



Minutes/ October 8, 2012

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 Burn 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 of Student Services  
Mr. Keith McAlister, Director of New Design and Construction  
Mr. Mark Bounds, Public Information Officer

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

The Invocation was given by Adam Williams, St. Andrews Presbyterian Church. The Pledge of Allegiance was led by Drew Delk and Harrison Yarbrough, students at River Springs Elementary School.

The School Board Spotlight was presented by Robert Gantt and Beth Watson.

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

During the superintendent's report, Dr. Stephen Hefner gave a Vision 2015 update #10; Dr. Bob Couch gave an update on the Center for Advanced Technical Studies; and Mark Bounds gave an update on the status of school board policy revisions.

During the public participation, Lora Lee Doerring and Barbara Waldman spoke regarding Phase II at Irmo High School; Ed Yates spoke regarding SAT scores; Reina Floyd spoke regarding the technology plan; George Burbach spoke regarding taxpayer concerns; and Dan Koon spoke regarding the fine arts center at Irmo High School and Irmo Elementary School's dedication.

Helen Anderson presented proposed revisions to "I" policies: replace policy IHG "Secondary Education" with new policy IKG "Secondary Education", replace policy IHF "Graduation Requirements" with new policy IKF "Graduation Requirements", replace policy IHF-R "Graduation Requirements/Diplomas" with new policy IKF-R "Graduation Requirements", and add new policy IHAQ "Career/Transition to Work Education" (Exhibit C).

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

SCHOOL DISTRICT FIVE  
OF  
LEXINGTON AND RICHLAND COUNTIES

Meeting of October 8, 2012

		B A U M G A R D N E R	G A N T T	H A M M O N D	M U R P H Y	T U R N E R	W A T S O N	W H I T E
1.	M. Baumgardner  S. Hammond  Enter executive session to consider the following: a) selected employment items (Exhibit A); and b) receipt of legal advice	X	X	X	X	X	X	X
2.	M. Watson  S. Hammond  Approve the agenda	X	X	X	X	X	X	X
3.	M. Watson  S. Baumgardner  Approve the selected employment items (Exhibit A)	X	X	X	X	X	X	X
4.	M. Watson  S. Hammond  First reading approval of proposed revisions to "I" policies: add new Administrative Rule ADF-R "School Wellness", changes/revisions to policy JJE "Student Fundraising Activities", and changes/revision to policy JJE-R "Student Fundraising Activities" (Exhibit B)	X	X	X	No	X	X	X
5.	M. Watson  S. Baumgardner  Approval of the minutes of the September 24, 2012 board meeting	X	X	X	No	X	X	X
6.	M. White  S. Gantt  Adjourn at 9:05 p.m.	X	X	X	X	X	X	X

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#13 *Kim Murphy*  
page 1 of 1

# The school board and the tape recorder



**By Jay Bender**  
SCPA Attorney

This is a story demonstrating how one member of a board or council — armed with a tape recorder — can make government more open.

Several years ago the Lexington-Richland School District 5 sued Kim Murphy to enjoin her from recording the public meetings of a committee of which she was a member. A circuit judge granted the injunction which was quickly vacated by the S.C. Court of Appeals because the FOIA provides that any meeting of a public body may be recorded by any person in attendance.

Some lessons are never learned.

Recently the same school board, this time with Kim Murphy as a member, went into executive session in a conference room adjacent to the auditorium where the public portion of the board meeting had been conducted. Nearly 100 persons remained in the

auditorium awaiting the board's return.

At the conclusion of the executive session, one board member indicated that he wanted to talk about a situation that had received some local notoriety, the denial of permission for a home-schooled student to participate in the Junior ROTC program.

The issue wasn't on the board agenda.

The board chair, Robert Gantt, announced that the executive session was over, and directed that the conference room door be opened so the discussion regarding the home-schooled student could be held "in public."

Kim Murphy's tape recorder made an appearance. The board chair said the discussion could not be recorded, but Ms. Murphy, having prevailed previously in the face of school board ignorance was not deterred. When Ms. Murphy remained steadfast in her insistence that the discussion would be recorded, the board chair adjourned the illegal meeting.

South Carolina's FOIA has some weaknesses, but on balance, the law -- if followed -- would provide citizens with greater opportunities to learn and report on the activities of public bodies. The problem isn't with the law. The problem is with a culture that allows public officials to make decisions outside the presence of the public without challenge. The problem is a culture among public officials that convinces them they know what is best for us, and they will tell us what decisions have been made in public business when it suits the public officials.

Ms. Murphy knew the law, and challenged an illegal discussion of an item that wasn't on the agenda. Had the issue of the home-schooled cadet applicant been on the agenda, the discussion would have been lawful only in public. Simply opening the door to the conference room would not have made the discussion public.

If we could find one person on every council, board or commission who would pull out a tape recorder to record illegal discussions, we would have many fewer secret decisions in South Carolina.

