district five
OF LEXINGTON & RICHLAND COUNTIES

Minutes/ February 14, 2011

The Board of Trustees of School District Five of Lexington and Richland Counties met at River Springs Elementary School with the following members present:

Mr. Robert Gantt, Chairman
Mrs. Beth Hutchison-Watson, Vice Chairman
Mrs. Ellen Baumgardner, Secretary
Mrs. Jan Hammond
Mrs. Kim Murphy
Mr. Jim Turner
Mr. Ed White
Dr. Stephen Hefner, Interim District Superintendent

The following staff were in attendance:

Ms. Helen Anderson, Chief Instructional Services Officer
Dr. Angela Bain, Chief Human Resource Services Officer
Mr. Gary Black, Chief Technology Services Officer
Dr. Karl Fulmer, Chief Financial Services Officer
Mr. Keith McAlister, Director, New Design and Construction
Mr. Buddy Price, Director, Office of Community Services

Robert Gantt called the meeting to order and gave welcoming remarks.

Reverend Matthew Rings, St. Andrews Presbyterian gave the Invocation. Kyle Madden, a second grade student at River Springs Elementary School led the Pledge of Allegiance.

Robert Gantt, Beth Watson, Julie Painter and Robin Cox presented the School Board Spotlight.

A welcome and brief overview of River Springs Elementary School was given by Melanie Cohen, principal.

During the superintendent's report, Dr. Fulmer gave an update on the cost of the Chapin High School's wetlands lawsuit (Exhibit C).

During public participation, Mary Moslet spoke regarding lawsuits.

Michael Harris presented proposed revisions to board policies J: JICA "Student Dress" replaces JCDB "Dress Code, JICA-R "Student Dress" replaces AR-JCDB-R "Dress Code", JICF "Secret Societies/Gang Activity" replaces JCDAF "Gangs and Gang Related Activity", JICFA add "Hazing" JICFAA "Harassment, Intimidation or Bullying" replaces JCDAAAA "Harassment, Intimidation or Bullying", JICI add "Weapons In School" (Exhibit G).

The Board discussed board meeting guideline parameters.

SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of February 14, 2011

	BAUMGARDNER	GANTT	HAMMOND	MURPHY	TURNER	WATSON	WHITE
1. M. Watson S. Hammond	X	X	X	X	X	X	X
Enter executive session to consider the following: 2a) selected employment items (Exhibit A); 2b) requests for instruction at a place other than school (Exhibit B); and 2c) a contractual matter regarding the new elementary school property – Derrick Pond Road							
2. M. Baumgardner S. Hammond							
Approve the agenda							
M. Turner S. Hammond							
Amend to move item 16 (Board meeting guideline parameters) to the discussion agenda as item 19-1							
M. Watson S. Baumgardner	X	X	X	X	X	X	X
Amend to move item 7 (approve the agenda) and item 8 (approve the minutes of the December 13, 2010 board meeting, the January 18, 2011 budget workshop, and the January 24, 2011 board meeting) until after the welcome and brief overview of River Springs Elementary School							
Vote on the amendment	X	X	X	X	X	X	X
Vote on the original motion	X	X	X	X	X	X	X
3. M. Watson S. Baumgardner							
Approve the minutes of the January 18, 2011 budget workshop and the January 24, 2011 board meeting							
M. Watson S. Hammond							
Amend to move the approval of the January 18, 2011 budget workshop and the January 24, 2011 board meeting to the discussion agenda as item 19-2	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes

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		BAUMGARDNER	GANTT	HAMMOND	MURPHY	TURNER	WATSON	WHITE
4.	M. Watson S. White Move the approval of the December 13, 2010 board meeting to the end of this meeting as item 19-3	X	X	X	X	X	X	X
5.	M. Baumgardner S. Watson Make it a goal to conclude the meeting at 9:30 p.m. and review at 9:15 p.m. anything that has not been completed to be tabled to the next meeting	X	X	X	X	X	X	X
6.	M. Hammond S. White Move item 12-1 (approve a covered batting cage for the baseball team at Irmo High School Exhibit D) to the action agenda and approve it	X	X	X	X	X	X	X
7.	M. Watson S.Baumgardner Approve the selected employment items (Exhibit A)	X	X	X	X	X	X	X
8.	M. Watson S. Baumgardner Approve the requests for instruction at a place other than school (Exhibit B)	X	X	X	X	X	X	X
9.	M. Watson S. Baumgardner Approve first reading of proposed revisions to board J policies: JIB add "Student Involvement In Decision Making", JICEA "School Related Student Publications" replaces JHCC "Student Publications", JICG "Tobacco Use By Students" replaces JCDAA "Tobacco Free Facilities/Possession and Use of Tobacco", JICG-R "Tobacco Use By Students" replaces AR-JCDAA-R "Tobacco Free Facilities/Possession and Use of Tobacco", JICH "Drug And Alcohol Use By Students" replaces JCDAB/JCDAC "Alcohol/Drug Use" (Exhibit E)	X	X	X	X	X	X	X

