

**BEFORE THE BOARD OF SCHOOL DIRECTORS
OF THE SCHOOL DISTRICT OF THE CITY OF YORK**

IN RE:

HIAWATHA POWELL

**DECLARATION OF VACANCY AS
BOARD OF DIRECTOR**

ADJUDICATION

I. PROCEDURAL BACKGROUND

In the general election in November, 2007, Mr. Hiawatha Powell was elected to the office of the Board of Directors for the School District of the City of York and took office during the first week of December of that same year. After Mr. Powell neglected to attend the re-organizational meeting on December 3, 2008, and the regular monthly board meetings on December 17, 2008, January 21, 2009, February 18, 2009, March 18, 2009, and April 22, 2009, and issues or concerns regarding Mr. Powell's residency arose, the President of the Board of Directors, Jeanette Torres, requested the board's Solicitor, Gregory H. Gettle, Esquire, to notify Mr. Powell that she intended to present two resolutions for the board as a whole to consider at its regular board meeting that was to be held on Wednesday, May 20, 2009: the first resolution was a resolution to declare Mr. Powell's office as a School Board Director vacant as a result of his neglecting or refusing to attend two successive regular meetings of the school board pursuant to § 3-319 of the School Code, and; the second resolution was a resolution to declare Mr. Powell's office as a School Board Director vacant as a result of his removal from the School District (not a resident of the City of York) pursuant to § 3-315 of the School Code.

By letter dated April 29, 2009, Mr. Powell was informed of the intent to present the two resolutions and was also advised that he had a right to a private hearing as well as other rights associated with that hearing. The letter also advised Mr. Powell that a hearing would be held by the Board of School Directors on Wednesday, May 20, 2009, in the School District's Administration Building. By email dated May 14, 2009, Mr. Powell advised the board's solicitor that he wanted a private hearing.

On May 20, 2009, Mr. Powell appeared for the scheduled hearing with legal counsel (Clarence Allen, Esquire). Attorney Allen requested a continuance of the hearing because he had only recently been retained by Mr. Powell and had not had the opportunity to prepare or sufficiently prepare for the hearing. The request for continuance was granted and the hearing was rescheduled for Wednesday, June 10, 2009.

On June 10, 2009, a private hearing before the Board of School Directors of the School District of the City of York was held, at which time all nine board members, including Mr. Powell, as well as Attorney Allen were present. Two employees from the School District of the City of York testified as witnesses and introduced exhibits concerning the issues. In addition,

two witnesses as well as Mr. Powell testified on his behalf and also introduced exhibits. Mr. Powell's attorney also called two members of the current school board (President Torres and Ms. Atwater) to testify.

At a special meeting of the Board of Directors of the School District of the City of York which occurred later that evening and after the conclusion of the private hearing on June 10, 2009, the board voted 5-4 to approve two resolutions which declared the Board of Director office held by Hiawatha Powell vacant. Both resolutions were made (moved) by board member Barbara Krier and seconded by board president, Jeanette Torres. The resolutions which were approved were as follows:

RESOLVED, that the School District of the City of York Board of Director office held by Hiawatha Powell be declared vacant as a result of Mr. Powell's removal from the school district (not residing in the school district).

RESOLVED, that the School District of the City of York Board of Director office held by Hiawatha Powell be declared vacant as a result of Mr. Powell's neglect or refusal to attend two consecutive regular meetings of the board without legal excuse.

This adjudication is submitted in support of the board's vote to declare vacant the Board of Director office held by Hiawatha Powell (hereinafter, "Powell").

II. EXHIBITS

A. Exhibits submitted on behalf of the School District/Board of Directors:

- PH#1: Letter dated April 19, 2009
- PH#2: Meeting minutes
- PH#3: Email dated 11/14/08
- PH#4: Email dated 12/9/08
- PH#5: Statement of Financial Interest dated 11/6/08
- PH#6: Statement of Financial Interest dated 3/31/09
- PH#7: Envelope (returned as undeliverable)
- PH#8: Envelope (returned as undeliverable)
- PH#9: Memo to Chris Touras from Jon Boyer dated 3/27/09

B. Exhibits submitted on behalf of Hiawatha Powell

- PHD#1: Envelope dated 5/28/09
- PHD#2: Ship a payment coupon (undated)

III. FINDINGS OF FACT

1. Powell was elected to the office of the Board of School Directors for the School District of the City of York in the November, 2007, election and took office during the first week

of December of 2007.

