District Five OF LEXINGTON & RICHLAND COUNTIES

Minutes
Board Meeting – April 27, 2020

The Board of Trustees of School District Five of Lexington and Richland Counties conducted a virtual meeting with the following members present:

Mr. Michael Cates, Chairman
Ms. Beth Hutchison, Vice Chairman
Mr. Robert Gantt, Secretary
Mrs. Nikki Gardner
Mrs. Jan Hammond
Mr. Ken Loveless
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members were in attendance:

Mrs. Katrina Goggins, Director, Office of Communications
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Dr. Allison Jacques, Chief Human Resources Officer
Mr. Len Richardson, Chief Finance Officer

A livestream audio link was provided to the public for the meeting.

Chairman Cates called the meeting to order at 7:02 p.m. Chairman Cates confirmed 100% attendance of board members via visual video confirmation. Mr. Cates shared a welcome message which included appreciation for the senior supply pick-up events held on April 21 and 22 at each high school. Mr. Cates noted the district continues to navigate through extraordinary times and also reported that we have not yet had to exercise any options provided in the Emergency Resolution that was passed at the April 6, 2020 Board Meeting.

The Invocation was given by Robert Gantt, Board of Trustees.

During the Superintendent's Report, Dr. Christina Melton provided an update on the COVID-19 mandatory closure. Dr. Melton gave praise and appreciation for the senior supply pick-up events and all individuals involved who ensured successful events at each high school. Dr. Melton provided an overview of the work that continues to take place throughout the district and stressed that students remain at the core of districtwide efforts.

The minutes from the April 6, 2020 board meeting were approved.

Approval of Personnel items: a) selected employment items (Exhibit A) (Action); b) selected employment items (Exhibit B) (Information Only).

Textbook Adoptions (Exhibit C) were presented for approval.

The Proposed 2020-2021 School Board Meeting Schedule (Exhibit D) was presented for approval.

Board Policy BEDH, "Public Participation at Meetings" was reinstated (with modifications).

The next regular scheduled school board meeting will be May 18, 2020 with the location to be determined due to the current mandated closure.

The meeting was adjourned at 7:59 p.m.

Record of Voting

School District Five
of
Lexington and Richland Counties

Meeting of April 27, 2020
(Corrected May 15, 2020)

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
1. M. Gardner S. Gantt Approve the agenda	X	X	X	X	X	X	X
2. M. Loveless S. Hammond Motion to amend the agenda of the April 27, 2020 board meeting: In light of the SC Attorney General's formal opinion on the resolution approved at the 4/6/2020 board meeting, I request that tonight's agenda be amended to include re-visiting the resolution discussion. The Attorney General's formal opinion is attached. (Shown in Attachment #1)	N	N	X	X	N	X	N
3. M. Hutchison S. Loveless Enter executive session to consider the following: a. Update from counsel and receipt of legal advice regarding Case No. 2013-CP-40-1897	X	X	X	X	X	X	X

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

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
4. M. -- S. -- (*presumptive approval of minutes as presented*) Approve the minutes of the April 6, 2020 board meeting	X	X	X	X	X	X	X
5. M. Hutchison S. Gantt Personnel a. Selected employment items (*Exhibit A*) (Action) b. Selected employment items (*Exhibit B*) (Information Only)	X	X	X	X	X	X	X
6. M. Hammond S. Hutchison Approval of Textbook Adoptions (*Exhibit C*)	X	X	X	X	X	X	X
7. M. Gantt S. Hutchison Approval of Proposed 2020-2021 School Board Meeting Schedule (*Exhibit D)*	X	X	X	X	X	X	X
8. M. Cates S. Hutchison Motion (Reinstate with modifications Board Policy BEDH, "Public Participation at Meetings") That we reinstate policy BEDH in a format designed to address the unique situation and circumstances imposed by the limitations of online meetings, the specifics will be as follows: The District will create a public participation portal on its website, which will be open for each Board meeting. The portal will be open for public participation only. Anyone desiring to participate in the portal may do so according to rules similar to our current public participation. 1. The submissions form will open when the agenda is posted for the public and must be submitted before 12:00 PM on the date of the board meeting. 2. The submissions will be limited to 400 words, which approximates a three-minute presentation. 3. Each submitter will provide his or her name, physical address, e-mail address, and telephone number as well as any	X	X	X	X	X	X	X

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	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
group that he/she represents with his/her submission. Only the name and comment will be posted by the district. 4. The submission may be on an agenda topic or a non-agenda topic. 5. Each submitter will be allowed one submission per meeting. 6. The District will provide, electronically, the submissions to board members prior to the meeting, and the District will post each submission to a separate section of the Board Page for each meeting under public participation. 7. The District will treat each submission as if it were given during public participation and follow policy BEDH in addressing the submissions.							
9. M. Hammond S. – (*No second, amendment died*) Amended Motion (Reinstate with modifications Board Policy BEDH, "Public Participation at Meetings"): Allow five (5) public participation questions to be read aloud during meetings	-	-	-	-	-	-	-
10. M. Loveless S. Hammond Amended Motion (Reinstate with modifications Board Policy BEDH, "Public Participation at Meetings"): Amend the motion to state that all questions presented by members of public in accordance with policy BEDH be read aloud at that meeting (Shown in Attachment #2)	N	N	X	X	N	X	N
11. M. Hammond S. Hutchison Adjourn the meeting at 7:59 p.m.	X	X	X	X	X	X	X

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MOTION TO AMEND THE AGENDA OF THE APRIL 27, 2020 BOARD MEETING

THE MOTION:

" IN LIGHT OF THE S.C. ATTORNEY GENERAL'S FORMAL OPINION ON THE RESOLUTION APPROVED AT THE 4/6/2020 BOARD MEETING, I REQUEST THAT TONIGHT'S AGENDA BE AMENDED TO INCLUDE ~~RE-VISITING~~ RE-VISITING THE RESOLUTION DISCUSSION. THE ATTORNEY GENERAL'S FORMAL OPINION IS ATTACHED."