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	BAUMGARDNER	GANTT	HAMMOND	MURPHY	TURNER	WATSON	WHITE
10. M. White S. Watson Resolved that the Board of Trustees of District Five of Lexington and Richland Counties disapproves of the lawsuit brought by Mrs. Kim Murphy, Murphy vs. School District Five of Lexington and Richland Counties and DHEC, which has cost the School District in excess of $1.57 million as of February 14, 2011, and is delaying the renovations to Chapin High School and denying students the timely use of much needed facilities. The Board also disapproves of the recent appeal filed by Mrs. Kim Murphy on January 20, 2011, requesting that DHEC deny a construction permit for the sewer system which permit is necessary to begin renovations at Chapin High School. The Board requests that Mrs. Murphy abide by the vote of the majority of the Board of Trustees to proceed with the renovations at Chapin High School.	X	X	X	No	X	X	X
11. M. White S. Watson The School District publish this resolution in the board briefs, email blast, as well as send it to local media, and in the board brief synopsis identify the resolution as pertaining to the lawsuit brought by Mrs. Kim Murphy, Murphy vs. School District Five of Lexington and Richland Counties and DHEC.	X	X	AB	No	AB	X	X
12. M. Watson S. Hammond Approve the recommendation for temporarily suspending the Administrative Rule IEC-R for the 2011-2012 budget cycle.	X	X	X	No	X	X	X
13. M. Watson S. Baumgardner Approve the minutes of the January 18, 2011 budget workshop	X	X	X	X	X	X	X
14. M. Murphy S. Baumgardner Approve the minutes of the January 24, 2011 board meeting M. White S. Watson	X	X	X	X	X	X	X

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	BAUMGARDNER	GANTT	HAMMOND	MURPHY	TURNER	WATSON	WHITE
Amend that the attachments are properly stamped with a disclaimer that states the Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment Vote on original motion	X	X	X	X	X	X	X
15. M. Murphy S. Watson Table the December 13, 2010 board meeting minutes to the next board meeting	X	X	X	X	X	X	X
16. M. Hammond S. Baumgardner Adjourn at 9:45 p.m.	X	X	X	X	X	X	X

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Attachment 1 is included with the minutes of the 2-14-11 meeting, at the request of Board member Robert Gantt pursuant to S.C. Code Ann. §30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CHILDS & HALLIGAN

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February 8, 2011

Mr. Robert Gantt, Chairman
Board of Trustees
School District Five of Lexington and Richland Counties
1020 Dutch Fork Road
Irmo, SC 29063

Re: Board Meeting Minutes

Dear Mr. Gantt:

You asked for an opinion as to what information should be included in the minutes of the Board of Trustees' pursuant to the South Carolina Freedom of Information Act (FOIA). S.C. Code Ann. § 30-4-90. Specifically, you inquired about the requirements of S.C. Code Ann. § 30-4-90(a)(4). For the reasons set forth below, we believe that a South Carolina court would likely hold that the Board's minutes must include only information requested by a Board member relevant to the Board's business and consistent with the general purpose and content of meeting minutes but not documents irrelevant to the Board's business and/or verbatim comments by Board members.

The FOIA requires public bodies to keep written minutes of their public meetings. S.C. Code Ann. § 30-4-90(a).[1] The written minutes must include, but need not be limited to, (1) the date, time, and place of the meeting; (2) the members of the public body recorded as either present or absent; (3) the substance of all matters proposed, discussed, or decided, and at the request of any member, a record by an individual member of any votes taken; and (4) any other information that any member of the public body requests be included or reflected in the minutes. S.C. Code Ann. § 30-4-90(a). *See also* Board Policy BEDG (containing the same language as the FOIA).

Specifically at issue is whether the phrase "any other information that any member of the public body requests be included or reflected in the minutes" literally means <u>any</u> other information, without limit, including documents not relevant to the Board's business and verbatim comments by a Board member, or whether it means any other information that is relevant to the Board's business and consistent with the general purpose and content of meeting minutes.

[1] In addition to written minutes, a Board meeting may also be recorded electronically. S.C. Code Ann. § 30-4-90(c).