2. Prior to December, 2008, Powell resided at 656 West Locust Street, York, PA 17404, in the City of York. He resided with his wife and two children at that location.
3. Both of his children attended Lincoln Elementary Charter School.
4. In December, 2008, Powell began to pack his belongings to move to 27 East King Street in the City of York. The property at 27 East King Street consists of a commercial unit on the first floor and a one-unit apartment on the second and third floor.
5. Powell and some friends worked on renovating the property at 27 East King Street prior to the intended move.
6. Powell advised the school district that he had moved to 27 East King Street in or around the beginning of February, 2009.
7. Powell's wife and children did not move to the King Street address or left that location shortly after the move and moved to Virginia.
8. Powell's children were signed out of Lincoln Elementary Charter School by Powell on or about February 17, 2009. The withdraw report listed the transfer school for the children as located in Herndon, Virginia.
9. Powell's current driver's license is a Pennsylvania driver's license but indicates the place of residence as 656 Locust Street, York PA (not 27 E. King Street, York PA).
10. For a considerable period of time there was no mail receptacle at the 27 East King Street address and no mail could be received at that address or be delivered to that address by the postman.
11. An employee of the school district attempted to personally deliver mail to Powell at the King Street address on April 1 and April 2 without success. The employee testified that the property appeared vacant.
12. Powell had two friends testify about his residency at 27 E. King Street in the City of York.
13. The two witnesses who testified on behalf of Powell about his residency at 27 E. King Street in the City of York were not credible.
14. Powell missed the re-organizational board meeting on December 3, 2008.
15. Powell also missed the regular school board meetings on December 17, 2008, January 21, 2009, February 18, 2009, March 18, 2009, and April 22, 2009.

16. Powell emailed the Board Secretary, Mindy Wantz, on 12/9/08 and informed her that he would miss the December 17, 2008, board meeting because he was in the process of moving; however, Powell failed to advise the Board Secretary or any other officers of the school board that he would miss any other board meeting.
17. Powell testified at the private hearing that he missed the February, March and April, 2009, general board meetings because his wife was pregnant and was having some medical problems.
18. Should any of these findings of fact be deemed to be conclusions of law, the ones so found are incorporated therein.

IV. CONCLUSIONS OF LAW

1. Section 3-315 of the Public School Code of 1949 provides that a vacancy shall occur in any board of school directors by reason of . . . removal from the district . . . 24 P.S. § 3-315.
2. Section 3-319 of the Public School Code of 1949 provides that if any person having qualified as a school director . . . shall neglect or refuse to attend two successive regular meetings of the school board . . . unless detained by sickness, or prevented by necessary absence from the district . . . the remaining members of the board may declare his office as director vacant. 24 P.S. § 3-319.
3. For a period of time during 2009, Powell removed himself from the district (was not a resident of the City of York).
4. Powell missed six successive regular meetings of the Board of School Directors from December, 2008, through April, 2009, without legal excuse.
5. Should any of these conclusions of law be deemed to be findings of fact, the ones so found are incorporated therein.

V. DECISION

Based on the foregoing, the Board of School Directors of the School District of the City of York hereby declares vacant the office of Hiawatha Powell as a School Board Director.

The decision of the Board of School Directors of the School District of the City of York at its special meeting on June 10, 2009, which proved by a vote of 5 to 4 the two resolutions to declare vacant the office of Board of School Director held by Hiawatha Powell is hereby confirmed.¹

Dated: _____, 2009

THE SCHOOL DISTRICT OF THE CITY OF YORK

By: _____
Jeanette Torres, Board President

¹The following board members voted in favor of the two resolutions to declare vacant the office of School Director held by Hiawatha Powell: President Jeanette Torres, Vice President Thomas Foust, Board Member Elmira Sexton, Board Member Barbara Krier and Board Member Renee Nelson. The following Board Members voted against the resolutions: Board Member Beverly Atwater, Board Member James Morgan, Board Member Samuel Beard and Board Member Hiawatha Powell.