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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2023-000104

Paul Roy Osmundson..... Appellant,

vs.

School District 5 of Lexington and Richland Counties..... Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Paul Roy Osmundson,) Civil Action No.: 2021-CP-40-_____
))
Plaintiff,))
))
v.) SUMMONS
))
School District 5 of Lexington and)
Richland Counties,)
))
Defendant.)
_____)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HERBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

By: s/ J.C. Nicholson, III
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Columbia, South Carolina
July 23, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT

Paul Roy Osmundson,	)	Civil Action No.: 2021-CP-40-_____
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	
School District 5 of Lexington and	)	
Richland Counties,	)	(NON-JURY)
	)	
Defendant.	)	
_____	)	

COMES NOW, Plaintiff, Paul Roy Osmundson, seeking a declaratory judgment pursuant to §15-53-20 of the South Carolina Code of Laws. Plaintiff would show unto this Honorable Court as follows:

PARTIES, JURISDICTION, and VENUE

1. Plaintiff is a citizen and resident of Richland County, South Carolina and the Senior Editor for News at The State Newspaper.
2. Defendant, School District 5 of Lexington and Richland Counties is a body politic created pursuant to §59-17-10 of the South Carolina Code of Laws. It is a “public body” as that term is used in the Public Records Statute, §30-1-20 of the South Carolina Code of Laws and has the authority to sue and be sued in its own name pursuant to §4-1-10 of the South Carolina Code of Laws.
3. Venue is proper in this Court pursuant to §§ 15-7-20 (2) and 15-7-30 (C) as the events giving rise to this action occurred in Richland County, South Carolina.

4. This action for declaratory and injunctive relief is brought pursuant to §15-53-20 and §30-4-10, *et seq.*, as amended of the South Carolina Code of Laws. The matters alleged herein are justiciable controversies and satisfy the requirements of standing and irreparable harm as provided by the S.C. Freedom of Information Act, specifically, §30-4-100.

FOR A FIRST CAUSE OF ACTION
(Violations of the Freedom of Information Act)

5. On or about May 1, 2021, a South Carolina citizen, Laurene Mensch, requested in writing pursuant to the Freedom of Information Act, §30-4-90, (hereinafter the “FOIA”) “A list of the Board Officer Meetings schedule for 2021; the meetings that have already taken place as well as any that remain. She also requested pursuant to the FOIA the dates/times/locations of the meetings.

6. Meetings of Board Officers of the Defendant consisting of the Chair, the Vice Chair, and the Secretary, are within the scope of the Public Records Act, §30-1-10, *et. seq.* of the South Carolina Code of Laws. The Board Officers attending and participating in such meetings constitute a “public body” as that term is defined in §30-1-10(B) of the South Carolina Code of Laws. That code section extends the requirement of the public records law to any “committees, subcommittees, advisory committees, and the like of any such body by whatever name known and includes any *quasi*-governmental body of the state and its political subdivisions.”

7. School District 5 Meetings of Board Officers fall within the requirements of §30-1-10(B) of the South Carolina Code of Laws.

8. In response to this request, the duly authorized records custodian of the Defendant, exercising the duties described in §30-1-20 of the South Carolina Code of Laws on May 19, 2021 responded to Ms. Mensch as follows:

“The District does not have a record to provide to you, pursuant to the definition of records provided in the SC Freedom of Information Act. In other words, there is no documents/records showing when they met in 2021.

Beyond the requirements FOIA, the District would like to offer the clarification that it is our understanding that our Board Officers meetings are not committee meetings and thus do not fit the definition of a “public meeting” under SC FOIA. Therefore, there are no agendas or public postings of the meetings, and no notification of the meetings are required under the law. The District would like to also offer that the meeting times, dates, and locations vary based on need and availability of the three (3) Board officers and the Superintendent. Unlike Board meeting schedules for the school year, Board officer meetings are not posted, voted on by the full Board, or scheduled in advance of the school year.

Please accept this as our final determination regarding your FOIA request. The District makes every good faith effort to respond fully to SC FOIA requests.”

9. Prior to this email reply to Ms. Mensch on May 19, 2021, the Board of Trustees of School District 5 of Lexington and Richland counties had been advised by one of its members, Trustee Ed White, an experienced member of the South Carolina Bar and a partner in the leading South Carolina law firm, Nelson Mullins Riley & Scarborough, that such Meetings of Board Officers were subject to the public meetings requirement of the law, including §30-4-60 of the South Carolina Code of Laws.

10. On May 5, 2021, Plaintiff requested copies of the times, dates, places, and agendas of the Meetings of Board Officers from School District 5 of Lexington and Richland. On May 19, 2021, Plaintiff was informed by School District 5 that no such documents existed for the Meetings of Board Officers. **Exhibit A.**

11. On January 25, 2021, Trustee White made a motion to add to the Action Agenda of the Board to read, “Requiring Board Officer meetings to be open to the public including live streaming the meeting in accordance with the S.C. Freedom of Information Act.” In opposition

to the motion and in support of continuing to have Meetings of Board Officers in violation of the afore referenced statutes, the Chair of the Board, Jan Hammond, told Trustee White during the January 25, 2021 meeting, "It is offensive to me that you think that we have to be live streamed for me to be upfront and transparent." She later announced that she would not vote on the original amendment proposed by Trustee White. The Vice-Chair, Ken Loveless, commented that he did not see the need for the amendment and there was no precedent for it. Board Secretary Nikki Gardner, argued that "we have to continue doing this the way we've been doing things."

12. The contemptuous comments by the Chair, Vice-Chair, and Secretary on the transparency and openness of Meetings of Board Officers are an illustration of the need for open and public meeting requirements under South Carolina law.

13. The Board voted 2-5 to deny Trustee White's request to add to the Action Agenda an item requiring that the Meetings of Board Officers be held in public. Both Trustee White and Board member, Rebecca Hines, voted in favor of the amendment to the Action Agenda.

14. On or about February 8, 2021, Trustee White, called to the entire Board's attention the need for Meetings of Board Officers to be open to the public. Trustee White submitted to the Board, the written opinion of the South Carolina Attorney General (hereinafter "AG") dated August 29, 2019 ruling that a similar meeting by a similar body in another South Carolina School District was subject to the statutory open meetings law also popularly known as, "The Sunshine Act." This AG opinion cited various opinions of the South Carolina Supreme Court supporting its strong and well-reasoned conclusion. **Exhibit B & Exhibit C.**

15. Upon information and belief, Trustee White also reminded the Board of Trustees of the requirements of §30-4-90 of the South Carolina Code of Laws which requires written

minutes of such meetings to include the date, time and place of the meeting, the members present, the substance of all matters proposed, discussed, or decided and any other information that any member of the public requests be included or reflected in the minutes.

16. On March 1, 2021, the Board of Trustees voted to remove the referenced Attorney General's opinion which had been submitted by Trustee White. This decision was made in bad faith and constituted a deliberate attempt by certain other Trustees to eliminate evidence that the Meetings of Board Officers were unlawful and should be open to the public. **Exhibit D.**

17. The Board of Trustees of School District 5 of Lexington and Richland Counties was aware of the provision of §30-4-100 of the South Carolina Code of Laws which provides in relevant part, "any citizen of the State may apply to the Circuit Court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter."

18. On information and belief, certain Trustees of the Board of Trustees of School District 5 of Lexington and Richland Counties, not including Trustee White, secretly negotiated with the former Superintendent, Dr. Christina Melton, and her attorney a termination agreement ending her employment by the District. It was the desire of these Trustees, not the desire of Dr. Christina Melton that this employment be terminated.

19. On information and belief, the Board of Trustees of School District 5 of Lexington and Richland Counties, not including Trustee White, conducted secret votes, not on the record, and secret straw votes having to do with the status of the former Superintendent. Such secret votes are in violation of the law of South Carolina.

20. On information and belief, there was never a public vote on the record related to the status and the termination of Superintendent Dr. Christina Melton as required by law.

21. In defense of the decision to continue having Meetings of Board Officers in violation of the afore referenced statutes, the Vice-Chair of the Board stated that he “sometimes has things to say which I do not want to say in public” or words to that effect.

22. This contemptuous comment by the Vice-Chair is proof of bad faith and an illustration of why there is a statutory open and public meeting requirement under South Carolina law.

23. The other two Board Officers, the Chair and the Secretary, also made similar remarks reflecting their disdain and contempt for the Freedom of Information Act and the open meetings laws of South Carolina. None of the actions by the Board Officers surrounding the Meetings of Board Officers met the FOIA exemption requirements as outlined in §30-4-70, *et. seq.*

24. At the meeting of Board of Trustees on June 14, 2021 during an executive session, a “settlement agreement” was signed by some of the Board Trustees. Trustee White publicly announced his resignation and left the meeting. Before leaving, Trustee White stated openly and publicly that the officers of the Board of Trustees had created a “hostile work environment that had driven the Superintendent from her job.” He also stated the actions of the trustees were illegal. Mr. White refused to sign the document terminating Dr. Melton. His integrity is in stark contrast to the other trustees. After the meeting, Mr. White issued this statement:

“Last night I resigned from the School Board of School District Five of Lexington and Richland Counties. I felt that it was the only action that I could take to express the serious nature of my objection to the way our Board has decided to conduct the public’s business. My fellow Board members signed a secret settlement agreement with Dr. Melton to terminate the Superintendent’s Contract without a public vote. They wanted to present the false façade that she had resigned and keep it from the public until after the school year adjourned, ostensibly to avoid the criticism they would receive for their actions. I refused to sign the agreement.

The truth is that Mr. Loveless, Ms. Gardner, and Ms. Huddle forced Dr. Melton to resign. I witnessed the hostile and abusive work environment these three created for her that would make it impossible for any Superintendent to succeed. Then they demanded that Mrs. Melton, the Superintendent of the Year, resign. There was no basis for terminating her employment. I felt that this was wrong, unfair, and not in the best interests of our District, community, teachers, and students.

This action should have been voted on in public rather than misleading the public about her departure. Ending the employment of the one person that the Board has the authority to hire and fire should take place with a public vote that lets the public know what is happening. When we hire a superintendent, we do it in public, but these board members wanted to get rid of the State Superintendent of the Year in secret.

Transparency means conducting the public's business in public – all the time – not when it suits. It means not trying to cover up actions to create a narrative or advance a private agenda. As elected officials, we owe that obligation. I have worked for years on this Board for the public. Unfortunately, I do not believe that I can solve this problem serving on this Board and don't want to preside over the damage to School District Five that this Board is creating.

Ed White”

25. After the meeting on June 14, 2021, the Board Chair stated that Dr. Melton had enough votes to keep her job if she wanted to stay. This statement by the Board Chair is evidence that there had been a straw vote taken. Such a vote constitutes a violation of the Freedom of Information Act and Open Meetings law.

26. The Board Chair, in a deliberate attempt to mislead the public and respond to the criticism of the Board of Trustees, stated that Dr. Melton resigned of her own free will or words to that affect. This statement published by the press was deliberately false. The Board Chair acted “willfully and dishonestly” by making this statement.

27. The actions of the members of School District 5 Board of Trustees for Lexington and Richland Counties, except for former Trustee White, by their deliberate and repeated actions were willful violations of South Carolina law. They were done in “bad faith” and with “corrupt

intent.” They constituted the common law crime of misconduct in office. The South Carolina Supreme Court held in State v. Hess 279 SC 14, 201 SE 2d 547 (1983). “This crime occurs when duties imposed by law have not been properly and faithfully discharged.” In the same opinion the Court stated:

“Public officers ... must transact their business frankly and openly in the light of public scrutiny so that the public may know and be able to judge them and their work fairly.” “... we hold that even officials operating in secrecy must be at the same time and in some manner accountable.”

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

28. Each and every allegation set forth above is incorporated herein by reference as fully as if repeated.

29. On information and belief, Defendant School District 5 of Lexington and Richland Counties has repeatedly violated the Freedom of Information Act.

30. On information and belief, Plaintiff is entitled to a declaratory judgment entered by this Honorable Court which includes the equitable relief of an injunction requiring all Board of Trustees and Meetings of Board Officer to be conducted openly and in strict compliance with the laws of South Carolina, including the Freedom of Information Act.

31. On information and belief, the Court’s injunction entered by this Honorable Court should require Defendant to pay a civil fine as authorized by §30-4-110(F) of the South Carolina Code of Laws.

32. On information and belief, the said injunction should include the requirement that Plaintiff be awarded attorneys’ fees and costs in bringing and prosecuting this action pursuant to §30-4-100(B) of the South Carolina Code of Laws.

WHEREFORE, Plaintiff seeks the equitable relief set forth herein, the award of attorneys' fees and costs, an initial hearing within ten days of service on all parties pursuant to §30-4-100(A), and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/ J.C. Nicholson, III
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***Attorneys for the Plaintiff Paul Roy
Osmundson***

Columbia, South Carolina

July 23, 2021

From: Katrina Goggins <kgoggins@lexrich5.org>
Date: Wed, May 19, 2021 at 7:23 PM
Subject: Re: Request for meeting notification, agenda
To: Osmundson, Paul <posmundson@thestate.com>
Cc: Marchant, Bristow <bmarchant@thestate.com>, Brian Tolley <btolley@thestate.com>, Communications Office <communications@lexrich5.org>

Paul:

This email is in response to an FOIA request for the following:

Under the state's Freedom of Information Act, we're asking to be notified of the times, dates and places of those meetings and to be provided the agendas. Please send the notifications and agendas to Bristow Marchant and me. You can send them via email. My email address is posmundson@thestate.com, and Bristow's is bmarchant@thestate.com.

It is the District's understanding that our Board Officers meetings are not committee meetings and thus do not fit the definition of a "public meeting" under SCFOIA. Therefore, there are no agendas or public postings of their meetings, and no notification of the meetings are required under the law. The District would like to also offer that the meetings times, dates and locations vary based on need and availability of the three Board Officers and the Superintendent. Unlike board meeting schedules for the school year, Board Officer meetings are not posted, voted on by the full board or scheduled in advance for the school year.

Please accept this as our final determination regarding your FOIA request. The district makes every good-faith effort to respond fully to SCFOIA requests.

Regards,



Katrina Goggins

Director of Communications

School District Five of Lexington & Richland Counties

o: 803.476.8118 c: 803.309.0084

www.lexrich5.org



Pursuing Excellence for Tomorrow's Challenges.

----- Forwarded message -----

From: Osmundson, Paul <posmundson@thestate.com>

Date: Wed, May 5, 2021 at 10:47 AM

Subject: Request for meeting notification, agenda

To: <jhammond@lexrich5.org>, Katrina Goggins <kgoggins@lexrich5.org>

Cc: Marchant, Bristow <bmarchant@thestate.com>, Brian Tolley <btolley@thestate.com>

Good morning, Katrina and Jan. While I have enjoyed working with Katrina in the past, I don't think I've ever met Jan. I am Paul Osmundson, an editor at The State Media Co., aka The State newspaper.

It's my understanding that a committee of officers of the Lexington-Richland 5 school board meets twice a month. I've been told that the committee meets the week prior to the regular school board meeting.

Under the state's Freedom of Information Act, we're asking to be notified of the times, dates and places of those meetings and to be provided the agendas. Please send the notifications and agendas to Bristow Marchant and me. You can send them via email. My email address is posmundson@thestate.com, and Bristow's is bmarchant@thestate.com.

Thanks! If you have any questions, please contact me via email or at 803-230-1428.

Sincerely,

Paul Osmundson
803-230-1428



Edward White <ewhite@lexrich5.org>

Fwd: Agenda Items Request

1 message

Edward White <ewhite@lexrich5.org>

Tue, Feb 2, 2021 at 2:46 PM

To: Janis Hammond <jhammond@lexrich5.org>, Kenneth Loveless <kloveless@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Matt Hogan <mhogan@lexrich5.org>, Rebecca Hines <rhines@lexrich5.org>, Cathy Huddle <chuddle@lexrich5.org>

Cc: Christina Melton <cmelton@lexrich5.org>

Bcc: ed.white@nelsonmullins.com

Attachment #1, pg. 1 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ed White

Mrs. Hammond,

I would like to make the following agenda item requests for our next meeting:

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.

1. Financial Relationship of Ken Loveless with a Vendor and Recusal Requirements - this was explained in the motion I made previously in our January 25, 2021 meeting.

2. Meeting Procedure and Streamling Meetings - I would like to ask we spend no more than a minute or two on confirming minutes. If a board member has multiple edits to the minutes then perhaps the board member can bring a copy of the minutes with the edits written in for us to review in advance of the meeting and we quickly vote. I am asking that you publicly discuss and clarify whether the other board officers are allowed to call a person out of order when you are presiding as the Chair. Specifically, I would like you to address Mr. Loveless calling me out of order for "pontificating." I am aware of no such rule of order under Robert's Rules of Order. In fact, in our August 24, 2021 meeting, Mr. Loveless made this same statement as a point of order and he was ruled out of order by Mr. Cates because there was no such point of order in parliamentary procedure. You can see this discussion at time 14.57 in the link below in the video of our August 24, 2021 meeting. Additionally, I am repeatedly interrupted while speaking by Nicki Gardner while she attempts to rebut or refute my statements before I finish speaking. You need to ensure all board members follow proper board procedure and that you call all board members out of order when they fail to follow procedure. This includes the other board officers.

3. Requirement that Board Officers Meetings be Open to the Public - Someone forwarded me the attached Attorney General Opinion dated April 26, 2019 after seeing my request at the January 25, 2021 meeting to have the Board officer meetings voluntarily made public. From the statutes and cases cited in this opinion it is unequivocal that: (i) a school board is a public body, (ii) a committee of a school board is a public body, (iii) board officers are a committee because they are appointed by the board to carry out specific functions of the board (see committee definition from Oxford Dictionary), (iv) if board officers meet to discuss district business, or receive district information the meeting is a public meeting that has to be open to the public, and (v) the board officers meet with the Superintendent to discuss district information and receive district information and the meetings need to be open to the public. I understand our legal counsel was asked her opinion in real time in our January 25, 2021 meeting if the board officers meetings had to be public and she said in her opinion that answer was no. However, based on the information in this Attorney General's opinion, I disagree with that conclusion and, in fairness to her, she probably had not analyzed this issue completely. I am asking we get legal advice based on the opinion and the express language of the statute. Unless there is a specific statutory exception that applies to board officer meetings I think this is an absolute obligation of the Board. I note also this opinion states a public body cannot ignore this obligation.

4. Procurement of legal fees- I have never served on a board where the board officers retain legal counsel directly. Every board that I have served on, to my knowledge, was provided legal counsel by the Superintendent. I personally do not have a problem with the board using Andrea White as she has worked for the District and the Board many times. However, I think it is threatening to the Superintendent when board officers retain the counsel and bring counsel into the meeting and there is no coordination with the Superintendent which happened in our December 14, 2020 meeting. Who retained Andrea White for the Board? What authority did the person have to retain counsel? Who signed the engagement letter? How do the board members who are not board officers get their legal questions answered? On January 6, 2021, I sent you an email asking that the board meet with legal counsel to discuss the legal implications of Mr. Loveless' demand in his email dated January 5, 2021 to have all information in the Superintendent's possession about candidates for job positions with the district. I understand there are some legal concerns about the type of information that the district may disclose to the board and I wanted the opportunity to ask my questions directly to legal counsel at a board meeting. Instead, my request was ignored and in our board packet for the January 25, 2021 meeting, I received almost 80 pages of documents related to our CFO candidate (which I assume was the result of Mr. Loveless' demand). Are the board officers using legal counsel for their own personal requests while excluding other board member requests? If so, can the rest of us on the board retain our own counsel and have that counsel send their bills to the District. I would like to request that these answers be provided to the full board.

RECORD 013

5. Ken Loveless' Demand to Inspect Piney Woods School - I am requesting a public discussion of Mr. Loveless' continued demands that he be allowed to oversee the construction of Piney Woods Elementary School to deal with the multitude of issues raised by his actions (his most recent requests were made in his emails of January 6, 2021 and January 20, 2021). The new board members may not be aware but we dealt with a multitude of issues last year (his actions are outside of a board member's role, create potential liability for the District, he disparages prior construction projects and prior boards involved in construction without having direct knowledge of the circumstances, the inaccurate information in his assessments, the fact he deliberately mislead the board (in a written email) about the construction project and he mislead the board and the public (in our recorded September 14, 2021 meeting) in a manner that disparaged the parties involved in the construction project). I will outline these issues and providing the information to the board in a separate email. In addition, Mr. Loveless if required to recuse himself completely from the Piney Woods project discussions pursuant to the Ethics Opinion addressed to him and dated September 25, 2020 (which is the topic for agenda request #1. above).

Please do not respond to this email as this needs to be discussed in our public meeting.

Thank you,

Ed

Time 14.57 August 24, 2020 Meeting Action Agenda Part 2, https://www.youtube.com/watch?v=Rz4LwOK5L9M&list=PLI9eR_8HyUjCmiuuAscQorovwTB0vb4y5&index=7&t=1329s

2 attachments

 **AG Opinion Board Committee Meetings.pdf**
4915K

 **Public Body SC Code 30-4-20.pdf**
776K

Attachment #1, pg. 2 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member

Ed White
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

August 26, 2019

Craig Witherspoon, Ed.D.
Superintendent
Richland One School District
1616 Richland Street
Columbia, South Carolina 29201

Attachment ^{#1, pg. 5} is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White

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 Superintendent Witherspoon:

We understand from your letter to Attorney General Alan Wilson you seek an opinion of this Office concerning section 30-4-80(E) of the South Carolina Code (Supp. 2018). By way of background, you provide the following information as stated in your letter:

Recently, an individual made the following request: *"Please add me to your list to notify regarding times, dates, places and agenda of Richland County School District One Board public meetings including scheduled, rescheduled, or called Meetings, Work Sessions, Retreats and Committee Meetings."*

Currently, we provide notice in accordance with § 30-4-80(A) of the South Carolina Code of Laws. Further, we understand the definition of a "meeting" as defined by the state Freedom of Information Act (FOIA) criteria. However, committee meetings have not been not [sic] considered a "meeting" as outlined in § 30-4-20(D) in that they do not require "convening of a quorum of the constituent membership of a public body." Additionally, work sessions, retreats, and committee meetings may be treated as meetings but may be considered closed meetings as outlined in §30-4-70(a)(1-5).

Accordingly, you seek an opinion of this Office as to "whether 'Committee Meetings' should be considered a 'meeting' as defined by § 30-4-20(D) and whether such meetings would require notification in accordance with § 30-4-80(E), if they are not interpreted as meetings."

Law/Analysis

The South Carolina Freedom of Information Act (FOIA) is contained in sections 30-4-10 et seq. of the South Carolina Code (2007 & Supp. 2018). In interpreting the provisions contained in FOIA, we employ the primary rule of statutory construction, which is to "ascertain

Attachment #1, pg 6 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White

Craig Witherspoon, Ed.D.
Page 2
August 26, 2019

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.

and give effect to the intent of the legislature.” Kerr v. Richland Mem’l Hosp., 383 S.C. 146, 148, 678 S.E.2d 809, 811 (2009) (citations omitted) (internal quotations omitted). The Legislature aptly conveyed its intent in the preamble to FOIA, which states:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (2007). As our South Carolina Supreme Court stated in Brock v. Town of Mount Pleasant, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016), “The essential purpose of FOIA is to protect the public from secret government activity.” (citations omitted) (internal quotations omitted). “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001).

In order to answer your question as to whether FOIA applies to committee meetings, we must first consider whether a committee is a public body for purposes of FOIA. FOIA defines “public” body as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

Attachment #1, pg 7 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ed White

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.

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S.C. Code Ann. § 30-4-20 (2007) (emphasis added).^{*} This provision clearly states school districts are public bodies for purposes of FOIA. Furthermore, as the statute provides, any committee of a public body is likewise a public body for purposes of FOIA.

In Quality Towing, Inc., 345 S.C. 156, 547 S.E.2d 862, as cited previously, our Supreme Court considered the application of FOIA to a committee formed by the city manager for the city of Myrtle Beach to review proposals from wrecker services to provide towing services for the city. The Court conclusively determined the committee was a "public body" under section 30-4-20(a), finding

[t]he fact that the City Manager, and not the City Council, created the Committee and no council member served on the Committee, is not enough to remove the Committee from the definition of "public body" as stated in FOIA. First, it does not matter that the members of the Committee are not members of the parent body. See 1984 S.C. Op Atty Gen., No. 84-281. Second, the Committee was set up to give advice to the City Manager, and ultimately the City Council. It is clear from the minutes of the City Council meeting and the testimony of Thomas Leath, City Manager, the Committee's selection process and recommendation went directly to the City Council.

Furthermore, the legislature amended the definition of "public body" in 1987 by adding the phrase "including committees, subcommittees, advisory committees, and the like of any such body by whatever name known." Clearly, the legislature intended for "advisory" bodies, such as the Committee set up by the City Manager to advise him and the City Council, to be covered by the definition.

Id. at 162, 547 S.E.2d at 865. See also Op. S.C. Att'y Gen., 2013 WL 1931657 (S.C.A.G. Apr. 30, 2013) ("It is firmly established that a committee or other body formed to give advice to a government body or a public official is a 'public body' subject to FOIA."). While we do not know the purpose or the function of the committee you reference in your letter, we presume this committee was created by the Richland County School District One Board of Commissioners (the "Board").^{*} The Board, as the governing body for a school district, is clearly a public body under section 30-4-20(a).^{*} Therefore, any committee of the Board is a public body and subject to FOIA.

Section 30-4-80 of the South Carolina Code (Supp. 2018) contains the notice requirements for public bodies. As you mentioned in your letter, subsection (E) of this provision requires:

All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called,

Attachment #1, pg 8 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ed White

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.

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and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

S.C. Code Ann. § 30-4-80(E).

In your letter, you indicate the Board takes the position committee meetings are not meetings for purposes of the notice requirements under FOIA because they do not constitute a "convening of a quorum of the constituent membership" We understand you are applying the quorum requirement of the Board to the committee. We believe this interpretation is contrary to the legislative intent as evidenced by the language used in the statute.

FOIA defines "meeting" as "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." S.C. Code Ann. § 30-4-20(d) (2007). FOIA provides a "quorum" "unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body." S.C. Code Ann. § 30-4-20(e) (2007) (emphasis added).

If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.

*1 quorum of committee
2 meet
3 discuss to advise must be noticed as a public meeting*

Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 525-26, 642 S.E.2d 751, 754 (2007) (citations omitted) (internal quotations omitted). As we explained above, the committee itself would be considered a public body. According to the plain language used in section 30-4-20(e), the quorum requirement for a meeting covered under FOIA applies the public body. While this committee was formed by the Board, also a public body for purposes of FOIA, if the committee has a quorum of its members and the committee convenes to discuss or act upon a matter over which the committee has supervision, control, jurisdiction or advisory power then the committee must provide notice as required under section 30-4-80.

Our interpretation is consistent with prior opinions of this Office. In 2002, this Office considered whether a committee formed by the Town of Mount Pleasant must be advertised as a town council meeting when a quorum of council members attend the committee meeting. Op. S.C. Att'y Gen., 2002 WL 31341811 (S.C.A.G. Aug. 19, 2002). While this opinion addressed a slightly different issue than you pose to us, a portion of that opinion pertaining specifically to committees is relevant. Initially, we agreed with the town attorney's assessment that committees formed by the town council are public bodies for purposes of FOIA. Id.

As Mr. Young advised, "Mount Pleasant Town Council and all our committees are considered public bodies which are subject to the freedom of

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Attachment #1, pg. 9 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White
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.

information act and requirements thereof.” We agree with Mr. Young. This Office has so advised for many years, long before the FOIA was amended expressly to reflect such requirement. See e.g., Op. Atty. Gen., July 28, 1983; Op. Atty. Gen., Op. No. 91-42 (June 28, 1991); Op. Atty. Gen., Op. No. 88-5 (January 14, 1988); Op. Atty. Gen., Op. No. 84-125 (October 26, 1984); Op. Atty. Gen., Op. No. 84-64 (June 1, 1984).

Id. While addressing whether the committee meeting was a “meeting” under FOIA, we stated:

To our knowledge, no court in South Carolina has ever addressed the novel question raised here: whether, for purposes of the FOIA, notice of a full council meeting is required if the committee members, in calling a meeting of the committee, are aware that non-committee members may be in attendance and that, by such attendance, a quorum of the full body will be created where council business is discussed. The FOIA, of course, defines a “meeting” as a convening of the public body - in this instance, the committee itself - to “discuss or act upon” matters within that body’s subject matter or jurisdiction.

All committee
has to do is
meet to
discuss a
District Matter
Id.

We made a similar finding in a 2006 opinion. Op. S.C. Att’y Gen., 2006 WL 1574910 (S.C.A.G. 2006). In that opinion, we discussed whether FOIA applied to a political party caucus of the South Carolina House of Representatives. After concluding a party caucus was public body subject to FOIA, we addressed the quorum requirement. Id. Referring to the caucus as a public body, we stated:

Such a conclusion is not dependent upon the Majority Caucus gathering in sufficient numbers to constitute a quorum of the entire House of Representatives. While in this situation, the Majority Caucus members constitute a majority of the House, and we have concluded that a social gathering of a majority of membership in certain circumstances may constitute a “meeting” of the “public body,” Op. S.C. Atty. Gen., Op. No. 83-55, (August 8, 1983), it is our opinion that the Majority Caucus is itself a “public body” for purposes of FOIA. See, Weston v. Carolina Research and Development Foundation, supra.

Id. Accordingly, we are of the opinion that so long as the committee has a quorum of its members in attendance, a meeting of the committee is a meeting for purposes of FOIA.

In regard to section 30-4-80 cited above and referenced in your letter, this Office continually advised “with very few exceptions, all meetings held by a public body are to be open to the public and media.” Op. S.C. Att’y Gen., 1989 WL 406201 (S.C.A.G. Oct. 11, 1989). Moreover, we noted the requirements under section 30-4-80 “must be liberally construed to carry

2 of 3
Board officers
present =
public
meeting

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Attachment #1, pg.10 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White
pursuant to South Carolina Code
Ann. Section 30-4-90(a)(4)
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out their legislative purpose to adequately inform the public. These requirements are mandatory and may not be ignored by a public body. The section requires overt and affirmative action by the public body to fulfill the notice requirements." Id. (citations omitted). Accordingly, we advise the Board that the committees it creates to provide advice or perform any other governmental function must comply with FOIA, including the notice requirements found in section 30-4-80.

Your letter also mentions that the Board's work session, retreats, and committee meetings may be treated as meetings, but may be considered closed meeting as outline in section 30-4-70(a)(1)-(5) of the South Carolina Code (2007). Please be advised that "meeting" for purposes of FOIA is broadly defined. In Lambries v. Saluda County Council, 409 S.C. 1, 14-15, 760 S.E.2d 785, 792 (2014), our Supreme Court described meeting as follows:

"Under an open meetings law, a meeting is a gathering of a quorum or more members of a governing body at which members discuss, decide, or receive information as a group on issues relating to the official business of the body . . . A meeting is not limited to gatherings at which action is taken by a governing body. Deliberative gatherings are included as well, and deliberation in this context connotes not only collective decision-making but also the collective acquisition and exchange of facts in preparation for the final decision."

(quoting 62 C.J.S. Municipal Corporations § 308 (2011)).

In Braswell v. Roche, 299 S.C. 181, 183, 383 S.E.2d 243, 244 (1989), the Supreme Court considered whether a meeting held by the Newberry County Board of Education constituted a meeting for purposes of FOIA. The Supreme Court explained "[a]ccording to the Board, it met only to receive information from its administrative staff regarding matters over which it had 'supervision, control, jurisdiction or advisory power.' The Board denies that it convened to 'discuss or act upon' such matters." Id. at 182, 383 S.E.2d at 244. However, the Court found

the nature of items on the agenda, together with the expressed intent to "go over each piece of information," necessarily entailed Board discussion of matters over which it had "supervision, control, jurisdiction or advisory power" involving Bush River School. Therefore, this Court holds that the convening of the Board on April 7, 1987, was within the definition of a "meeting" under the FOIA as it existed on that date; and, further, that the Board violated the FOIA by failing to give public notice of the meeting.

Id. at 183, 383 S.E.2d at 244.

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Attachment #1, pg. 11 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White
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.

Numerous opinions of this Office also address the broad meaning of "meeting" under FOIA. In a 1983 opinion quoting a Florida Supreme Court case, we emphasized the purpose of FOIA is

to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meetings conference except to conduct some part of the decisional process behind closed doors. The statute should be construed to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion . . . relates to any matter on which foreseeable action will be taken.

Op. S.C. Att'y Gen., 1983 WL 142726 (S.C.A.G. Aug. 8, 1983). In that opinion, we determined that it did not matter for purposes of FOIA whether a meeting is designated as formal or inform or whether action is taken upon public business or merely discussed, the requirements under FOIA continue to apply. Id. "A public body may not ignore the requirements of the Act when it discusses public business over which it has supervision, control, jurisdiction or advisory power by holding a meeting, as defined, in an informal or social setting." Id.

Moreover, we also caution that the provisions of section 30-4-70(a) should be narrowly construed in order to further the purpose of FOIA to protect the public from secret government activity. Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). In a 1994 opinion, we discussed the use of executive sessions. Op. S.C. Att'y Gen., 1994 WL 136198 (S.C.A.G. Mar. 31, 1994).

The Act itself states that the public policy of this State favors public meetings; thus, there must be "some exceptional reason so compelling" as to override that policy and close a meeting for reasons other than those expressly stated in § 30-4-70. (And those "exceptional reasons" would be very few and very far between.)

The Freedom of Information Act is a statute remedial in nature, which must be liberally construed to carry out the purpose mandated by the legislature. See South Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1976). Any exceptions to the Act's applicability must be narrowly or strictly construed. News and Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co., 223 S.E.2d 580 (N.C. 1976).

Id. As such, the exceptions to the open meeting requirement presented in section 30-4-70(a) should be used sparingly and only when the letter and the spirit of FOIA allow.

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Attachment #1, pg.12 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White
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.

Conclusion

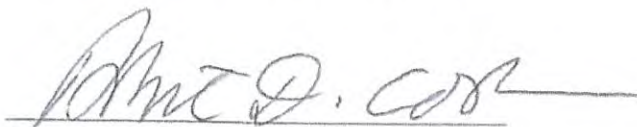
Section 30-4-80(E) of the South Carolina Code requires notice of public meetings be given to "persons or organizations, local news media, or such other news media as may request notification." Pursuant to section 30-4-20, our courts as well as this Office have consistently found that any committee formed by a public body to give advice or conduct any other governmental function is a public body and subject to FOIA. Furthermore, a meeting under FOIA is determined by the presence of a quorum of the members of the public body. Consistent with prior opinions of this Office, we continue to believe a committee formed by a public body is a public body itself and therefore, the quorum requirements are determined based on the membership of the committee, not the public body from which it was formed. Accordingly, a meeting held by a committee formed by the Board is subject to the notice provisions provided in section 30-4-80(E).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General



Minutes
Board Meeting – March 1, 2021

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at Dutch Fork Middle School with the following members present:

Mrs. Rebecca Blackburn Hines
Mrs. Nikki Gardner, Secretary
Mrs. Jan Hammond, Chair
Mr. Matt Hogan (*Absent*)
Mrs. Catherine Huddle
Mr. Ken Loveless, Vice Chair
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended:

Mr. Todd Bedenbaugh, Executive Director of Operations
Mrs. Katrina Goggins, Director, Office of Communications (*Absent*)
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Mrs. Marty Rawls, Chief Finance Officer
Dr. Tamara Turner, Chief Human Resources Officer

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

Mrs. Hammond called the meeting to order at 7:15 p.m. and offered welcoming remarks. Board member, Mr. Ed White, gave the invocation and also led the Pledge of Allegiance.

During the Superintendent's Report, Dr. Melton presented the 2020-2021 School Reentry Overview, Part XII presentation, with no new recommendations. Dr. Harris provided Redistricting Exemptions for 2021-2022. A Flexible Innovative Virtual Education (FIVE) 2021-2022 Update was provided. Lastly, a Human Resources Report was provided which highlighted teacher recruitment efforts.

During public participation, the following students spoke: Savannah Stephens and Laken Robinson. Kim Murphy spoke regarding FOIA violations. Stephanie Lipford spoke regarding reentry and teacher breaks. Debbie Goodman read a teacher's statement. Heather Tucker, Beth Hutchison and Leslie Stiles spoke regarding board decisions and board focus.

Action Agenda

Action as necessary or appropriate on matters discussed in Executive Session.

Discussion Agenda

Proposed FY 2021-2022 Capital Budget.

Discussion and Possible Action regarding the actions of a Trustee in relation to his/her relationships with current and potential District vendors.

The following board members submitted items for the record (attached): Ken Loveless, Ed White, Rebecca Blackburn Hines and Cathy Huddle.

The meeting adjourned at 10:30 p.m.

Record of Voting



**School District Five
of
Lexington and Richland Counties**

Meeting of March 1, 2021

	Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless	White
1. M. Blackburn Hines S. Huddle Approve the agenda							
M. Gardner S. Loveless I move to amend the motion to suspend the rules as stated to allow each board member one (1) minute to speak/comment on board agenda item #13.	N	X	N	A	X	X	N
Vote on original motion	X	X	X	A	X	X	X
2. M. Blackburn Hines S. Huddle Enter Executive Session to discuss: a. Selected employment items (Exhibit A) (Action) b. Selected employment items (Exhibit B) (Information Only) c. Receipt of Legal advice re: Contract for Substitutes	X	X	X	A	X	X	X
3. M. Huddle S. Blackburn Hines I move that we approve making Piney Woods Elementary School a School of Choice for the 2021-2022 school year and that we put on the agenda in the next two meetings a full review of the School of Choice program.	X	X	X	A	X	X	X
4. M. Gardner S. Blackburn Hines I move that we approve the Tier I recommendation: First grade through 12 th grade with high school (9-12) having a modified model of instruction for the Flexible Innovative Virtual Education program (FIVE) for 2021-2022.	X	X	X	A	X	X	X

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

5. M. Gardner S. Blackburn Hines Approve the minutes of the February 8, 2021 board meeting.							
M. Huddle S. Loveless I move to amend the minutes of the February 8, 2021 Board Meeting and exclude the first attachment submitted by Mr. White because the attachment exceeds the ten (10) page limit rule by seven (7) pages.	N	X	X	A	X	X	N
Vote on original motion	X	X	X	A	X	X	X
6. M. Loveless S. Gardner I move that we approve the selected employment items as discussed in Executive Session under Exhibit A.	X	X	X	A	X	X	X
7. M. Huddle S. Gardner I move that due to the issues with the daily rates of pay for some substitute teachers, payments exceeding the contract rates per Exhibit A of the contract, that we ratify the contract through June 30, 2021 per Procurement Code section 1240.1 and that furthermore since the ratification is needed we direct the superintendent to follow Procurement Code section 1240.2 "Corrective Action" and present the required information to the board at our next meeting. <i>(No vote taken)</i>	-	-	-	A	-	-	-
M. Huddle S. Gardner <i>(Modified Motion)</i> I move that we continue our existing processes as it relates to contracting for substitute teachers pending more information on that process from the superintendent or her staff at the first board meeting of April.	X	X	X	A	X	X	X
8. M. Huddle S. Gardner Adjourn at 10:30 p.m.	X	X	X	A	X	X	X
	Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless	White

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

Paul Roy Osmundson,

Plaintiff,

v.

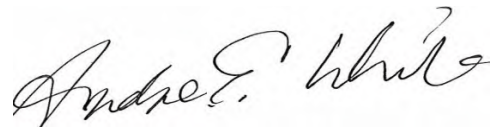
School District 5 of Lexington and Richland
Counties,

Defendant.

Case No.: 2021-CP-40-03694

ACCEPTANCE OF SERVICE

I, Andrea E. White, as Attorney for the Defendant, School District Five of Lexington and Richland Counties, hereby accept service of the Summons and Complaint in the above-captioned matter. In my capacity as legal counsel for the Defendant, School District Five of Lexington and Richland Counties, I hereby waive formal service of process on behalf of my clients effective **July 28, 2021**.



Andrea E. White (SC Bar No. 76392)
WHITE & STORY, LLC
P.O. Box 7036
Columbia, SC 29202
T: 803.814.0993
F: 803.814.1183
awhite@sodacitylaw.com

July 28, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Paul Roy Osmundson,) Civil Action No.: 2021-CP-40-03694
))
Plaintiff,)

v.)

AMENDED SUMMONS

School District 5 of Lexington and)
Richland Counties,)
))
Defendant.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HERBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to the Amended Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

By: s/ J.C. Nicholson, III
Joel W. Collins, Jr.
Bar Number: 1341
jcollins@collinsandlacy.com
J.C. Nicholson
Bar Number: 70324
jcnicholson@collinsandlacy.com
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

Columbia, South Carolina
August 16, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Paul Roy Osmundson,	)	Civil Action No.: 2021CP4003694
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED
	)	COMPLAINT
School District 5 of Lexington and	)	
Richland Counties,	)	
	)	
Defendant.	)	(NON-JURY)
	)	

COMES NOW, Plaintiff, Paul Roy Osmundson, seeking a declaratory judgment pursuant to §15-53-20 of the South Carolina Code of Laws. Plaintiff would show unto this Honorable Court as follows:

PARTIES, JURISDICTION, and VENUE

1. Plaintiff is a citizen and resident of Richland County, South Carolina and the Senior Editor for News at The State Newspaper.
2. Defendant, School District 5 of Lexington and Richland Counties is a body politic created pursuant to §59-17-10 of the South Carolina Code of Laws. It is a “public body” as that term is used in the Public Records Statute, §30-1-20 of the South Carolina Code of Laws and has the authority to sue and be sued in its own name pursuant to §4-1-10 of the South Carolina Code of Laws.
3. The Trustees of Defendant School District 5 of Lexington and Richland Counties administer an annual budget of approximately Two Hundred One Million Six Hundred Ninety-Four Thousand One Hundred Sixty-Six Dollars (\$201,694,166.00) in taxpayer funded revenues.

4. Venue is proper in this Court pursuant to §§ 15-7-20 (2) and 15-7-30 (C) as the events giving rise to this action occurred in Richland County, South Carolina.

5. This action for declaratory and injunctive relief is brought pursuant to §15-53-20 and §30-4-10, *et seq.*, as amended of the South Carolina Code of Laws. The matters alleged herein are justiciable controversies and satisfy the requirements of standing and irreparable harm as provided by the S.C. Freedom of Information Act, specifically, §30-4-100.

FOR A FIRST CAUSE OF ACTION
(Violations of the Freedom of Information Act)

6. On or about May 1, 2021, a South Carolina citizen, Laurene Mensch, requested in writing pursuant to the Freedom of Information Act, §30-4-90, (hereinafter the “FOIA”) “A list of the Board Officer Meetings schedule for 2021; the meetings that have already taken place as well as any that remain. She also requested pursuant to the FOIA the dates/times/locations of the meetings.

7. Meetings of Board Officers of the Defendant consisting of the Chair, the Vice Chair, and the Secretary, are within the scope of the Public Records Act, §30-1-10, *et. seq.* of the South Carolina Code of Laws. The Board Officers attending and participating in such meetings constitute a “public body” as that term is defined in §30-1-10(B) of the South Carolina Code of Laws. That code section extends the requirement of the public records law to any “committees, subcommittees, advisory committees, and the like of any such body by whatever name known and includes any *quasi*-governmental body of the state and its political subdivisions.”

8. School District 5 Meetings of Board Officers fall within the requirements of §30-1-10(B) of the South Carolina Code of Laws.

9. In response to this request, the duly authorized records custodian of the Defendant, exercising the duties described in §30-1-20 of the South Carolina Code of Laws on May 19, 2021 responded to Ms. Mensch as follows:

“The District does not have a record to provide to you, pursuant to the definition of records provided in the SC Freedom of Information Act. In other words, there is no documents/records showing when they met in 2021.

Beyond the requirements FOIA, the District would like to offer the clarification that it is our understanding that our Board Officers meetings are not committee meetings and thus do not fit the definition of a “public meeting” under SC FOIA. Therefore, there are no agendas or public postings of the meetings, and no notification of the meetings are required under the law. The District would like to also offer that the meeting times, dates, and locations vary based on need and availability of the three (3) Board officers and the Superintendent. Unlike Board meeting schedules for the school year, Board officer meetings are not posted, voted on by the full Board, or scheduled in advance of the school year.

Please accept this as our final determination regarding your FOIA request. The District makes every good faith effort to respond fully to SC FOIA requests.”

10. Prior to this email reply to Ms. Mensch on May 19, 2021, the Board of Trustees of School District 5 of Lexington and Richland counties had been advised by one of its members, Trustee Ed White, an experienced member of the South Carolina Bar and a partner in the leading South Carolina law firm, Nelson Mullins Riley & Scarborough, that such Meetings of Board Officers were subject to the public meetings requirement of the law, including §30-4-60 of the South Carolina Code of Laws.

11. On May 5, 2021, Plaintiff Paul Roy Osmundson requested copies of the times, dates, places, and agendas of the Meetings of Board Officers from School District 5 of Lexington and Richland. On May 19, 2021, Plaintiff was informed by School District 5 that no such documents existed for the Meetings of Board Officers. **Exhibit A.**

12. On January 25, 2021, Trustee White moved to add to the Action Agenda of the Board to read, "Requiring Board Officer meetings to be open to the public including live streaming the meeting in accordance with the S.C. Freedom of Information Act." In opposition to the motion and in support of continuing to have Meetings of Board Officers in violation of the afore referenced statutes, the Chair of the Board, Jan Hammond, told Trustee White during the January 25, 2021 meeting, "It is offensive to me that you think that we have to be live streamed for me to be upfront and transparent." She later announced that she would not vote on the original amendment proposed by Trustee White. The Vice-Chair, Ken Loveless, commented that he did not see the need for the amendment and there was no precedent for it. Board Secretary Nikki Gardner, argued that "we have to continue doing this the way we've been doing things."

13. The contemptuous comments by the Chair, Vice-Chair, and Secretary on the transparency and openness of Meetings of Board Officers are illustrations of the need for open and public meeting requirements under South Carolina law.

14. The Board voted 2-5 to deny Trustee White's request to add to the Action Agenda an item requiring that the Meetings of Board Officers be held in public. Both Trustee White and Trustee Rebecca Hines, voted in favor of the amendment to the Action Agenda. The five others voted in opposition.

15. On or about February 8, 2021, Trustee White, again called to the entire Board's attention to the need for Meetings of Board Officers to be open to the public. Trustee White submitted to the Board, the written opinion of the South Carolina Attorney General (hereinafter "AG") dated August 29, 2019 ruling that a similar meeting by a similar body in another South Carolina School District was subject to the statutory open meetings law, also popularly known as

“The Sunshine Act.” This AG opinion cited various opinions of the South Carolina Supreme Court supporting its strong and well-reasoned conclusion. **Exhibit B & Exhibit C.**

16. Upon information and belief, Trustee White also reminded the Board of Trustees of the requirements of §30-4-90 of the South Carolina Code of Laws which requires written minutes of such meetings to include the date, time and place of the meeting, the members present, the substance of all matters proposed, discussed, or decided and any other information that any member of the public requests be included or reflected in the minutes.

17. On March 1, 2021, the Board of Trustees voted to remove the referenced South Carolina Attorney General’s opinion which had been submitted by Trustee White. This decision was made in bad faith and constituted a deliberate attempt by certain other Trustees to eliminate evidence that the Meetings of Board Officers were unlawful and should be open to the public.

Exhibit D.

18. Upon information and belief, Chairwoman Hammond was quoted as saying that Dr. Melton was not forced to resign. This statement is misleading and deceptive. This statement is evidence of the school board’s doing things in secret and not following FOIA. The Trustees of School District 5 of Lexington and Richland Counties were aware of the provision of §30-4-100 of the South Carolina Code of Laws which provides in relevant part, “any citizen of the State may apply to the Circuit Court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter.”

19. On information and belief, certain Trustees of the Board of Trustees of School District 5 of Lexington and Richland Counties, not including Trustee White, secretly negotiated with the former Superintendent, Dr. Christina Melton, and her attorney a termination agreement

ending her employment by the District. It was the desire of these Trustees, not the desire of Dr. Christina Melton, that her employment be terminated.

20. On information and belief, the Board of Trustees of School District 5 of Lexington and Richland Counties, not including Trustee White, conducted secret votes, not on the record, and secret straw votes having to do with the status of the then and now former Superintendent. Such secret votes are in violation of the law of South Carolina.

21. On information and belief, there was never a public vote on the record related to the status of and the termination or so called “resignation” of Superintendent Dr. Christina Melton, as required by law.

22. In defense of their position and practice of having Meetings of Board Officers in violation of the afore referenced statutes, the Vice-Chair of the Board stated “I sometimes have things to say which I do not want to say in public” or words to that effect.

23. This contemptuous comment by the Vice-Chair is proof of his bad faith and an illustration of why there is a statutory open and public meeting requirement under South Carolina law.

24. The other two Board Officers, the Chair and the Secretary, also made similar remarks reflecting their disdain and contempt for the Freedom of Information Act and the open meetings laws of South Carolina. None of the actions by the Board Officers surrounding the Meetings of Board Officers met the FOIA exemption requirements as outlined in §30-4-70, *et. seq.* of the South Carolina Code of Laws.

25. Despite legal advice received from the South Carolina School Board Association and others, the Trustees of Defendant School District, not including Trustee Ed White,

circumvented the Freedom of Information Act by creating standing committees which regularly met without compliance with the Open Meetings Law of the Freedom of Information Act.

