

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

C.A. No.: 2019-CP-40-04931
Appellate Case No. 2019 - 001624

RECEIVED
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SC Court of Appeals

Nancy Miramonti,

Respondent,

v.

Richland County School District One, a body politic and corporate; and the
Board of Commissioners of Richland County School District One,

Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4004931

Nancy Miramonti
PLAINTIFF(S)

Richland County School District One 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:

Based upon the filings and memorandum, the Motion to reconsider is denied.

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 09/24/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Richland Common Pleas

Case Caption: Nancy Miramonti vs Richland County School District One ,
defendant, et al

Case Number: 2019CP4004931

Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-40-04931

NANCY MIRAMONTI

**RICHLAND COUNTY SCHOOL
DISTRICT ONE, a body politic and
corporate; and the BOARD OF
COMMISSIONERS OF RICHLAND
COUNTY SCHOOL DISTRICT ONE,**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jonathan M. Milling

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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: Declaratory and Injunctive relief requested by Plaintiff is GRANTED, attorneys fees and costs awarded

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
--	--	--

Nancy Miramonti	Richland County School District One and Board of Commissioners of Richland County School District One	\$4,566.82 (fees and costs)
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
 (Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Nancy Miramonti,)
Plaintiff,)
vs.)
RICHLAND COUNTY SCHOOL)
DISTRICT ONE, a body politic and)
corporate; and the BOARD OF)
COMMISSIONERS OF RICHLAND)
COUNTY SCHOOL DISTRICT ONE,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2019-CP-40-04931

ORDER

This matter comes before the Court by legal action initiated by the Plaintiff pursuant to South Carolina Code Annotated Section 30-4-100(A) seeking to enforce by declaratory judgment and injunction the provisions of the South Carolina Freedom of Information Act ("FOIA"). Pursuant to South Carolina law, within ten (10) days of service of the parties a hearing was scheduled by the chief administrative judge for Richland County Court of Common Pleas and that hearing was held on September 13, 2019 at 11:00am. Plaintiff was represented by Jonathan Milling and Defendants were represented by Kenneth Davis. After hearing from the parties regarding their respective positions, reviewing the applicable law and evaluating this matter, for the following reasons, the Court finds in favor of Plaintiffs.

BACKGROUND

The majority of the background and factual issues in this case are not in dispute. Subsequent to May 1, 2019, Defendants enacted a new policy regarding English as a Second Language (ESOL) students that would change where those affected students would attend class. No longer would students attend schools such as AC Moore where a magnet type program had

been set up for those students; instead they would go to the school designated by their residence. Upon learning of this change in policy, Plaintiff and others at a Board Meeting on June 11, 2019, made comments seeking to consider allowing effected ESOL students to apply for transfers. The matter was referred to the District. On June 13, 2019, the District issued a response merely indicating why the ESOL Program was expanding but without addressing the underlying request that the transfer policy be changed to allow those students impacted by the new policy to remain at their original school if they so choose.

Ultimately, on August 7, 2019, a letter was sent to the Board pursuant to *Policy KE Public Concerns and Complaints* ("Letter"). The letter does not suggest, threaten or otherwise intimate formal legal action, but merely voices a belief that the foregoing situation and proposed change to the Transfer Policy be addressed. Rather, the Letter specifically addresses the factual background at issue and several key issues that are requested to be addressed. Pursuant to *Policy KE*, the Board at its next meeting (regular or special) would consider the complaint and dispose of it according to its best judgment. The next meeting was August 13, 2019.

At the August 13, 2019, meeting, during the open portion, Chairman Devine indicated that he had received the letter and that he would be sending a letter in response. As is reflected in the District's video recording of the public session, Commissioner King voiced concern over the action taken. During this discussion, it was outlined that the matter was discussed in executive session and that Chairman Devine had deemed it best to send a response letter. On August 14, 2019, Defendants submitted a five sentence response which merely notes that the District cannot share information regarding student transfers as such is protected under the Family Education Rights and Privacy Act and craves reference to the response previously provided. This correspondence is not responsive to the Letter.

LEGAL ANALYSIS

South Carolina law, as outlined in the Freedom of Information Act ("FOIA") clearly and unequivocally outlines that "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter." S.C. Code Ann. § 30-4-60. Defendants do not contest that they are a public body, and therefore subject to the provisions of FOIA. "The essential purpose of FOIA is to protect the public from secret government activity." *See Brock v. Town of Mount Pleasant*, 785 S.E.2d 198, 200 (S.C. 2016)(citing *Lambries v. Saluda County Council*, 760 S.E.2d 785, 789 (S.C. 2014)).

"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

As previously noted, the open meeting requirement has certain limited exceptions, only one of which has been raised here. South Carolina Code Annotated Section 30-4-70(a)(2) has been cited by Defendants in support of their executive session discussion of the Letter. This section provides that a public body may hold a closed meeting for

Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

S.C. Code Ann. § 30-4-70

This section is to be narrowly construed to further the stated purpose of FOIA to protect the public from secret government activity. *See Bellamy v. Brown*, 408 S.E.2d 219, 221 (S.C. 1991).

A review of the Letter clearly reveals that no legal action was pending or threatened. No other potential claim is readily apparent from the Letter. Instead, Defendants suggest that twelve (12) other statutes are implicated with the District's Transfer Policy and so consultation with counsel was appropriate. Certainly, seeking legal advice regarding the implications of these other statutes is appropriate, and is within the purview of executive session. However, when pressed on this issue, the District was unable to provide any specific examples of how or why consultation was necessary. Only general references were ever advanced. Beyond this, however, receipt of any such advice, if it were given, is not relevant to the Letter, or the response that was provided. The August 14, 2019, correspondence is not responsive to the Letter, which undermines the Defendants' proposed reliance upon the "legal advice" exception to the open meeting requirement. None of the statutes which would potentially be impacted by a change in the transfer policy were cited in the response letter which undermines the presented argument of the Defendants. Rather, considering the response, it appears that the "legal advice" justification for the discussion in executive session was manufactured after the instant action were initiated.

Beyond the foregoing, it is readily apparent that regardless of the secret discussions had in executive session on this issue that the Board further elected in executive session to take action in the form of tendering correspondence in response to the Letter. South Carolina Code Annotated Section 30-4-70, the statute relied upon by Defendants in attempting to justify discussion of this issue in executive session, clearly states "[n]o action may be taken in executive session except to (a) adjourn or (b) return to public session." S.C. Code Ann. § 30-4-70(b). Thus when executive session is conducted under appropriate circumstances (which is not the case

here), no action can be taken in executive session on the matter which is being discussed in executive session. From the Defendants' video of the public meeting, it is readily apparent that in the executive session, it was determined that a letter would be sent in response to the Letter. Such is an action, as prohibited in South Carolina Code Annotated Section 30-4-70(b).

In response to the foregoing, the Defendants point to their own FOIA policy which is different from South Carolina law. Per District Policy, no "formal" action can be taken in executive session, which is defined as a "recorded vote committing the board to a specific course of action." District Policy goes on to recite that the board will also refrain from polling its members in executive session. The Defendants cannot alter South Carolina law to grant them authority to take actions other than voting and polling in executive session. FOIA prohibits any "action" in executive session, not just "formal action" and Defendants' Policy in this regard is invalid. That no formal vote was taken is of no moment. *Policy KE Public Concerns and Complaints*, mandates that the board consider a complaint and dispose of the matter according to its best judgment. To dispose of the matter requires an action by the Board. Action was taken in executive session when it could not be, and in so doing Defendants violated FOIA.

In one final attempt to justify their conduct, Defendants assert the Plaintiff doesn't have standing to bring the instant action challenging the action on the Letter. Defendants' position has no merit as South Carolina Code Annotated Section 30-4-100(A) outlines that "[a] citizen of the State may apply to the circuit court for declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter" Not only is Plaintiff a citizen of this State, but she is also a citizen of Richland County, with her residence within the geographical area designated for Richland One School District. Clearly, Plaintiff has standing.

Based upon the foregoing, it is clear and apparent that on August 13, 2019, Defendants

improperly discussed a matter in executive session in violation of FOIA and Plaintiff is entitled to declaratory judgment to this effect. Plaintiff is additionally entitled to declaratory judgment that Defendants further violated FOIA by taking action in executive session. Plaintiff, a citizen of this State has standing to enforce the provisions of FOIA.

IT IS THEREFORE ORDERED AND DECLARED THAT Defendants' actions in going into executive session to discuss the Letter were improper and in violation of FOIA; and

IT IS FURTHER ORDERED AND DECLARED THAT Defendants' conduct in taking action on the Letter in executive session is invalid and in violation of FOIA; and

IT IS ALSO ORDERED AND DECLARED THAT the Defendant Board of Commissioners of Richland County School District One must consider the Letter complaint at their next regular meeting or special meeting and dispose of the matter according to their best judgment, in a public setting;

IT IS ADDITIONALLY ORDERED THAT Defendants are enjoined from further violations of FOIA by entering into executive session on matters not specifically authorized by the provisions of South Carolina Code Annotated Section 30-4-70(a);

IT IS MOREOVER ORDERED THAT Defendants are enjoined from further violations of FOIA by taking any action in executive session, not just "formal action" as outlined by their policy; and

IT IS FINALLY ORDERED THAT Plaintiff has standing to bring this action and is justified in bringing this action to enforce the provisions of FOIA and therefore, pursuant to South Carolina Code Annotated Section 30-4-100(B), as the prevailing party, she is hereby awarded the recovery of attorneys' fees in the amount of Four Thousand Two Hundred and no/100 (\$4,200.00) Dollars and costs in the amount of \$366.82, which shall be remitted by the

Defendants within ten (10) days of the entry of this Order.

IT IS SO ORDERED!

The Honorable Robert E. Hood
Presiding Circuit Court Judge
Fifth Judicial Circuit

_____, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Sep 18 4:46 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931



Richland Common Pleas

Case Caption: Nancy Miramonti vs Richland County School District One ,
defendant, et al
Case Number: 2019CP4004931
Type: Order/Judgment and Form 4

So Ordered

s/ R.E. Hood #2164

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Kenneth A. Davis
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September 24, 2019

VIA ELECTRONIC MAIL

The Honorable Robert E. Hood
Richland County Court House
1701 Main Street, Suite 222
Columbia, South Carolina 29202

Re: Nancy Miramonti v. Richland County School District One, a body politic and corporate; and the Board of Commissioners of Richland County School District One
C.A. No.: 2019-CP-40-04931

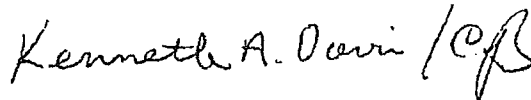
Dear Judge Hood:

This letter is to call the Court's attention to an error of fact included in Mr. Milling's submission to the Court. Specifically, Mr. Milling contends that Ms. Susan Williams, at some point asserted that Mr. Cody Smith is a district employee. However, Ms. Williams never made such a statement to the Board, the Court, or in her affidavit.

Accordingly, Ms. Williams is aware of Mr. Smith's relationship with the School Improvement Council, and in that regard, she knows that Mr. Smith is not a District employee. Ms. Williams' affidavit does address a District employee's conduct and that remains an accurate statement. Further, should the Court wish, we are happy to provide evidence to support this part of Ms. Williams' affidavit.

Should you have any questions, please feel free to contact our office.

Sincerely,



Kenneth A. Davis

/clm

cc: Jonathan Milling, Esq.
Susan Williams, Esq.
Charles J. Boykin, Esq.
Eugene Matthews, Esq.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Nancy Miramonti,)
Plaintiff,)
vs.)
RICHLAND COUNTY SCHOOL)
DISTRICT ONE, a body politic and)
corporate; and the BOARD OF)
COMMISSIONERS OF RICHLAND)
COUNTY SCHOOL DISTRICT ONE,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2019-CP-40-04931

**RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO ALTER
OR AMEND**

Having received and reviewed the Defendants' Motion to Alter or Amend ("Motion"), the undersigned hereby submits Plaintiff's Opposition to the Defendants' requested relief.

SCRCP Rule 59(e)

While Rule 59(e) affords a non-prevailing party the opportunity to seek reconsideration of a Judgment, "[a] part cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." *Anderson Mem. Hosp. Inc. v. Hagen*, 443 S.E.2d 399, 401 (S.C. 1994)(citing *CAH v. LH*, 434 S.E.2d 268 (S.C. 1993)). Defendants' response, however, does just that. Despite Susan Williams being in Court on September 13, 2019, and able to testify, she elected to remain silent, and only now presents an affidavit purporting to justify advice given to the Defendant Board. Such is a new issue that could have been raised initially but wasn't. Similarly, Defendants suggest that the Court grant a Writ of Mandamus. Again, the issue was not raised at the earlier hearing. Despite the impropriety of presentation of such "new" arguments, they also fail on the merits and will be addressed in turn.

Procedure

Defendants appear to call into question the hearing on September 13, 2019, and the ability of the Court to enter a final determination pursuant to South Carolina Code Annotated Section 30-4-100(A), without entering a scheduling order. That section, however, provides that only where “the hearing court is unable to make a final ruling at the initial hearing” should the Court enter a scheduling order.” *See* S.C. Code Ann. §30-4-100(A). Here, the evidence plainly established a clear violation of FOIA and the suggested scheduling order unnecessary.

Executive Session

As was established at the hearing, a public body may only go into executive session for a limited set of approved reasons. Defendants rely upon South Carolina Code Annotated Section 30-4-70(a)(2), to receive legal advice relating to “matters covered by the attorney-client privilege.” While this issue was raised at the hearing, it was only raised in the context of counsel for the Defendants merely arguing twelve (12) different federal and state statutes were implicated, without any specificity. Now, contrary to the position previously espoused, Defendants tender an Affidavit of Susan Williams. As previously noted, Ms. Williams was in Court during the hearing but did not testify.

Ms. Williams’ Affidavit posits that she “provided legal advice to the Board concerning the legality of a District employee requesting that ESOL students waive their rights to ESOL services in order to remain at A.C. Moore Elementary School” *See* Affidavit of Susan Williams. While it is unclear the basis for Ms. Williams’ assertion that Mr. Smith is a District employee, the only information in the record which might give rise to this blanket assertion is the fact that Mr. Smith was a School Improvement Council (“SIC”) Chair for AC Moore Elementary School. The SIC is a statutorily created position pursuant to S.C. Code Annotated Section 59-

justify their discussion, once any actual legal advice was provided, all other "discussion" had to be on the record in an open meeting. This was not done, and the Motion acknowledges this.

Defendants also attempt to rely upon their own FOIA policy to suggest no "formal action" was taken, but action was taken. It is clear that Chairman Devine went on the record and said that he would send a letter in response to the Complaint letter. No discussion was held prior to that announcement. According to the Defendants, they discussed the Complaint letter in Executive Session (see Motion, p6), and Chairman Devine made the decision to send a response letter. He took that "action," i.e. making the decision to send the response, in Executive Session. To violate State FOIA does not require a formal vote. It prohibits any action. Had Defendants appropriately conducted the meeting, not hidden in Executive Session, and discussed the Complaint letter on the record, we would not be having the instant problem. Unfortunately, they elected to conduct their business in private, in violation of FOIA, and the Order was properly entered.

Contents of the Executive Session

The instant action does not seek, and the Order does not require, disclosure of what was actually said in Executive Session. Any discussion outside of those limited circumstances outlined in South Carolina Code Annotated Section 30-4-70, is prohibited, regardless of the discussion. It is interesting, however, that the Defendants first advance that twelve (12) different statutes were implicated and legal advice was presented regarding these affected statutes at the hearing. Then, realizing such a statement was unsuccessful, present an Affidavit which is factually inaccurate as to what was suggested in the Complaint letter and the employment status of the author. Such conduct calls into question any assertion by the Defendants as to what precisely occurred in Executive Session. Regardless, however, it was in violation of FOIA.

Writ of Mandamus²

Plaintiff does not seek and the Order does not issue a Writ of Mandamus. Instead, having concluded that the executive session which gave rise to the action of determining to issue a response letter was in violation of FOIA, the Order merely declares that the District's own policy requires disposal of the Complaint at the next meeting. Because the discussion was not properly subject to any of the exceptions to the public meeting requirements, it must be in public. This is the law. This declaratory relief sought and granted is not a writ of mandamus. It is a declaration of how the discussion and disposal of the Complaint should occur, having initially been conducted improperly. It does not mandate any decision. It does not require any special action. It merely declares that to be conducted properly, it should comply with District policy and be in a public setting, not in the concealed setting of Executive Session.

Conclusion

For each of these reasons, those argued at the hearing on September 13, 2019, and for those additional arguments that may be advanced at a hearing on Defendants' Motion if the Court deems a hearing is needed, Defendants' Motion should be denied.

MILLING LAW FIRM, LLC

2910 Devine Street
Columbia, South Carolina 29205
(803) 451-7700

s/ Jonathan M. Milling
Jonathan M. Milling (SC Bar No. 15628)
Attorney for the Plaintiffs

September 23, 2019
Columbia, South Carolina

² As previously indicated, this issue was not raised initially and is therefore not properly the subject of the instant Motion.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Nancy Miramonti,

Plaintiff,

v.

Richland County School District One, a
body politic and corporate; and the Board
of Commissioners of Richland County
School District One,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2019-CP-40-04931

**DEFENDANTS' MOTION TO
ALTER OR AMEND**

NOW COME Defendants Richland County School District One (the "District") and the Board of Commissioners of Richland County School District One (the "Board") (collectively the "Defendants"), by and through the undersigned counsel, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and respectfully move this Court to alter or amend its Order entered Wednesday, September 18, 2019.

A motion under Rule 59(e), SCRCPP, is essentially viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004).

For the reasons stated herein, the Defendants respectfully request that the Court alter or amend its Order to DENY the relief requested by Plaintiff and DISMISS Plaintiff's Complaint. In the alternative, the Defendants respectfully request that the Court alter or amend its Order to DENY the relief requested by Plaintiff and to establish a scheduling order designed to conclude this actions within six months of the initial filing, as provided in S.C. Code Ann. § 30-4-100(A).

In support of this motion, the Defendants set forth their arguments as follows:

BACKGROUND

This case concerns a “complaint letter” filed with the District by a third-party not a party to this action over the District’s application of its transfer policy. The letter, written by a District employee, specifically requested that the Board approve changes to the District’s transfer policy in the event that students participating in the District’s English-as-a-Second-Language (“ESOL”) wished to remain at their current school rather than attend another school that offered ESOL services. (*Plaintiffs’ Complaint, Letter dated August 7, 2019*).

On August 13, 2019, the Board held a regularly-scheduled meeting at which the complaint letter was discussed. The letter did not include a threat or suggestion of formal legal action. Because the complaint letter explicitly requested changes to the District’s existing policy on transfers, the Board received legal counsel from its General Counsel, Ms. Susan Williams, in executive session concerning potential legal issues implicated by the request. Specifically, the Board sought legal advice from Ms. Williams on the following matters:

- The Board received legal advice concerning the legality of a District employee requesting that ESOL students waive their rights to ESOL services in order to remain at A.C. Moore Elementary School, and how these actions relate legally to the complaint letter and the transfer policy.
- The Board received legal advice regarding the ways in which a response to the complaint letter would implicate student privacy, including how the requirements of state and federal statutory protections would impact the response.

(*Affidavit of Susan Williams, Esq., attached as Exhibit “A”*).

Furthermore, the Board took no actions, took no votes, and reached no decisions concerning its response to the letter in executive session. The only action the Board took in executive session was to come out of executive session.

Once the Board returned to open session, Board Chairman Devine indicated that (1) the Board members discussed the letter in executive session, and (2) he would respond to the letter, as the matter did not require a vote. Also in open session, Commissioner King voiced concerns over Chairman Devine's proposed course of action, but did not raise a point of order or move to act otherwise, such as request a vote.

The District responded to the complaint letter on August 14, 2019. In part, the response referred the third-party to previous answers he had received earlier. Nevertheless, Plaintiff believed that the response to the third-party was not adequate, and ultimately brought the case now before the Court.

In her Complaint, Plaintiff alleged that the Defendants violated South Carolina's Freedom of Information Act ("FOIA") by (1) improperly going into executive session to discuss a complaint filed by a third-party concerning the District's transfer policy in violation of FOIA's open meeting requirement, and (2) improperly "taking action" concerning the complaint in executive session. Plaintiff requested declaratory relief that the Board violated the open meeting provisions of FOIA, prospective injunctive relief "by holding open meetings to discuss all applicable topics, and taking no action in executive session," for reasonable attorney's fees and costs, and for "such other relief as appropriate."

This court scheduled the required "initial" hearing under S.C. Code Ann. § 30-4-100(A) on September 13, 2019. Rather than establish a scheduling order to conclude the actions within six months of the initial filing, the Court issued an Order finding as follows:

1. Defendants' discussion of the complaint letter in executive session was itself a violation of FOIA. The Order found that there was no evidence in the record supporting the Defendants' contention that the Board received legal advice. Instead, the Court found that the District was "unable to provide any specific examples of how or why consultation was necessary. Only general references were advanced." The Court also found that, because it believed the Board's response to the third-party was not

"responsive to the Letter," and did not reference the statutes discussed in executive session, the Defendants' " 'legal advice' justification for the discussion in executive session was manufactured after the instant action [was] initiated." (Order, p. 8).

2. Defendants "took action" in executive session concerning the complaint letter in violation of FOIA. The Order draws this conclusion from the "video of the public meeting," from which the Court surmises that "it is readily apparent that in the executive session, it was determined that a letter would be sent in response to the [complaining] Letter."
3. The Order enjoins the Defendants from "further violations of FOIA." Specifically, the Court enjoins the Defendants from (1) entering into executive session on matters not specifically authorized by the provisions of S.C. Code Ann. § 30-4-70(a), and (2) from "further violations of FOIA by taking any action in executive session, not just 'formal action' as outlined by their policy."
4. The Order awarding attorneys' fees and costs. Together, attorneys' fees and costs are awarded in the amount of \$4,566.82 to Plaintiff.
5. The Order also acts as a Writ of Mandamus. Although not specifically plead in the Complaint, the Order compels the Defendants to "consider the Letter complaint at their next regular meeting or special meeting and dispose of the matter according to their best judgment, in a public setting."

