

USD 416 Board of Education Members,

We as parents and members of the USD 416 community are writing to express our concern regarding the actions of the superintendent and the deleterious impact upon our beloved school district. Louisburg prides itself as a city *where people live by choice*. The quality of the local education is a critical component of that choice many have made to stay or move to Louisburg.

Kansas Statute 72-1138 states that boards of education *may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools*.¹ We are deeply concerned that the ability of the USD 416 Board of Education to faithfully execute their statutory powers and constitutional duties is being deliberately impeded through intentional actions of the Superintendent of Schools, Dr. Brian Bierman.

Recent events make these concerns incontrovertible. In the April 11, 2022 regularly scheduled board meeting, the USD 416 Board of Education made clear that there were reservations about renewing a membership to the Kansas Association of School Boards (KASB).^{2,3} The board wisely tabled the discussion and action item for KASB renewal pending further inquiry into the potential impacts to the district regarding policy guidance and legal counsel. Over the next few months there was thorough fact finding and deliberation over the matter and it became clear the majority of the Board did not wish to renew KASB membership. Discussion also indicated a formal motion for non-renewal was never made under the understanding that the lack of a motion and vote for renewal would carry the same effect. In the June 13, 2022 regularly scheduled board meeting the discussion on KASB was tabled until the July meeting pending some final feedback and thoughts from the board.^{4,5} We were satisfied with the deliberate process which the Board took addressing this important issue to our district and community and supported the non-renewal of KASB membership.

We believed the Board would remain committed to the best educational interests of our children and separate from KASB moving into the July 11, 2022 regularly scheduled board meeting. We were disturbed to witness what occurred during the board meeting.^{6,7} During this meeting, at the last possible moment prior to finalizing the previously determined course of action, Dr. Bierman presented a litany of never-before-discussed supposed issues, in addition to an ambush of opposition from multiple sources, to pressure the board to reverse the direction to disassociate from KASB and clearly expressed a new found alarm and urgency for the board to take immediate action to renew KASB membership.

During the Board meeting Dr. Bierman presented the following as *facts*:

- There are only two options for liability insurance coverage for districts the size of Louisburg: 1) EMC and 2) a KASB self-funded pool (referred to as KSB in the meeting).
- Only KASB members could participate in the KASB self-funded insurance pool
- EMC and Elliot insurance stated that non-renewal of KASB membership would result in the district's insurance rate going up *drastically* or the district being deemed *uninsurable*.
- The independent fiscal auditor, Sean Gordon, CPA, *will write letters of concern* in the district's fiscal audit should KASB membership be non-renewed.

Some direct quotes from Dr. Bierman in the meeting include (time stamp reference from the live stream):

2 hr 47 min 6 sec

*I felt like it **could not wait...***

2 hr 47 min 23 sec

I did not feel comfortable waiting...

2 hr 49 min 56 sec

*EMC writers, when they heard about this discussion, told Brock that if you don't have a, a policymaker like KASB, and we know that's currently the only option out there, that one or two options are going to happen. Either your rates are gonna **go up drastically or they're gonna consider us uninsurable**. Well, then we have, uh, one option, and I don't even know if the pool and obviously that is KSB. So, we really **don't have any options** because we're not going to be a member of KASB.*

2 hr 58 min 34 sec

*Dr. Brian Bierman: I mean, if there's something else you need for me, then let me know I've tried every time to get it, um, shared the latest, I worry about our exposure. Um, But that's, that's why I brought it to the forefront tonight when I'm hearing our insurance carrier that I fight like heck every year and even doing that our rates still go up. I know if we don't have EMC and the board doesn't want to KSB that's my own. I mean, I can't, you know, it's not like personal insurance. **There's no other option out there**. And so that's why they're saying **you'll be uninsurable**. And then when our auditors **are going to give us**, we've always prided ourselves, especially the ones who've been here when we know shot. So he's going to come in September, he's going to stand at that podium in November. And I always am proud that he gives us a very favorable audit, we have to publish your audits are audited is on our website. We just talked about accreditation. **And now our auditor potentially is going to give us an unfavorable audit statement based off this, this, uh.***

Lanny Smith: This year he shouldn't because we've already approved the recommendation or procedure

Dr. Brian Bierman: Right now he's going to because we're not a member of a policy service, like KSB so he's knowing we're, don't, because some of those policies you approved in June, we're fiscally tied. And so he, they're gonna worry now that we don't have a policy service that's watching and recommending, and you guys are approving the latest fiscal policy.

