

**THE OVERSIGHT COMMITTEE FOR
THE IMPLEMENTATION OF THE SECOND AMENDED INTERLOCAL AGREEMENT FOR PUBLIC
SCHOOL FACILITY PLANNING, BROWARD COUNTY, FLORIDA**

**Final Minutes
Oversight Committee Public Meeting
April 8, 2015
12:00 noon**

Kathleen C. Wright Administration Center, School Board Meeting Room

1. Call to Order

Chair Stermer called the April 8, 2015 Oversight Committee meeting to order at 12.10 p.m.

2. Roll Call

Linda Houchins took roll call, and the following Committee Members were in attendance:

- Cooper, Joy
- Eichner, Shelley
- Freedman, Abby M.
- Furr, Beam
- Good, Patricia
- Hunschofsky, Christine
- Krishnaiyer, Latha
- Naylor, Lew
- Resnick, Gary
- Rich Levinson, Laurie
- Rogers, Roy
- Soltanipour, Marilyn
- Stermer, Daniel J.
- Tingom, Peter
- Wexler, Lois

Chair Stermer advised that Committee Member Eisinger had requested an excused absence.

3. Approval of Minutes – January 14, 2015 Meeting

Chair Stermer asked for a motion to approve the minutes of the January 14, 2015 meeting. Committee Member Naylor suggested that under Item Number 9.2 on page 3, language be added to the last paragraph, stating: "He said that the mechanism for the Hardship School Concept is that the Level of Service Standard (LOS) will be 110% of permanent Florida Inventory of School Houses (FISH) capacity starting in the 2019/2020 school year, however, if the school is a hardship school, then the capacity can be increased to 100% of gross FISH capacity to include portables". Chair Stermer asked for a vote on the amendment, and the amendment was approved unanimously. Committee Member Rogers made a motion to approve the minutes as amended. Committee Member Good seconded the motion, and the minutes were unanimously approved as amended.

4. Additions to the April 8, 2015 Meeting Agenda

There were no additions to the April 8, 2015 meeting agenda.

5. Approval of the Final Agenda for the April 8, 2015 Meeting

Committee Member Wexler made a motion to approve the final agenda for the April 8, 2015 meeting. Committee Member Soltanipour seconded the motion, and the motion passed unanimously.

6. PUBLIC INPUT

There was no public input.

7. SUBCOMMITTEE REPORTS

None

8. OLD BUSINESS

8.1 Validity of Using the Interpretation Document to Authorize Usage of Hardship School Concept

Ms. Brown commended the work of Mr. Gabriel and Mr. Carland regarding questions posed by the Oversight Committee. Mr. Gabriel asked if there were any questions pertaining to his legal memorandum. Committee Member Wexler stated that she had asked Deputy County attorney, Maite Azcoitia, to review the legal memorandum, and that Ms. Azcoitia did not concur with certain issues in the memorandum. Committee Member Wexler said that the hardship concept process was intended as an interim process and was not necessarily meant to be a long term solution. She asked if the last paragraph on the last page of the memorandum was stating that adoption of the Third Amended Interlocal Agreement (ILA) for the purposes of permanently modifying the Level of Service Standard (LOS) was necessary. Mr. Gabriel responded that in order to have 100% gross capacity District-wide, the Second Amended ILA must be amended. Committee Member Wexler asked if it was intended that the Hardship School Concept (HSC) be in place forever. Mr. Gabriel responded that the HSC allows for 100% gross capacity at a particular school where there is a demonstrated hardship. He said that if the LOS were changed to 100% gross capacity District-wide, the HSC would no longer be necessary. Mr. Gabriel advised that the HSC had been adopted and continues unless it is further modified. He said that the HSC was supposed to be a temporary measure which would eventually revert back to 110% permanent capacity. Committee Member Wexler said that if the third amendment passes there would be no issue, but if the amendment did not pass, then the HSC would stay in place "temporarily" which had not been defined. Mr. Gabriel reiterated that as long as each year the school was found to be a hardship school, the 100% of gross capacity would stay in place.

Chair Stermer said that during his duration as an Oversight Committee Member, there had never been such a divergence of legal opinions as to how things should be interpreted and applied among the three groups of members who sit on the Committee. He stated that Mr. Gabriel was the School Board cadre attorney, not the attorney for the Oversight Committee. He said that the Committee did not have an independent attorney, irrespective of the three member groups on the Committee, to give legal advice. Chair Stermer said the specific issue was what would happen past school year 2019/20 if the third amendment failed. He said that it was the School Board cadre attorney's opinion that the temporary use of the HSC at specific schools could continue if the amendment did not pass. He stated that the County attorney believed that the use of 100 percent LOS gross capacity at hardship schools could not continue if the third amendment did not pass.