LEGAL DISCUSSION

I. THE COURT'S ORDER SHOULD BE ALTERED BECAUSE THE BOARD LAWFULLY WENT INTO EXECUTIVE SESSION.

The FOIA statute concerning a public body's ability to conduct an executive session states, in pertinent part, as follows:

A public body may hold a meeting closed to the public for...[d]iscussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

S.C. Code Ann. § 30-4-70(a)(2) (emphasis added). Therefore, a public body may enter into an executive session in order to receive legal advice relating to "matters covered by the attorney-client privilege."

In this case, there is no evidence that the Board neglected to seek or receive legal advice regarding the issues raised in the letter concerning the transfer policy. Indeed, the attached affidavit of Susan Williams, Esq. (*Exhibit "A"*) indicates exactly what topics were discussed and the types of legal advice the Board actually sought in the executive session. These matters are those ordinarily covered by attorney-client privilege.

Furthermore, the allegation that the District's response to the complaint letter did not address specific statutory concerns or set forth the nature of the legal advice delivered by Susan Williams has no evidentiary bearing on Plaintiff's FOIA action. The content of the response letter simply has no bearing on the fact that (1) the Board was permitted to go into executive session to seek the legal advice that Susan Williams delivered, and (2) that Susan Williams actually delivered legal advice to the Board in the executive session concerning the complaint letter. FOIA did not – and does not – require the Defendants to disclose these matters in its response to the third-party.

II. THE COURT'S ORDER SHOULD BE ALTERED BECAUSE THE BOARD DID NOT TAKE ANY "ACTION" DURING EXECUTIVE SESSION OTHER THAN VOTE TO COME OUT OF EXECUTIVE SESSION.

The FOIA statute also provides as follows concerning the conduct of affairs in executive session:

Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. 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.

S.C. Code Ann. § 30-4-70(b).

The Court's Order states that "it is readily apparent that regardless of the secret discussions had in executive session on this issue that the Board further elected in executive session to take action in the form of tendering correspondence in response to the Letter." (Order, p. 8). While it may certainly be true that the members of the Board discussed a response to the complaint letter, there is no evidence in the record that the Board took "action" – formal or otherwise – in executive session, other than to vote to come out of executive session.

The minutes of the meeting, previously submitted to the Court, follow the proceedings in open session as follows:

- Chairman Devine stated there was a discussion. And the best judgment of the Board is to send a letter to respond to this complaint. So we are going to send a letter out tomorrow, once it gets on letterhead, based off the discussion we had in executive session.
- Commissioner King stated I disagree with the letter. We can't vote in executive session. I have on that topic a different resolution for the best interest of the students. **There has been a discussion, but there needs to be an action taken.** If there is a letter, it has to be signed by you, Mr. Devine, but I disagree with the letter. There has to be a vote at some point. There needs to be a motion.
- Chairman Devine stated there doesn't have to be a motion. Doesn't have to be a vote. Dispose of the matter according to its best judgment. Our best judgment is to respond to Mr. Smith in writing.

(emphasis added).

These proceedings, conducted in open session, indicate that (1) the letter was discussed in executive session, and (2) there was no action taken on the letter in executive session. As to the discussion and action taken in open session, Mr. Devine and Ms. King may disagree over whether the Board must formally vote on how to respond to the complaint letter, but that matter is not subject for the Court's review under FOIA. The Board Chairman's decision to dispose of the matter by responding with a letter under his signature without any vote on the matter by the full Board may be appropriate (or not) under the Board's internal procedures. Nevertheless, because

the matter was discussed in open session, and decided in open session, the Defendants did not violate the “open meeting” provisions of FOIA.

III. TO THE EXTENT THAT PLAINTIFF SEEKS TO COMPEL THE DEFENDANTS TO DISCLOSE INFORMATION CONCERNING THE EXECUTIVE SESSION, THE ACTION IS AT “LAW,” AND FACTUAL DISPUTES SHOULD BE DETERMINED BY A JURY.

A declaratory judgment action under the FOIA to determine whether certain information should be disclosed is an action at law. *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 280, 580 S.E.2d 163, 165 (Ct. App. 2003) (emphasis added). Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable. There is no right to trial by jury in an equitable action, but there is for an action at law. *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997).

At the very least, in order to find for Plaintiff, the factfinder in this matter must resolve genuine issues of material fact in favor of the Plaintiff. Because this action appears to be an action at law, not equity, these issues of material fact appear to require resolution by a jury. For this reason alone, this Order should be set aside.

IV. TO THE EXTENT THAT PLAINTIFF SEEKS TO COMPEL THE DEFENDANTS TO TAKE CERTAIN ACTIONS, THE COMPLAINT SEEKS A “WRIT OF MANDAMUS,” WHICH WAS NOT PLEAD IN THE COMPLAINT, AND REQUIRES DIFFERENT FINDINGS FROM THOSE SET FORTH IN THE ORDER.

The Order compels the Defendants to “consider the Letter complaint at their next regular meeting or special meeting and dispose of the matter according to their best judgment, in a public setting.” Because the Order seeks to Compel the Board to act, it is the equivalent of a Writ of Mandamus, which requires different findings from those set forth in the Order.

A Writ of Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy. *Ex parte Littlefield*, 343 S.C. 212, 540 S.E.2d 81 (2000); *Willimon v. Greenville*, 243 S.C. 82, 132 S.E.2d 169 (1963). It is a coercive writ that orders a public official to perform a ministerial duty. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999) (emphasis added). Mandamus will issue only to compel a public official to perform a mandatory legal duty. *Redmond v. Lexington County School Dist. No. Four*, 314 S.C. 431, 445 S.E.2d 441 (1994).

To obtain a writ of mandamus requiring the performance of an act, a petitioner must show: (1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. *Sanford v. S. Carolina State Ethics Comm'n*, 385 S.C. 483, 494, 685 S.E.2d 600, 606, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009). When the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued. *City of Rock Hill v. Thompson*, 349 S.C. 197, 200, 563 S.E.2d 101, 102 (2002) (emphasis added).

Generally, courts issue writs of mandamus to legislative bodies only "in those extremely limited circumstances in which there is a clear constitutional or statutory mandate that the legislative body take some specified action." *See, e.g., McMehan v. York County Council*, 281 S.C. 249, 315 S.E.2d 127 (1984); *Buchanan v. State Treasurer*, 68 S.C. 411, 47 S.E. 683 (1903); *Culbertson v. Blatt*, 194 S.C. 105 S.E.2d 218 (1940); *Attorney General Op.*, 1988 WL 485355, at *4 (S.C.A.G. Dec. 30, 1988).

Here, the issue concerns a policy of the District that permits the Board to dispose of matters “according to its best judgment.” At very least, and by its own terms, the performance of duty rests in the discretion of the Board. For this reason alone, a Writ of Mandamus is not appropriate.

Further, there is no “clear constitutional or statutory mandate that the legislative body take some specified action” at issue here. Therefore, the Order’s inclusion of a directive to the Board to “consider the Letter complaint at their next regular meeting or special meeting” appears to have been in error, as it does not meet the standards required for issuance of the Writ of Mandamus.

CONCLUSION

For the reasons stated herein, the Defendants respectfully request that the Court alter or amend its Order to DENY the relief requested by Plaintiff and DISMISS Plaintiff’s Complaint. In the alternative, the Defendants respectfully request that the Court alter or amend its Order to DENY the relief requested by Plaintiff and to ESTABLISH a scheduling order designed to conclude this actions within six months of the initial filing, as provided in S.C. Code Ann. § 30-4-100(A).

Dated this the 20th day of September, 2019.

Respectfully submitted,

BOYKIN & DAVIS & SMILEY & LCC

s/Kenneth A. Davis

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**COUNSEL FOR DEFENDANTS RICHLAND COUNTY
SCHOOL DISTRICT ONE**

EXHIBIT A
AFFIDAVIT OF SUSAN WILLIAMS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

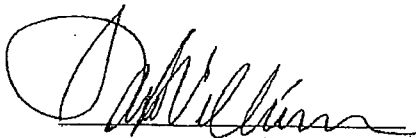
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2019-CP-40-04931

AFFIDAVIT OF SUSAN WILLIAMS

PERSONALLY, appeared before me, Susan Williams, who being duly sworn, deposes and states that the following is true and correct based on her personal knowledge and does so under penalty of perjury:

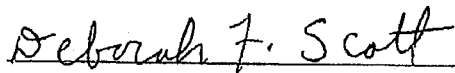
1. I am General Counsel for Richland County School District One.
2. On August 13, 2019, during executive session, I provided legal advice to the Board concerning the legality of a District employee requesting that ESOL students waive their rights to ESOL services in order to remain at A.C. Moore Elementary School among other issues, and how these actions related legally to a request made in the complaint letter and the protection of personally identifiable information regarding the transfer of any student including ESOL students.
3. On August 13, 2019, during executive session I provided legal advice to the Board regarding the response to the letter in question that was legally sufficient to avoid violation of the Family Education Rights and Privacy Act. Further, district processes in place provided for any transfer requests made in behalf of the ESOL students and at the same time maintained student privacy, including the requirements of state and federal statutory protections that would impact the response.

Further Affiant sayeth not.


Susan Williams, Esq.

SWORN TO BEFORE ME THIS

20th day of September, 2019


Notary Public for South Carolina

My commission expires: 7-6-2020

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Nancy Miramonti,

Plaintiff,

vs.

RICHLAND COUNTY SCHOOL
DISTRICT ONE, a body politic and
Corporate; and the BOARD OF
COMMISSIONER OF RICHLAND
COUNTY SCHOOL DISTRICT ONE,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

C.A. NO.: 2019-CP-40-04931

**MEMORANDUM OF LAW IN
OPPOSITION TO
DECLARATORY JUDGEMENT AND
INJUNCTIVE RELIEF**

INTRODUCTION

Defendants, Richland County School District One ("the District"), and the Board of Commissioners of Richland County School District One ("the Board"), (collectively "the Defendants"), by and through their undersigned counsel, hereby submits this Memorandum of Law in Opposition to Declaratory Judgment and Injunctive Relief. The basis of this Memorandum is to assert the Defendants' position that the Defendants did not violate the South Carolina Freedom of Information Act ("FOIA"), when:

- (1) The Board received legal advice in executive session regarding a Complaint Letter submitted by Cody Smith in his capacity as Chairman of the School Improvement Council at AC Moore Elementary School; and
- (2) Board Chairman Jamie Devine made an announcement in open session that a response to Mr. Smith would be sent by letter.

To the extent that Plaintiff seeks an order of the Court compelling a Board vote on the Smith Complaint Letter, Plaintiff lacks standing to seek a declaratory judgment requesting the Board take action on the Complaint Letter, as she was not the author of the letter and was not a party involved in the underlying matter of the Complaint Letter. Therefore, Defendants respectfully submit this Memorandum of Law in Opposition to Declaratory Judgment and Injunctive Relief.

ALLEGATIONS OF COMPLAINT

Plaintiff alleges in her complaint that on August 13, 2019, the Board violated FOIA by discussing Cody Smith's ("Smith") Complaint Letter in executive session and further that the Board took action by issuing a response letter to Smith based on discussions had in executive session.

Plaintiff has alleged two causes of action, one as a declaratory judgment seeking a declaration from the Court that the Board violated FOIA by discussing the letter in executive session; and second, for injunctive relief seeking an order of the Court requiring the Board to adhere to the requirements of FOIA, arising from Plaintiff's allegation that the Board took action in issuing a response letter based on discussion held in executive session.

ARGUMENT

I. As Permitted by the South Carolina Freedom of Information Act, the Board Sought the Advice of Legal Counsel During Executive Session, and Therefore, did not Violate FOIA During the August 13, 2019 Meeting.

In general, S.C. Code Ann. §30-4-60 requires a public body to hold all meetings open to the public. Pursuant to S.C. Code Ann. § 30-4-70(a)(2), a public body may have a meeting closed to the public, i.e. executive session, for, among other things, "the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the

attorney- client privilege, settlement of legal claims, or the position of the public agency in other adversary situation involving the assertion against the agency of a claim.”

In this instance, the Complaint Letter was received by Devine, the Board’s Chairman, on or about August 7, 2019. The Complaint Letter requested the Board to instruct the District to provide an exception to Policy *JFABC: Student Assignments and Transfers*, as it relates to English As A Second Language (“ESOL”) students. The District Policy *JFABC* is attached as Exhibit A. Plaintiff alleges that the Defendants violated FOIA because the Complaint Letter and changing District Policy are not reasons for an executive session discussion, thereby requiring the Board to discuss the Complaint Letter only in open session. Despite Plaintiff’s contentions, the Board may go into executive session to receive legal advice as provided in S.C. Code Ann. § 30-4-70(a)(2).

The Complaint Letter makes specific complaints regarding the District’s student transfer policy and requested the Board mandate the District provide an additional exception to this policy for ESOL students by extending the transfer deadline from May 1 to September 21, 2019. Although the Board is the governing body for the District and is charged with creating the District’s policies, when contemplating any change to policy or deviation from current Board Policy, it is within the Board’s authority to consult legal counsel for potential issues during any discussion of potential changes. On August 13, 2019, as evidenced by the meeting minutes, the complaint letter was discussed with legal counsel during executive session. The meeting minutes are attached as Exhibit B. Additionally, Smith received a letter dated August 14, 2019, from the Board Chair citing the legal reasons the Board could not provide him with individual student information regarding the ESOL student transfer requests. The letter is attached as Exhibit C. This provides further evidence that the Board received guidance from legal counsel regarding Smith’s request for the personal information of students.

Thus, any claim that the Board violated FOIA are simply not supported by the facts of this case.

II. Board Chairman Devine's Announcement in Open Session that a Response Would be Provided by Letter Does Not Constitute an Action Which Violates FOIA.

Pursuant to §30-4-70(b), no action may be taken in executive session except to adjourn or return to public session and members of a public body may not commit the public body to a course of action by polling members during executive session. Additionally, according to Board Policy *BEC: Executive Sessions/Open Meetings*, "no formal action may be taken in executive session. As used in this item "formal action" means a recorded vote committing the body concerned to a specific course of action. No vote may be taken in executive session." Board Policy *BEC* is attached as Exhibit D.

In this case, Plaintiff alleges the Board violated FOIA by taking "action" in issuing the response letter to Smith's Complaint Letter based on discussions held in executive session. Plaintiff's rationale for this allegation is apparently based on a belief that the response letter is an "action" by the Board. However, the response letter is not an action within the meaning of Board Policy *BEC*, as no recorded vote was taken on the record.

The minutes reflect a comment from the Board Chairman Devine that there was a discussion in executive session and that the best way to follow Board policy and dispose of the complaint using its best judgment was to respond by letter. In addition, the Affidavit of Board Chairman Devine indicates that no polling of the Board occurred in executive session nor does Plaintiff allege that polling occurred in executive session. Furthermore, the meeting minutes reflects a comment from Commissioner King that "there was a discussion, but then there needs to be an action taken." Commissioner King's presence in executive session for discussion and

statement in open session that a vote needed to be taken confirms that no vote was taken in executive session. All that appears on the record is the announcement from Board Chairman Devine that a response letter to Smith's Complaint Letter would be sent.

The Complaint does allege that there were concerns raised by Commissioner King about the process of responding to Smith's Complaint Letter. Board Policy BEDD provides that "[t]he latest edition of *Robert's Rules of Order* will govern all matters not covered by the rules of the board." Board Policy BEDD is attached as Exhibit E. Pursuant to Chapter VIII, Section 23 of Robert's Rules of Order, "[w]hen a member thinks that the rules of the assembly are being violated, he can make a Point of Order (or raise a question of order," as it is sometimes expressed), thereby calling upon the chair for a ruling and enforcement of the regular rules." Henry M. Robert III et al., Robert's Rule of Order Newly Revised (10th ed. 2000). As the minutes reflect, Commissioner King voiced her opinion on the matter, but never offered a motion to vote on any matter concerning the complaint and never raised a Point of Order in accordance with Robert's Rules of Order to cite some violation. Additionally, this discussion during open session provides evidence that the Board did not vote on any response to the Complaint Letter in executive session.

By not taking a vote or poll in executive session the Board did not take any action during executive session, thus Plaintiff is not entitled to a declaration that the Defendants violated FOIA.

III. Plaintiff Lacks Standing to Mandate the Board Take Action on the Complaint Letter.

To the extent that Plaintiff is seeking an order from the Court mandating the Board take action on the Complaint Letter received from Smith, Plaintiff lacks standing to pursue this action. To acquire standing, one must have a personal stake in the subject matter: (1) by statute; (2) through the rubric of constitutional standing; or (3) under the public importance exception. See Vicary v. Town of Awendaw, 417 S.C. 631, 790 S.E.2d 787 (2016).

Here, Smith is the author of the Complaint Letter referenced in Plaintiff's complaint; Smith met with Superintendent Craig Witherspoon; Smith addressed the Board at the August 13, 2019 meeting; and Smith received the response letter from the Board. Plaintiff was neither involved in either of these acts nor has she alleged she is a parent or guardian to an ESOL student requesting a transfer. Further, Plaintiff has provided no evidence that she has a personal stake in the subject matter of the Complaint Letter received by the Board. Additionally, Plaintiff has provided no injury that has been caused, will be caused, or that needs to be addressed to her personally.

Therefore, the Defendants request that any allegations by Plaintiff seeking an order to require the Board to vote on Smith's Complaint Letter, be stricken and disregarded by the Court.

CONCLUSION

For the aforementioned reasons, the Defendants respectfully request that this Court dismiss the Plaintiff's complaint.

Respectfully submitted,

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Attorneys for Defendant Richland County
School District One

September 12, 2019
Columbia, South Carolina

Exhibit A

Policy JFABC Student Assignments And Transfers

Issued 3/19

Purpose: To establish the basic structure for the assignment and transfer of students.

The policy of the board is to maintain school attendance zones for the purpose of assigning students to its schools. In all cases of exception to a regular zoned assignment, there must be space, faculty, staff, and curriculum availability adequate to accommodate such exceptions. The superintendent is authorized to investigate transfers including, but not limited to, investigation of all transfers in a single school.

Further, all students will attend the schools to which their residence is zoned, except in special circumstances or where school choice is permitted (see policy JFB). Annually, the superintendent or his/her designee will project the enrollment for each school for the upcoming school year. Based on these projections, the enrollment for the current school year and the capacity of each school (excluding portables), the superintendent or his/her designee will identify schools projected to be underutilized or over-utilized. The superintendent will develop administrative rules to determine space availability.

Once granted, student transfers are effective through the highest grade at the assigned school. All transfers of school assignments will require that written verification is on file to show that one or more of the following conditions exist.

Childcare

When requested, assignments may be made for kindergarten through grade eight students only. Such assignments require documentation to be presented for elementary students during the initial transfer year and updated by May 1st prior to the 3rd grade enrollment.

For middle school students, documentation must be presented during the initial transfer year and updated by May 1st prior to the eighth grade enrollment. The documentation should show that all adult family members of the students' household who are legally responsible for the student are engaged in full-time employment, are full-time student(s), or are disabled and incapable of caring for children. Such circumstances must make them unavailable to care for the student(s) immediately before and/or after school hours.

Administrative

Consideration may be given to legitimate requests due to severe hardship. Such requests must be authenticated by the recommendations of a licensed professional such as medical doctors, psychiatrists, psychologists, social workers, school administrators, etc.

The superintendent reserves the right to grant an administrative transfer for extenuating circumstances.

Special Program(s) of Study

Requests for program transfers for high school students that will serve the needs of the student and the district may be granted. The superintendent or his/her designee will publish a list of the specific programs of study available for this option on an annual basis.

Employee Option

Requests for out-of-attendance-zone assignments for children of full-time district employees may be granted. The superintendent will direct the criteria for granting transfers. All employee option transfers are subject to space availability.

Transportation

No out-of-attendance-zone student will be transported on any bus or public vehicle owned or controlled by the district, the exception being those students who have been given a school assignment which makes provision for such transportation.

Transfer Revocation

A student's transfer may be revoked for reasons including, but not limited to, repeated tardiness and/or other irregularities of attendance and repeated consequential violations of the discipline code. The district will set forth procedures for revocation appeals. The superintendent has the authority to determine a final date for transfer revocations on an annual basis.

Transition Students

Any student returning to the district as a result of the following reason(s) will be transitioned into their zoned schools per the recommendations of the director of student support services or his/her designee:

- a student returning from the department of juvenile justice/adult correctional institutions

- a student returning from the department of mental health

Cf. BBA, JFAA, JFB, JJIB

Adopted 6/13/00; Revised 7/9/02, 12/14/04, 6/16/09, 10/24/17, 3/12/19

Legal References:

Federal Law:

Homeless Assistance Act, P.L. 100-77, 101 Stat. 482-538 (1987), also known as the McKinney Act.

Title VI of the Civil Rights Act of 1964 - Prohibits discrimination on the basis of race, color, national origin, religion, or sex.

Uniform Tax Act (Section 1524, Internal Code) Section 610 E, Code Section 6676 E - All dependents age five and above required to have social security number.

No Child Left Behind Act of 2001, P.L. 107-110, Section 4155.

S.C. Code of Laws, 1976, as amended:

Section 59-19-90(9) - School trustees have power to transfer and assign pupils: (see 59-19-510 for right to appeal).

Section 59-19-510 - Right to appeal to county board of education; petition.

Section 59-63-30 - Qualifications for attendance.

Section 59-63-40 - Discrimination on account of race, creed, color, or national origin prohibited.

Section 59-63-45 - Procedures for reimbursement for districts for cost of educating non-resident students.