RESPECT FULLY SUBMITTED,

KENNETH B. LOVELESS

TRUSTEE

Attachment #1, Pg. 1 is included with the minutes of the 4/27/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 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.

ALAN WILSON
ATTORNEY GENERAL

April 16, 2020

Christina Gwozdz, MD
Chairperson
Beaufort County Board of Education
Post Office Drawer 309
Beaufort, SC 29901-0309

Attachment #1, pg. 2 is included with the minutes of the 4/27/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 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 Dr. Gwozdz:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter reads as follows:

> The Beaufort County Board of Education is requesting a formal opinion on the legality of the attached Emergency Resolution, which has not yet been approved by the Board. ...
>
> The resolution states the following:
>
> NOW, THEREFORE, the Board hereby adopts the following EMERGENCY
>
> RESOLUTION:
>
> For the duration of the State of Emergency in South Carolina, and unless otherwise directed by subsequent action of the Board, the Board waives and/or suspends all policies, administrative procedures, and other rules that conflict with the aforementioned Executive Orders of Governor McMaster and any future applicable Executive Orders, any state and federal emergency laws such as the Families First Coronavirus Response Act (FFCRA) that may have or may be passed during the pandemic, any guidance issued by federal or state agencies, including but not limited to FEMA, the Department of Labor, the IRS, and the South Carolina Department of Education, and further authorizes the Board Chair in consultation with the Superintendent to waive or suspend provisions of existing policies, administrative procedures, and other rules, if compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action by

Attachment #1, Pg. 3 is included with the minutes of the 4/27/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 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.

the Board or school district in coping with the emergency or otherwise in carrying out the applicable Executive Orders of the Governor, including making necessary and appropriate arrangements to account for the local needs and unique circumstances of the Board and school district.

Law/Analysis

It is this Office's opinion that the resolution does not present an apparent conflict with state law. However, in application, the waiver or suspension of policies, administrative procedures, and other rules by a single board member and superintendent raises potential issues regarding the non-delegation doctrine. See Bauer v. S.C. State Hous. Auth., 271 S.C. 219, 232, 246 S.E.2d 869, 876 (1978) (discussing limitations on delegating legislative power).

The resolution can broadly be divided into two clauses. The first suspends any of the Board's policies, administrative procedures, and other rules that conflict with the Governor's executive orders, state and federal law, and guidance from state and federal agencies for the duration of the state of emergency in South Carolina. This clause does not raise apparent issues and seems to be an acknowledgment that the Board's rule making power must be consistent with state and federal law. See S.C. Code § 59-19-110. In regards to suspending the Board policies in response to agency guidance, the Board is authorized to "prescribe such rules and regulations" as they "may deem necessary or advisable to the proper disposition of matters" brought before them. Id. The Board has the authority to voluntarily alter its own policies, procedures, and rules to comply with lawfully issued state and federal agency guidance.

The second clause permits the Board Chair, in consultation with the superintendent, to waive or suspend provisions of existing policies, procedures, or rules that "would in any way prevent, hinder, or delay necessary action by the Board or school district in coping with the emergency" or carrying out applicable Governor's executive orders and accounting for local needs. This clause seems to apply where a policy, procedure, or rule does not directly conflict with an executive order, state or federal law or agency guidance, but instead makes the response to the emergency or compliance with an executive order more difficult. While this clause does not appear to conflict with state law on its face, it may be applied in a manner that would. One concern with this clause is that it may be used in a manner that violates quorum requirements. See In re Matthews, 345 S.C. 638, 646, 550 S.E.2d 311, 314–15 (2001) ("In the absence of any statutory or other controlling provision, the common-law rule that a majority of the whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum."). Again, the Board may adopt rules and regulations that it deems proper to address the matters brought before them. This specifically includes "designat[ing] one or more of its members" to conduct hearings in connection with any responsibility of the board to one or more of its members. Id. However, this designee must still report to the Board for its determination. Id. Similarly, if this second clause is utilized, we suggest consulting with the Board's or school

district's attorney to ensure that any policy or rule suspension is one that a designated member can make or that the superintendent can make on their own, or if it needs Board approval.

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Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

Attachment #1, pg. 4 is included with the minutes of the 4/27/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 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.

BOARD MEETING OF APRIL 27, 2020

MOTION TO AMEND MOTION PLACED FOR ACTION AGENDA ITEM # 12. ON THE FLOOR BY CHAIRMAN CATES:

" AMEND THE MOTION TO STATE THAT ALL THE QUESTIONS PRESENTED BY MEMBERS OF PUBLIC IN ACCORDANCE WITH POLICY BEDH BE READ ALOUD AT THAT MEETING."

RESPECTFULLY SUBMITTED,

Kenneth B. Loveless

Trustee

Attachment #2 is included with the minutes of the 4/27/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 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.