monies are coming out of the budget in regards to this investigation as it might shape decision making in the future. Ms. Loht recommends directing Mr. Daniels to speak directly with FFAST attorneys instead of with staff. She stated that she was not aware of all that was alleged and asked if there was a sense that this could rise to a level that would be considered criminal. Mr. Tobin stated that it was not considered criminal from the initial allegations but that from his conversation with the investigators that they may be looking into some deeper financial aspects.

Mr. Welter stated that he agreed with most of what had been said. He stated that as far as the resignation and termination goes, that resignation is a decision for Mr. Daniels to make and not the Executive Committee, and that termination is their decision to make or not. Mr. Welter believes that considering either would be putting the cart before the horse before seeing how the investigation plays out. He agrees with Ms. Loht that the process needs to come to a conclusion before the Executive Committee makes any decisions on their end. Mr. Daniels is free to make his own decision at any time, but when the conversation or resignation or termination happens, that the compensation part is clear in Mr. Daniels' contract. Mr. Welter stated that in his opinion there was not a lot to consider or decide at this point.

Ms. Loht asked that if Mr. Daniels were to resign, if the investigation would continue. Mr. Tobin does not know the answer to that question. Mr. Welter thinks it could impact the Hold Harmless clause if Mr. Daniels is guilty of misconduct that raises to the level of fraud that FFAST could ask for attorney fees in that situation. Ms. Loht believes that asking for attorney fees would be a separate civil action and wants FFAST to start tracking this. Mr. Welter agreed.

Mr. Tobin asked what the action steps were moving forward. Mr. Welter restated Ms. Loht's point that communication with Mr. Daniels should go through the attorneys and not staff. Mr. Welter does not believe that any other action at this time is warranted but agrees that keeping track of the expenses is prudent. Mr. Tobin asked Mr. Reed to communicate the Executive Committee's decision to not take action to the attorneys so that they can relay this to Mr. Daniels. Mr. Tobin restated that he would like to know the attorney's opinion on if FFAST is on the hook for paying the one month's severance or not according to Mr. Daniels' contract. Mr. Reed clarified that if Mr. Daniels were to officially resign in writing, if FFAST would have to uphold the section 11 paragraph as well. Mr. Tobin agreed. Mr. Tobin would like the attorneys to determine how FFAST would handle if Mr. Daniels were to resign and the investigation were to continue, how the organization would deal with this.

Mr. Welter also believe that the attorneys should let FFAST know if responding or not responding to Mr. Daniels' request as he wants to ensure that FFAST is not leaving itself open to liability by not responding. Mr. Tobin stated that FFAST has already asked the attorney to respond to the request for documentation under the Sunshine provision.

Mr. Tobin stated that the other request the Mr. Daniels made was to retrieve some personal items from the office. Mr. Tobin asked Mr. Reed if he has determined how this may be done. Mr. Reed stated that he can go through the attorney to see if Mr.

Daniels has a list of items he is specifically looking to retrieve.

Mr. Tobin stated that with the two issues of requesting an answer from the attorney and trying to figure out how to get Mr. Daniels the personal items he requested. He does not believe there are any other actions to take beyond those two things until Mr. Daniels formally submits a letter of resignation.

Ms. Whitney Harris asked the Executive Committee made a vote to not take any action at this time. Mr. Tobin made a motion (See Decision).

d. **ACTION NEEDED**

Decision: Mr. Tobin made a motion that the Executive Committee not take any action pending outcome of the investigation and that communications with Mr. Daniels be coordinated through Pennington. Furthermore, he would ask the Executive Committee concur with the actions taken, that the contract is reviewed by the attorney for paragraph 11 with regard to severance and paragraph 12 with regard to indemnification when there is some sort of finding because those are the items that are agreed upon.

Decision: Mr. Welter seconded the motion.

Decision: The motion passed without dissent.

Task: Mr. Tobin suggested that Mr. Reed forwards Mr. Daniels' contract to the attorney to get clarification that the Executive Committee is reading Section 11 and 12 properly, and that there is nothing in Florida law that supersedes this language.  Eric Reed 01/27/2020

Task: FFAST to begin tracking attorney fees related to the Executive Director's suspension.  Whitney Harris 01/27/2020

Task: Mr. Reed is to contact the attorney to have them let Mr. Daniels know the view of the Executive Committee is that no action will be taken until the investigation is concluded.  Eric Reed 01/10/2020

Task: Mr. Reed is to ask the attorneys to determine how FFAST would handle if Mr. Daniels were to resign and the investigation were to continue, how the organization would deal with this.  Eric Reed 01/10/2020

V. **Agenda Modifications**

- a. **From Agenda II d.**
No modifications were made to the agenda.

VI. **Closing**

Ms. Loht asked for a motion to close the January 7, 2020 Executive Committee Meeting.

- a. **Last Call for Public Comment**

No public comments were made.

b. **Next Meeting**

Ms. Harris asked the Executive Committee could be moved to another date, as FFAST Staff will be meeting with Vocational Rehabilitation during the next scheduled meeting time. Ms. Loht stated that Thursday, January 30 at 3:00-4:00 PM, would work for her schedule. Mr. Tobin and Mr. Welter agreed.

1. **Date and Time**

Monday, January 27, 2020 | 3:00-4:00 PM

The next meeting will be moved to Thursday, January 30, 2020 from 3:00-4:00 PM.

2. **GoToMeeting Information**

<https://global.gotomeeting.com/join/883760317>

3. **Toll-free number and Access Code**

United States: +1 (646) 749-3129

Access Code: 883-760-317

c. **Adjourn**

The January 7, 2020 Executive Committee Meeting was adjourned at 11:38 AM.

Decision: Mr. Tobin motioned to adjourn the January 7, 2020 Executive Committee Meeting.

Decision: Mr. Welter seconded the motion.

Decision: The motion passed without dissent.