26. The Trustees of the School Board, with the exception of Trustee White, deliberately and repeatedly utilized the procedure of going into executive session to discuss and conduct business, where they harassed, insulted and intimidated the superintendent and where they created a “hostile work environment” as described by Trustee White. Such overuse and misuse of executive session was an intentional violation of the “Open Meetings Law” of South Carolina and the Freedom of Information Act.

27. It was the practice of the Board of Trustees, despite objections, to obscure the matters discussed in executive session by voting in open session on items without advising the public the subject of the item. These were deliberate violations of the Freedom of Information Act.

28. At the meeting of Board of Trustees on June 14, 2021 during an executive session, a so called “settlement agreement” was signed by some of the Board Trustees. Trustee White refused to sign it. Trustee White then publicly announced his resignation and left the meeting. Before leaving, Trustee White stated openly and publicly that the officers of the Board of Trustees had created a “hostile work environment that had driven the Superintendent from her job.” He also stated these actions of the other trustees were illegal. Trustee White refused to sign the document terminating Dr. Melton. His integrity is in stark contrast to the other trustees. After the meeting, Mr. White issued this statement:

“Last night I resigned from the School Board of School District Five of Lexington and Richland Counties. I felt that it was the only action that I could take to express the serious nature of my objection to the way our Board has decided to conduct the public’s business. My fellow Board members signed a secret settlement agreement with Dr. Melton to terminate the Superintendent’s Contract without a public vote. They wanted to present the false façade that she had resigned and keep it from the

public until after the school year adjourned, ostensibly to avoid the criticism they would receive for their actions. I refused to sign the agreement.

The truth is that Mr. Loveless, Ms. Gardner, and Ms. Huddle forced Dr. Melton to resign. I witnessed the hostile and abusive work environment these three created for her that would make it impossible for any Superintendent to succeed. Then they demanded that Mrs. Melton, the Superintendent of the Year, resign. There was no basis for terminating her employment. I felt that this was wrong, unfair, and not in the best interests of our District, community, teachers, and students.

This action should have been voted on in public rather than misleading the public about her departure. Ending the employment of the one person that the Board has the authority to hire and fire should take place with a public vote that lets the public know what is happening. When we hire a superintendent, we do it in public, but these board members wanted to get rid of the State Superintendent of the Year in secret.

Transparency means conducting the public's business in public – all the time – not when it suits. It means not trying to cover up actions to create a narrative or advance a private agenda. As elected officials, we owe that obligation. I have worked for years on this Board for the public. Unfortunately, I do not believe that I can solve this problem serving on this Board and don't want to preside over the damage to School District Five that this Board is creating.

Ed White"

29. After the meeting on June 14, 2021, the Board Chair stated that Dr. Melton had enough votes to keep her job if she wanted to stay. This statement by the Board Chair is evidence that there had been a straw vote taken. Such a vote constitutes a violation of the Freedom of Information Act and Open Meetings law.

30. The Board Chair, in a deliberate attempt to mislead the public and respond to the criticism of the Board of Trustees, stated that Dr. Melton resigned of her own free will or words to that affect. This statement was deliberately false. The Board Chair acted "willfully and dishonestly" by releasing this statement to the press.

31. The actions of the members of School District 5 Board of Trustees for Lexington and Richland Counties, except for former Trustee White, by their deliberate and repeated actions

were willful violations of South Carolina law. They were done in “bad faith” and with “corrupt intent.” They constituted the common law crime of misconduct in office. The South Carolina Supreme Court held in State v. Hess, 279 SC 14, 201 SE 2d 547 (1983). “This crime occurs when duties imposed by law have not been properly and faithfully discharged.” In the same opinion the Court stated:

“Public officers ... must transact their business frankly and openly in the light of public scrutiny so that the public may know and be able to judge them and their work fairly.” “... we hold that even officials operating in secrecy must be at the same time and in some manner accountable.”

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

32. Each and every allegation set forth above is incorporated herein by reference as fully as if repeated verbatim.

33. On information and belief, the Board of Trustees of Defendant School District 5 of Lexington and Richland Counties with the exception of Trustee White has repeatedly violated the Freedom of Information Act.

34. On information and belief, Plaintiff is entitled to a declaratory judgment entered by this Honorable Court which includes the equitable relief of an injunction requiring all Board of Trustees and Meetings of Board Officer to be conducted openly and in strict compliance with the laws of South Carolina, including the Freedom of Information Act.

35. On information and belief, this Honorable Court’s Order should require Defendant to pay a civil fine as authorized by §30-4-110(F) of the South Carolina Code of Laws.

36. On information and belief, this Honorable Court’s Order should declare that the Defendant’s handling of the termination, or so called “resignation,” of the District Superintendent on June 14, 2021 was a wilful violation of the Freedom of Information Act.

37. On information and belief, this Honorable Court's Order should include the requirement that Plaintiff be awarded attorneys' fees and costs in bringing and prosecuting this action pursuant to §30-4-100(B) of the South Carolina Code of Laws.

WHEREFORE, Plaintiff seeks the equitable relief set forth herein, the award of attorneys' fees and costs, an initial hearing within ten days of service on all parties pursuant to §30-4-100(A), and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/ J.C. Nicholson, III
Joel W. Collins, Jr., Esquire
Bar Number: 1341
jcollins@collinsandlacy.com
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Columbia, SC 29211
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803.771.4484 (fax)

*Attorneys for the Plaintiff Paul Roy
Osmundson*

Columbia, South Carolina

August 16, 2021

From: **Katrina Goggins** <kgoggins@lexrich5.org>
Date: Wed, May 19, 2021 at 7:23 PM
Subject: Re: Request for meeting notification, agenda
To: Osmundson, Paul <posmundson@thestate.com>
Cc: Marchant, Bristow <bmarchant@thestate.com>, Brian Tolley <btolley@thestate.com>, Communications Office <communications@lexrich5.org>

Paul:

This email is in response to an FOIA request for the following:

Under the state's Freedom of Information Act, we're asking to be notified of the times, dates and places of those meetings and to be provided the agendas. Please send the notifications and agendas to Bristow Marchant and me. You can send them via email. My email address is posmundson@thestate.com, and Bristow's is bmarchant@thestate.com.

It is the District's understanding that our Board Officers meetings are not committee meetings and thus do not fit the definition of a "public meeting" under SCFOIA. Therefore, there are no agendas or public postings of their meetings, and no notification of the meetings are required under the law. The District would like to also offer that the meetings times, dates and locations vary based on need and availability of the three Board Officers and the Superintendent. Unlike board meeting schedules for the school year, Board Officer meetings are not posted, voted on by the full board or scheduled in advance for the school year.

Please accept this as our final determination regarding your FOIA request. The district makes every good-faith effort to respond fully to SCFOIA requests.

Regards,





Katrina Goggins

Director of Communications

School District Five of Lexington & Richland Counties

o: 803.476.8118 c: 803.309.0084

www.lexrich5.org



Pursuing Excellence for Tomorrow's Challenges.

----- Forwarded message -----

From: **Osmundson, Paul** <posmundson@thestate.com>

Date: Wed, May 5, 2021 at 10:47 AM

Subject: Request for meeting notification, agenda

To: <jhammond@lexrich5.org>, Katrina Goggins <kgoggins@lexrich5.org>

Cc: Marchant, Bristow <bmarchant@thestate.com>, Brian Tolley <btolley@thestate.com>

Good morning, Katrina and Jan. While I have enjoyed working with Katrina in the past, I don't think I've ever met Jan. I am Paul Osmundson, an editor at The State Media Co., aka The State newspaper.

It's my understanding that a committee of officers of the Lexington-Richland 5 school board meets twice a month. I've been told that the committee meets the week prior to the regular school board meeting.

Under the state's Freedom of Information Act, we're asking to be notified of the times, dates and places of those meetings and to be provided the agendas. Please send the notifications and agendas to Bristow Marchant and me. You can send them via email. My email address is posmundson@thestate.com, and Bristow's is bmarchant@thestate.com.

Thanks! If you have any questions, please contact me via email or at 803-230-1428.

Sincerely,

Paul Osmundson
803-230-1428



Edward White <ewhite@lexrich5.org>

Fwd: Agenda Items Request

1 message

Edward White <ewhite@lexrich5.org>

Tue, Feb 2, 2021 at 2:46 PM

To: Janis Hammond <jhammond@lexrich5.org>, Kenneth Loveless <kloveless@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Matt Hogan <mhogan@lexrich5.org>, Rebecca Hines <rhines@lexrich5.org>, Cathy Huddle <chuddle@lexrich5.org>

Cc: Christina Melton <csmelton@lexrich5.org>

Bcc: ed.white@nelsonmullins.com

Attachment #1, pg. 1 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ed White

Mrs. Hammond,

I would like to make the following agenda item requests for our next meeting:

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.

1. Financial Relationship of Ken Loveless with a Vendor and Recusal Requirements - this was explained in the motion I made previously in our January 25, 2021 meeting.
2. Meeting Procedure and Streamling Meetings - I would like to ask we spend no more than a minute or two on confirming minutes. If a board member has multiple edits to the minutes then perhaps the board member can bring a copy of the minutes with the edits written in for us to review in advance of the meeting and we quickly vote. I am asking that you publicly discuss and clarify whether the other board officers are allowed to call a person out of order when you are presiding as the Chair. Specifically, I would like you to address Mr. Loveless calling me out of order for "pontificating." I am aware of no such rule of order under Robert's Rules of Order. In fact, in our August 24, 2021 meeting, Mr. Loveless made this same statement as a point of order and he was ruled out of order by Mr. Cates because there was no such point of order in parliamentary procedure. You can see this discussion at time 14:57 in the link below in the video of our August 24, 2021 meeting. Additionally, I am repeatedly interrupted while speaking by Nicki Gardner while she attempts to rebut or refute my statements before I finish speaking. You need to ensure all board members follow proper board procedure and that you call all board members out of order when they fail to follow procedure. This includes the other board officers.
3. Requirement that Board Officers Meetings be Open to the Public - Someone forwarded me the attached Attorney General Opinion dated April 26, 2019 after seeing my request at the January 25, 2021 meeting to have the Board officer meetings voluntarily made public. From the statutes and cases cited in this opinion it is unequivocal that: (i) a school board is a public body, (ii) a committee of a school board is a public body, (iii) board officers are a committee because they are appointed by the board to carry out specific functions of the board (see committee definition from Oxford Dictionary), (iv) if board officers meet to discuss district business, or receive district information the meeting is a public meeting that has to be open to the public, and (v) the board officers meet with the Superintendent to discuss district information and receive district information and the meetings need to be open to the public. I understand our legal counsel was asked her opinion in real time in our January 25, 2021 meeting if the board officers meetings had to be public and she said in her opinion that answer was no. However, based on the information in this Attorney General's opinion, I disagree with that conclusion and, in fairness to her, she probably had not analyzed this issue completely. I am asking we get legal advice based on the opinion and the express language of the statute. Unless there is a specific statutory exception that applies to board officer meetings I think this is an absolute obligation of the Board. I note also this opinion states a public body cannot ignore this obligation.
4. Procurement of legal fees- I have never served on a board where the board officers retain legal counsel directly. Every board that I have served on, to my knowledge, was provided legal counsel by the Superintendent. I personally do not have a problem with the board using Andrea White as she has worked for the District and the Board many times. However, I think it is threatening to the Superintendent when board officers retain the counsel and bring counsel into the meeting and there is no coordination with the Superintendent which happened in our December 14, 2020 meeting. Who retained Andrea White for the Board? What authority did the person have to retain counsel? Who signed the engagement letter? How do the board members who are not board officers get their legal questions answered? On January 6, 2021, I sent you an email asking that the board meet with legal counsel to discuss the legal implications of Mr. Loveless' demand in his email dated January 5, 2021 to have all information in the Superintendent's possession about candidates for job positions with the district. I understand there are some legal concerns about the type of information that the district may disclose to the board and I wanted the opportunity to ask my questions directly to legal counsel at a board meeting. Instead, my request was ignored and in our board packet for the January 25, 2021 meeting, I received almost 80 pages of documents related to our CFO candidate (which I assume was the result of Mr. Loveless' demand). Are the board officers using legal counsel for their own personal requests while excluding other board member requests? If so, can the rest of us on the board retain our own counsel and have that counsel send their bills to the District. I would like to request that these answers be provided to the full board.

2/8/2021,

Lexington/Richland School Dist. 5 Mail - Fwd: Agenda Items Request

5. Ken Loveless' Demand to Inspect Piney Woods School - I am requesting a public discussion of Mr. Loveless' continued demands that he be allowed to oversee the construction of Piney Woods Elementary School to deal with the multitude of issues raised by his actions (his most recent requests were made in his emails of January 6, 2021 and January 20, 2021). The new board members may not be aware but we dealt with a multitude of issues last year (his actions are outside of a board member's role, create potential liability for the District, he disparages prior construction projects and prior boards involved in construction without having direct knowledge of the circumstances, the inaccurate information in his assessments, the fact he deliberately mislead the board (in a written email) about the construction project and he mislead the board and the public (in our recorded September 14, 2021 meeting) in a manner that disparaged the parties involved in the construction project). I will outline these issues and providing the information to the board in a separate email. In addition, Mr. Loveless if required to recuse himself completely from the Piney Woods project discussions pursuant to the Ethics Opinion addressed to him and dated September 25, 2020 (which is the topic for agenda request #1. above).

Please do not respond to this email as this needs to be discussed in our public meeting.

Thank you,

Ed

Time 14.57 August 24, 2020 Meeting Action Agenda Part 2, https://www.youtube.com/watch?v=Rz4LwOK5L9M&list=PLI9eR_8HyUjCmiiuAscQorovwTB0vb4y5&index=7&t=1329s

2 attachments

 **AG Opinion Board Committee Meetings.pdf**
4915K

 **Public Body SC Code 30-4-20.pdf**
776K

Attachment #1, pg. 2 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White

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

August 26, 2019

Craig Witherspoon, Ed.D.
Superintendent
Richland One School District
1616 Richland Street
Columbia, South Carolina 29201

Attachment #1, pg. 5 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White

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 Superintendent Witherspoon:

We understand from your letter to Attorney General Alan Wilson you seek an opinion of this Office concerning section 30-4-80(E) of the South Carolina Code (Supp. 2018). By way of background, you provide the following information as stated in your letter:

Recently, an individual made the following request: *"Please add me to your list to notify regarding times, dates, places and agenda of Richland County School District One Board public meetings including scheduled, rescheduled, or called Meetings, Work Sessions, Retreats and Committee Meetings."*

Currently, we provide notice in accordance with § 30-4-80(A) of the South Carolina Code of Laws. Further, we understand the definition of a "meeting" as defined by the state Freedom of Information Act (FOIA) criteria. However, committee meetings have not been not [sic] considered a "meeting" as outlined in § 30-4-20(D) in that they do not require "convening of a quorum of the constituent membership of a public body." Additionally, work sessions, retreats, and committee meetings may be treated as meetings but may be considered closed meetings as outlined in §30-4-70(a)(1-5).

Accordingly, you seek an opinion of this Office as to "whether 'Committee Meetings' should be considered a 'meeting' as defined by § 30-4-20(D) and whether such meetings would require notification in accordance with § 30-4-80(E), if they are not interpreted as meetings."

Law/Analysis

The South Carolina Freedom of Information Act (FOIA) is contained in sections 30-4-10 et seq. of the South Carolina Code (2007 & Supp. 2018). In interpreting the provisions contained in FOIA, we employ the primary rule of statutory construction, which is to "ascertain

Attachment #1, pg 6 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White

Craig Witherspoon, Ed.D.

Page 2

August 26, 2019

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.

and give effect to the intent of the legislature.” Kerr v. Richland Mem’l Hosp., 383 S.C. 146, 148, 678 S.E.2d 809, 811 (2009) (citations omitted) (internal quotations omitted). The Legislature aptly conveyed its intent in the preamble to FOIA, which states:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (2007). As our South Carolina Supreme Court stated in Brock v. Town of Mount Pleasant, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016), “The essential purpose of FOIA is to protect the public from secret government activity.” (citations omitted) (internal quotations omitted). “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001).

In order to answer your question as to whether FOIA applies to committee meetings, we must first consider whether a committee is a public body for purposes of FOIA. FOIA defines “public” body as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

Attachment #1, pg 7 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White

Craig Witherspoon, Ed.D.
Page 3
August 26, 2019

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.

S.C. Code Ann. § 30-4-20 (2007) (emphasis added). This provision clearly states school districts are public bodies for purposes of FOIA. Furthermore, as the statute provides, any committee of a public body is likewise a public body for purposes of FOIA.

In Quality Towing, Inc., 345 S.C. 156, 547 S.E.2d 862, as cited previously, our Supreme Court considered the application of FOIA to a committee formed by the city manager for the city of Myrtle Beach to review proposals from wrecker services to provide towing services for the city. The Court conclusively determined the committee was a "public body" under section 30-4-20(a), finding

[t]he fact that the City Manager, and not the City Council, created the Committee and no council member served on the Committee, is not enough to remove the Committee from the definition of "public body" as stated in FOIA. First, it does not matter that the members of the Committee are not members of the parent body. See 1984 S.C. Op Atty Gen., No. 84-281. Second, the Committee was set up to give advice to the City Manager, and ultimately the City Council. It is clear from the minutes of the City Council meeting and the testimony of Thomas Leath, City Manager, the Committee's selection process and recommendation went directly to the City Council.

Furthermore, the legislature amended the definition of "public body" in 1987 by adding the phrase "including committees, subcommittees, advisory committees, and the like of any such body by whatever name known." Clearly, the legislature intended for "advisory" bodies, such as the Committee set up by the City Manager to advise him and the City Council, to be covered by the definition.

Id. at 162, 547 S.E.2d at 865. See also Op. S.C. Att'y Gen., 2013 WL 1931657 (S.C.A.G. Apr. 30, 2013) ("It is firmly established that a committee or other body formed to give advice to a government body or a public official is a 'public body' subject to FOIA."). While we do not know the purpose or the function of the committee you reference in your letter, we presume this committee was created by the Richland County School District One Board of Commissioners (the "Board"). The Board, as the governing body for a school district, is clearly a public body under section 30-4-20(a). Therefore, any committee of the Board is a public body and subject to FOIA.

Section 30-4-80 of the South Carolina Code (Supp. 2018) contains the notice requirements for public bodies. As you mentioned in your letter, subsection (E) of this provision requires:

All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called,

Attachment ^{#1, pg 8} is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ed White

Craig Witherspoon, Ed.D.

Page 4

August 26, 2019

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.

and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

S.C. Code Ann. § 30-4-80(E).

In your letter, you indicate the Board takes the position committee meetings are not meetings for purposes of the notice requirements under FOIA because they do not constitute a "convening of a quorum of the constituent membership." We understand you are applying the quorum requirement of the Board to the committee. We believe this interpretation is contrary to the legislative intent as evidenced by the language used in the statute.

FOIA defines "meeting" as "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." S.C. Code Ann. § 30-4-20(d) (2007). FOIA provides a "quorum" "unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body." S.C. Code Ann. § 30-4-20(e) (2007) (emphasis added).

If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.

*1) quorum of committee
2) meet
3) Discuss to advise must be noticed as a public meeting*

Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 525-26, 642 S.E.2d 751, 754 (2007) (citations omitted) (internal quotations omitted). As we explained above, the committee itself would be considered a public body. According to the plain language used in section 30-4-20(e), the quorum requirement for a meeting covered under FOIA applies the public body. While this committee was formed by the Board, also a public body for purposes of FOIA, if the committee has a quorum of its members and the committee convenes to discuss or act upon a matter over which the committee has supervision, control, jurisdiction or advisory power then the committee must provide notice as required under section 30-4-80.

Our interpretation is consistent with prior opinions of this Office. In 2002, this Office considered whether a committee formed by the Town of Mount Pleasant must be advertised as a town council meeting when a quorum of council members attend the committee meeting. Op. S.C. Att'y Gen., 2002 WL 31341811 (S.C.A.G. Aug. 19, 2002). While this opinion addressed a slightly different issue than you pose to us, a portion of that opinion pertaining specifically to committees is relevant. Initially, we agreed with the town attorney's assessment that committees formed by the town council are public bodies for purposes of FOIA. Id.

As Mr. Young advised, "Mount Pleasant Town Council and all our committees are considered public bodies which are subject to the freedom of

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Attachment #1, 1999 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ed White 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.

information act and requirements thereof.” We agree with Mr. Young. This Office has so advised for many years, long before the FOIA was amended expressly to reflect such requirement. See e.g., Op. Atty. Gen., July 28, 1983; Op. Atty. Gen., Op. No. 91-42 (June 28, 1991); Op. Atty. Gen., Op. No. 88-5 (January 14, 1988); Op. Atty. Gen., Op. No. 84-125 (October 26, 1984); Op. Atty. Gen., Op. No. 84-64 (June 1, 1984).

Id. While addressing whether the committee meeting was a “meeting” under FOIA, we stated:

To our knowledge, no court in South Carolina has ever addressed the novel question raised here: whether, for purposes of the FOIA, notice of a full council meeting is required if the committee members, in calling a meeting of the committee, are aware that non-committee members may be in attendance and that, by such attendance, a quorum of the full body will be created where council business is discussed. The FOIA, of course, defines a “meeting” as a convening of the public body - in this instance, the committee itself - to “discuss or act upon” matters within that body's subject matter or jurisdiction.

All committee has to do is meet to discuss a District Matter

We made a similar finding in a 2006 opinion. Op. S.C. Att’y Gen., 2006 WL 1574910 (S.C.A.G. 2006). In that opinion, we discussed whether FOIA applied to a political party caucus of the South Carolina House of Representatives. After concluding a party caucus was public body subject to FOIA, we addressed the quorum requirement. Id. Referring to the caucus as a public body, we stated:

Such a conclusion is not dependent upon the Majority Caucus gathering in sufficient numbers to constitute a quorum of the entire House of Representatives. While in this situation, the Majority Caucus members constitute a majority of the House, and we have concluded that a social gathering of a majority of membership in certain circumstances may constitute a “meeting” of the “public body,” Op. S.C. Atty. Gen., Op. No. 83-55, (August 8, 1983), it is our opinion that the Majority Caucus is itself a “public body” for purposes of FOIA. See, Weston v. Carolina Research and Development Foundation, supra.

2 of 3 Board officers present = public meeting

Id. Accordingly, we are of the opinion that so long as the committee has a quorum of its members in attendance, a meeting of the committee is a meeting for purposes of FOIA.

In regard to section 30-4-80 cited above and referenced in your letter, this Office continually advised “with very few exceptions, all meetings held by a public body are to be open to the public and media.” Op. S.C. Att’y Gen., 1989 WL 406201 (S.C.A.G. Oct. 11, 1989). Moreover, we noted the requirements under section 30-4-80 “must be liberally construed to carry

Attachment #1, pg.10 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ed White

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.

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out their legislative purpose to adequately inform the public. These requirements are mandatory and may not be ignored by a public body. The section requires overt and affirmative action by the public body to fulfill the notice requirements." Id. (citations omitted). Accordingly, we advise the Board that the committees it creates to provide advice or perform any other governmental function must comply with FOIA, including the notice requirements found in section 30-4-80.

Your letter also mentions that the Board's work session, retreats, and committee meetings may be treated as meetings, but may be considered closed meeting as outline in section 30-4-70(a)(1)-(5) of the South Carolina Code (2007). Please be advised that "meeting" for purposes of FOIA is broadly defined. In Lambries v. Saluda County Council, 409 S.C. 1, 14-15, 760 S.E.2d 785, 792 (2014), our Supreme Court described meeting as follows:

"Under an open meetings law, a meeting is a gathering of a quorum or more members of a governing body at which members discuss, decide, or receive information as a group on issues relating to the official business of the body . . . A meeting is not limited to gatherings at which action is taken by a governing body. Deliberative gatherings are included as well, and deliberation in this context connotes not only collective decision-making but also the collective acquisition and exchange of facts in preparation for the final decision."

(quoting 62 C.J.S. Municipal Corporations § 308 (2011)).

In Braswell v. Roche, 299 S.C. 181, 183, 383 S.E.2d 243, 244 (1989), the Supreme Court considered whether a meeting held by the Newberry County Board of Education constituted a meeting for purposes of FOIA. The Supreme Court explained "[a]ccording to the Board, it met only to receive information from its administrative staff regarding matters over which it had 'supervision, control, jurisdiction or advisory power.' The Board denies that it convened to 'discuss or act upon' such matters." Id. at 182, 383 S.E.2d at 244. However, the Court found

the nature of items on the agenda, together with the expressed intent to "go over each piece of information," necessarily entailed Board discussion of matters over which it had "supervision, control, jurisdiction or advisory power" involving Bush River School. Therefore, this Court holds that the convening of the Board on April 7, 1987, was within the definition of a "meeting" under the FOIA as it existed on that date; and, further, that the Board violated the FOIA by failing to give public notice of the meeting.

Id. at 183, 383 S.E.2d at 244.

Attachment #1, pg. 11 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White
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.

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Numerous opinions of this Office also address the broad meaning of "meeting" under FOIA. In a 1983 opinion quoting a Florida Supreme Court case, we emphasized the purpose of FOIA is

to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meetings conference except to conduct some part of the decisional process behind closed doors. The statute should be construed to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion . . . relates to any matter on which foreseeable action will be taken.

Op. S.C. Att'y Gen., 1983 WL 142726 (S.C.A.G. Aug. 8, 1983). In that opinion, we determined that it did not matter for purposes of FOIA whether a meeting is designated as formal or informal or whether action is taken upon public business or merely discussed, the requirements under FOIA continue to apply. Id. "A public body may not ignore the requirements of the Act when it discusses public business over which it has supervision, control, jurisdiction or advisory power by holding a meeting, as defined, in an informal or social setting." Id.

Moreover, we also caution that the provisions of section 30-4-70(a) should be narrowly construed in order to further the purpose of FOIA to protect the public from secret government activity. Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). In a 1994 opinion, we discussed the use of executive sessions. Op. S.C. Att'y Gen., 1994 WL 136198 (S.C.A.G. Mar. 31, 1994).

The Act itself states that the public policy of this State favors public meetings; thus, there must be "some exceptional reason so compelling" as to override that policy and close a meeting for reasons other than those expressly stated in § 30-4-70. (And those "exceptional reasons" would be very few and very far between.)

The Freedom of Information Act is a statute remedial in nature, which must be liberally construed to carry out the purpose mandated by the legislature. See South Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1976). Any exceptions to the Act's applicability must be narrowly or strictly construed. News and Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co., 223 S.E.2d 580 (N.C. 1976).

Id. As such, the exceptions to the open meeting requirement presented in section 30-4-70(a) should be used sparingly and only when the letter and the spirit of FOIA allow.

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Attachment #1, pg. 12 is included with
 the minutes of the 2-8-2021
 meeting, at the request of Board member
Ed White
 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.

Conclusion

Section 30-4-80(E) of the South Carolina Code requires notice of public meetings be given to "persons or organizations, local news media, or such other news media as may request notification." Pursuant to section 30-4-20, our courts as well as this Office have consistently found that any committee formed by a public body to give advice or conduct any other governmental function is a public body and subject to FOIA. Furthermore, a meeting under FOIA is determined by the presence of a quorum of the members of the public body. Consistent with prior opinions of this Office, we continue to believe a committee formed by a public body is a public body itself and therefore, the quorum requirements are determined based on the membership of the committee, not the public body from which it was formed. Accordingly, a meeting held by a committee formed by the Board is subject to the notice provisions provided in section 30-4-80(E).

Sincerely,

Matthew Houck
 Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
 Solicitor General



Minutes
Board Meeting – March 1, 2021

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at Dutch Fork Middle School with the following members present:

Mrs. Rebecca Blackburn Hines
Mrs. Nikki Gardner, Secretary
Mrs. Jan Hammond, Chair
Mr. Matt Hogan (*Absent*)
Mrs. Catherine Huddle
Mr. Ken Loveless, Vice Chair
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended:

Mr. Todd Bedenbaugh, Executive Director of Operations
Mrs. Katrina Goggins, Director, Office of Communications (*Absent*)
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Mrs. Marty Rawls, Chief Finance Officer
Dr. Tamara Turner, Chief Human Resources Officer

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

Mrs. Hammond called the meeting to order at 7:15 p.m. and offered welcoming remarks. Board member, Mr. Ed White, gave the invocation and also led the Pledge of Allegiance.

During the Superintendent's Report, Dr. Melton presented the 2020-2021 School Reentry Overview, Part XII presentation, with no new recommendations. Dr. Harris provided Redistricting Exemptions for 2021-2022. A Flexible Innovative Virtual Education (FIVE) 2021-2022 Update was provided. Lastly, a Human Resources Report was provided which highlighted teacher recruitment efforts.

During public participation, the following students spoke: Savannah Stephens and Laken Robinson. Kim Murphy spoke regarding FOIA violations. Stephanie Lipford spoke regarding reentry and teacher breaks. Debbie Goodman read a teacher's statement. Heather Tucker, Beth Hutchison and Leslie Stiles spoke regarding board decisions and board focus.

Action Agenda

Action as necessary or appropriate on matters discussed in Executive Session.

Discussion Agenda

Proposed FY 2021-2022 Capital Budget.

Discussion and Possible Action regarding the actions of a Trustee in relation to his/her relationships with current and potential District vendors.



The following board members submitted items for the record (attached): Ken Loveless, Ed White, Rebecca Blackburn Hines and Cathy Huddle.

The meeting adjourned at 10:30 p.m.

Record of Voting

 School District Five of Lexington and Richland Counties Meeting of March 1, 2021		Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless	White
1. M. Blackburn Hines S. Huddle Approve the agenda M. Gardner S. Loveless I move to amend the motion to suspend the rules as stated to allow each board member one (1) minute to speak/comment on board agenda item #13. Vote on original motion		N	X	N	A	X	X	N
2. M. Blackburn Hines S. Huddle Enter Executive Session to discuss: a. Selected employment items (Exhibit A) (Action) b. Selected employment items (Exhibit B) (Information Only) c. Receipt of Legal advice re: Contract for Substitutes		X	X	X	A	X	X	X
3. M. Huddle S. Blackburn Hines I move that we approve making Piney Woods Elementary School a School of Choice for the 2021-2022 school year and that we put on the agenda in the next two meetings a full review of the School of Choice program.		X	X	X	A	X	X	X
4. M. Gardner S. Blackburn Hines I move that we approve the Tier I recommendation: First grade through 12th grade with high school (9-12) having a modified model of instruction for the Flexible Innovative Virtual Education program (FIVE) for 2021-2022.		X	X	X	A	X	X	X

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

5.	M. Gardner	S. Blackburn Hines	Approve the minutes of the February 8, 2021 board meeting.						
	M. Huddle	S. Loveless	I move to amend the minutes of the February 8, 2021 Board Meeting and exclude the first attachment submitted by Mr. White because the attachment exceeds the ten (10) page limit rule by seven (7) pages.	N	X	X	A	X	X
			Vote on original motion	X	X	X	A	X	X
6.	M. Loveless	S. Gardner	I move that we approve the selected employment items as discussed in Executive Session under Exhibit A.	X	X	X	A	X	X
7.	M. Huddle	S. Gardner	I move that due to the issues with the daily rates of pay for some substitute teachers, payments exceeding the contract rates per Exhibit A of the contract, that we ratify the contract through June 30, 2021 per Procurement Code section 1240.1 and that furthermore since the ratification is needed we direct the superintendent to follow Procurement Code section 1240.2 "Corrective Action" and present the required information to the board at our next meeting. <i>(No vote taken)</i>	-	-	-	A	-	-
	M. Huddle	S. Gardner	<i>(Modified Motion)</i> I move that we continue our existing processes as it relates to contracting for substitute teachers pending more information on that process from the superintendent or her staff at the first board meeting of April.	X	X	X	A	X	X
8.	M. Huddle	S. Gardner	Adjourn at 10:30 p.m.	X	X	X	A	X	X
				Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless
									White

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

Andrea E. White
Ashley C. Story
E. Scott Winburn
J. Alexander Sherard
Lionelle P. Mitchell
Molly Flynn



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August 17, 2021

VIA EMAIL AND U.S. MAIL

Mr. Joel W. Collins, Esquire
Mr. J.C. Nicholson, III, Esquire
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, South Carolina 20211
jcollins@collinsandlacy.com
jnicholson@collinsandlacy.com

Re: Osmundson v. School District Five of Lexington and Richland Counties
C/A No.: 2021-CP-40-03694

Gentlemen:

I hope this letter finds you both well. I am writing to advise you that, at its meeting on August 9, 2021, the LR5 Board voted to officially accept Dr. Melton's resignation effective June 30, 2021, and also to ratify the Settlement Agreement between the parties. As the lack of an official vote serves as the basis of your declaratory judgment action, that claim is now moot and there is nothing for a court to decide, particularly as the South Carolina Freedom of Information Act (FOIA) does not require that a public body vote to accept an employee's resignation and clearly permits discussions regarding an employee's release to occur in executive session.

Further, while no court has found that meetings of school board officers to set an agenda constitute the meeting of a "committee" for purposes of FOIA requirements, the LR5 Board voted on August 9, 2021, to consider those meetings as meetings of a public body. Consequently, that part of your declaratory judgment also is now moot.

I have enclosed a copy of the minutes from the August 9th meeting for your review and trust that, based on the Board's actions, you will immediately dismiss the above-captioned suit as originally filed. I understand you now have amended your original Complaint to allege that meetings of standing committees of the LR5 Board have not complied with FOIA requirements. As you do not identify specific meetings where the requirements of FOIA were not followed, I am looking into your allegations and will share what I find with you.

Please be advised that if your original Complaint is not dismissed, I intend to file a Motion to Dismiss on the grounds that there is no longer a justiciable controversy.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrea E. White". The ink is dark and the signature is fluid.

Andrea E. White

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District 5 of Lexington and Richland
Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. No. 2021-CP-40-03694

**ANSWER AND AFFIRMATIVE
DEFENSES BY DEFENDANT**

Defendant School District Five of Lexington and Richland Counties (“the District”), by and through its undersigned counsel, hereby responds to the Complaint filed by Paul Roy Osmundson, (“Plaintiff”), in accordance with the numbered paragraphs thereof, as follows:

1. Admitted upon information and belief.

2. Admitted.

3. Admitted upon information and belief.

4. Admitted in part and denied in part. The District admits that venue in this matter would be proper in Richland County or Lexington County. The District denies all remaining allegations of Paragraph 4.

5. Admitted in part and denied in part. The District admits that this action is brought pursuant to the South Carolina Freedom of Information Act and S.C. Code § 15-53-20. The District denies all remaining allegations of Paragraph 5.

FIRST CAUSE OF ACTION
(Violations of the Freedom of Information Act)

6. Admitted.

7. Denied.

8. Denied.

9. Admitted.

10. Denied as stated. The District admits only that former Trustee Ed White opined that meetings of Board Officers to set the Board's meeting agendas are subject to the requirements of the South Carolina FOIA.

11. Admitted.

12. Admitted on information and belief.

13. Denied.

14. Admitted.

15. Denied as stated. The District admits only that former Trustee Ed White provided the Board with a copy of an opinion written by the South Carolina Attorney General regarding FOIA's applicability to committees of a public entity.

16. Denied.

17. Denied.

18. Denied.

19. Admitted in part and denied in part. The District admits only that attorneys for the Board and attorneys for former Superintendent Dr. Christina Melton negotiated the terms of Dr. Melton's resignation from the District. The District denies all remaining allegations of Paragraph 19.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Admitted in part and denied in part. The District admits only that former Trustee Ed White made a statement at the June 14th meeting, which statement was in violation of Trustee White's duties and responsibilities as a Trustee to maintain the confidentiality of matters discussed in Executive Session. The District denies all remaining allegations in Paragraph 28.

29. Denied.

30. Denied.

31. Denied.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

32. The District incorporates by reference herein its responses to the preceding paragraphs of Plaintiff's Complaint.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

Plaintiff's "WHEREFORE" statement constitutes a demand for relief to which no responsive pleading is required. To the extent that a responsive pleading is required, the District denies that Plaintiff is entitled to the relief he seeks.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

Plaintiff's Complaint fails, in whole or in part, to state any claim upon which relief can be granted in that there is no justiciable controversy upon which a court could rule.

SECOND AFFIRMATIVE DEFENSE
(Laches, Waiver, Consent, and/or Estoppel)

Plaintiff's Complaint is barred by the doctrines of laches, waiver, consent, and/or estoppel.

THIRD AFFIRMATIVE DEFENSE
(Frivolous Proceeding)

The District asserts that Plaintiff is pursuing a frivolous lawsuit, which due to the lack of a justiciable controversy, has no chance of succeeding. Filing of frivolous lawsuits is barred by S.C. Code Ann. 15-36-10, *et seq.*

FOURTH AFFIRMATIVE DEFENSE
(Reliance on Other Defenses)

The District hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery or investigation, and it reserves its right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, the District prays that judgment be entered in its favor and against Plaintiff dismissing the Complaint with prejudice and awarding the District costs and any reasonable attorney's fees as permitted by law.

(SIGNATURE BLOCK ON THE FOLLOWING PAGE)

Respectfully Submitted:

WHITE & STORY, LLC

By: s/Andrea E. White

Andrea E. White (SC Bar #11891)

Maire E. Flynn (SC Bar #100927)

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Attorneys for Defendant

September 21, 2021

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Paul Roy Osmundson,)
) Civil Action No.: 2021-CP-40-03694
Plaintiff,)
)
v.) PLAINTIFF'S MOTION FOR SUMMARY
) JUDGEMENT
School District 5 of Lexington and)
Richland Counties,)
)
Defendant.)
)

TO THE DEFENDANT ABOVE NAMED:

Plaintiff Paul Roy Osmundson, hereby moves pursuant to SCRCP Rule 56 for Summary Judgment in this action on the grounds there is no genuine issue of material fact and Plaintiff is entitled to Judgment as a matter of law. Submitted with this Motion are the Affidavits of Plaintiff Paul Roy Osmundson (Exhibit A) and Edward K. White (Exhibit B).

By: s/ J.C. Nicholson, III
Joel W. Collins, Jr.
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J.C. Nicholson
Bar Number: 70324
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Columbia, South Carolina
February 11, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Paul Roy Osmundson,) Civil Action No.: 2021CP4003694

Plaintiff,)

v.)

AFFIDAVIT OF
PAUL ROY OSMUNDSON

School District 5 of Lexington and
Richland Counties,)

Defendant.)

PERSONALLY, APPEARED BEFORE ME, Paul Roy Osmundson, who upon being
duly sworn deposes and states as follows:

1. I am a citizen and resident of Richland County. I am over the age of 18. I am the
Plaintiff in the above-captioned lawsuit, and I am the Senior Editor for Local News of The State
Newspaper.

2. Before deciding to be the Plaintiff bring this lawsuit under the Freedom of
Information Act, I followed with interest other Freedom of Information Act cases in this State. I
have also followed with interest the events and actions of the Board of Trustees of School
District 5 of Lexington and Richland Counties.

3. I know the schools of District 5 to be some of the best public schools in South
Carolina, and I am generally aware that there is great support for these schools among the
taxpaying citizens of Lexington and Richland Counties.

4. I have been asked by my attorney, Joel W. Collins, Jr., of the firm of Collins &
Lacy, P.C., to review the available public records and provide this Affidavit. Among the records

PAO

I have reviewed are School Board Meeting Agendas; School Board Meeting Minutes; various emails exchanged by board members and others; various newspaper stories which include quotations from these board members; and other sources as may be cited or referred in this Affidavit.

5. With the assistance of Attorney Collins and others, I have compared the allegations of my Amended Complaint ("Complaint") filed on August 16, 2021, and the Answer filed by the Defendant filed on September 21, 2021.

6. I have been advised that under the South Carolina Rules of Civil Procedure, a party to a lawsuit is entitled to the entry of a summary judgment if it can be shown that there is no genuine issue of material fact. I am advised that under these circumstances the moving party is entitled to judgment as a matter of law. I am aware this Affidavit will be submitted to the Court in support of my Motion for Summary Judgment which will be filed.

MEETINGS OF THE BOARD OFFICERS

7. On May 5, 2021, I filed a Freedom of Information Act request with the LR5 Board of Trustees. I requested the times, dates, places and agendas of the meetings of the Board Officers on May 19, 2021. My request is attached to my Complaint as Exhibit A. I was informed no documents existed. This was the first action I took which culminated in the filing of my original Summons and Complaint on July 23, 2021.

8. In a letter to another citizen who made a similar request, a representative of Defendant stated, "Our Board Officers meetings are not committee meetings and thus do not fit the definition of a public meeting under the SC FOIA."

9. Paragraph 7 of my Complaint alleges, "Meetings of Board Officers of the Defendant consisting of the Chair, the Vice Chair, and the Secretary, are within the scope of the

Public Records Act, §30-1-10 et seq. of the South Carolina Code of Laws. The Board Officers attending and participating in such meetings constitute a “public body” as that term is defined in §30-1-10(B) of the South Carolina Code of Laws. That code section extends the requirement of the public records law to any “committees, sub-committees, advisory committees, and the like of any such body by whatever name known and includes any quasi-governmental body of the State and its political subdivisions.”

10. Although the Defendant denied these allegations in its Answer, it approved a motion on August 9, 2021, during the public session of its school board meeting, opening its Board Officer meetings. This action was clearly required by the South Carolina code section quoted in paragraph 7 of my Complaint.

11. Prior to taking this action opening its Board Officer meetings, the D5 Board of Trustees was advised by one of its members, Attorney Edward K. White, that such Board Officer meetings were required to be conducted in public.

12. I have been provided with the Affidavit of Edward K. White which I understand will also be filed in support of my Motion for Summary Judgment. Trustee White references an opinion of the South Carolina Attorney General dated August 26, 2019, which he presented to the LR5 Board of Trustees. This opinion cites and relies upon binding decisions of the South Carolina Supreme Court, prior Attorney General opinions, and other authorities. It is Exhibit C to my Complaint.

13. Given Mr. White’s Affidavit, the aforesaid Attorney General’s opinion, the clear language of the statutes referenced in paragraph 7 of my Complaint and the actions taken by the Defendant School Board on August 9, 2021, I submit there is no genuine issue of fact that the

PRO

School Board officers' meetings are within the requirement of the South Carolina Freedom of Information Act and must be conducted in public.

14. The denial by the Defendant of the allegations of paragraphs 7 and 8 of my Complaint are without foundation. They do not, in my opinion, create a genuine issue of material fact.

**ALTERATION OF THE MINUTES OF A PREVIOUS
BOARD MEETING**

15. In paragraph 17 of my Amended Complaint, I allege that the Defendant Board of Trustees voted to remove the South Carolina Attorney General's opinion from the Minutes of a prior Board of Trustees meeting. This allegation was denied by the Defendants' Answer. That denial was not made in good faith, in my opinion, because the Board of Trustees Board Meeting Minutes show that this vote was indeed taken. Attached are the Minutes of the March 1, 2021, meeting and the record of the votes taken shown on page 3, item 5.

THE FORCED RESIGNATION OF SUPERINTENDENT MELTON

16. One of the primary reasons for my bringing this lawsuit was the information received from Trustee Ed White on June 15, 2021, explaining his decision to resign as a Trustee in protest of how the Board had handled, in Executive Session, the forced resignation of Superintendent Dr. Christina Melton.

17. Consistent with the South Carolina Freedom of Information Act, the District 5 Trustees should have voted in public on this matter.

18. In paragraph 18 of my Amended Complaint, I allege that Board Chairwoman Hammond stated that Superintendent Melton had not been forced out. The allegations of that paragraph were denied in Defendant's Answer. I submit this denial cannot be asserted in good faith. Attached hereto is a copy of an article dated October 7, 2021, of the Charleston Post and

Courier and a copy of an article in the Irmo News with Chairwoman Hammond's remarks. She is quoted as saying, "She (Dr. Melton) had the votes she needed to remain on the job... I am not pleased she resigned, but I respect her decision." Attached to my affidavit is a copy of the article printed by the New Irmo News on June 24, 2021.

19. In paragraph 28 of my Complaint, I quoted the statement issued and made public by former Trustee, Edward K. White about the termination of Superintendent Melton. In its Answer, the Defendant denied this allegation alleging this statement "was in violation of Trustee White's duties and responsibilities."

20. The totally false narrative of the District 5 Trustees and their attorney came to light because of the actions of Trustee Edward White.

21. I submit there is no genuine issue of material fact that Trustee White issued this statement and was well within his moral and legal right to do so. Any claimed confidentiality of what took place in an Executive Session of a Board of Trustees meeting cannot stand when those actions were fraudulent, unlawful, and criminal.

22. The actions taken by the District 5 Trustees on June 14, 2021 violated their duties. I am advised this may constitute the SC Common Law Crime of Misconduct in Office. As alleged in paragraph 31 of my Complaint, the SC Supreme Court stated, "this crime occurs when duties imposed by law have not been properly and faithfully discharged."

23. In its Answer, the Defendant alleged that my lawsuit is "frivolous" and "has no chance of succeeding." During my 33 years as a newspaper journalist, I have invoked the Freedom of Information Act well over one hundred (100) times. Additionally, I have followed hundreds of cases alleging violations of that statute. This case is one of the most important and substantial FOIA cases I have ever encountered.



24. Only after my lawsuit was filed did the Defendant change its policy about Board Officers meetings. Only after this lawsuit was filed did the Board of Trustees in an open meeting vote to accept the "resignation" of Superintendent Dr. Christina Melton. The filing of this lawsuit forced the Defendant to take actions required by the law. These later actions by the Defendant did not render this lawsuit "frivolous" or moot.

25. I respectfully submit there is no genuine issue of material fact that the Defendant deliberately violated the South Carolina Freedom of Information Act and the judgment should be entered on my behalf. I also respectfully submit the Defendant should be fined. Defendant should be required to pay my attorney's fees as called for by the Freedom of Information Act statute. *PRO*

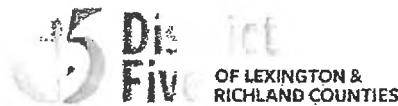
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Paul Roy Osmundson
Paul Roy Osmundson
SCDC, 5291

In witness thereof on this 10th
day of February, 2022.

Richard B. Nelson
Notary Public for South Carolina

My Commission Expires: 8-7-2030



**Minutes
Board Meeting – March 1, 2021**

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at Dutch Fork Middle School with the following members present:

Mrs. Rebecca Blackburn Hines
Mrs. Nikki Gardner, Secretary
Mrs. Jan Hammond, Chair
Mr. Matt Hogan (*Absent*)
Mrs. Catherine Huddle
Mr. Ken Loveless, Vice Chair
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended:

Mr. Todd Bedenbaugh, Executive Director of Operations
Mrs. Katrina Goggins, Director, Office of Communications (*Absent*)
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Mrs. Marty Rawls, Chief Finance Officer
Dr. Tamara Turner, Chief Human Resources Officer

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

Mrs. Hammond called the meeting to order at 7:15 p.m. and offered welcoming remarks. Board member, Mr. Ed White, gave the invocation and also led the Pledge of Allegiance.

During the Superintendent's Report, Dr. Melton presented the 2020-2021 School Reentry Overview, Part XII presentation, with no new recommendations. Dr. Harris provided Redistricting Exemptions for 2021-2022. A Flexible Innovative Virtual Education (FIVE) 2021-2022 Update was provided. Lastly, a Human Resources Report was provided which highlighted teacher recruitment efforts.

During public participation, the following students spoke: Savannah Stephens and Laken Robinson. Kim Murphy spoke regarding FOIA violations. Stephanie Lipford spoke regarding reentry and teacher breaks. Debbie Goodman read a teacher's statement. Heather Tucker, Beth Hutchison and Leslie Stiles spoke regarding board decisions and board focus.

Action Agenda

Action as necessary or appropriate on matters discussed in Executive Session.

Discussion Agenda

Proposed FY 2021-2022 Capital Budget.

Discussion and Possible Action regarding the actions of a Trustee in relation to his/her relationships with current and potential District vendors.



PPO

The following board members submitted items for the record (attached): Ken Loveless, Ed White, Rebecca Blackburn Hines and Cathy Huddle.

The meeting adjourned at 10:30 p.m.

