district five
OF LEXINGTON & RICHLAND COUNTIES

Minutes/September 12, 2011

The Board of Trustees of School District Five of Lexington and Richland Counties met at Dutch Fork Middle 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, District Superintendent

The following staff were in attendance:

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

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

The Invocation was given by Reverend Dr. Derrick Scott, St. Paul A.M.E. Church. The Pledge of Allegiance was led by Jesse Tompkins, a student at Dutch Fork Middle School, and the Presentation of Colors was given by Dutch Fork High School's Air Force JROTC.

A welcome and brief overview of Dutch Fork Middle School was given by Rod Taylor, principal, and Melinda Hare, media specialist.

During the superintendent's report, Dr. Hefner gave a report on the opening of school and presented his Vision 2015 proposal; Paula Hite and Mark Boone gave an update on the D5 Foundation for Educational Excellence; a special recognition was given to the Irmo Arbor Day Committee; Dr. Fulmer presented an update on the cost and status of the Chapin High School's wetlands legal appeal (Exhibit D); and Missy Wall-Mitchell presented an enrollment report (Exhibit E).

During the public participation, Peter Lauzon spoke regarding the academic freedom policy; Mark Hartig spoke regarding non-resident students; Michael Bishop spoke regarding Chapin High School; Holly Hodges, Marie Davis and Tracey Hagerty spoke regarding world language programs; George Lusk and Jay Potts spoke regarding Dutch Fork High School's athletic renovations; Amanda Murray spoke regarding overcrowding at Chapin Elementary School; Julie Murray spoke regarding the bond referendum; Mary Lohman spoke regarding an after-school

program; Lewis Gossett spoke regarding Vision 2015; Jane Walker spoke regarding policies under review; Michelle Estridge spoke regarding Chapin Middle School; Kevin Derrick and John Lindower spoke regarding upgrades for Irmo High School's athletics facilities; Jack Wolfe spoke regarding the building program; and Tosha Adison regarding Irmo High School .

Buddy Price presented the proposed ICRC 2011-2012 Park-School Agreement (Exhibit J).

SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of September 12, 2011

	BAUMGARDNER	GANTT	HAMMOND	MURPHY	TURNER	WATSON	WHITE
1. M. Baumgardner S. Hammond Enter executive session to consider the following: a) employee grievance hearing (Exhibit A); b) selected employment items (Exhibit B); c) student enrollment matter; and d) requests for approval of instruction at a place other than school (Exhibit C)	X	X	X	X	X	A	A
2. M. Hammond S. Watson Approve the agenda	X	X	X	X	X	X	X
3. M. White S. Watson That the Board adopt the following four resolutions in a singular motion: **RESOLVED**, that the Board of Trustees of District 5 of Lexington & Richland Counties hereby requests that the South Carolina School Board Association consider sponsoring legislation that would prohibit a School Board Member from instituting any legal proceedings or administrative action before any governmental agency or court to oppose any action undertaken by the school board on which the member has a seat and that the South Carolina School Board Association allow the Chairman of the District 5 Board to present this request as a formal proposal for a legislative initiative at the School Board Associations' December 2011 meeting. **RESOLVED**, that the Board of Trustees of District 5 of Lexington & Richland Counties hereby requests that each member of our legislative delegation consider sponsoring legislation that would prohibit a School Board Member from instituting any legal proceedings or administrative action before any governmental agency or court to oppose any action undertaken by the school board on which the member has a seat. **RESOLVED**, that the Board of Trustees of District 5 of Lexington & Richland Counties hereby requests that the South Carolina School Board Association review the TEMPORARY RESTRAINING ORDER AGAINST DEFENDANT MURPHY obtained by Maggie Stroud and D5 Citizens Ensuring The Implementation of the Referendum, Inc. and consider providing assistance to Maggie Stroud and	X	X	X	No	X	X	X