Section 59-63-210 - Grounds for which trustees may expel, suspend, or transfer pupils; petition for readmission; expulsion, suspension, or transfer.

Section 59-63-250 - Transfer of pupils.

Section 59-63-470 - Transfer of pupils when enrollment of such pupils threatens to disturb peace.

Section 59-63-480 - Attendance at schools in adjacent county.

Section 59-63-490 - Transfer to adjoining school district.

Section 59-63-500 - Transfer without consent of school district of residence

Section 59-63-510 - County board of education authorized to order transfer.

Section 59-63-520 - Consent required for transfer.

Federal Cases:

Tasby v. Estes, 412 F.Supp. 1185, aff'd 572 F.2d 1010.

Evans v. Buchanan, 393 F.Supp. 428.

Armour v. Nix, No.79-6108 (N.D. Ga. May 12, 1979).

U.S. Supreme Court:

Parents Involved in Community Schools v. Seattle School District No. 1, 127 S. Ct. 2738 (2007).

State Board of Education Regulations:

R-43-272 - School admission.

R-43-273 - Transfer and withdrawals.

Richland County School District One

Exhibit B

MINUTES

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS

RICHLAND COUNTY SCHOOL DISTRICT

STEVENSON ADMINISTRATION BUILDING

TUESDAY, AUGUST 13, 2019

7:00 P.M.

MEMBERS BOARD OF SCHOOL COMMISSIONERS

MR. JAMIE DEVINE, CHAIRMAN

MR. AARON BISHOP, VICE CHAIRMAN

MRS. LILA ANNA SAULS, SECRETARY/TREASURER

CHERYL HARRIS, PARLIAMENTARIAN

MR. DARRELL BLACK

MRS. BEATRICE KING

MS. YOLANDA ANDERSON

**REPORTED BY
BARBARA D.B. CHEESEBORO
1103 PINECROFT DRIVE
WEST COLUMBIA, S.C. 29170**

**REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
RICHLAND SCHOOL DISTRICT ONE
STEVENSON ADMINISTRATION BUILDING
AUGUST 13, 2019**

MINUTES

STEVENSON ADMINISTRATION BUILDING

1616 RICHLAND STREET

COLUMBIA, SC 29201

HELD TUESDAY, AUGUST 13, 2019

7:00 P.M.

MATTER OF

RECORD:

AS MANDATED BY THE FREEDOM OF
INFORMATION ACT PASSED BY THE SOUTH
CAROLINA GENERAL ASSEMBLY, THE RECORDS
WILL SHOW THAT THE LOCAL NEWS MEDIA WERE
NOTIFIED OF THIS MEETING. THE RECORD WILL
ALSO SHOW THAT CHAIRMAN DEVINE CALLED
FOR A MOTION TO GO INTO OPEN SESSION TO
DISCUSS SEVERAL ISSUES: (1) LEGAL STATUS; (2)
PERSONNEL/HR UPDATES; (3-5) ADMINISTRATIVE
APPOINTMENTS; (6-7) LEAVE OF ABSENCES; (8)
HIRING OF PERSONNEL; (9) MINUTES: JULY 23, 2019
(REGULAR MEETING) AND JULY 30, 2019 (BUDGET

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
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WORK SESSION); (10) CONTRACT EXTENSION: CITY
YEAR COLUMBIA MENTORING PROGRAM; (11)
CONTRACT EXTENSION: CERTIFIED BUILDING
INSPECTION OF ASBESTOS AND LEAD
MANAGEMENT; (12) CONTRACT EXTENSION:
ULTRA LOW SULFUR DIESEL FUEL FOR DISTRICT
WIDE BUS FLEET; (13) CONTRACT EXTENSION:
PURCHASE OF FRESH PRODUCE; (14) CONTRACT
EXTENSION: MULTI-FUNCTIONAL COPIER
EQUIPMENT AND SERVICES (LEASE); (15)
CONTRACT EXTENSION: LIBRARY MEDIA
MANAGEMENT SOFTWARE; (16) CONTRACT
EXTENSION: GRADE LEVEL BENCHMARK
ASSESSMENT; (17) CONTRACT EXTENSION: LEXIA
LEARNING SYSTEMS. LLC; (18) CONTRACT
EXTENSION: EDUCATIONAL SUPPLIES AND
MATERIALS; (19) APPROVAL FOR CITY OF
COLUMBIA POLICE TO PROVIDE SCHOOL
RESOURCES; (20) BOARD REPORT; (21)
APPOINTMENT/REAPPOINTMENTS HALL OF FAME
NOMINATION/SELECTION COMMITTEE AND

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
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ADVISORY BOARD: (22) SUPERINTENDENT'S
REPORT; (23) CONTRACT; CLASSROOM FURNITURE;
(24) CONTRACT; AFTER SCHOOL CHILD CARE
PROVIDERS; (25) PROFESSIONAL DEVELOPMENT
AND STAFF TRAINING FOR INSTRUCTIONAL
LEADERS AND CLASSROOM TEACHERS; (26)
CONTRACT: PROFESSIONAL ENGINEERING
SERVICES FOR HVAC RENOVATION AT THE
CENTRAL SERVICES FACILITIES BUILDING; (27)
ELECTRICAL EASEMENT FOR RABBIT ONE - DOT
PENNY PROJECT; (28) DEED OF WATER LINE FOR
CAUGHMAN ROAD; (29) DEED TO WATER LINES AT
BOLDEN STADIUM; (30) ELECTRICAL EASEMENT
FOR DREHER HIGH SCHOOL ATHLETIC UPGRADES;
(31) INCREASE FOR LED SPORTS LIGHTING AT THE
NEW DREHER FIELD AND TENNIS COURTS.

CALL TO ORDER:

THE BOARD OF COMMISSIONERS MET AT
STEVENSON ADMINISTRATION BUILDING. ON
AUGUST 13, 2019.

CHAIRMAN DEVINE CALLED THE MEETING TO
ORDER AT 7:00 P.M.

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
RICHLAND SCHOOL DISTRICT ONE
STEVENSON ADMINISTRATION BUILDING
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PRESENT:

CHAIRMAN JAMIE DEVINE. COMMISSIONERS
AARON BISHOP, LILA ANNA SAULS, CHERYL
HARRIS, BEATRICE KING, DARRELL BLACK,
YOLANDA ANDERSON.

INVOCATION:

REVEREND GENEVA STAFFORD, SENIOR PASTOR
OF FRANCIS BURNS UNITED METHODIST CHURCH,
GAVE THE INVOCATION.

AGENDA ADOPTION:

CHAIRMAN DEVINE STATED THERE IS AN
AMENDMENT TO THE AGENDA: ADD ITEM 2.02 IN
EXECUTIVE SESSION: SAFETY AND SECURITY
(INFORMATION ITEM); WHICH CORRESPONDS IN
OPEN SESSION, OFFICE OF THE SUPERINTENDENT.
ITEM 8.03.

HE ASKED WHAT IS THE PLEASURE OF THE BOARD?

MOTION:

COMMISSIONER BLACK MOVED FOR APPROVAL
AND WAS SECONDED BY COMMISSIONER SAULS.

VOTE: IN FAVOR: UNANIMOUS (7-0)

SCHOOL BOARD

COMMISSIONER BLACK GAVE THE SCHOOL

SPOTLIGHT:

BOARD SPOTLIGHT FOR THE AUGUST 13, 2019
SCHOOL BOARD MEETING.

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
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(SEE ATTACHMENT FOR ADDITIONAL
INFORMATION).

PUBLIC PARTICIPATION:

MR. CODY SMITH STATED HE IS FOLLOWING UP
ON A LETTER THAT HE SENT LAST WEEK AND WAS
EXPECTING TO BE ON THE AGENDA.

HE SAID HE HAD REQUESTED THE DISTRICT TO
RESPOND TO ALLOWING ESOL STUDENTS
IMPACTED BY THE ESOL EXPANSION TO REQUEST
TRANSFERS TO STAY IN SCHOOLS THAT THEY ARE
NOW BEING RELOCATED FROM.

ALL THE DETAILS OF THE FACTS OF THIS ARE IN
THE LETTER WITH THE EXHIBITS THAT I
SUBMITTED. I'D ASK THAT YOU PLEASE LOOK
THAT OVER IN CONSIDERING THIS REQUEST.
I THINK THE FIRST QUESTION YOU HAVE TO ASK IN
DETERMINING WHETHER YOU CAN MOVE
FORWARD WITH THE ACTION I AM REQUESTING IS
WHETHER YOU CAN DO IT. CERTAINLY, IN THE
STATE'S STATUE THE SCHOOL BOARDS ARE GIVEN
THE ABILITY TO OVERSEE TRANSFERS AMONG
STUDENTS IN THE DISTRICT.

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ACCORDING TO YOUR OWN DISTRICT'S POLICY
AND THE SCHOOL BOARD'S POLICY, THE SAME
THING OCCURS. YOU DO HAVE THIS AUTHORITY.
THE SECOND QUESTION IS SHOULD YOU DO IT.
SHOULD YOU ALLOW STUDENTS THAT HAVE BEEN
IMPACTED AND ARE BEING RELOCATED TO
REQUEST TRANSFERS?

WHEN THE TRANSFER DATE CLOSES ON MAY 1ST
AND THESE STUDENTS FIND OUT ABOUT THEIR
RELOCATION AFTER THAT, IT SEEMS THAT IT
WOULD BE GOOD PRACTICE TO ALLOW THEM TO
SEEK A TRANSFER.

SECONDLY, EVERYONE I HAVE SPOKEN TO ABOUT
THIS HAS NOT GIVEN ME ONE GOOD REASON OF
WHAT THE DISTRICT WOULD GAIN IN NOT
ALLOWING THESE TRANSFER PROCESSES TO MOVE
FORWARD. WE ARE NOT SAYING A GUARANTEED
TRANSFER. WE ARE JUST SAYING LET THEM
APPLY IF THEY DECIDE TO DO SO.

ONE GOOD RESPONSE I'VE GOTTEN, WE HAVE MET
WITH ALL THESE FAMILIES AND WE ARE

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CONFIDENT THEY ARE HAPPY WITH WHERE THEY
ARE. THAT MAY BE THE CASE.

SO, IF YOU MOVE FORWARD TO DO THIS YOU
WON'T GET ONE SINGLE APPLICATION, BECAUSE
ALL THESE STUDENTS WILL BE HAPPY.

SO, I DON'T UNDERSTAND WHAT THE DETRIMENT
IS IN DOING THIS.

SECONDLY, ELEMENTARY SCHOOL IS A HUGE TIME
FOR OUR CHILDREN. IF YOU HAVE BEEN AT A
SCHOOL FOR FOUR OR FIVE YEARS AND YOUR
CHILD IS MOVING INTO THE FIFTH GRADE, IT
SEEMS THAT IT MIGHT BE VERY IMPORTANT FOR
YOU TO KEEP YOUR CHILD THERE TO FINISH OUT
THEIR EXPERIENCE.

I DON'T SEE THE HARM IN THE DISTRICT
ALLOWING THOSE TRANSFER REQUEST TO BE
MADE.

I RESPECTFULLY ASK THAT YOU MAKE A MOTION
TONIGHT TO VOTE ON THIS AND THAT YOU
APPROVE THIS AND THAT THE TRANSFER PERIOD
BE OPENED UP FOR THESE STUDENTS. MAYBE A

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MONTH INTO THE SCHOOL YEAR, WHICH I

SUGGEST SEPTEMBER 21ST.

I CAN YOU SAYING WE DON'T WANT TO DO THIS.

BECAUSE WE FEEL LIKE WE WILL BE MICRO

MANAGING WITH OUR SCHOOL DISTRICT. WE

TRUST OUR STAFF TO DO THE JOBS THAT THEY

THINK IS IN THE BEST INTEREST OF OUR

CHILDREN. I GET THAT. BUT IT'S YOUR DUTY AS

SCHOOL BOARD TO MAKE SURE TO STEP IN WHEN

THINGS ARE NOT BEING HANDLED THE PROPER

WAY.

I ASK YOU TO THINK ABOUT WHAT A PARENT IS. I

ASK YOU TO THINK ABOUT IF THIS IS YOUR CHILD.

HOW WOULD YOU FEEL. AND WHEN YOU MAKE

THAT DECISION I HOPE THAT YOU WILL SEE THAT

IN OUR FAVOR.

CONSENT AGENDA:

MINUTES: JULY 23, 2019 (REGULAR MEETING) AND

JULY 30, 2019 (BUDGET WORK SESSION)

CONTRACT EXTENSION: CITY YEAR COLUMBIA

MENTORING PROGRAM

CONTRACT EXTENSION: CERTIFIED BUILDING

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INSPECTION FOR ASBESTOS AND LEAD

MANAGEMENT

CONTRACT EXTENSION: ULTRA LOW SULFUR

DIESEL FUEL FOR DISTRICT WIDE BUS FLEET

CONTRACT EXTENSION: PURCHASE OF FRESH

PRODUCE

CONTRACT EXTENSION: MULTI-FUNCTIONAL

COPIER EQUIPMENT AND SERVICES (LEASE)

CONTRACT EXTENSION: LIBRARY MEDIA MANAGE-

MENT SOFTWARE

CONTRACT EXTENSION: GRADE LEVEL BENCH-

MARK ASSESSMENT

CONTRACT EXTENSION: LEXIA LEARNING

SYSTEMS, LLC

CONTRACT EXTENSION: EDUCATIONAL SUPPLIES

AND MATERIALS

APPROVAL FOR CITY OF COLUMBIA POLICE TO

PROVIDE SCHOOL RESOURCE OFFICERS (SROS)

CHAIRMAN DEVINE READ ALL CONTRACTS FOR

THE RECORD.

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MOTION:

COMMISSIONER BISHOP MOVED FOR APPROVAL
AND WAS SECONDED BY COMMISSIONER HARRIS.

DISCUSSION:

COMMISSIONER KING REFERENCED CONTRACT
EXTENSION: EDUCATIONAL SUPPLIES AND
MATERIALS. SHE ASKED HOW DOES THIS WORK
WITH THE \$250 FOR TEACHER SUPPLIES? DOES
EACH SCHOOL HAVE A BUDGET FOR THAT?
WE USED TO HAVE WAREHOUSES SUPPLIES
BEFORE AND WE GOT AWAY FROM THAT.
MS. OUTING RESPONDED THE \$250, THE TEACHERS
HAVE THE OPTION TO USE IT IN THEIR OWN NEEDS
TO SUPPLY THEIR CLASSROOM. THIS PARTICULAR
CONTRACT SERVICES THROUGHOUT THE SCHOOL
DISTRICT THROUGHOUT THE YEAR. SO THESE
VENDORS ARE AVAILABLE AND HAVE BEEN
PREAPPROVED TO BE USED AS NEEDED FOR
MULTIPLE SERVICES OR FOR MULTIPLE NEEDS FOR
CLASSROOM MATERIALS, ARTS AND SUPPLIES
THROUGHOUT THE YEAR. SO THE TEACHERS THAT
RECEIVES THE STIPEND, THE \$250, THEY HAVE THE
OPTION OF USING THAT IN OUR WAREHOUSE.

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STOCKED SUPPLIES, AS WELL AS USING IT
EXTERNALLY TO OTHER VENDORS THROUGHOUT
THE COMMUNITY. BUT THESE ARE NORMALLY
THROUGH OUR PURCHASE ORDER AND/OR OUR
ORP CARDS.

COMMISSIONER KING ASKED IS THIS A PART OF A
PARTICULAR DEPARTMENT'S BUDGET, AND IS
THERE A CAP ON THAT?

MR. CARLON RESPONDED THIS IS FOR ANYBODY
TO USE THAT HAS A SUPPLY BUDGET. WHETHER IT
IS FOR A SCHOOL OR DEPARTMENT, THEY CAN USE
THESE VENDORS. THEY MAY SPEND \$10. THEY
MAY SPEND \$1,000, \$5,000. WHATEVER THEIR
BUDGET ALLOWS, THEY CAN USE IT FROM THEIR
BUDGET. THEY CAN USE FROM TEACHER SUPPLIES
TOOLS. THEY CAN USE FROM SPECIAL REVENUE.
WHERE EVER THERE IS MONEY THAT NEEDS TO
PURCHASE THESE TYPES OF SUPPLIES. THEY CAN
USE THESE VENDORS.

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COMMISSIONER ANDERSON ASKED TO EXTRACT

6.02: CONTRACT EXTENSION: CITY YEAR

MENTORING PROGRAM AS A SEPARATE ITEM.

VOTE: IN FAVOR: UNANIMOUS (7-0)

CONTRACT EXTENSION: CITY YEAR COLUMBIA

MENTORING PROGRAM

MS. OUTING STATED THE ADMINISTRATION IS

REQUESTING APPROVAL TO EXTEND THE

CONTRACT TO CITY YEAR COLUMBIA MENTORING

PROGRAM FOR THE SCHOOL OF J.P. THOMAS

ELEMENTARY.

THE ADMINISTRATION SO RECOMMENDS.

MOTION:

COMMISSIONER BISHOP MOVED FOR APPROVAL

AND WAS SECONDED BY COMMISSIONER BLACK.

VOTE: IN FAVOR: UNANIMOUS (6-0)

COMMISSIONER HARRIS ABSTAIN.

CHAIRMAN DEVINE RECOGNIZED CITY YEAR

STAFF AND CORE MEMBERS.

OFFICE OF BOARD:

BOARD REPORT

BOARD:

CHAIRMAN DEVINE PRESENTED CERTIFICATE OF

ACHIEVEMENT FROM THE SOUTH CAROLINA

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SCHOOL BOARD'S ASSOCIATION TO
COMMISSIONER DARRELL BLACK FOR REACHING
LEVEL 4 AND TO COMMISSIONER YOLANDA
ANDERSON FOR REACHING LEVEL 2 ON THE
BOARDMANSHIP INSTITUTE TRAINING PROGRAM
AS A SCHOOL BOARD MEMBER IN RICHLAND
COUNTY SCHOOL DISTRICT ONE.

CHAIRMAN DEVINE ACKNOWLEDGED RECEIPT OF
A LETTER, POTENTIAL COMPLAINT BY MR. SMITH.
HE STATED THAT LETTER HAS BEEN RECEIVED BY
THE BOARD. THE BOARD HAS RESPONDED AND HE
WILL GET SOMETHING IN WRITING FROM THE
BOARD TOMORROW.

COMMISSIONER KING ASKED FOR ATTORNEY
WILLIAMS TO ADDRESS POLICY KE, WHICH
ADDRESSES PUBLIC COMPLAINTS TO THE BOARD.
SHE SAID IT STATES AS SOON AS THE BOARD
RECEIVES THE COMPLAINT THAT THE BOARD HAS
TO DISPOSE OF THE COMPLAINT AT THE NEXT
BOARD MEETING.

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SHE ASKED WHAT IS THE DEFINITION OF DISPOSING OF THE COMPLAINT? DOES THAT TRANSLATE INTO A VOTE?

ATTORNEY WILLIAMS STATED THE POLICY READS THAT THE BOARD AT ITS NEXT REGULAR MEETING OR AT A SPECIAL MEETING WILL CONSIDER THE COMPLAINT AND DISPOSE OF THE MATTER ACCORDING TO ITS BEST JUDGMENT.

COMMISSIONER KING ASKED REGARDING THE DISPOSAL OF THE COMPLAINT, HOW DO WE DO THAT? IS THERE A VOTE? IS THERE A MOTION? IS IT A DISCUSSION WHERE WE END UP WITH A VOTE FOR A RESOLUTION?

ATTORNEY WILLIAMS RESPONDED THAT THERE WAS A DISCUSSION DURING EXECUTIVE SESSION.

COMMISSIONER KING STATED THERE WAS A DISCUSSION. BUT THEN THERE NEEDS TO BE AN ACTION TAKEN. SHE ASKED IS THE ONLY WAY WE CAN TAKE AN ACTION IS BY A VOTE BY THE BOARD; IS THAT RIGHT?

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ATTORNEY WILLIAMS RESPONDED SAYING I CAN'T SAY THAT IS CORRECT. THERE WAS A DISCUSSION PREVIOUSLY.

CHAIRMAN DEVINE STATED THERE WAS A DISCUSSION. AND THE BEST JUDGMENT OF THE BOARD IS TO SEND A LETTER TO RESPOND TO THIS COMPLAINT. SO WE ARE GOING TO SEND A LETTER OUT TOMORROW. ONCE IT GETS ON LETTERHEAD, BASED OFF THE DISCUSSION WE HAD IN EXECUTIVE SESSION.

COMMISSIONER KING STATED I DISAGREE WITH THE LETTER. WE CAN'T VOTE IN EXECUTIVE SESSION. I HAVE ON THAT TOPIC A DIFFERENT RESOLUTION FOR THE BEST INTEREST OF STUDENTS. THERE HAS BEEN A DISCUSSION. BUT THERE NEEDS TO BE AN ACTION TAKEN. IF THERE IS A LETTER, IT HAS TO BE SIGNED BY YOU, MR. DEVINE, BUT I DISAGREE WITH THE LETTER. THERE HAS TO BE A VOTE AT SOME POINT. THERE NEEDS TO BE A MOTION.

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CHAIRMAN DEVINE STATED THERE DOESN'T HAVE TO BE A MOTION. DOESN'T HAVE TO BE A VOTE. DISPOSE OF THE MATTER ACCORDING TO ITS BEST JUDGMENT. OUR BEST JUDGMENT IS TO RESPOND TO MR. SMITH IN WRITING.

COMMISSIONER KING STATED FOR THE RECORD WHAT IS STATED IN THE LETTER IS NOT MY POSITION. I DO BELIEVE THAT THE SCHOOL DISTRICT IN THE MATTER OF SHIFTING OF THE ESOL PROGRAM SERVICES DID MAKE A GOOD MOVE, WHICH I SUPPORTED BY VOTE. BUT I DO BELIEVE THAT THE TRANSITION INTO THIS MOVE IS RESULTING IN SOME FAMILIES BEING SOMEWHAT HURT, BECAUSE OF THE DATES AND THE TIMELINE OF THIS DECISION WHERE THE TRANSFER WINDOW ACTUALLY WAS IMPOSED ON THEM BEFORE THEY KNEW THAT THEY WOULD BE IMPACTED BY DIRECTION.