Record of Voting

 School District Five of Lexington and Richland Counties Meeting of March 1, 2021		Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless	White
1. M. Blackburn Hines S. Huddle Approve the agenda								
M. Gardner S. Loveless I move to amend the motion to suspend the rules as stated to allow each board member one (1) minute to speak/comment on board agenda item #13.		N	X	N	A	X	X	N
Vote on original motion		X	X	X	A	X	X	X
2. M. Blackburn Hines S. Huddle Enter Executive Session to discuss: a. Selected employment items (Exhibit A) (Action) b. Selected employment items (Exhibit B) (Information Only) c. Receipt of Legal advice re: Contract for Substitutes		X	X	X	A	X	X	X
3. M. Huddle S. Blackburn Hines I move that we approve making Piney Woods Elementary School a School of Choice for the 2021-2022 school year and that we put on the agenda in the next two meetings a full review of the School of Choice program.		X	X	X	A	X	X	X
4. M. Gardner S. Blackburn Hines I move that we approve the Tier I recommendation: First grade through 12 th grade with high school (9-12) having a modified model of instruction for the Flexible Innovative Virtual Education program (FIVE) for 2021-2022.		X	X	X	A	X	X	X

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

5.	M. Gardner	S. Blackburn Hines	Approve the minutes of the February 8, 2021 board meeting.						
	M. Huddle	S. Loveless	I move to amend the minutes of the February 8, 2021 Board Meeting and exclude the first attachment submitted by Mr. White because the attachment exceeds the ten (10) page limit rule by seven (7) pages.	N	X	X	A	X	X
			Vote on original motion	X	X	X	A	X	X
6.	M. Loveless	S. Gardner	I move that we approve the selected employment items as discussed in Executive Session under Exhibit A.	X	X	X	A	X	X
7.	M. Huddle	S. Gardner	I move that due to the issues with the daily rates of pay for some substitute teachers, payments exceeding the contract rates per Exhibit A of the contract, that we ratify the contract through June 30, 2021 per Procurement Code section 1240.1 and that furthermore since the ratification is needed we direct the superintendent to follow Procurement Code section 1240.2 "Corrective Action" and present the required information to the board at our next meeting. <i>(No vote taken)</i>	-	-	-	A	-	-
	M. Huddle	S. Gardner	<i>(Modified Motion)</i> I move that we continue our existing processes as it relates to contracting for substitute teachers pending more information on that process from the superintendent or her staff at the first board meeting of April.	X	X	X	A	X	X
8.	M. Huddle	S. Gardner	Adjourn at 10:30 p.m.	X	X	X	A	X	X
				Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless
									White

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

State of South Carolina
State Ethics Commission

CHILDREN, THRASHER & HAIR
DONALD GISELA VICE CHAIR
BRYAN M. BARNWELL



ADRIAN L. BOWEN
DR. JACKSON
BRANDON A. THOMAS FINKELSON

1100 UNIVERSITY CENTER DRIVE, SUITE 300
COLUMBIA, SC 29206

MEGHAN E. WATKINS
EXECUTIVE DIRECTOR

February 22, 2021

VIA ELECTRONIC MAIL ONLY

Kenneth B. Loveless
228 Lookout Pointes Drive
Chapin, SC 29036
ken@lovelesscontracting.com

Re: Informal Opinion Request

Dear Mr. Loveless:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

ISSUE

On February 18, 2021, you presented the following:

As you know, I serve on the board of trustees for the School District 5 of Lexington-Richland Counties and had previously requested that the SC Ethics Commission issue guidance on recusal from certain matters. I sought guidance after other board members accused me during open session September 14, 2020.

Some members took issue with me not recusing myself from discussions pertaining to the Piney Woods Elementary School Construction Project. However, the agenda for the September 14, 2020 meeting was set by others. The presenter was a vendor, the construction manager at risk, Contract Construction, Inc. (general contractor).

Attachment #1, B-1 is included with
the minutes of the 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.

Kenneth B. Loveless, p. 2
February 22, 2021

The presentation went without much discussion. I asked one question about the number of change orders received as of that date.

Next under the Discussion Agenda was an item entitled "District Construction." It was there that I was basically subjected to public trial for not having recused myself from the previous Discussion Agenda item, Piney Woods. I was dismayed at the accusations and decided to ask guidance of the Commission.

The guidance I received was provided by you as General Counsel in a letter dated September 25, 2020. Your letter provided guidance requested in response to my letter dated September 21, 2020. The letter was couched in terms of possible future events as might occur in the normal course of business for my occupation: employee and stockholder of a general contracting corporation.

No other updates or discussions of the Piney Woods school project have occurred since the September 14, 2020 meeting. I did attend a walk-through for all board members hosted by the school superintendent last month. It was and is my intention to recuse myself when any contract discussion of Contract Construction, Inc. is on the agenda. No discussion of Contract Construction, Inc. or its contract with the District has been on the agenda since December 8, 2019.

At the last school board meeting February 8, 2021[1], I decided to formally recuse myself via a letter to the Board Chair Janis Hammond as follows:

Re: Recusal of Kenneth B. Loveless on certain matters

Dear Mrs. Hammond:

In accordance with the requirements of SC Code Section 8-13-700(B)(1), I am advising you, as Chairperson of the Board of Trustees for School District Five of Lexington and Richland Counties, of my affiliation with Contract Construction, Inc. My affiliation with Contract Construction, Inc. is that the company with which I am employed and a stockholder, Loveless Commercial Contracting, Inc. operates as a contractor on the S.C. Law Enforcement Division Forensics Lab project, Columbia, SC. The association began on March 12, 2020 and will end at the completion of the construction project.

Please be advised that effective immediately, I will recuse myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees related to Contract Construction, Inc.

Please publish my statement to the Board and the public at the Board's next meeting on February 8, 2021 and include a copy of this statement with the minutes of that meeting.

Attachment #1 pg 2 is included with the minutes of the 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.

Kenneth B. Loveless, p. 3
February 22, 2021

Yours Truly,

Kenneth B. Loveless
Vice Chairman of the Board of Trustees

In light of the above and the information provided, I ask you to formally provide rulings upon:

- (1) I believe recusal is a matter of personal perspective. It is not for other members of the board to question or have a right to demand recusal. Am I correct in that statement?
- (2) Provided that there are no additional projects or business ties, I believe that I have a right to end recusal when the contract relationship at the SC Law Enforcement Division Forensic Lab Project between Contract Construction, Inc. and Loveless Commercial Contracting Inc. has been completed. Am I correct in that belief?
- (3) I believe that I should be allowed in the normal course of duties and responsibilities of a school board trustee to visit Piney Woods Elementary School or any other district construction site and to receive and review those projects and corresponding records as they pertain to the nature of the physical construction product which the district has or is to receive. In reference to ethics under SC Code 8-13-700. Am I correct in that belief?

LAW

Section 8-13-700 states, in part:

- (A) No [public official] may knowingly use his official [office] to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated . . .
- (B) No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
 - (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

Attachment #1, p. 3 is included with the minutes of the 3-1-2021 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.

Kenneth B. Loveless, p. 4
February 22, 2021

- (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, - municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(4) defines "business with which he is associated" as:

[a] business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth more than one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

DISCUSSION

Based on the facts presented in your September 2020 request for an informal opinion, Contract Construction is a "business with which [you are] associated" for purposes of the Ethics Act. As I stated in my September 25, 2020 response, this means that whenever you are faced with a scenario in which Contract Construction has an economic interest, you must recuse yourself following the instructions in Section 8-13-700(B). Keeping that in mind, I have answered your questions below in turn:

1. I believe recusal is a matter of personal perspective. It is not for other members of the board to question or have a right to demand recusal. Am I correct in that statement?

Recusal is mandated by law in certain circumstances, such as when you, your family members, or any individuals or businesses with which you are associated have an economic interest. It is outside the scope of the Ethics Act as to what public officials have a right to question, but you are correct that the ultimate decision to recuse belongs to the public official. If a public servant fails to properly recuse himself from circumstances that require recusal, that public servant subjects himself to a possible enforcement action by the Commission.

2. Provided that there are no additional projects or business ties, I believe that I have a right to end recusal when the contract relationship at the SC Law Enforcement Division Forensic Lab Project between Contract Construction, Inc. and Loveless Commercial Contracting Inc. has been completed. Am I correct in that belief?

Correct. Once the conflict no longer exists, recusal is no longer required.

3. I believe that I should be allowed in the normal course of duties and responsibilities of a school board trustee to visit Piney Woods Elementary School or any other district

Attachment #1 is included with the minutes of the 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.

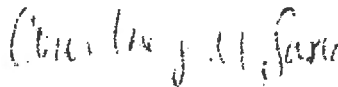
Kenneth B. Loveless, p. 5
February 22, 2021

construction site and to receive and review those projects and corresponding records as they pertain to the nature of the physical construction product -which the district has or is to receive. In reference to ethics under SC Code 8-13-700. Am I correct in that belief?

When disqualification is required, you should not discuss the matter or take any action on it that could be perceived as an attempt to influence the governmental decision. Section 8-13-700 does not simply prohibit voting or taking other official action, but prohibits the public official from making, participating in making, or in any way attempting to use his public office to influence the governmental decision. In fact, the Commission has held that a mere discussion in executive session by a public servant about a matter in which his wife had an economic interest violated Section 8-13-700. See Complaints 97-035 and 97-036. Therefore, you should not make site visits to the Piney Woods Elementary School construction site, nor should you review invoices or any other documents related to this project. Similar activities at other District construction sites are not prohibited as long as you are not recused from those projects.

I hope this is responsive to your request. Keep in mind that this opinion only relates to future conduct and is not intended to apply to events that may have already occurred. Thank you for contacting the Commission. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

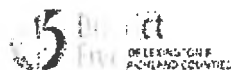


Courtney M. Laster
General Counsel

Attachment #1, pg 5 is included with
the minutes of the 3-1-2021
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.

3/1/2021

Lexington/Richland School Dist. 5 Mail - Officer's Agenda Meeting Summary



Edward White <ewhite@lexrich5.org>

Officer's Agenda Meeting Summary

1 message

Nikki Gardner <ngardner@lexrich5.org>

Wed, Feb 17, 2021 at 7:30 PM

To: Janis Hammond <jhammond@lexrich5.org>

Cc: Christina Melton <csmelton@lexrich5.org>, Erin Strange <estrangle@lexrich5.org>

Bcc: ewhite@lexrich5.org

This email been BLIND COPIED to all board members.

Hello board members,

At our Tuesday evening Officer's Agenda meeting we were able to take all of the submitted agenda items that we received beforehand and put them on our next few meetings. I thank each of you for agreeing to the new process and making it easier for us to prioritize concerns and also to keep track of them.

Feb 22 DRAFT of agenda will include the following along with our usual items:

- 1) Kelly Services contract
- 2) Human Resources report
- 3) Redistricting Exemptions
- 4) Capital Budget - questions from Cathy have been forwarded to Dr. Melton to address if possible before the meeting.
- 5) Re-entry & COVID relief funds discussion

Mar 8 DRAFT of agenda will include the following along with our usual items:

- 1) Legal advice regarding construction matter - requested by Ken
- 2) Legal advice about sewer taps - requested by Cathy
- 3) Possibly an emergency policy concerning leave - requested by Dr. Melton
- 4) Capital Budget First Reading - New CFO will be in place by this reading & this may be the time to discuss our expectations for monthly budget updates as requested by Cathy.
- 5) Discussion & First Reading of Sexual Harassment Policy updates - requested by Dr. Melton & administration
- 6) Board Meeting schedule - to be put together by Katrina Goggins for us to approve
- 7) Officer's Meetings & Agenda Procedure - as requested by Ed & Nikki

In order to accommodate the other agenda requests we will be holding a Board Training Workshop on Ethics facilitated by Megan Walker, Executive Director of SC State Ethics Commission. Jan will coordinate with Megan to secure a date. Agenda items will include 1) PWES & other schools inspection rights &/or violations, 2) Educating board on proper procedures and instructions in board meetings as pertaining to etiquette, 3) legal opinions on the legal liability of past actions of the board when there was possible personal benefit involved.

Items of importance still upcoming:

- 1) Committees to work on procurement, policies, and construction
- 2) Board Goals Workshop
- 3) Legislative Event - yearly event with our local public officials that has historically been poorly attended and was a breakfast held at the district office. Jan is hopeful we can still make this happen this year and will be coordinating a location in the evening. She will be asking for help:) Possibly the 15th or the 29th of March.

If there is anything missing on here that you have asked about please let me know. These are only draft agendas as of now and as always, I will remind everyone, the board chair has the final say on our agenda.

Thank you,
Nikki Garder

Attachment #2, pg 1 is included with the minutes of the 3-1-2021 meeting, at the request of Board member Ed White 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.



Attachment #3, PB1 is included with
the minutes of the 8-7-2021
meeting, at the request of Board member
Ed White

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 Agenda ITEM REQUEST

Date of Submittal to Chair: 2/16/2021, 2/2/2021

Agenda Item Subject: Board Member's Demand to Supervise and
Inspect PWES

Approval/Vote Requested? Y/N

Depends but probably so.

Purpose:

- Avoid liability to District.

- Ensure competent,
quality assessed

- Avoid Compromising Contractual Rights of District.

Background:

Incidents with PWES during 2020.

- Avoid political
bias.

Financial Impact (attach additional documents as needed):

Alternatives:

Hire 3rd Party that has credentials and

Recommendation:

free from political bias to inspect.

Follow Policies for Review of Buildings
as detailed by Board Chair in 2020 for
the Board.

www.lexrich5.org

1020 Dutch Fork Road • Irmo, South Carolina 29063 • (803) 476-8000

"Pursuing Excellence for Tomorrow's Challenges"



Attachment #4, pg 1 is included with the minutes of the 5-1-2021 meeting, at the request of Board member Ed White

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 Agenda ITEM REQUEST

Date of Submittal to Chair: 2/16/2021, 2/2/2021

Agenda Item Subject: Requirement that Board Officers Meetings Be Open To the Public

Approval/Vote Requested? Y/N

Purpose: Yes. Vote to Make Public and if that fails a vote to seek an attorney general's opinion

Background: → Comply with current legal standards, Transparency.

Financial Impact (attach additional documents as needed):

Alternatives: less than the cost of a lawsuit if the public sues to require compliance with open meeting laws

Recommendation:

Open Board Officers Meetings Immediately to the Public.

Rebecca Blackburn Hines
Statement.

In a business environment, a professional workplace is necessary for long-term success. Interactions and relationships are of vital importance to ensure that goals and objectives are met. Leaders who behave professionally set an appropriate example by encouraging others to conduct themselves in a manner that supports the success for all. This is just as true for a school district and school board as it is for a business.

I have served on this board since November 16th, 2020. 106 days. In 106 days, this board – who has 3 brand new members, 2 members with 2 years of experience and 2 veteran members (both without much officer experience) has had 5 board meetings, 2 special called meetings, 2 board workshops, 1 conference, dealt with struggles of reentry during a pandemic, rezoned lines for an elementary school, and have fielded hundreds of emails and phone calls.

Specifically related to this discussion item on the agenda and professionalism, there have been several conversations about potential ethical concerns in regards to board members. Of note, one of the concerns that I have raised is the relationship of a board member and a vendor. I was unaware of this relationship until shortly prior to joining the board. Once on the board, I witnessed several emails requesting information which raised concerns for me. Policy changes have been made which could impact some of these ethical concerns. My concerns have been based upon fact. The fact is, we now have TWO advisory opinions that expressly state that a certain board member could not participate in conversations (or anything) relating to an ongoing project within our district. My actions have been made in an earnest attempt to both inform fellow trustees of the obligation we have to maintain the public's trust, and to also protect all of my colleagues from potential infractions of this opinion that may lead to violations of ethics law.

I have made no statements outside of official meetings, and do not choose to engage on social media. This is done in attempt to meet the expectations that we are held to by board policy and out of respect for the integrity of my fellow board members.

Unfortunately, by seeking to protect our district and by doing the right thing, (which has been validated by the Ethics Commission) I am being attacked by members of this board.

Last week, my actions during recent meetings were made reference to on social media in a thinly veiled inference by a fellow board member, and my character and

Attachment #15, pg 1 is included with
the minutes of the 3-1-2021
meeting, at the request of Board member
Rebecca Blackburn Hines
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.

integrity were called into question. I cannot, and will not stand for this; both for myself and any of my colleagues.

I have been told by a board member that I am "choosing the wrong side" by seconding motions. I have been cursed out by a board member's spouse. Instead of having reasonable conversations, a board member has taken to sending me screen shots of social media posts via text. By insinuating conversations that have not occurred. By maligning my integrity and character on social media with untrue statements. Flat out lies.

Let me be clear. I am no one's enabler. And my thoughts and opinions are not for sale. I would hope the case is the same for every other member on this board.

This public display of divisiveness does little to benefit our mission and objectives as a school board, and in fact has only led to increased hostility among our constituency. As I reflected about these events, I found myself looking to other public bodies who serve localities such as ours. Very rarely do you see representatives from our respective county and town councils engage in such behaviors publicly, with such frequency. I wish to continue encouraging all of our trustees to work together to advance the causes of our district and represent all of our constituents. We are and should be held to a higher standard because of the office we occupy, myself included.

What we cannot continue to do is engage in a petty display of divisiveness where baseless claims against one or more trustees are perpetuated by others. The public we represent deserves transparency and accountability, and the best way we can address these needs is through cooperation and an open display of trust within our own system of governance through our established board policies.

We function as a board and we all need to be better.

#5 pg 2
Attachment is included with the minutes of the meeting, at the request of Board member Rebecca Blackburn Hines 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.

3/1/2021

I believe that our board and our entire community are tired of ethics concerns among board members detracting from our duty to focus on the business of our district.

Personally, in addition to obtaining an ethics opinion when asked, I think all board members with current or past relationships with district vendors whether personal, familial or through a business they are an equity owner, should issue a written statement disclosing any such relationships.

I would also like to see all board members go on the record as to whether he or any member of their family or person or business with whom they are associated or aware of, participated in the incorporation, funding or activities of the organization Positive Voices for District 5 Success. Attached is the Articles of Incorporation for this organization filed by Erik Norton. Positive Voices for District 5 Success is the organization that sent mailers during the last election in support of two candidates for school board, including a newspaper title The Education Reporter which included an article criticizing two sitting board members. Despite clearly funding election activities, Positive Voices for District 5 Success has not filed a statement of Organization or any other reports with the SC Ethics Commission.

I believe that any board member that truly has the interests of our school district at heart, will clear up, once and for all, in writing, any past or present relationships with District Five vendors and any knowledge of or participation in the campaign mailer criticizing fellow board members,

Attachment #6, pg 1 is included with
the minutes of the 3-1-2021
meeting, at the request of Board member
Catherine Huddle
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.

<https://www.lexrich5.org/cms/lib/SC01916806/Centricity/domain/428/2020-2021%20board%20meeting%20information/minutes/3-1-2021%20Minutes.pdf>

https://www.postandcourier.com/columbia/news/lex-rich-five-schools-leader-struggled-with-changing-board-before-leaving-emails-show/article_48943f28-26a7-11ec-b964-8f4e77779e31.html

Lex-Rich Five schools leader struggled with changing board before leaving, emails show

BY ADAM BENSON AND JESSICA HOLDMAN ABENSON@POSTANDCOURIER.COM
JHOLDMAN@POSTANDCOURIER.COM

OCT 7, 2021



Christina Melton. A Post and Courier review of emails between former Lexington-Richland Five chief Christina Melton and members of her governing board during the six months leading up to her resignation show tension with trustees, but give no insight about what led to the sides moving on from one another. PROVIDED

BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

COLUMBIA — Lexington-Richland District Five Superintendent Christina Melton struggled this year adapting to expectations of new board leadership with differing priorities as the coronavirus pandemic surged and debate

spiraled over safety protocols, emails obtained by The Post and Courier showed.

“Dr. Melton, Are you going to answer me?” one exchange with the vice chairman went.

“Mr. Loveless, Based upon my records, I sent a reply on Jan. 6 as seen below,” Melton replied. “It is my goal to meet the expectations of the Board while supporting compliance within my scope of responsibilities.”



COLUMBIA NEWS

Lawsuit alleges Lex-Rich 5 board ignored records law, held secret vote on superintendent

BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

The superintendent of the fast-growing, 17,500-student district covering the Lake Murray towns of Chapin and Irmo also faced criticism over continuing the district's mask requirements.

“Continuing to ask our children to wear masks seems downright unwarranted after staff vaccinations have had a chance to take effect,” board Chairwoman Jan Hammond told Melton in late April.

At a board meeting June 14, Melton tearfully announced her resignation, just six weeks after being named South Carolina's superintendent of the year. One board member said she was forced out.

The Post and Courier obtained hundreds of emails between Melton and members of her governing board stretching from Jan. 1 through the day of Melton's June 14 announcement under a public records request submitted to

district leaders on June 15. The district supplied the documents on Oct. 4.

While a review of the emails show Melton's tension at times with trustees, they do not reveal why she ultimately left.

There were no emails from Melton saying she was considering resignation. There were no statements from board members suggesting they no longer wanted her to run the district.

In the end, Melton walked away with a \$225,000 severance.



COLUMBIA NEWS

**Former Lex-Rich 5 superintendent to take senior post at SC
Department of Education**

BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

How things changed

Melton was not a stranger in Lex-Rich Five when she became the superintendent in 2017. She had spent 11 years within the administration before replacing Stephen Hefner, who had been a for 24 years — 17 with Richland School District Two and seven with Lex-Rich Five.

And for most of her four-year tenure at the helm, Melton worked under a board of trustees dominated by long-serving members supportive of new school construction approved by voters in 2008 as well as a slow classroom reopening plan during the heights of the COVID pandemic.

The board was often split 4-3, the power brokers being three trustees who boasted a combined 49 years in office, voting alongside a single-term chairman.

Outside its veteran members, Lex-Rich Five is a board that has seen much turnover in the past decade, with a smattering of candidates voted out after just one term.

But with one long-reigning trustee not seeking reelection in 2020 and another ousted at the ballot box, along with the chairman, only trustee Ed White remained from the previous majority.

An influx of new members shifted power to a group within the board that's been critical of the district's expansion and that supported a quicker return to face-to-face instruction.



COLUMBIA NEWS

Lex-Rich 5 superintendent received good evaluation, contract extension 8 months before resignation

BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

This includes two first-term trustees elected in 2018, who became vice chairman and secretary, and another longtime member, Hammond, who took over as chairwoman.

Soon after the shift in board leadership, members started communicating directly with Melton, often with requests for information not usually sought by previous leadership.

“It has been my practice and expectations of previous boards to work with the chair,” Melton responded to a set of questions from Vice Chairman Ken Loveless at the end of January.

That was just the beginning of challenges facing the superintendent.

Information requests

Melton simultaneously was hitting headwinds with the district’s reopening plans.

Three high schools — Chapin, Dutch Fork and Irmo — were closed Dec. 1, amid mass staff absences a day after trustees failed to vote on her request to reduce the number of in-person class days as COVID-19 cases rose after the Thanksgiving break.

A week later, Loveless accused Melton of being insubordinate for waiting more than three days to answer questions he had about staffing levels at Chapin High School and rumors of a substitute punching a student.

Loveless asked that the new board leadership discuss creating a policy for communications at its next meeting.

This is a theme that would continue into February, emails showed: Loveless or another board member submitting inquiries and then later questioning why they had not received an answer, and Melton asking the full board for policy clarifications.



Popular resigning Columbia-area superintendent gives pep talk to Class of 2021

BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

Loveless requested information about finalists for the chief financial officer job opening, data on remote work during closures of the district office and funding of a district virtual learning option.

Sometimes, he was joined in these requests by other trustees. Other times, he was rebuked by other trustees for micro-management.

Loveless declined comment for this story, citing board policy that only the chairwoman speaks to the media and that the board's severance agreement with Melton does not allow trustees to discuss her resignation.

Hammond issued a short statement Oct. 6: "Our board is committed to moving forward and it is inappropriate to comment on this matter." Other board members did not respond to requests for comment for this story.

Reopening woes for Melton continued as protesters opposed to a suggested return to five-day live learning outside the board's Jan. 25 meeting. The district had previously been operating on a four-day, in-person schedule.

A week later, on the first day of full in-person instruction, the district already found itself announcing the temporary closure of Chapin Elementary School because of a positive COVID case.

COLUMBIA

Lex-Rich Five paying consultant for audits, improvement plans, advising superintendent



BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

A new majority

As the pandemic continued to pose problems at schools, Melton prepared for a meeting on Feb. 8 where trustees wished to speak to her about improving communication and relations.

In a conversation with Hammond, Melton mentioned a previous closed-door meeting in December that turned hostile without offering specifics. Both stated they wanted this meeting to be different.

Among the feedback Melton received from trustee Nikki Gardner, who was part of the new majority: "Earn the trust of the Board," according to notes Melton had taken.

Following that February meeting, relationships between the superintendent and the board appear to have improved.

"I know working with a new board is challenging and I really appreciate the additional steps you are taking to communicate with us," trustee Catherine Huddle, a newcomer to the board, wrote Feb. 17.



COLUMBIA

New Lex-Rich 5 schools chief will get \$175K a year paid through his consulting firm

BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

In the weeks after, several board members respond kindly when Melton informed them her granddaughter is ill and she'll be out the next day.

"Thank you for being a great superintendent," Hammond wrote at the beginning of March. "As board chair please know we all appreciate your hard work and your staff. Your caring nature added with your knowledge of the classroom shows in every way."

These congenial feelings would take a turn over the next month.

Mask debate

By mid-April, parents were flooding school board meetings around the Midlands asking for an end to masking in classrooms. Gov. Henry McMaster had weighed in that it's a decision that should be left to parents.

But in exchanges with board members, Melton said she thought it was too soon to change the district's policy of requiring masks — her employers disagreed.

"I am concerned by an indefinite mask policy," new trustee Rebecca Blackburn Hines wrote to Melton on April 13.

Huddle suggested eliminating the mask requirement for the outdoors and in places inside where students could be more than six feet apart.

"If we have a way to suspend this policy but do not, I believe we are not fulfilling our mission to 'always put children first,' " she wrote April 28.



Lex-Rich 5 trustees censure ex-member over leak amid outpouring for ousted superintendent

BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

Board members called for lifting the district's mask mandate at the May board meeting.

"My concern is that your expectations are not clear to parents, our community or our board," Hammond told Melton on April 29.

Melton's continued guidance against modifying the district's mask policy infuriated Gardner.

"Our school district has repeatedly sent mixed messages about this policy and are putting our children in the middle of this political battle," Gardner wrote April 30. "This is unconscionable and I will not be a part of it any longer."

Trustees voted 4-2 on May 4 to rescind requirements for masks inside classrooms. But two days after that vote, the district's attorney said a more thorough review of state law was needed. The masks stayed.

Gardner said Melton's refusal to abide by the board's earlier vote was catastrophic.

"I cannot believe you have gone directly against the will of the board," Gardner wrote May 6. "You have no authority to enforce masking without a policy. This will cause extreme events ... and I will lay it at your feet."

No hints of an end

As the school year wound down, the confrontation appears to have passed.

June emails showed no indication that a separation between the sides was coming, with back-and-forth emails on innocuous topics, such as when Melton planned to use vacation days, scheduling of board workshops and graduation attendance.

So it would come as a surprise when White resigned from the board mid-meeting on June 14, followed by Melton's own tearful resignation announcement.

White later would go one to say there was no basis for pushing out Melton and accused Gardner, Huddle and Loveless of leading the effort.

"I witnessed the hostile and abusive work environment these three created for her that would make it impossible for any Superintendent to succeed," White wrote in a June 15 statement that did not provide details.

Multiple attempts to reach White for comment for this story were unsuccessful.



COLUMBIA NEWS

Cash, endorsements flow into Lexington-Richland Five school board race

BY ADAM BENSON ABENSON@POSTANDCOURIER.COM

In her one public statement since the meeting, Hammond said Melton had been considering resigning for nearly a month and had been communicating with board members. None of these communications appeared in the emails provided by the district.

“She had the votes she needed to remain on the job,” Hammond told the New Irmo News. “I’m not pleased she resigned but I respect her decision.”

Melton told The Post and Courier on Oct. 5 that lessons she learned while leading the district helped ready her for the next step in career. She oversees the state Department of Education’s newly combined Office of Assessment and Standards, a job she began on Sept. 1.

“My experiences in District Five helped me transition into a state level role,” she said in a statement. “As director, I am eager to work alongside schools and districts to deploy strategies we proved successful in District Five to improve achievement and educator success.”

After Melton left, Lex-Rich Five trustees pivoted quickly to a former national Principal of the Year as their choice to helm the district temporarily. Akil Ross, who spent eight years leading Chapin High School, agreed to a \$175,000 per year deal starting July 1.

In his first public remarks as interim superintendent, Ross called for a culture change and community healing.

Casey Darnell contributed from Columbia.

Editors Note: This story has been corrected to show the number of years former superintendent Stephen Hefner served. He was superintendent of Lex-Rich Five for seven years and Richland Two for 17 years.

Reach Jessica Holdman at jholdman@postandcourier.com. Follow her @jmholdman on Twitter.

MORE INFORMATION

Irmo mayor, councilmen feud over how town is spending \$250,000 in business grants

Lexington County school district lifting mask mandate after Halloween deadline

Lex-Rich Five trustees interview slate of superintendent candidates

JESSICA HOLDMAN

Jessica Holdman is a business reporter for The Post & Courier covering Columbia. Prior to moving to South Carolina, she reported on business in North Dakota for The Bismarck Tribune and has previously written for The Spokesman-Review in Spokane, Wash.

ADAM BENSON

Benson joined The Post and Courier's Columbia bureau in November 2019. A native of Boston, he spent three years at the Greenwood Index-Journal and has won multiple South Carolina Press Association awards for his reporting.

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Volume 27 Number 57

Leeza's Care Connection events

All support groups are now offered in-person and virtually.

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9:30 am: Men's Coffee

June 28

1 pm: Grief Support Group

June 29

12 pm: Facebook Live: Preventing Dehydration in those Living with Dementia

Geriatric Nurse Practitioner Donna Wolff offer tips for keeping your loved one hydrated in the summer heat.

June 30

12:30 pm: Lunch 'N Learn: Have Your Care Needs Changed? (in-person & virtual)

Home care expert LaReece Edwards and Hospice expert Tyler Barton breaks down how these added layers of support can help you.

To register for programs visit leezas-careconnection.org/programs.

Lake Murray celebration set for July 3

The Capital City/Lake Murray Country Regional Tourism Board will present Lake Murray's 4th of July Celebration July 3.

The Boat Parade is back this year and will take place at noon. Bouts of



Parents and students gather outside Lexington District 5 offices to protest the resignation of Superintendent Christina Melton. Photo by Al Dozier

Akil Ross named District 5 interim superintendent

By Al Dozier

Contributing Writer

The Lexington-Richland District Five school board Tuesday named Dr. Akil Ross interim superintendent, its controversy continued to swirl around the sudden departure of former Superintendent Christina Melton.

Ross is a former Chapin High School Principal who was named National Principal of the Year in 2018. He served as the district's Director over Secondary Education before starting his own educational consulting service known as Heart-ED LLC.

He is currently leading the town of Ir-

mo's Youth Zone initiative to curb crime among young people.

"District Five is extremely fortunate to have Dr. Ross lead our District. He is a well-respected educational leader throughout the District, state, and our country," Board Chair Jan Ham-

mond said in a press release. "The entire



Ross

Board member's actions may have forced superintendent's reaction

When Lexington-Richland School District 5 Superintendent Dr. Christina Melton resigned during last week's school board meeting the district has been witnessing an outpouring of disbelief and blame pointed at the school board.

Long time board member Ed White's actions at the school board meeting may have been the catalyst that forced Dr. Christina Melton to resign. Just 20 minutes previous to the su-

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• See Board on Page 12

EXHIBIT
3
RECORD 093

Board

Continued from Page 1

perintendent's reading her prepared statement, Ed White stood and resigned his seat stating that he was in protest of an agreement that would end Melton's employment June 30.

White issued a statement to the press claiming three of the new board members wanted Melton fired and that a secret contract had been discussed for Melton's compensation. He also claimed they had created a "hostile and abusive work environment... that would make it impossible for any Superintendent to succeed."

Melton was considering resigning for nearly a month and was communicating with board members according to Chairperson Jan Hammond.

"She had the votes she needed to remain on the job," said Hammond. "I'm not pleased she resigned but I respect her decision." The school board is re-

sponsible for hiring and firing the superintendent, and she reports solely to the board. The November election saw new board members who were, in part, elected to bring more transparency to a district often plagued with controversy.

"The timing was terrible and we shouldn't pass judgement on anyone after this past year due to COVID," Hammond said. "I can't deny she was being questioned about her actions and there were expectations."

In a statement issued by the District it outlined that an agreement was being reached by both parties and wouldn't be dis-

closed until June 22 which would have come after the school year ended. There was no action planned by the board at the meeting and disclosure of the settlement would be issued when it had been reached. Instead, Ed White's actions brought a rebuttal from the board.

"The public display of contempt and disdain for the situation stripped Dr. Melton of the ability to address her staff, students, and the community about her plans and completely undermined her authority to share her future in the manner that she deserved during this transitional pe-

riod for our District."

According to chair Jan Hammond, who had to undergo full shoulder replacement surgery due to a fall prior to last Monday's board meeting, the board wanted answers to certain questions but did not plan on ousting the superintendent. "I supported Christina and wanted her to stay," Hammond said.

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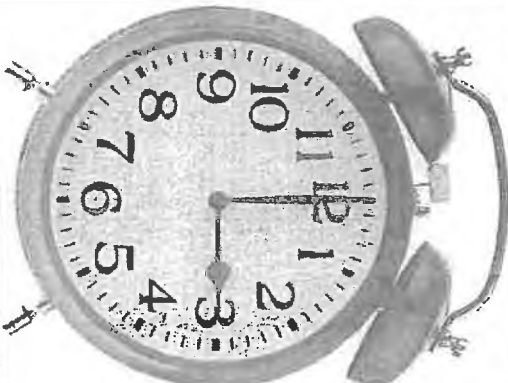
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Paul Roy Osmundson,

Plaintiff,

v.

School District 5 of Lexington and
Richland Counties,

Defendant.

Civil Action No.: 2021CP4003694

AFFIDAVIT OF
EDWARD K. WHITE

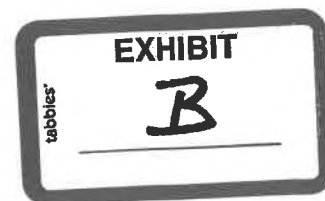
PERSONALLY, APPEARED BEFORE ME, Edward K. White, who upon being duly sworn deposes and states as follows:

1. I am a citizen and resident of Richland County. I am a member in good standing of the South Carolina Bar. I was admitted to practice in 1988. I am a partner in the law firm of Nelson Mullins Riley & Scarborough.

2. For eighteen (18) years, I served as a Trustee of School District 5 of Lexington and Richland Counties of South Carolina. Other than my law practice, my work as a School Board Trustee consumed more of my time and attention than anything else outside of my family.

3. During my tenure on the board, the district grew substantially. Its current annual budget is approximately \$201,694,166.

4. In 2017, our School Board hired Dr. Christina Sullivan Melton to serve as our Superintendent. She was well-qualified for the job, having most recently served as the District's Chief Instructional Officer. Prior to that time, she was the Principal of Nursery Road Elementary School and before that a teacher.



5. As a School Board Member, I was taught that School District 5 is a “public body” as that term is used in S.C. Code, Ann. §30-1-20.

6. Upon information and belief, the School Board is obligated to comply with the South Carolina Freedom of Information Act as codified in §30-4-90 of the South Carolina Code of Laws.

7. Ken Loveless and Nikki Gardner were elected to the School Board in 2018. In November 2020, a slate of candidates that Ken Loveless financially supported and promoted were also elected. These new Board Members were Rebecca Hines, Catherine Huddle and Matt Hogan. During November 2020, the Board elected new Board officers (the Chair, Vice Chair and Secretary). Jan Hammond was elected to serve as Chair, Ken Loveless was elected Vice Chair and Nikki Gardner was elected Secretary. After these changes were implemented, I noticed substantial differences in the way our Board conducted its business and interfaced with our Superintendent, our staff and our outside advisors, including legal counsel approved by the Board.

8. At a Board meeting on December 14, 2020, the Board Officers placed an item on the Agenda for the Board to meet in Executive Session to discuss Dr. Melton’s role as Superintendent. Andrea White, an attorney who had previously represented the District, but had not advised Board Members for a number of years, attended the Executive Session portion of the meeting. Chair Jan Hammond communicated that the objective of the session was for the Board Members to comment on what they thought about Dr. Melton. What resulted was a rambling, awkward and confusing session where several Board Members complained about Dr. Melton. Most of these complaints were centered on her failure to follow instructions of Mr. Loveless and other individual Board Members, not her communications with the Board as a whole. Ken Loveless and Nikki Gardner were visibly angry and hostile to Dr. Melton. I concluded that the

meeting was an attempt by the Board Officers to bring Dr. Melton into line obeying their individual directions outside of the public view and to tell Dr. Melton how they expected her to change. This was particularly disturbing to me because the prior Board had given Dr. Melton glowing reviews just a few months earlier and this Board with new Board Members had only worked with Dr. Melton for a few meetings.

9. Upon information and belief, Dr. Melton was unaware of the purpose of the meeting and that Andrea White would be at the meeting. Dr. Melton appeared surprised because she, as the Superintendent, had not engaged Andrea White to meet with the Board. One of Dr. Melton's first statements was to Andrea White in which Dr. Melton said that she was not aware Andrea White was going to be there. Dr. Melton stated that she felt like she should have been informed of Andrea White's presence at the meeting so that she could have brought her own counsel to the meeting. At that time it was my impression that one or more of the Board Officers hired Andrea White to participate in the meeting without Dr. Melton's knowledge.

10. During that meeting, Andrea White stated that the Board could not continue to sit in Executive Session and just talk about the Superintendent, or something to that effect, and that the Board either needed to go back into public session to continue this conversation or try to structure something along the lines of an evaluation of the Superintendent. I interpreted this statement to mean that the conversations to that point were not properly in Executive Session. The discussion was then modified to be consistent with a discussion that the attorney felt was proper for an Executive Session conversation.

11. At the December 14, 2020 meeting, I also recall Trustee Rebecca Hines making the remark she believed the Board had created a "hostile work environment" for Dr. Melton. This meeting was clearly an ambush by the Board Officers of Dr. Melton in private with legal counsel

present to attempt to exert control over Dr. Melton and her decisions as a Superintendent. These communications indicated those individuals wanted Dr. Melton to follow their individual directives.

12. There are a number of e-mail communications that have been made public that demonstrate that these members viewed her as their individual employee under their personal supervision and threatened consequences if she failed to carry out their personal – not board – instructions.

13. Sometime after this meeting I asked Dr. Melton who had engaged Andrea White and asked her to come to the meeting that night to advise the Board. Dr. Melton confirmed to me that she had not engaged Andrea White to advise the Board and she thought it was Jan Hammond or one of the other Board Officers who engaged Andrea White.

14. In my 18 years on the Board I am not aware of any time legal counsel was engaged to represent the Board except by the Superintendent working with the Board Officers. I remember being concerned after witnessing the hostile Executive Session on December 14, 2020 because Andrea White had obtained her engagement and financial relationship, as counsel to the Board directly through these hostile Board Members. My concern was whether Andrea White would be completely objective in her legal advice to the Board, as a whole, rather than giving advice in a manner to satisfy the objectives of the Board Officers since they created and controlled her financial relationship with the District.

15. An email was made public that showed on December 7, 2020, Catherine Huddle sent an email to the Board Chair, Jan Hammond, directing Jan Hammond to choose an attorney and ask that person to serve as the Board's attorney and meet with the Board during the Executive Session on December 14, 2020. Catherine Huddle conveyed to Jan Hammond in that email that

she was copying Ken Loveless and Nikki Gardner as Board Officers. This email shows that since December 14, 2020, Catherine Huddle and the Board Officers were acting in concert to bully, intimidate and harass Dr. Melton until they ultimately forced her out of her position as Superintendent.

16. I also recall around the time of the December 14, 2022 meeting that Rebecca Hines conveyed to me that Ken Loveless told her prior to the November 2020 election that he wanted to get rid of Dr. Melton as the Superintendent and that he had someone specifically in mind that he wanted to take Dr. Melton's place. When I asked Rebecca Hines who Ken Loveless wanted to put in Dr. Melton's place, she declined to tell me the name of the person.

17. I recall seeing an email which Mr. Loveless sent to Dr. Melton stating, "you have been warned."

18. I have never served as a Board Officer while serving on the Board of School District 5. I am aware that Board Officers in School District 5 routinely met with the Superintendent the week before a Board meeting to set the agenda and receive information about the issues that the Board will ultimately preside over. As a result of witnessing the hostile meeting on December 14, 2020 (described above), I became concerned that the Board Officers would use the Board Officer meetings to continue to secretly bully, intimidate and further harass the Superintendent to conduct the District's business the way they personally wanted it conducted.

19. There is legal authority that states that Board Committees are open to the public, specifically, §30-1-10(B) of the South Carolina Code of Laws extended the FOIA requirements to "any committees, subcommittees, advisory committees, and the like of any such body by whatever name known and includes any quasi-governmental body of the state and its political subdivisions."

20. As of December 2020, many School Boards across South Carolina were no longer having Board Officer meetings with the Superintendent in sessions closed to the public, as School District Five continued to do, because of the concern that the modern legal precedents would require that these meetings be conducted in public.

21. At the January 25, 2021 school board meeting, I requested in the public portion of the meeting that the Board make the Board Officer meetings public and called to the attention of the Board the legal precedents that indicated these meetings very likely would be considered public meetings under the Freedom of Information Act. Andrea White, serving as legal counsel to the Board, was in attendance at the meeting. In the public session portion of the meeting, Jan Hammond, as the Chair, asked Ms. White to comment on my request. In a live recorded meeting, with no discussion, I recall attorney Andrea White expressing her opinion that if the Board Officer meetings were only used to set the meeting agenda with the Superintendent then the meetings were not within the scope of the Freedom of Information Act and were not required to be open to the public.

22. Upon information and belief, the newly constituted School Board Officers continued having meetings with the Superintendent at times and places which were not announced to the public.

23. In the Jan. 25, 2021 meeting, I recall Mrs. Hammond stating that other districts did not have public Board Officer meetings and she did not feel the need to do so, or words to that effect. I recall the Vice Chair, Trustee Loveless, stating, "I don't really see the need in it and there is no precedent for it," or words to that effect. I also recall Nikki Gardner saying that "we have to continue with the way we are doing the things and we inherited the processes," or words to that effect.

24. At the Board Meeting on February 8, 2021, I submitted a written opinion of the South Carolina Attorney General dated August 26, 2019, which found that a similar committee of the Richland One School Board in Columbia, South Carolina was found to be within the scope of the Freedom of Information Act. Prior to that meeting on February 8, 2021, I sent an email to all the Board Members and Dr. Melton which I understand is attached as Exhibit B to the Amended Complaint filed by Plaintiff Paul Roy Osmundson against the School Board. The email referenced the Attorney General's opinion which is attached to the Amended Complaint as Exhibit C.

25. I requested several times in writing that we discuss the Attorney General's opinion as a Board with legal counsel present. As a member of the Board, I wanted to be able to directly ask my questions to our legal counsel about the risks and consequences to the District if the Board Officers meetings violated the Freedom of Information Act. One of my concerns was the legal precedents that stated that if Board Officers meet and receive District information from a District employee then the meeting is a public meeting. It is my understanding that the Board Officers received District information from the Superintendent and were briefed on the issues and based on the legal precedents these actions would make the Board officers meeting a public meeting.

26. Pursuant to §30-4-90 of the South Carolina Code of Laws a Board Member has an absolute right to have any document attached and made part of the Minutes. I submitted the Attorney General's Opinion and other documents to the School Board's secretary, Erin Strange. to be made part of the minutes of the February 8, 2021 Board meeting. My intention in putting the Attorney General's Opinion into the minutes was to make it readily available to the members of the public who reviewed our Board minutes and to see my handwritten notes on the face of the Opinion highlighting the legal precedents which suggested the Board Officer's meetings were subject to the Freedom of Information Act.

27. At the next meeting of the School Board on March 1, 2021, Mrs. Huddle made a motion to exclude the first attachment from the minutes which I submitted to the Board Secretary for inclusion in the minutes of the February 8, 2021 meeting. This motion was approved with a 4-2 vote, and resulted in the Attorney General Opinion being removed from the minutes. The removal from the minutes of the documents I submitted for inclusion in the minutes violated § 30-4-90 of the South Carolina Code of Laws.

28. § 30-4-90 of the South Carolina Code of Laws and a Board Member's right to put documents on the Minutes had been discussed openly with many of the members of the current Board. These discussions occurred in June 2020 when I put documents in the Minutes and Ken Loveless objected and tried to modify the submission. I emailed all the Board Members at that time outlining the rights afforded to a Board Member pursuant to §30-4-90 of the South Carolina Code of Laws. The next time was the first meeting of the newly constituted Board in November 2020, when Ken Loveless asked me whether §30-4-90 of the South Carolina Code of Laws or the District's Policy controlled the length of a document submitted to be made part of the Minutes. I relayed, in front of the entire Board, that the statute controlled and had no limits on the number of pages in a submission even though our policy limited individual submissions to a certain number of pages.

29. Catherine Huddle's motion to remove documents I submitted to the Board Secretary on February 8, 2021 and the Board's vote to remove those documents removed the Attorney General Opinion from the Minutes and kept this legal precedent from the public's view.

30. In April of 2021, the Board, without any advance notice, hastily voted to approve removing the mask policy that had been in place for the entire school year. I was not in attendance at this meeting, but I was told that subsequent to that meeting Andrea White expressed concerns

that the Board's modification to the mask policy could create insurance coverage issues for the District. I understand that this advice was given to Board Chair Jan Hammond and Dr. Melton and that Andrea White asked them to delay implementing the policy change until she could speak to the entire Board.

31. At the next Board meeting in Executive Session, Andrea White explained to the Board the insurance issues and the reason she had asked that the change to the mask policy be delayed. Trustees Huddle and Gardner were particularly loud and angry and speaking in a hateful and hostile manner toward Dr. Melton. Their anger was directed at Dr. Melton for delaying the modification to the mask policy. Their comments appeared to have been coordinated and were delivered in hostile and angry tones.

32. I recall that when I mentioned to Trustee Huddle that Andrea White had recommended the delay in the modification of the masking policy, Trustee Huddle responded by casting a nasty, glaring scowl in the direction of Dr. Melton and stated "The insurance is not the issue. You directly disobeyed this Board's motion. You work for us. We do not work for you. You overturned our mask policy change, and you made us look bad" or words to that effect. I recall Trustee Huddle then demanding Christina Melton resign. Right after Catherine Huddle stopped speaking, I recall Trustee Gardner began her own tirade directed at Dr. Melton stating that "we tried to work with you" and making it clear through her angry demeanor that it would be impossible for Dr. Melton to co-exist as the Superintendent with her and her cohorts on the Board. Trustee Gardner then demanded that Superintendent Melton resign. I recall Trustee Loveless smiling as he looked at Dr. Melton stating, "I agree with everything Trustee Huddle and Trustee Gardner said" or words to that effect.

33. From December 2020 until my last Board meeting on June 14, 2021, nothing was said about the matter during public Board meetings that would give the public any reason to believe that there was friction between Trustees Ken Loveless, Nikki Gardner or Catherine Huddle and Superintendent Melton. No one in the public was aware that efforts were being made to remove Dr. Melton from her office.

34. In the Spring of 2021, Dr. Melton was named South Carolina Superintendent of the Year, an honor which reflected very favorably upon our entire School District.

35. From my point of view Dr. Melton did everything within her power to keep her position as District Superintendent. She never indicated any desire to leave the employ of District Five. She is the consummate team player and was particularly concerned about her staff and the District. I could tell the meetings and negotiations were very stressful for her. The Board Officers did everything that they could to keep their efforts to replace her out of the public view.

36. At the next Board meeting, the Board met in Executive Session to discuss a potential settlement with Dr. Melton. I recall Nikki Gardner stating she wanted to fire Dr. Melton and pay her nothing. Andrea White explained that there was no basis for terminating Dr. Melton's contract. Andrea White explained there was a substantial payout to Dr. Melton if she was terminated without cause. At that time Catherine Huddle looked at Ken Loveless, as if the rest of us were not in the room, and stated "we are going to be criticized when the public finds out about this." I also recall Catherine Huddle speaking in a very demeaning manner toward Jan Hammond when Mrs. Hammond was expressing her desire to retain Dr. Melton. I interpreted Catherine Huddle's comments as more of the bullying and harassment to Jan Hammond to intimidate her to go along with the stated objective of Ken Loveless, Nikki Gardner and Catherine Huddle to oust

Dr. Melton. I recall Catherine Huddle speaking in a similar manner to Rebecca Hines in Executive Session that night.

37. At the June 14, 2021 school board meeting, the School Board went into Executive Session. We were presented with a "Settlement Agreement" (the "Agreement") which I had never seen or heard about. The Agreement was the most unorthodox contract between the District and a Superintendent I had ever seen in my 18 years on the Board.

38. The Agreement included a secrecy pact for the signers which provided that "Dr. Melton and each member of the board agree that they will not make any negative or disparaging statement or remarks concerning each other to any third person entity or organization..." The breach of this provision provided for a \$20,000 payment of liquidated damages individually by the Superintendent and the Board Members.

39. I asked why the Agreement was not being voted upon in public session. Attorney Andrea White stated that the Board did not have to vote on an agreement to modify the Superintendent's contract because "no court has ever ruled that a School Board could not execute an agreement to modify a superintendent's contract without a public vote" or words to that effect. Andrea White stated that the Board Members only needed to execute the document in Executive Session. I was struck by the fact Andrea White offered no legal analysis of the risks that the signing of the document in Executive Session could be interpreted as a secret vote, or the consequences if a court later determined that the signing of the document was a secret vote. In the 18 years I served on the Board, I do not recall the Board ever signing a document in Executive Session nor do I recall the Board Members signing a contract without a prior vote on the document in public session. I do not recall any attorney ever advising the Board that it was legal to sign a contract in Executive Session without a public vote. I refused to sign the Agreement.