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

SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of September 12, 2011

		BAUMGARDNER	GANTT	HAMMOND	MURPHY	TURNER	WATSON	WHITE
	D5 Citizens Ensuring The Implementation of the Referendum, Inc. with this important policy issue before the court that affects every school district in this state. **RESOLVED FURTHER**, the Chairman shall be authorized to write letters to the South Carolina School Board Association and the legislative delegation representing District 5 communicating these resolutions and requests to be submitted on behalf of the Board and include a copy for their review of the TEMPORARY RESTRAINING ORDER AGAINST DEFENDANCE MURPHY.							
4.	M. Hammond S. Baumgardner The Board deny the request for relief in connection with a grievance filed by a former employee of the District.	X	X	X	No	X	X	AB
5.	M. Watson S. Baumgardner Approve the selected employment items (Exhibit B)	X	X	X	X	X	X	X
6.	M. Watson S. Baumgardner Approve the requests for approval of instruction at a place other than school (Exhibit C)	X	X	X	X	X	X	X
7.	M. Watson S. Hammond Second reading approval of proposed revisions and additions to I policies: Add new board policy IB "Academic Freedom", Add new board policy IHAE "Physical Education", Add new board policy IHAF "Arts Education", Add new board policy IHAG "Music Education", . Add new board policy IHAH "World Language Education", Replace IA "Philosophy", IB "Goals and Objectives" and IKA "Teaching Methods" with IA "Instructional Goals and Learning Objectives", Replace AC "School District Organization Plan" with IE "Organization of Instruction (Exhibit F) M. Murphy S. Amend to pull out 11a IB "Academic Freedom" and vote on							

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	BAUMGARDNER	GANTT	HAMMOND	MURPHY	TURNER	WATSON	WHITE
it separately Vote on original motion	X	X	X	X	X	X	X
8. M. Baumgardner S. Hammond First reading approval of proposed revisions and additions to J policies": JLA "Student Insurance Coverage" replaces JGA "Student Insurance Program, JLCC "Communicable/Infectious Diseases" replaces JGCC "Communicable Diseases", JLCC-R "Communicable/Infectious Diseases" replaces JGCC "Communicable Diseases - Students", JLCDA "Individual Healthcare Plans" replaces JGCDA "Individual Healthcare Plans", Add JLCDA-E "Indemnification/Hold Harmless Agreement For Self-Administration of Medication", JLCE "First Aid And Emergency Care" replaces JGFGA "First Aid & Emergency Care", JLCFA "Training Of Unlicensed Personnel For Select Nursing Tasks" replaces JDCDAA "Training Of Unlicensed Personnel For Select Nursing Tasks" (Exhibit G)	X	X	X	X	X	X	X
9. M. Watson S. Hammond First reading approval of proposed Administrative Rule for Policy IB "Academic Freedom" (Exhibit H)	X	X	X	No	X	X	X
10. M. Watson S. Hammond First reading approval of proposed revisions to board policy ADF "School Wellness" (Exhibit I)	X	X	X	No	X	X	X
11. M. Hammond S. Baumgardner Approve the minutes of the August 8, 2011 board meeting M. Murphy S. Turner Amend the minutes to withdraw the Exhibit #3 and replace	No	No	AB	X	AB	No	No

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SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of September 12, 2011

	BAUMGARDNER	GANTT	HAMMOND	MURPHY	TURNER	WATSON	WHITE
with the original document that I proposed to go on the record Vote on original motion	X	X	X	X	X	X	X
12. M. Watson S. White Adjourn at 10:45 p.m.	X	X	X	X	X	X	X

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Attachment 1 is included with the minutes of the 9-12-11 meeting, at the request of Board member Ed White 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.

ON THE RECORD STATEMENT SUBMITTED BY ED WHITE

September 12, 2011

Kim Murphy v. South Carolina Department of Health and Environmental Control and District 5 of Lexington & Richland Counties

1. The damage as a result of the legal proceedings filed by Mrs. Murphy for the Chapin High School project is now approximately $7,638,655. This amount includes the actual expenditures from legal and consulting fees, the estimated increase in construction costs based on current bid prices, and the increased interest cost over the 20-year life of the bonds. Because we are in a near zero interest rate environment, the $7,638,655 amount of estimated damages today approximates the present value of the payments over the 20-year life of the bonds that will be issued to fund the project. A complete transcript of the 10-day trial and the Court's Order is posted on the District 5 website and I would encourage anyone trying to understand why we are incurring these expenses to read the transcript of the trial and the Court Order.