MY POSITION ON THIS PARTICULAR TOPIC WOULD BE TO REOPEN A TRANSFER WINDOW FOR SPECIFICALLY THE ESOL FAMILIES TO DECIDE

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WHETHER THEY CAN REQUEST A SPECIAL TRANSFER, SO THAT THEY ALL KNOW THAT'S A POSSIBILITY.

COMMISSIONER BLACK STATED HE HAD AN OPPORTUNITY OVER THE LAST WEEK OR SO TO EXPERIENCE TWO GREAT EVENTS: ONE AT BIBLE WAY CHURCH ON ATLAS ROAD, WHICH WAS AN OUTSTANDING EVENT.

HE EXPRESSED GRATITUDE TO PASTOR JACKSON AND ANTWOINE JACKSON FOR CONTINUING TO SUPPORT OUR TEACHERS AS WE GO BACK TO A NEW SCHOOL YEAR.

HE STATED FOOD NUTRITIONAL SERVICES WAS ANOTHER GREAT EVENT.

COMMISSIONER HARRIS STATED SHE ATTENDED SEVERAL EVENTS, ALONG WITH EDUCATIONAL RECEPTION WHICH BROUGHT EDUCATORS FROM ACROSS THE STATE OF SOUTH CAROLINA. BIBLEWAY DOES SO MUCH FOR THE COMMUNITY AND STUDENTS AT LARGE.

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SHE NOTED SHE WAS AT ZION MILLCREEK CHURCH. WITH DR. WENDELL SUMTER. THE WEBBER ALUMNI FOUNDATION PARTNERED WITH THE LOWER RICHLAND ALUMNI FOUNDATION ALONG WITH A FORMER MEMBER OF THE HOUSE OF REPRESENTATIVES, MS. LEVOLA TAYLOR. WHICH THEY DID A BACK TO SCHOOL BASH.

SHE NOTED WHAT PARKS AND RECREATION HAS DONE ACROSS THE COUNTY AND ALSO FRIENDSHIP BAPTIST CHURCH. UNDER THE DIRECTION OF PASTOR CURETON.

SHE STATED AT THE EVENTS THE STUDENTS HAVE SAID THEY ARE READY TO COME BACK TO SCHOOL.

WHAT THE RICHLAND ONE COMMUNITY IS DOING IS NOT GOING UNNOTED BY THIS DISTRICT. IT IS GREATLY APPRECIATED.

SHE MADE A SPECIAL NOTE OF A MR. OWENS WHO REACHED OUT ON FACEBOOK ASKING TEACHERS WHO NEEDED SCHOOL SUPPLIES TO JUST GIVE THEIR NAMES TO HIM. SHE SAID SHE SEEN

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PICTURES OF HIM MAKING TRUCK LOADS OF DELIVERIES OF SCHOOL SUPPLIES TO OUR TEACHERS FOR THEIR CLASSROOMS.

COMMISSIONER BISHOP COMMENDED CHAIRMAN DEVINE AND DR. WITHERSPOON FOR THEIR LEADERSHIP AND COMMITMENT.

HE NOTED THE UNIVERSITY OF SOUTH CAROLINA TRIO PROGRAM, BY WAY OF UPWARD BOUND, DOES TREMENDOUS WORK WITH OUR STUDENTS.

CHAIRMAN DEVINE EXPRESSED GRATITUDE TO THE RICHLAND ONE DISTRICT COMMUNITY FOR THE BACK TO SCHOOL BASHES.

CHAIRMAN DEVINE CHALLENGED THE BOARD TO ATTEND AS MANY SCHOOLS AS THEY CAN ON THE FIRST DAY OF SCHOOL.

COMMISSIONER HARRIS CHALLENGED SCHOOL BOARD MEMBERS TO RIDE THE BUS TO SCHOOL AND CHALLENGED COMMISSIONER BISHOP TO RIDE HIS BICYCLE TO SCHOOL.

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APPOINTMENT/REAPPOINTMENTS HALL OF FAME
NOMINATION/SELECTION COMMITTEE AND
ADVISORY BOARD

MS. YORK STATED THE BOARD APPOINTS TWO COMMITTEES TO CARRY OUT THE WORK RELATED TO HALL OF FAME NOMINATIONS AND SELECTION PROCESS AND ULTIMATE RECOMMENDATION TO THE BOARD FOR ITS FINAL APPROVAL EVERY YEAR. OUR HALL OF FAME PERIOD CLOSED ON AUGUST 1ST. WE LOOK FORWARD TO THE NOMINATION COMMITTEE TO BRING A RECOMMENDATION TO THE BOARD.

WE HAVE COMMITTEE MEMBERS WHOSE TWO YEAR TERMS HAS EXPIRED. THE MATTER BEFORE THE BOARD AT THIS TIME IS TO APPOINT NEW MEMBERS TO SERVE IN THEIR PLACES OR TO REAPPOINT THOSE MEMBERS. INFORMATION HAS BEEN SHARED WITH THE BOARD REGARDING THOSE APPOINTMENTS FOR REAPPOINTMENT.

MOTION:

COMMISSIONER BISHOP MOVED FOR REAPPOINTMENT OF THE TWO MEMBERS WHOSE TWO YEAR

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TERM HAS EXPIRED TO THE HALL OF FAME
NOMINATION AND SELECTION COMMITTEE AND
ADVISORY BOARD AND WAS SECONDED BY
COMMISSIONER HARRIS.

VOTE: IN FAVOR: UNANIMOUS (6-0)

COMMISSIONER ANDERSON ABSTAIN.

OFFICE OF THE
SUPERINTENDENT:

LEGAL STATUS REPORT

ATTORNEY WILLIAMS STATED INFORMATION WAS
PRESENTED DURING EXECUTIVE SESSION ON THE
STATUS OF LEGAL MATTERS IN THE DISTRICT.
THIS IS AN INFORMATION ITEM.

IF YOU APPROVE ADDITIONAL ITEMS ON THE
AGENDA, WE WILL HAVE DOCUMENTS FOR YOU TO
SIGN TONIGHT.

SUPERINTENDENT'S REPORT

DR. WITHERSPOON STATED THE SUMMER BREAK IS
COMING TO AN END FOR RICHLAND ONE
STUDENTS AND STAFF, AND WE ARE LOOKING
FORWARD TO THE START OF THE 2019-2020 SCHOOL
YEAR. OUR TEACHERS WILL RETURN TO WORK
TOMORROW (AUGUST 14) TO GET READY TO

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WELCOME OUR 24,000 STUDENTS BACK TO SCHOOL
ON WEDNESDAY, AUGUST 21.

- I'M SURE THAT OUR PARENTS ARE ALSO
EXCITED ABOUT THE START OF THE NEW
SCHOOL YEAR. WE ARE RUNNING A **START
STRONG** BACK-TO-SCHOOL SOCIAL MEDIA
CAMPAIGN THAT OFFERS TIPS FOR
STUDENTS AND PARENTS ON GETTING A
HEAD START ON A GREAT SCHOOL YEAR.
PLEASE CHECK OUT THE **#RISTARTSTRONG**
TIPS ON FACEBOOK AND TWITTER, AS WELL
AS AT RICHLANDONE.ORG.
- OUR PARENTS WILL RECEIVE A COPY OF
THE FALL 2019 EDITION OF OUR SPOTLIGHT
ONE PUBLICATION WHICH INCLUDES OUR
2019-2020 CALENDAR, KEY DATES,
INFORMATION ABOUT OUR NEW STRATEGIC
PLAN, POINTS OF PRIDE AND MORE.
SPOTLIGHT ONE IS ALSO POSTED ON OUR
WEBSITE.

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- WE ALSO WANT TO REMIND PARENTS THAT, IF YOU HAVE NOT DONE SO ALREADY, PLEASE LOG INTO THE POWERSCHOOL PARENT PORTAL AND COMPLETE THE RETURNING STUDENT ENROLLMENT VERIFICATION FORM IN INFOSNAP. COMPLETING THE FORM IS IMPORTANT FOR BUS TRANSPORTATION ASSIGNMENTS AND FOR ENSURING THAT WE HAVE UP-TO-DATE EMERGENCY CONTACT INFORMATION.
- ATTENDANCE MATTERS AND GOOD SCHOOL ATTENDANCE HABITS START WITH THE FIRST DAY OF SCHOOL. AGAIN THIS YEAR, WE ARE ENLISTING PARENTS' SUPPORT IN ENSURING THAT ALL OF OUR STUDENTS ARE AT SCHOOL AND ON TIME FOR SCHOOL ON THE FIRST DAY OF SCHOOL AND EVERY OTHER DAY OF THE SCHOOL YEAR.

OUR COACHES, ATHLETICS COORDINATORS AND ATHLETICS DIRECTORS ALSO ARE GEARING UP FOR THE NEW SCHOOL YEAR. THEY WILL GATHER

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
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 STEVENSON ADMINISTRATION BUILDING
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FOR OUR ANNUAL COACHES CONVOCATION ON FRIDAY (AUGUST 16) AT C.A. JOHNSON HIGH SCHOOL. WHERE THEY WILL ENGAGE IN PROFESSIONAL LEARNING ACTIVITIES DESIGNED TO INCREASE THEIR KNOWLEDGE AND SKILLS. THE KEYNOTE SPEAKER WILL BE MR. VINCE FORD, SENIOR VICE PRESIDENT FOR COMMUNITY HEALTH WITH PRISMA HEALTH AND A FORMER RICHLAND ONE BOARD MEMBER. ALSO DURING THE CONVOCATION, THE MIDDLE SCHOOL AND HIGH SCHOOL COACHES OF THE YEAR WILL BE ANNOUNCED. CONGRATULATIONS TO ALL OF THE COACH OF THE YEAR NOMINEES, AND THANK YOU TO ALL OF OUR ATHLETICS STAFF FOR THEIR WORK WITH OUR STUDENTS.

ON SATURDAY (AUGUST 17), WE WILL KICK OFF THE 2019 HIGH SCHOOL FOOTBALL SEASON WITH OUR ANNUAL SPORTSARMA FOOTBALL JAMBOREE AT MEMORIAL STADIUM. THE FESTIVITIES WILL BEGIN WITH THE PRE-GAME SHOW AT 5:45 P.M. THE FIRST OF FOUR GAMES WILL KICK OFF AT 6

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P.M. TICKETS ARE \$5 AND THEY WILL BE SOLD AT THE GATE. WE ENCOURAGE EVERYONE TO COME OUT AND JOIN US IN CHEERING ON OUR TEAMS.

THERE HAVE BEEN NUMEROUS BACK TO SCHOOL RALLIES THAT HAVE BEEN GOING ON IN OUR COMMUNITIES THAT PROVIDED INFORMATION AND SUPPLIES AND INFORMATION FOR OUR STUDENTS. FOR OUR PARENTS. WE HAD OUR STAFF MEMBERS THERE. IT SPEAKS VOLUMES TO WHAT WE DO AS A COMMUNITY IN TERMS OF SUPPORTING OUR PARENTS AND OUR FAMILIES AND OUR SCHOOLS.

I AM LOOKING FORWARD TO HAVING OUR TEACHERS BACK. WE HAVE BEEN HAVING OUR VARIOUS STAFF BACK IN THROUGHOUT THE WEEK AND DOING THEIR PROFESSIONAL TRAINING AND SO FORTH.

IT WAS A GRAND TIME WITH STUDENT NUTRITION. OUR TEACHERS RETURNING WILL SEE THEM. STUDENT SERVICES WILL BE HAVING THEIR BACK TO SCHOOL TRAINING AND JUST GETTING GEARED

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UP FOR THE NEW SCHOOL YEAR. WE APPRECIATE THE WORK IN ADVANCE THAT IS BEING DONE.

WE KNOW THAT SOME OF OUR SCHOOLS HAVE HAD THEIR OWN ADMINISTRATIVE RETREATS AND VARIOUS MEETINGS IN THEIR RESPECTIVE SITES ACROSS THE DISTRICTS. THESE AND SOME OTHERS ARE GEARING UP AND TAKING ADVANTAGE OF INFORMATION THAT WE SHARED AT OUR DISTRICT LEADERSHIP RETREAT/MEETING. BACK-TO-SCHOOL LEADERSHIP CONFERENCE. AND THEY HAVE BEEN SHARING THAT INFORMATION WITH THEIR INSTRUCTIONAL LEADERSHIP TEAMS AND WITH THEIR ADMINISTRATIVE TEAMS. ALL ARE GEARING UP FOR WHAT WE ANTICIPATE BEING ANOTHER STRONG YEAR FOR RICHLAND ONE.

MR. PERKINS STATED THE BOLDEN PROJECT IS DOING VERY WELL. THE TURF HAS BEEN INSTALLED. THE SCORE BOARD LIGHTS ARE IN PLACE. CANTEEN AND RESTROOMS ARE 85 PERCENT COMPLETE. CURRENTLY 80 PERCENT

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COMPLETE ON THE TICKET BOOTH. WE HAVE
MOVED VERY WELL WITH THE PRESS BOX. WE
ARE STARTING TO PUT THE SCANNER ON. WE
ANTICIPATE OPENING IN SEPTEMBER.

DREHER PROJECT IS ALSO MOVING VERY WELL.
THE SUBSURFACE WORK AND TRANE SYSTEMS
UNDERNEATH THE TENNIS COURT AREA IS
COMPLETE. THE PARKING SPACES HAS BEEN
PAVED. THE BUS LOOP HAS BEEN PAVED. WE JUST
PUT THE FIRST COAT FOR THE BUS LOOP AND
THEN WE WILL FINISH THAT AFTER ALL THE
CONSTRUCTION HAS BEEN COMPLETED. WE WILL
SCHEDULE AN UPDATE.

DISCUSSION:

COMMISSIONER KING ASKED REGARDING THE
DREHER PROJECT, THE TENNIS COURT. HAVE ANY
OF THE TREES BEEN MOVED?

MR. PERKINS RESPONDED ALL THE TREES HAVE
BEEN TAKEN OUT.

COMMISSIONER KING ASKED IS THE TREES THAT
ARE THERE. ARE THEY GOING TO BE CLOSE TO THE
TENNIS COURT?

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MR. PERKINS RESPONDED THEY ARE NOT GOING TO BE TAKEN OUT AT THIS POINT, UNLESS THEY BECOME AN ISSUE.

COMMISSIONER KING STATED THE ISSUE WAS FORMALLY INDICATED. SHE ASKED IS THAT NOT GOING TO BE AN ISSUE?

MR. PERKINS RESPONDED AS TO THE ORIGINAL DESIGN, WE TOOK OUT ALL OF THE TREES.

COMMISSIONER KING STATED OVER THE YEARS THE TREES ARE GOING TO GROW. SHE ASKED ARE WE NOT GOING TO MOVE THEM UNTIL WE HAVE SOME ISSUES?

MR. PERKINS RESPONDED YES.

COMMISSIONER KING ASKED WHEN WILL THE TENNIS COURT BE FINISHED?

MR. PERKINS RESPONDED WE HAVE NOT SET A SPECIFIC DATE ON THE TENNIS COURT.

COMMISSIONER KING ASKED WASN'T THERE A TIMELINE WHEN THE TENNIS COURT WOULD BE FINISHED?

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MR. PERKINS RESPONDED OUR MAJOR CONCERN WAS GETTING THE BUSING BACK IN PLACE. WE ARE NOW WORKING ON THE TENNIS COURTS. WE ARE WORKING ON BOTH ENDS.

COMMISSIONER KING ASKED WHAT ABOUT THE (INAUDIBLE) TREES?

MR. PERKINS RESPONDED THE TREES THAT WERE REMOVED EARLY ON IN THE PROCESS WILL BE THIS YEAR. THE OTHER ONES TO PLANT, WE WILL DO THAT LATER, AFTER ALL THE CONSTRUCTION HAS BEEN COMPLETED.

DR. WITHERSPOON STATED THE TRIO PROGRAM THAT WE ARE APART OF, A NUMBER OF STUDENTS AND A NUMBER OF OUR HIGH SCHOOLS. THEY ARE GOING TO START TO DO 8.0 PROGRAMS WITH OUR MIDDLE SCHOOLS. WE ARE LOOKING AT IF WE CAN FIND SOME SYNERGY ALSO WITHIN OUR ADVID PROGRAM. BUT IT DOES SPEAK TO A NUMBER OF STUDENTS THAT HAVE NOW CAME THROUGH THAT. WITH THAT SUPPORT THAT THOSE PROGRAMS PROVIDE, IT SHOWS THAT OUR

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STUDENTS CAN GO ON AND DO VERY WELL IN TERMS OF COLLEGE ADMISSIONS. ALSO GRADUATION RATES. WE DO GET SOME OF THOSE SCHOLARSHIPS AND SO FORTH. THEY HAVE TO MAINTAIN CERTAIN GPAS, CERTAIN AMOUNT OF COMMUNITY SERVICE AND SOME OTHER ACTIVITIES WHILE THEY ARE IN COLLEGE. THEY ALSO PROVIDE OPPORTUNITIES FOR INTERNATIONAL TRAVEL. THE GROUP THIS SUMMER WENT TO THE NETHERLANDS AND OTHER PLACES IN THE PAST. WE ARE PROUD TO BE ASSOCIATED WITH THAT PROGRAM AND EVEN MORE PROUD OF OUR STUDENTS THAT COMES THROUGH THE PROGRAM.

COMMISSIONER SAULS REQUESTED THE BOARD BE PROVIDED AN UPDATED VERSION OF THE NOPROFITS WE HAVE IN THE COLUMBIA CLUSTER.

DR. WITHERSPOON RESPONDED WE WILL.

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SAFETY AND SECURITY

CHAIRMAN DEVINE STATED THIS WAS AN
INFORMATION ITEM PRESENTED BY MR. CARLON
AND MR. FRALEY DURING EXECUTIVE SESSION.
NO ADDITIONAL COMMENTS.

OFFICE OF

OPERATIONS:

CONTRACT: CLASSROOM FURNITURE

**CONTRACT: AFTER SCHOOL CHILD CARE
PROVIDERS**

**CONTRACT: PROFESSIONAL DEVELOPMENT
AND STAFF TRAINING FOR INSTRUCTIONAL
LEADERS AND CLASSROOM TEACHERS**

**CONTRACT: PROFESSIONAL ENGINEERING
SERVICES FOR HVAC RENOVATION AT THE
CENTRAL SERVICES FACILITIES BUILDING**

CHAIRMAN DEVINE READ FOR THE RECORD THE
LISTED CONTRACT.

MOTION:

COMMISSIONER HARRIS MOVED FOR APPROVAL
AND WAS SECONDED BY COMMISSIONER KING.

DISCUSSION:

COMMISSIONER KING STATED REGARDING THE
CONTRACT: PROFESSIONAL ENGINEERING
SERVICES FOR HVAC RENOVATION AT THE

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
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CENTRAL SERVICES FACILITIES BUILDING. IT SAYS
IN THERE IT IS FOR \$80,000, FOR THE DESIGN AND
REPLACEMENT. SHE ASKED DOES THAT INCLUDE
THE REPLACEMENT OF THE UNIT ITSELF?

MR. PERKINS RESPONDED IT IS FOR THE DESIGN
OF THE REPLACEMENT. IT IS A VERY LARGE
PROJECT. IT IS TO REPLACE THE (INAUDIBLE)
HANDLERS FOR THAT BUILDING. WE ARE FAILING
ON A REGULAR BASIS WITH THAT. WE HAVE BEEN
TRYING TO PUT THAT IN PLACE. THE LARGE
PORTION OF IT IS WE ARE PUTTING IN VARIOUS
CONTROLS THAT ARE NEEDED IN ORDER TO BE
EFFECTIVE. IT IS PROBABLY GOING TO BE CLOSE
TO ABOUT \$700-800,000 TO DO THE ACTUAL WORK.

COMMISSIONER BLACK ASKED IS THE COMPANY
THAT IS DOING THE DESIGN, IS THAT THE SAME
COMPANY THAT IS GOING TO DO THE
REPLACEMENT?

MR. PERKINS RESPONDED THEY WILL DO THE
DESIGN AND THEN WE WILL COME BACK WITH
THE PROJECT.

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COMMISSIONER KING ASKED WHERE CAN WE SEE
ON THE PROCUREMENT WEBSITE THE SCOPE OF
THE WORK THROUGH THOSE CONTRACTS AND
WHAT IS ACTUALLY BEING PROVIDED?

CHAIRMAN DEVINE STATED THE SCOPE OF WORK
IS ALSO IN THE CONTRACT THAT IS PRESENTED
BEFORE US, TOO.

MR. PERKINS RESPONDED THAT IS CONTRACTUAL
INFORMATION. WHAT THE VENDOR WILL CHARGE,
SERVICES, USUALLY SOMETHING THAT IS
PROPRIETARY.

COMMISSIONER KING ASKED IS THERE NO BID
FOR THAT?

MR. PERKINS RESPONDED THERE IS A BID.

COMMISSIONER KING ASKED IS THE SCOPE OF
WORK PROPRIETARY?

MR. PERKINS RESPONDED THE SCOPE OF WORK
WE CAN PROVIDE. IT'S NOT SOMETHING ON THE
WEBSITE. WHEN WE GO OUT AND REQUEST FOR
ARCHITECTS, ENGINEERS TO PROVIDE THEIR

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QUALIFICATIONS. WE GIVE THEM AN IDEA OF
WHAT WORK WE ARE LOOKING FOR.

