

Heidi Maier's attorney says only state can investigate

By Joe Callahan

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School Board has hired law firm to probe hostile work environment allegations. The latest complaint was filed by Dennis McFatten, the district's Safe Schools director.

The attorney for Superintendent of Schools Heidi Maier says the School Board has overstepped its authority by investigating whistleblower complaints accusing her of creating a hostile work environment.

Her Ocala attorney, Henry Ferro, sent School Board attorney Paul Gibbs a letter on Tuesday. Ferro says only the state has authority to investigate complaints made against a school superintendent.

"Please understand that the only entity that may legally investigate the superintendent is the Office of the Governor," the letter states. "The School Board does not have any legal authority to engage in any investigation of the superintendent."

Maier was elected in 2016 to a four-year term. Last year voters approved a referendum giving the School Board the authority to appoint the K-12 leader, beginning in 2020. The School Board voted that it will not hire Maier as first appointed superintendent.

Ferro stated in the letter that Pam Bondi, the Florida attorney general at the time, opined in January 2018 that Maier, "based upon pertinent case law, was legally entitled to complete her elective term of office."

"It appears as though the School Board and its counsel were dissatisfied with the response of the attorney general and have now engaged in an on-going assault to keep my client from legally completing her four-year term by continuously interfering with her ability to do her job," Ferro wrote.

Ferro said there are clear statutory responsibilities of the board and school superintendent. The board sets policy and approves the budget and the elected superintendent handles the day-to-day operation and has sole authority to hire and fire personnel.

The first complaint was filed last month by Safe Schools employee Terrence "Chris" Smith, who emailed a resignation letter, describing what he considered to be a hostile work environment.

On Tuesday, it was revealed that Dennis McFatten, the School District's Safe Schools director, also has filed a complaint against Maier. McFatten also cites a hostile work environment.

Last Thursday, the School Board chastised Maier after she said she was against forming a School Board police force, basically laying blame on McFatten for a conflict with Sheriff Billy Woods. The board responded on McFatten's behalf, stating Maier has supported the efforts and has been part of the police force discussion all along.

Gibbs and all five board members have said they cannot talk about active investigations.

Andrea Messina, the executive director of the Florida School Boards Association, said the board has the right to conduct investigations into superintendents who are accused of harassment. The School Board's role is to make sure that all employees are working in a "healthy and safe" work environment, she noted.

Messina said Florida law is clear about the board's and the superintendent's responsibilities. No matter if the superintendent is elected or appointed, those responsibilities are the same under the law.

The School Board hired an outside law firm to investigate both whistleblower complaints. Gibbs, on behalf of the board, asked the district's human resources department to convince Smith to stay on the job while the case is being investigated.

Ferro said Maier believes the complaints filed by Smith and McFatten "are intended to protect each of these individuals from their inability to perform their assigned duties rather than to protect the public's health, safety or welfare."

Ferro said the allegations are not whistleblower complaints.

"Neither of the complaints appear to be classic 'whistle-blower' complaints and neither one is appropriately before the School Board," he wrote. "Neither of the complaints should be the subject of a School Board investigation, either internally or contracted out to an investigatory agency and/or law firm."

Ferro said the Florida Whistle-Blowers Act provides parameters on the subject.

"Dr. Maier has not engaged in any 'retaliatory action,' " and Smith and McFatten "have not been subject to an 'adverse personnel action.' "

Ferro said Maier has "expressed serious concerns about the manner in which she had been treated pre-dating the release of the opinion by the Office of the Attorney General."

Ferro said it has gotten worse since that state decision. He says Maier has been party of a hostile environment from the School Board.

He said the board on “numerous occasions engaged in behavior to shut-down or shut-out Dr. Maier from speaking at School Board meetings and have also engaged in actions that interfere with her ability to continue to do the job for which she was elected in November of 2016.”

“We are requesting that all members of the School Board ... (to) permit all points of view to be aired at meetings of the School Board,” Ferro noted.

Bill Montford, III, the CEO of the Florida Association of School District Superintendents, said his agency does not comment on legal issues between school boards and superintendents.

Ferro said the superintendent and the School Board “each have separate statutory responsibilities and a responsibility to work together for the benefit and welfare of Marion County students.”

Ferro also alleges that Gibbs has interfered with Maier’s statutory responsibilities.

Gibbs worked with human resources “to permit Chris Smith to return to the employment of the school system after his resignation, which was tendered and accepted by the superintendent,” Ferro noted.

“Mr. Gibbs has inserted himself in the day to day operations of the superintendent’s office regarding the allegations by several members of the staff at Evergreen Elementary,” Ferro also noted.

The school district launched an investigation into how employees were treated when they were transferred from Evergreen Elementary School last month. The school curriculum is being handled by an outside company.

In August, Maier and other School District officials arrived at the school and told five teachers and seven teacher’s aides that they were being transferred. The employees said they were escorted off campus by district safe schools officers, who were armed.

At Tuesday night’s board meeting, an Evergreen Elementary employee asked during public comment if the district was investigating and whether a report would be issued.

That is when the board learned that there was an official investigation into what happened at the school. Maier told the board she could not comment about the Evergreen investigation because she was also part of that probe.

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