Some on the Lexington-Richland School Board don't like Kim Murphy because she has challenged decisions of DHEC with respect to water quality issues in connection with a construction project at Chapin High School, and those same folks are probably unhappy that she wouldn't acquiesce in an impermissible discussion outside of public view. Fortunately for the public Ms. Murphy had the courage and the knowledge to challenge the chair. We need more of that in South Carolina.

And by way of acknowledgement, I am defending Ms. Murphy in a suit brought by a non-profit corporation and a former Chapin student claiming to have suffered financial losses in the millions of dollars personally because she challenged the issuance of a permit to fill the headwaters of a stream so a parking lot for high school students could be built. I also represented her when the school board last sued her to prevent the lawful recording of a meeting. I like courage.

Item "For The Record" requested by Kim Murphy for attachment to the Minutes.

Attachment 1 is included with the minutes of the 10-3-12 meeting, at the request of Board member Kim Murphy 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.

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

Robert Gantt



September 24, 2012

Mr. Jerry Bellune  
Lexington Chronicle  
PO Box 1500  
Lexington, SC 29071

Attachment 2 is included with  
the minutes of the 10-5-12  
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.

Dear Mr. Bellune:

I am writing in response to your e-mail dated September 20, 2012, in which you offered the District the opportunity to respond to an article written by Jay Bender, the South Carolina Press Association's attorney, and attorney for Kim Murphy, a Board member in School District Five. On behalf of the District, we are most appreciative of your providing the District with the opportunity to tell "the other side of the story."

As best as I understand it, Mr. Bender appears to be referring to a situation at the Board's last meeting on September 10, 2012, in which a Board member asked the Superintendent for an update on a confidential student matter, either near the end of, or at the end of, the Board's executive session meeting. While I do not agree with Mr. Bender's version of the facts, I believe it is essential to address on behalf of the District our fundamental disagreement with the main point of the article that Board discussions about student matters should be conducted in public session. Specifically, Mr. Bender states, "Had the issue of the home-schooled cadet applicant been on the agenda, the discussion would have been lawful only in public." This statement is legally inaccurate.

Pursuant to a federal law referred to as the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g, the District is generally prohibited from releasing personally identifiable information derived from or contained in a student's education records, subject to certain exceptions, without the prior written consent of parents. "Education records" are defined as those records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency. "Personally identifiable information" includes, among other things, "other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency ... reasonably believes knows the identity of the student to whom the education record relates." 34 C.F.R. §99.3. Thus, it certainly would not be appropriate for the content of student educational records or personally identifiable information regarding a student to be discussed publicly by the Board. District policy JRA/JRA-R (Student Records) clarifies the District's procedures in this regard. This is the case even if a matter has already been discussed publicly by the student or parent.

Item "For The Record" requested by **Robert Gantt** for attachment to the Minutes.

The FOIA specifically excludes from disclosure matters exempted from disclosure by statute or law. S.C. Code Ann. § 30-4-40(a)(4). In this case, the statute would be FERPA. Further, it is well established that a public body can hold a meeting closed to the public for discussion of a matter involving a student. S.C. Code § 30-4-70(a)(1). For these reasons, under the circumstances, Mr. Bender's assertion is incorrect.

Sincerely,



Robert W. Gantt  
Chairman, Board of Trustees

C: D5 Board of Trustees

Attachment 3 is included with  
the minutes of the 10-8-12  
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.

Item "For The Record" requested by **Robert Gantt** for attachment to the Minutes.

Robert Gantt

9/24/12

Ms. Murphy,

You have taken issue with my decision not to include in your documents to be submitted on your behalf into the Board's public minutes Dr. Hefner's letter to the parents of a student who lives in our District. I told you it would not be included because it was a student's educational record not to be released without written parental consent pursuant to the Family and Educational Rights and Privacy Act (FERPA). You stated in response that I should redact the student's name and address from the letter and that would suffice in meeting any concerns with the FERPA law. I have been advised that deleting the student's name and address does not negate the fact that it would violate FERPA to place the letter in the Board's public minutes or otherwise release it publicly, so I must continue to deny your request.

I have been advised that under FERPA, the District is prohibited from releasing personally identifiable information derived from or contained in a student's education records, subject to certain exceptions, without the written consent of parents. "Personally identifiable information" includes, among other things, "other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency ... reasonably believes knows the identity of the student to whom the education record relates." 34 C.F.R. §99.3.

In this case, if the Board were to make this letter public, even with the student's name and address redacted, given the public attention that has already been brought to the matter, the letter could still be linked to the student by a reasonable person in the community. For these reasons, its public release would violate FERPA. Thus, it certainly would not be appropriate for the content of student educational records or personally identifiable information regarding a student to be discussed publicly by the Board or placed in the Board's minutes available to the public.