VOTE: IN FAVOR: UNANIMOUS (7-0)

ELECTRICAL EASEMENT FOR RABBIT RUN

-DOT PENNY PROJECT

DEED TO WATER LINE FOR CAUGHMAN ROAD

DEED TO WATER LINES AT BOLDEN STADIUM

ELECTRICAL EASEMENT FOR DREHER HIGH

SCHOOL ATHLETIC UPGRADES

MOTION:

COMMISSIONER BLACK MOVED FOR APPROVAL
AND WAS SECONDED BY COMMISSIONER SAULS.

DISCUSSION:

COMMISSIONER HARRIS ASKED REGARDING THE
ELECTRICAL EASEMENT FOR RABBIT RUN, IS THAT
THE BACK SIDE OF THE STADIUM AREA THAT
THEY ARE LOOKING AT?

MR. PERKINS RESPONDED NO. THIS IS THE SIDE
BY THE PARKING LOT BETWEEN THE SCHOOL AND
THE FIELD ON THE LOWER RICHLAND BOULEVARD
SIDE.

COMMISSIONER HARRIS STATED THEN IT'S NOT
RABBIT RUN. IT IS LOWER RICHLAND BOULEVARD.

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MR. PERKINS RESPONDED I BELIEVE THAT'S
WHAT IT IS. THAT AREA GOES UP TOWARDS
RABBIT RUN.

COMMISSIONER HARRIS REQUESTED FOLLOW-UP
CLARIFICATION AS TO LOWER RICHLAND
BOULEVARD VERSUS RABBIT RUN.

CHAIRMAN DEVINE REQUESTED INFORMATION
ON THE DIGITAL DRAWINGS OF THE PROPOSED
DEED.

MR. PERKINS RESPONDED I WILL GET THAT FOR
YOU.

VOTE: IN FAVOR: UNANIMOUS (7-0)

INCREASE FOR LED SPORTS LIGHTING AT THE
NEW DREHER FIELD AND TENNIS COURTS

MS. OUTING STATED THE ADMINISTRATION IS
PRESENTING THIS INFORMATION AS INFORMATION
ONLY.

OFFICE OF

HUMAN RESOURCES:

PERSONNEL/HR UPDATES

DR. LONG STATED THE HR/PERSONAL UPDATES
WERE PROVIDED DURING EXECUTIVE SESSION AS
INFORMATION ITEM.

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ADMINISTRATIVE APPOINTMENT

DR. LONG STATED THE ADMINISTRATION
RECOMMENDS THE APPOINTMENT OF ROCHELL
BENNETT TO THE POSITION OF ASSISTANT
ADMINISTRATOR AT MEADOWFIELD ELEMENTARY
SCHOOL FOR THE 2019-2020 ACADEMIC YEAR.

THE ADMINISTRATION SO RECOMMENDS.

MOTION:

COMMISSIONER HARRIS MOVED FOR APPROVAL
AND WAS SECONDED BY COMMISSIONER SAULS.

VOTE: IN FAVOR: UNANIMOUS (7-0)

ADMINISTRATIVE APPOINTMENT

DR. LONG STATED THE ADMINISTRATION
RECOMMENDS THE APPOINTMENT OF ELIZABETH
SMITH TO THE POSITION OF ASSISTANT
ADMINISTRATOR AT SANDEL ELEMENTARY
SCHOOL FOR THE 2019-2020 ACADEMIC YEAR.

THE ADMINISTRATION SO RECOMMENDS.

MOTION:

COMMISSIONER HARRIS MOVED FOR APPROVAL
AND WAS SECONDED BY COMMISSIONER SAULS.

VOTE: IN FAVOR: UNANIMOUS (7-0)

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ADMINISTRATIVE APPOINTMENT

DR. LONG STATED THE ADMINISTRATION RECOMMENDS THE APPOINTMENT OF MARY ANN TILLMAN TO THE POSITION OF ASSISTANT ADMINISTRATOR AT HORRELL HILL ELEMENTARY SCHOOL FOR THE 2019-2020 ACADEMIC YEAR.

THE ADMINISTRATION SO RECOMMENDS.

MOTION:

COMMISSIONER HARRIS MOVED FOR APPROVAL AND WAS SECONDED BY COMMISSIONER BLACK.

VOTE: IN FAVOR: UNANIMOUS (7-0)

LEAVE OF ABSENCE

DR. LONG STATED THE ADMINISTRATION RECOMMENDS THE APPROVAL FOR THE LEAVE OF ABSENCE WITHOUT PAY FOR THE EMPLOYEE WITH THE INITIALS J.C. TO COMPLETE HER STUDENT TEACHING.

THE ADMINISTRATION SO RECOMMENDS.

MOTION:

COMMISSIONER BLACK MOVED FOR APPROVAL AND WAS SECONDED BY COMMISSIONER HARRIS.

VOTE: IN FAVOR: UNANIMOUS (7-0)

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RICHLAND SCHOOL DISTRICT ONE
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AUGUST 13, 2019

LEAVE OF ABSENCE

DR. LONG STATED THE ADMINISTRATION RECOMMENDS THE APPROVAL FOR THE LEAVE OF ABSENCE WITHOUT PAY FOR THE EMPLOYEE WITH INITIALS S.M. FOR MEDICAL.

THE ADMINISTRATION SO RECOMMENDS.

MOTION:

COMMISSIONER HARRIS MOVED FOR APPROVAL AND WAS SECONDED BY COMMISSIONER SAULS.

VOTE: IN FAVOR: UNANIMOUS (7-0)

HIRING OF PERSONNEL

DR. LONG STATED THE ADMINISTRATION RECOMMENDS THE HIRING OF ALL THE TEACHERS ON THE LIST FOR THE 2019-2020 ACADEMIC YEAR. THERE ARE 15 TEACHERS INCLUDED.

THE ADMINISTRATION SO RECOMMENDS.

MOTION:

COMMISSIONER BLACK MOVED FOR APPROVAL AND WAS SECONDED BY COMMISSIONER SAULS.

VOTE: IN FAVOR: UNANIMOUS (7-0)

CHAIRMAN DEVINE ASKED WHAT IS THE APPROXIMATE VACANCY NUMBER FOR TEACHERS.

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
RICHLAND SCHOOL DISTRICT ONE
STEVENSON ADMINISTRATION BUILDING
AUGUST 13, 2019

DR. LONG RESPONDED AFTER THIS VOTE WE ARE
NOW DOWN TO ABOUT 38.5.

CHAIRMAN DEVINE STATED WE ARE LOOKING
FORWARD TO A GREAT SCHOOL YEAR AND GREAT
THINGS.

DR. WITHERSPOON ANNOUNCED THAT TICKETS
FOR SPORTSARAMA IS \$6.00.

ADJOURNMENT:

CHAIRMAN DEVINE ADJOURNED THE MEETING
8:20 P.M.

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
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STEVENSON ADMINISTRATION BUILDING
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STENOGRAPHER

CHAIRMAN, BOARD OF SCHOOL
COMMISSIONERS

SECRETARY/TREASURER, BOARD OF
SCHOOL COMMISSIONERS

REGULAR MEETING OF THE BOARD OF SCHOOL COMMISSIONERS
RICHLAND SCHOOL DISTRICT ONE
STEVENSON ADMINISTRATION BUILDING
AUGUST 13, 2019

Exhibit C

Jamie Devine
Chairman

Aaron Bishop
Vice Chairman

Lila Anna Sauls
Secretary-Treasurer



RICHLAND ONE

ENGAGE • EDUCATE • EMPOWER

RICHLAND ONE BOARD OF SCHOOL COMMISSIONERS

Cheryl Harris
Parliamentarian

Beatrice King

Darrell Black

Yolanda Anderson

1616 Richland Street • Columbia, South Carolina 29201 • Office: (803) 231-7556 • Fax: (803) 231-7560

August 14, 2019

Mr. Cody Smith
1712 Crestwood Drive
Columbia, South Carolina 29205
CERTIFIED MAIL
7015 3430 0001 1727 3297

Dear Mr. Smith:

We are in receipt of your letter dated June 13, 2019 regarding a potential complaint. Please be aware we cannot share information regarding student transfer requests as it pertains to ESOL participants or their families which is protected by the Family Education Rights and Privacy Act.

In addition, you have met with Dr. Craig Witherspoon, the Superintendent, and Jamie Devine, Chairman and Lila Anna Sauls, Secretary/Treasurer for the Board. The answer to your question has remained and continues to be the same.

The matter is concluded at this time.

Sincerely,

Jamie Devine
Chairman

cc: Board of School Commissioners
Dr. Craig Witherspoon
Via regular mail

ELECTRONICALLY FILED - 2019 Sep 04 11:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931

Exhibit D

Policy BEC Executive Sessions/Open Meetings

Issued 4/17

Purpose: To establish the basic structure for conduct of executive sessions.

The board, by majority vote, may go into executive session for reasons provided for by law. Only upon request of the board may persons other than board members be present during executive sessions.

Before going into executive session, the board chairman will put the question of whether to meet in executive session to vote. If such vote is favorable, the chairman will then announce the **specific purpose** of the executive session, i.e., identify the matter(s) to be considered in executive session, which will be reflected in the minutes.

As permitted by law, executive session matters may involve the following:

- individual student or personnel actions
- individual staff personnel actions (unless the individual requests a public meeting)
- discussion of negotiations incident to proposed contractual arrangements
- acquisition or sale of property
- receipt of legal advice, including settlement of a claim
- security
- investigation of criminal misconduct

The board will not take any formal action in executive session. Formal action means a recorded vote committing the board to a specific course of action. The board will not take a vote, nor will it poll members in executive session. A vote may be taken on any action discussed in executive session only after the board returns to open session. However, no action may be taken on an item discussed in executive session unless the meeting's agenda provides sufficient notice to the public that action may be taken on the topics discussed therein.

Under the state's open meeting laws, board members and other persons attending the executive session are duty bound not to disclose matters discussed in executive session. Board members or any other persons attending will not use tape recorders or any other means of sonic or video reproduction to record executive sessions. Additionally, board members will refrain from electronic communications during executive sessions on personal or district-owned devices as communications regarding board matters are subject to disclosure.

A public body may hold a meeting closed to the public for one or more of the following reasons:

- Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, such employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item will prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.
- Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.
- Discussion regarding the development of security personnel or devices.
- Investigative proceedings regarding allegations of criminal misconduct.
- Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

Prior to going into executive session, the public agency will vote in public on the question, and when such vote is favorable the presiding officer will announce the specific purpose of the executive session. No formal action may be taken in executive session. As used in this item "formal action" means a recorded vote committing the body concerned to a specific course of action. No vote may be taken in executive session.

No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

This chapter does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

Cf. KDB

Adopted 5/9/00; Revised 4/25/17

BEC

Legal References:

S.C. Code, 1976, as amended:

Sections 30-4-70 and 30-4-90 - South Carolina Freedom of Information Act.

S.C. Cases:

Brock v. Town of Mount Pleasant, 415 S.C. 625, 785 S.E.2d 198 (2016).

Donohue v. City of North Augusta, 412 S.C. 526, 773 S.E.2d 140 (2015).

Richland County School District One

Exhibit E

Policy BEDD Rules Of Order

5/00

Purpose: To establish the basic structure for rules of order for the conduct of board meetings.

Parliamentary procedure

The latest edition of *Robert's Rules of Order* will govern all matters not covered by the rules of the board.

Addressing the board

No person, including members or employees of the board, will address the board without permission of the chair. Those persons will make such oral communications made only in the regular order of business, except by suspension of the rules.

Decorum

When a member speaks to any question, he/she will address him/herself to the chair, confine his/her remarks strictly to the point at issue, and refrain from discussing personalities.

Motions

No motion will be subject to debate until it has been announced by the chair. The mover will put the motion in writing at the request of any member. When a motion has been made and seconded, it may be withdrawn by the person making the motion at any time prior to taking the vote.

Point of order

No board member will be interrupted while speaking, except on a point of order. A member thus interrupted will cease to speak until the point is decided.

Limit on debate

The board may limit debate on any issue to such time as it may deem wise and expedient in the efficient conduct of its business. No member may speak twice on the same motion if other members are waiting to speak on the motion.

Suspension of the rules

Rules may be suspended at any meeting by majority vote of board members. The order of business may be suspended at any meeting by a majority vote of those present.

Adopted 5/9/00

Richland County School District One

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Nancy Miramonti,)

Plaintiff,)

vs.)

RICHLAND COUNTY SCHOOL)
DISTRICT ONE, a body politic and)
corporate; and the BOARD OF)
COMMISSIONERS OF RICHLAND)
COUNTY SCHOOL DISTRICT ONE,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2019-CP-40-

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint of Nancy Miramonti in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the attorney for Nancy Miramonti, Milling Law Firm, LLC, 2910 Devine Street, Columbia, SC 29205, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within said time, judgment by the default will be rendered against you for the relief demanded in the Complaint.

MILLING LAW FIRM, LLC

2910 Devine Street
Columbia, South Carolina 29205
(803) 451-7700

s/ Jonathan M. Milling
Jonathan M. Milling (SC Bar No. 15628)
Attorney for the Plaintiffs

September 4, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Nancy Miramonti,)
Plaintiff,)
vs.)
RICHLAND COUNTY SCHOOL)
DISTRICT ONE, a body politic and)
corporate; and the BOARD OF)
COMMISSIONERS OF RICHLAND)
COUNTY SCHOOL DISTRICT ONE,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2019-CP-40-

COMPLAINT
(Freedom of Information Act Suit for
Declaratory Judgment and Injunction)
(Non-Jury)

The Plaintiff, herein, complaining of the Defendants, would respectfully show unto this
Honorable Court:

PARTIES AND JURISDICTION

1. Plaintiff, Nancy Miramonti, is a citizen of South Carolina residing in Richland County within the geographical area designated for Richland County School District One.
2. Defendant Richland County School District One (hereinafter "**Richland One**") is a political subdivision of the state of South Carolina and is in charge of public education within the geographical zone of Richland County. Richland One's principal offices are in Columbia, South Carolina. Richland One is a "Public Body" under the South Carolina Freedom of Information Act (FOIA). S.C. Code Ann. §30-4-10.
3. Defendant the Board of Commissioners of Richland County School District One (hereinafter "**School Board**"), is the legally constituted governing body of Richland One and Richland One is under the control and management of School Board pursuant to S.C. Code Ann. §59-

19-10.

4. This action for declaratory judgment and injunction, is brought pursuant to, and under the authority on 15-53-10, et. seq., Code of Laws, known as the Uniform Declaratory Judgment Act, and 30-4-10 et. seq., Code of Laws of South Carolina, as amended, known as the Freedom of Information Act.
5. That this Court has jurisdiction over the parties to and subject matter of this action.

BACKGROUND

6. This action involves the School Board's departure from the statutory procedures for conducting open meetings as required by S.C. Code Ann. §§ 30-4-60 and 70.
7. Heretofore, on August 7, 2019, a Complaint Letter ("**Complaint Letter**") was registered to the School Board to address an unsatisfactory response from Richland One pertaining to the Richland One Transfer Request Policy. Specifically, the Complaint Letter requested that the School Board take action to instruct the District to revise the Transfer Request Policy to allow ESOL students impacted by the District's expansion of the ESOL Program to request transfers. A copy of the email and Complaint Letter is attached hereto as "**Exhibit A**" and incorporated herein by reference.
8. The Complaint Letter was registered per District Policy KE Public Concerns and Complaints a copy of which is attached hereto as "**Exhibit B**".
9. Per Policy KE Public Concerns and Complaints, the School Board "at its next regular meeting or at a special meeting, will then consider the complaint and dispose of the matter according to its best judgment."
10. A copy of the 2019-2020 Board Meeting Schedule is attached hereto as "**Exhibit C**".
11. The next regular School Board Meeting was August 13, 2019 and the School Board did not

specifically include the Complaint Letter or subject thereof on the School Board Meeting Agenda. A copy of the August 13, 2019 Agenda is attached hereto as "**Exhibit D**".

12. During Agenda Item 7.01 (Board Report presented by Chairman Devine), Commissioner Jamie Devine referred to the Complaint Letter, stated that the Complaint Letter was discussed during the Executive Session that took place prior to the public session, and the Board would be responding to the Complaint Letter via a letter.
13. Subsequently, Commissioner Beatrice King raised concerns about the process and the decision to send a response letter without a discussion or vote.
14. The School Board mailed a response to the Complaint Letter that provides the School Board "cannot share information regarding student transfer requests as it pertains to ESOL participants or their families which is protected by the Family Education Rights and Privacy Act".
15. A copy of the School Board response letter is attached hereto as "**Exhibit E**".
16. The actions outlined heretofore are in violation of the Freedom of Information Act's mandate of open meetings.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment, S.C. Code Ann. 15-53-10, *et seq*)
Procedural Due Process
Violation of the S.C. Freedom of Information Act

17. Each and every relevant and consistent allegation contained in the foregoing paragraphs is incorporated herein as if fully repeated verbatim.
18. S.C. Code § 30-4-60 requires that every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70.
19. Neither discussion of the Complaint Letter nor discussion of whether to instruct the District

to revise the Transfer Request Policy are reasons a public body may hold a closed meeting pursuant to S.C. Code Ann. §30-4-70.

20. The Plaintiff is informed and believes that the court should issue its order declaring the actions of the School Board to be in violation of the FOIA and the Plaintiff is entitled to an Order of the Court enjoining further violations of the open meeting requirements and requiring the Richland One and the School Board to adhere to the lawful requirements for holding open meetings.
21. The Plaintiff is further informed and believes that this court should award a reasonable attorney fee as provided in the FOIA as the instant action was necessitated by Defendant's conduct.

FOR A SECOND CAUSE OF ACTION

Procedural Due Process

Violation of the S.C. Freedom of Information Act

22. Each and every relevant and consistent allegation contained in the foregoing paragraphs is incorporated herein as if fully repeated verbatim.
23. S.C. Code Ann. §§ 30-4-70(b) provides that no action may be taken in executive session except to adjourn or return to public session.
24. Despite the foregoing mandate, and the aforementioned requirement that the instant discussion be in open meeting, not executive session, the School Board discussed the Complaint Letter in executive session and took action in issuing the response letter based on those same discussions in executive session.
25. The Plaintiff is informed and believes that the court should issues its order declaring the actions of the School Board to be in violation of the FOIA and the Plaintiff is entitled to an Order of the Court requiring the Richland One and the School Board to adhere to the lawful

requirements for holding open meetings.

26. The Plaintiff is further informed and believes that this court should award a reasonable attorney fee as provided in the FOIA as the instant action was necessitated by Defendant's conduct.

WHEREFORE, having fully set forth its complaint, Plaintiff prays that this court issue its order declaring the action of the School Board to be in violation of the FOIA, to issue its order enjoining School Board from continuing to violate FOIA by holding open meetings to discuss all applicable topics, and taking no action in executive session; and for reasonable attorney fees, the cost of this action and such other relief as appropriate.

RESPECTFULLY SUBMITTED,

By: /s/ Jonathan M. Milling

Jonathan M. Milling (SC Bar 15628)

MILLING LAW FIRM, LLC

2910 Devine Street

Columbia, South Carolina 29205

(803) 451-7700

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
September 4, 2019

August 7, 2019

Via E-Mail

Commissioner Jamie L. Devine, **Chair**
Richland County School District One School Board
1616 Richland Street
Columbia, SC 29201

RE: **AC Moore Elementary School – ESOL Expansion**

Dear Commissioner Devine:

Please accept this letter as registering a complaint for an unsatisfactory response/answer from Richland County School District 1 (“Richland One” or the “District”) to concerns/questions surrounding the ESOL expansion and the ability for affected ESOL students and their siblings to request transfers. Per District Policy KE Public Concerns and Complaints, the School Board shall consider the complaint and dispose of the matter at the next regular meeting or at a special meeting.

The following are the facts on which the complaint is based:

- District is expanding the ESOL Program to provide ESOL services at additional schools throughout the District. As a result, ESOL students zoned for one of the new ESOL centers or a feeder of the new ESOL center, will have his/her enrollment changed to the new ESOL center for the 2019-2020 school year. <https://www.richlandone.org/Page/6164>.
- On Tuesday, June 11, 2019, I made comments at the District School Board Meeting asking the District to consider allowing affected ESOL students to apply for transfers to be allowed to remain at schools they attended in the 2018-2019 school year. The matter was referred to the District.
- I receive the attached June 13, 2019 Letter in response, which simply explains why the ESOL Program is expanding and fails to provide any further information regarding the potential for affected ESOL students to seek transfers. See Attachment 1.
- Subsequently, on Tuesday, July 9, 2019, I met with Dr. Witherspoon to discuss the issue. At the meeting I was simply informed that the District works “directly with individual parents regarding transfers or any other individual matters.” Dr. Witherspoon referred me to the District Transfer policy published on the District website. See Attachment 2 – email correspondence with Dr. Witherspoon.
- Per District Transfer policy, “ONLY SEVERE HARDSHIP APPLICATIONS WILL BE ACCEPTED AND PROCESSED ***AFTER MAY 1ST*** FOR SCHOOLS WITH SPACE AVAILABILITY.” <https://www.richlandone.org/Page/3387> (emphasis added). In order to qualify for Severe Hardship: “Documentation will be used to prove a clear condition of danger or hazard for the student, family or both must be provided. Severe Hardship requests should be supported by statements from medical doctors, psychiatrists, psychologists, social workers, and/or school administrators who have knowledge of the concern.” <https://www.richlandone.org/Page/3387>.

- Of note, affected ESOL students were notified of the expansion and the enrollment change circa mid-May 2019.
- Accordingly, affected ESOL students and their siblings are unable to apply for transfers and were never able to seek such transfer based on the timing.

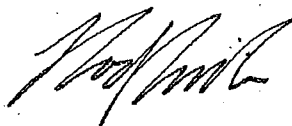
Based on the above, I respectfully request that the School Board take action to instruct the District to:

1. Create a one-time Transfer Option for affected ESOL students and their siblings, allowing Transfer applications to be submitted by such students and their siblings through September 21, 2019 to request approval to remain at the school they (or their sibling) attended in 2018-2019.
2. Such Transfer Applications shall be approved pursuant to Board Policy, (i.e. contingent on space, faculty, staff, and curriculum availability adequate to accommodate such transfer). See Policy JFABC Student Assignments And Transfers, attached here as Attachment 3.