40. The Agreement had been negotiated prior to the June 14, 2021 meeting. I assumed the Agreement had been negotiated by Andrea White, working in consultation with the Board Officers, who all seemed familiar with its contents and pleased with the terms of the Agreement. The Agreement stated that Dr. Melton would resign as Superintendent, that no public announcement would be made, that she would go out on personal leave time immediately, that she would preside at the high school graduation ceremonies scheduled for the latter part of June, that she would receive from the District approximately \$226,368 and on June 21, 2021, she would publicly announce she was resigning as the District Superintendent. The Agreement contained language obligating both the Trustees and Dr. Melton to make no disparaging remarks about the other, and as I understood it, obligating Dr. Melton to say only that she was resigning. She was not to say anything about the intense pressure created by the hostile working environment which had been created by the others on the Board of Trustees.

41. While explaining the Agreement to the Board, Andrea White stated, "The Agreement reads as if Dr. Melton had a change of life decision and decided to resign after the completion of the school year and was not forced-out, even though we all know that is what is happening," or words to that effect. Upon hearing those words, I made a decision I was not going to participate in this scheme to mislead the public about why the District was severing its relationship with Dr. Melton and paying \$226,368 to do so.

42. S.C. Code Ann. §30-4-70(c) provides that "No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session." The Board Officers by presenting a proposed contract and requiring members to sign the agreement in Executive Session to get everyone's agreement, clearly were deceiving the public

about the Superintendent's departure and committing the District to a course of action and large financial obligation without a public vote. The six Board Members' signatures on the contract evinced that they were polled and agreed to the plan to force Dr. Melton out of office and hide the fact she was forced out of office. While the Board Chair subsequently tried to assert that there was no vote, the language of the agreement concludes, "IN WITNESS WHEREOF, and **intending to be legally bound hereby** the parties have executed the foregoing Settlement Agreement and Mutual Release as of June 14, 2021, the effective date" [Emphasis added]. The legal effect of the signing of the Agreement in the Executive Session is that the Agreement was immediately binding as of the date it was signed – with no public notice and no public vote.

43. This District later argued that because Dr. Melton had a legal window to revoke acceptance that the Board did not enter an agreement. The fallacy of this argument is that the Board bound the School District by signing the Agreement – it had no out.

44. Before we left the Executive Session, I witnessed all of the other six Board Members execute the Agreement. The simultaneous execution of the Agreement in Executive Session by the six other Board Members constituted their votes of approval for the Agreement.

45. I recall Catherine Huddle asking, "what about Ed not signing the Agreement?" Andrea White responded by saying "Don't worry about Ed not signing the Agreement." Catherine Huddle then looked at me and smiled as she said "Remember, we are in Executive Session and you cannot repeat anything we say or do in here" or words to that effect.

46. I realized that I just witnessed the completion of the Board officers and Catherine Huddle working together with legal counsel to create an environment that forced Dr. Melton to leave the district in a dishonest way. My interpretation of those events is that those Board Members wanted to install a more compliant Superintendent who might abrogate his/her responsibilities and

allow these Board Members to run the School District rather than the Superintendent. Chair Hammond, Vice Chair Loveless, Secretary Gardner and Board Member Catherine Huddle acted together to construct a narrative to conceal their nefarious conduct and crafted an agreement that they approved by a “signing vote” in Executive Session with a contractual covenant of secrecy on the signers.

47. Their plan is illustrated by the fact that they published the meeting item in the agenda with a false narrative. They listed it as “legal advice regarding a contractual matter.” The board wasn’t getting legal advice. The Executive Session item was to approve and execute a binding contract paying the Superintendent almost a quarter million dollars because they wanted her gone – and then covering their tracks with secrecy and misrepresentation. The Executive Session was to further their plan by trying to wipe their fingerprints off of the action. When I objected and brought their activities out in public, they later voted to censure me in retaliation.

48. The fact that this action was already planned is reflected by the special-called Board meeting the very next week on June 22, 2021 to name the Interim Superintendent. There was not a public Board meeting held between June 14 and June 22 nor a publicized Board officers meeting that would let the public know the Board was discussing the selection of an Interim Superintendent.

49. Further proof that Dr. Melton did not want to leave her position is the fact that upon her resignation, she had to surrender her title as Superintendent of the Year she had been awarded a few weeks earlier, return all prize money and other recognition items and tributes.

50. I was so disgusted by what the Board had done, I not only refused to sign the document, I also publicly resigned and immediately left the meeting. Before I left, I made the comment that I did not agree with the way the Board handled Dr. Melton’s contract. The next day,

having received requests from several people and the press, I issued a statement which read as follows:

Last night I resigned from the School Board of District 5 for Lexington and Richland Counties. I felt it was the only action that I could take to express the serious nature of my objection to the way our Board has decided to conduct the public's business. My fellow Board members signed a secret Settlement Agreement with Dr. Melton to terminate the Superintendent's contract without a public vote. They wanted to present the false facade that she had resigned and keep it from the public until after the school year adjourned, ostensibly to avoid the criticism they would receive for their actions. I refused to sign the Agreement.

The truth is that Mr. Loveless, Mrs. Gardner, and Mrs. Huddle forced Dr. Melton to resign. I witnessed the hostile and abusive work environment these three created for her that would make it impossible for any Superintendent to succeed. Then, they demanded that Dr. Melton, the Superintendent of the Year, resign. There was no basis for terminating her employment. I felt that this was wrong, unfair, and not in the best interests of our District, community, teachers, and students.

This action should have been voted on in public rather than misleading the public about her departure. Ending the employment of the one person the Board has the authority to hire and fire should take place with a public vote that lets the public know what is happening. When we hire a Superintendent, we do it in public, but these Board members wanted to get rid of the State Superintendent of the Year in secret.

Transparency means conducting the public's business in public -- all the time -- not when it suits. It means not trying to cover up actions to create a narrative or advance a private agenda. As elected officials, we owe that obligation. I have worked for years on this Board for the public. Unfortunately, I do not believe I can solve this problem serving on this Board and don't want to preside over the damage to School District 5 that this Board is creating."

51. I am aware that after my departure Jan Hammond publicly stated that my statement to the public contained false information about the other Board Members. There is no false information in my issued statement. Jan Hammond's statement is a misrepresentation that is misleading. My statements are true and correct in all material respects and there were nine (9) people in the meeting room the night when Ken Loveless, Nikki Gardner and Catherine Huddle demanded that Dr. Melton resign. These people included the seven Board Members, Dr. Melton,

and Andrea White all of whom are witnesses to what occurred and what was said. I am aware that on June 28, 2021 Jan Hammond, Ken Loveless, Nikki Gardner and Catherine Huddle voted to approve a resolution censuring me for making the statement and part of the resolution states that I made false statements about the Board Members. This resolution by the Board and the statement that I made a false statement is an official statement of the Board that is misleading and misrepresents the facts as they occurred. Board Chair Jan Hammond made the motion to adopt this resolution. Trustees Matt Hogan and Rebecca Hines voted against the resolution. I am told that in the discussion portion of the motion in a recorded public meeting, Rebecca Hines asked Jan Hammond which part of my statements were not true and Jan Hammond would not answer that question. This resolution of the Board and the public statement that Jan Hammond made about me in her official capacity as the Board Chair are another step by Jan Hammond, Ken Loveless, Nikki Gardner and Catherine Huddle to use their positions as Board Members to mislead the public about what they had done to oust Dr. Melton.

52. Further public statements made by the Board Chair, Jan Hammond, following June 14, 2021 were dishonest and also misleading to the public. Those statements included the claim by Ms. Hammond that Dr. Melton had not been forced out but had resigned on her own volition. Another statement was that Dr. Melton talked about leaving for a month and that she had enough votes to remain the Superintendent had she wished to stay, or words to that effect. Jan Hammond's statement omits the fact the District would not have been required to pay Dr. Melton \$226,368 if she simply wanted to leave on her own volition. Jan Hammond's statements also omit the fact that Dr. Melton only started negotiating the terms of her departure after the April 26, 2021 Board meeting where she was accosted by Catherine Huddle, Nikki Gardner and Ken Loveless with demands that Dr. Melton resign. Their demands for her resignation reflected a pattern of

mistreatment, blame and criticism that appears to have been coordinated between them with the support of Ms. Hammond. Those statements by Ms. Hammond further shows her support in assisting them in trying to keep these abusive actions hidden from the public.

53. Rather than dealing with the truth when it was disclosed to the public about the hostility directed at Dr. Melton, Chair Jan Hammond chose to attempt to hide this action from the public by misleading the public as to what actually happened to Dr. Melton.

54. I am not aware of any prior comments from Dr. Melton or any other Board Member, including Jan Hammond, that Dr. Melton wanted, or intended, to leave her position at the District for any reason other than the fact that Catherine Huddle, Nick Gardner and Ken Loveless demanded she resign. I spoke to Dr. Melton approximately a week before the meeting where the other Board Members signed the Settlement Agreement and asked Dr. Melton where she was with everything that was going on. Dr. Melton stated she wanted to get out of this situation on some reasonable basis with her reputation intact. She said that even if she tried to stay in her job with the hostile actions by Ken Loveless, Nikki Gardner and Catherine Huddle that these three were so insistent on intruding into the operations of the District that she was concerned that they were going to mess things up and blame it on her and, in doing so, damage her reputation. She also said that if the Board composition were to change that she would be willing to come back as Superintendent someday.

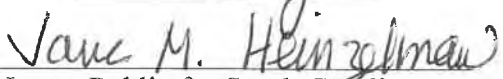
(signature is on the following page)

FURTHER YOUR AFFIANT SAYETH NAUGHT.


Edward K. White

In witness thereof on this 11th

day of February, 2022.


Notary Public for South Carolina

My Commission Expires: 6/9/2025

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2021-CP-40-03694

**DEFENDANT'S NOTICE OF MOTION
TO DISMISS AND MOTION TO
DISMISS PURSUANT TO RULE 41(b),
SCRPC**

This action alleging violations of the South Carolina Freedom of Information Act, S.C. Code Ann. Section 30-4-10, et seq. ("FOIA") was filed against School District Five of Lexington and Richland Counties ("the District") on July 23, 2021, by Paul Roy Osmundson ("Osmundson"). Osmundson states in his Complaint that he is employed as senior editor by the *State* newspaper. In his Complaint, Osmundson seeks a declaratory judgment and injunctive relief against the District.

In his Complaint and subsequent Amended Complaint, which was filed on August 16, 2021, Osmundson alleges the District's Board of Trustees violated FOIA in the following particulars regarding the Board's handling of the separation of former District Superintendent Dr. Christina Melton: (1) failing to publicly discuss the reasons and circumstances leading to Dr. Melton's resignation; (2) failing to publicly vote to accept Dr. Melton's resignation; (3) failing to follow FOIA's requirements in conducting meetings of its Board Officers to set the agenda for Board meetings; and (4) conducting "straw" votes in Executive Session. The District filed an Answer in which it denied violating FOIA in any manner.

Section 30-4-100(A) of FOIA requires that, upon the filing of a request for a declaratory judgment or injunctive relief related to provisions of the statute, the chief administrative judge of the applicable circuit “must schedule an initial hearing within ten days of the service on all parties (emphasis added).” Plaintiff’s original Complaint was served on the District on July 28, 2021; his Amended Complaint was served on August 23, 2021. Thereafter, Plaintiff did not contact the Court to schedule the required hearing nor did the Court sua sponte schedule the required hearing. To date, no hearing has been scheduled despite this matter being filed seven months ago.

Because the language of Section 30-4-100(A) is mandatory as to the scheduling of this initial hearing and that hearing was not held, Plaintiff’s Complaint must be dismissed with prejudice based on Plaintiff’s failure to prosecute pursuant to Rule 41(b), SCRCP.

This motion is based on the pleadings, the South Carolina Rules of Civil Procedure, the laws of the State of South Carolina, and a Memorandum of Law to be filed with the Court prior to the hearing on this motion.

Respectfully Submitted:

WHITE & STORY, LLC

By: s/Andrea E. White

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Maire E. Flynn (SC Bar ID #100927)

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Attorneys for Defendant

February 24, 2022

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Paul Roy Osmundson,	)	Civil Action No.: 2021-CP-40-03694
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S
	)	MEMORANDUM OF LAW
School District 5 of Lexington and	)	IN OPPOSITION TO
Richland Counties,	)	DEFENDANT'S MOTION TO
	)	DISMISS PURSUANT TO
Defendant.	)	RULE 41(b) SCRCP
	)	

INTRODUCTION

Defendant has moved to dismiss the Amended Complaint under Rule 41(b), SCRCP. That Rule states:

(b) Involuntary Dismissal: Non-suit; Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.

The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits. (Emphasis added.)

Pursuant to this Rule, Plaintiff is entitled to the opportunity to present his evidence before the Court considers dismissal of the Complaint.

In support of its Motion to Dismiss ("Motion"), Defendant cites Section 30-4-100(a) of the Freedom of Information Act, which states that the court must schedule an initial hearing within

ten (10) days of the service on all parties. Obviously, it is the court which schedules such an initial hearing, not the Plaintiff. Without offering any evidence, Defendant's Motion alleges that "Plaintiff did not contact the court to schedule the required hearing nor did the court *sua sponte* schedule the required hearing." As a result, Defendant argues, "Plaintiff's Complaint must be dismissed with prejudice based on Plaintiff's failure to prosecute pursuant to Rule 41(b) SCRCP."

For reasons stated herein and for other reasons which may be argued by Plaintiff, Plaintiff would show that this Motion is unfounded and should be denied. Plaintiff would show he has prosecuted and continues to prosecute his case against Defendant. In fact, before Defendant's Motion was filed, Plaintiff moved for summary judgment and submitted two substantial affidavits in support of the same. Moreover, Plaintiff monitored the status of the case on a regular basis. See Exhibit A, Affidavit of M. Larry Nelson.

ARGUMENTS

1. Plaintiff has sought a hearing under Section 30-4-100(A). Defendant neglects to note that in the prayer of the Plaintiff's Amended Complaint, the Plaintiff clearly prays for "an initial hearing within ten (10) days of service on all parties pursuant to §30-4-100(A)..."

2. The case has not been assigned to a circuit judge and the Clerk of Court has not yet scheduled a hearing on Plaintiff's Motion for Summary Judgment. Plaintiff would ask the Court to note that as a party, he is incapable of unilaterally scheduling the hearing called for by Section 30-4-100(A). In short, Plaintiff has done all he can to prosecute his case against Defendant and should not be punished because his timely-filed Motion for Summary Judgment has not yet been scheduled for a hearing.

3. The Defendant has ignored the recent Orders of the South Carolina Supreme Court regarding the effects of the COVID-19 pandemic. Plaintiff would call to the attention of the Court

the various orders which have been entered by the South Carolina Supreme Court addressing “the continued operation of the trial courts during the current corona virus (COVID 19) emergency....”

The initial lengthy Order of the South Carolina Supreme Court entered on April 3, 2020, and amended on April 14, 2020, sets forth a variety of practices and procedures the circuit courts are to follow to deal with the corona virus emergency. In its initial Order, the Court recognized “[t]he extraordinary challenge presented by the current emergency,” and went on to state that “in the event of a conflict between this Order and the South Carolina Rules of Civil Procedure ... this Order shall control.” (Emphasis added.)

In its clarifying Order of April 24, 2020, the Supreme Court stated in part, “...we expect the justice system, and those persons who operate within it, to react with compassion, empathy, and understanding and not take punitive actions that hinder the ability to act justly and fairly. Our laws favor the resolution of cases on the merits and this public health crisis will not cause us to abandon that principal.” (Emphasis added.)

In a memorandum to the circuit court judges, family court judges, and clerks of court, Chief Justice Donald Beatty on June 3, 2020, referenced, “court operations during the seven-week period June 15-July 31, 2020. In that memorandum he stated in part “...the unprecedented Covid-19 pandemic has required changes to ordinary court operations, and you have readily adapted to these difficult circumstances.” (Emphasis added). That memorandum went on to state each common pleas, general sessions, and family court continue to work with the clerks of court to create a comprehensive plan to schedule and dispose of all status conferences, pre-trial hearings, and pre-trial motions during this time. In bold print, Justice Beatty’s memorandum stated:

“Judges will continue handling as much of the regular dockets within their circuit as it practical. In doing so, judges shall adhere to the guidance set forth in the April 22, 2020, Order of the Supreme Court regarding operation of the trial courts during the corona virus emergency.”

In a memorandum of July 30, 2020, Justice Beatty again addressed to the circuit court judges, family court judges, and clerks of court and referencing court operations during the seven-week period of August 3-September 18, 2020, stating in part, "... the unprecedented Covid 19 pandemic has required changes to ordinary court operations" (Emphasis added.) In bold print, that memorandum also stated, "**Judges will continue handling as much of the regular dockets within their circuit as practical.**" (Emphasis added.) This language obviously allows the courts to exercise their discretion in the scheduling of all matters before them.

In a December 16, 2020 Order issued by the Supreme Court of South Carolina, the Court stated, in part:

"In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from those prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances given rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months."

Addressing the subject of hearings on motions, the Order stated, "While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency...." (Emphasis added.)

Addressing the matters relating to statutes of limitations, repose, and other similar statutes, this Order of the Supreme Court stated, "This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses... While this Court has recognized the existence of

judicial authority to toll a statute of limitations in other situations, it would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.” (Emphasis added.)

In an Order consistent with previous Orders of the court relating to the coronavirus emergency, the South Carolina Supreme Court entered another Order on March 4, 2021 consistent with its previous Orders, and once again stated in the first part of under the heading “Purpose” that “in the event of a conflict between this Order and the South Carolina Rules of Civil Procedure... this Order shall control.” (Emphasis added.)

In yet another Order of the Supreme Court of South Carolina dated August 27, 2021, after this lawsuit had been filed, the Court stated, in relevant part, “[t]he pandemic has necessarily delayed the resolution of many cases, and the response to this emergency must now focus on the resolution of these cases in a safe, timely, and just manner....” Again, this order contemplates and authorizes courts to exercise their discretion in scheduling and hearing motions as best they can under the unique and extraordinary circumstances.

In an Order dated November 23, 2021, the Supreme Court of South Carolina held, under the heading “Discretion of the Trial Judges to Impose Mitigation Measures,” “...this Court is confident the trial judges will take appropriate mitigation measures to address any unique risk the coronavirus may pose in any individual case.”

In its most recent Order addressing the coronavirus emergency, issued on February 4, 2022, the Supreme Court of South Carolina referenced its previous coronavirus emergency Orders and extended the November 23, 2021, Order’s provisions until May 5, 2022. Under the heading “Discretion of the Trial Judges to Impose Mitigation Measures,” the Court again stated that it is

confident “trial judges will take appropriate mitigation measures to address any unique risks the coronavirus may pose in any individual case.”

Plaintiff respectfully submits that Defendant, in filing its Motion to Dismiss, has given no consideration to these Orders and Memoranda addressing the COVID 19 emergency. It is fair to say the delay in holding the Section30-4-100(A) hearing in this case was, at least in part, the result of the pandemic and the stress it put on our judicial system. Moreover, the delay was not the result of Plaintiff’s failure to prosecute his case.

4. SOUTH CAROLINA CASE LAW INTERPRETING RULE 41(B)

There is not a great deal of case law interpreting Rule 41(b). Plaintiff has yet to find a case standing for the proposition that a Freedom of Information Act lawsuit was properly dismissed pursuant to Rule 41(b) as a result of an initial hearing not being held within ten days of filing. Perhaps the leading case is that of Collins v. Sigmon, 299 S.C. 464, 385 SE2d 835 (1989). In Collins, the underlying case was removed from the trial court’s active roster by agreement of the parties. Thereafter, a rule to show cause was issued to litigant Sigmon to explain why his action should not be dismissed for failure to prosecute. Defendant Sigmon did not respond. The trial judge, *sua sponte*, dismissed the case under Rule 41(b). In an opinion authored by then Justice Jean H. Toal, reference was made to the fact that a ruling *sua sponte* is an “inherent power” of the circuit court because “courts can manage their own affairs in order to achieve the orderly and expeditious disposition of cases.” Citing the maxim “equity aids the vigilant and diligent,” the court noted that the Defendant’s failure to respond to the rule to show cause was an appropriate factor for the trial court to consider. The court further held that a trial court should not rule until after the parties have had the opportunity to more fully develop the facts. A concurring opinion by

Justices Gregory, Harwell, and Finney noted that trial judges have discretion in these and similar situations. In short, the opinion in Collins v. Sigmon lends no support to Defendant's Motion.

In another opinion of the South Carolina Supreme Court, Johnson v. J.P. Stevens, 308 S.C. 116, 417 SE2d 527 (1992), the court held that a master in equity can weigh the evidence before ruling on a Motion to Dismiss under Rule 41(b). In Johnson, unlike the case at bar, there was no evidence presented to be weighed by the court. Because Plaintiff has filed a Motion for Summary Judgment and two substantive affidavits with extensive exhibits, Johnson v. J.P. Stevens is inapplicable and likewise offers no support to Defendant's Motion.

Plaintiff respectfully submits the Supreme Court's COVID 19 orders and existing case law requires the denial of Defendant's Motion to Dismiss.

CONCLUSION

Plaintiff is aware of no case decided by any circuit court, the Court of Appeals, or the South Carolina Supreme Court dismissing a Freedom of Information Act lawsuit because a Section 30-4-100(A) hearing was not held within the ten (10) day period referenced in the statute. Plaintiff respectfully submits that such a dismissal in this case would be in gross violation of Plaintiff's right to have his case decided on the merits, especially during this Covid pandemic crisis. A dismissal would also punish Plaintiff and cause him severe prejudice for scheduling issues over which he has no control.

For these reasons and any others that may be presented to or accepted by the Court prior to or at a hearing on this matter, Plaintiff respectfully submits Defendant's Motion to Dismiss should be denied in full.

[SIGNATURE PAGE FOLLOWS]

COLLINS & LACY, PC

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Columbia, South Carolina
March 3, 2022

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff

vs.

School District 5 of Lexington and Richland
Counties,

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2021CP4003694

AFFIDAVIT OF M. LARRY NELSON

PERSONALLY APPEARED BEFORE ME, the undersigned, M. Larry Nelson, who after being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and reside in Richland County, South Carolina. Unless otherwise noted as being based upon information and belief, the statements below are based on my own personal knowledge.

2. I execute this Affidavit with the full knowledge and intent that this is a sworn statement as if testifying in a court of law. As confirmation of this acknowledgement, I have initialized this paragraph. Ln

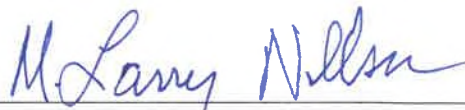
3. I am the Legal Investigator for Collins & Lacy, P.C. and have held this position since December 1, 1997. I am assigned the above caption case to perform paralegal duties and responsibilities.

4. I filed the Summons & Complaint and four exhibits with the Richland County Court of Common Pleas on July 23, 2021, and the Amended Summons & Complaint and four exhibits with the Richland County Court of Common Pleas on August 16, 2021.



5. Part of my responsibilities for this case is to check Court rosters weekly or bi-weekly to determine recent filings and Court notifications related to Hearings or filed documents. With the exception of December 18, 2021, through January 3, 2022, (when I was on vacation) I have checked the Richland County Court of Common Pleas Roster weekly or bi-weekly. While checking the Court Roster on March 4, 2022, I noticed where the aforementioned case was scheduled for a Roster Meeting on March 21, 2022.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.



M. Larry Nelson

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 16th DAY OF March 2022.



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 8/7/2030

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

**DEFENDANT'S MEMORANDUM OF
LAW IN SUPPORT OF RULE 41(b)
SCRCP MOTION TO DISMISS**

Defendant School District Five of Lexington and Richland Counties ("the District"), by and through its undersigned counsel, respectfully submits this Memorandum of Law in Support of its Motion to Dismiss for Failure to Prosecute pursuant to Rule 41(b), SCRCP.

STATEMENT OF FACTS

Plaintiff, senior editor at *The State* newspaper, initially filed this FOIA action against the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board") on July 23, 2021, seeking a declaratory judgment pursuant to S.C. Code Ann. § 15-53-20 and injunctive relief pursuant to S.C. Code Ann. § 30-4-100. Plaintiff filed an amended complaint on August 16, 2021.

In his Amended Complaint, Plaintiff alleges the Board violated the South Carolina Freedom of Information Act ("FOIA"), S.C. Code 30-4-10, *et seq.*, in connection with the Board's handling of the resignation of former District Superintendent Dr. Christina Melton. Specifically, Plaintiff alleges the following: (1) the Board improperly discussed its criticisms of Dr. Melton and her possible separation from the District during executive session of the Board's meetings rather

than in public; (2) the Board improperly voted or held “straw votes” in executive session; (3) the Board improperly failed to consider meetings of its three officers and the District Superintendent to set the agenda for Board meetings as subject to FOIA; and (4) the Board improperly created standing committees and did not conduct meetings of those committees in accordance with FOIA.

Section 30-4-100 (A) of FOIA requires that where a plaintiff is seeking a declaratory judgment or injunctive relief, the chief administrative judge of the circuit in which the action was filed “**must** schedule an initial hearing within ten days of the service on all parties.” The statute continues to state that if the matter is not resolved at the initial hearing by the court hearing the matter, the court “**shall** establish a scheduling order to conclude actions brought pursuant to this section within six months of initial filing.” Here, there was no hearing held within ten days nor was the matter concluded within six months of the initial filing in August 2021.

LAW/ANALYSIS

Our courts consistently have ruled that a plaintiff has the burden of prosecuting his action and that where the plaintiff fails to meet that burden, the case may be dismissed. *Don Shevey & Spires, Inc. v. Am. Motors Realty Corp.*, 279 S.C. 58, 301 S.E.2d 757 (1983); *Small v. Mungo* 254 S.C. 438, 175 S.E.2d 802 (1970); *Joyner v. Glimcher Props.*, 356 S.C. 460, 589 S.E.2d 762 (Ct. App. 2002). A defendant has no burden to move a case along; that burden belongs solely to the plaintiff¹. *Thomas & Howard Company v. Fowler*, 238 S.C. 46, 119 S.E.2d 97 (1961); *Shevey*, 301 S.E.2d at 759.

¹ Despite having no duty to do so, counsel for the District reminded Plaintiff’s counsel on two occasions of the ten day hearing requirement.

The case of *Joyner v. Glimcher Props*, 589 S.E.2d 762, squarely addresses the question of the appropriateness of a Rule 41b dismissal where a court has not done what it is obligated to do under the applicable law and the plaintiff has not contacted the court or sought a mandamus. In *Joyner*, the plaintiff was injured when a tree limb in a commercial parking lot fell and destroyed his vehicle. Plaintiff sued the owner of the parking lot and the landscaping company in magistrate's court and was awarded \$2,500 by a jury. Thereafter, the parking lot owner appealed to circuit court. The magistrate did not file a return with the circuit court as required by Rule 75, SCRCP, and the parking lot owner did not contact the magistrate's court or file a writ of mandamus. The circuit court subsequently dismissed the appeal under Rule 41b, SCRCP, finding that the parking lot owner had failed to prosecute his appeal.

Here, neither Plaintiff nor his counsel contacted the office of the Chief Administrative Judge, or the Richland County Clerk of Court after Plaintiff filed his Amended Complaint on August 2, 2021. Plaintiff also did file a writ of mandamus. Further, this case has been pending for more than seven months and Plaintiff has not requested a scheduling order as mandated by FOIA to ensure the case is concluded within the requisite six-month period.

In his memorandum of law in opposition to the District's motion to dismiss, Plaintiff makes two essential arguments to justify his negligence in failing to prosecute his case. He first asserts the court, and not him, must schedule the ten-day hearing and that he has "done all he can" to further his case. Plaintiff's argument ignores his obligation, as explained by the *Joyner* court, to contact the office of the Richland County Chief Administrative Judge and/or the Richland County Clerk of Court to request that the ten-day hearing be scheduled. This is particularly egregious, given that Defendant's counsel reminded him, in writing, of that obligation by letter dated August 17, 2021 (Exhibit A).

Plaintiff also tries to obfuscate his negligence in failing to request a hearing by pointing to the Covid-19 pandemic and its impact on the South Carolina judicial system. While Plaintiff is correct the pandemic had an impact on the scheduling of in-person trials, motions and other hearings, our courts began hearing motions and conducting status conferences long before this matter was filed in August 2021.

CONCLUSION

Plaintiff has the burden of prosecuting his case, which he failed to do, This justifies dismissal of this action pursuant to Rule 41, SCRPC. Accordingly, this Court should dismiss Plaintiff's FOIA action and award Defendant the attorney's fees and court costs incurred as the result of the filing of this motion.

Respectfully Submitted:

WHITE & STORY, LLC

By: s/Andrea E. White

Andrea E. White (SC Bar ID No. 11891)

P.O. Box 7036

Columbia, SC 29202

T: 803.814.0993

F: 803.814.1183

awhite@sodacitylaw.com

Attorney for Defendant

March 16, 2022
Columbia, South Carolina

Exhibit A

Andrea E. White
Ashley C. Story
E. Scott Winburn
J. Alexander Sherard
Lionelle P. Mitchell
Molly Flynn



3614 Landmark Dr. Ste.
P.O. Box 7036 (29206)
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www.sodacitylaw.com

Sender's email
awhite@sodacitylaw.com

August 17, 2021

VIA EMAIL AND U.S. MAIL

Mr. Joel W. Collins, Esquire
Mr. J.C. Nicholson, III, Esquire
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, South Carolina 20211
jcollins@collinsandlacy.com
jnicholson@collinsandlacy.com

Re: Osmundson v. School District Five of Lexington and Richland Counties
C/A No.: 2021-CP-40-03694

Gentlemen:

I hope this letter finds you both well. I am writing to advise you that, at its meeting on August 9, 2021, the LR5 Board voted to officially accept Dr. Melton's resignation effective June 30, 2021, and also to ratify the Settlement Agreement between the parties. As the lack of an official vote serves as the basis of your declaratory judgment action, that claim is now moot and there is nothing for a court to decide, particularly as the South Carolina Freedom of Information Act (FOIA) does not require that a public body vote to accept an employee's resignation and clearly permits discussions regarding an employee's release to occur in executive session.

Further, while no court has found that meetings of school board officers to set an agenda constitute the meeting of a "committee" for purposes of FOIA requirements, the LR5 Board voted on August 9, 2021, to consider those meetings as meetings of a public body. Consequently, that part of your declaratory judgment also is now moot.

I have enclosed a copy of the minutes from the August 9th meeting for your review and trust that, based on the Board's actions, you will immediately dismiss the above-captioned suit as originally filed. I understand you now have amended your original Complaint to allege that meetings of standing committees of the LR5 Board have not complied with FOIA requirements. As you do not identify specific meetings where the requirements of FOIA were not followed, I am looking into your allegations and will share what I find with you.

Please be advised that if your original Complaint is not dismissed, I intend to file a Motion to Dismiss on the grounds that there is no longer a justiciable controversy.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea E. White". The signature is written in a cursive, flowing style.

Andrea E. White

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

Defendant School District Five of Lexington and Richland Counties ("the District"), by and through its undersigned counsel, hereby moves, pursuant to Rule 56, SCRCP, for summary judgment as to Plaintiff's Complaint in its entirety.

The District is entitled to judgment as a matter of law because the undisputed evidence in the record shows there are no material facts supporting Plaintiff's claims that the District has violated the South Carolina Freedom of Information Act, even viewing all facts in the light most favorable to Plaintiff.

In support of this Motion, the District relies upon the attached the Affidavits of Jan Hammond, Ken Loveless, Cathy Huddle, Nikki Gardner, Matt Hogan, and Rebecca Hines, the statutory and common law of the State of South Carolina, a Memorandum of Law to be filed with the Court prior to the hearing on this Motion, and any other evidence deemed admissible by the Court.

(SIGNATURE BLOCK ON THE FOLLOWING PAGE)

Respectfully submitted by,

WHITE & STORY, LLC

By: s/Andrea E. White

Andrea E. White (SC Bar No. 11891)

P.O. Box 7036 (29202)

3614 Landmark Drive, Suite EF

Columbia, SC 29204

T: (803) 814-0993

F: (803) 814-1183

awhite@sodacitylaw.com

***Attorney for Defendant School District Five of
Lexington and Richland Counties***

March 17, 2022
Columbia, SC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

AFFIDAVIT OF JAN HAMMOND

I, Jan Hammond, being duly sworn according to law, do say as follows:

1. My name is Jan Hammond, and I am the current Chair of the Board of Trustees for School District Five of Lexington and Richland Counties (“the Board” and “the District”). I have served as Board Chair since 2020.

2. As Board Chair, I assist the Board in ensuring compliance with the requirements of the South Carolina Freedom of Information Act (“FOIA”). Over my more than 17 years on the Board, I have attended numerous workshops regarding how FOIA applies to Board meetings, including when it is permissible for the Board to discuss issues in Executive Session, such as matters related to the separation of personnel.

3. In November 2020, three new Trustees were elected to the Board, resulting in a “shift” of the prior Board majority. On January 25, 2021, the Board met in Executive Session with then-Superintendent Dr. Christina Melton to conduct an informal mid-year evaluation, as permitted by Dr. Melton’s contract with the District (Exhibit A). During that discussion, several Trustees expressed to Dr. Melton their concerns about certain aspects of her performance, in particular her interactions with the Board.

4. Throughout the following several months, several Trustees voiced concerns to Dr. Melton about what those Trustees considered her lack of responsiveness to their questions and requests for information. These concerns were discussed in Executive Session, as permitted by FOIA. Dr. Melton never requested that these discussions take place in public.

5. Following the Executive Session at the Board meeting on May 10, 2021, during which several Trustees advised Dr. Melton that they had lost confidence in her continued leadership, Dr. Melton sought legal counsel.

6. At the board meeting on May 24, 2021, Andrea White, the District's legal counsel, advised the Board that she had received a letter from Dr. Melton's counsel regarding Dr. Melton's employment status. During that same meeting, Ms. White also advised the Board regarding its options under Dr. Melton's contract if the Board desired to end the contract between the Board and Dr. Melton. The Board did not take any vote on the matter or conduct a straw poll, but each Trustee had an opportunity to share their opinions about Dr. Melton's leadership. Trustees also discussed the amount of money they would be willing to pay Dr. Melton in the event she decided to resign pursuant to Section 11(a) of her contract.

7. Ms. White then advised the Board that she would contact Dr. Melton's attorney to discuss a mutually negotiated termination of the contract, as required by Section 11 of Dr. Melton's contract.

8. Ms. White and Dr. Melton's attorney subsequently engaged in settlement negotiations over a period of a few weeks.

9. During Executive Session at the Board's meeting on June 14, 2021, Ms. White presented the Board with a Settlement Agreement, the terms of which had been negotiated with Dr. Melton's counsel. She explained the terms to the Board and then asked each Trustee to sign the Agreement, as had been requested by Dr. Melton's attorney. Trustee Ed White refused to sign the Agreement and stormed out of Executive Session, taking a copy of the Settlement Agreement with him without consent from the Board or Ms. White. During the subsequent public portion of that meeting, Ed White made a statement in which he disclosed what had been discussed during Executive Session in violation of Board Policy and against the wishes of Dr. Melton. Ed White then walked out of the meeting, handing a typed letter of resignation to the Board secretary as he left.

10. Because of Mr. White's unanticipated and inappropriate outburst during the meeting, the Board then re-entered Executive Session while Ms. White contacted Dr. Melton's legal counsel, who advised Ms. White that Dr. Melton still desired to resign. Thereafter, the Board Vice-Chair made a public statement accepting Dr. Melton's resignation.

11. The executed Settlement Agreement, which outlined the settlement terms negotiated by the Board and Dr. Melton through their respective legal counsel, was then disclosed to the media (Exhibit B).

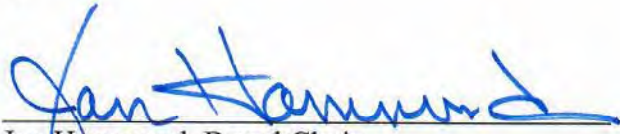
12. While nothing in FOIA or Board Policy requires the Board to vote to accept a resignation, at its meeting on August 9, 2021, the Board voted to accept Dr. Melton's resignation. At that same meeting, the Board also voted to have meetings of its Board Officers to set the agenda for Board meetings open to the public and subject to FOIA. Prior to Mr. White raising that issue in January 2021, the Board Officers had always met privately with the Superintendent to set the agenda for the next Board meeting. During Mr. White's many years on the Board, Mr. White had never questioned that practice, leading me to conclude his actions in raising the issue following the 2020 election were purely political.

13. In February 2021, the Board established three standing committees. Since their inception, these committees have complied with the requirements of FOIA (Exhibit C).

14. I have never asked Board members to vote in Executive Session; to conduct a straw vote; or to participate in a secret ballot.

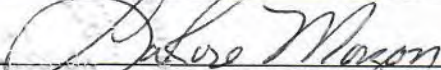
15. Following the June 14, 2021, Board meeting, I made a statement to a reporter to the effect that "Dr. Melton had the votes to say if she had chosen to stay." In making that comment, I did not mean to imply that the Board had taken a vote or conducted a straw vote at its meeting on May 24, 2021, or at any other time. My comment was solely based on the opinions and thoughts shared by the other Trustees during the May 24th meeting.

FURTHER AFFIANT SAYETH NOT.



Jan Hammond, Board Chair
School District Five of Richland and Lexington
Counties Board of Trustees

SWORN BEFORE ME THIS 17th
DAY OF March, 2022.



NOTARY PUBLIC FOR STATE OF SC
My Commission Expires: 9-30-2026

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
)
)
PROFESSIONAL EMPLOYMENT
AGREEMENT BETWEEN THE BOARD
OF TRUSTEES FOR SCHOOL DISTRICT
FIVE OF LEXINGTON AND RICHLAND
COUNTIES AND
DR. CHRISTINA MELTON

This Employment Agreement (hereinafter, referred to as the "Agreement" or "contract") is made and entered into this 11th day of December, 2017, by and between the Board of Trustees for the School District Five of Lexington and Richland Counties (hereinafter, referred to as the "Board") and Dr. Christina Melton (hereinafter, referred to as the "Superintendent").

WHEREAS, the Board desires to provide the Superintendent with a written employment contract in order to enhance administrative stability and continuity within the schools, which the Board believes generally improves the quality of its overall educational program; and

WHEREAS, the Board and the Superintendent believe that a written contract is necessary to describe specifically their relationship and to serve as the basis for effective communication between them as they fulfill their respective duties and responsibilities in the operation of the District schools;

NOW, THEREFORE, the Board and the Superintendent, for the consideration herein specified, agree as follows:

1. TERM

The Board, in consideration of the promises herein contained of the Superintendent, hereby employs and the Superintendent hereby accepts employment as Superintendent of the District for a term commencing July 1, 2018, and ending June 30, 2021.

2. CERTIFICATION AND RESPONSIBILITIES OF THE SUPERINTENDENT

The Superintendent will furnish throughout the life of this Contract professional credentials acceptable to the Board to act as Superintendent of the District or, alternatively, a South Carolina superintendent's credential. This is a contract for the performance of professional services by the Superintendent, who shall not be reassigned to any other position or have [his/her] duties reassigned to others without [his/her] consent.

The Superintendent shall have charge of the administration of the District under the direction of the Board. [S/he] shall be the chief executive officer of the District; shall select, organize, reorganize, and assign all personnel as best serves the District in compliance with State law and District policy; shall oversee the instructional program and business affairs of the District; shall from time to time suggest and/or promulgate as may be appropriate regulations, rules, and procedures deemed necessary for the well ordering of the District; shall have authority to accept resignations for and on behalf of the Board; and in general, shall perform all duties incident to the office of Superintendent as prescribed by Board policies.

The Superintendent shall have the right to attend all Board meetings and all Board and citizen committee meetings, serving as an ex officio member and providing administrative recommendations on each item of business considered except as otherwise provided herein. The Board may only meet in executive session without the Superintendent or [his/her] representative for the purpose of discussing the Superintendent's evaluation, compensation, Board and Superintendent relations, and/or individual Board member actions or Board member relations with other Board members.

The Board, individually and collectively, shall refer all substantive criticisms, complaints, and suggestions called to the Board's attention to the Superintendent for study and appropriate action, and the Superintendent shall investigate such matters or cause such matters to

be investigated, and when requested or as is otherwise necessary, shall inform the Board of the results of such investigations. Requests for substantive information shall be made to the Superintendent and not to individual members of the District staff.

The Superintendent agrees to devote [his/her] time, skill, labor, and attention to said employment during the term of this contract, provided, however, that the Superintendent may undertake various outside professional duties and obligations including writing, lecturing, and speaking engagements subject to proper notification to the Board. In addition, the Superintendent may engage in other short-term activities of the Superintendent's choosing, including the opportunity to teach or serve as an adjunct professor or in some other capacity at the college or university level on a part-time basis, subject to approval by the Board. In addition, the Superintendent may accept appointments to foundations, boards or commissions that do not interfere with the Superintendent's performance of [his/her] duties under this contract, subject to the approval of the Board.

The Board encourages the continuing professional growth of the Superintendent through [his/her] participation, as [s/he] might decide in light of [his/her] responsibilities as Superintendent, in (a) the operations, programs, and other activities conducted or sponsored by local, state, and national school administrator and school board associations; (b) seminars and courses offered by public or private educational institutions; and (c) informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of the Superintendent to perform [his/her] professional responsibilities for the District. In its encouragement, the Board shall permit a reasonable amount of released time for the Superintendent to attend such matters and pay or reimburse the Superintendent in accordance with District policy for the necessary fees for travel and related expenses as provided in the annual District budget for the Superintendent's office.

3. COMPENSATION

The Board shall pay the Superintendent an annual base salary of \$175,000. The annual salary rate shall be paid to the Superintendent in accordance with the schedule of salary payments in effect for other certificated employees of the District. The Board and Superintendent may mutually agree to adjust the salary annuity of the Superintendent during the term of this contract, but in no event, shall the Superintendent's salary or annuity be reduced. Any adjustments in salary or annuity made during the life of this contract shall be in the form of an amendment and become part and parcel of this contract, but it shall not be deemed that the Board and the Superintendent have entered into a new contract or that the termination date of the existing contract has been extended. Any across-the-board compensation adjustments provided to the District's administrative employees shall be provided to the Superintendent as well.

4. VACATION AND OTHER BENEFITS

(a) The Superintendent shall be entitled to all benefits of administrative employees of the District, with the exception of sick leave and vacation leave, which are treated specifically as provisions of this contract.

(b) The Superintendent shall be entitled to a total of twenty (20) days of vacation or annual leave per year in addition to all legal and other holidays recognized by the District. Said 20 days of vacation leave shall be available to the Superintendent July 1, 2018, and each July 1 thereafter. The Superintendent may, upon written notice to the Board, carry over up to 10 vacation or annual leave days into a subsequent school year, but the Superintendent shall not be reimbursed for any unused vacation or annual leave upon the termination of the contract.

(c) The Superintendent shall receive 15 days of sick leave annually. The Superintendent's sick leave may be used for personal illness, medical issues, or leave as provided

for in the Family and Medical Leave Act. The Superintendent's sick leave may be accumulated, but [s/he] shall not receive reimbursement for unused sick leave.

(d) The Superintendent shall be provided with a laptop computer and/or I-Pad, or equivalent technological equipment, for use in the performance of [his/her] duties under this contract. The Superintendent may also utilize these resources for reasonable and appropriate personal use.

(e) The District shall make an annual contribution to an annuity plan of the Superintendent's choice in the amount of 5% of the annual salary. Said contributions to be conditioned upon a satisfactory performance evaluation as determined in good faith by the Board. Said contribution shall normally be made on or before October 31, beginning in 2018, provided, however, that if the Board fails to professionally conduct and complete in good faith the Superintendent's evaluation by October 20 in any given year, the annuity payment provided for that year shall be due and paid.

5. EXPENSES

(a) The Board shall pay the Superintendent's dues to the American Association of School Administrators, the South Carolina Association of School Administrators, and other related professional group memberships, which the Superintendent identifies, and feels are necessary to maintain and improve [his/her] professional skills. Annually, the Superintendent shall provide the Board with a list of such organizations. The Board shall further pay or reimburse the Superintendent for reasonable expenses incurred by the Superintendent in the continuing performance of [his/her] duties under this contract as provided in the District budget for the Superintendent's office. The Board encourages the Superintendent's participation in appropriate community organizations and will pay expenses for such participation including membership dues and fees as provided in the District budget.

6. AUTOMOBILE REIMBURSEMENTS

The Superintendent shall be entitled to a monthly automobile allowance of (\$850.00) to be used toward automobile use, maintenance, and fuel expenses incurred for in-District travel. The Superintendent will be reimbursed for out-of-District travel in accord with standard operating practices and the confines of the budget for the Superintendent's Office.

7. PROFESSIONAL LIABILITY

The District agrees that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in [his/her] individual capacity or in [his/her] official capacity as an agent/employee of the District, provided the claim made or the incident or occurrence giving rise to the claim or action took place while the Superintendent was acting in good faith within the scope of [his/her] employment. In no case shall an individual Board member be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings.

8. MEDICAL EXAMINATION

In light of the unique nature of the professional duties of the Superintendent, the District shall, at its expense, provide to the Superintendent a complete annual medical examination by a physician licensed to practice medicine in the State of South Carolina. The Superintendent shall direct the physician to advise the Board Chairperson, in writing, of the continued fitness of the Superintendent to perform [his/her] duties. The contents of the physician's report shall be kept confidential.

The first such physician's report shall be provided to the Board Chairperson on or before April 1, 2018. The receipt of an acceptable physician's report as provided herein on or before July 1, of each year thereafter, shall be a condition precedent to the Superintendent's continued employment pursuant to this contract.

9. EVALUATION

The Board and Superintendent shall meet at least once annually and may include other appropriate school officials of the District for the purpose of establishing District goals and objectives for the ensuing school year. Said goals and objectives shall be reduced to writing and be among the criteria by which the Superintendent is evaluated as hereinafter provided. This goal-setting session shall be scheduled annually by agreement of the parties.

The Board shall evaluate the performance of the Superintendent at least once a year during the term of this Agreement. For this purpose, the Superintendent shall submit to the Board a recommended format for conducting the evaluation. The Board shall meet and discuss the proposed format, attempting in good faith to reach consensus with the Superintendent as to an agreeable evaluation format. The Board/Superintendent discussion concerning the evaluation process and the evaluation itself shall be conducted in executive session, unless the parties agree otherwise. Thereafter, the Board shall adopt an evaluation format and shall evaluate the Superintendent pursuant thereto.

To conclude the evaluation, the Board shall meet in executive session for the purpose of discussing the results of the evaluation and any related matters, such as the terms of the Superintendent's contract. The results of the evaluation and any conclusions drawn by the Board shall be shared with the Superintendent, both verbally, in executive session, and in the form of a written summary. The Superintendent shall have the right to respond to the results either during the executive session, or in writing, following the executive session. Any written response, along with the written summary of the results, shall be made a part of the Superintendent's personnel file. Following the Superintendent's evaluation or [his/her] written response, and at the request of either party, the Board may meet with the

Superintendent in executive session to discuss the matter further.

The annual evaluation shall normally be conducted during the fall, with the first annual evaluation scheduled for the fall of 2019. The Board, however, reserves the right to conduct an interim evaluation of the Superintendent's performance during the winter of 2018.

10. RENEWAL

If the Board does not notify the Superintendent in writing on or before February 1, 2020, and February 1 of each year under this Agreement that the Superintendent's contract will not be extended beyond the term specified in section 1. hereof, or the then-current termination date, it shall be deemed that the Board has renewed the contract for one additional year beyond the then-current termination date.

The Superintendent shall remind each Board member, in writing or via electronic communication, of this automatic renewal clause no later than December 1 of each year, beginning in 2019. If during any year subsequent to 2019, the Superintendent does not so remind the Board, this automatic renewal provision shall not be applicable for that year.

11. TERMINATION

This contract shall be terminated by:

- (a) mutual agreement of the parties;
- (b) disability of the Superintendent;

In the event of disability by illness or incapacity, the Board may terminate this contract by written notice to the Superintendent at any time after the Superintendent has exhausted any accumulated sick leave and such other leave as may be available, and has been absent from [his/her] employment, for whatever cause, for a continuous period of 90 days. Except for any notification which may be required by law, including but

not limited to COBRA, all obligations of the District shall cease upon such termination.

If a question arises concerning the capacity of the Superintendent to return to [his/her] duties, the Board may require the Superintendent to submit to a medical examination, at District expense, to be performed by a physician selected by the Board, upon good faith consultation with the Superintendent. The physician shall submit a report to the Board as to whether the Superintendent is fully capable of performing the essential functions of [his/her] duties and responsibilities.

(c) discharge for just cause;

Discharge for just cause shall be based upon conduct which is prejudicial to the District or upon conduct which constitutes neglect of duty, incompetence, or unprofessional conduct. Notice of the specific grounds and facts supporting the discharge for just cause shall be given in writing, and the Superintendent shall be entitled to appear before the Board in executive session to discuss such cause or causes and to provide oral and written support for the Superintendent's position with respect to the discharge. If the Superintendent chooses to be accompanied by legal counsel at such meeting, [s/he] shall bear any costs therein involved. Following the meeting, the Superintendent shall be provided notice in writing of the results of the meeting.

(d) unilateral termination;

The Board may, at its option, unilaterally terminate this Agreement upon affirmative vote of four (4) members of the Board at any regular or special meeting of the Board. In the event of such termination, the

Superintendent shall not be entitled to appear before the Board, but the District shall pay to the Superintendent, conditioned upon the execution of a complete release of all claims or causes of action satisfactory to the Board, severance pay the equivalent of 12 months salary or the balance due on the contract, whichever is less. It is understood that this option should be exercised only after reasonable and good faith efforts pursuant to paragraph 11(a) of this Agreement have been concluded.