2. I would like to recognize the extraordinary ruling that Maggie Stroud and the group, D5 Citizens Ensuring The Implementation of the Referendum, Inc., obtained from our state court that keeps Mrs. Murphy from filing additional legal proceedings against District 5 construction projects. This court Order has a profound significance not only for District 5, but for all school districts throughout the state. A copy of the TEMPORARY RESTRAINING ORDER AGAINST DEFENDANT MURPHY is attached and I am requesting that the District post a copy of the TEMPORARY RESTRAINING ORDER on the District 5 website. I would like to personally thank Maggie Stroud and the D5 Citizens Ensuring The Implementation of the Referendum, Inc. because they took the initiative to raise private funds, to hire an attorney and press for this court Order to help District 5. It is a tremendous ruling of profound significance for District 5 as well as for all school districts in the state.

3. I see a very important policy consideration in this TEMPORARY RESTRAINING ORDER. The policy concern is that as a School District we do not have an effective legal remedy against a fellow Board Member who institutes legal proceedings to challenge a decision or action of this Board when the challenge causes economic damage to the District. The reason we do not have an effective legal remedy is that a School Board Member has immunity from legal liability for anything they do in their role as a Board Member. Any decision by a School Board to seek a legal remedy against a fellow Board Member is complicated by the reality it would have to prove the Board Member was acting outside the scope of their authority or role as a Board Member. As a practical matter, any lawyer defending a School Board Member would argue the person's actions were within the scope of their role as a Board Member. It could be difficult for a court to make a factual conclusion that the actions were

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completely outside the scope of their role as a Board Member and a court would probably favor protecting the Board Member's immunity.

4. The practical reality is that it is too easy for a political group to marshal their resources behind a Board Member and let the Board Member bring the legal proceeding to challenge the School District's actions in the Board Member's name and have the shield of immunity for all of their actions. This means a political group could conspire, engage in misrepresentations, and abuse the legal process for an improper motive and be shielded from liability by simply hiding behind the name of the Board Member who brought the action.

5. In contrast, if private citizens file a legal proceeding to challenge a School District's actions for improper motives, conspire to misrepresent facts to abuse the legal process and cause the School District economic damages in doing so, the School District can pursue legal remedies in the court system and seek compensation for the damages caused without the shield of a Board Member's immunity from liability. In other words, if private citizens bring abusive legal proceedings against a School District, they face the risk that they could be personally liable for the economic damages they cause.

6. I would like to publicly encourage Maggie Stroud and the D5 Citizens Ensuring The Implementation of the Referendum, Inc. to press ahead in the court system to seek a permanent order against Mrs. Murphy to restrain her from bringing further legal proceedings in her name to block District 5 construction projects.

7. I know Maggie Stroud and the D5 Citizens Ensuring The Implementation of the Referendum, Inc. is raising private funds to continue the legal process to acquire the permanent order and I want to thank you again for your efforts.

8. I believe as a Board Member we should adopt a resolution as the Board of Trustees of District 5 that: (a) we send a letter to the South Carolina School Board Association to ask it to review the TEMPORARY RESTRAINING ORDER AGAINST DEFENDANT MURPHY and consider assisting Maggie Stroud and the D5 Citizens Ensuring The Implementation of the Referendum, Inc. with this important policy decision pending before our court system; (b) we ask the South Carolina School Board Association to consider sponsoring legislation that prohibits a School Board Member from instituting any legal or administrative proceeding before any court or governmental agency to oppose a school board action; and (c) we write a letter to the entire legislative delegation representing District 5 asking them to review the TEMPORARY RESTRAINING ORDER AGAINST DEFENDANT MURPHY and consider adopting legislation to the same effect.