Please note, the above request is within the Board's powers. (See SC Code § 59-19-90(9) (2013), which includes in the School Board's authority: "(9) *Transfer and assign pupils*. Transfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll."). See Attachment 4.

Thank you for your consideration of this matter.

Sincerely,



L. Cody Smith
SIC Chair, AC Moore

Cc: Dr. Craig Witherspoon, Superintendent (via email)
Commissioner Aaron Bishop (via email)
Commissioner Lila Anna Sauls (via email)
Commissioner Cheryl Harris, Parliamentarian (via email)
Commissioner Darrell Black (via email)
Commissioner Beatrice King (via email)
Commissioner Yolanda Anderson (via email)

Attachments:

- Attachment 1 – District June 13, 2019 Letter
- Attachment 2 – Email correspondence with Dr. Witherspoon
- Attachment 3 - Policy JFABC Student Assignments And Transfers
- Attachment 4 – SC Code § 59-19-90 (2013)

Attachment 1 – District June 13, 2019 Letter

ELECTRONICALLY FILED - 2019 Sep 04 1:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931



RICHLAND ONE

ENGAGE • EDUCATE • EMPOWER

Office of Teaching and Learning
Waverley Administrative Complex

Dr. Craig Witherspoon
Superintendent

Dr. Sandra C. Brossard
Chief of Teaching and Learning

June 13, 2019

Mr. Cody Smith
1712 Crestwood Drive
Columbia, SC 29205

Dear Mr. Smith:

At the June 11, 2019 meeting of the Richland County School District One Board of Commissioners meeting, you made comments regarding the district's plan to expand ESOL services to other sites. Please see responses to the comments listed below.

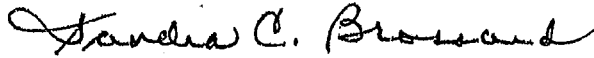
1. A request was made to allow transfers for ESOL families who wish to remain at A. C. Moore Elementary and to maintain ESOL services for those students. *We have expanded our ESOL program so students can be served at their home schools.*
2. A request was made to fully fund the arts and to maintain the art and music teachers at A. C. Moore. *The Arts Program will remain.*
3. Comments were expressed about the variances in diversity that will result at A. C. Moore as a result of some ESOL students being served in 2019-2020 at Meadowfield and South Kilbourne Elementary Schools. *The district acknowledges your appreciation for the diversity that is afforded by a larger population of ESOL students in your school. However, ensuring ESOL students are provided services and programs in the community school in which they reside is a high priority and a matter of equity and access.*

We appreciate the comments you expressed for ESOL students and families. *We are confident that non-ESOL students, parents, teachers, and administrators at South Kilbourne and Meadowfield will be equally kind and welcoming to the ESOL populations transitioning to their school. Moreover, we are certain they will appreciate the increased diversity that you and others have expressed as being such a benefit.*

Mr. Cody Smith
Page 2
June 13, 2019

Thank you for attending the June 11, 2019 Richland One Board of Commissioners meeting. We welcome your attendance and participation.

Sincerely,



Sandra C. Brossard, Ed.D.
Chief of Teaching and Learning

cc: Board of Commissioners

Attachment 2 – Email correspondence with Dr. Witherspoon

ELECTRONICALLY FILED - 2019 Sep 04 1:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931

Cody Smith

From: Witherspoon, Craig <craig.witherspoon@richlandone.org>
Sent: Wednesday, July 10, 2019 2:27 PM
To: Cody Smith
Cc: Devine, Jamie; Bishop, Aaron R; lilaanna.sauls@richlandone.org; Harris, Cheryl; Black, Darrell T; King, Beatrice; Anderson, Yolanda
Subject: Re: FOLLOW UP (Meeting) - AC MOORE SIC - ESOL Transfers

I answered your questions during our meeting as noted. We work directly with individual parents regarding transfers on any other individual matters, ESOL any otherwise.

All information regarding transfers on the district's website at www.richlandone.org: Click on departments, go to the registrar's office to view this information.

Thank you.

Craig Witherspoon

Sent from my iPad

On Jul 9, 2019, at 2:01 PM, Cody Smith <csmith@rogerslewis.com> wrote:

Dr. Witherspoon: Thank you again for your time this morning. Just to memorialize our meeting, my specific questions/concerns were as follows:

Are ESOL Students/Families affected by the ESOL expansion allowed to apply for Transfers to stay at their existing schools? If so, is there a deadline for submitting the transfer request?

And my understanding of your response/answer is:

The District meets directly with students and their families.

As I mentioned, I don't fully understand this response, but do appreciate your willingness to meet with me. If I misunderstood anything, please let me know. I have copied the School Board Commissioners just to make sure they are all know that we received your response. I've copied Dr. Cobb and Dr. Brossard as well as I submitted inquires to them on this issue earlier.

Regards,

L.Cody Smith, Esq.
 Member
 <image001.jpg>
 Direct: (803) 978-1447

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From: Cody Smith <csmith@rogerslewis.com>
Sent: Wednesday, June 19, 2019 11:10 AM
To: craig.witherspoon@richlandone.org
Cc: jamie.devine@richlandone.org
Subject: RE: FOLLOW UP (Meeting) - AC MOORE SIC - ESOL Transfers

Dr. Witherspoon/Commissioner Devine – Just following up here on scheduling our meeting as you offered at last week's Board Meeting. I have followed up with Ms. Williams several times but have yet to have anything scheduled. Hoping you can help facilitate getting a date and time set for our meeting.

Look forward to hearing from you.

Regards,

L.Cody Smith, Esq.
 Member
 <[image001.jpg](#)>
 Direct: (803) 978-1447

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From: Cody Smith <csmith@rogerslewis.com>
Sent: Friday, June 14, 2019 4:23 PM
To: craig.witherspoon@richlandone.org
Cc: jamie.devine@richlandone.org
Subject: RE: OFFICIAL REQUEST - AC MOORE SIC - ESOL Transfers

Dr. Witherspoon: Happy Friday to you. In revisiting this, I was seeking quick response as was under the impression that the School Bd did not meet in July. I've since learned there is a July 9 meeting. I'm also aware that the District continues to look at this policy and particularly the potential for considering Transfer requests from affected families/students.

As such, I remain confident this issue will be resolved satisfactorily and do not see the need to escalate this unnecessarily at this time with a formal complaint. I would still like to be updated on progress, and would love to have the meeting with you and Commissioner Devine as was offered. I spoke with your

assistant on Wednesday about such, but have not heard back. I know District is closed today, so hope to hear something early next week on this front.

Anyways, have a good weekend and I look forward to meeting with you next week and to having this issue resolved soon. Feel free to call me if you would like to discuss anything.

Regards,

L.Cody Smith, Esq.
Member
<Image001.jpg>
Direct: (803) 978-1447

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From: Cody Smith <csmith@rogerslewis.com>
Sent: Wednesday, June 12, 2019 2:23 PM
To: craig.witherspoon@richlandone.org
Cc: jamil.devine@richlandone.org; aaron.bishop@richlandone.org; lilaanna.sauls@richlandone.org; charris@richlandone.org; darrell.black@richlandone.org; bking@richlandone.org; yolanda.anderson@richlandone.org; Baker-Parnell, Luvenia C <luvenia.baker-parnell@richlandone.org>
Subject: RE: OFFICIAL REQUEST - AC MOORE SIC - ESOL Transfers

Dr. Witherspoon – Please see the attached letter regarding our official request for immediate response on decision regarding AC Moore's ability to grant Transfers to any ESOL Student (and their siblings) that attended AC Moore in the 2018-19 school year as was raised at last night's School Board Meeting.

I understand that you have been in and out of meetings today and generally unable to consider our requests from last night. I further understand that the District is still looking at how to implement the ESOL expansion. However, I feel that as SIC Chair, I cannot simply sit and wait for guidance here and need to push for immediate response. Currently, our families and our school have the understanding that any transfer request by the affected students will not be approved by the District as such was communicated by a District representative. Accordingly, our families and students are dealing with the stress of losing their preferred school and beginning to make preparations to attend new schools.

For the sake of our students and their families that are currently sitting in limbo, please provide clear guidance on what the policy will be for these students – specifically:

- (1) Will the District approve Transfer requests granted by AC Moore per the normal procedures for these students and their siblings?
- (2) Will the District agree that these students should qualify for transfers as Hardship or otherwise?

I humbly request a response by Friday midday. Unfortunately, we don't receive a satisfactory response as requested, given the late "hour" in the School Board calendar and that the next School

Board meeting is the last for a while, I will have to register a formal complaint with the School Board to have this matter addressed at their next meeting. I prefer to avoid taking any such action and trust you will make the correct and prompt decision that is in the best interests of these students.

Thanks in advance for your time and consideration.

Regards,

L.Cody Smith, Esq.
Member
<Image001.jpg>
Direct: (803) 978-1447

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Attachment 3 - Policy JFABC Student Assignments And Transfers

ELECTRONICALLY FILED - 2019 Sep 04 1:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931

Policy JFABC Student Assignments And Transfers

Issued 3/19

Purpose: To establish the basic structure for the assignment and transfer of students.

The policy of the board is to maintain school attendance zones for the purpose of assigning students to its schools. In all cases of exception to a regular zoned assignment, there must be space, faculty, staff, and curriculum availability adequate to accommodate such exceptions. The superintendent is authorized to investigate transfers including, but not limited to, investigation of all transfers in a single school.

Further, all students will attend the schools to which their residence is zoned, except in special circumstances or where school choice is permitted (see policy JFB). Annually, the superintendent or his/her designee will project the enrollment for each school for the upcoming school year. Based on these projections, the enrollment for the current school year and the capacity of each school (excluding portables), the superintendent or his/her designee will identify schools projected to be underutilized or over-utilized. The superintendent will develop administrative rules to determine space availability.

Once granted, student transfers are effective through the highest grade at the assigned school. All transfers of school assignments will require that written verification is on file to show that one or more of the following conditions exist.

Childcare

When requested, assignments may be made for kindergarten through grade eight students only. Such assignments require documentation to be presented for elementary students during the initial transfer year and updated by May 1st prior to the 3rd grade enrollment.

For middle school students, documentation must be presented during the initial transfer year and updated by May 1st prior to the eighth grade enrollment. The documentation should show that all adult family members of the students' household who are legally responsible for the student are engaged in full-time employment, are full-time student(s), or are disabled and incapable of caring for children. Such circumstances must make them unavailable to care for the student(s) immediately before and/or after school hours.

Administrative

Consideration may be given to legitimate requests due to severe hardship. Such requests must be authenticated by the recommendations of a licensed professional such as medical doctors, psychiatrists, psychologists, social workers, school administrators, etc.

The superintendent reserves the right to grant an administrative transfer for extenuating circumstances.

Special Program(s) of Study

Requests for program transfers for high school students that will serve the needs of the student and the district may be granted. The superintendent or his/her designee will publish a list of the specific programs of study available for this option on an annual basis.

Employee Option

Requests for out-of-attendance-zone assignments for children of full-time district employees may be granted. The superintendent will direct the criteria for granting transfers. All employee option transfers are subject to space availability.

Transportation

No out-of-attendance-zone student will be transported on any bus or public vehicle owned or controlled by the district, the exception being those students who have been given a school assignment which makes provision for such transportation.

Transfer Revocation

A student's transfer may be revoked for reasons including, but not limited to, repeated tardiness and/or other irregularities of attendance and repeated consequential violations of the discipline code. The district will set forth procedures for revocation appeals. The superintendent has the authority to determine a final date for transfer revocations on an annual basis.

Transition Students

Any student returning to the district as a result of the following reason(s) will be transitioned into their zoned schools per the recommendations of the director of student support services or his/her designee:

- a student returning from the department of juvenile justice/adult correctional institutions
- a student returning from the department of mental health

Attachment 4 – SC Code § 59-19-90 (2013)

ELECTRONICALLY FILED - 2019 Sep 04 1:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931

JUSTIA

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2013 South Carolina Code of Laws

Title 59 - Education

CHAPTER 19 - SCHOOL TRUSTEES

SECTION 59-19-90. General powers and duties of school trustees.

Universal Citation: SC Code § 59-19-90 (2013)

The board of trustees shall also:

- (1) Provide schoolhouses. Provide suitable schoolhouses in its district and make them comfortable, paying due regard to any schoolhouse already built or site procured, as well as to all other circumstances proper to be considered so as best to promote the educational interest of the districts;
- (2) Employ and discharge teachers. Employ teachers from those having certificates from the State Board of Education, fix their salaries and discharge them when good and sufficient reasons for so doing present themselves, subject to the supervision of the county board of education. In reaching a decision as to whether or not to employ any person qualified as a teacher, consideration may be given to the residence of such person but it shall not be the deciding factor or a bar to employing such person.
- (3) Promulgate rules and regulations. Promulgate rules prescribing scholastic standards of achievement and standards of conduct and behavior that must be met by all pupils as a condition to the right of such pupils to attend the public schools of such district. The rules shall take into account the necessity of proper conduct on the part of all pupils and the necessity for scholastic progress in order that the welfare of the greatest possible number of pupils shall be promoted notwithstanding that such rules may result in the ineligibility of

pupils who fail to observe the required standards, and require the suspension or permanent dismissal of such pupils;

(4) Call meetings of electors for consultation. Call meetings of the qualified electors of the district for consultation in regard to the school interests thereof, at which meetings the chairman or other member of the board shall preside, if present;

(5) Control school property. Take care of, manage and control the school property of the district;

(6) Visit schools. Visit the public schools within its district from time to time and at least once in every school term and take care that they are conducted according to law and with the utmost efficiency;

(7) Control educational interest of district. Manage and control local educational interests of its district, with the exclusive authority to operate or not to operate any public school or schools;

(8) Charge matriculation and incidental fees. Charge and collect matriculation and incidental fees from students; however, regulations or policies adopted by the board regarding charges and collections must take into account the students' ability to pay and must hold the fee to a minimum reasonable amount. Fees may not be charged to students eligible for free lunches and must be reduced pro rata for students eligible for reduced price lunches;

(9) Transfer and assign pupils. Transfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll; and

(10) Prescribe conditions and charges for attendance. Be empowered to prescribe conditions and a schedule of charges based on cost per pupil as last determined, for attendance in the public schools of the school district for

(a) children of parents temporarily residing within the school district;

(b) children whose parents or legal guardians live elsewhere but who are residing with residents of the school district; and

(c) children of parents residing on Federal property or military or naval bases of the United States located within or adjacent to the boundaries of such school district; and

(d) all other children specially situated and not meeting the eligibility requirements of Section 59-63-30, but who shall have petitioned the trustees in writing seeking permission to attend the public schools of the school district.

(11) Provide school-age child care program or facilities therefor. Provide:

(a) a school-age child care program for children aged five through fourteen years that operates before or after the school day, or both, and during periods when school is not in session;

(b) a school-age child care program that operates during periods when school is in session for students who are enrolled in a half-day kindergarten program; or

(c) classrooms, other space, or both, in a school for use by an organization that is operating a school-age child care program before or after the school day, or both, and during periods when school is not in session for children aged five through fourteen years.

All latchkey programs operating pursuant to this item must be licensed.

(12) Establish the annual calendar. Have the authority to establish an annual school calendar for students, faculty, and staff to include starting dates, ending dates, holidays, make-up days, in-service days, and professional development days.

HISTORY: 1962 Code Section 21-230; 1952 Code Section 21-230; 1942 Code Section 5358; 1932 Code Sections 5384, 5596; Civ. C. '22 Sections 2616, 2630; Civ. C. '12 Sections 1753, 1761; Civ. C. '02 Sections 1211, 1218; Cr. C. '22 Section 452; 1896 (21) 165; 1920 (31) 1046; 1923 (33) 180; 1937 (40) 75; 1955 (49) 83; 1964 (53) 2171; 1978 Act No. 504; 1989 Act No. 189, Part II, Section 43 Sub 6; 1996 Act No. 458, Part II, Section 72; 2003 Act No. 21, Section 1, eff April 21, 2003; 2003 Act No. 89, Section 3, eff July 23, 2003.

Disclaimer: These codes may not be the most recent version. South Carolina may have more current or accurate information. We make no warranties or guarantees about the accuracy, completeness, or adequacy of the information contained on this site or the information linked to on the state site. Please check official sources.

Policy KE Public Concerns and Complaints

Issued 6/13/00

Purpose: To establish the board's vision for receiving and handling public complaints.

Complaints to one or more board members against any action of any employee of the district or against any administrative rule or board policy, which in the judgment of the board members hearing the complaint requires investigation or action, will be referred to the superintendent.

If the matter cannot be resolved satisfactorily by the superintendent, the complainant may register the complaint in writing with the chairperson of the board, setting forth the facts on which the complaint is based.

The board, at its next regular meeting or at a special meeting, will then consider the complaint and dispose of the matter according to its best judgment.

Adopted 6/13/00

RICHLAND COUNTY SCHOOL DISTRICT ONE
BOARD MEETING SCHEDULE
JULY 2019-JUNE 2020

ELECTRONICALLY FILED - 2019 Sep 04 1:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931

July 23, 2019	7:00 p.m.	District Office
August 13, 2019	7:00 p.m.	District Office
August 27, 2019	7:00 p.m.	District Office
September 10, 2019	7:00 p.m.	Bradley Elementary School
September 24, 2019	7:00 p.m.	District Office
October 8, 2019	7:00 p.m.	Hopkins Middle School
October 22, 2019	7:00 p.m.	District Office
November 12, 2019	7:00 p.m.	Heyward Career and Technology Center

December 10, 2019	7:00 p.m.	Annie Burnside Elementary School
January 14, 2020	7:00 p.m.	District Office
January 28, 2020	7:00 p.m.	W.G. Sanders Middle School
February 11, 2020	7:00 p.m.	District Office
February 25, 2020	7:00 p.m.	W.J. Keenan High School
March 10, 2020	7:00 p.m.	District Office
March 24, 2020	7:00 p.m.	Carver-Lyon Elementary School
April 28, 2020	7:00 p.m.	Crayton Middle School
May 12, 2020	7:00 p.m.	District Office

May 26, 2020	7:00 p.m.	Lower Richland High School
June 9, 2020	7:00 p.m.	District Office
June 23, 2020	7:00 p.m.	District Office



RICHLAND ONE
ENGAGE • EDUCATE • EMPOWER

**Tuesday, August 13, 2019
Regular Board Meeting**

**Stevenson Administration Building
1616 Richland Street
Columbia, SC 29201**

1. 5:30 P. M. EXECUTIVE SESSION

2. Office of the Superintendent

2.01 Legal Status Report presented by Williams (Action/Information Item 8.01)

3. Office of Human Resources

3.01 Personnel/HR Updates presented by Dr. Long (Information Item 10.01)

3.02 Administrative Appointment presented by Dr. Long (Action Item 10.02)

3.03 Administrative Appointment presented by Dr. Long (Action Item 10.03)

3.04 Administrative Appointment presented by Dr. Long (Action Item 10.04)

3.05 Leave of Absence presented by Dr. Long (Action Item 10.05)

3.06 Leave of Absence presented by Dr. Long (Action Item 10.06)

3.07 Hiring of Personnel presented by Dr. Long (Action Item 10.07)

4. 7:00 P.M. PUBLIC SESSION

5. Call to Order

5.01 Invocation presented by Reverend Geneva Stafford, Senior Pastor of Francis Burns United Methodist Church

5.02 Agenda Adoption presented by Chairman Devine

5.03 School Board Spotlight presented by Black and Sauls

5.04 Public Participation presented by Chairman Devine

6. Consent Agenda

6.01 Minutes: July 23, 2019 (Regular Meeting) and July 30, 2019 (Budget Work Session)

6.02 Contract Extension: City Year Columbia Mentoring Program presented by Outing

6.03 Contract Extension: Certified Building Inspection for Asbestos and Lead Management presented by Outing

6.04 Contract Extension: Ultra Low Sulfur Diesel Fuel for District Wide Bus Fleet presented by Outing

ELECTRONICALLY FILED - 2019 Sep 04 1:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931

- 6.05 Contract Extension: Purchase of Fresh Produce presented by Outing
- 6.06 Contract Extension: Multi-Functional Copier Equipment and Services (Lease) presented by Outing
- 6.07 Contract Extension: Library Media Management Software presented by Outing
- 6.08 Contract Extension: Grade Level Benchmark Assessment presented by Outing
- 6.09 Contract Extension: LEXIA Learning Systems, LLC presented by Outing
- 6.10 Contract Extension: Educational Supplies and Materials presented by Outing
- 6.11 Approval for City of Columbia Police to Provide School Resource Officers (SROs) presented by Outing

7. Office of the Board

- 7.01 Board Report presented by Chairman Devine
- 7.02 Appointments/Reappointments Hall of Fame Nomination/Selection Committee and Advisory Board presented by Chairman Devine

8. Office of the Superintendent

- 8.01 Legal Status Report presented by Williams
- 8.02 Superintendent's Report presented by Dr. Witherspoon

9. Office of Operations

- 9.01 Contract: Classroom Furniture presented by Outing
- 9.02 Contract: After School Child Care Providers presented by Outing
- 9.03 Contract: Professional Development and Staff Training for Instructional Leaders and Classroom Teachers presented by Outing
- 9.04 Contract: Professional Engineering Services for HVAC Renovation at the Central Services Facilities Building presented by Outing
- 9.05 Electrical Easement for Rabbit Run - DOT Penny Project presented by Perkins
- 9.06 Deed to Water Line for Caughman Road presented by Perkins
- 9.07 Deed to Water Lines at Bolden Stadium presented by Perkins
- 9.08 Electrical Easement for Dreher High School Athletic Upgrades presented by Perkins
- 9.09 Increase for LED Sports Lighting at the new Dreher Field and Tennis Courts presented by Outing

10. Office of Human Resources

- 10.01 Personnel/HR Updates presented by Dr. Long
- 10.02 Administrative Appointment presented by Dr. Long
- 10.03 Administrative Appointment presented by Dr. Long
- 10.04 Administrative Appointment presented by Dr. Long
- 10.05 Leave of Absence presented by Dr. Long

10.06 Leave of Absence presented by Dr. Long

10.07 Hiring of Personnel presented by Dr. Long

11. Adjournment

11.01 The next Regular meeting of the Richland One Board of School Commissioners will be held on Tuesday, August 27, 2019 at Stevenson Administration Building, 1616 Richland Street, Columbia, SC 29201

Jamie Devine
Chairman

Aaron Bishop
Vice Chairman

Lila Anna Sauls
Secretary-Treasurer



RICHLAND ONE

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RICHLAND ONE BOARD OF SCHOOL COMMISSIONERS

Cheryl Harris
Parliamentarian

Beatrice King

Darrell Black

Yolanda Anderson

1616 Richland Street • Columbia, South Carolina 29201 • Office: (803) 231-7556 • Fax: (803) 231-7560

August 14, 2019

Mr. Cody Smith
1712 Crestwood Drive
Columbia, South Carolina 29205
CERTIFIED MAIL
7015 3430 0001 1727 3297

Dear Mr. Smith:

We are in receipt of your letter dated June 13, 2019 regarding a potential complaint. Please be aware we cannot share information regarding student transfer requests as it pertains to ESOL participants or their families which is protected by the Family Education Rights and Privacy Act.