- (e) death of the Superintendent.

12. SAVINGS CLAUSE

If, during the term of this contract, it is found by a court of law that a specific clause of the Agreement is illegal under either federal or state law, the remainder of the Agreement not affected by such ruling shall remain in force.

13. DECLARATION BY GOVERNOR

As required by S.C. Code Ann. § 59-18-1570, this contract shall be void should the Governor of South Carolina declare that the office of Superintendent in School District Five of Lexington and Richland Counties is vacant.

14. AMENDMENT

This Agreement may be amended during its term by the mutual written consent of the Board and the Superintendent. Any such amendment shall be in writing and approved by official action of the Board and accepted in writing by the Chairperson of the Board and the Superintendent; any waiver of any term of the contract must be in writing and any breach or noncompliance with a term is not to be construed as a waiver of such term in the future.

15. PARTIAL INVALIDITY

The invalidity of one or more phrases, sentences, clauses, sections or paragraphs contained in this Agreement shall not affect the remaining portions, so long as the material purposes of this Agreement can be determined and effectuated.

16. LAW

This Agreement shall be governed, construed and enforced in accordance with the law of the State of South Carolina.

17. ADMINISTRATIVE LEAVE

At any time during the term of this Agreement if there is alleged conduct on the part of the Superintendent which is prejudicial to the District, including, but not limited to unprofessional conduct, derelict of duty, inefficiency or incompetency, and the Board deems it in the best interest of the District, the Board may so inform the Superintendent and place the Superintendent on administrative leave, during which time the Superintendent will receive [his/her] full salary and benefits as provided for in sections 3, Salary, and 4, Benefits. Such administrative leave shall continue until the Board decides otherwise.

18. SUPERINTENDENT ELECT

Effective January 1, 2018, Dr. Christina Melton, shall be designated Superintendent Elect by the Board and shall perform any such duties in [his/her] capacity requested by the Superintendent; the Superintendent Elect's salary, effective January 1, 2018, shall be \$155,000, along with any benefits currently conferred upon administrative employees of the District. In all other respects, Dr. Christina Melton's current employment agreement shall be in force until July 1, 2018, at which time the terms and conditions of this Agreement shall become effective, conditioned upon satisfactory performance by Dr. Christina Melton while Superintendent Elect, as determined in good faith by the Board on or before June 22, 2018.

IN WITNESS WHEREOF, the Board has caused this Employment Agreement to be approved in its behalf and executed by its duly authorized Chairperson, and the Superintendent

has approved and executed this Agreement effective on the date and year specified above.

Christina Melton

Superintendent/Superintendent Elect

[Signature]

Chairperson, Board of Trustees

Edward R. Dea

Witness

Patricia D. Baker

Witness

12-12-17

Dated

12/14/17

Dated

Exhibit B

STATE OF SOUTH CAROLINA	)	
	)	CONFIDENTIAL SETTLEMENT
COUNTY OF LEXINGTON	)	AGREEMENT AND MUTUAL RELEASE

WHEREAS, the Board of Trustees of School District Five of Lexington and Richland Counties (respectively, “the Board” or “the District”) previously employed Dr. Christina Melton (“Dr. Melton”) pursuant to a written Employment Agreement initially executed on or about December 11, 2017, first amended on September 23, 2019, and second amended on October 7, 2020 (collectively referred to herein as the “Employment Agreement”);

WHEREAS, the parties are desirous of terminating said Employment Agreement by mutual agreement, pursuant to Paragraph 11(a) of the Employment Agreement; and

WHEREAS, the parties seek to resolve any and all disputes between them regarding termination of the Employment Agreement in this Confidential Settlement Agreement and Mutual Release (“Agreement”);

IT IS HEREBY MUTUALLY AGREED by and between the Board and Dr. Melton as follows:

1. Dr. Melton will resign from the District effective June 30, 2021, and the Board wishes to accept Dr. Melton’s resignation.
2. The parties agree that Dr. Melton will represent the District at graduation on Saturday, June 19, 2021, but will thereafter take her earned, accumulated, and unused vacation leave for the balance of the month of June 2021 and not report to work.
3. In consideration of the terms of Dr. Melton’s Employment Agreement, which currently extends through June 30, 2023, and her agreement to release all claims as set forth more fully in Paragraph 4 below, the Board agrees to pay Dr. Melton the lump sum, gross amount of Two Hundred Twenty-Six Thousand Three Hundred Sixty-Eight Dollars (\$226,368), this amount equaling to approximately one year of Dr. Melton’s total compensation. The District will pay said amount in

addition to Dr. Melton's earned salary and vacation leave time through June 30, 2021. The District will pay Dr. Melton said amount in a lump sum on or before July 15, 2021 – presuming that Dr. Melton has met the conditions set forth in paragraph 7, herein below.

4. Dr. Melton, for and in consideration of the undertakings of the Board and the District set forth in Paragraph 2, and intending to be legally bound, does hereby irrevocably and unconditionally release, acquit and discharge forever School District Five of Lexington and Richland Counties, the District Board of Trustees, its members, in both their official and individual or personal capacities, and its and their agents, servants, successors and assigns, from any and all claims, demands, actions and causes of action whatsoever, in law or equity, known or unknown, from the beginning of time to the date hereof, including attorney's fees and costs incurred, which she has had or claims to have had, now has or claims to have, or hereafter may have or claim to have, particularly, but without limitation, any claims for breach of contract and personal injuries arising from or relating in any way to her employment relationship with the Board or the District and her separation from employment with the District. This Agreement shall not preclude Dr. Melton from continuing in the District's employee group benefit plan under COBRA; nor shall it preclude her from pursuing a claim, review, appeal, and/or litigation for any denials of employee group benefits.

5. For and in consideration of Dr. Melton's willingness to compromise any dispute she has with the District regarding termination of the Employment Agreement, the Board, its members in both their official and individual or personal capacities and the District hereby irrevocably and unconditionally releases, acquits and discharges forever Dr. Melton from any and all claims, demands, actions, and causes of action whatsoever, in law or equity, known or unknown from the beginning of time to the date hereof, including attorney's fees and costs incurred, which they have had or claim to have had, now have or claim to have, or hereinafter may have or claim to have, related to any actions by Dr. Melton during, arising from, or relating in any way to her employment relationship with the Board and her separation from the District.

CR

6. The parties agree to keep this Agreement and the terms thereof confidential, while acknowledging that the Agreement is subject to disclosure pursuant to any request made pursuant to the South Carolina Freedom of Information Act. If either party, including any individual Trustee, is asked about this Agreement and/or its terms, the party shall respond that the Agreement speaks for itself and that she/he has no further comment. Dr. Melton's spouse, financial advisors, and attorneys are exempted from this confidentiality clause so long as they agree to be bound by it.

7. Dr. Melton understands and agrees that:

a. She has up to twenty-one (21) calendar days from her receipt of this Agreement to review and to discuss the promises and covenants set forth herein with an attorney of her own choosing regarding whether or not she wishes to execute it, although she may choose to execute the Agreement before the expiration of the twenty-one (21) day period;

b. She has the right to consult with an attorney of her own choosing so that she is fully aware of her rights and obligations under this Agreement;

c. She has seven (7) calendar days after she has signed this Agreement during which time she may revoke this Agreement. If Dr. Melton wishes to revoke this Agreement, she may do so by delivering a written notice of revocation to White & Story, LLC, at P.O. Box 7036, Columbia, SC 29202, for receipt within the seven-day revocation period;

d. Should Dr. Melton revoke this Agreement, she will not be entitled to any of the benefits described above;

8. Dr. Melton and each member of the Board agree they will not make any negative or disparaging statements or remarks concerning each other to any third person, entity or organization, whether by way of direct conversation, written or electronic communication and/or posts/messages on social media. The parties agree that if there is a corroborated breach of this provision, the breaching party will be required to pay a stipulated remedy in the amount of Twenty Thousand Dollars (\$20,000) to the non-breaching party. All parties acknowledge this remedy is not a

CK

penalty, but an inducement for the parties to enter into this Agreement. The parties also agree that the non-breaching party is entitled to recover reasonable attorney's fees.

9. The parties agree that Dr. Melton can release the statement attached as *June 14*
Exhibit A by email to District stakeholders on Monday, ~~June 21~~, 2021. *CM*

10. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of South Carolina.

11. Dr. Melton acknowledges and agrees that this Agreement constitutes the entire agreement and understanding between the Board and her concerning the separation of her employment and any obligations, monetary or otherwise, owed to her arising out of her employment with the District. Dr. Melton acknowledges and agrees that this Agreement supersedes any prior written or oral agreements or understandings between the parties hereto.

12. The parties agree that if any provision of this Agreement, other than the general release set forth in Paragraphs 4 and 5 above, or the application thereof to any person, place or circumstance shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

13. The parties agree that a facsimile signature on this Agreement shall be as effective as an original signature, and that this Agreement may be signed in separate counterparts.

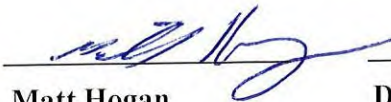
IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have executed the foregoing Settlement Agreement and Mutual Release as of June 14, 2021, the Effective Date.

Christina Melton *6/15/21*
Christina Melton, Ph.D. Date
Ecl.D

SCHOOL DISTRICT FIVE OF LEXINGTON
AND RICHLAND COUNTIES:


Jan Hammond, Board Chair

6/14/21
Date


Matt Hogan 6/14/21
Date


Ken Loveless, Vice Chair

6/14/2021
Date


Catherine Huddle 6/14/21
Date


Rebecca Blackburn *Hines*

6/14/21
Date

Ed White

Date


Nikki Gardner, Secretary

6/14/21
Date



This message is a bittersweet message to write because of my love for our district. This is home. We are family.

I am a strong believer in seasons of life, including career. My season as superintendent is drawing to an end on June 30, 2021. As I prepare for this new chapter in my life, I thank the Board of Trustees for the privilege to lead School District Five. I thank our families, our community, and especially our students. I am grateful to the staff of School District Five. I am convinced the brightest, most talented, capable and caring professionals are concentrated here in our district... "know thy impact" is not a mantra, it is a mission at work daily in all operations across our district. I could list the #PrideIn5 accolades we have achieved, the historic precedents we have set, the records our students have made and the records our students have broken. I could list the extensive accomplishments our staff have been recognized for and how we have been Innovative and forerunners in ratings, competitions, and recognitions. Instead of the extrinsic, it is the intrinsic I am most proud of. We have rallied in times of crisis. We have shared strength during weakness and we have seen the unprecedented. We have been a voice for our children, our community and our profession. We have been tested and have proven to be resilient and student-centered. I leave this chapter knowing the people in place will continue exemplary work focusing upon our most important resource... our children.

With a grateful heart and in service.

Exhibit C

Pursuing Excellence for Tomorrow's Challenges**FACILITIES COMMITTEE MEETINGS**

Agenda	Minutes	Video
6-9-2021 Facilities Committee Meeting	Minutes	N/A
8-11-2021 Facilities Committee Meeting	Minutes	N/A
9-8-2021 Facilities Committee Meeting	Minutes	N/A
10-6-2021 Facilities Committee Meeting	Minutes	N/A
11-10-2021 Facilities Committee Meeting	Minutes	N/A
Exhibit A	Minutes	N/A
12-8-2021 Facilities Committee Meeting	Minutes	N/A
1-12-2022 Facilities Committee Meeting	Minutes	N/A
2-16-2022 Facilities Committee Meeting	Minutes	Video

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Pursuing Excellence for Tomorrow's Challenges



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POLICY COMMITTEE MEETINGS

Agenda	Minutes	Video
9-15-2021 Policy Committee Meeting	Minutes	N/A
10-20-2021 Policy Committee Meeting	Minutes	N/A
11-17-2021 Policy Committee Meeting EXH A - Policy BCA Board Member Code of Ethics PROPOSED EXH B - Policy BCB Board Member Conflict of Interest EXH C - Policy AE Accountability EXH D - Policy DI DIE Fiscal Accounting Audits PROPOSED EXH E - Policy FEE Site Acquisition PROPOSED	Minutes	N/A
1-19-2022 Policy Committee Meeting Policy JFBA Revisions Intra-District Transfer and Withdrawal - Exhibit A Policy FGG Change Orders and Contingency Allowance - Exhibit B	Minutes	N/A
2-23-2022 Policy Committee Meeting EXH A Policy FGG Change Orders and Contingency Allowance - updated EXH B BDG - Board Attorney Legal Services SCSBA Model Policy EXH C BDG_R - Board Attorney Legal Services SCSBA Model Rule EXH D Policy-GCB Professional Staff Contracts and Compensation - recommended changes EXH E Policy-GDB Support Staff Compensation - proposed changes DD - Funding Proposals Grants and Special Projects - Exhibit E	Minutes	Video
3-16-2022 Policy Committee Meeting EXHIBIT A - Board Policy FGG Change Orders and Contingency Allowance EXHIBIT B - Policy FEC Selection of Professionals in Facilities Construction EXHIBIT C - Policy BDG - Board Attorney Legal Services SCSBA Model Policy EXHIBIT D - Policy BDG-R - Board Attorney Legal Services-suggested edits EXHIBIT E - Policy BC - Board Member Conduct Exhibit F 1 of 3 - Policy BCA EXHIBIT F 2 of 3 - Policy BCA - Board Member Code of Ethics - SCSBA Model Policy EXHIBIT F 3 of 3 Policy BCA - Board Member Code of Ethics - Proposed Policy Committee Revisions EXHIBIT G - Policy BCB - Board Member Conflict of Interest EXHIBIT H - Policy BEDH Public Participation at Meetings	Minutes	Video

Pursuing Excellence for Tomorrow's Challenges**PROCUREMENT COMMITTEE MEETINGS**

Agenda	Minutes	Video
6-2-2021 Procurement Committee Meeting	Minutes	N/A
8-4-2021 Procurement Committee Meeting	Minutes	N/A
8-25-2021 Procurement Review Panel Meeting	N/A	N/A
9-1-2021 Procurement Committee Meeting	Minutes	N/A
11-3-2021 Procurement Committee Meeting	Minutes	N/A
12-1-2021 Procurement Committee Meeting	Minutes	N/A
2-2-2022 Procurement Committee Meeting	Minutes	N/A

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Paul Roy Osmundson	)	Civil Action No.: 2021-CP-40-03694
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF KEN LOVELESS
	)	
School District Five of Lexington and	)	
Richland Counties,	)	
	)	
Defendant.	)	
_____	)	

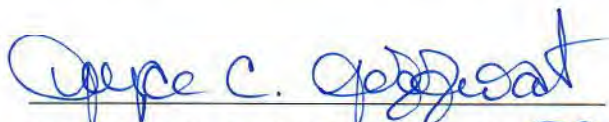
I, Ken Loveless, being duly sworn according to law, do say as follows:

1. My name is Ken Loveless and I am the Vice Chair for the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board" and "the District"). I was elected Vice Chair in 2020.
2. On May 24, 2021, I participated in discussions during executive session but no votes were taken on any topic during executive session.

FURTHER AFFIANT SAYETH NOT.


 Ken Loveless, Vice Chair
 School District Five of Richland and Lexington
 Counties Board of Trustees

SWORN BEFORE ME THIS 16th
 DAY OF March, 2022.


 NOTARY PUBLIC FOR STATE OF SC



My Commission Expires: 03.14.2026

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

AFFIDAVIT OF CATHY HUDDLE

I, Cathy Huddle, being duly sworn according to law, do say as follows:

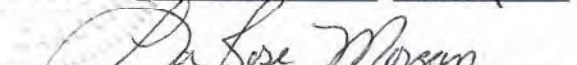
1. My name is Cathy Huddle, and I am a member of the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board" and "the District"). I was elected to the Board in 2020.
2. On May 24, 2021, I participated in a discussion during executive session where our legal counsel, Andrea White, advised us she had been contacted by Dr. Melton's attorney regarding the possibility of Dr. Melton resigning. All Trustees were given the opportunity to share their opinions regarding a possible departure of Dr. Melton, but the Board did not conduct a vote or a straw poll.

FURTHER AFFIANT SAYETH NOT.



Cathy Huddle, Trustee
School District Five of Richland and Lexington
Counties Board of Trustees

SWORN BEFORE ME THIS 16th
DAY OF March, 2022.


NOTARY PUBLIC FOR STATE OF SC
My Commission Expires: 9-30-2026

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

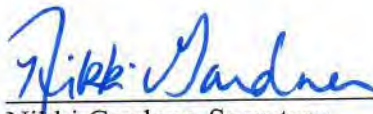
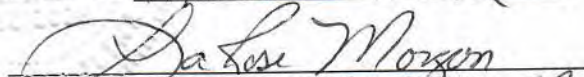
C/A No. 2021-CP-40-03694

AFFIDAVIT OF NIKKI GARDNER

I, Nikki Gardner, being duly sworn according to law, do say as follows:

1. My name is Nikki Gardner, and I am the Secretary for the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board" and "the District"). I was elected secretary in 2020.
2. On May 24, 2021, I participated in a discussion during executive session where our legal counsel, Andrea White, advised us she had been contacted by Dr. Melton's attorney regarding the possibility of Dr. Melton resigning. All Trustees were given the opportunity to share their opinions regarding a possible departure of Dr. Melton, but the Board did not conduct a vote or a straw poll.
3. I have never been asked to raise my hand; fill out a ballot, or otherwise vote during any executive session of a Board meeting.

FURTHER AFFIANT SAYETH NOT.

Nikki Gardner, Secretary
School District Five of Richland and Lexington
Counties Board of TrusteesSWORN BEFORE ME THIS 16th
DAY OF March, 2022.NOTARY PUBLIC FOR STATE OF SCMy Commission Expires: 9-30-2026

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

AFFIDAVIT OF MATT HOGAN

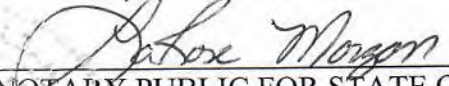
I, Matt Hogan, being duly sworn according to law, do say as follows:

1. My name is Matt Hogan, and I am a member of the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board"). I was elected to the Board in 2020.
2. On May 24, 2021, I participated in a discussion during executive session where our legal counsel, Andrea White, advised us she had been contacted by Dr. Melton's attorney regarding the possibility of Dr. Melton resigning. All Trustees were given the opportunity to share their opinions regarding a possible departure of Dr. Melton, but the Board did not conduct a vote or a straw poll.
3. I have never been asked to raise my hand; fill out a ballot, or otherwise vote during any executive session of a Board meeting.

FURTHER AFFIANT SAYETH NOT.


Matt Hogan, Trustee
School District Five of Richland and Lexington
Counties Board of Trustees

SWORN BEFORE ME THIS 16th
DAY OF March, 2022.


NOTARY PUBLIC FOR STATE OF SC
My Commission Expires: 9-30-2026

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-40-03694

**DEFENDANT’S MEMORANDUM OF
LAW IN OPPOSITION TO PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT
AND IN SUPPORT OF DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

Defendant School District Five of Lexington and Richland Counties (“the District”), by and through its undersigned counsel, submits this Memorandum of Law in opposition to Plaintiff’s Motion for Summary Judgment and in support of Defendant’s Motion for Summary Judgment.

INTRODUCTION

In his Amended Complaint filed in August 2021, Plaintiff, editor at *The State* paper, alleges the District’s Board of Trustees (“the Board”) violated the South Carolina Freedom of Information Act (“FOIA”), S.C. Code 30-4-10, *et seq.*, in connection with the Board’s handling of the resignation of former District Superintendent Dr. Christina Melton. Plaintiff also alleges other FOIA violations, all of which are now moot. Specifically, Plaintiff alleges the following: (1) the Board improperly discussed its criticisms of Dr. Melton and her possible separation from the District during executive session of the Board’s meetings rather than in public; (2) the Board improperly voted, conducted secret ballots or held “straw votes” in executive session; (3) the Board improperly failed to consider meetings of its three officers and the District Superintendent to set

the agenda for Board meetings as subject to FOIA; and (4) the Board improperly created standing committees and did not conduct meetings of those committees in accordance with FOIA.

Plaintiff has filed a motion for summary judgment pursuant to Rule 56, SCRCP, supported by his Affidavit and the Affidavit of former District Trustee Ed White (“White”). The District has filed a Motion for Summary Judgment supported by the Affidavits of Board Chair Jan Hammond and Trustees Ken Loveless, Nikki Gardner, Cathy Huddle and Matt Hogan. All Affidavits are attached as Exhibits A through E. The other documents referenced herein are attached as Exhibits F and G. As explained below, there are no issues of material fact in this case and the District is entitled to judgment as a matter of law.

STATEMENT OF FACTS

School District Five of Lexington and Richland Counties is governed by an elected school board consisting of seven trustees, five elected from Lexington County and two from Richland County. Prior to the November 2020 election, the four-member Board majority, of whom former Trustee Ed White was a member, ruled the District. In November 2020, three new trustees were elected, flipping the majority. This suit followed the Board’s action at its meeting on May 24, 2021, accepting then-Superintendent Dr. Christina Melton’s resignation pursuant to a settlement agreement negotiated by their respective legal counsel.

The Board properly discussed personnel matters in executive session and conducted no improper votes, secret ballots and/or straw votes in executive session

At the time of the election in November 2020, Dr. Christina Melton served as the District’s Superintendent, having been appointed by the prior Board majority. In January 2021, the Board advised Dr. Melton, in accordance with the terms of her contract, that they wished to conduct an

informal evaluation of her performance. (Hammond Aff. ¶ 3 and Exhibit A to Affidavit). That evaluation occurred during executive session of the Board's meeting on January 25, 2021, (Hammond Aff. ¶ 3).

Between January 2021 and May 2021, the Board informally discussed Dr. Melton's performance during executive session several times. During those meetings, several Trustees advised Dr. Melton of their concern with certain aspects of her performance, most significantly her interactions with Trustees (Hammond Aff. ¶ 4). Following the Board's meeting on May 10, 2021, Dr. Melton retained legal counsel, who then contacted the District's legal counsel regarding Dr. Melton's employment status. At the Board's meeting on May 24, 2021, the District's legal counsel informed the Board of her receipt of a letter from Dr. Melton's legal counsel (Hammond Aff. ¶ 6). The District's legal counsel then shared with the Board its options under Dr. Melton's contract in the event the Board decided to part ways with Dr. Melton. (Hammond Aff. ¶ 6). Each of the seven Trustees shared their opinions about the matter but no votes, secret ballots or straw votes took place. (Hammond Aff. ¶ 6); (Loveless Aff. ¶ 2); (Gardner Aff. ¶¶ 2-3); (Huddle Aff. ¶ 2); (Hogan Aff. ¶¶ 2-3).

Based on the discussions during the May 24, 2021, meeting, the District's counsel and Dr. Melton's counsel began settlement negotiations as required by Section 11 of Dr. Melton's contract (Hammond Aff. ¶¶ 7-8). At the next Board meeting on May 24, 2021, the District's legal counsel advised the Board in executive session that a settlement had been agreed to by Dr. Melton. She then presented each member of the Board with a settlement agreement and release for their review. (Hammond Aff. ¶ 9). At the request of Dr. Melton's counsel, all Trustees signed the Agreement after reviewing it, with the exception of Ed White. (Hammond Aff. ¶ 9). The Board then returned to open session and began its meeting. During the open session, Trustee White made a dramatic

and emotional public statement in which he revealed what had been discussed during executive session. (Hammond Aff. ¶ 9). Trustee White then handed a typed letter of resignation to the secretary for the Board and stormed out of the meeting, taking his copy of the Settlement Agreement with him without the agreement or knowledge of the Board or its legal counsel. (Hammond Aff. ¶ 9).

The Board then reconvened in executive session to receive legal advice following Mr. White's unanticipated antics. (Hammond Aff. ¶ 10). After Dr. Melton's legal counsel advised the District's counsel that Dr. Melton still desired to resign and accept the terms of the negotiated settlement agreement, the Board's Vice Chair made a public statement accepting Dr. Melton's resignation. (Hammond Aff. ¶ 10). The settlement agreement and release signed by Dr. Melton and six members of the Board was then immediately released to the media and to members of the public who requested it. (Hammond Aff. ¶ 11 and Exhibit B to Affidavit). Thereafter, at its meeting on August 9, 2021, the Board officially voted to accept Dr. Melton's resignation.

S.C. Code Ann. Section 30-4-70(a)(1) allows a public body to hold a meeting closed to the public for several reasons, including, for purposes of this action, "discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee..." Pursuant to this statute, the Board was well within its legal rights under FOIA to discuss Dr. Melton's employment and any potential release of Dr. Melton from her position as Superintendent during executive session. *Multimedia, Inc. v. Greenville Airport Com.*, 287 S.C. 521, 339 S.E.2d 884 (Ct. App. 1986). As no votes, secret ballots or straw votes were taken at any of the meetings where Dr. Melton's employment was discussed, the Board did not violate either the spirit or intent of FOIA. (Hammond Aff. ¶ 11); (Loveless Aff. ¶ 2); (Gardner Aff. ¶¶ 2-3); (Huddle Aff. ¶ 2); (Hogan Aff. ¶¶ 2-3).

In his Amended Complaint and through the Affidavit of Ed White, Plaintiff also asserts the Board violated FOIA when it discussed the terms of the settlement negotiated by the District's counsel and Dr. Melton's counsel during the executive session portion of the meeting on May 24, 2021. His assertion is unfounded based on the plain language of FOIA. In Section 30-4-70(a)(2), FOIA states that the "settlement of legal claims" may properly be discussed in executive session.

The Board properly created standing committees and treats all meetings of such committees as subject to the requirements of FOIA

At its meeting in February 2021, the Board voted to create three standing committees: Finance, Procurement and Policy. Nothing in FOIA prohibits a public body from implementing the use of committees. Since the inception of those committees, their meetings have been noticed and conducted in accordance with the requirements of FOIA. (Hammond Aff. ¶ 13 and Exhibit C to Affidavit).

The Board treats the meetings of its officers and the District Superintendent to set agendas for Board meetings as subject to the requirements of FOIA

Historically, either the Board Chair or the Board Officers have met privately with the District Superintendent to plan the agenda for the Board's meetings. (Exhibit F - Board Policy BEDB Agenda). That practice was never questioned by Trustee White, any member of the media or any member of the public until January 2021. At the Board's meeting on January 25, 2021, Trustee White made a motion that the Board consider those meetings as meetings of a committee of the Board and thus subject to the requirements of FOIA. The Board voted Mr. White's motion down at that time. At its meeting on August 9, 2021, the Board unanimously passed a motion to make

those meetings subject to the requirements of FOIA¹. Since that date, all meetings of the Board Officers and the District Superintendent to set the agenda for Board meetings have been open to the public. (Exhibit G), thus making Plaintiff's claims for a FOIA violation moot because there is no longer a justiciable controversy. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006).

CONCLUSION

This suit was filed as the result of the November 2020 school board election that did not turn out as many expected. As evidenced by the 15-page Affidavit executed by Ed White in which he casts aspersions; uses histrionic descriptions of people and meetings; and touts his own opinions and experiences on matters that have nothing whatsoever to do with the requirements of the South Carolina Freedom of Information Act, it is a thinly veiled attempt to discredit the current majority of the Board and influence the upcoming school board election in November 2022.

Based on the material undisputed facts of this matter, it is clear the District did not violate the requirements of FOIA and the District prays that this Court deny Plaintiff's motion for summary judgment and grant its motion, awarding the District attorney's fees and court costs.

(SIGNATURE BLOCK ON THE FOLLOWING PAGE)

¹ The question whether a meeting of school trustees with their superintendent to set an agenda for a school board meeting constitutes a "meeting" of a public body for purposes of FOIA has not been before our appellate courts. While a "committee" clearly is a public body, it is unclear whether board officers are considered a committee.

Respectfully Submitted:

WHITE & STORY, LLC

By: s/Andrea E. White

Andrea E. White (SC Bar ID No. 11891)

P.O. Box 7036 (29202)

3614 Landmark Drive, Suit EF

Columbia, SC 29204

T: 803.814.0993

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awhite@sodacitylaw.com

Attorney for Defendant

March 18, 2022

Columbia, South Carolina

Exhibit A

*Affidavit of
Jan Hammond*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

AFFIDAVIT OF JAN HAMMOND

I, Jan Hammond, being duly sworn according to law, do say as follows:

1. My name is Jan Hammond, and I am the current Chair of the Board of Trustees for School District Five of Lexington and Richland Counties (“the Board” and “the District”). I have served as Board Chair since 2020.

2. As Board Chair, I assist the Board in ensuring compliance with the requirements of the South Carolina Freedom of Information Act (“FOIA”). Over my more than 17 years on the Board, I have attended numerous workshops regarding how FOIA applies to Board meetings, including when it is permissible for the Board to discuss issues in Executive Session, such as matters related to the separation of personnel.

3. In November 2020, three new Trustees were elected to the Board, resulting in a “shift” of the prior Board majority. On January 25, 2021, the Board met in Executive Session with then-Superintendent Dr. Christina Melton to conduct an informal mid-year evaluation, as permitted by Dr. Melton’s contract with the District (Exhibit A). During that discussion, several Trustees expressed to Dr. Melton their concerns about certain aspects of her performance, in particular her interactions with the Board.

4. Throughout the following several months, several Trustees voiced concerns to Dr. Melton about what those Trustees considered her lack of responsiveness to their questions and requests for information. These concerns were discussed in Executive Session, as permitted by FOIA. Dr. Melton never requested that these discussions take place in public.

5. Following the Executive Session at the Board meeting on May 10, 2021, during which several Trustees advised Dr. Melton that they had lost confidence in her continued leadership, Dr. Melton sought legal counsel.

6. At the board meeting on May 24, 2021, Andrea White, the District's legal counsel, advised the Board that she had received a letter from Dr. Melton's counsel regarding Dr. Melton's employment status. During that same meeting, Ms. White also advised the Board regarding its options under Dr. Melton's contract if the Board desired to end the contract between the Board and Dr. Melton. The Board did not take any vote on the matter or conduct a straw poll, but each Trustee had an opportunity to share their opinions about Dr. Melton's leadership. Trustees also discussed the amount of money they would be willing to pay Dr. Melton in the event she decided to resign pursuant to Section 11(a) of her contract.

7. Ms. White then advised the Board that she would contact Dr. Melton's attorney to discuss a mutually negotiated termination of the contract, as required by Section 11 of Dr. Melton's contract.

8. Ms. White and Dr. Melton's attorney subsequently engaged in settlement negotiations over a period of a few weeks.

9. During Executive Session at the Board's meeting on June 14, 2021, Ms. White presented the Board with a Settlement Agreement, the terms of which had been negotiated with Dr. Melton's counsel. She explained the terms to the Board and then asked each Trustee to sign the Agreement, as had been requested by Dr. Melton's attorney. Trustee Ed White refused to sign the Agreement and stormed out of Executive Session, taking a copy of the Settlement Agreement with him without consent from the Board or Ms. White. During the subsequent public portion of that meeting, Ed White made a statement in which he disclosed what had been discussed during Executive Session in violation of Board Policy and against the wishes of Dr. Melton. Ed White then walked out of the meeting, handing a typed letter of resignation to the Board secretary as he left.

10. Because of Mr. White's unanticipated and inappropriate outburst during the meeting, the Board then re-entered Executive Session while Ms. White contacted Dr. Melton's legal counsel, who advised Ms. White that Dr. Melton still desired to resign. Thereafter, the Board Vice-Chair made a public statement accepting Dr. Melton's resignation.

11. The executed Settlement Agreement, which outlined the settlement terms negotiated by the Board and Dr. Melton through their respective legal counsel, was then disclosed to the media (Exhibit B).

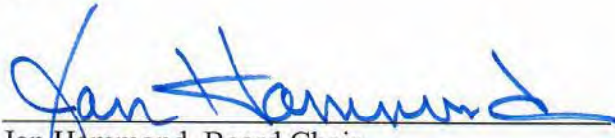
12. While nothing in FOIA or Board Policy requires the Board to vote to accept a resignation, at its meeting on August 9, 2021, the Board voted to accept Dr. Melton's resignation. At that same meeting, the Board also voted to have meetings of its Board Officers to set the agenda for Board meetings open to the public and subject to FOIA. Prior to Mr. White raising that issue in January 2021, the Board Officers had always met privately with the Superintendent to set the agenda for the next Board meeting. During Mr. White's many years on the Board, Mr. White had never questioned that practice, leading me to conclude his actions in raising the issue following the 2020 election were purely political.

13. In February 2021, the Board established three standing committees. Since their inception, these committees have complied with the requirements of FOIA (Exhibit C).

14. I have never asked Board members to vote in Executive Session; to conduct a straw vote; or to participate in a secret ballot.

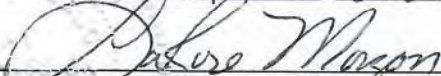
15. Following the June 14, 2021, Board meeting, I made a statement to a reporter to the effect that "Dr. Melton had the votes to say if she had chosen to stay." In making that comment, I did not mean to imply that the Board had taken a vote or conducted a straw vote at its meeting on May 24, 2021, or at any other time. My comment was solely based on the opinions and thoughts shared by the other Trustees during the May 24th meeting.

FURTHER AFFIANT SAYETH NOT.



Jan Hammond, Board Chair
School District Five of Richland and Lexington
Counties Board of Trustees

SWORN BEFORE ME THIS 17th
DAY OF March, 2022.



NOTARY PUBLIC FOR STATE OF SC
My Commission Expires: 9-30-2026

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
)
)
PROFESSIONAL EMPLOYMENT
AGREEMENT BETWEEN THE BOARD
OF TRUSTEES FOR SCHOOL DISTRICT
FIVE OF LEXINGTON AND RICHLAND
COUNTIES AND
DR. CHRISTINA MELTON

This Employment Agreement (hereinafter, referred to as the "Agreement" or "contract") is made and entered into this 11th day of December, 2017, by and between the Board of Trustees for the School District Five of Lexington and Richland Counties (hereinafter, referred to as the "Board") and Dr. Christina Melton (hereinafter, referred to as the "Superintendent").

WHEREAS, the Board desires to provide the Superintendent with a written employment contract in order to enhance administrative stability and continuity within the schools, which the Board believes generally improves the quality of its overall educational program; and

WHEREAS, the Board and the Superintendent believe that a written contract is necessary to describe specifically their relationship and to serve as the basis for effective communication between them as they fulfill their respective duties and responsibilities in the operation of the District schools;

NOW, THEREFORE, the Board and the Superintendent, for the consideration herein specified, agree as follows:

1. TERM

The Board, in consideration of the promises herein contained of the Superintendent, hereby employs and the Superintendent hereby accepts employment as Superintendent of the District for a term commencing July 1, 2018, and ending June 30, 2021.

2. CERTIFICATION AND RESPONSIBILITIES OF THE SUPERINTENDENT

The Superintendent will furnish throughout the life of this Contract professional credentials acceptable to the Board to act as Superintendent of the District or, alternatively, a South Carolina superintendent's credential. This is a contract for the performance of professional services by the Superintendent, who shall not be reassigned to any other position or have [his/her] duties reassigned to others without [his/her] consent.

The Superintendent shall have charge of the administration of the District under the direction of the Board. [S/he] shall be the chief executive officer of the District; shall select, organize, reorganize, and assign all personnel as best serves the District in compliance with State law and District policy; shall oversee the instructional program and business affairs of the District; shall from time to time suggest and/or promulgate as may be appropriate regulations, rules, and procedures deemed necessary for the well ordering of the District; shall have authority to accept resignations for and on behalf of the Board; and in general, shall perform all duties incident to the office of Superintendent as prescribed by Board policies.

The Superintendent shall have the right to attend all Board meetings and all Board and citizen committee meetings, serving as an ex officio member and providing administrative recommendations on each item of business considered except as otherwise provided herein. The Board may only meet in executive session without the Superintendent or [his/her] representative for the purpose of discussing the Superintendent's evaluation, compensation, Board and Superintendent relations, and/or individual Board member actions or Board member relations with other Board members.

The Board, individually and collectively, shall refer all substantive criticisms, complaints, and suggestions called to the Board's attention to the Superintendent for study and appropriate action, and the Superintendent shall investigate such matters or cause such matters to

be investigated, and when requested or as is otherwise necessary, shall inform the Board of the results of such investigations. Requests for substantive information shall be made to the Superintendent and not to individual members of the District staff.

The Superintendent agrees to devote [his/her] time, skill, labor, and attention to said employment during the term of this contract, provided, however, that the Superintendent may undertake various outside professional duties and obligations including writing, lecturing, and speaking engagements subject to proper notification to the Board. In addition, the Superintendent may engage in other short-term activities of the Superintendent's choosing, including the opportunity to teach or serve as an adjunct professor or in some other capacity at the college or university level on a part-time basis, subject to approval by the Board. In addition, the Superintendent may accept appointments to foundations, boards or commissions that do not interfere with the Superintendent's performance of [his/her] duties under this contract, subject to the approval of the Board.

The Board encourages the continuing professional growth of the Superintendent through [his/her] participation, as [s/he] might decide in light of [his/her] responsibilities as Superintendent, in (a) the operations, programs, and other activities conducted or sponsored by local, state, and national school administrator and school board associations; (b) seminars and courses offered by public or private educational institutions; and (c) informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of the Superintendent to perform [his/her] professional responsibilities for the District. In its encouragement, the Board shall permit a reasonable amount of released time for the Superintendent to attend such matters and pay or reimburse the Superintendent in accordance with District policy for the necessary fees for travel and related expenses as provided in the annual District budget for the Superintendent's office.

3. COMPENSATION

The Board shall pay the Superintendent an annual base salary of \$175,000. The annual salary rate shall be paid to the Superintendent in accordance with the schedule of salary payments in effect for other certificated employees of the District. The Board and Superintendent may mutually agree to adjust the salary annuity of the Superintendent during the term of this contract, but in no event, shall the Superintendent's salary or annuity be reduced. Any adjustments in salary or annuity made during the life of this contract shall be in the form of an amendment and become part and parcel of this contract, but it shall not be deemed that the Board and the Superintendent have entered into a new contract or that the termination date of the existing contract has been extended. Any across-the-board compensation adjustments provided to the District's administrative employees shall be provided to the Superintendent as well.

4. VACATION AND OTHER BENEFITS

(a) The Superintendent shall be entitled to all benefits of administrative employees of the District, with the exception of sick leave and vacation leave, which are treated specifically as provisions of this contract.

(b) The Superintendent shall be entitled to a total of twenty (20) days of vacation or annual leave per year in addition to all legal and other holidays recognized by the District. Said 20 days of vacation leave shall be available to the Superintendent July 1, 2018, and each July 1 thereafter. The Superintendent may, upon written notice to the Board, carry over up to 10 vacation or annual leave days into a subsequent school year, but the Superintendent shall not be reimbursed for any unused vacation or annual leave upon the termination of the contract.

(c) The Superintendent shall receive 15 days of sick leave annually. The Superintendent's sick leave may be used for personal illness, medical issues, or leave as provided

for in the Family and Medical Leave Act. The Superintendent's sick leave may be accumulated, but [s/he] shall not receive reimbursement for unused sick leave.

(d) The Superintendent shall be provided with a laptop computer and/or I-Pad, or equivalent technological equipment, for use in the performance of [his/her] duties under this contract. The Superintendent may also utilize these resources for reasonable and appropriate personal use.

(e) The District shall make an annual contribution to an annuity plan of the Superintendent's choice in the amount of 5% of the annual salary. Said contributions to be conditioned upon a satisfactory performance evaluation as determined in good faith by the Board. Said contribution shall normally be made on or before October 31, beginning in 2018, provided, however, that if the Board fails to professionally conduct and complete in good faith the Superintendent's evaluation by October 20 in any given year, the annuity payment provided for that year shall be due and paid.

5. EXPENSES

(a) The Board shall pay the Superintendent's dues to the American Association of School Administrators, the South Carolina Association of School Administrators, and other related professional group memberships, which the Superintendent identifies, and feels are necessary to maintain and improve [his/her] professional skills. Annually, the Superintendent shall provide the Board with a list of such organizations. The Board shall further pay or reimburse the Superintendent for reasonable expenses incurred by the Superintendent in the continuing performance of [his/her] duties under this contract as provided in the District budget for the Superintendent's office. The Board encourages the Superintendent's participation in appropriate community organizations and will pay expenses for such participation including membership dues and fees as provided in the District budget.

6. AUTOMOBILE REIMBURSEMENTS

The Superintendent shall be entitled to a monthly automobile allowance of (\$850.00) to be used toward automobile use, maintenance, and fuel expenses incurred for in-District travel. The Superintendent will be reimbursed for out-of-District travel in accord with standard operating practices and the confines of the budget for the Superintendent's Office.

7. PROFESSIONAL LIABILITY

The District agrees that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in [his/her] individual capacity or in [his/her] official capacity as an agent/employee of the District, provided the claim made or the incident or occurrence giving rise to the claim or action took place while the Superintendent was acting in good faith within the scope of [his/her] employment. In no case shall an individual Board member be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings.

8. MEDICAL EXAMINATION

In light of the unique nature of the professional duties of the Superintendent, the District shall, at its expense, provide to the Superintendent a complete annual medical examination by a physician licensed to practice medicine in the State of South Carolina. The Superintendent shall direct the physician to advise the Board Chairperson, in writing, of the continued fitness of the Superintendent to perform [his/her] duties. The contents of the physician's report shall be kept confidential.

The first such physician's report shall be provided to the Board Chairperson on or before April 1, 2018. The receipt of an acceptable physician's report as provided herein on or before July 1, of each year thereafter, shall be a condition precedent to the Superintendent's continued employment pursuant to this contract.

9. EVALUATION

The Board and Superintendent shall meet at least once annually and may include other appropriate school officials of the District for the purpose of establishing District goals and objectives for the ensuing school year. Said goals and objectives shall be reduced to writing and be among the criteria by which the Superintendent is evaluated as hereinafter provided. This goal-setting session shall be scheduled annually by agreement of the parties.

The Board shall evaluate the performance of the Superintendent at least once a year during the term of this Agreement. For this purpose, the Superintendent shall submit to the Board a recommended format for conducting the evaluation. The Board shall meet and discuss the proposed format, attempting in good faith to reach consensus with the Superintendent as to an agreeable evaluation format. The Board/Superintendent discussion concerning the evaluation process and the evaluation itself shall be conducted in executive session, unless the parties agree otherwise. Thereafter, the Board shall adopt an evaluation format and shall evaluate the Superintendent pursuant thereto.

To conclude the evaluation, the Board shall meet in executive session for the purpose of discussing the results of the evaluation and any related matters, such as the terms of the Superintendent's contract. The results of the evaluation and any conclusions drawn by the Board shall be shared with the Superintendent, both verbally, in executive session, and in the form of a written summary. The Superintendent shall have the right to respond to the results either during the executive session, or in writing, following the executive session. Any written response, along with the written summary of the results, shall be made a part of the Superintendent's personnel file. Following the Superintendent's evaluation or [his/her] written response, and at the request of either party, the Board may meet with the

Superintendent in executive session to discuss the matter further.

The annual evaluation shall normally be conducted during the fall, with the first annual evaluation scheduled for the fall of 2019. The Board, however, reserves the right to conduct an interim evaluation of the Superintendent's performance during the winter of 2018.

10. RENEWAL

If the Board does not notify the Superintendent in writing on or before February 1, 2020, and February 1 of each year under this Agreement that the Superintendent's contract will not be extended beyond the term specified in section 1. hereof, or the then-current termination date, it shall be deemed that the Board has renewed the contract for one additional year beyond the then-current termination date.

The Superintendent shall remind each Board member, in writing or via electronic communication, of this automatic renewal clause no later than December 1 of each year, beginning in 2019. If during any year subsequent to 2019, the Superintendent does not so remind the Board, this automatic renewal provision shall not be applicable for that year.

11. TERMINATION

This contract shall be terminated by:

- (a) mutual agreement of the parties;
- (b) disability of the Superintendent;

In the event of disability by illness or incapacity, the Board may terminate this contract by written notice to the Superintendent at any time after the Superintendent has exhausted any accumulated sick leave and such other leave as may be available, and has been absent from [his/her] employment, for whatever cause, for a continuous period of 90 days. Except for any notification which may be required by law, including but

not limited to COBRA, all obligations of the District shall cease upon such termination.

If a question arises concerning the capacity of the Superintendent to return to [his/her] duties, the Board may require the Superintendent to submit to a medical examination, at District expense, to be performed by a physician selected by the Board, upon good faith consultation with the Superintendent. The physician shall submit a report to the Board as to whether the Superintendent is fully capable of performing the essential functions of [his/her] duties and responsibilities.

(c) discharge for just cause;

Discharge for just cause shall be based upon conduct which is prejudicial to the District or upon conduct which constitutes neglect of duty, incompetence, or unprofessional conduct. Notice of the specific grounds and facts supporting the discharge for just cause shall be given in writing, and the Superintendent shall be entitled to appear before the Board in executive session to discuss such cause or causes and to provide oral and written support for the Superintendent's position with respect to the discharge. If the Superintendent chooses to be accompanied by legal counsel at such meeting, [s/he] shall bear any costs therein involved. Following the meeting, the Superintendent shall be provided notice in writing of the results of the meeting.

(d) unilateral termination;

The Board may, at its option, unilaterally terminate this Agreement upon affirmative vote of four (4) members of the Board at any regular or special meeting of the Board. In the event of such termination, the

Superintendent shall not be entitled to appear before the Board, but the District shall pay to the Superintendent, conditioned upon the execution of a complete release of all claims or causes of action satisfactory to the Board, severance pay the equivalent of 12 months salary or the balance due on the contract, whichever is less. It is understood that this option should be exercised only after reasonable and good faith efforts pursuant to paragraph 11(a) of this Agreement have been concluded.

- (e) death of the Superintendent.

12. SAVINGS CLAUSE

If, during the term of this contract, it is found by a court of law that a specific clause of the Agreement is illegal under either federal or state law, the remainder of the Agreement not affected by such ruling shall remain in force.

13. DECLARATION BY GOVERNOR

As required by S.C. Code Ann. § 59-18-1570, this contract shall be void should the Governor of South Carolina declare that the office of Superintendent in School District Five of Lexington and Richland Counties is vacant.

14. AMENDMENT

This Agreement may be amended during its term by the mutual written consent of the Board and the Superintendent. Any such amendment shall be in writing and approved by official action of the Board and accepted in writing by the Chairperson of the Board and the Superintendent; any waiver of any term of the contract must be in writing and any breach or noncompliance with a term is not to be construed as a waiver of such term in the future.

15. PARTIAL INVALIDITY

The invalidity of one or more phrases, sentences, clauses, sections or paragraphs contained in this Agreement shall not affect the remaining portions, so long as the material purposes of this Agreement can be determined and effectuated.

16. LAW

This Agreement shall be governed, construed and enforced in accordance with the law of the State of South Carolina.

17. ADMINISTRATIVE LEAVE

At any time during the term of this Agreement if there is alleged conduct on the part of the Superintendent which is prejudicial to the District, including, but not limited to unprofessional conduct, derelict of duty, inefficiency or incompetency, and the Board deems it in the best interest of the District, the Board may so inform the Superintendent and place the Superintendent on administrative leave, during which time the Superintendent will receive [his/her] full salary and benefits as provided for in sections 3, Salary, and 4, Benefits. Such administrative leave shall continue until the Board decides otherwise.

18. SUPERINTENDENT ELECT

Effective January 1, 2018, Dr. Christina Melton, shall be designated Superintendent Elect by the Board and shall perform any such duties in [his/her] capacity requested by the Superintendent; the Superintendent Elect's salary, effective January 1, 2018, shall be \$155,000, along with any benefits currently conferred upon administrative employees of the District. In all other respects, Dr. Christina Melton's current employment agreement shall be in force until July 1, 2018, at which time the terms and conditions of this Agreement shall become effective, conditioned upon satisfactory performance by Dr. Christina Melton while Superintendent Elect, as determined in good faith by the Board on or before June 22, 2018.

IN WITNESS WHEREOF, the Board has caused this Employment Agreement to be approved in its behalf and executed by its duly authorized Chairperson, and the Superintendent

has approved and executed this Agreement effective on the date and year specified above.

Christina Melton

Superintendent/Superintendent Elect

[Signature]

Chairperson, Board of Trustees

Edward R. Dea

Witness

Patricia D. Baker

Witness

12-12-17

Dated

12/14/17

Dated

Exhibit B

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

**CONFIDENTIAL SETTLEMENT
AGREEMENT AND MUTUAL RELEASE**

WHEREAS, the Board of Trustees of School District Five of Lexington and Richland Counties (respectively, “the Board” or “the District”) previously employed Dr. Christina Melton (“Dr. Melton”) pursuant to a written Employment Agreement initially executed on or about December 11, 2017, first amended on September 23, 2019, and second amended on October 7, 2020 (collectively referred to herein as the “Employment Agreement”);

WHEREAS, the parties are desirous of terminating said Employment Agreement by mutual agreement, pursuant to Paragraph 11(a) of the Employment Agreement; and

WHEREAS, the parties seek to resolve any and all disputes between them regarding termination of the Employment Agreement in this Confidential Settlement Agreement and Mutual Release (“Agreement”);

IT IS HEREBY MUTUALLY AGREED by and between the Board and Dr. Melton

as follows:

1. Dr. Melton will resign from the District effective June 30, 2021, and the Board wishes to accept Dr. Melton's resignation.
2. The parties agree that Dr. Melton will represent the District at graduation on Saturday, June 19, 2021, but will thereafter take her earned, accumulated, and unused vacation leave for the balance of the month of June 2021 and not report to work.
3. In consideration of the terms of Dr. Melton's Employment Agreement, which currently extends through June 30, 2023, and her agreement to release all claims as set forth more fully in Paragraph 4 below, the Board agrees to pay Dr. Melton the lump sum, gross amount of Two Hundred Twenty-Six Thousand Three Hundred Sixty-Eight Dollars (\$226,368), this amount equaling to approximately one year of Dr. Melton's total compensation. The District will pay said amount in

addition to Dr. Melton's earned salary and vacation leave time through June 30, 2021. The District will pay Dr. Melton said amount in a lump sum on or before July 15, 2021 – presuming that Dr. Melton has met the conditions set forth in paragraph 7, herein below.