Attachment 2 is included with the minutes of the 2-14-11 meeting, at the request of Board member Robert Gantt pursuant to S.C. Code Ann. § 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

No South Carolina court has considered this question. Nonetheless, it is our opinion that a South Carolina court would likely interpret the phrase "any other information" in a manner that would promote the purpose of keeping minutes. The North Carolina Supreme Court has considered the content and purpose of a public body's meeting minutes:

> generally, they should contain mainly a record of what was *done* at the meeting, not what was *said* by the members. Henry M. Robert, *Robert's Rules of Order Newly Revised* § 47, at 458 (9th ed. 1990). Their purpose is to reflect matters such as motions made, the movant, points of order, and appeals—not to show discussion or absence of action. *See id.* at 459-60.

Maready v. City of Winston-Salem, 467 S.E.2d 615 (N.C. 1996).

Additionally, *Robert's Rules of Order* states that the content of the minutes should include: (1) the kind of meeting, i.e., regular, special, adjourned regular, or adjourned special; (2) the name of the society or assembly; (3) the date and time of the meeting, and the place, if it is not always the same; (4) the fact that the regular chairman and secretary were present, or in their absence, the names of the persons who substituted for them; (5) whether the minutes of the previous meeting were read and approved—as read or as corrected—and the date of that meeting if it was other than a regular business meeting; (6) all main motions or motions to bring a main question again before the assembly—except, normally, any that were withdrawn—stating the wording of the motion and its disposition; (7) secondary motions that were not lost or withdrawn, in cases where it is necessary to record them for completeness or clarity; (8) all notices of motions; (9) all points of order and appeals, whether sustained or lost, together with the reasons given by the Chair for his or her ruling; and (10) the hour of adjournment. Henry M. Robert, *Robert's Rules of Order* § 48, at 451-453 (10th ed. 2000). Further, *Robert's Rules of Order* lists "[a]dditional rules and practices relating to the content of the minutes," which seem to emphasize relevance and brevity. *See id.* at 453-54 (seconder of motion not entered in minutes unless ordered by assembly; committee proceedings not entered in minutes; committee report entered in minutes only if it is of great importance or to show legislative history; and no summary of guest speaker's remarks entered in minutes).

It is our further opinion that a South Carolina court would likely interpret the FOIA in light of the authorities above, which the South Carolina Legislature may have considered in drafting the FOIA minutes statute, § 30-4-90. In drafting the "any other information" language, the Legislature likely intended to permit a member of a public body to put into the minutes any information not already included in the minutes relevant to the Board's business and consistent with the general purpose and content of meeting minutes. *See Brown v. County of Horry*, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992) ("It is a settled rule of statutory construction that it is the duty of the court to ascertain the intent of the Legislature and to give it effect so far as possible within constitutional limitations."); *Caughman v. Columbia Y.M.C.A*, 212 S.C. 337, 47 S.E.2d 788, 789 ("Courts are not always confined to the literal meaning of a statute; the real purpose and intent of the lawmakers will prevail over the literal import of the

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words.") Such information may include documents or proposed resolutions that are relevant to the Board's business, which a Board member requests be attached to the minutes.

It is also likely that a South Carolina court would hold that the FOIA's "any other information" language does not require the Board to attach irrelevant documents to the minutes or to include verbatim comments of what was said at Board meetings. It is unlikely that the Legislature intended to permit a Board member to put literally any information in existence into the Board's meeting minutes without regard to relevance or to include verbatim comments by persons present at Board meetings, which would be inconsistent with the general purpose and content of meeting minutes and which would require the Board to hire a transcriptionist for each Board meeting. *See Bolton v. Doe*, 266 S.C. 344, 349, 223 S.E.2d 187, 189 (1976) ("A statute is not to be read in an atmosphere of sterility, but in the context of what actually happens when human beings go about the fulfillment of its purposes.")

Finally, it should be understood that the request of any Board member to include certain information in the minutes is like any other such request, subject to a ruling by the Chair, which of course is appealable to the full body. In these circumstances we would advise the Chair to rule in a manner consistent with the intent of state law and Board policy.

In summary, it is our opinion that a South Carolina court would likely interpret "any other information" to mean any information not already included in the minutes that is relevant to the Board's business and consistent with the general purpose and content of meeting minutes. As explained above, such information would not include irrelevant documents or verbatim comments by a Board member.

We hope this letter is responsive to your inquiry. Please let this firm know if you have any questions or if we can be of further assistance.

With kind regards, I am

Sincerely yours,

Ken Childs

Kenneth L. Childs
kchilds@childs-halligan.net

/mmk

c: Board Members
Dr. Stephen Hefner, Interim Superintendent