In addition, you have met with Dr. Craig Witherspoon, the Superintendent, and Jamie Devine, Chairman and Lila Anna Sauls, Secretary/Treasurer for the Board. The answer to your question has remained and continues to be the same.

The matter is concluded at this time.

Sincerely,



Jamie Devine
Chairman

cc: Board of School Commissioners
Dr. Craig Witherspoon
Via regular mail

ELECTRONICALLY FILED - 2019 Sep 04 1:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004931

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2019-CP-40-04931

Nancy Miramonti,)
Plaintiff,)
vs.)
Richland County School Board,)
et al,)
Defendants.)
_____)

September 13, 2019

Columbia, South Carolina

B e f o r e:

The Honorable Robert Hood, Judge

A p p e a r a n c e s:

Jonathan M. Milling, Esquire
Attorney for the Plaintiff

Charles Boykin, Esquire
Kenneth Davis, Esquire
Attorneys for the Defendants

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/The Court	4
Motion/Mr. Milling	4
Response/Mr. Davis	14
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

1 (On the record at 10:41 a.m.)

2 THE COURT: Good morning. We're on the record in
3 2019-CP-40-04931. This is Nancy -- somebody help me.

4 MR. MILLING: Miramonti.

5 THE COURT: I don't know how to say it.

6 MR. MILLING: Miramonti.

7 THE COURT: *Miramonti v Richland County School*
8 *District One and the Board of Commissioners of Richland*
9 *County School District One*. Mr. Milling is present,
10 representing the Plaintiffs, and Mr. Davis --

11 MR. DAVIS: Yes, Your Honor.

12 THE COURT: Good morning. -- is present,
13 representing the School District; is that right?

14 MR. DAVIS: School District and the Board of
15 Commissioners.

16 THE COURT: And the Board of Commissioners.

17 MR. DAVIS: We're joined by Mr. Boykin.

18 THE COURT: Mr. Boykin is also present. Good
19 morning, Mr. Boykin.

20 MR. BOYKIN: Good morning, Your Honor.

21 THE COURT: All right. Thank you very much. And Mr.
22 Milling, you ready to get started?

23 MR. MILLING: Yes, sir.

24 THE COURT: Okay.

25 MR. MILLING: Judge, this was an action, as is

1 outlined in the complaint, challenging a -- what
2 apparently was an executive session of the Board back in
3 August of this year, August 11 -- August the 13th was the
4 date of the -- the -- the meeting at issue.

5 Prior to that time, really May or so of this year,
6 the School Board discussed and determined that they were
7 going to change the ESOL, the English as a Second Language
8 program for Richland One, which they certainly have the
9 prerogative to do.

10 Previously, they had set it up where, essentially,
11 magnet Schools would house these types of programs. A.C.
12 Moore was one of them, Brennan is one of them. And so all
13 the kids who qualified for that program would go to those
14 Schools, regardless of whether or not they were zoned for
15 that particular School.

16 After May 1 of this year, they sent a notice out
17 identifying the change in the policy that those kids would
18 now be zoned or -- go to the School that they are zoned
19 for based upon where their residence is.

20 Cody Smith, who is also here, was the SIC chairman
21 for A.C. Moore, an elementary School here in Richland 1,
22 and --

23 THE COURT: "SIC" is Student Improvement Counsel?

24 MR. MILLING: Yes, sir.

25 THE COURT: Okay. Just wanted to make sure I was

1 following that correctly.

2 MR. MILLING: Yes, sir.

3 MR. DAVIS: It's School Improvement, Your Honor.

4 MR. MILLING: School Improvement.

5 THE COURT: Okay. I'm sorry. I'm sorry. Okay.

6 MR. MILLING: And Mr. Smith and others, including Ms.
7 Miramonti, at a Board meeting, on June the 11th, addressed
8 this issue, requesting specifically that the Board
9 consider changing the transfer policy so that these
10 students, if they chose to do so -- and there was no
11 pressure one way or the other, but if they chose to do so,
12 would have the opportunity to petition the Board and the
13 District for a transfer so that they could stay at the
14 School where they'd been. Basically, if they were
15 grandfathered in, that they could -- could stay there if
16 that's what they wanted to do.

17 The Board issued letters, following public comments,
18 a few days later -- and we've got a copy of that attached
19 to the complaint -- basically not really taking action,
20 talking about the benefits of the new ESOL policy and why
21 it's better for the kids to be able to stay at the Schools
22 where they're zoned for and things like that.

23 Subsequent to that meeting, there were additional
24 discussions between Ms. Miramonti, Mr. Smith, Mr. Smith
25 and Dr. Witherspoon with the -- the District -- the

1 Superintendent for the District, trying to address, not
2 the -- the specific issues as it relates to these
3 students, but address the policy -- a policy decision.

4 After getting nowhere, the letter was sent August 7
5 of this year. That is the complaint letter which was
6 issued pursuant to KE policy, District policy. And it
7 specifically says if you've got an issue, you gotta direct
8 it to the Board and within the next -- or by the next
9 Board meeting, you gotta take action as the Board deems
10 fit. You gotta --

11 THE COURT: You gotta be disposed of ---

12 MR. MILLING: Disposed of. Yes, sir.

13 THE COURT: -- best -- best judgment of the Board.

14 MR. MILLING: Yes, sir. That -- that -- that's the
15 exact language.

16 THE COURT: Right.

17 MR. MILLING: And so the next meeting was that August
18 13 meeting. There was not an agenda item for the
19 complaint letter and during the open session, it was
20 learned that apparently during executive session the
21 letter from Mr. Smith was addressed.

22 And Ms. Miramonti was there. She can authenticate
23 the -- the video recording that I emailed to chambers
24 yesterday. We've got a copy of that -- or not a copy, but
25 we can -- I'll play it on my laptop if Your Honor wants us

1 to here today.

2 But basically, Chairman Devine says, "What we're
3 going to do is we're going to send a letter. We discussed
4 it, we're gonna send a letter."

5 THE COURT: We discussed it in executive session.

6 MR. MILLING: He doesn't start off saying that he
7 discussed it in executive session, but Ms. King --
8 Commissioner King starts to discuss, "Wait a second. I
9 disagree with what we're doing."

10 She turns to Ms. Williams, who is general counsel for
11 the Board and for the District, I believe, technically,
12 and asks questions about taking action and there's a lot
13 of discussion about vote and polling and things like that.

14 But it is clear and apparent that during that --
15 during that executive session, this topic was discussed.

16 The next day, on August the 14, a letter is sent out
17 which basically said, "We can't discuss any specific
18 transfer requests, ESOL or otherwise, with people who are
19 not the parent," which was never the request, which was
20 never what was discussed in the -- the complaint letter,
21 which was never discussed on the -- the June 11 meeting or
22 anything like that.

23 The whole purpose behind this letter and the -- the
24 formal complaint under KE policy is to make sure that
25 everything's in public, and give everybody the opportunity

1 to be heard on this topic as to the justification and why
2 things should have been considered as to whether or not
3 these kids -- who had been sent to one School, are now
4 being sent to another School -- whether or not they should
5 be allowed to stay with their friends, stay in an
6 environment where they're comfortable, stay where they've
7 been for one or more years. And that's the whole purpose
8 behind the -- everything starting up, and no answer was
9 ever given. That's why the formal complaint letter was
10 raised.

11 Now, if we look at -- at FOIA, the whole purpose
12 behind FOIA is to make sure that everything is out in
13 public and out in the open. And Judge, regarding, you
14 know, these facts that I've recited, I don't think that
15 the District or the Board really are gonna dispute these
16 facts.

17 If you look at their answer, if you look at their
18 memorandum, everything seems to be consistent with that
19 procedural history and the -- the factual recitation that
20 I've given. And I'm sure that Mr. Davis is gonna disagree
21 with anything that he disagrees with, but I think for the
22 most part, all of that is -- is consistent from both sides
23 of the aisle.

24 The issue is whether or not when they went into
25 executive session, on August the 13, it was done so

1 properly, for an approved purpose, and it was conducted
2 properly. As outlined in the complaint, we don't think
3 that it was. If you look at -- beg your indulgence for
4 one moment. South Carolina law, FOIA, South Carolina
5 Code, annotated, 30-4-70, I believe it is, talks about
6 what can actually be discussed in executive session.

7 THE COURT: I'm looking at it.

8 MR. MILLING: Yes, sir. And based upon the
9 memorandum in response that we received yesterday about
10 3:30, it appears that the District and the Board are
11 relying upon the legal advice exception, which is, I
12 think, (A) (2).

13 Unfortunately for the District, when you --

14 THE COURT: 30-4-70(A), section 2.

15 MR. MILLING: Yes, sir.

16 THE COURT: Right?

17 MR. MILLING: Yes sir. When we look at that section,
18 yeah, they can go into executive session to receive legal
19 advice, but then they've gotta come back out and discuss
20 the public portion of it, that portion of it which is not
21 related to the receipt of legal advice.

22 They can talk about legal advice regarding pending,
23 threatened litigation, there's no suggestion of that here.
24 And if, if legal counsel came forward and said, "You know
25 what? There might be legal implications if we change this

1 policy. Here's what those might be," that's fine. But
2 then you have to go back in public to talk about the rest
3 of it, to give the public an opportunity to be heard, to
4 have a -- an opportunity to hear the discussion with the
5 Board about why this might work, why this might not work,
6 why it's not gonna be considered. None of that was done.

7 Furthermore, 34-70 -- 30-4-70 says that you can't
8 take action, cannot take action. Now, Mr. Davis's
9 response that we got last night outlines that the Board
10 policy says that you can't take formal action, which they
11 decide -- define as a -- you can't take a vote, you can't
12 take polling, or anything like that; but that's contrary
13 to South Carolina law. South Carolina law says you can't
14 take any action. Not just you can't vote, not just you
15 can't poll, you can't do anything.

16 And it is abundantly clear from the video that we've
17 got of the -- of the -- the Board meeting that action was
18 taken. A decision was made to send a response letter.
19 Response letter doesn't have anything to do with anything
20 as it relates to the complaint letter, but a decision was
21 made that that's how they're going to do things. That is
22 action and they can't do it.

23 Now, FOIA is a statute that -- because it's remedial
24 in nature, because the purposes are to make sure that --
25 that the Government can't operate in secret, it's got to

1 be strictly and narrowly construed. You can't expand upon
2 it, you can't add formal to action and then define formal
3 different than -- than South Carolina Law does, and yet
4 that's what Richland County 1, the School Board, has done.
5 They can't do it.

6 What we're asking, Your Honor, is for an order to be
7 issued declaring that that action was improperly done.
8 They didn't properly go into executive session, they
9 didn't discuss this issue properly in executive session
10 because it is not subject to one of the exceptions, and
11 they took action improperly.

12 We would ask the Court to issue an injunction
13 preventing them from taking any similar improper action in
14 violation of future -- in violation of FOIA in the future
15 because the whole purpose behind this is to make sure
16 everything's out in the open. And you can't stick your
17 head in the sand and say, "Well, we're not gonna talk
18 about this letter based upon legal advice because we
19 talked about it in executive session." that -- that's --
20 this was not properly in executive session from Moment
21 One.

22 And any legal advice that they may have given in
23 there, that's fine; but then you gotta go back on the
24 record, talk about the non-legal advice matters related to
25 this complaint in public, take action in public, and that

1 wasn't done.

2 THE COURT: So what exactly are you requesting,
3 that's what I'm having a hard time wrapping my head
4 around?

5 MR. MILLING: I -- I think, from a practical
6 standpoint, specific to this complaint, that their action
7 in going into executive session to discuss this complaint
8 letter was improper, that they should have to go in public
9 session to address that issue.

10 THE COURT: Of the -- the complaint?

11 MR. MILLING: The complaint, yes.

12 THE COURT: Okay.

13 MR. MILLING: Because it -- it was improperly done --

14 THE COURT: Okay.

15 MR. MILLING: -- up to this point in time. They
16 can't go and hide in executive session on this issue.

17 And then we want to enjoin them from taking similar
18 conduct, bringing matters into executive session that do
19 not fall within the four corners of 40- -- or 30-4-70, so
20 that we don't have to come back here next month.

21 THE COURT: And as a part of that, are you requesting
22 attorney's fees?

23 MR. MILLING: I am, Your Honor.

24 THE COURT: Okay. Anything else?

25 MR. MILLING: No, sir, Your Honor.

1 THE COURT: Okay.

2 MR. MILLING: Not at this time.

3 THE COURT: All right. Mr. Davis?

4 MR. DAVIS: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. DAVIS: We provided draft minutes from the August
7 13, 2019 meeting that have been marked as "Exhibit B"
8 attached to our memo. And in Exhibit B, there's an
9 affidavit from Eva Wilson, who's the executive assistant
10 to the Board, who ultimately com -- compiled the minutes
11 for submission to the Board chair and the Board secretary.

12 And Richland One has a -- what's called a "bifurcated
13 meeting," meaning that they open the meeting at 5:30, then
14 they entertain a motion to go into executive session and
15 they discuss proper matters for executive session. They
16 meet in executive session, then they open a public meeting
17 at 7 p.m., and the minutes reflect that process in
18 Richland One.

19 Prior to going into executive session at this
20 meeting, the minutes reflect that the Board moved to go
21 into executive session for the receipt of legal advice.

22 Mr. Smith sent a complaint letter, which goes to an
23 existing policy in effect in the District that had a
24 deadline of May 1, which is the normal deadline. So this
25 is in August. So there are rights of students implicated

1 by Mr. Smith's request.

2 And so it is logical that when you have a request to
3 alter a policy -- and the policy they're asking us to
4 alter, the transfer policy there are 13 different statutes
5 that are cited as background for that policy. And then
6 there's one statute that's not cited in the policy
7 regarding personnel which is also implicated by Mr.
8 Smith's request. Those go directly to the legal interests
9 of the District, it's personnel, and its students. So the
10 District is well within -- the Board is well within its
11 right to seek legal advice regarding disposing of Mr.
12 Smith's policy -- I mean, policy request change is what he
13 wanted. He wanted to -- to change the policy essentially,
14 give a window to a certain class of students, not the
15 whole District, to a certain class of students, he wanted
16 to give them a new window to request transfers, which was
17 counter to the existing policy.

18 And so in considering such a request, it is
19 understandable, logical, and natural that a Board would
20 want advice from counsel as to what effect would adopting
21 this policy have on other students in the District, what
22 effect would it have in how we deploy our personnel in the
23 District. Those are logical things that -- what -- who --
24 who might be offended if we -- if we change this and feel
25 like their right was not properly protected. So those are

1 all proper subjects for the Board to receive legal advice
2 about.

3 And so the Board, went into executive session, there
4 were discussions in executive session, and in open
5 session, there -- there are six pages in the minutes,
6 beginning on page 9, where there was an open-session
7 discussion about Mr. Smith's request.

8 THE COURT: That wasn't on the agenda.

9 MR. DAVIS: I -- be -- right. It -- it was not on
10 the agenda.

11 THE COURT: Right. So there's no way for anyone in
12 the School District to know that this is an issue because
13 it was never put on the agenda.

14 MR. DAVIS: Your -- Your Honor, but I point you to
15 the case of *Brock* --

16 THE COURT: That's -- that's correct, right?

17 MR. DAVIS: It was not on the agenda, I will say
18 that.

19 THE COURT: All right.

20 MR. DAVIS: But *Brock v Town of Mt. Pleasant*, 2016
21 State Supreme Court, says that (as read): "FOIA did not
22 require that an agenda for an executive session item be
23 posted or that the news media be notified of the agenda of
24 the executive session."

25 THE COURT: I thought your own policy said that it

1 was supposed to go on the agenda for the next meeting
2 after the complaint was filed?

3 MR. DAVIS: No. It doesn't say "on the agenda." The
4 policy says it has to be considered by the Board at the
5 next meeting and then disposed of. Consideration can
6 include an executive session. Con -- consideration does
7 not mean equal action -- does not mean action.
8 Consideration means the Board, in this instance, received
9 legal advice about Mr. Smith's request.

10 And then in open session, there was a discussion.
11 The Board did follow the advice of counsel in saying that
12 they would issue a response letter to Mr. Smith based upon
13 the advice of counsel. That is -- that is an appropriate
14 action for -- that -- that's an appropriate course for the
15 -- the Board to follow, but that is not an action within
16 the meaning of FOIA, meaning that there was no vote on it.

17 Even Commissioner King -- who's cited in the
18 complaint, she even says that there was a discussion in
19 executive session, discussion equals consideration, it --
20 meaning, you -- you hear from counsel.

21 In open session, there was a discussion. Ms. King
22 felt that a -- maybe a vote needed to happen. But Ms.
23 King was a Board member and a Board member has certain
24 parliamentary mechanisms at their disposal to address an
25 issue when they think a vote needs to be taken, meaning

1 that there was -- that -- there -- there about six or
2 seven page discussion between Commissioner Devine, the
3 chairman, Ms. King, and others -- Ms. Williams, the
4 general counsel, and others where they are talking about
5 Mr. Smith's request. Ms. King -- Commissioner King, she
6 hints ---

7 THE COURT: They're -- they're not really talking
8 about it. They're talking about the fact that it's not
9 being talked about.

10 MR. DAVIS: But it was talked --

11 THE COURT: What -- what they're talking about is the
12 fact that no one is talking about it.

13 MR. DAVIS: Well, yes.

14 THE COURT: So that's not talking about it.

15 MR. DAVIS: But it is because they're talking about
16 it because Mr. Devine announced that --

17 THE COURT: All right. Listen, listen, listen. The
18 School District can play all the word games they want to
19 with themselves. They're not gonna play word games with
20 this Court. There was not a discussion about Mr. Smith's
21 complaint on the record, in the public hearing of the
22 School Board, on August the 13, 2019.

23 Chairman Devine got up there and said, "We're gonna
24 issue a letter, have a nice day," and the only reason
25 there was any discussion in any way, shape, or form, or

1 the only reason anybody knew what was going on was because
2 Ms. King said, "I don't think this is right. I think we
3 should vote on it." And then she asked for legal advice
4 from Ms. Williams, who -- I don't know -- I don't remember
5 what she said, but she didn't say much. And then the
6 whole issue just died.

7 MR. DAVIS: And -- and Your Honor, the other thing I
8 wanna say is, is this is ultimately about right. If
9 there's no action, there's no violation of FOIA. FOIA
10 prohibits the -- an illegal vote, an illegal recorded
11 vote, illegal polling.

12 There's an admission here from Ms. King that there
13 was no vote, there's no polling. So there's no FOIA
14 violation.

15 The executive session to -- to obtain legal advice
16 about this is proper. That to the extent that we're here
17 today to argue about whether the Board should've voted on
18 the policy, that's not -- FOIA standing is not conferred
19 to that.

20 THE COURT: The Board didn't even discuss the
21 complaint.

22 MR. DAVIS: That -- Ms. Miramoti is not a party ---

23 THE COURT: How did Mr. Smith ---

24 MR. DAVIS: --- to the complaint.

25 THE COURT: --- supposed -- how is Mr. Smith supposed

1 to know that that was gonna be a topic that evening?

2 MR. BOYKIN: FOIA doesn't require ---

3 MR. DAVIS: FOIA does not require the executive
4 session item be published on the agenda, but Ms. Miramonti
5 is not a party to the complaint. And so if Mr. Smith
6 wants to be the party to the -- the lawsuit, he's not
7 here. Ms. Miramonti is. She has no standing to assert a
8 claim related to an action in a complaint raised by Mr.
9 Smith. Mr. -- Ms. Miramonti -- the Plaintiff is
10 Miramonti, it's not Smith. Ms. Miramonti did not sign on
11 to that letter.

12 THE COURT: So Ms. Mira -- the complaint alleges that
13 Ms. Miramonti is a citizen of Richland County and who
14 lives within School District One. So a citizen of
15 Richland County, who lives within School District One, in
16 the School District's legal opinion, does not have the
17 authority to assert a claim based upon what they believe
18 to be an inappropriate action of the School Board. That's
19 the position y'all are taking?