4. Dr. Melton, for and in consideration of the undertakings of the Board and the District set forth in Paragraph 2, and intending to be legally bound, does hereby irrevocably and unconditionally release, acquit and discharge forever School District Five of Lexington and Richland Counties, the District Board of Trustees, its members, in both their official and individual or personal capacities, and its and their agents, servants, successors and assigns, from any and all claims, demands, actions and causes of action whatsoever, in law or equity, known or unknown, from the beginning of time to the date hereof, including attorney's fees and costs incurred, which she has had or claims to have had, now has or claims to have, or hereafter may have or claim to have, particularly, but without limitation, any claims for breach of contract and personal injuries arising from or relating in any way to her employment relationship with the Board or the District and her separation from employment with the District. This Agreement shall not preclude Dr. Melton from continuing in the District's employee group benefit plan under COBRA; nor shall it preclude her from pursuing a claim, review, appeal, and/or litigation for any denials of employee group benefits.

5. For and in consideration of Dr. Melton's willingness to compromise any dispute she has with the District regarding termination of the Employment Agreement, the Board, its members in both their official and individual or personal capacities and the District hereby irrevocably and unconditionally releases, acquits and discharges forever Dr. Melton from any and all claims, demands, actions, and causes of action whatsoever, in law or equity, known or unknown from the beginning of time to the date hereof, including attorney's fees and costs incurred, which they have had or claim to have had, now have or claim to have, or hereinafter may have or claim to have, related to any actions by Dr. Melton during, arising from, or relating in any way to her employment relationship with the Board and her separation from the District.

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6. The parties agree to keep this Agreement and the terms thereof confidential, while acknowledging that the Agreement is subject to disclosure pursuant to any request made pursuant to the South Carolina Freedom of Information Act. If either party, including any individual Trustee, is asked about this Agreement and/or its terms, the party shall respond that the Agreement speaks for itself and that she/he has no further comment. Dr. Melton's spouse, financial advisors, and attorneys are exempted from this confidentiality clause so long as they agree to be bound by it.

7. Dr. Melton understands and agrees that:

a. She has up to twenty-one (21) calendar days from her receipt of this Agreement to review and to discuss the promises and covenants set forth herein with an attorney of her own choosing regarding whether or not she wishes to execute it, although she may choose to execute the Agreement before the expiration of the twenty-one (21) day period;

b. She has the right to consult with an attorney of her own choosing so that she is fully aware of her rights and obligations under this Agreement;

c. She has seven (7) calendar days after she has signed this Agreement during which time she may revoke this Agreement. If Dr. Melton wishes to revoke this Agreement, she may do so by delivering a written notice of revocation to White & Story, LLC, at P.O. Box 7036, Columbia, SC 29202, for receipt within the seven-day revocation period;

d. Should Dr. Melton revoke this Agreement, she will not be entitled to any of the benefits described above;

8. Dr. Melton and each member of the Board agree they will not make any negative or disparaging statements or remarks concerning each other to any third person, entity or organization, whether by way of direct conversation, written or electronic communication and/or posts/messages on social media. The parties agree that if there is a corroborated breach of this provision, the breaching party will be required to pay a stipulated remedy in the amount of Twenty Thousand Dollars (\$20,000) to the non-breaching party. All parties acknowledge this remedy is not a

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penalty, but an inducement for the parties to enter into this Agreement. The parties also agree that the non-breaching party is entitled to recover reasonable attorney's fees.

9. The parties agree that Dr. Melton can release the statement attached as *June 14*
Exhibit A by email to District stakeholders on Monday, ~~June 21~~, 2021. *CM*

10. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of South Carolina.

11. Dr. Melton acknowledges and agrees that this Agreement constitutes the entire agreement and understanding between the Board and her concerning the separation of her employment and any obligations, monetary or otherwise, owed to her arising out of her employment with the District. Dr. Melton acknowledges and agrees that this Agreement supersedes any prior written or oral agreements or understandings between the parties hereto.

12. The parties agree that if any provision of this Agreement, other than the general release set forth in Paragraphs 4 and 5 above, or the application thereof to any person, place or circumstance shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

13. The parties agree that a facsimile signature on this Agreement shall be as effective as an original signature, and that this Agreement may be signed in separate counterparts.

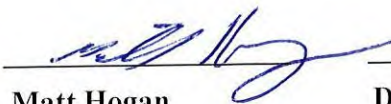
IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have executed the foregoing Settlement Agreement and Mutual Release as of June 14, 2021, the Effective Date.

Christina Melton *6/15/21*
Christina Melton, Ph.D. Date
Ecl.D

SCHOOL DISTRICT FIVE OF LEXINGTON
AND RICHLAND COUNTIES:


Jan Hammond, Board Chair

6/14/21
Date


Matt Hogan 6/14/21
Date


Ken Loveless, Vice Chair

6/14/2021
Date


Catherine Huddle 6/14/21
Date


Rebecca Blackburn *Hines*

6/14/21
Date

Ed White Date


Nikki Gardner, Secretary

6/14/21
Date



This message is a bittersweet message to write because of my love for our district. This is home. We are family.

I am a strong believer in seasons of life, including career. My season as superintendent is drawing to an end on June 30, 2021. As I prepare for this new chapter in my life, I thank the Board of Trustees for the privilege to lead School District Five. I thank our families, our community, and especially our students. I am grateful to the staff of School District Five. I am convinced the brightest, most talented, capable and caring professionals are concentrated here in our district... "know thy impact" is not a mantra, it is a mission at work daily in all operations across our district. I could list the #PrideIn5 accolades we have achieved, the historic precedents we have set, the records our students have made and the records our students have broken. I could list the extensive accomplishments our staff have been recognized for and how we have been Innovative and forerunners in ratings, competitions, and recognitions. Instead of the extrinsic, it is the intrinsic I am most proud of. We have rallied in times of crisis. We have shared strength during weakness and we have seen the unprecedented. We have been a voice for our children, our community and our profession. We have been tested and have proven to be resilient and student-centered. I leave this chapter knowing the people in place will continue exemplary work focusing upon our most important resource... our children.

With a grateful heart and in service.

Exhibit C

Pursuing Excellence for Tomorrow's Challenges**FACILITIES COMMITTEE MEETINGS**

Agenda	Minutes	Video
6-9-2021 Facilities Committee Meeting	Minutes	N/A
8-11-2021 Facilities Committee Meeting	Minutes	N/A
9-8-2021 Facilities Committee Meeting	Minutes	N/A
10-6-2021 Facilities Committee Meeting	Minutes	N/A
11-10-2021 Facilities Committee Meeting	Minutes	N/A
Exhibit A	Minutes	N/A
12-8-2021 Facilities Committee Meeting	Minutes	N/A
1-12-2022 Facilities Committee Meeting	Minutes	N/A
2-16-2022 Facilities Committee Meeting	Minutes	Video

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Pursuing Excellence for Tomorrow's Challenges



POLICY COMMITTEE MEETINGS

Agenda	Minutes	Video
9-15-2021 Policy Committee Meeting	Minutes	N/A
10-20-2021 Policy Committee Meeting	Minutes	N/A
11-17-2021 Policy Committee Meeting EXH A - Policy BCA Board Member Code of Ethics PROPOSED EXH B - Policy BCB Board Member Conflict of Interest EXH C - Policy AE Accountability EXH D - Policy DI DIE Fiscal Accounting Audits PROPOSED EXH E - Policy FEE Site Acquisition PROPOSED	Minutes	N/A
1-19-2022 Policy Committee Meeting Policy JFBA Revisions Intra-District Transfer and Withdrawal - Exhibit A Policy FGG Change Orders and Contingency Allowance - Exhibit B	Minutes	N/A
2-23-2022 Policy Committee Meeting EXH A Policy FGG Change Orders and Contingency Allowance - updated EXH B BDG - Board Attorney Legal Services SCSBA Model Policy EXH C BDG_R - Board Attorney Legal Services SCSBA Model Rule EXH D Policy-GCB Professional Staff Contracts and Compensation - recommended changes EXH E Policy-GDB Support Staff Compensation - proposed changes DD - Funding Proposals Grants and Special Projects - Exhibit E	Minutes	Video
3-16-2022 Policy Committee Meeting EXHIBIT A - Board Policy FGG Change Orders and Contingency Allowance EXHIBIT B - Policy FEC Selection of Professionals in Facilities Construction EXHIBIT C - Policy BDG - Board Attorney Legal Services SCSBA Model Policy EXHIBIT D - Policy BDG-R - Board Attorney Legal Services-suggested edits EXHIBIT E - Policy BC - Board Member Conduct Exhibit F 1 of 3 - Policy BCA EXHIBIT F 2 of 3 - Policy BCA - Board Member Code of Ethics - SCSBA Model Policy EXHIBIT F 3 of 3 Policy BCA - Board Member Code of Ethics - Proposed Policy Committee Revisions EXHIBIT G - Policy BCB - Board Member Conflict of Interest EXHIBIT H - Policy BEDH Public Participation at Meetings	Minutes	Video

Pursuing Excellence for Tomorrow's Challenges**PROCUREMENT COMMITTEE MEETINGS**

Agenda	Minutes	Video
6-2-2021 Procurement Committee Meeting	Minutes	N/A
8-4-2021 Procurement Committee Meeting	Minutes	N/A
8-25-2021 Procurement Review Panel Meeting	N/A	N/A
9-1-2021 Procurement Committee Meeting	Minutes	N/A
11-3-2021 Procurement Committee Meeting	Minutes	N/A
12-1-2021 Procurement Committee Meeting	Minutes	N/A
2-2-2022 Procurement Committee Meeting	Minutes	N/A

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Exhibit B

Affidavit of
Ken Loveless

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Paul Roy Osmundson	)	Civil Action No.: 2021-CP-40-03694
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF KEN LOVELESS
	)	
School District Five of Lexington and	)	
Richland Counties,	)	
	)	
Defendant.	)	
_____	)	

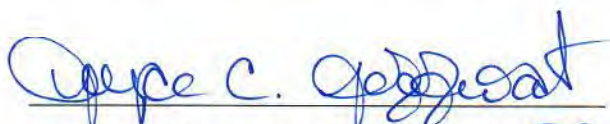
I, Ken Loveless, being duly sworn according to law, do say as follows:

1. My name is Ken Loveless and I am the Vice Chair for the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board" and "the District"). I was elected Vice Chair in 2020.
2. On May 24, 2021, I participated in discussions during executive session but no votes were taken on any topic during executive session.

FURTHER AFFIANT SAYETH NOT.


 Ken Loveless, Vice Chair
 School District Five of Richland and Lexington
 Counties Board of Trustees

SWORN BEFORE ME THIS 16th
 DAY OF March, 2022.


 NOTARY PUBLIC FOR STATE OF SC



My Commission Expires: 03.14.2026

Exhibit C

Affidavit of
Nikki Gardner

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

AFFIDAVIT OF NIKKI GARDNER

I, Nikki Gardner, being duly sworn according to law, do say as follows:

1. My name is Nikki Gardner, and I am the Secretary for the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board" and "the District"). I was elected secretary in 2020.
2. On May 24, 2021, I participated in a discussion during executive session where our legal counsel, Andrea White, advised us she had been contacted by Dr. Melton's attorney regarding the possibility of Dr. Melton resigning. All Trustees were given the opportunity to share their opinions regarding a possible departure of Dr. Melton, but the Board did not conduct a vote or a straw poll.
3. I have never been asked to raise my hand; fill out a ballot, or otherwise vote during any executive session of a Board meeting.

FURTHER AFFIANT SAYETH NOT.

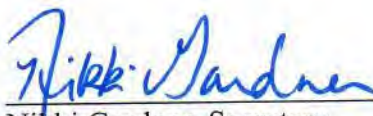
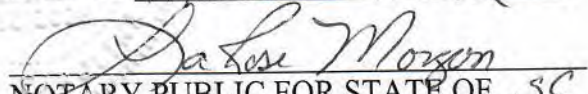
Nikki Gardner, Secretary
School District Five of Richland and Lexington
Counties Board of TrusteesSWORN BEFORE ME THIS 16th
DAY OF March, 2022.NOTARY PUBLIC FOR STATE OF SCMy Commission Expires: 9-30-2026

Exhibit D

Affidavit of
Cathy Huddle

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

AFFIDAVIT OF CATHY HUDDLE

I, Cathy Huddle, being duly sworn according to law, do say as follows:

1. My name is Cathy Huddle, and I am a member of the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board" and "the District"). I was elected to the Board in 2020.
2. On May 24, 2021, I participated in a discussion during executive session where our legal counsel, Andrea White, advised us she had been contacted by Dr. Melton's attorney regarding the possibility of Dr. Melton resigning. All Trustees were given the opportunity to share their opinions regarding a possible departure of Dr. Melton, but the Board did not conduct a vote or a straw poll.

FURTHER AFFIANT SAYETH NOT.

Cathy Huddle, Trustee
School District Five of Richland and Lexington
Counties Board of Trustees

SWORN BEFORE ME THIS 16th
DAY OF March, 2022.

NOTARY PUBLIC FOR STATE OF SC
My Commission Expires: 9-30-2026

Exhibit E

Affidavit of
Matt Hogan

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Paul Roy Osmundson,

Plaintiff,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-03694

AFFIDAVIT OF MATT HOGAN

I, Matt Hogan, being duly sworn according to law, do say as follows:

1. My name is Matt Hogan, and I am a member of the Board of Trustees for School District Five of Lexington and Richland Counties ("the Board"). I was elected to the Board in 2020.
2. On May 24, 2021, I participated in a discussion during executive session where our legal counsel, Andrea White, advised us she had been contacted by Dr. Melton's attorney regarding the possibility of Dr. Melton resigning. All Trustees were given the opportunity to share their opinions regarding a possible departure of Dr. Melton, but the Board did not conduct a vote or a straw poll.
3. I have never been asked to raise my hand; fill out a ballot, or otherwise vote during any executive session of a Board meeting.

FURTHER AFFIANT SAYETH NOT.


Matt Hogan, Trustee
School District Five of Richland and Lexington
Counties Board of Trustees

SWORN BEFORE ME THIS 16th
DAY OF March, 2022.

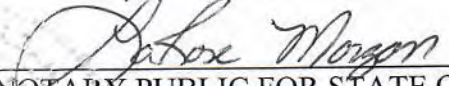

NOTARY PUBLIC FOR STATE OF SC
My Commission Expires: 9-30-2026

Exhibit F

Board Policy

BEDB Agenda

Policy BEDB Agenda

Issued 7/06

Purpose: To establish the basic structure for board preparation of and adherence to its meeting agenda.

The superintendent, in cooperation with the board chairman, will prepare the agenda for the regular meetings.

Items of business may be suggested by board members, staff members or citizens of the district. Individual members requesting items to be included on the agenda should make such request to the board chairman no later than 2:00 p.m. on the Monday one week prior to the next Monday board meeting. The inclusion of such items will be at the discretion of the superintendent, board chairman and the board officers. The agenda will, however, allow time for the remarks of persons who have requested to appear before the board.

The board will follow the order of business set by the agenda unless the order is altered by a majority vote of the members present. Items of business not on the agenda may be discussed and acted upon if a majority of the board agrees to consider them.

All written communications intended for the board's consideration will be sent to the superintendent for presentation in the established order of business. Unless disposed of by board action or by reference to the proper officers, staff members or committees, the superintendent will keep all such communications on file and on the board's agenda until final disposition is made.

Normally, the agenda, together with supporting materials, should be distributed to board members at least three days prior to the meeting. Copies of the board agendas will be distributed to each principal/director simultaneously with the distribution to the board and the news media.

Materials distributed to the board which reflect staff recommendations in their final form are open to the public unless exempt from disclosure by law or are of a personal nature such that public disclosure thereof would constitute unreasonable invasion of personal privacy.

Adopted 2/24/69; Revised 1973, 11/16/81, 6/16/86, 5/3/93, 7/24/06

Legal references:

S.C. Code, 1976, as amended:

[Section 30-4](#)-80 - Posting of agendas.

School District Five of Lexington and Richland Counties

Exhibit G

Board Officers

Meetings

2021-2022

Pursuing Excellence for Tomorrow's Challenges**2021-2022 BOARD OFFICERS MEETINGS**

Date	Agenda
8/16/2021	Agenda
8/26/2021	Agenda
9/16/2021	Agenda
9/30/2021	Agenda
10/14/2021	Agenda
10/28/2021	Agenda
11/18/2021	Agenda
1/4/2022	Agenda
1/13/2022	Agenda
1/27/2022	Agenda
2/10/2022	Agenda
3/3/2022	Agenda

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ELECTRONICALLY FILED - 2022 Mar 18 4:51 PM - RICHLAND - COMMON PLEAS - CASE#2021-0000000000

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Paul Roy Osmundson,	)	Civil Action No.: 2021CP4003694
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S
	)	MEMORANDUM OF LAW
School District 5 of Lexington and	)	IN OPPOSITION TO
Richland Counties,	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
Defendant.	)	
	)	

The heart of defendant's position in its Motion for Summary Judgment is the erroneous assertion that its actions taken at a post lawsuit board meeting on August 9, 2021, rendered moot the most substantial claims by plaintiff of violations of the Freedom of Information Act. There is no genuine issue of fact that on June 14, 2021, six of the trustees of School District 5, in two closed-door executive sessions, made and reaffirmed the decision to approve a Resignation Agreement with Dr. Christina Melton, District School Superintendent. This document was signed in executive session by all of the trustees except trustee Ed White. Nothing was done on the record by the board either before or after their executive sessions on June 14, 2021. The public was totally excluded.

On July 23, 2021, this lawsuit was filed. This was over two weeks before the August 9, 2021, board meeting where the board attempted to cure its violations and voted on the record to approve the Melton Resignation Agreement. Also on August 9, 2021, the board enacted in open session a rule that the board officer meetings would henceforth be set and conducted publicly.

Prior to that time, District 5 board officer meetings were not public. This was the basis for plaintiff's second allegation of violation of the Freedom of Information Act. For the

defendant to claim that both of these alleged Freedom of Information Act violations are now moot is akin to a bank employee charged with embezzlement insisting the charges be dismissed because he/she replaced the money after being caught.

The assertions made in the affidavits filed by defendant trustees Hammond, Loveless, Gardner, Huddle and Hogan - wherein they claim that no votes, no secret ballots, and no straw votes took place - in executive session are refuted by District 5's Director of Communications, Katrina Goggins. Her email to Michael Bishop is referenced and included herein.

Most importantly, defendant's position is contradicted by the opinion of the South Carolina Court of Appeals in the case of Piedmont Public Service District v. Cowart, 319 S.C. 124, 459 S.E.2nd 876 (Ct. App. 1995), aff'd, 324 S.C. 239, 478 S.E.2d 836 (1996). In that case, the Piedmont Public Service District board of directors voted in executive session to terminate their fire chief. The district argued that their subsequent ratification of the board's decision satisfied the Freedom of Information Act and rendered a Freedom of Information Act violation claim invalid and moot.

The Court soundly rejected this argument. It held that a subsequent ratification in a public meeting cannot cure the Freedom of Information Act violations of actions made in executive session. The Court in its opinion stated as follows:

The Act originally allowed formal action to be taken in executive session if the action was later ratified in public. S.C. Code Ann. §30-4-70(a)(5) (Supp.1978) ("Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective."). However, the 1987 amendments to the Act **deleted the language allowing ratification of votes taken in executive session** and specifically prohibited voting while in executive session. S.C. Code Ann. §30-4-70(a)(6) (Supp.1987). While a mere technical error may not constitute a violation of the Act, *see Multimedia, Inc. v. Greenville Airport Comm'n*, 287 S.C. 521, 522, 339 S.E.2d 884, 887 (Ct.App.1986) ("[S]ubstantial compliance with the Act will satisfy its requirements where a technical violation has no demonstrated effect on a complaining party"), given the history of the Act, we cannot characterize the District's error as merely technical. **By**

affirmatively deleting the ratification language, the legislature made its intent clear. Ratification no longer validates a vote cast during an executive session.

Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 129, 459 S.E.2d 876, 878-79 (Ct. App. 1995), *aff'd*, 324 S.C. 239, 478 S.E.2d 836 (1996) (emphasis added).

The lengthy and factually detailed affidavit of former trustee Ed White includes numerous specific statements made by and actions taken by the other six board members during the executive sessions of the board on June 14, 2021. Although these other trustees, with the exception of trustee Rebecca Hines, submitted affidavits to this Court, they did not refute or even address these very specific sworn factual statements by Mr. White.

For example, Ed White made specific reference to an Attorney General's Opinion dated August 26, 2019, a copy of which he submitted to the trustees at its meeting on February 8, 2021. This is alleged in paragraph 15 of the Amended Complaint. Trustee White noted that this Attorney General's Opinion was later removed from the minutes of this February 9, 2021 board of trustees' meeting by a vote taken on March 1, 2021. Paragraph 17 of the Amended Complaint alleges this decision to remove the Attorney General's Opinion was "made in bad faith" and constituted a deliberate attempt by the other District 5 trustees to eliminate evidence that the meetings of board officers were unlawful and should have been open to the public. Plaintiff submits that the complete failure by the other trustees to address in their affidavits the board's actions with regard to this Attorney General's Opinion leaves these allegations and sworn representations by trustee White completely unrefuted.

Other portions of trustee White's affidavit describe in detail the elaborately concocted plan of the other trustees to handle Dr. Christina Melton's so-called "resignation" in such a way as to completely deceive and leave the public with the false impression that Dr. Melton, who had been named South Carolina School Superintendent of the Year, decided on her own to quit her

job, forfeit her title, abandon her award, and return all the prizes at the end of the academic year. This plan also required that Dr. Melton, with no discussion of her status, would preside at the graduation ceremonies of all the district high schools and remain on leave until the end of the month without ever returning to her office as District Superintendent. The five trustees who submitted affidavits offered no factual refutation of this concocted and deceptive plan as described by trustee White. This leaves this Court with no genuine issue of material fact regarding this deliberate and improper plan to defeat the requirements of the Freedom of Information Act.

The Separation Agreement signed by six of the trustees on June 14, 2021, in executive session cites Clause 11(a) of Dr. Christina Melton's contract as the basis for her termination. That clause does not require the District to pay Dr. Melton any money. The only provision of her contract calling for payment is Clause 11(d) entitled, "Unilateral Termination."

There is no genuine issue about the fact that the six trustees who signed the Melton Agreement did so without any public discussion or vote. As described by trustee White in his affidavit, that Termination Agreement was signed in executive session and immediately obligated the District to pay her \$226,368.00. It was not discussed in anyway whatsoever during the public board meeting.

Section 30-4-70(b) of the South Carolina Code of Laws addresses executive sessions of a public agency. That code section requires a vote in public on any action taken. That statute states in relevant part:

"No action may be taken in Executive Session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session."

If a board of trustees of a public agency signs a legal document in executive session committing it to pay nearly a quarter of a million dollars, it has clearly committed “an action” as that term is defined by the statute.

In an email dated June 23, 2021, Katrina Goggins, the Director of Communications for School District 5 of Lexington and Richland Counties, sent an email to Michael Bishop in which she stated:

“Mr. Bishop: Per your request, we sought clarification from the School Board’s attorney regarding the version of the settlement that was provided to you in response to your FOIA request. She confirmed that the record we provided you with this week is the only signed version. However, the attorney did correct the previous statement that the settlement was signed during the first executive session. The Settlement Agreement was revised during the second executive session, which is why page 4 includes handwritten changes.

The board entered the first of two executive sessions shortly after the start of the June 14th meeting, I am attaching the agenda of that meeting to this email and providing a link to the video.”

Mr. Bishop’s affidavit with a copy of this email is attached hereto as Exhibit A.

This admission by Ms. Goggins, defendant’s duly authorized Director of Communications, clearly indicates that the Agreement between Dr. Christina Melton and School District 5 was signed during executive session.

For these reasons and all others raised by the plaintiff in other filed submissions, the Court should deny defendant’s Motion for Summary Judgement and grant plaintiff’s Motion for Summary Judgment in full.

Signature to follow on next page.

By: s/ Joel W. Collins, Jr.
Joel W. Collins, Jr., Esquire
Bar Number: 1341
jcollins@collinsandlacy.com
J.C. Nicholson, III, Esquire
Bar Number: 70324
jcnicholson@collinsandlacy.com
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

Columbia, South Carolina

April 8, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Paul Roy Osmundson,) Civil Action No.: 2021CP4003694
))
Plaintiff,))
))
v.))
))
School District 5 of Lexington and)
Richland Counties,)
))
Defendant.)
))

**AFFIDAVIT OF
MICHAEL A. BISHOP**

PERSONALLY, APPEARED BEFORE ME, Michael A. Bishop, who upon being duly sworn deposes and states as follows:

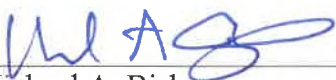
1. I am a citizen and resident of Richland County, South Carolina. My home is within the area served by Lexington/Richland School District 5.

2. In June 2021, I sent a Freedom of Information Act request to District 5. I received a reply from Katrina Goggins, the Director of Communications for the school district. Her email to me is attached hereto as Exhibit 1.

3. Ms. Goggins essentially advised me that the settlement agreement the school board executed with former District Superintendent, Dr. Christina Melton, was signed in the first executive session meeting of the board. She went on to advise me that the settlement agreement was revised during a second executive session. I was interested to note that the settlement agreement was never addressed during any open session of the district 5 school board meeting on June 14, 2021, the date of the settlement agreement. MB



FURTHER YOUR AFFIANT SAYETH NAUGHT.


Michael A. Bishop
SCDC ... 8993

In witness thereof on this 8th

day of April, 2022.


Notary Public for South Carolina

My Commission Expires: 8-7-2030

Re: SC FOIA Request - Settlement Agreement

From: Katrina Goggins <kgoggins@lexrich5.org>
To: <mabishop@earthlink.net>
Subject: Re: SC FOIA Request - Settlement Agreement
Date: Jun 23, 2021 11:58 PM
Attachments: [Agenda 6-14-2021.pdf](#)

Mr. Bishop:

Per your request, we sought clarification from the school board's attorney regarding the version of the settlement that was provided to you in response to your FOIA request. She confirmed that the record we provided to you this week is the only signed version. However, the attorney did correct the previous statement that the settlement was signed during the first executive session. The settlement agreement was revised during the second executive session, which is why page 4 includes handwritten changes.

The board entered the first of two executive sessions shortly after the start of the June 14 meeting. I am attaching the agenda of that meeting to this email and providing a link to the video: https://www.youtube.com/playlist?list=PLI9eR_8HyUjCbv5sCPp1CGZ6oBkSvIlaa

Regards,

On Wed, Jun 23, 2021 at 2:05 PM <mabishop@earthlink.net> wrote:

Ms. Goggins:

Page 4 of the agreement you provided includes a hand written change to a date on that page. I asked for all copies of any version of the agreement signed by the board. I want to be clear on one point, is it the position of the district that a version of this agreement **was not** signed by the board during the 1st executive session held on the evening of the 14th?

If there was a copy signed during the 1st executive session, please provide a copy of that document as per my request.

Regards,

Michael Bishop

This email is in response to an FOIA request, in which you requested the following:

I request ALL signed version of the settlement agreement with Dr. Melton. If there was an original signed version and subsequently changed or amended signed version(s) I request that you provide ALL version that were signed.

I also request the District information pertaining to the time / date / and location the agreement(s) were signed by the board members.

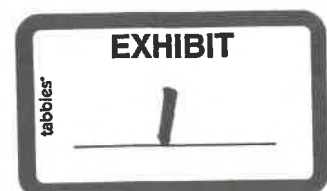
See the attached record. There are no costs associated with this request.

Please accept this as our final determination/response regarding your SC FOIA request. The District makes every good-faith effort to identify and provide all documents pursuant to FOIA requests.

Regards,

Katrina Goggins

MB



**Director of Communications**

School District Five of Lexington & Richland Counties

o: 803.476.8118 c: 803.309.0084

www.lexrich5.org*Pursuing Excellence for Tomorrow's Challenges*

On Wed, Jun 16, 2021 at 9:19 AM <mabishop@earthlink.net> wrote:
Clarification -

I request ALL signed version of the settlement agreement with Dr. Melton. If there was an original signed version and subsequently changed or amended signed version(s) I request that you provide ALL version that were signed.

I also request the District information pertaining to the time / date / and location the agreement(s) were signed by the board members.

Regards,

Michael Bishop
Irmo

--

--

**Katrina Goggins****Director of Communications**

School District Five of Lexington & Richland Counties

o: 803.476.8118 c: 803.309.0084

www.lexrich5.org*Pursuing Excellence for Tomorrow's Challenges*

MB

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2021-CP-40-03694
	)	
	)	
	)	
	)	
PAUL ROY OSMUNDSON,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SCHOOL DISTRICT FIVE OF	)	
LEXINGTON AND RICHLAND,	)	
DEFENDANT.	)	
_____	)	

July 18, 2022
Columbia, South Carolina

B E F O R E:

THE HONORABLE ALISON LEE, JUDGE.

A P P E A R A N C E S:

JOEL COLLINS, ESQ.
THOMAS MCGEE, III, ESQ.
Attorney for the Plaintiff

WARD BRADLEY, ESQ.
Attorney for the Defendant

Proceedings recorded via WebEx
Transcribed by Penny M. Johnson

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

1
2 THE COURT: Good afternoon. We are here on motions
3 this afternoon. The motion I'm taking up at this particular
4 point would be in docket number 2021-CP-40-03694, Paul
5 Osmundson vs. School District Five of Lexington and Richland
6 County.

7 On behalf of the Plaintiff is Joel Collins; is that
8 correct?

9 MR. BRADLEY: Yes, Judge. I don't see Joel on here,
10 but Joel is the Plaintiff's lawyer -- there he is.

11 THE COURT: So Mr. Collins is representing the
12 Plaintiff. On behalf of what I call Richland/Lexington
13 School District Five is Ward Bradley. Also, appearing, I
14 thought I saw Ms. Andrea White, although she has moved to be
15 relieved as counsel.

16 Are there other individuals who are present who will be
17 speaking?

18 JAKE: Judge, this is Jake. I doubt I speak, but I'm
19 here.

20 THE COURT: Okay.

21 MR. BRADLEY: Also, with us today is Jan Hammond, who
22 is the chair of the school board, Judge.

23 THE COURT: All right. Thank you.

24 MR. MCGEE: Your Honor, this is Billy McGee. I'm also
25 co-counsel with Mr. Collins, but I will not be speaking

1 today.

2 THE COURT: Okay. Thank you.

3 If you cannot hear me, you need to turn up the volume
4 on your computers.

5 There are a number of motions that need to be heard
6 today that are listed on my docket. I will take them in the
7 order in which they have been filed. So I will start with
8 the motion for summary judgment that was filed on behalf of
9 the Plaintiff.

10 MR. COLLINS: Thank you, Your Honor. This is Joel
11 Collins. With me here in my conference room is my client,
12 Paul Osmundson.

13 We would begin, Your Honor, by giving you a brief
14 chronology. On May the 1st, a citizen named Lauren Mitch
15 filed a Freedom of Information Act with District Five. She
16 sought the information regarding the dates, times and places
17 of the school board officer meetings. And four days after
18 that, my client, Paul Osmundson, filed a similar request
19 seeking, essentially, the same information.

20 The response they received, which is attached to our
21 claim, was, essentially, a letter saying that -- here it is,
22 quote, It is the district's understanding that our board
23 officer meetings are not committee meetings and thus, do not
24 fit the definition of a public meeting under SCFOIA,
25 therefore, there are no agendas or public postings of their

1 meetings and no notification of the meetings are required
2 under the law.

3 Following that, Your Honor, one of the school board
4 members, Ed White, and I'll be referring to him a lot today,
5 brought with him to a meeting of the school board a copy of
6 an Attorney General opinion dated August 26th, 2019. That
7 Attorney General opinion, Your Honor, is also an exhibit to
8 our complaint.

9 And in that exhibit, the Attorney General opined that a
10 similar subcategory committee did meet the definition of a
11 public body and, therefore, it's meetings had to be noticed.
12 They had to have an agenda and they had to be conducted
13 publically. That was the considered opinion of Mr. White
14 and he filed that with the board.

15 A later decision was made by the board on March the
16 1st, 2021. The attorney general opinion that Mr. White had
17 brought in was removed. They took a vote to remove that
18 opinion from the Minutes of the school board meeting.
19 Thereafter, Your Honor, there were a number of meetings by
20 the school board in executive session.

21 And one of our complaints, and this is set forth
22 specifically in Paragraph 27 of our complaint, quote, It was
23 the practice of the board of trustees, despite objections to
24 obscure the matters discussed in executive session by voting
25 in open session on items without advising the public the

1 subject of the item.

2 In the preceding paragraph, we allege that the trustees
3 deliberately and repeatedly utilized the procedure going
4 into executive session to discuss and conduct business where
5 they harassed, insulted and intimidated the superintendent
6 and where they created a hostile work environment as
7 described in more detail by Trustee White in his affidavit.
8 Quote, Such overuse and misuse of executive session was an
9 intentional violation of the open meetings law of the South
10 Carolina Freedom of Information Act.

11 Your Honor, one of my able assistants provided me with
12 a copy of the agendas that were published. This is a
13 pernicious thing, the way they operate. We've alleged that
14 it was on June the 14th, 2021, that this board went into
15 executive session, entered into a written agreement called a
16 termination agreement, actually signed the thing in the
17 meeting, six of the seven. Ed White just refused to sign
18 it. And they signed this agreement in executive session.
19 They never came back out into open session to do anything,
20 which was a clear and deliberate violation of the statute.

21 And the only notice that the public had that anything
22 was going to happen at that executive session on the 21st of
23 June was an agenda item 3D. Quote, Legal advice regarding a
24 contractural matter. Very vague.

25 Our Supreme Court, Your Honor, has rendered an opinion,

1 which I did not get around to citing in any of my stuff
2 because I didn't find it in time. The case is Donahue vs.
3 The City of North Augusta. It's found at 412 S.C. 526 and
4 773 S.E.2d, Page 140. It's a 2015 opinion written by my
5 classmate, Justice Costa Pleicones.

6 And in that opinion, the Supreme Court held that the
7 specific purpose of the executive session is required by
8 Section 30-4-70(a)(1). And in that case, the City of North
9 Augusta had simply said they were going to have an executive
10 session to discuss a contractual matter, very similar to
11 what we have here.

12 The opinion includes this statement: The Freedom of
13 Information Act is not satisfied merely because citizens
14 have some idea of what will be discussed. The statute
15 clearly mandates the specific purpose must be announced.

16 So, Your Honor, what do we have happening on June the
17 14th? We have this agreement, termination agreement signed.
18 And they say they didn't take a vote. Well, Judge, when you
19 sign an agreement, a binding agreement, that's a vote.
20 That's more than a vote. That's a vote consummated by an
21 execution of an agreement. And that agreement, which we
22 refer to in our complaint, is outrageously misleading and a
23 violation.

24 First of all, it cites to a paragraph of her employment
25 agreement that calls for a termination by a mutual

1 agreement. That's not at all what they actually did, Your
2 Honor. They unilaterally terminated her and in that
3 agreement agreed to pay her over \$226,000. Not one item of
4 discussion about that ever publically. It goes on to say
5 that she is contractually obligated not to go back to her
6 office. This is June the 14th.

7 In the next few days or so, there's going to be
8 graduating ceremonies in District Five, at Dutch Fork High
9 School, Irmo High School, Chapin High School and, I guess,
10 Springhill High School. She was contractually obligated to
11 go and conduct those graduation ceremonies just as if she
12 was the superintendent. And then at the end of the month,
13 she was contractually obligated to say I've decided to
14 resign as superintendent of District Five. And nobody was
15 ever going to be the wiser of what had actually happened
16 unless and until Ed White said I'm not going to be a part of
17 this. And he resigned then and there, refused to sign that
18 agreement.

19 The agreement also has a clause in it that says that
20 any discussion with the public about what actually occurred
21 here on June the 14th, any discussion will be a violation of
22 this termination agreement and will result in the imposition
23 of liquidated damages of \$20,000 for the offending party,
24 plus an award of attorney's fees.

25 So Christina Melton was obligated contractually to put

1 up this great big facade, this misleading set of
2 circumstances leading the public to believe that she had
3 some incredible life-changing event that caused her to
4 resign as superintendent even though she was recently named
5 the South Carolina school superintendent of the year and
6 received prizes and recognition and all sorts of honoraria
7 and was, therefore, when she resigned obligated to surrender
8 that title and return all those honoraria. Outrageously
9 misleading to the public. And that prompted the lawsuit
10 that was brought.

11 The meeting of June 14th where Ed White publically
12 disputed what was going on followed a public release by him,
13 I think, the next day. On July the 23rd, 2021, this lawsuit
14 was filed.

15 On August the 9th, 2021, the school board in regular
16 session voted to accept the resignation agreement with Dr.
17 Melton and, also, voted to have their board officer meetings
18 open to the public as had been requested by Mr. White and as
19 had been clearly required, we think, by the opinion of the
20 Attorney General I made reference to earlier.

21 So the school board thinks that this vote taking on
22 August the 9th cured everything. The lawsuit became moot.
23 We got a letter from the school board's attorney telling us
24 that the decision to retroactively approve what had happened
25 on June 14 rendered this case moot.

1 But as I told Mr. Bradley the other day, we had a brief
2 conversation, I said, Ward, you're obviously unaware of or
3 ignoring the Supreme Court's opinion in Piedmont Public
4 Service District vs. Cowart. That's a case, also, Your
5 Honor, I did not cite in my earlier memorandum because I
6 didn't come across it until we saw the need to find it. And
7 I commend Mr. McGee's firm for helping with the research on
8 that.

9 Piedmont Public Service District vs Cowart, it's at 319
10 S.C. 124, 459 S.E.2d 876, it was decided by the Court of
11 Appeals, but it was confirmed by the opinion of the South
12 Carolina Supreme Court in 1996, that would be the next year,
13 in the opinion at 324 S.C. 239, 478 S.E.2d 836.

14 And in that case, the Supreme Court squarely held that
15 a subsequent ratification of a decision by a public service
16 district, in that case which had fired their chief, was not
17 sufficient to cure the violation of the FOIA. And the court
18 said the 1987 amendment to the Freedom of Information Act
19 deleted the language allowing ratification of votes taken in
20 executive session and specifically prohibited voting while
21 in executive session, citing section 30-4-70(a)(6). And the
22 court went on to say, quote, By affirmatively deleting the
23 ratification language, the legislature made its intent
24 clear, ratification no longer validates a vote cast during
25 an executive session.

1 So, Judge, we think the facts in this case are not in
2 dispute. The school district thinks that that vote they
3 took on August the 9th swept everything under the rug. It's
4 like the bank robber coming in and saying here's the money,
5 folks. I'm giving it all back to you now, let's drop these
6 charges and everybody go home. You can't do it, Your Honor.
7 You can't unring that bell. So we believe since both sides
8 have moved for summary judgment, there really is no dispute.

9 And we have also, Your Honor, presented to you the
10 scalding affidavit of Ed White, an 18-year-veteran of the
11 school board, a respected member of the Bar. And that
12 affidavit, Your Honor, goes into great detail. It quotes
13 these other school board members, what they did and said to
14 him. I might point out that even though they've had this
15 affidavit of Mr. White for months now, not one of his
16 factual representations about things that were said has been
17 refuted. Ms. Hammond was referred to specifically by Mr.
18 White, several times. Ms. Hammond has not filed anything
19 saying Mr. White's wrong. I never said that. He made that
20 up. She hasn't refuted it.

21 And one of the things that I point out is that in her
22 affidavit that she gave is that Mr. White didn't complain
23 about these things were happening back at the time he was on
24 the board. Well, my point in the reply memo that I filed
25 was, that's not the point of the Freedom of Information Act.

1 Mr. White doesn't get to decide what, if anything, is done
2 in violation or in compliance with the Freedom of
3 Information Act. It's there for the public. Ms. Hammond
4 apparently does not or did not at the time understand that
5 the Freedom of Information Act is all about enabling the
6 public to know what's going on.

7 So we submit, Your Honor, that when you read the
8 affidavit of Ed White, the unrefuted affidavit of Ed White,
9 when you read and understand the Minutes of the meetings of
10 June 14th and then August the 9th, we see that the school
11 board has, essentially, admitted that what they did on the
12 14th was not in compliance with the Freedom of Information
13 Act. They've opened up their school board meetings --

14 And let me just say this, we don't think the opening up
15 of the school board meetings has been done in utmost good
16 faith. They still have an agenda for their officer board
17 meetings. They say the first thing we're going to do is go
18 into executive session. So all the important decisionmaking
19 and discussion of what's to be done still occurs beyond the
20 knowledge of the public. They go into executive session
21 when they want to do something.

22 Mr. Loveless, the vice-chair, is quoted by Mr. White as
23 saying, Sometimes I have things I want to say and I don't
24 want to be on the record. Well, that's exactly why we have
25 a Freedom of Information Act, Your Honor, so school board

1 members don't say things that are illegal, wrong,
2 ill-advised, all with the idea in mind of shielding it from
3 the public being made aware.

4 We believe that the affidavits of Mr. Osmundson and Mr.
5 White coupled with the very thin affidavits of the school
6 board members -- all they said, and this is amazing, they
7 said at the meeting on May the 14th or whenever, the
8 preceding May, they didn't take a note.

9 Well, what's that got to do with anything? Nothing.
10 We're not complaining about what happened at the May meeting
11 other than, of course, the fact that it was yet again one of
12 these brow-beating sessions where they were abusive and very
13 ugly to Dr. Melton, all beyond the hearing of the public.

14 Judge, following that meeting, there was apparently an
15 intense negotiation that went on into the language of this
16 resignation agreement. The public had no awareness of that.
17 The public didn't know there was anything going on with
18 regard to their superintendent. A very widely respected and
19 I would say beloved superintendent. They knew how popular
20 she was.

21 And as I quoted in my last memorandum of law, the
22 opening sentence, which I thought was very telling,
23 Katherine Huddle said regarding the decisions that were
24 being made by the board regarding Dr. Melton, quote, We are
25 going to be criticized when the public finds out about this.

1 That's in Paragraph 36 of Ed White's affidavit. And
2 tellingly, Your Honor, and importantly, Katherine Huddle has
3 not filed an affidavit saying I never said that. So it
4 stands unrefuted, Your Honor, that they were acting in
5 deliberate bad faith keeping this from the public.

6 At one of the last sessions, in fact, the last session
7 where Mr. White was present, one of the trustees turned to
8 him with a big smile and said, Well, Mr. White, you know,
9 we're doing all this in executive session. You can't go out
10 and tell anything to anybody about what we're doing.
11 Because it was the custom, not the law, by the way, just the
12 custom to keep things in executive session confidential.

13 So it was the purpose of this school board, Your Honor,
14 we believe to deliberately engage in a pattern conduct which
15 was in deliberate violation of the Freedom of Information
16 Act. And yet, when they got served with the summons and
17 complaint in this lawsuit, what did they say in their
18 answer? They said in their answer -- let me find it. They
19 said in their answer -- excuse me, Your Honor, for fumbling
20 around there. They said, The Defendant asserts that
21 Plaintiff is pursuing a frivolous lawsuit which due to the
22 lack of a justiciable controversy has no chance of
23 succeeding. Filing a frivolous lawsuit is barred by South
24 Carolina Code 15-36-10.

25 Your Honor, that wasn't a pleading that Andrea White

1 came up with in my opinion based on everything I can put
2 together. That was a position taken in this answer by the
3 overly aggressive members of this board who have been
4 dismissive of all efforts by the public to achieve
5 compliance with the Freedom of Information Act.

6 And the last thing I want to say is -- I guess the last
7 thing, maybe I'll think of something else. Ms. White
8 submitted just last week a letter that she wrote and hand
9 delivered on June the 13th. We didn't know about it until a
10 month later.

11 Judge, I've been around cases where a lawyer had to
12 withdraw, where a lawyer saw a conflict of interest, saw a
13 problem, an ethical problem. Almost every time that's
14 handled very confidentially. If a letter is sent, it's done
15 attorney/client privilege. It's done in strict confidence.

16 Here, for the first time I can ever recall, a very
17 prominent and experienced lawyer with 34 years experience
18 publically without marking it confidential, without marking
19 it attorney/client privilege sends a letter to the school
20 board that she represents and tells them that in her
21 opinion, this school board is operating in a manner that is
22 dysfunctional. That's strong language coming from a lawyer
23 who represented that board, dysfunctional.

24 And by the way, we filed this with the Court. This
25 letter of Ms. White is an exhibit that has now been made a

1 part of the public record in this case.

2 She goes on after saying that the board is
3 dysfunctional stating, quote, When a school board fails to
4 consult me prior to making a legal decision that could
5 adversely impact the board or the school district, ignores
6 my advice, ignores my advice and does not provide complete
7 and accurate facts about a matter, I am placed in a position
8 where I cannot represent that client without compromising my
9 own integrity and professional reputation. Please know I
10 have given much thought and consideration to this decision
11 and I do not make it lightly. In my 34 years of
12 representing school districts across South Carolina, I have
13 not been placed in the position in which I find myself with
14 this board.

15 Judge, this is remarkable. This is a first. In my 54
16 years of practicing law, I've never seen a letter like this
17 written by a lawyer to the client and made for public
18 dissemination.

19 Judge, I respectfully submit on behalf of my client and
20 on behalf of the well-intended, hardworking citizens of
21 District Five, who support this school district to the tune
22 of 201 million dollars a year that they have not been well
23 served by this board. They have been deliberately deceived
24 and misled. This board has knowingly and understandingly
25 violated the Freedom of Information Act. Their own lawyer

1 has chastised them and called them dysfunctional, telling
2 them that they've ignored my advice.

3 I submit, Your Honor, that the evidence in this case is
4 really overwhelming that there has been and that you should
5 find violations, multiple violations of the Freedom of
6 Information Act.

7 And since I've made a little list, I tried to come up
8 with something that I thought would be of some assistance to
9 Your Honor. We have sought a declaratory judgment. That
10 means we're entitled to -- if the Court rules favorably for
11 my client, we're entitled to a finding that there has been a
12 violation of the Freedom of Information Act by the way of a
13 declaratory judgment.

14 We submit that Your Honor should find that the
15 Defendants failed to comply with the requirements of the
16 Freedom of Information Act in that they failed to give the
17 specific purpose of their announced executive session, that
18 they failed to comply by conducting their board officer
19 meetings in violation of the notice requirements of the
20 Freedom of Information Act and that they in executive
21 session on June the 14th, 2021 executed a resignation
22 agreement without ever telling the public anything about it,
23 going to elaborate steps to hide it from the public and
24 never taking a vote on it at the time, which is absolutely
25 required by the clear language of the statute, and not

1 taking a vote on it at all until nearly a month later on
2 August the 9th. So we believe that we're entitled to a
3 declaration that those actions did violate as a matter of
4 law the Freedom of Information Act.

5 We believe that the Court, given the broad discretion
6 you have in an equitable matter like this, where injunctive
7 relief can be fashioned, we believe that you, Your Honor,
8 has before you a case that calls for some far reaching,
9 perhaps, remedies. For example, we believe you ought to
10 require the six trustees who signed that agreement to
11 undergo training on the Freedom of Information Act. And
12 that all training sessions that they have be publically
13 conducted so that the public can see what they've been
14 instructed to do.

15 Now, there's one member of the board of trustees
16 recently elected, Tiffany Moore, she was elected a special
17 election to replace Ed White. We don't think she should be
18 subject to that, but the rest of them clearly should be
19 required.

20 We believe that the Court should maintain jurisdiction
21 in this matter so that if in the future there are claims of
22 violations of the Freedom of Information Act, that citizen,
23 Mr. Osmundson, maybe, or somebody else, could come back
24 before this Court on a petition for a rule to show cause and
25 not have to start all over with a new summons and complaint

1 and all the time that might take.

2 We believe that it would be appropriate for Your Honor
3 to impose a civil fine as is required or, at least, as
4 authorized by Section 30-4-110(f) of the Freedom of
5 Information Act.

6 And lastly, Your Honor, we believe that this fine
7 should be paid from funds that would otherwise have been
8 paid to these board members, these deliberately violating
9 board members. Instead of them being paid a salary, which
10 is normally done, they get about 10 or \$12,000 a year for
11 serving on the board --

12 Excuse me, nine?

13 Between 9500 and 10,000, I'm advised. We think instead
14 of them getting paid that amount of money, that money ought
15 to go into funding the fine that Your Honor imposes.