Attachment 2 is included with the minutes of the 9-12-11 meeting, at the request of Board member Ed White 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.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
Margaret Stroud and D5 Citizens Ensuring)	
The Implementation of the Referendum, Inc.)	CASE NUMBER: 2011-CP-40-2926
)	
Plaintiffs,)	**ORDER DENYING DEFENDANTS MOTION TO DISMISS and ORDERING A TEMPORARY RESTRAINING AGAINST DEFENDANT MURPHY**
)	
Kim Murphy)	
)	
Defendant.)	
)	

2011 SEP -1 PM 4:33 RICHLAND COUNTY FILED

JEANETTE W. WALKER C.C.P. & G.S. BRIDGE

This matter comes before me on the Plaintiffs motion pursuant to Rule 65 of the South Carolina Rules of Civil Procedure for the issuance of a restraining order requiring Defendant Kim Murphy to withdraw the appeals set forth on Exhibit A related to permits necessary for the construction of Chapin High School in School District 5 of Lexington and Richland Counties ("District 5") and prohibiting Defendant from filing further appeals in District 5 and for further filing **appeals or actions that would result in the delay or obstruct construction approved by District 5 and the voters who passed the 2008 bond referendum to fund the expansion and renovation project**. The Court also considered Defendant's Motion to Dismiss the Plaintiffs' claims in accordance with Rule 12(b)(1) and (6). A hearing was held on the motions on August 3, 2011 and the Court heard arguments from counsel representing the parties.

After considering the materials provided by counsel and hearing the arguments at the hearing on these motions, the Court denies Defendant's Motion to Dismiss and enjoins Defendant Murphy from filing any further appeals in District 5.

The Court finds, in the light most favorable to Plaintiffs, that Plaintiffs have standing and

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have sufficiently plead facts to constitute a cause of action against Defendant Murphy for abuse of process. *Spence v. Spence*, 368 S.C. 106, 116-17, 628 S.E.2d 869, 874 (2006).

As for the Plaintiffs Motion to enjoin Defendant Murphy, the Court finds that there is a likelihood of success on the merits that Plaintiffs will prevail on its challenge to Mrs. Murphy's standing to file appeals or declaratory actions of District 5 decisions in her own name so long as she is a sitting member of the District 5 school board. In *Newman v. Richland County Historic Preservation Com'n* 480 S.E.2d 72 (S.C.,1997), the Supreme Court stated that it had found no precedent "which permits a disappointed legislator to attack a decision of her own body, either through a declaratory judgment or through a direct "appeal." *Id* at 74.

The Court is not requiring Mrs. Murphy to withdraw the appeals which she has already filed and which are set forth on Exhibit A, but finds that the Plaintiffs are likely to succeed on the merits, that the issue of a public official filing appeals of the directives and decisions of the board on which she sits in her own name is a significant public interest, and, in balancing the harm to the parties by the issuance of an injunction, the Court finds that the Plaintiffs would suffer irreputable harm if future appeals were filed. There is little or no harm to Mrs. Murphy in preventing her from individually filing such appeals while she is a sitting board member.

Therefore, the Court is ordering the following:

1. That Defendant answer fully the discovery responses served upon her on or before September 22, 2011;

2. That discovery proceed and this matter be heard on the merits as soon as practicable;

3. That Defendant Murphy, so long as she is a member of the District

5 school board, is prohibited from filing in her own name any further appeals, actions or challenges at the South Carolina Department of Health and Environmental Control ("DHEC") or any other agency necessary to approve permitting for various construction projects authorized by the District 5 school board and funded by the 2008 referendum passed by the citizens of District 5.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the above stated Agreement is hereby entered into as an Order of this Court.

IT IS SO ORDERED.

The Hon. L. Casey Manning

Sept 1, 2011

Attachment 5 is included with the minutes of the 9-12-11 meeting, at the request of Board member Ed White 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.

Form 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP4002926

Margaret Stroud *vs.* **Kim Murphy**

Plaintiff Defendant

RICHLAND COUNTY FILED
2011 SEP 2 AM 9:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

CHECK ONE:

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

_____
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 2 September 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Todd R Ellis
ATTORNEY(S) FOR THE PLAINTIFF(S)

Jay Bender
ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
Clerk of Court

SCRCP APP-24/FORM 4

Attachment 6 is included with the minutes of the 9-12-11 meeting, at the request of Board member Ed White 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.