The alarmist story portrayed by Dr. Bierman seemingly left the Board with no choice, but to renew KASB membership to manage the risk associated with loss of liability insurance coverage and findings of concern on the upcoming fiscal audit. During the board meeting, the Board came to learn that Dr. Bierman had learned of these purported facts as early as June 16th, which was 25 days prior to the board meeting and 20 days before the initial meeting agenda would have been set and posted publicly. We are knowledgeable of the fact that this information was only provided to the board in the last days leading up to the meeting either through the board packet and/or through the regular communication from the

Superintendent to the Board that is provided going into a Board meeting. Board member Goodman stated in the meeting that it would have been nice to know this information sooner.

The board asked Dr. Bierman for additional follow-up regarding written documentation of the information and statements presented in the board meeting and Dr. Bierman indicated he would have something in writing to provide, at least regarding the liability insurance policies. We are knowledgeable that, **as of August 4th, 2022, the Board had not received** this written documentation or communication.

Following the Board meeting we were interested to verify some of the “facts” presented and also became aware of a Kansas Open Records Act (KORA) request seeking to obtain details regarding the information and statements Dr. Bierman presented during the Board meeting. We requested a copy of the contents of the KORA request upon learning of its existence.⁸ We also learned more details about this matter through a non-profit watchdog publication in Kansas, The Sentinel.⁹

Truth of the Surrounding Information and Statements Presented to The Board by Dr. Bierman

1) EMC and a KASB risk pool are the only choice for school districts like Louisburg

Research conducted by individuals affiliated with this letter did confirm that competition in school liability insurance coverage is limited in Kansas and that the two main options for smaller school districts in Kansas include EMC and Kansas Educational Risk Management Pool (KERMP).¹⁰ The reason market competition is seemingly restricted in Kansas is unknown even to experts in the insurance industry consulted on this matter. One theory is that the existence of the KERMP program may make it challenging to charge profitable enough premiums to be attractive. However, one of the largest privately held insurance brokerages in the world also provisioned a list of thirteen insurance companies that provide school liability coverage across the country and could be evaluated as candidates for coverage for a school district like Kansas.¹²

2) You must be a member of KASB to participate in the KERMP (incorrectly referred to as the KASB pool in the Board meeting)

The Sentinel had direct communication with Jeremy Woydziak, the Director of Risk Management Sales at the for-profit arm of KASB, Kansas Board Solutions, Inc.. Mr. Woydziak informed the Sentinel that **membership to KASB is not required to participate in KERMP**. This can be corroborated by reviewing Article VIII Obligations of Members in the KERMP by-laws.¹³

3) Liability insurance premiums will go up drastically or the district will be deemed uninsurable

The documents produced pursuant to the KORA request related to these matters produced an email communication from Justin Zwaschka from EMC where he stated:

There is no hard requirement for them to stay a KASB member as an EMC insured. However, this portion of the premium is always based on the unknown. If we add more unknowns into the question (which would be introduced by terminating their membership) there would be a high likelihood this have to be reflected in their premium.

This email was sent to Dr. Bierman on July 12th, 2022 and was not immediately produced to you as the Board. **Nowhere in this communication does EMC communicate a drastic increase in premium or a finding the district would be uninsurable.**

4) *The fiscal auditor will have findings of concern in this year's fiscal audit*

The Sentinel story reports they spoke with Sean Gordon, the independent auditor selected and contracted by you as a Board to perform fiscal audits. According to the Sentinel, *Sean Gordon did not paint the dire picture shared by Bierman. He said not keeping up with financial policies "could potentially" have an impact.*

In addition, the claims made by Dr. Bierman regarding this statement from Mr. Gordon were not documented anywhere and that this was only ever communicated through phone calls, with no ability to verify the correctness of the statement or understand the context of what was asked to Mr. Gordon.

Matters of Concern

We have become increasingly concerned by the events that unfolded surrounding KASB membership renewal. Initially, we wanted to believe the Superintendent revealed new explosive information that would indeed change the minds of many of us in the community, especially in the short run.

We were hopeful that this was all unintentional timing and coincidence; however, contents of the KORA request revealed to us that this was indeed a concerted effort by Dr. Bierman to manipulate and coerce the Board into a vote that he wanted.

In furtherance of this assessment, an email from Mr. Brock Elliot of Elliot Insurance to Dr. Bierman on July 12th, 2022, Mr. Elliot stated:

Sorry we couldn't get this for the meeting last night. Sounds like it went fine without it though! Congratulations that's a big win for the common sense community!