16 And then, finally, Your Honor, we believe that we are
17 clearly in this case authorized to be awarded attorney's
18 fees and costs pursuant to Section 30-4-100(b) of the South
19 Carolina Code of Laws.

20 I believe that's all I have to say at this time. I'm
21 sure that I may wish to respond to arguments made by
22 opposing counsel.

23 Thank you, Your Honor.

24 THE COURT: Mr. Bradley, are you going to argue your
25 motion in addition to responding to Mr. Collins?

1 MR. BRADLEY: I didn't hear that, Your Honor.

2 THE COURT: You're muted.

3 MR. BRADLEY: Yes, ma'am. Can you hear me now, Judge?

4 THE COURT: Yes, I can. Before you begin, we'll make a
5 note that in some of the documents that were filed on behalf
6 of the school district, there was reference to six
7 affidavits, Jan Hammond, Ken Loveless, Kathy Huddle, Nicky
8 Gardner, Matt Hogan and Rebecca Hines. There was no
9 affidavit from Rebecca Hines in the documents that I
10 reviewed online. So I don't know whether that was
11 intentional or whether it was a mistake. I note that the
12 exact same affidavits were also submitted again with
13 additional motions or memoranda that were filed. So I just
14 wanted to make that notation for you.

15 If it's something that I need to consider, then you'll
16 need to file it because it was not filed. These files were
17 done in March of 2022, March 16th, 2022. So either it got
18 attached to something else -- well, actually, I printed out
19 all of those and there was no affidavit from Ms. Hines.

20 MS. WHITE: Your Honor, this is Andrea White. I'm
21 sorry, if I could just speak briefly to that. Ms. Hines did
22 not sign an affidavit at the time. She was out of town and
23 didn't sign it, so there was not one. So that's an error in
24 the actual memorandum of law.

25 THE COURT: That's fine. I just wanted to clarify that

1 so I could make sure I wasn't missing anything. Thank you
2 for clarifying that.

3 Yes, sir, Mr. Bradley.

4 MR. BRADLEY: Thank you, Judge. Before I start, since
5 this is kind of how Mr. Collins ended, I just want to ask
6 the Court --

7 MR. COLLINS: I was going to point out, Your Honor,
8 that Ms. Hines had plenty of opportunity had she wanted to
9 to give an affidavit.

10 THE COURT: It makes no difference, please, Mr.
11 Collins.

12 MR. COLLINS: Yes, ma'am.

13 THE COURT: If she didn't submit one, she didn't submit
14 one. I don't attribute anything to the fact that she did
15 not provide one.

16 MR. COLLINS: I understand. I would like the Court to
17 know that Ms. Hines is a lawyer. She's an admitted member
18 of the Bar.

19 THE COURT: It's still not relevant for me for this
20 particular hearing at this time. Thank you, though.

21 MR. BRADLEY: Thank you, Judge. Is it my turn now?

22 THE COURT: Yes, sir.

23 MR. BRADLEY: Thank you.

24 Before I get into my argument, Andrea White had asked
25 to be relieved as counsel in this matter, which the school

1 board has agreed to. Would it be acceptable for me just to
2 submit a short order relieving her as counsel to make it a
3 little easier for everybody.

4 THE COURT: Yes, I saw that there was something that
5 had been filed. I think it was today. So there was no
6 order, so I didn't do anything with that. So since you have
7 taken her place and you are of record as of today, I don't
8 have any objection to that.

9 MR. BRADLEY: Thank you, Judge. I'll go ahead and
10 submit a brief order on that.

11 And the last thing I would just like to address before
12 I go into exactly what my argument is going to be is all of
13 these events that Mr. Collins talked about were done by the
14 advice of Ms. White. So, basically, the reason we are being
15 sued here today is based upon her advice which she advised
16 the council.

17 So I'm not really going to go too much into her letter
18 Mr. Collins has filed, which doesn't have anything to do
19 with this lawsuit, but I would say that she was the lawyer
20 advising the board of trustees at the time all of these
21 events that he says are so bad took place.

22 So let me go into where we are. Basically, there's two
23 allegations in the complaint of what the school district did
24 wrong. The first being that it did not vote in public to
25 accept the resignation of the superintendent, Dr. Melton.

1 And the second being that the school district did not open
2 up the board officer agenda meetings to the public. So
3 that's what I take is what the complaints are.

4 And I sent some materials, I don't know if you received
5 them or not, Judge, as attachments to an e-mail just to make
6 it easier. If you have them there, it might make it easier
7 to follow. But the first one is a timeline of what
8 happened. I think these dates and times are important to
9 understand what happened here.

10 On June 14th, 2021, there was a meeting of the school
11 board where Dr. Melton's resignation was considered. And
12 that's the time that Mr. Collins is talking about where they
13 signed the resignation agreement, which was negotiated
14 between Dr. Melton's lawyer and Ms. White. Okay, that's
15 June 14th, 2021. That's the meeting that they say violates
16 the Freedom of Information Act because they signed a
17 negotiated agreement in executive session. That's their
18 allegations.

19 After that meeting, Ed White left, took the agreement
20 itself and disclosed it to the press. So as of the date of
21 that meeting, that agreement was disclosed. So the public
22 knew at the date of that meeting on which they base their
23 lawsuit exactly what the agreement said because Ed White
24 gave it to the newspaper.

25 June 23rd is when this lawsuit was initially filed, so

1 that was, basically, a little more than a week after that
2 meeting.

3 On August 9th of 2021, the board of trustees, based on
4 this lawsuit had a public vote to accept Dr. Melton's
5 resignation. So, basically, two weeks at their first
6 meeting of the board, two weeks after the complaint was
7 filed, they voted in public to accept the resignation, which
8 was one of their bases for the complaint two weeks later.

9 They also voted to adopt a rule -- and this was all on
10 the advice of Ms. White -- to open all meetings of officers
11 to the public and to publish all meetings of officers,
12 including the meetings of the executive officers to set
13 agendas pursuant to the Freedom of Information Act, which
14 they have done ever since that date.

15 I might also note that neither Mr. Collins nor his
16 client, Mr. Osmundson, has attended any of those meetings.
17 Even though they claim that this is a very large injustice
18 against the public, neither one of them have come to any of
19 those meetings to see actually what's happening. So they're
20 very sparsely attended, but they are noticed.

21 So as of August 9th, 2021, almost a year ago, the board
22 voted on Ms. White's advice to do exactly what the complaint
23 asked them to do, which is publically vote to accept the
24 resignation, which they did, and adopt a rule to open all
25 board meetings to officers, which they did. They did all

1 those things and they've been done ever since then. The
2 relief that's sought in the complaint was done two weeks
3 after the complaint was filed.

4 On August 16th, about a week later, 2021, they then
5 filed an amended complaint, okay, with the same allegations,
6 basically. So a week after we did whatever they wanted,
7 they filed another complaint.

8 And then on August 17th, the very next day, Andrea
9 White sent a letter to Mr. Collins telling him that they had
10 a public vote on accepting the resignation just as he's
11 requesting in his complaint and that they had voted to open
12 all board meetings to the public and publish the notice just
13 as Mr. Collins had requested in his complaint. There was
14 never any response to that letter. They never responded and
15 said oh, that's excellent, but we want you to do something
16 else or anything. They never said anything.

17 So a year ago, the board, two weeks after the lawsuit
18 was filed, voted to do what they asked the board to do in
19 the lawsuit on Ms. White's advice. Ms. White then wrote a
20 letter to Mr. Collins telling him we have done everything
21 they asked for. And we haven't heard from him since except
22 today with a long bill of particulars that he set out for
23 us. So that's what happened. That's why that's important.

24 So the next thing that's important is the actual
25 complaint because Mr. Collins has asked for a lot of things.

1 He wants you to actually fine, I guess, the members of the
2 board of trustees, which, obviously, that can't be done
3 because the Freedom of Information Act doesn't allow you to
4 fine individuals, it's only the entity.

5 But the other thing that's troubling about his
6 recitation of his bill of particulars and what he wants is
7 he didn't ask for that in the complaint. So the complaint
8 itself has two causes of action --

9 THE COURT: Are you referring to the amended complaint?

10 MR. BRADLEY: Yes, ma'am, the amended complaint has two
11 causes of action. The first one alleges a violation of the
12 Freedom of Information Act, but doesn't seek any relief.
13 Just doesn't say what relief it wants. The second cause of
14 action is listed as injunctive relief. And that cause of
15 action ask for a declaratory judgment and an injunction
16 requiring that all board meetings of trustees be conducted
17 openly and in strict compliance with the laws of South
18 Carolina, including the Freedom of Information Act. And
19 that's what the board has been doing for the last year
20 pursuant to his request. The second -- that's Paragraph 35
21 of the amended complaint -- Paragraph 34 of the amended
22 complaint. I'm sorry, Judge, Paragraph 34 of the amended
23 complaint.

24 Paragraph 35 ask that the Court order a civil fine as
25 indicated in Section 30-4-110(f) of the South Carolina Code

1 of Laws. I suppose he wants to be paid by the board in a
2 punitive manner by the school district for the wrongdoing
3 that he alleges here. And I can tell you, the Act does
4 include an indication that the public entity can be fined.
5 In my review of every Freedom of Information Act case that I
6 could find that's recorded, it's never happened. And I
7 would be amazed if it would be appropriate when two weeks
8 after the lawsuit was filed, the people who make the
9 decisions did exactly what the lawsuit requested. I'm not
10 sure how that can be some kind of willful or ongoing act
11 meriting a fine.

12 And then, finally, Paragraph 36 of the amended
13 complaint ask that the Court find in a declaratory action
14 that the resignation, which they call a so-called
15 resignation, of the superintendent was a willful violation
16 of the Freedom of Information Act. And then, finally,
17 Paragraph 37 ask for attorney's fees.

18 So that's what they've asked for in the complaint and
19 they haven't ever moved to amend it. So all those little
20 particulars that Mr. Collins wants isn't even what was
21 requested in the complaint. So I would just ask the Court
22 to reflect on the fact that they have to put in their
23 complaint the relief they want and they didn't put all that
24 relief in there.

25 The next thing I'd like to do is refer the Court to a

1 case of the South Carolina Supreme Court, which is Sloan vs.
2 The South Carolina Department of Revenue. And that case is
3 recorded at 762 S.E.2d 687, 762 S.E.2d 687. And for your
4 convenience, I e-mailed a copy of that case to you. I know
5 you probably get thousands of e-mail, so I was just trying
6 to make it a little easier for you.

7 And in that case, what happened was Mr. Sloan asked the
8 Department of Revenue for a set of information. And the
9 Department of Revenue wrote him a letter back and said we've
10 received your request and, you know, we'll get to it when
11 it's convenient for us. And Mr. Sloan filed a lawsuit
12 saying, you know, you can't answer like that. You have to
13 provide me the information or provide some reason that you
14 can't give it to me or when you're going to be able to give
15 it to me. So he filed a lawsuit.

16 After he filed the lawsuit, the Department of Revenue
17 gave him all the information. They gave him everything he
18 asked for. Mr. Sloan persisted in his lawsuit and he was
19 seeking a declaratory judgment and an injunction, just like
20 Mr. Collins is. So he said yeah, I know you've responded
21 now, but that's not good enough. We want an order of the
22 court that you're stinkers and you didn't do it initially
23 and, therefore, we want the court to say you didn't do what
24 you were supposed to do.

25 So Judge Cooper, Thomas Cooper, threw the case out on

1 the basis that it was moot because the Department had
2 provided all the relief that Mr. Sloan had requested. So
3 that wasn't good enough for Mr. Sloan, so he appealed it.
4 And, eventually, the Supreme Court agreed with Judge Cooper
5 and said look, you're not entitled to an injunction or a
6 declaratory judgment when you've gotten the relief you
7 requested already. It makes the case moot. You've gotten
8 everything you asked for, but we do find that they have a
9 right to petition for attorney's fees because you didn't do
10 it right the first time. So they can submit a petition for
11 attorney's fees. We're going to remand this case back to
12 Judge Cooper for him to decide whether they should receive
13 attorney's fees and how much they can receive for attorney's
14 fees.

15 So, basically, the court said yes, the case is moot --
16 the case is almost identical to what we're dealing with here
17 and the Supreme Court said yeah, we find this case is moot
18 because you've received what you've asked for. And not only
19 that, in this case, two weeks after they filed a lawsuit,
20 the board did what they asked for in their lawsuit, the
21 lawyer sent them a letter and said we've done it. If
22 there's something else that you want, let us know. And for
23 a year, we haven't heard anything from them, nothing, not a
24 peep.

25 So the Supreme Court said once you've gotten what you

1 asked for, the case is moot, but the court can still
2 consider whether attorney's fees are appropriate and how
3 much in attorney's fees are appropriate.

4 And the case -- let's see, it's section 2 of the
5 opinion on the second page. The Court said, I'm just going
6 to quote, Despite the Department's failure to comply with
7 the requirements of the Freedom of Information Act, we hold
8 the trial court properly found Sloan's request for
9 declaratory judgment was mooted when the Department produced
10 the requested information. I just read exactly what Judge
11 Kittredge wrote.

12 Later in the paragraph, Judge Kittredge writes again,
13 The information Mr. Sloan sought has been disclosed and
14 there is no continuing violation of the Freedom of
15 Information Act upon which the trial court could have issued
16 a declaratory judgment. So at the point where we have done
17 what they've asked for, the case becomes moot. And that's
18 not Ward Bradley saying that as Mr. Collins indicated,
19 that's Justice Kittredge saying that on behalf of the
20 Supreme Court.

21 So I just ask that you take a look at that and I think
22 when you do, you'll see that's the appropriate answer in
23 this case, which is find their case is moot because they've
24 received what they want and to allow them to submit a
25 petition for attorney's fees and allow us respond to it and

1 then make a decision on what's the appropriate remedy at
2 that point.

3 So you may be asking at this point why are we still
4 here if they've received what they want and you've wrote
5 them a letter that said hey, if you want something else, let
6 us know and they never responded to it? That's because
7 they're really not here about the Freedom of Information Act
8 anymore. What they're here is to score political points
9 because what we've got is a situation where the Plaintiffs
10 in this case are using it, essentially, as a political
11 weapon. They're trying to draft in the court system as a
12 part of politics, which is inappropriate and not the way the
13 Freedom of Information Act is intended to be used. Which is
14 also why Mr. Collins has his long bill of particulars and
15 all these things which he wants the Court to order, which he
16 didn't request in his complaint and aren't allowed by the
17 Freedom of Information Act because he wants to embarrass the
18 board because his clients and the people that he's sitting
19 there with, who I don't know who they are because he didn't
20 introduce them, but the people who are whispering him
21 information as he talks want to try and embarrass the board.
22 And that's what this lawsuit is about because it's already
23 moot.

24 Why would what I say have any persuasive authority on
25 that? Here's the first reason, okay: The Freedom of

1 Information Act requires if you're seeking an injunction
2 that it be set in ten days after you file it. The
3 administrative judge is supposed to set it up in ten days
4 and it's supposed to be handled with a scheduling order in
5 six months. That's section 30-4-100 of the Freedom of
6 Information Act, 30-4-100.

7 It says the chief administration judge of the circuit
8 must schedule an initial hearing within ten days. If the
9 hearing court is unable to make a final ruling at the
10 initial hearing, the court shall establish a scheduling
11 order to conclude the actions within six months of the
12 initial filing.

13 So the Freedom of Information Act itself says when
14 you're seeking an injunction against the violation of this
15 Act, when you file it, you've got to ask for that injunction
16 and the court has to schedule a hearing within ten days and
17 if you can't decide it then, you've got to enter a six-month
18 scheduling order. And once again, that's not coming from
19 Ward Bradley, that's the South Carolina Legislature,
20 30-4-100.

21 But they didn't do that and they still haven't done it
22 and they didn't do it when Ms. White filed a motion saying
23 you're supposed to do it.

24 So why didn't they if they're really concerned about
25 getting relief? Because they've already gotten the relief

1 they asked for. What they're now concerned about is trying
2 to stretch this out and embarrass people in the newspaper,
3 which is what the lawsuit is about at this point. It's not
4 the purpose of the Freedom of Information Act.

5 So they've already got what has been requested and they
6 didn't apply 30-4-100, which gives them almost a ten-day
7 hearing on this by statute.

8 The next thing is all these meetings have been open for
9 the last year, but Mr. Collins has never come, Mr. Osmundson
10 has never come and Mr. White hasn't come. And I don't know
11 who else is sitting in the room with Mr. Collins whispering
12 information to him, but I bet they didn't come either. So I
13 don't know where he thinks that people are hiding at public
14 meetings or going into executive session to hide something
15 because there's nothing that he's put into evidence about
16 that and none of them have come to any of the meetings that
17 they're demanding that have been open for the last year. So
18 none of them have ever shown up.

19 And Ms. White sent a letter a year ago saying we've
20 done what you've asked. If you don't like it, tell us what
21 else there is. And the response has been crickets. And
22 that is because this lawsuit is not about the Freedom of
23 Information Act because the District has already complied
24 with it on advice of the attorney, Andrea White, which they
25 follow to the letter on the Freedom of Information Act

1 questions.

2 What we've got here is a political battle, which is
3 appropriate to have political battles, that's what our
4 system is all about. If you want to have a political
5 battle, have it at the polls. But the one place it's not is
6 to enlist the judiciary in the political battle and
7 weaponize the Freedom of Information Act when the people who
8 are on the board are trying to comply with the rules as best
9 they can and based upon the advice of the lawyer, who Mr.
10 Collins said is well respected and gave them the advice to
11 do everything they did, which led to the lawsuit that we're
12 about today.

13 So, you know, this idea that you should require them to
14 undergo training and maintain jurisdiction of the case and
15 impose a civil file on the individual board members, all
16 those things are not in the complaint. They're not
17 permitted by the Freedom of Information Act. And they're
18 really just grandstanding to try and make this case about
19 politics, which is also shown by Mr. Collins' arguments,
20 which don't have anything to do with the Freedom of
21 Information Act or what people have done and have a lot to
22 do with politics that his clients don't like the decisions
23 the board has made. They're entitled to not like them and
24 they're entitled to run against them or vote for somebody
25 else in the next election, but what they're not entitled to

1 do is use the Freedom of Information Act as a sledgehammer
2 in a political process.

3 And that's why we believe the case is moot. We've
4 complied with everything they've asked. If there's
5 something that we haven't complied with that they think
6 we're supposed to do, we're happy to talk to them about it,
7 but they won't say anything to us. And in accord with the
8 Sloan case, Mr. Collins is entitled to submit his attorney's
9 fees petition, which we're entitled to respond to and the
10 Court is entitled to rule on one way or the other and then
11 the case should be over because we've done what they asked.

12 Thank you, Judge.

13 THE COURT: Mr. Collins.

14 I'm sorry, Mr. Bradley, does that cover all of your
15 other motions as well?

16 MR. BRADLEY: Yes, Judge. The first motion was for
17 mootness, then the second one was for failure to comply with
18 -- basically, failure to prosecute under Rule 41(b) because
19 they didn't comply with the statute to receive an
20 injunction, which is 30-4-100 in the Freedom of Information
21 Act.

22 And I argued all those things and my arguments were
23 also in response to Mr. Collins' arguments.

24 THE COURT: Thank you.

25 Mr. Collins.

1 MR. COLLINS: First off, Your Honor, the first point
2 Mr. Bradley made is that Ed White took it upon himself on
3 the evening of June the 14th or the next day to issue a
4 public statement. And Mr. Bradley very creatively says
5 well, the board of trustees didn't need to come out of
6 executive session and go into open session and take a vote
7 and let the public know what they had done because Ed White
8 took care of that all by himself. That's a very creative
9 argument.

10 But, Judge, what it amounts to is this: He's saying
11 that Ed White can excuse the board for exercising its clear
12 duty under the Freedom of Information Act. The board had
13 the duty when they came out of executive session to go into
14 open session and take a vote and let the public know what
15 they had done. No amount of activity by Ed White after he
16 resigned eliminates the board's obligation clearly stated
17 under the statute to go into open session and take their
18 vote.

19 He makes the point that neither Mr. Osmundson nor I
20 attended these subsequent trustee meetings. Judge, I don't
21 think I'm obligated to go to board of trustee meetings if
22 I'm representing Mr. Osmundson and I don't think he's
23 obligated to go to those meetings. I don't think a lawyer
24 representing the board can stand before you and say we
25 obviously don't mean what we say or else we would have come

1 to those meetings. That's not the point of the Freedom of
2 Information Act at all. We are obligated to go to the
3 meetings less we waive the requirements of the Freedom of
4 Information Act.

5 I think it's obvious that Mr. Bradley has gone out of
6 his way on several occasions to say that everything the
7 board did was pursuant to the advice of Andrea White. And
8 being a lawyer that sometimes represents other lawyers in
9 legal malpractice lawsuits, I know what that was. That was
10 a shot across the mouth. They're, essentially, saying if we
11 lose this case, we're going to blame Andrea White for giving
12 us bad legal advice.

13 Well, Judge, I think now we know a little bit better
14 why Ms. White wrote her letter and publically released it
15 because she said you ignored my advice. That's in her
16 letter. When a school board fails to consult me prior to
17 making a legal decision that could adversely impact the
18 board or the school district ignores my advice and/or does
19 not provide complete and accurate facts about a matter, I am
20 placed in a position where I cannot represent that client
21 without compromising my own integrity and professional
22 representation.

23 This is not a board of trustees that seeks and follows
24 legal advice. This is a board of trustees that does as they
25 please and then they tell their lawyer to sweep up

1 whatever's left on the floor and be done with it. This is
2 not a board that seeks to comply with the law, this is a
3 board that goes out of its way to not comply with the law.
4 They find the Freedom of Information Act to be something to
5 be avoided and circumvented rather than to be complied with.

6 He says that I went for a year and they never heard
7 from me. Ms. White wrote this letter saying now, we've
8 cured all the problems. We took this vote on August the
9 9th. We opened up our school officer board meetings to the
10 public and we ratified that resignation agreement. We
11 solved all those problems. We've rendered your lawsuit
12 moot. There's nothing left for the Court to do. Everything
13 is fine. The fact that you had to sue us to get us to do
14 the right thing shouldn't matter at all. We did it. It's
15 all over and done with. So we haven't heard from Mr.
16 Collins at all.

17 Well, that's not so either, Judge. They heard from me
18 big time when they got my supplemental memorandum of law,
19 which I filed on June the 1st, 2022. This is a 17-page
20 memorandum of law, which I call to the attention of the
21 Court a good many of the South Carolina cases having to do
22 with Freedom of Information Act, sort of a survey, but done
23 by my able law clerk, who's here with me today. And we call
24 to the Court's attention some of the scalding allegations of
25 Ed White about things that occurred during these meetings.

1 I headlined that part of the memo. Quote, The unrefuted
2 affidavit of Edward K. White.

3 And I thought sure after they read how I slammed this
4 in their face repeatedly saying you haven't refuted it, I
5 felt sure they would file something, but they didn't. They
6 didn't file anything at all refuting what Ed White said
7 under oath about how they created this terrible abusive
8 working relationship, this abusive meeting while they're in
9 executive session. And then Katherine Huddle telling Mr.
10 White, remember, we're in executive session. You can't
11 repeat anything we say or do in here.

12 So here's what Ed White said in Paragraph 47 of his
13 affidavit: Their plan, he's talking about the school
14 board's plan, is illustrated by the fact that they published
15 the meeting item and the agenda with a false narrative.
16 They listed it as, quote, legal advice regarding a
17 contractual matter. The board was not getting legal
18 advice. The executive session item was to approve and
19 execute a binding contract paying the superintendent almost
20 a quarter of a million dollars. They wanted her gone and
21 then covering their tracks with secrecy and
22 misrepresentation. The executive session was to further
23 their plan by trying to wipe their fingerprints off of the
24 action. When I objected and brought their activities out in
25 public, they later voted to censure me in retaliation.

1 That's the truth of what was going on, Judge. The idea
2 that you ought to find no harm, no foul because they went
3 back in August and took a vote on this outrageously improper
4 action they took on June the 15th is almost beyond my puny
5 ability to fashion an argument.

6 With regard to the items that I suggested that the
7 Court consider, Judge, I don't think I had to put those in
8 the prayer of my complaint in order to suggest them to you
9 as I did just a while ago. I came up with this little list
10 of items last night as I was brainstorming this case a
11 little bit. My mother-in-law died and I was distracted and
12 I was -- I still am. But I believe that you have wide
13 discretion if you want to to require the fines be paid from
14 the money that would otherwise be paid to these board
15 members.

16 Mr. Bradley morphed into a -- or segued into his motion
17 to dismiss under Rule 41, which, by the way, they didn't
18 even file until after we moved for summary judgment. But
19 they had the gall, I should say, to say to the Court you
20 ought to dismiss this lawsuit because the Plaintiff didn't
21 seek a hearing within the ten days required by Section
22 30-4-100.

23 Well, Judge, let's take a look at our amended
24 complaint. What did we ask for in the prayer of our
25 complaint? We asked for -- Paragraph 37: On information

1 and belief, this honorable Court's order should include the
2 requirement that Plaintiff be awarded attorney's fees and
3 costs in bringing and prosecuting this action pursuant to
4 30-4-100(b). Plaintiff seeks the equitable relief set forth
5 herein, the award of attorney's fees and costs and initial
6 hearing within ten days of service on all the parties
7 pursuant to section 30-4-100(a). We clearly in the prayer
8 of our complaint asked for the ten-day hearing called for by
9 the statute.

10 Judge, my information from talking to lawyers across
11 the state is, it's not often that the Court has this ten-day
12 hearing under the Freedom of Information Act and there's not
13 a single case out there where the Court said you didn't ask
14 for a ten-day hearing, we're dismissing your lawsuit. We're
15 not going to consider the merits of your lawsuit because you
16 didn't come over here and strong arm the clerk of court or
17 brow beat the judge's law clerk or do whatever else you had
18 to do to schedule a ten-day hearing.

19 Judge, we asked for it, but we were mindful of the fact
20 that we were operating under the very serious limitations of
21 the Covid protocols that have been addressed in repeated
22 orders of Chief Justice Beatty and the Supreme Court --

23 THE COURT: Mr. Collins, let me stop you right there.
24 Your -- and this is a misconception that I think many
25 attorneys have. When the complaint is filed, there's no one

1 in the clerk's office who reads the complaint. It's not
2 read. There's no way that the chief administrative judge or
3 any other judge would have knowledge that there's been a
4 complaint filed in which there is supposed to be a hearing
5 held within ten days. If it's not brought to the chief
6 administrative judge's attention or to a judge's attention,
7 that doesn't happen. And that's on a regular basis. We
8 have no way of knowing what the prayerful relief is.

9 The normal way we come up with those is there's
10 generally some type of a document that is forwarded to the
11 chief administrative judge requesting a hearing and a
12 courtesy copy of any complaint to indicate that there is a
13 need for a hearing or that there should be a hearing within
14 a ten-day window.

15 So I would hope that members of the Bar would be aware
16 of that, or if they're not aware of that, then they can be
17 educated to that. Because the clerk's office isn't
18 responsible for reading the complaints and forwarding them
19 to the appropriate person. So if it's not styled in the
20 manner in which it's a request for a restraining order or
21 temporary injunction or a motion for a hearing for an
22 injunction, it doesn't come to the judge's attention.

23 Let me also tell you that even under the protocol for
24 the Covid situation, I was chief administrative judge when
25 Covid first came into being and -- you know, there was some

1 confusion and some -- no one knew exactly what to do because
2 everything was more or less closed down. But I will tell
3 you, just like we're having a hearing today by WebEx, any
4 hearing could have been conducted by WebEx with the parties
5 present. All we needed to do was get a court reporter.
6 Court administration and the judicial branch has been very
7 responsive in trying to make sure that those individuals who
8 need hearings for whatever reason could have access to one
9 and has bent over backwards to make sure there were court
10 reporters available.

11 It may have taken a little while for us to get WebEx.
12 I'm not sure exactly how long it may have taken. And, of
13 course, I'm no longer chief administrative judge for civil
14 or criminal. But there's certainly always the opportunity
15 to be able to conduct a hearing with the consent of the
16 parties, whether it be by telephone, whether it be by WebEx
17 in those situations in which there was an emergency or which
18 the orders issued by the Supreme Court, and they revised
19 them frequently. I can tell you we probably got about ten
20 or 11 amendments to those orders.

21 Those are things that the Court certainly would have
22 considered had it been presented and certainly would have
23 tried to make arrangements and to do everything that we can
24 do to make sure that we're complying with the requirements
25 and giving everyone the opportunity to be heard.

1 That's all I have to say. I just wanted to make sure
2 y'all understand that you can't file a complaint and then
3 expect the Court to realize you're asking for injunctive
4 relief or some type of a hearing in order for that to take
5 place. We certainly leave those up to the parties to make
6 sure that they have filed the appropriate documents to put
7 the Court on notice that they need to have a hearing and to
8 schedule a hearing because that's not automatically done in
9 any clerk's office that I know anywhere across the state.

10 So I'll be happy to hear you further.

11 MR. COLLINS: Judge, let me just say this: That
12 instruction that you just gave is something I didn't know.
13 I didn't know about how the clerk's office interfaces with
14 the court, I didn't know about that.

15 The statute that we're talking about, it poses a duty
16 on the court to schedule an initial hearing. It doesn't say
17 that the moving party or the Plaintiff must do anything, it
18 says the Court must schedule a hearing. It doesn't tell me
19 that I've got to do anything other than request it under the
20 statute.

21 The other argument that we made in our memo is, we are
22 incapable of unilaterally scheduling the hearing. And in
23 this case, we go for a year, Judge, we go for a year before
24 any hearing is conducted. And the Supreme Court in its many
25 orders talked about the Covid emergency and the new

1 procedures that have to be held in mind to deal with the
2 coronavirus and went on to say in the event of a conflict
3 between this order and the South Carolina Rules of Civil
4 Procedure, this order shall control.

5 So the order that says -- it goes on to say, we expect
6 the justice system and those persons who operate it to act
7 with compassion, empathy and understanding and not take
8 punitive actions that hinder the ability to act justly and
9 fairly. Quote, Our laws favor the resolution of cases on
10 the merits and this public health crisis will not cause us
11 to abandon that principle.

12 We believe that the repeated orders of the court
13 emphasize that the court shall do that which is practical.
14 And I've cited those in my memo, which is before Your Honor.
15 Judges will continue handling matters within their circuit
16 as practical.

17 So we believe that clearly we should not be put in the
18 position of having this very important lawsuit tossed out
19 because we didn't understand exactly how the clerk's office
20 operated. We had a hearing scheduled before Judge Hood, and
21 then Judge Hood on the day of the hearing said that he had
22 children in District Five and would give either of us the
23 opportunity to ask him to recuse himself. The school
24 district asked him to recuse himself, and he did. But see,
25 Judge, he didn't say well, we can go ahead and get that

1 ten-day hearing knocked out, that needs to be done.

2 THE COURT: I understand what you're saying, Mr.
3 Collins. I've always found that when lawyers really need to
4 have something heard or they really want something to be
5 heard, they will certainly reach out to the Court and make
6 it very clear that they need a hearing.

7 And I'm not -- please don't think that I'm trying to
8 cast any aspersions on anyone or that I'm considering
9 dismissal because there was no ten-day hearing. I'm not. I
10 just want the practicing lawyers to understand that when
11 they're filing information, filing documents that ask for
12 injunctive relief, if they want injunctive relief and that's
13 what they have to do, they really do need to bring it to the
14 attention of a judge and not just file it with the clerk's
15 office. I know that many attorneys probably don't know that
16 as well --

17 MR. COLLINS: That's right. I talked to many lawyers
18 in the state who does Freedom of Information Act work and
19 I've talked to every one of them I could find, not one of
20 them told me that that's something I had to do or needed to
21 do.

22 THE COURT: I'm just telling you all, if you need a
23 hearing within a ten-day period when you file it, you
24 certainly need to make somebody, the chief administrative
25 judge aware of the fact or tell the clerk of court's office

1 you need to have a hearing or file a separate document along
2 with that that's requesting an immediate hearing pursuant to
3 whatever the statutory provision is so that it can get to
4 the appropriate person so it can be scheduled.

5 MR. COLLINS: Judge, we also filed an affidavit from
6 our court investigator who said that every week, he called
7 over to the clerk's office to find out where we stood.

8 THE COURT: The clerk's office doesn't schedule it.
9 The clerk's office does not schedule it. It doesn't go that
10 way.

11 MR. COLLINS: Judge, this instruction that you just
12 gave to me and others is an instruction that I haven't heard
13 until today.

14 THE COURT: I understand. I fully understand, yes,
15 sir. Is there anything further?

16 MR. COLLINS: Judge, I think we've made our position
17 clear. We've cited to some case law in our memorandum which
18 offers no support to the Defendant's position and we believe
19 that the overwhelming law in this state is that a Rule 41
20 motion dismissing a lawsuit for failure to prosecute is
21 totally unlike this case at bar and there is no case out
22 there which gives any support for the proposition that a
23 Rule 41 motion should be granted in this case.

24 Thank you, Your Honor.

25 THE COURT: And I believe Ms. White wanted to speak, so

1 I'll hear from her.

2 MR. WHITE: Thank you, Your Honor. Even though I have
3 filed a motion to withdraw, some of the things that Mr.
4 Collins has said are totally inaccurate and I feel the need
5 to state my position on the record.

6 First of all, I have to say that I was appalled that
7 Mr. Collins somehow got a copy of the letter that I wrote to
8 the board back in June and then filed it with the Court as
9 some support of his lawsuit here.

10 Let me also say that I did not -- contrary to what he
11 asserted, I did not release my letter to anyone. The letter
12 was given to members of the board. I did not release it to
13 anyone other than giving a copy to those board members and
14 that needs to be corrected on the record.

15 The next thing is that yes, they were acting on my
16 legal advice at all times related to the separation from Dr.
17 Christina Melton, so any indication by Mr. Collins that, you
18 know, I'm going to say that they acted contrary to my advice
19 is totally wrong. My decision to withdraw from representing
20 the client had nothing whatsoever to do with any of the
21 events that led up to this lawsuit.

22 Also, I just wanted to state a couple of facts that are
23 in, I believe, the memorandum of law I wrote. The point of
24 my motion for summary judgment in opposition to theirs is
25 that the night of June 14th, after Mr. White came out of

1 executive session with a copy of the settlement agreement
2 and he left the board meeting, the board and I went back
3 into executive session to figure out what to do at this
4 point in time. I had to get on the phone with Dr. Melton's
5 attorney and have a discussion with her because that was
6 unanticipated. The board then returned to open session that
7 same night and announced that Dr. Melton was going to be
8 resigning effective at the end of the school year. Then Dr.
9 Melton herself read a statement that evening.

10 So to say that the public didn't know anything about
11 what had happened until the board vote on August the 2nd is
12 not accurate and not reflected by the facts here. And, in
13 fact, the settlement agreement itself was released to the
14 public, I want to say if it wasn't that evening, it was on
15 June the 15th, which was the next day. So the public was
16 fully aware before this lawsuit was ever filed of what was
17 in that agreement and what had been agreed to not only by
18 the board, but also by Dr. Melton.

19 So I just wanted to make sure that you had those facts,
20 Your Honor. Thank you.

21 THE COURT: Thank you.

22 Mr. Bradley, is there anything else?

23 MR. BRADLEY: Briefly, I do, and I appreciate your
24 patience in asking me, Judge.

25 First, I'd just like to know who's in the room with Mr.

1 Collins. We announced to the Court who was with us and I'd
2 just like to know who's there. Anyway we can find out that?

3 MR. COLLINS: Well, Judge, I'd be happy to. Mr.
4 Osmundson is here, he's my client. Also, from the State
5 newspaper, Mr. Bristow Marchant, my law clerk, Kaitlyn
6 Costner and Beth Hutchinson, a friend of mine, who has
7 helped me understand this case and the facts and
8 circumstances.

9 MR. BRADLEY: Thank you, Judge, and thank you, Mr.
10 Collins.

11 I have two other things I'd like to clear up. I'll try
12 to be brief because I know this has gone a long time.
13 First, there was an implication made by Mr. Collins -- and,
14 normally, I wouldn't do this, but because it's so serious, I
15 feel the need to address it. And that is he -- it wasn't
16 even an implication, it was a direct statement that I was
17 implying that the board somehow was going to sue Andrea
18 White and this was a legal malpractice case and that because
19 he did legal malpractice cases, he knew all about that and
20 that's what was going to happen.

21 I'm just going to say that's complete fiction. It's
22 complete garbage and I really don't appreciate him saying
23 that to the Court on the public record when he would impugn
24 my name and the name of another lawyer solely to advance his
25 client's interest and misrepresent to the Court what was

1 actually done. I take that personally and I wanted to clear
2 it up. That's all I've got to say on that.

3 Second, here's the question: We've heard a lot about
4 how bad these people are on the board and this, that and the
5 other, what did they want us to do? That's what we've been
6 asking for a year. We've done what they asked in the
7 lawsuit. What is it that they want us to do to comply with
8 the act?

9 And the reason it's important that no one has showed up
10 at these meetings is not to say that the meetings don't have
11 to be open or that the Freedom of Information Act is
12 important or that the public has to come in order to make
13 the board comply with the Freedom of Information Act, but to
14 point out that that's not really the relief they want
15 because they don't even show up when we gave them the relief
16 they wanted.

17 The point is they're not seeking that relief in this
18 lawsuit. What they're trying to do is make a political
19 point, which is why they have newspaper reporters in the
20 room with them. It's not -- which is fine, they're entitled
21 to make political points, that's what newspapers do and
22 that's what politicians do, too.

23 But what they're not entitled to do is use the Freedom
24 of Information Act when we've tried to comply with it and
25 ask them what they want from us and they've said nothing and

1 we've done everything they asked in the complaint to somehow
2 use it to create a situation where they can say oh, the
3 court said these people are so bad and they don't follow
4 rules when they followed legal advice in everything they
5 did. And Mr. Collins tried to create the impression with
6 the Court that they're some kind of rogue board who
7 disobeyed what Andrea White told them when she was their
8 lawyer when, in fact, they did everything she said.

9 It's really very offensive to me that we've descended
10 into this. I expect more from our court system. And I'll
11 just be quiet now because I don't want to go too far other
12 than to say that I've never been in a lawsuit where the
13 Plaintiff won't even tell me what they want when I'm the
14 Defendant. Most lawsuits are about money. Maybe I'm not
15 going to pay them what they want, maybe I'm not going to do
16 what they want, but, at least, they'll tell me what they
17 want before we wind up in court. I asked Mr. Collins what
18 he wanted and he couldn't really even tell me. And that's
19 the point of what's going on here. It's not about getting
20 relief.

21 THE COURT: As far as I'm concerned, I'm here only to
22 hear the motions. Now, if you all wish to have a
23 conversation to discuss matters in an effort to resolve
24 whatever may be left of this particular lawsuit, you all are
25 free to do that. You don't need to do it here in public.

1 You don't need to do it before me, that's a private
2 conversation. I'm here to listen to what you have to say
3 and determine the legal issues.

4 In most things that come before the Court, there are
5 some very high emotions that go along with it.
6 Particularly, where there are individuals that are involved,
7 when there's the public involved in some form or fashion.
8 Sometimes I think people fail to realize that what they say
9 and what they do really makes a difference in terms of how
10 people perceive you and how people react to what you have to
11 say.

12 Thankfully over the years, I've gotten a little more
13 tough skinned so I can gloss over some of the things you all
14 say to get to the meat of the issue. But I counsel
15 everybody, not just you all, but anybody who appears in
16 court that you need to make sure that you stick to the
17 issues. You keep the personal issues out. You keep the
18 emotional part out of it. It's very hard to keep emotion
19 out of some stories, some lawsuits and I understand that
20 fully. I try to give everybody grace on that and to
21 recognize that emotions sometimes run high and you cannot
22 always keep people from expressing exactly how they feel or
23 having them talk about things that really don't need to be
24 discussed as it relates to a legal issue.

25 So I will consider all the arguments that have been

1 made. I will go back and reread some of the material
2 because I have not had a chance to read all of it completely
3 and digest it all. I think what I heard addressed I was
4 familiar with and I will review it and go from there.

5 MR. COLLINS: Judge, may I make one final point. This
6 lawsuit was brought by a newspaper man.

7 THE COURT: I understand that. I did notice that.

8 MR. COLLINS: And he's here and another newspaper man
9 that works with him is here. They have a right to be here.

10 THE COURT: I'm not objecting to that, okay? I'm not
11 objecting to the public being there or the newspaper.
12 You're absolutely right, they have the right to be there.
13 And I knew from the beginning that this was a person who was
14 associated with the newspaper, the press when the lawsuit
15 was filed, so I'm aware of all that. I'm not trying to
16 infringe upon anybody's rights and their right to report.
17 They can certainly do that.

18 My only discussion is in reference to how you treat
19 each other, how you react to what each other has to say. I
20 understand being an advocate, that's what attorneys do, but
21 to the extent there are issues you all need to resolve or
22 talk about if there is a potential resolution, then I
23 encourage you to do that without tearing each other down and
24 being overly sensitive.

25 I do appreciate your arguments. I thank you for those

1 arguments and for the clarity that you brought to some of
2 these issues. I'll review them and get with you as soon as
3 I can.

4 Thank you very much for appearing.

5 MR. BRADLEY: Thank you, Judge. And this is going to
6 be really quick, 15 seconds. Are you still there?

7 THE COURT: I'm still here.

8 MR. BRADLEY: Thank you for your patience. I
9 apologize. I just want everyone to know to the extent that
10 I've gone beyond what I should argue about the Freedom of
11 Information Act that Joel Collins is my friend and I admire
12 him. He's a tremendous lawyer. So to the extent that
13 anyone feels that I've said something otherwise, I
14 apologize.

15 THE COURT: Emotions run high and you're being
16 advocates for your clients, so I appreciate that.

17 MR. COLLINS: Thank you, Ward.

18 THE COURT: And I appreciate all of you. You're
19 excellent attorneys. I've seen many of you many times, so
20 I'm very aware of your advocacy. You all do a wonderful job
21 with advocating for your client. That's what you're
22 supposed to do and I appreciate those arguments. Sometimes
23 we get a little carried away and I appreciate that, too. I
24 appreciate that you can still come together and we can still
25 move forward and be professional.

1 Thank you.

2 MR. BRADLEY: Thank you, Judge.

3 MR. COLLINS: Thank you.

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CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

September 11, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

Joel W. Collins, Jr. | D: 803.255.0423 | E: jcollins@collinsandlacy.com

October 5, 2022

The Honorable Alison R. Lee
Richland County Judicial Center
Post Office Box 192
Columbia, SC 29202

Re: Paul Roy Osmundson v. School District 5 of Lexington and Richland Counties
Civil Action No.: 2021CP4003694
C&L File No.: 002136-00100

Dear Judge Lee:

On behalf of our client, the plaintiff in this case, we respectfully request again Your Honor issue a ruling on the cross motions heard on July 18, 2022.

The school board election is a month away. The incumbents would like to campaign on the basis they did not violate the FOIA if you rule for them. The challengers would like to do the opposite.

We respectfully submit this is an important case with vital issues which need to be resolved. We understand Your Honor is very busy, but the tax paying citizens in District Five, the parents, the teachers, the administrators, the students and indeed the whole state of South Carolina need Justice. School board compliance with the FOIA is an issue in other counties, according to reports we have seen.

Thank you for your consideration.

Sincerely,

s/ Joel W. Collins, Jr.

Joel W. Collins, Jr.

JWCjr/naa

cc: Ward Bradley
Paul Osmundson

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP4003694

Paul Roy Osmundson
PLAINTIFF(S)

School District 5 Of Lexington And Richland Counties et al
DEFENDANT(S)

DISPOSITION TYPE (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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

After reading all the documents and motions, Defendant's Motion to Dismiss is dispositive according to S.C. Code Ann. § 30-4-100(A). According to Section 30-4-100(A) a hearing must be held within ten days of the service on all parties and a scheduling order to conclude the action must be held within six months. In this current matter, no hearing was held within the allotted timeframe. Therefore, the Motion to Dismiss is dispositive and the court need not determine the merits of the Summary Judgment claims.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/19/2022 .

Ricland Counties

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Paul Roy Osmundson vs School District 5 Of Lexington And Richland Counties , defendant, et al
Case Number: 2021CP4003694
Type: Order/Electronic Form 4

So Ordered

s/ Alison Renee Lee

Electronically signed on 2022-10-19 14:12:22 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Paul Roy Osmundson,	)	Civil Action No. 2021-CP-40-03694
	)	
Plaintiff,	)	
	)	
v.	)	<u>PLAINTIFF'S MOTION TO</u>
	)	<u>RECONSIDER</u>
School District 5 of Lexington and Richland	)	
Counties,	)	
	)	
Defendant.	)	
	)	
	)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff Paul Roy Osmundson ("Plaintiff") moves to alter or amend the Court's October 20, 2022, Order dismissing this action in its entirety because a hearing was not held within ten days pursuant to S.C. Code Ann. § 30-4-100(A) (the "Order"). Among others, the grounds for this Motion are as follows:

1. Rule 59(e) of the South Carolina Rules of Civil Procedure allows a party to file a motion to alter or amend the judgment no later than ten days after receipt of the written notice of the entry of the order.

2. "A motion under Rule 59(e) long has been viewed as a 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778–79 (2004). The South Carolina Supreme Court explains that the procedural rules allow a party "to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously made." *Id.* at 21, 602 S.E.2d at 779. "A party may wish to file [a 59(e)] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780.

3. Plaintiff filed his Complaint in this matter on July 23, 2021, asserting various violations of the South Carolina Freedom of Information Act, § 30-4-10, *et seq.* (“FOIA”) and seeking injunctive relief.

4. The General Assembly promulgated the following findings and purpose of FOIA:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15.

5. Additionally, FOIA is remedial in nature and should be liberally construed to carry out its purpose. *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001).

6. As relevant here, S.C. Code Ann. § 30-4-100(A) provides:

Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

7. In his Complaint, the Plaintiff specifically and explicitly sought an “initial hearing within ten days of service on all parties pursuant to § 30-4-100(A).”

8. For reasons not explained in the record, the Chief Administrative Law Judge for the Fifth Judicial Circuit did not schedule a hearing within ten days as required by § 30-4-100(A).

9. On February 24, 2022, the Defendant filed a Motion to Dismiss, seeking to have the Complaint dismissed pursuant to Rule 41(b), SCRCP for Plaintiff's failure to prosecute because a ten-day hearing was not scheduled pursuant to § 30-4-100(A).

10. On July 18, 2022, a hearing was held on Defendant's Motion to Dismiss. During the hearing, Judge Allison Lee stated as follows: "...please don't think that I'm trying to cast aspersion on anyone or that I'm considering dismissal because there was no ten-day hearing. I'm not." (July 18, 2022 motions hearing transcript at p. 46, attached hereto as **Exhibit A**).

11. Notwithstanding this pronouncement on the record, on October 20, 2022, Judge Lee issued a Form 4 Order providing:

After reading all the documents and motions, Defendant's Motion to Dismiss is dispositive according to S.C. Code Ann. § 30-4-100(A). According to Section 30-4-100(A) a hearing must be held within ten days of the service on all parties and a scheduling order to conclude the action must be held within six months. In this current matter, no hearing was held within the allotted timeframe. Therefore, the Motion to Dismiss is dispositive and the court need not determine the merits of the Summary Judgment claims.

12. In reaching this decision, it is clear that the Court misunderstood the arguments before it and failed to consider the legal ramifications of its decision, which justifies reconsideration.

13. First, S.C. Code Ann. § 30-4-100(A) is clear in that it is the Chief Administrative Judge's duty to schedule the statutorily required hearing. The Order fails to grapple with this legal fact and instead punishes the litigant for a failure of the court system.

14. In construing a statute, a Court examines and enforces the statutory language as written. *See Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017) ("It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the

statutory text to discern its meaning. . . . ‘[T]here is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning’ unless a statutory provision is ambiguous.” (quoting *Paschal v. State Election Comm’n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995))).

15. The text of S.C. Code Ann. § 30-4-100(A) is plain, and the Order runs directly contrary to the unambiguous statutory language.

16. Second, the Court’s decision to dismiss this matter in the Order is not permitted by S.C. Code Ann. § 30-4-100(A). In other words, while S.C. Code Ann. § 30-4-100(A) does provide that a hearing “must” be scheduled, it does not require or direct the dismissal of a FOIA claim if such a hearing is not scheduled.

17. Third, there is absolutely no explanation, justification, or limiting principles placed on the Court’s Order.

18. As written, the Order establishes a rule that, if a hearing on an alleged FOIA violation seeking injunctive relief is not appropriately scheduled within ten days by the chief administrative judge, the case must be dismissed as a matter of law. Of course, no litigant has the power or ability to ensure that a hearing be scheduled as required by § 30-4-100(A).

19. This rule puts FOIA litigants in an untenable position. Under the Order and this novel interpretation of FOIA, a litigant will be forced to call the courts repeatedly and insist that a hearing be immediately scheduled. What is a litigant to do if it cannot get the hearing scheduled in a timely manner? Show up to the courthouse and demand a hearing? Seek a writ from the South Carolina Supreme Court? The litigant will likely be forced to do all these things and more because, based on the Order, the penalty for not convincing the chief administrative judge to schedule a timely hearing is a summary dismissal of the FOIA claim.

20. If the rule intended to be espoused by the Order is that a litigant must inquire and/or make efforts to have a ten-day hearing timely scheduled, then the Order must be altered and amended to provide as such. While such an interpretation is still contrary to the plain and unambiguous text of the statute, it will at least help alleviate the absurd result created by the Order in which a litigant can be thrown out of court for something completely out of his or her control.