I trust that you will understand that the Federal Law (FERPA) was put in place for a reason to protect students and must be followed.

Robert Gantt

Attachment 4 is included with the minutes of the 10-8-12 meeting, at the request of Board member

(1)

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.

**From:** Kim Murphy <[movingmountainkwm@gmail.com](mailto:movingmountainkwm@gmail.com)>  
**To:** ROBERT W GANTT <[ganttrw@bellsouth.net](mailto:ganttrw@bellsouth.net)>  
**Cc:** Kim Murphy <[kwmurphy@lex5.k12.sc.us](mailto:kwmurphy@lex5.k12.sc.us)>; Kim Murphy <[kwmurphy@lexrich5.org](mailto:kwmurphy@lexrich5.org)>; Mark Bounds <[mbounds@lexrich5.org](mailto:mbounds@lexrich5.org)>; Beth Watson <[bhwatson@lex5.k12.sc.us](mailto:bhwatson@lex5.k12.sc.us)>; ""[bhwatson@lexrich5.org](mailto:bhwatson@lexrich5.org)"" <[bhwatson@lexrich5.org](mailto:bhwatson@lexrich5.org)>; ""[ebaumgar@lexrich5.org](mailto:ebaumgar@lexrich5.org)"" <[ebaumgar@lexrich5.org](mailto:ebaumgar@lexrich5.org)>; Ed White <[EWhite@lex5.k12.sc.us](mailto:EWhite@lex5.k12.sc.us)>; Ellen Baumgardner <[ebaumgardner@sc.rr.com](mailto:ebaumgardner@sc.rr.com)>; ""[ewhite@lexrich5.org](mailto:ewhite@lexrich5.org)"" <[ewhite@lexrich5.org](mailto:ewhite@lexrich5.org)>; Jan Hammond <[jhammond@lex5.k12.sc.us](mailto:jhammond@lex5.k12.sc.us)>; JanH08 <[janh08@aol.com](mailto:janh08@aol.com)>; Jim Turner <[jturner@lex5.k12.sc.us](mailto:jturner@lex5.k12.sc.us)>; jimturnjr <[jimturnjr@gmail.com](mailto:jimturnjr@gmail.com)>; Superintendent Steve Hefner <[swhefner@gmail.com](mailto:swhefner@gmail.com)>; Stephen Hefner <[shefner@lexrich5.org](mailto:shefner@lexrich5.org)>  
**Sent:** Friday, September 21, 2012 6:32 PM  
**Subject:** Re: For the Record Request 9 10 12

Dear Mr. Gantt,

I would like the Superintendent's letter dated August 16, 2012, denying the student access to JROTC, recorded in the record of the minutes of September 10, 2012 as page 10 of 10. This is clearly a policy issue that must be addressed and one that should have been brought before us in our legal update on August 13, 2012 for our consideration, especially since the "Tebow" law (Act 203 of 2012) was signed into law by the Governor on June 7, 2012. It is unfortunate that the student's family had to hire an attorney in order for their child to participate in a program that is afforded to him by law. Here is a link to the law: [http://www.scstatehouse.gov/sess119\\_2011-2012/bills/149.htm](http://www.scstatehouse.gov/sess119_2011-2012/bills/149.htm)

You may redact the student's name and address from the Superintendent's denial letter and that will suffice in meeting any concerns with the FERPA law.

I have attached the denial letter for other board members to examine, as well as the Attorney General's opinion stating that denying the homeschooled student the right to participate in the JROTC program or other interscholastic opportunities violates the intent of the legislature.

If you would like to make the change in the minutes and resubmit them to us before the board meeting that will alleviate the need for a motion to occur at the board meeting.

Regards,

Kim Murphy

(2)

Attachment 5 is included with the minutes of the 10-8-12 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.

Item "For The Record" requested by **Robert Gantt** for attachment to the Minutes.

On Fri, Sep 21, 2012 at 2:03 PM, ROBERT W GANTT <[ganttrw@bellsouth.net](mailto:ganttrw@bellsouth.net)> wrote:

Ms. Murphy,

I reviewed your 12 page submission of documents you proposed to submit as your "for the record" items in the Board's minutes for the September 10, 2012 Board meeting. All of the documents that you provided for inclusion in the minutes were attached, with one exception. Because the Board's minutes are considered public records, I have excluded the letter that Dr. Hefner wrote to the parents, who are residents in our District, regarding their child, as this letter is considered an educational record of the student that should not be disclosed by the District pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. Regardless of how you obtained a copy of the student's education record, I do not believe that it is appropriate for the Board to publish a student's educational record in its public Board minutes.

Protecting student rights, as required by law, is our obligation as Trustees of School District 5.

Robert Gantt

(3)

Attachment 6 is included with  
the minutes of the 10-8-12  
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.

Item "For The Record" requested by **Robert Gantt** for attachment to the Minutes.