20 MR. BOYKIN: That's not the ---

21 MR. DAVIS: That -- that -- that's not our position.
22 She does not -- she has standing under FOIA to -- to
23 assert FOIA violations, but the complaint is a specific
24 thing that was filed by a specific person. It's like if
25 I'm in -- if I am -- in an automobile accident and I'm

1 alive and I have capacity, Mr. Boykin can't file a lawsuit
2 and -- and claim damages for me. I have to ---

3 THE COURT: He could --

4 MR. DAVIS: --- do that myself.

5 THE COURT: He could if y'all were married.

6 MR. DAVIS: But we're not -- but in this instance,
7 they're not married.

8 THE COURT: It's called "loss of contortion," it
9 happens all the time.

10 MR. DAVIS: But -- but again, in this case, standing
11 is -- is specifically defined --

12 THE COURT: So the School District is taking the
13 legal position that a resident of the county, who lives in
14 the School District, does not have the authority to file a
15 FOIA based complaint based upon something that happened at
16 a School District?

17 MR. DAVIS: Not as to FOIA. She has to -- the
18 authority to raise the FOIA based complaint, which is
19 whether there was a vote in executive session; but to the
20 extent that she asserted that the Board had to vote on the
21 -- Mr. Smith's complaint letter, she was not a party to
22 that complaint letter.

23 THE COURT: How -- if she's a citizen of the county
24 and lives in the School District, how does she not have a
25 right to be heard on the complaint if -- even if she

1 didn't file it?

2 I mean, if -- if -- let's say the School District, in
3 its wisdom and -- had said, "We're gonna have an open,
4 public hearing on it, on Mr. -- on Mr. Smith's letter."
5 Would you have presented Ms. -- prevented Ms. Miramonti
6 from speaking on it?

7 MR. BOYKIN: No.

8 MR. DAVIS: That's not what's before us.

9 THE COURT: That's a -- that's a "yes" or "no"
10 question.

11 MR. DAVIS: It would -- it would depend on the
12 circumstances. But what before us is the fact that --

13 THE COURT: Okay. Now, that's a lawyer answer.

14 So you're telling me that if this complaint, if -- if
15 the complaint filed by Mr. Smith was actually handled in
16 open session at the Richland County School District One
17 School Board meeting and was open for public comment so
18 that the public could come in and comment on it, you
19 would've prevented Ms. Miramonti from making any statement
20 about it?

21 (Mr. Boykin and Mr. Davis confer briefly.)

22 MR. DAVIS: Again, this is a FOIA proceeding, which
23 means that FOIA converts standing on any citizen to -- if
24 -- if the Court believe that the executive session was
25 improper, Ms. Miramonti had the standing to assert that.

1 But --

2 THE COURT: I don't know why you need legal advice to
3 determine whether or not you should extend the time to
4 allow people to consider whether or not they want a
5 transfer. What -- what is the legal implication of that
6 to the School District?

7 MR. DAVIS: That's within the authority of the Board
8 to determine whether --

9 THE COURT: Well, I mean, but you just can't say -- I
10 mean, that's like saying "elephants are purple" because I
11 believe elephants are purple. No one in the entire world
12 believes elephants are purple, but the -- this body
13 believes elephants are purple, so that makes them purple.

14 MR. DAVIS: But that --

15 THE COURT: You -- you mean -- what -- what is --
16 what -- what legal advice is necessary to determine
17 whether or not this complaint should be allowed to be
18 fettered out in the public view so that all the School
19 Board -- so that all the School Board commissioners, who
20 are all publicly elected, can -- have to sit in front of
21 their constituents, who have the notice of the hearing, so
22 that they can be heard and make them take an open position
23 on this issue?

24 MR. DAVIS: Your Honor, the policy on Board transfer
25 references 13 specific statutes that are implicated (as

1 read): "59-19-90, "School Board trustees have the power
2 to transfer and assign pupils.

3 "59-19-510, Right to appeal the County Board of
4 education.

5 "59-63-30, Qualifications for attendance.

6 "59-3-40, Discrimination on account of race, creed,
7 color.

8 "59-40-5345 --

9 THE COURT REPORTER: Sir, sir.

10 THE COURT: You're going too fast.

11 MR. DAVIS: Okay.

12 THE COURT REPORTER: Read it a little slower. Thank
13 you.

14 MR. DAVIS: Okay. (As read) "59-63-45, Procedures
15 for a reimbursement for Districts for cost of non-resident
16 students.

17 "59-53-210, Ground for which trustees may expel,
18 suspend, or transfer pupils.

19 "59-63-250, Specifically transfer of pupils.

20 "59-63-470, Transfer of pupils when enrollment of
21 such pupil threatens to disturb peace.

22 "59-63-480, Attendance at Schools in a adjacent
23 county.

24 "59-53-490, Transfer to adjoining School District."

25 There are other ---

1 THE COURT: And so these kids are getting transferred
2 to other School Districts?

3 MR. DAVIS: What I'm saying is this --

4 THE COURT: Were they?

5 MR. DAVIS: What I'm saying is --

6 THE COURT: The answer's "yes" or "no."

7 MR. DAVIS: Your Honor, there --

8 THE COURT: The answer is "yes" or "no." Were they
9 getting transferred to other school districts?

10 MR. DAVIS: Factually, we do not know because --
11 because they're -- they're -- Your Honor, individual --

12 THE COURT: Seriously?

13 MR. DAVIS: Individuals -- individuals --

14 THE COURT: What other county were they being
15 transferred to?

16 MR. DAVIS: I'm not saying there were, but these are
17 all ---

18 THE COURT: What other schools are they being
19 transferred to?

20 MR. DAVIS: These are all the rights that are
21 implicated by this policy.

22 THE COURT: You -- you have just proven to me that
23 the legal argument that they needed legal advice on, at
24 least two to three of the ones you just quoted, don't even
25 apply.

1 MR. DAVIS: Right. But -- but the Board may need the
2 advice of counsel to determine whether they apply or not.

3 THE COURT: So -- so tell me whether or not there was
4 a consideration that any of these students were being
5 transferred to another county.

6 MR. DAVIS: There -- there were no specific requests
7 from students before the Board on that evening. This was
8 a change to the policy ---

9 THE COURT: You're not answering the question. This
10 is called "dodging," this is called "deflecting."

11 MR. DAVIS: Your Honor --

12 THE COURT: The question is: What students or how
13 many students were being considered transferred for
14 another county?

15 MR. DAVIS: Don't know of any.

16 THE COURT: And how many students were being
17 considered transferred into an entire other school
18 district?

19 MR. DAVIS: Don't know of any.

20 THE COURT: Right. Because they don't exist because
21 it -- it's just made up stuff that gets stuck in something
22 to try to generate some legal reason not to go out on the
23 record and have a full-blown discussion with the public
24 about what you're doing.

25 MR. DAVIS: Your Honor, that said, the Board has a

1 right to hear from their attorney as to whether any of
2 these statutes are implicated. In addition, August 15
3 creates a deadline for the assignment of personnel in the
4 School District. And so that's a legal statute, 59-25-
5 410, and so a request to transfer students also implicates
6 the District's personnel interest, meaning that do we have
7 --

8 THE COURT: I understand that.

9 MR. DAVIS: Do we have the people in place to
10 accommodate these transfer requests.

11 THE COURT: And -- and -- I mean, here's my question:
12 What does a lawyer know about whether or not a school
13 district has -- a school has enough teachers to take care
14 of the children? "Absolutely nothing" is the answer to
15 that question.

16 MR. DAVIS: The -- the lawyer knows about what
17 deadlines are already in place. The lawyer can advise the
18 Board about whether other students may have some type of
19 cause of action --

20 THE COURT: I don't dispute that.

21 MR. DAVIS: And so that's an appropriate subject for
22 the Board to seek advice from -- on --

23 THE COURT: I ---

24 MR. DAVIS: -- to hear from their lawyer as to
25 whether or not we have things that are implicated.

1 THE COURT: I don't -- I don't disagree with that.

2 MR. DAVIS: And so that's what happened here.

3 THE COURT: Yeah. But then -- then the issue never
4 got resolved. They walked out of the executive -- out in
5 the open session and said, "We're sending a letter. Have
6 a nice day."

7 MR. DAVIS: And -- and Your Honor, on -- on that -- I
8 --

9 MR. COURT: "Let's hand out some more awards."

10 MR. DAVIS: Right. And that's not a FOIA violation,
11 though. That's not a FOIA issue. That is an issue of
12 whether -- that's an issue of whether Mr. Smith got relief
13 on the complaint that he asserted. Mr. Smith --

14 THE COURT: Mr. Smith never even got a hearing on the
15 complaint that he asserted.

16 MR. DAVIS: But Mr. ---

17 THE COURT: Neither did any other -- neither did any
18 other citizen of Richland County who's assigned to School
19 District One because there was no way for anybody to know
20 about it. In -- in the way it was handled at the hearing,
21 there was no opportunity for anybody, other than Board
22 members, to say anything.

23 And had Ms. King not said anything, the whole thing,
24 may have been brushed underneath the table and no one ever
25 known about it.

1 MR. DAVIS: But the facts are Mr. Devine and Ms. King
2 had a discussion on the record. And the policy that
3 require [sic] a public hearing on this, it doesn't require
4 an opportunity to allow citizens to come in and speak upon
5 it. That's not in the policy.

6 THE COURT: So what's the purpose of allowing
7 somebody to file a complaint if they can't be heard on it?

8 MR. DAVIS: Sometimes -- this policy is really --
9 what Mr. Smith was requesting here was a policy change.
10 Mr. Smith is not a Board member.

11 THE COURT: So if a citizen requests a policy change,
12 then the Richland County School District One Board's
13 position is the citizens are not allowed any input on
14 that.

15 MR. DAVIS: Not saying that. What I'm saying is that
16 ---

17 THE COURT: That's what you just said.

18 MR. DAVIS: The citizen has no right to compel a
19 Board vote on the policy change. I'm not saying they
20 don't have the -- the right to request, but whether the
21 Board -- there was no initiative petition type legislation
22 for citizens to enact Board policy.

23 And this -- this is -- in effect what Mr. Smith was
24 trying to do. He wanted a specific policy, which -- which
25 was in effect -- he was asking that the Board change it.

1 Now, the Board, in it's prerogative, it could change
2 it. And the Board --

3 THE COURT: So when the Board changes policy, they
4 don't do that in open session?

5 MR. DAVIS: They do it in open session. Yes. But
6 they -- but they don't change policy -- they don't have to
7 go on the record for a non-action because the complaint
8 policy does not require an action. It does not. It says,
9 "consideration."

10 THE COURT: It says "dispose ---"

11 MR. DAVIS: Dispose --

12 THE COURT: --- of the matter."

13 MR. DAVIS: And -- and sending a letter on the advice
14 of counsel is a disposal. It's -- it's one way of
15 disposing of it. It -- it doesn't say dispose by vote,
16 dispose by action, or -- you know, it says "dispose." And
17 sending a letter to Mr. Smith, on the advice of counsel --

18 THE COURT: What -- what if the letter has nothing to
19 do with the complaint he filed? What if the letter says,
20 "Elephants are purple"? Because the letter is nonsensical
21 in response to the complaint that was filed.

22 MR. DAVIS: And -- and then beyond that, Ms.
23 Miramonti is not a party to that complaint, she's not.

24 THE COURT: She's a citizen of the District.

25 MR. DAVIS: But -- but does not confer standing to

1 deal with a specific complaint.

2 THE COURT: You can take that argument as far as you
3 wanna take it. In my opinion, citizens of this community,
4 who are members of that School District, have the -- have
5 full authority to file this complaint.

6 But you -- you can -- you've protected that issue for
7 the record, but that -- that argument has no basis, in my
8 opinion, in this argument.

9 In your -- here ...

10 (The Court confers with law clerk briefly.)

11 MR. MILLING: Your Honor, I was just gonna say that
12 -- that South Carolina Code annotated, 30-4-100(A)
13 specifically says (as read): "A citizen of the state may
14 apply to the circuit court for a declaratory judge ..."
15 which is precisely what was done here -- she did not sign
16 or author this letter ...

17 MR. DAVIS: But Your Honor, that speaks specifically
18 to a FOIA based suit, which is ---

19 THE COURT: This is a FOIA based suit. But the
20 argument is that under the FOIA laws, there's laws about
21 documents that must be produced ---

22 MR. DAVIS: Right.

23 THE COURT: --- and there's laws about the way
24 meetings must be held.

25 MR. DAVIS: Right.

1 THE COURT: And this is -- this is a suit challenging
2 the way in which Richland County School District One, on
3 August the 13 of 2019, conducted its meeting.

4 MR. DAVIS: Yes, Your Honor. But FOIA does not
5 require an action. FOIA just requires that if an action
6 is taken, that it follow certain -- certain guidelines.
7 But FOIA does not require an action.

8 So FOIA doesn't require the Board vote on this
9 complaint letter, the policy itself doesn't require a vote
10 on the complaint letter.

11 MR. MILLING: Your Honor, if I may?

12 THE COURT: Hold on. Hold on.

13 MR. MILLING: Yes, sir.

14 THE COURT: I'm gonna let you argue. I'm trying to
15 look at something.

16 (Brief pause.)

17 THE COURT: So Mr. Smith filed a complaint that was
18 very specific, that was very detailed, and that clearly --
19 in a clear, legible, coherent manner, outlined his
20 concerns about the ability for the transfers and informed
21 the School District of their responsibilities.

22 The School in -- the School District, in turn, the
23 day after they went into executive session, wrote a letter
24 to Mr. Smith, that they sent via certified mail, that
25 makes absolutely zero sense in any way, shape, or form of

1 -- that -- as to his complaint. I mean, it -- it might
2 was well say, "The elephant is purple."

3 I mean, I don't know who wrote this letter. I know
4 who signed this letter, but the letter does not address
5 Mr. Smith's complaint in any way, shape, or form. It
6 says, we can't tell you -- I mean, basically, they're,
7 like, "Our response to this issue of whether or not these
8 kids should be at these -- kids should be allowed to apply
9 for transfers -- you know, even though you told us,
10 basically, about the transfer after the transfer date had
11 expired, you know, our response to this is HIPPA." That's
12 basically what they say, "We're gonna go invoke HIPPA or
13 the -- in -- in this case, the Family Education Rights and
14 Privacy Act.

15 So instead of saying this is how we're addressing
16 this or this is what we're doing about this or based upon
17 this legal advice we're not doing this, it just says, "We
18 can't tell you specific information about student transfer
19 requests because it's protected under our privacy act."

20 It might as well say, "The sky is yellow." It
21 doesn't really -- it doesn't say anything.

22 And -- and again, I mean, this idea that the Board
23 has disposed of this or even considered this is fraud
24 because their response doesn't even address that their
25 alleged disposal of the issue is this letter, which

1 doesn't even address the concerns raised in the complaint.
2 I mean, it might as well say, "Gamecocks by 90."

3 MR. DAVIS: Your Honor, I will say that the letter
4 doesn't -- the law doesn't require that the Board tell the
5 public what the legal advice is.

6 THE COURT: The -- this letter doesn't tell anybody
7 anything.

8 MR. DAVIS: Well, it does. The -- the second
9 paragraph, which suggests that Mr. Devine's saying that
10 the -- he's standing on the prior discussions between Mr.
11 Smith and the Superintendent, which is, "We're not
12 changing the policy."

13 THE COURT: Okay.

14 MR. DAVIS: I mean, the -- there's a history going
15 back to June of dialog between Mr. Smith -- came to the
16 Board meeting on June 11th, was deferred to -- to the
17 District staff. District staff sent him a letter on June
18 13th. There's a lot of back and forth in emails between
19 Mr. Smith and them, and that was all attached in Mr.
20 Millings pleadings ---

21 THE COURT: I saw it.

22 MR. DAVIS: And so what Mr. Devine's letter, in that
23 second paragraph, is saying -- aside from the legal
24 position in the first paragraph, Mr. Devine's letter is
25 saying that what you -- you know, what you've talked about

1 in the past is -- is -- is where this thing stands.

2 THE COURT: Okay.

3 MR. DAVIS: And that's his position.

4 THE COURT: Great. Mr. Milling?

5 MR. MILLING: Your Honor, I -- I -- I don't want to
6 belabor the point, but for Mr. Davis to suggest that the
7 August 15th date was a reason not to change the policy,
8 and then turn around two seconds ago and say they had been
9 discussing this since June, underscores the point that
10 they're not taking the necessary steps to comply with
11 FOIA.

12 Their own policy, KE policy, says (as read): "The
13 Board at its next regular meeting or any special meeting
14 ...". According to FOIA, the meetings have to be in
15 public. There are only limited circumstances under which
16 you can go into FOIA, you have clearly grasped those
17 issues and how Richland One didn't comply with that here.

18 THE COURT: I mean, I don't dispute that they have
19 the right to get legal advice.

20 MR. DAVIS: Right.

21 THE COURT: And the legal advice may be, "This is
22 gonna open up a can of worms. We're gonna get all these
23 law suits," or "You can't do this. It's in violation of a
24 state statute," but you still have to come out and
25 explain.

1 MR. MILLING: Yes, sir. You're absolutely right, and
2 Mr. Davis cited to the Brock case. If you go on a little
3 bit further, down to page 202, it says (as read): "We
4 recognize and petitioner does not dispute that unnoticed
5 items can be added to an executive session; however" --
6 it's the very next sentence -- "however, after the
7 executive session concludes and the public body reconvenes
8 in open session, any action taken or decision made must be
9 properly noticed." That's what we've been talking about
10 here today.

11 MR. DAVIS: And Your Honor, I'll just add that that
12 only applies when an action is taken. It -- it doesn't --
13 if there was an action that someone was trying to enforce
14 against someone, then Mr. Milling's argument makes all the
15 sense in the world that, you know, the Board has to take
16 action in open sessions.

17 But the point is there was no action within the legal
18 definition or -- or a legal understanding of an action has
19 been taken in this case. There was a disposition, but not
20 an action. And whether -- whether the -- the Board
21 followed policy is not a FOIA matter.

22 It -- it may be a declaratory judgement as to whether
23 the Board followed its policy, but that's not what's been
24 -- been presented in this case. What's been presented in
25 this case is whether the Board violated FOIA.

1 I think Your Honor has conceded that the Board could
2 get executive -- could get legal advice in executive
3 session.

4 THE COURT: Sure.

5 MR. DAVIS: And so -- and -- and Your Honor said that
6 they had to come in open session to take action.

7 But there was no action here, and so whether there is
8 --

9 THE COURT: There was act -- there was no action, but
10 there was disposal.

11 MR. DAVIS: Yes, Your Honor. Action and disposition
12 are not the same thing.

13 THE COURT: Yeah. And action and consideration are
14 not the same thing.

15 MR. DAVIS: Right. They're not the same thing.

16 THE COURT: So you know --

17 MR. DAVIS: The Board followed its policy.

18 THE COURT: Let's just go affect all these children's
19 lives because the School District wants to play with
20 words.

21 MR. MILLING: And Your Honor, the -- the words are
22 clear under South Carolina Code annotated 30-4-70,
23 subsection B. Different from District policy it says (as
24 read): "No action," not no formal action. It says (as
25 read): "No action be taken in executive session except

1 adjourn and return to public ---

2 THE COURT: Well, I mean, drafting a letter and
3 signing it on behalf of the Board is not action, I mean,
4 according to the School District.

5 MR. MILLING: Because according to their definitions,
6 there was no formal vote taken.

7 THE COURT: Yeah. I mean, so drafting a letter in
8 response to a properly filed complaint is not action.
9 Just like people who live in the school district, who are
10 paying tax payers of the school district, don't have the
11 right to file this complaint.

12 MR. DAVIS: Your Honor, the matter of standing is --
13 has been addressed by the Court as recently as 2016 in the
14 case *Vicary v Town of Awendaw*. And it says standing is
15 conferred by statute, which is the FOIA aspect of the suit
16 -- of the suit. So if there were a FOIA violation, Ms.
17 Miramonti has standing there.

18 THE COURT: Well, that's the whole complaint. The
19 whole complaint is a FOIA violation.

20 MR. DAVIS: If -- if there's no illegal executive
21 session, then there's no complaint, but what -- if -- if
22 there was no vote when a vote should have been taken,
23 that's not FOIA, that's -- that's an interpretation of the
24 Board policy in which -- and -- and so the next thing is
25 they have to have some interest in the subject matter.

1 She -- she has not stated an interest in her complaint in
2 the subject matter other than being a tax payer, but --

3 THE COURT: What ---

4 MR. DAVIS: -- on a -- on a specific policy request,
5 you have to show some nexus between you and that specific
6 policy request. If Mr. Smith were arguing that, I would -
7 - if Mr. Smith had filed this complaint, you would not
8 hear a standing argument from us in this case.

9 THE COURT: All right.

10 MR. DAVIS: Thank you, Your Honor.

11 THE COURT: What else, Mr. Milling?

12 MR. MILLING: Your Honor, based upon the discussion
13 we've had on the record and your questions, I think that
14 you've got a firm understanding of the legal position of
15 the plaintiff.

16 THE COURT: All right. I'll let y'all know my
17 decision by the end of the day. We're not going to delay
18 this thing any longer.

19 MR. MILLING: Thank you, Your Honor.

20 MR. DAVIS: Thank you, Your Honor.

21 THE COURT: You'll get an email from my clerk by the
22 end of the day out -- outlining the basis of my ruling,
23 and then we'll do -- ask for a formal written order.

24 MR. MILLING: Yes, sir, Your Honor.

25 THE COURT: Thank y'all very much.

1 MR. DAVIS: Thank you, Your Honor.

2 (Off the record at 11:28 a.m.)

3 -- END OF RECORD OF TRANSCRIPT --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 13th day of September, 2019.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

September 23, 2019

PLACE HOLDER
VIDEO OF RICHLAND ONE BOARD MEETING
8/13/19

ALL VIDEOS
APR 03 2019
12:00 PM

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

C.A. No.: 2019-CP-40-04931
Appellate Case No. 2019 - 001624

Nancy Miramonti,

Respondent,

v.

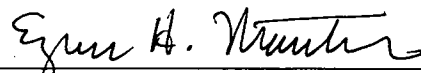
Richland County School District One, a body politic and corporate;
and the Board of Commissioners of Richland County School District
One,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

January 28, 2020



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