21. Fourth, the Order runs directly contrary to the purpose of FOIA as espoused by the South Carolina General Assembly. The General Assembly has legislated that the purpose of FOIA is to make it possible for citizens “to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.” S.C. Code Ann. § 30-4-15. The critical purpose of ensuring public transparency is why the chief administrative judge is statutorily required to schedule a timely hearing on the FOIA claim.

22. The Order accomplishes exactly the opposite result by throwing the Plaintiff out of court based on a tenuous ruling on a procedural technicality. Additionally, the 84-word Order was inexplicably handed down over a year after the lawsuit was initially filed and eight months after Defendant filed its Motion to Dismiss.

23. Fifth, the Order fails to consider or grapple with the Covid-19 orders established by the South Carolina Supreme Court as detailed in Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Dismiss filed on March 10, 2022.

24. Specifically, a South Carolina Supreme Court order recognizing “[t]he extraordinary challenge presented by the current emergency,” and stating, “in the event of a conflict between this Order and the South Carolina Rules of Civil Procedure . . . this Order shall control.” (Emphasis Added.)

25. Sixth, the Order failed to explain how dismissal is appropriate pursuant to Rule 41(b), which was the legal basis for the Motion to Dismiss.

26. In sum, Plaintiff wishes for the Court to reconsider the Order and fully consider all the facts and arguments that were before the Court.

In further support of this Motion, Plaintiff incorporates all previous arguments set forth in its prior briefings and oral arguments made to the Court on this matter. Plaintiff also incorporates all prior pleadings, court filings, applicable law, supplemental memorandum to be filed in support of this Motion, and oral argument of this matter at an expedited hearing, which expressly requested.

Accordingly, for the foregoing reasons, and additional grounds that may be identified to the Court before or during a hearing on this matter, Plaintiff respectfully requests that the Court reconsider its October 20, 2022, Order granting Defendant's Motion to Dismiss.

[Signature block on following page]

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Attorneys for Plaintiff

Columbia, South Carolina

October 31, 2022.

Exhibit A

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2021-CP-40-03694
	)	
	)	
	)	
	)	
PAUL ROY OSMUNDSON,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SCHOOL DISTRICT FIVE OF	)	
LEXINGTON AND RICHLAND,	)	
DEFENDANT.	)	
_____	)	

July 18, 2022
Columbia, South Carolina

B E F O R E:

THE HONORABLE ALISON LEE, JUDGE.

A P P E A R A N C E S:

JOEL COLLINS, ESQ.
THOMAS MCGEE, III, ESQ.
Attorney for the Plaintiff

WARD BRADLEY, ESQ.
Attorney for the Defendant

Proceedings recorded via WebEx
Transcribed by Penny M. Johnson

1 ten-day hearing knocked out, that needs to be done.

2 THE COURT: I understand what you're saying, Mr.
3 Collins. I've always found that when lawyers really need to
4 have something heard or they really want something to be
5 heard, they will certainly reach out to the Court and make
6 it very clear that they need a hearing.

7 And I'm not -- please don't think that I'm trying to
8 cast any aspersions on anyone or that I'm considering
9 dismissal because there was no ten-day hearing. I'm not. I
10 just want the practicing lawyers to understand that when
11 they're filing information, filing documents that ask for
12 injunctive relief, if they want injunctive relief and that's
13 what they have to do, they really do need to bring it to the
14 attention of a judge and not just file it with the clerk's
15 office. I know that many attorneys probably don't know that
16 as well --

17 MR. COLLINS: That's right. I talked to many lawyers
18 in the state who does Freedom of Information Act work and
19 I've talked to every one of them I could find, not one of
20 them told me that that's something I had to do or needed to
21 do.

22 THE COURT: I'm just telling you all, if you need a
23 hearing within a ten-day period when you file it, you
24 certainly need to make somebody, the chief administrative
25 judge aware of the fact or tell the clerk of court's office

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

September 11, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP4003694

Paul Roy Osmundson
PLAINTIFF(S)

School District 5 Of Lexington And Richland Counties et al
DEFENDANT(S)

DISPOSITION TYPE (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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

After careful review, pursuant to SCRPC Rule 59(g), this court denies the Plaintiff's motion for reconsideration because Plaintiff failed to provide the motion to the trial judge within ten days of filing. Plaintiff filed his motion for reconsideration on October 31, 2022. however, a copy was not provided to the court pursuant to Rule 59(g). The Court did not receive notice until December 21, 2022, when an email was sent to the court with the motion attached. In Smith v. Fedor, 422 S.C. 118, 809 S.E.2d 612 (Ct. App. 2017), the trial court denied Smith's motion for reconsideration because he did not timely provide a copy of the motion to the judge. (see page 2)

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/06/2023 .

Ricland Counties

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The Court in Smith stated, "Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule." 422 S.C. at 126, 809 S.E.2d at 616. Plaintiff's motion for reconsideration was not timely presented pursuant to Rule 59(g). Therefore, Plaintiff's motion for reconsideration is denied.



Richland Common Pleas

Case Caption: Paul Roy Osmundson vs School District 5 Of Lexington And Richland Counties , defendant, et al
Case Number: 2021CP4003694
Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2023-01-06 14:47:56 page 3 of 3

RECEIVED
Jan 24 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Common Pleas Case No. 2021-CP-40-03694

Paul Roy Osmundson,.....Appellant,

vs.

School District 5 of Lexington and Richland Counties..... Respondent.

NOTICE OF APPEAL

Paul Roy Osmundson timely appeals the lower court's Orders (1) Granting Respondent's Motion to Dismiss because a hearing was not held within ten days pursuant to S.C. Code Ann. § 30-4-100(A); and (2) Denying Appellant's Motion to Reconsider. Copies of the Orders are attached hereto. Appellant received written notice of the Order granting the Motion to Dismiss on October 20, 2022. Appellant filed a timely Motion to Reconsider pursuant to Rule 59 and received written notice of the Order denying the Motion to Reconsider on January 6, 2023.

(signature page attached)

/s/Thomas William McGee, III
Thomas William McGee, III
SC Bar No. 11317
Nelson Mullins Riley & Scarborough LLP
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Attorney for School District 5 of Lexington and Richland Counties

RECEIVED
Jan 24 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Common Pleas Case No. 2021-CP-40-03694

Paul Roy Osmundson,.....Appellant,

vs.

School District 5 of Lexington and Richland Counties..... Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing Notice of Appeal on the date given below by emailing it to counsel for the Respondent at the address(es) noted below. A copy of that electronic mail is attached to this certificate.

James Edward Bradley, Esq., at ward@mbmlawsc.com

/s/ Thomas William McGee, III

Thomas William McGee, III

S.C. Bar No. 11317

Attorney for Appellate

January 24, 2023

Jessica Dominick

From: Jessica Dominick
Sent: Tuesday, January 24, 2023 2:28 PM
To: Ward@mbmlawsc.com
Cc: Billy McGee; jcollins@collinsandlacy.com
Subject: Paul Roy Osmundson vs. School District 5 of Lexington and Richland Counties (2021CP4003694)
Attachments: Notice of Appeal.pdf; Order 1 - 2022.10.20 Form 4 Order on Motion to Dismiss.pdf; Order 2 - 2023.01.06 Form 4 Denying Motion to Reconsider.pdf

Good afternoon,

On behalf of Attorney McGee, attached please find a Notice of Appeal in the above-referenced matter. Service is made via email pursuant to the Supreme Court Order 2022-05-06-03.

Thank you,

Jessica



JESSICA DOMINICK ADMINISTRATIVE ASSISTANT
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STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP4003694

Paul Roy Osmundson
PLAINTIFF(S)

School District 5 Of Lexington And Richland Counties et al
DEFENDANT(S)

DISPOSITION TYPE (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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

After reading all the documents and motions, Defendant's Motion to Dismiss is dispositive according to S.C. Code Ann. § 30-4-100(A). According to Section 30-4-100(A) a hearing must be held within ten days of the service on all parties and a scheduling order to conclude the action must be held within six months. In this current matter, no hearing was held within the allotted timeframe. Therefore, the Motion to Dismiss is dispositive and the court need not determine the merits of the Summary Judgment claims.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/19/2022 .

Richland Counties

RECEIVED
Jan 24 2023
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Paul Roy Osmundson vs School District 5 Of Lexington And Richland Counties , defendant, et al

Case Number: 2021CP4003694

Type: Order/Electronic Form 4

So Ordered

s/ Alison Renee Lee

Electronically signed on 2022-10-19 14:12:22 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP4003694

Paul Roy Osmundson
PLAINTIFF(S)

School District 5 Of Lexington And Richland Counties et al
DEFENDANT(S)

DISPOSITION TYPE (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.
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☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

After careful review, pursuant to SCRPC Rule 59(g), this court denies the Plaintiff's motion for reconsideration because Plaintiff failed to provide the motion to the trial judge within ten days of filing. Plaintiff filed his motion for reconsideration on October 31, 2022. however, a copy was not provided to the court pursuant to Rule 59(g). The Court did not receive notice until December 21, 2022, when an email was sent to the court with the motion attached. In Smith v. Fedor, 422 S.C. 118, 809 S.E.2d 612 (Ct. App. 2017), the trial court denied Smith's motion for reconsideration because he did not timely provide a copy of the motion to the judge. (see page 2)

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/06/2023 .

Richland Counties

RECEIVED
Jan 24 2023
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The Court in Smith stated, "Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule." 422 S.C. at 126, 809 S.E.2d at 616. Plaintiff's motion for reconsideration was not timely presented pursuant to Rule 59(g). Therefore, Plaintiff's motion for reconsideration is denied.



Richland Common Pleas

Case Caption: Paul Roy Osmundson vs School District 5 Of Lexington And Richland Counties , defendant, et al
Case Number: 2021CP4003694
Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2023-01-06 14:47:56 page 3 of 3

The Supreme Court of South Carolina

Extended to August 31, 2021 by Order [2021-07-30-01](#)

RE: Operation of the Trial Courts During the Coronavirus Emergency
(As Amended June 15, 2021)

Appellate Case No. 2020-000447

ORDER

(a) Purpose. The purpose of this order is to provide guidance on the continued operation of the trial courts during the coronavirus (COVID-19) emergency.

This is the fourth time this order has been amended.¹ In this fourth amendment to the order, the discussion in section (a) has been significantly revised.

The expiration date of the order in section (i) has been extended to August 2, 2021, and the title of section (i) has been revised to reflect this section contains an expiration date. This relatively short extension is being made as a more complete and thorough revision of this order is being considered by the Court.

Finally, new footnotes 2 and 13 have been added, and the remaining footnotes have been renumbered based on these additions. No other substantive changes have been made.

The risk posed by COVID-19 has reduced significantly, and is projected to

¹ This order was initially filed on April 3, 2020, and has been amended on three prior occasions. On April 14, 2020, changes were made to sections (c)(5) and (c)(8). On April 22, 2020, section (c)(17) was added. On December 16, 2020, the Court amended sections (c)(1), (c)(2) (c)(3), (c)(4), (c)(6), (c)(8), (c)(9), (d)(2), (d)(3), (f)(1)(C), (h)(1), (h)(2), (h)(3), and (i), and added new sections (c)(11)(D), (c)(18), (f)(4) and (i)(3). The third amendment revised section (i) to extend the order for an additional 90 days.

decrease even further.² As anticipated by the language in section (c) and footnote 4 of this order, the Chief Justice has issued guidance allowing in-person hearings and trials to proceed. Further, grand juries are again being convened. This Court wholeheartedly supports these actions taken by the Chief Justice, and nothing in this order should be construed as limiting the ability of the Chief Justice to further reduce restrictions as may be appropriate, including the masking and social distancing requirements in this order.

This amended order is being issued pursuant to Rule 611 of the South Carolina Appellate Court Rules (SCACR). In the event of a conflict between this order and the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Rules of Criminal Procedure (SCRCrimP), the South Carolina Rules of Family Court (SCRFC), the South Carolina Rules of Probate Court (SCRPC), the South Carolina Rules of Magistrates Court (SCRMC), the South Carolina Court-Annexed Alternative Dispute Resolution Rules (SCADR), South Carolina Rules of Evidence (SCRE) or any other rule or administrative order regarding the operation of a trial court, this order shall control. As required by Rule 611, SCACR, a copy of this order shall be provided to the Chairs of the House and Senate Judiciary Committees.

Finally, Rule 612, SCACR, recently became effective. This order serves as the current guidance for use of remote communication technology under that rule.

(b) Terminology. The following terminology is used in this order.

(1) Judge: a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.

(2) Remote Communication Technology: technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.

² At the end of 2020 and the start of 2021, the Institute for Health Metrics and Evaluation estimated that around 12,300 persons were being infected with the coronavirus each day in South Carolina. Currently, the estimated number of new infections is around 625 per day, and this is projected to decrease to around 240 new infections per day by September 1, 2021. See <https://covid19.healthdata.org/united-states-of-america/south-carolina?view=infections-testing&tab=trend&test=infections>.

(3) **Summary Court:** the magistrate and municipal courts.

(4) **Trial Court:** the circuit court (including masters-in-equity court), family court, probate court, magistrate court and municipal court.

(c) **General Guidance.** This section provides general guidance applicable to all trial courts or to several court types, and later sections will provide guidance that is limited to one court type. While this order remains in effect, the following general guidance shall apply:

(1) **Jury Trials.** If done in accordance with a plan approved by the Chief Justice,³ jury selections and jury trials may be conducted. These plans should adhere to the guidance contained in section (c)(3) below.

(2) **Non-Jury Trials and Hearings.** Subject to the guidance provided in section (c)(3) below, non-jury trials and hearings may be conducted.

(3) **General Guidance Regarding Trials and Hearings.**

(A) **Remote Non-Jury Trials and Hearings.** Except as may be restricted by any constitutional provision, statutory provision or other provision of this order, a non-jury trial or a hearing on a motion or other matter, including a first appearance in a criminal case, may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel.

(B) **In-Person Trials and Hearings.**⁴ An in-person trial or hearing

³ To obtain approval of a plan, the plan should be submitted to the Office of Court Administration. Since the plan will have to address courtroom and other facility specific information, a separate plan will need to be submitted for the circuit court in each county. Further, a separate plan will need to be submitted by each magistrate, municipal and probate court. Court Administration should be contacted to obtain additional advice and assistance regarding the content and requirements that should be addressed in any plan.

⁴ The guidance in this order is, of course, subject to such additional orders and directions as the Chief Justice may prescribe as the administrative head of the unified judicial system under Article V, §4, of the South Carolina Constitution. As

may be conducted if a judge determines (1) it is appropriate to conduct an in-person trial or hearing and (2) the trial or hearing can be safely be conducted. If an in-person trial or hearing is held, the following will apply:

- (i)** Start and end times for trials and hearings must be staggered to minimize the number of persons who will be present at the same time in the courtroom or hearing room, and the waiting rooms, hallways or other common areas which support the courtroom or hearing room.
- (ii)** Unless the judge authorizes another person to attend, attendance at the trial or hearing shall be limited to the attorneys or parties in the matter, necessary witnesses and necessary court staff. In the event the matter has numerous counsel or parties, the judge may further limit attendance as may be necessary to safely conduct the hearing.
- (iii)** Except as restricted by constitutional or statutory provision, a judge may allow a party to appear or a witness to testify using remote communication technology. As an example, allowing a person who is at a heightened risk from COVID-19 due to age or serious underlying medical condition to appear or testify remotely might be an appropriate accommodation if requested by that person.
- (iv)** Except when necessary for the proceeding (such as handing an exhibit to the judge or opposing counsel, or counsel consulting with their client), all persons in the courtroom or hearing room must maintain at least six feet of distance from other persons in the room. Masks must be worn by all persons as specified by order of the Chief Justice dated July 30, 2020.⁵

it relates to live hearings or trials, the ability to safely conduct live proceedings will undoubtedly vary significantly over time, and we are confident the Chief Justice will provide the trial courts with additional guidance and instructions as may be necessary to either expand or restrict live proceedings as this pandemic progresses.

⁵ This order is available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2523>.

To ensure social distancing can be maintained, it is recommended the maximum number of persons not exceed one person per 113 square feet of space in the courtroom or hearing room. This area may be reduced if plexiglass shields are being used, but the six foot distancing set forth above should be maintained.

(v) Efforts should be made to sanitize the witness stand and/or podium between witnesses and presentation by counsel. Further, before a subsequent trial or hearing is held, the courtroom or hearing room surfaces which may have been touched by participants in the prior matter, including door handles, should be sanitized.

(4) Minimizing Hearings on Motions. While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

(5) Determination of Probable Cause Following Warrantless Arrest. When a warrantless arrest has occurred, the arresting officer shall provide the appropriate judge with an affidavit or a written statement with the certification provided by section (c)(16) below setting forth the facts on which the warrantless arrest was made within eight (8) hours of the arrest. The judge shall consider this affidavit or written statement with the certification and, if appropriate, may have the officer or others supplement the affidavit or written statement with the certification with sworn testimony given over the telephone or other remote communication technology. The judge may administer any necessary oath using the telephone or other

remote communication technology. If the judge finds a lack of probable cause for the arrest, the defendant shall be released. The goal is to have this determination of probable cause be made within twenty-four (24) hours of the arrest. Only in the most extraordinary and exceptional circumstances should this determination not be made within forty-eight (48) hours of the arrest. If this determination is not made within forty-eight (48) hours after arrest, the judge making the determination shall explain in writing the facts and circumstances giving rise to this delay, and a copy of this explanation shall be provided to the Office of Court Administration.

(6) Preliminary Hearings in Criminal Cases. Preliminary hearings may be conducted in-person or by remote communication technology subject to the requirements specified by section (c)(3) above. However, a preliminary hearing conducted by remote communication technology will not be conducted over the objection of the defendant. In the event a defendant objects to a preliminary hearing being conducted using remote communication technology, and the judge determines that an in-person hearing cannot safely be conducted, the preliminary hearing may be continued until such time as the judge determines an in-person hearing can be safely conducted.⁶

(7) Remote Administration of Oaths. Where this order authorizes a hearing, trial or other matter to be conducted using remote communication technology, any oath necessary during that hearing, trial or other matter may be administered by the same remote communication technology. While it is preferable that the person administering the oath have both audio and visual communication with the person taking the oath, the oath may be administered if only audio communication is available, provided the person administering the oath can reasonably verify the identity of the person taking the oath. Notaries who are authorized to administer oaths may administer oaths utilizing remote communication technology in the case of depositions. Nothing in this order shall be construed as authorizing remote administration of oaths for any other purpose than those contained in this order.

(8) Scheduling Orders.

⁶ If a preliminary hearing is not held before the defendant is indicted by the grand jury, a preliminary hearing will not be held. Rule 2(b) of the South Carolina Rules of Criminal Procedure.

(A) Scheduling Orders Issued Prior to April 3, 2020. Under a prior version of this order, all deadlines under scheduling orders issued prior to April 3, 2020, were stayed, retroactive to March 13, 2020. Forty-five (45) days following the date on which the Governor lifts or rescinds the emergency orders relating to the coronavirus emergency, this stay shall end.

(B) Scheduling Orders Issued On or After April 3, 2020. A new or amended scheduling order issued on or after April 3, 2020, will not be subject to any stay under this order. Both the decision to issue such an order and the terms of that order must consider the impact the emergency has on the ability of the parties and counsel to proceed. Judges are encouraged to seek input from the parties and counsel before issuing a new or amended scheduling order.

(9) Extensions of Time and Forgiveness of Procedural Defaults.

(A) Extensions of Time. Due to the increased need for extensions at the start of this emergency, the filing fees for a motion for an extension of time were waived, and the due dates for trial court filings due on or after April 3, 2020 were automatically extended for thirty (30) days. That need has now decreased.⁷ Accordingly, the filing fee waiver shall not apply to any motions for extensions filed on or after January 16, 2021. Further, the automatic extension shall not apply to any action or event due on or after January 16, 2021.

(B) Forgiveness of Procedural Defaults Since March 13, 2020, to April 3, 2020. In the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default was forgiven, and the required action was required to be taken by May 4, 2020. If a dismissal or other adverse action has been taken, that adverse action was to be rescinded.

⁷ As explained by the order of April 3, 2020, the automatic extension was intended to give "lawyers and self-represented litigants appearing before the trial courts ... time to take actions to protect themselves and their families." Since sufficient time has been provided for this to occur, and most lawyers and litigants have been able to adjust to working remotely, this automatic extension is no longer warranted.

(C) Extensions by Consent. The provision in Rule 6(b), SCRCPP, which permits the granting of only one extension of time by agreement of counsel, is suspended. Counsel may agree to further extensions of time without seeking permission from the court, and parties are strongly encouraged to do so upon request.

(D) Limitation. The provisions of (A) thru (C) above shall not extend or otherwise affect the time for taking action under Rules 50(b), 52(b), 59, and 60(b), SCRCPP, or Rule 29, SCRCrimP. Further, these provisions do not extend or otherwise affect the time for the serving of a notice of appeal under the South Carolina Appellate Court Rules, or the time to appeal from a lower court to the circuit court.

(10) Alternatives to Court Reporters and Digital Courtrooms. A trial or hearing in the court of common pleas (including the master-in-equity court), the court of general sessions or the family court is usually attended by a court reporter (before the master-in-equity this is usually a private court reporter) or is scheduled in one of the digital courtrooms with a court reporter or court monitor. While every effort will be made to continue these practices, this may not be possible as this emergency progresses. In the event such resources are not reasonably available, a trial or hearing authorized under this order may proceed if a recording (preferably both audio and video) is made. The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date. This would include, but is not limited to, making sure the names and spelling of all of the persons speaking or testifying are placed on the record; ensuring exhibits or other documents referred to are clearly identified and properly marked; controlling the proceeding so that multiple persons do not speak at the same time; and noting on the record the start times and the time of any recess or adjournment.

(11) Courthouses.

(A) Filings. To the extent possible, courthouses should remain open to accept filings and payments, and to report criminal information to the South Carolina Law Enforcement Division and the National Crime Information Center. For the acceptance of documents or payments submitted by delivery to the courthouse, this may be accomplished by providing access to a portion of the courthouse even

if the rest of the courthouse is closed to the public; providing an alternate location where the documents or payments may be delivered; or by providing a drop box where filings may be deposited. Adequate signage should be provided at the courthouse to alert persons about how to make filings by delivery, and this information should also be posted to the court's website, if available.

(B) Closure. In the event of the closure of a courthouse, information about the closure shall be provided by signage at the courthouse, and on the court's website if available.

(C) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the trial courts, incoming paper documents, whether delivered or mailed to the trial court, may be quarantined for a period of up to forty-eight (48) hours once the documents are physically received by the trial court.⁸ Once the quarantine period has ended, these documents will be file stamped with the date on which they were received, and court staff will then process the documents.

(D) Entrance Screening and Protective Masks. All persons entering a courthouse shall be screened for fever and shall wear a protective mask while in the courthouse as required by the order of the Chief Justice dated July 30, 2020.⁹

(12) Statute of Limitations, Repose and Other Similar Statutes. This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses. The Judicial Branch has raised this concern to the leadership of the General Assembly as this issue relates to the statute of limitations, statutes of repose and similar statutes such as S.C. Code Ann. §15-36-100. While this Court has recognized the existence of judicial authority to toll a statute of limitations in other situations, it would

⁸ One scientific study has reported that the coronavirus can live for up to 24 hours on cardboard.

<https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>.

⁹ This order is available at

<https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2523>.

be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.

(13) Service Using AIS Email Address. A lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS).¹⁰ For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by email, a copy of the sent email shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. This method of service may not be used for the service of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4 of the South Carolina Rules of Civil Procedure, or for any document subject to mandatory e-filing under Section 2 of the South Carolina Electronic Filing Policies and Guidelines. In addition, the following shall apply:

(A) Documents served by email must be sent as an attachment in PDF or a similar format unless otherwise agreed by the parties.

(B) Service by email is complete upon transmission of the email. If the serving party learns the email did not reach the person to be served, the party shall immediately serve the pleading or paper by another form of service in Rule 5(b)(1), SCRCP, or other similar rule, together with evidence of the prior attempt at service by email.

(C) In those actions governed by the South Carolina Rules of Civil Procedure, Rule 6(e), SCRCP, which adds five days to the time a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is

¹⁰ The email addresses for lawyers admitted in South Carolina can be accessed utilizing the Attorney Information Search at:
<https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>.

served upon him by mail, shall also apply when service is made by email under this provision.

(D) Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(14) Signatures of Lawyers on Documents. A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRCF, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(15) Optional Filing Methods. During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and email. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

(16) Certification in Lieu of Affidavit. If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt."

(17) Arrest and Search Warrants. Due to this emergency, it may not be possible for an officer seeking an arrest warrant or a search warrant to appear before the judge to be sworn and sign the warrant. Therefore, a judge may use the procedures provided in section (c)(7) above to remotely

administer the oath to the officer and, if appropriate, the judge may take sworn testimony using remote communication technology to supplement the allegations in the warrant. The judge shall make a notation on the warrant indicating the oath was administered remotely and the officer was not available to sign the warrant in the presence of the judge. If probable cause is found, the judge shall sign the warrant and return the warrant to the officer for execution. While the officer may sign the warrant when it is returned, the failure to do so shall not affect the validity of the warrant. The warrant may be transmitted to the judge and returned to the officer by e-mail, fax or other electronic means. For the purpose of this section, the term "search warrant" shall also include applications under South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10 to -145.

(18) Discovery. Depositions and other discovery matters may be conducted using remote communication technology.

(d) Court of General Sessions. The following additional guidance is provided regarding the Court of General Sessions:

(1) Rule 3(c), SCRCrimP. Based on this emergency, the ninety (90) day period provided by Rule 3(c), SCRCrimP, is hereby increased to one-hundred and twenty (120) days.

(2) County Grand Juries. The Solicitor or the Attorney General is hereby authorized to present an indictment to the grand jury using remote communication technology such as video conferencing and teleconferencing, and any necessary oath may be administered using this same remote communication technology pursuant to (c)(7) above. County grand juries may convene in-person so long as the Chief Judge for Administrative Purposes determines grand jurors can be safely distanced and equipped with protective gear, and meeting rooms and courtrooms sanitized. To help ensure appropriate social distancing can be maintained, a minimum of 113 square feet of space per person should be available during any grand jury proceedings, including deliberations.

(3) Guilty Pleas. Guilty pleas may be conducted as specified by section (c)(3) above. However, a guilty plea by remote communication technology will not be conducted unless both the defendant and prosecutor consent. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and

intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary.

(e) Court of Commons Pleas. The following additional guidance is provided regarding the Court of Common Pleas, including the Master-in-Equity Courts:

(1) Isolation and Quarantine Orders. As this pandemic continues, it is possible the provisions of the South Carolina Emergency Health Powers Act, S.C. Code Ann. §§ 44-4-100 to 44-4-570, may be triggered as it relates to isolation and quarantine orders. Therefore, the Chief Judges for Administrative Purposes for Common Pleas should familiarize themselves with the procedures for judicial review and petitions under that Act, most notably section 44-5-540, and begin to formulate a strategy to meet the timelines specified in that statute for judicial action.

(2) Procedural Guidance Regarding Filing. While the trial court case management system does not have a case type and subtype for these matters, the clerks of court should use "Nature of Action Code 699 (Special/Complex Other)" for these matters, and these matters will be exempt from any ADR requirement. Detailed instructions for attorneys to Electronically File in these cases are available at <https://www.sccourts.org/efiling/ARGs/ARG-26%20Quarantine%20Petitions.pdf>. It is also anticipated that all of these hearings will be conducted using remote communication technology. In coordination with the Pro Bono Program of the South Carolina Bar, a list of lawyers willing to serve as counsel for individuals or groups of individuals who are or are about to be isolated and quarantined under section 44-5-540(F), has been compiled.

(f) Family Court. The following additional guidance is provided regarding the Family Court:

(1) Granting of Uncontested Divorces. The Family Court may grant an uncontested divorce without holding a hearing where:

(A) The parties submit written testimony in the form of affidavits or certifications of the parties and corroborating witnesses that address

jurisdiction and venue questions, date of marriage, date of separation, the impossibility of reconciliation and the alleged divorce grounds.

(B) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(C) Any decree submitted by any attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied or waived by the parties.

(D) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the Family Court in the form of an affidavit or certification addressing the appropriate questions for name change and the name which he or she wishes to resume. This relief shall be included in any proposed Order submitted to the Court for approval at the time of the submission of the documents related to the relief requested.

(2) Approval of Settlement Agreements and Consent Orders without a Hearing.

(A) General Orders. Consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without the necessity of holding a hearing. Examples include consent orders resolving motions to compel, discovery disputes, motions to be relieved as counsel, or consent Orders appointing a Guardian ad Litem or addressing Guardian ad Litem fee caps. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

(B) Temporary Orders. Temporary consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations or

written testimony.

(C) Final Orders. Final consent orders approving final agreements in all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. These final consent orders include marital settlement agreements, custody and visitation settlement agreements and enforcement agreements. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

These Consent Orders shall be submitted together with all of the following:

- (i)** The final agreement, such as a marital settlement agreement, signed by the attorneys and the parties.
- (ii)** Updated signed Financial Declarations for each party.
- (iii)** An affidavit or certification from the Guardian ad Litem, if one has been appointed, addressing the best interests of the children.
- (iv)** Written testimony of all parties in the form of affidavit or certification addressing and answering all questions the Family Court would normally ask the parties on the record, including but not limited to affirmations from the parties that:
 - a.** The party has entered into the Agreement freely and voluntarily, understands the Agreement, and desires for the Agreement to be approved by the Court, without the necessity of a hearing.
 - b.** Setting forth the education level obtained by the party, the employment status of the party and the health of the party.
 - c.** There are no additional agreements, and neither party has been promised anything further than that set out in the Agreement.

d. The party fully understands the financial situation of each of the parties, the underlying facts, terms and effect of the Agreement.

e. The party has given and received full financial disclosure.

f. The party has had the benefit of an experienced family law attorney.

g. The party has had the opportunity to ask any questions relating to procedures and the effect of the Agreement.

h. The party is not acting under coercion or duress, and the party is not under the influence of any alcohol or drug.

i. That the Agreement is fair and equitable, it was reached by the parties through arms-length negotiations by competent attorneys and the agreement represents some sacrifices and compromises by each party.

j. The Agreement is in the best interests of the children, if there are any.

k. That the parties have entered into a marital settlement agreement in full and final settlement of all issues arising from the marriage which have been raised or which could have been raised in the proceeding, other than issues relating to grounds for divorce.

l. The party is aware of the applicable contempt sanctions associated with non-compliance.

(D) Consent Orders under S.C. Code Ann. § 63-7-1700(D).

Where all the parties consent and the Family Court determines a child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal, and the return of the child to

the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the Family Court may order the child returned to the child's parent without holding a hearing.

(3) Hearings Generally. With respect to all contested hearings in family court, including agency matters and private actions, both temporary and permanent, all hearings should be conducted in accordance with section (c)(3) of this order.

(4) Execution of Bench Warrants. While the Chief Justice temporarily suspended the execution of bench warrants for non-payment of child support and alimony,¹¹ that suspension has expired. Therefore, bench warrants issued by the family court shall be promptly executed by appropriate law enforcement personnel.

(g) Probate Court. The following additional guidance is provided:

Certification in Lieu of Affidavit. In the probate court, the certificate in section (c)(16) may also be used for a marriage license application under S.C. Code Ann. § 20-1-230, including any application which may be submitted electronically, or for any of the probate court forms available at www.sccourts.org/forms which are either an affidavit or require an oath or affirmation to be administered.

(h) Summary Court. The following additional guidance is provided regarding the Summary Courts:

(1) Bond Hearings in Criminal Cases. Bond hearings shall be conducted in the manner specified by section (c)(3) above. The frequency of these bond hearings shall be specified by the Chief Justice.¹² In addition to

¹¹ See Orders of the Chief Justice dated May 7, 2020 and June 5, 2020 (available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2510> and <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2497>).

¹² Currently, the Chief Justice has directed bond hearings be held twice a day. See Memorandum of the Chief Justice dated September 25, 2020 (available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2530>).

the normal factors for determining whether the defendant will be required to post a bond or will be released on a personal recognizance, the judge should consider the need to minimize the detention center population during this emergency. Further, judges should consider home detention or other options to help reduce detention center population. The summary court shall uphold victims' rights in accordance with the South Carolina Constitution, including seeking to ensure that a victim advocate/notifier is available for all bond hearings, subject to the rights of the defendant under the United States Constitution and the South Carolina Constitution.

(2) Transmission of Warrants for General Sessions Offenses.

Warrants for general sessions offenses shall continue to be forwarded to the clerk of the court of general sessions as provided for Rule 3, SCRCrimP. As to an arrest warrant for a defendant who is already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina, this Court hereby authorizes these defendants to be served with the warrant by mail. Therefore, if it is determined that the defendant is already in custody, the judge shall annotate the warrant to reflect that a copy has been mailed to the defendant, mail a copy of the annotated warrant to the defendant, and immediately forward the annotated warrant and any allied documents to the clerk of the court of general sessions for processing under Rule 3, SCRCrimP. If the defendant is incarcerated at the South Carolina Department of Corrections, the judge shall also transmit a copy of the annotated warrant to the Office of General Counsel at the South Carolina Department of Corrections.¹³

(3) Guilty Pleas. For offenses within the jurisdiction of the summary court (including those cases transferred to the summary court pursuant to S.C. Code Ann. § 22-3-545), guilty pleas may be conducted as specified by section (c)(3) above. However, a guilty plea by remote communication technology will not be conducted unless both the defendant and prosecutor consent. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and

¹³ Rule 3, SCRCrimP, was recently amended to include this language.

the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. A defendant charged with criminal offenses, traffic violations, ordinance violations, and administrative violations within the jurisdiction of the summary courts may plead guilty by affidavit or certification. This procedure may only be utilized by persons represented by an attorney and desiring to plead guilty where the charge does not carry imprisonment as a possible punishment or where the prosecutor or prosecuting law enforcement officer and defense attorney have agreed that the recommended sentence will not result in jail time. If applicable, the prosecutor or prosecuting law enforcement officer must comply with the Victims' Bill of Rights under Article I, Section 24 of the South Carolina Constitution.¹⁴

(i) Effective Date; Expiration Date; and Revocation of Prior Orders and Memoranda. This order is effective immediately. Unless extended, this order will expire on August 2, 2021. This order replaces the following orders and memoranda previously issued.

(1) Memoranda of the Chief Justice dated March 16, 2020, which are labeled as "Trial Courts Coronavirus Memo," and "Summary Courts Coronavirus Memo."

(2) Order dated March 18, 2020, and labeled "Statewide Family Court Order."

(3) Order dated May 29, 2020, entitled "County Grand Juries."

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

¹⁴ This language regarding pleas by affidavit or certification incorporates language from a May 7, 2020, order of the Chief Justice (available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-05-07-01>).

s/ George C. James, Jr. _____ J.

Columbia, South Carolina
April 3, 2020
As Amended June 15, 2021

*2021-08-27-01 (Amended by Order 2021-09-21-01)
(Amended by Order 2021-11-23-01)*

The Supreme Court of South Carolina

RE: Operation of the Trial Courts During the Coronavirus
Emergency (As Amended August 27, 2021)

Appellate Case No. 2020-000447

ORDER

On April 3, 2020, this Court issued an order entitled "Operation of the Trial Courts During the Coronavirus Emergency." This order was subsequently amended on four occasions, with the last amended order being filed on June 15, 2021.¹ This order is currently scheduled to expire on August 31, 2021.

The risk posed by the coronavirus has decreased, and in-person trials and hearings, including jury trials and grand jury proceedings, have resumed under guidance issued by the Chief Justice. Therefore, this Court has determined that many of the provisions in the June 15, 2021, order are no longer necessary, and this order is a complete revision of the prior order. If the risk posed by the coronavirus increases, this risk may be addressed by guidance from the Chief Justice under section (b) below or, if necessary, by a modification of this order by this Court.

The pandemic has necessarily delayed the resolution of many cases, and the response to this emergency must now focus on the resolution of these cases in a safe, timely and just manner. Some of the provisions in the June 15, 2021, order have been incorporated into this order since they foster this goal. In addition, some new provisions have been added, and the order includes discussion of certain issues addressed by the June 15, 2021, order which are now addressed by other guidance, including court rules and statutory amendments. Finally, as indicated below, a determination has been made that some of the provisions in the June 15, 2021 order will not be continued, and those provisions will expire when the June 15, 2021 order expires.

(a) Terminology. The following terminology is used in this order.

(1) Judge: a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.

(2) Remote Communication Technology: technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.

(3) Trial Court: the circuit court (including master-in-equity court), family court, probate court, magistrate court and municipal court.

(4) Summary Court: a magistrate or municipal court.

(b) Authority of the Chief Justice to Impose Mitigation Measures. Throughout the coronavirus pandemic, the Chief Justice has issued administrative orders and guidance under Article V, § 4, of the South Carolina Constitution to mitigate the risk posed by the pandemic. This Court is confident that the Chief Justice will continue to issue and modify guidance as may be appropriate to reduce the risk posed by the coronavirus. Therefore, many of the restrictions and requirements in the June 15, 2021, order, which were designed to allow hearings, trials or other matters to be safely conducted during the pandemic, have not been included in this order, and these matters are now left to the Chief Justice.

(c) Discretion of the Trial Judges to Impose Mitigation Measures. In addition to the guidance the Chief Justice may issue, this Court is confident that trial judges will take appropriate mitigation measures to address any unique risk the coronavirus may pose in any individual case.

(d) Minimizing Hearings on Motions. Section (c)(4) of the June 15, 2021, order stated the following:

While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.

This Court continues to encourage judges to follow this guidance. As discussed above, judicial resources need to be focused on the timely and just resolution of cases, and holding unnecessary hearings is inconsistent with this goal.

(e) Service Using AIS E-mail Address.² A lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary e-mail address listed in the Attorney Information System (AIS).³ For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. This method of service may not be used for the service of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4 of the South Carolina Rules of Civil Procedure (SCRCP), or for any document subject to mandatory e-filing under Section 2 of the South Carolina Electronic Filing Policies and Guidelines. In addition, the following shall apply:

(1) Documents served by e-mail must be sent as an attachment in PDF or a similar format unless otherwise agreed by the parties.

(2) Service by e-mail is complete upon transmission of the e-mail. If the serving party learns the e-mail did not reach the person to be served, the party shall immediately serve the pleading or paper by another form of service in Rule 5(b)(1), SCRCP, or other similar rule, together with evidence of the prior attempt at service by e-mail.

(3) In those actions governed by the South Carolina Rules of Civil Procedure, Rule 6(e), SCRCP, which adds five days to the time a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, shall also apply when service is made by e-mail under this provision.

(4) Lawyers are reminded of their obligation under Rule 410(g) of the South Carolina Appellate Court Rules (SCACR) to ensure that their AIS information is current and accurate at all times.

(f) **Signatures of Lawyers on Documents.**⁴ A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRCP, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(g) **Optional Filing Methods.** Section (c)(15) of the June 15, 2021, order provided as follows:

During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and e-mail. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

If such an optional filing system has been created prior to the date of this order, the clerk of court may continue to operate this system. By October 1, 2021, any court with an optional filing system shall provide the Office of Court Administration with information regarding this system, including a general description of the system, a copy of the procedures posted to the court's website, discussion of how successful and useful the system has been, how the system has been received by the users, and, if available, the approximate number of filings which have been made using this system.

(h) **Use of Remote Communication Technology.** During the coronavirus pandemic, WebEx and

other remote communication technologies were successfully used by the trial courts. Based on this experience, Rule 612 was added to the South Carolina Appellate Court Rules to allow this Court to issue an order allowing remote communication technology to be used in proceedings before the courts of this state. Pursuant to Rule 612, SCACR, this Court has today issued an order regarding the use of remote communication technology in proceedings before the trial courts, including the administration of any required oath or affirmation. Therefore, the provisions in the June 15, 2021, order relating to the use of remote communication technology are not included in this order.

This Court recognizes that various trials, pleas or hearings may have already been scheduled to be conducted using remote communication technology under the guidance contained in the order of June 15, 2021. If so, the use of remote communication technology for that trial, plea or hearing may continue to be conducted under the guidance contained in the June 15, 2021 order, notwithstanding any new limitations in the order governing the use of remote communication technology referenced in the preceding paragraph.

(i) Family Court Provisions. Section (f) of the June 15, 2021, order contained provisions applicable to the family court. Many of these provisions have proven to be very beneficial during the pandemic, and can be used to conserve judicial resources which can better be used to resolve cases that have been necessarily delayed by the impact of the pandemic. This Court, however, believes that hearings on consent agreements or orders regarding divorces or other final matters can now be safely conducted either in-person or using remote communication technology, and having hearings on these matters is beneficial to the litigants and the judicial system. Therefore, this order has significantly amended the language from the prior order.

(1) Granting of Uncontested Divorces Based on Separation for One Year Without a Hearing. The family court may grant an uncontested divorce based on separation for one year without holding a hearing, including granting any requested name change, if:

(A) The relief sought is limited to a divorce and any related change of name. If other relief is sought, including but not limited to, child support, child custody or visitation, alimony, property distribution or fees for attorneys or guardians ad litem, the divorce may not be granted without a hearing.

(B) The parties submit written testimony in the form of affidavits of the parties and corroborating witnesses that address jurisdiction and venue questions, date of marriage, date of separation, and the impossibility of reconciliation.

(C) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(D) Any decree submitted by any attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied or waived by the parties.

(E) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the family court in the form of an affidavit addressing the appropriate questions for name change and the name which he or she wishes to resume. This relief shall be included in any proposed order submitted to the Court for approval at the time of the submission of the documents related to the relief requested

(2) Approval of Agreements and Consent Orders Regarding Temporary Relief Without a Hearing. Based on the consent of the parties, temporary orders, including but not limited to those relating to child custody, child support, visitation, and alimony, may, in the discretion of the family court judge, be issued without a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the guardian ad litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations or written testimony.

(3) Consent Orders under S.C. Code Ann. § 63-7-1700(D). Where all the parties consent and the family court determines a child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal, and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the family court may order the child returned to the child's parent without holding a hearing.

(4) Consent Orders Regarding Procedural Matters. With the consent of the parties, a consent order relating to discovery, the appointment of counsel or a guardian ad litem (including the fees for, or the relief of, a counsel or a guardian ad litem) or any other procedural matter may, in the discretion of the family court judge, be issued without requiring a hearing.

(5) Submission of Additional Information. Nothing in this order shall be construed as preventing a family court judge from requiring additional information or documents to be submitted before making a determination that the order can be issued without a hearing or from holding a hearing where the judge finds a hearing is appropriate.

(6) Consent Orders or Agreements Submitted to the Family Court Prior to the Effective Date of this Order. Consent orders or agreements submitted to the family court on or prior to August 27, 2021, the effective date of this order, may continue to be processed under the guidance contained in the order of June 15, 2021.

(j) Rule 3(c) of the South Carolina Rules of Criminal Procedure (SCRCrimP). While this order remains in effect, the ninety (90) day period provided by Rule 3(c), is increased to one-hundred and twenty (120) days.

(k) Alternatives to Court Reporters and Digital Courtrooms. A trial or hearing in the court of common pleas (including the master-in-equity court), the court of general sessions or the family court is usually attended by a court reporter (before the master-in-equity this is usually a private court reporter) or is scheduled in one of the digital courtrooms with a court reporter or court monitor. While every effort will be made to continue these practices, this may not be possible as due to the impact of the pandemic and the expected increased demand for these resources to resolve cases which were delayed by the pandemic. In the event such resources are not reasonably available, a trial or hearing may proceed if a recording (preferably both audio and video) is made. The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date. This would include, but is not limited to, making sure the names and spelling of all of the persons speaking or testifying are placed on the record; ensuring exhibits or other documents referred to are clearly identified and properly marked; controlling the proceeding so that multiple persons do not speak at the same time; and noting on the record the start times and the time of any recess or adjournment.

(l) Amendment to Rule 3, SCRCrimP. The June 15, 2021, order contained a provision regarding the service of an arrest warrant on a defendant already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina. Since Rule 3(a), SCRCrimP, was recently amended to incorporate this language, this provision is not included in this order.

(m) Bond Hearings in Criminal Cases. Section (h)(1) of the June 21, 2021, order has not been included in this order. Judges should, of course, continue to hold bond hearings in accordance with the guidance provided by the Chief Justice.

(n) Notarizations. During the height of the pandemic, the ability to obtain notarial services was significantly impacted. To address this, the prior versions of this order contained provisions allowing a certification in lieu of affidavit. Since notarial services are now readily available, these provisions have not been included in this order. It is also noted that the General Assembly recently enacted the "South Carolina Electronic Notary Public Act" (Act No. 85 of 2021). The provisions in this Act should greatly reduce the impact any future emergency will have on the availability of notarial services.

(o) Extensions by Consent. Prior versions of this order created an exception to Rule 6(b), SCRCP, allowing extensions by the agreement of the parties. This exception is not included in this order, and Rule 6(b), SCRCP, shall govern any extension request made after August 27, 2021, the effective date of this order.

(p) Guilty Pleas by Affidavit or Certification in the Summary Court. Section (h)(3) of the June 15, 2021, order allowed a defendant to plead guilty by affidavit or certification before the summary courts. Since the order of the Chief Justice dated May 7, 2020 (available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-05-07-01>, addresses this same issue, it is unnecessary to include the prior provision in this order.⁶

This order is effective immediately, and the prior version of this order dated June 15, 2021, is rescinded. Pursuant to Rule 611, SCACR, this order shall expire in ninety (90) days unless extended by order of this Court. A copy of this order shall be provided to the Chairs of the House and Senate Judiciary Committees.

s/Donald W. Beatty_____C.J.

s/John W. Kittredge_____J.

s/Kaye G. Hearn_____J.

s/John Cannon Few_____J.

s/George C. James, Jr._____J.

Columbia, South Carolina
August 27, 2021

1 This amended order is available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2596>.

2 The language of this section is identical to that contained in (c)(13) of the June 15, 2021, order.

3 The e-mail addresses for a lawyer admitted in South Carolina can be accessed utilizing the Attorney Information Search at: <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>.

4 The language in this section is identical to that contained in section (c)(14) of the June 15, 2021, order.

5 This section is based on section (d)(1) of the June 15, 2021, order.

6 This Court does view a guilty plea by affidavit or certification as being a temporary measure in response to the coronavirus pandemic.

2022-03-01-01

The Supreme Court of South Carolina

RE: In-Person Proceedings and Jury Trials in the Trial Courts

ORDER

For the last two years, the South Carolina Judicial Branch has been forced to alter normal operating procedures in the trial courts due to the dangers caused by COVID-19. To protect the public, attorneys, judges, and court personnel, courts have been directed to halt or limit jury trials and in-person proceedings at various times due to rising rates of infection and percent positive rates. These directives have been based on guidance from the national Centers for Disease Control and Prevention (CDC) and the South Carolina Department of Health and Environmental Control (DHEC).

At many times over the past two years, the Judicial Branch has directed that the trial courts proceed with caution. Over the past several months, the Omicron variant has caused a surge in cases, which has resulted in directions that courts conduct more hearings remotely and permitting the increased use of remote communication technology to conduct guilty pleas.

Fortunately, case numbers and percent positive rates are now declining rapidly. Even though some precautions can and should still be taken, the time has come to more aggressively schedule jury trials and in-person proceedings. This aggressive action is necessary to address the backlog of cases in the trial courts of this state and better ensure that the courts of this state fulfill their constitutional obligation to provide a speedy remedy for wrongs sustained in accordance with Article I, § 9, of the South Carolina Constitution.

Therefore, pursuant to Article V, § 4 of the South Carolina Constitution, I direct the trial courts of this state to take the following actions.

I direct the chief judges for administrative purposes and the clerks of court to work together to ensure that courtroom space is utilized to the maximum extent possible. To that end, all courtrooms should be open to conduct judicial business, to the extent that personnel is available to operate in those courtrooms.

Further, courts must expand their jury rosters and dockets and permit more jury trials to be conducted. Chief judges and clerks must work together to ensure that, when a civil matter scheduled for trial ultimately settles, or when a criminal matter scheduled for trial results in a guilty plea, sufficient backup jury trial cases are available so that resources are properly utilized.

Where permitted by the Supreme Court's order titled *RE: Use of Remote Communication Technology by the Trial Courts (As Amended September 21, 2021)*, judges should continue to utilize remote communication technology to conduct hearings where courtroom space is unavailable or a court reporter is not immediately available.

s/Donald W.
Beatty

Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
March 1, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2023-000104

Paul Roy Osmundson..... Appellant,

vs.

School District 5 of Lexington and Richland Counties..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by all parties and not any other material.

/s/ Thomas William McGee, III

Thomas William McGee, III
S.C. Bar No. 11317
Attorney for Appellant

September 5, 2023

RECEIVED
Sep 25 2023
SC Court of Appeals

RECEIVED

Sep 25 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2023-000104

Paul Roy Osmundson..... Appellant,

vs.

School District 5 of Lexington and Richland Counties..... Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing motion for extension on the date given below by
emailing it to counsel for the Respondent at the address(es) noted below.

James Edward Bradley, Esq., at ward@mbmlawsc.com

/s/ Thomas William McGee, III

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S.C. Bar No. 11317

Attorney for Appellant

September 5, 2023