We must ask ourselves, why is it Mr. Elliot would congratulate Dr. Bierman on a win unless this was something that Dr. Bierman was seeking to have a win? We have determined that Dr. Bierman, at best, misrepresented the facts surrounding liability insurance coverage and the fiscal audit. He seemingly fabricated an urgency and emergency that did not exist in an effort to force the Board to renew KASB membership. Equally troubling, the response that this was "a big win for the common sense community" indicates a belief that the Board's desire to disassociate from KASB demonstrated a **lack** of common sense. That Mr. Elliott felt perfectly comfortable expressing this unflattering sentiment to your superintendent, and worse, that your superintendent wholly accepted this comment without any apparent pushback, is an indication of how he views the Board. This should be construed as evidence that he does not respect the Board or its will.

In addition, he enlisted the assistance of Dr. Randy Watson, the Commissioner of Education in Kansas, to provide additional talking points to paint a dire picture of consequence should the Board not renew KASB membership. Dr Watsons claim that KSDE does not provide fiscal policy guidance appears to be dubious as a quick check of the KSDE public website has an entire tab devoted to fiscal policy and links to other sources

The board should be questioning all this effort to get a school board to be a member of a voluntary association.

If all of this isn't enough, even the way much of the amplifying information provided in this letter was garnered is also highly problematic. The board directed the superintendent to provide the documentation to back up his claims and failed to do so.

But for the KORA request, this information would not be known. Only as a matter of law did he provide the information you directed him to provide. This environment cannot be construed as one where your subordinate is working with you, rather it should be clear that he is doing the opposite. The fact he did not provide what you directed him to provide further constitutes a violation of trust and insubordination.

It is unacceptable that an unelected public official, serving at the pleasure of the Board, should intentionally manipulate the Elected through what appears to be deceit and obfuscation in an effort to control school policy according to an agenda disparate from that of the Board's. Dr. Bierman's actions are disturbing, toxic, damaging to our children and staff, and, ultimately, to the community at large.

He has lost our faith and confidence that he is discharging his duties in good faith. As our representatives, you should arrive at the same conclusion. Once trust has been so blatantly compromised, it calls into question whether the superintendent is acting to execute the will of the Board in all other areas. Those citizens that elected the Board deserve and insist on having a school administrator that can be trusted and is not working to undermine the will of the board.

We urge this Board take action in regard to Dr. Bierman's conduct and insubordination. As the elected, you were selected by this community to bring forward the necessary leadership to keep Louisburg and USD 416 a school district where people live by choice. We implore you to fight to keep that choice a reality.

Sincerely,

Concerned Patrons of USD 416

References and Supporting Materials

1. K.S.A. 72-1138. Kansas Revisor of Statutes. https://www.ksrevisor.org/statutes/chapters/ch72/072_011_0038.html.
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3. USD 416 Board of Education Meeting. Live Stream. April 11, 2022. <https://www.youtube.com/watch?v=FfBF188rcac>.
4. USD 416 Meeting Minutes. Regularly Scheduled Board Meeting. June 13, 2022. https://core-docs.s3.amazonaws.com/documents/asset/uploaded_file/2972/USD_416/2173873/June_13_2022_Unofficial_Board_Minutes.pdf.
5. USD 416 Board of Education Meeting. Live Stream. June 13, 2022. https://www.youtube.com/watch?v=chrKo_wv5G8.
6. USD 416 Meeting Minutes. Regularly Scheduled Board Meeting. June 13, 2022. https://core-docs.s3.amazonaws.com/documents/asset/uploaded_file/2972/USD_416/2256231/July_11_2022_Regular_Board_Meeting_Minutes.pdf_Version_2.pdf.
7. USD 416 Board of Education Meeting. Live Stream. June 13, 2022. <https://www.youtube.com/watch?v=Dhkuz5OMksk&t=10013s>.
8. Kansas Open Records Request Contents from request submitted July 12, 2022 to USD 416. Contents delivered July 27, 2022.
9. *KSDE shirks responsibility to school districts, promotes KASB membership*. The Sentinel. August 3, 2022. <https://sentinelksmo.org/ksde-shirks-responsibility-to-school-districts-promotes-ksb-membership/>.
10. Kansas Educational Risk Management Pool. <https://www.kermp.com/>
11. Personal communication with employee of a large insurance brokerage. July 29, 2022.
12. Article VIII. Obligations of Members. Amended and Restated Operating Agreement of Kansas Educational Risk Management Pool, LLC. Pages 14-15. <https://www.kermp.com/media/1882/kermp-bylaws.pdf>.