Ms. Azcoitia said that she and Mr. Gabriel had discussions when the draft memorandum came out, and were in agreement regarding the language in the existing Agreement, Section 8.10, which allows for the utilization of 100% of gross capacity on a temporary basis. She said that the disagreement was on the portion of Section 8.10 which states that relocatable classrooms may be utilized on a temporary basis as an operational solution “during the replacement or expansion of District school facilities or exceptional student education cluster sites or in the case of a disaster or emergency.” Ms. Azcoitia said there may be instances when the HSC may be used if one of those three factors are met, but that the memorandum did not address the second part of the equation in Section 8.10. She said it was not a total disagreement, but it would be on a case by case basis as to whether one of the three factors was met. Mr. Gabriel said that when the HSC was presented to all parties, it was fully presented when and how it would be implemented and what was being agreed to in the Interpretation Document, and there were no issues as to whether or not it fell within the “temporary” use. He said the parties could change their minds as to what the temporary use may be defined as, and that might be necessary if the third amendment did not pass. He said it was the circumstances, not the time period that warranted the need. Committee Member Good said she would like the opportunity to review Ms. Azcoitia’s opinion on the legal memorandum. She said she recalled that the discussion to amend the ILA was more pertinent to whether or not to use gross capacity at all schools, and the issue of the HSC came into play regarding a different type of scenario and fell within the Interpretation Document. Committee Member Good said that there needed to be full agreement among the Committee members when the time comes to reach out to the community. Discussions followed regarding the language in Section 8.10 regarding when relocatable classrooms could be utilized.

Committee Member Rogers said that for clarity, there needed to be more dialogue between the two attorneys to arrive at a consensus. Further discussions continued regarding the interpretation of Section 8.10 and the HSC. Mr. Gabriel advised that the Interpretation Document and the HSC had been reviewed by the Oversight Committee and the SWG, and they both had found that the temporary use and the HSC was appropriate. He stated that the parties have the ability to modify or interpret how the words would be utilized, and he said that the body had already made that decision by adopting it into the Interpretation document. Mr. Gabriel said that if the Committee wanted to clarify the interpretation, they have the right to do so. Chair Stermer said the process to amend the SILA had been specifically limited to the issues in order to keep it narrow and not of adding other things that could distract the passage of the document, and said that the rest of the items in the Interpretation Document would remain in place. He asked what would happen if the third amendment did not pass? Ms. Eichner said that the SWG talked about the HSC, what would happen to the concept if the SILA were amended, and what were the upsides and downsides of amending the ILA versus not amending it. Chair Stermer said it needed to be clear that gross capacity includes the use of portables. He said that perhaps the Interpretation Document should include the definition of “temporary”. Committee Member Wexler said that the city officials would ask pointed questions and the key to getting the third amendment passed would be for staff to have responses to their questions. She also would like the two attorneys to get together and identify a compromise language.

Chair Stermer said that the SWG was having a special meeting on May 7, 2015, and that at the present time there was no recommendation regarding the proposed amendment to the SILA from that group. He asked that Mr. Gabriel and Ms. Azcoitia should schedule a meeting regarding the language in the SILA as soon as possible and send their feedback from that meeting to the Oversight Committee and the SWG prior to the SWG meeting scheduled for May 7, 2015. He said he was hopeful that the two attorneys would reach consensus on the issue(s).

8.2 Staff Working Group Feedback Regarding Third Amendment of the Interlocal Agreement for Public School Facility Planning

Ms. Eichner said that at the last SWG meeting, the members had more questions than answers. She said that as planners for the cities, they were committed to bringing the best information back to their cities. She said the Group wanted to know what the implications were for the schools if the SILA was not amended, they wanted more information on what kind of facilities would be receiving the bond monies in terms of additional capacity, how the portable disposition plan worked and needed as much information as possible in order to educate their cities. Ms. Eichner stated that the next SWG meeting was scheduled for May 7, 2015, and she would like the SWG to have the attorneys' opinion prior to that meeting. She said that Ms. Wight had provided questions and answers which the SWG had requested. Ms. Eichner said that she was hopeful that the SWG would be able to provide a recommendation to the Oversight Committee at the May 7, 2015 meeting. She said that the SWG was committed to be able to explain the issues to their cities. She thanked Ms. Wight for providing the information requested. She stated that the key issue was what would happen if the third amendment did not pass and the implications if it was amended.

8.3 Status of Portable Disposition Plan

Committee Member Rogers advised that all portables/relocatables are not the same, and it was the condition of the portable that was important. Ms. Brown stated that modulars are permanent facilities on school campuses and are not considered portables.

Ms. Brown talked about the Annual Portable Utilization Plan process which was provided to the Committee in the back-up materials. She said that a survey is done yearly to check the condition of all portables that house students. Ms. Brown stated that the building inspector is the only one who can tell the State whether a portable is no longer needed. Ms. Brown said that after the District makes a recommendation to the State, the State either approves or does not approve the recommendation, and after approved by the State, a surplus list is created and must be approved by the School Board. She said that after that process, the portables would then be removed from the school site by the Physical Plant Operations Department and thereafter, from District inventory. Ms. Brown advised that this system allows the District to systematically remove unused space and makes sure that all of the inventory is accounted for and in proper condition. She said that currently only unsatisfactory portables are being removed from inventory and the approval must be received from the State who considers portables an asset. Ms. Brown stated that the cost to remove each portable is approximately \$6,000 to \$10,000. She advised that the Board had been very clear that they want the money in the classrooms, and that the portable disposition process should begin with only those portables that are on campuses where they are interfering with instructional practices or are taking up track or playground space. Discussions followed regarding the yearly costs to demolish portables and the allocation of resources.

Ms. Brown stated that the prioritization process that the Board has used for capital funds has been very clear and staff has been very aware of it. She talked about the portable demolition done in 2015 and the timeline for removal of additional portables. She advised that staff would continue to bring information to the Committee as the process continues. Ms. Brown talked about the next set of portables which would be surplus in the summer of 2015.

Committee Member Rich-Levinson advised that there is currently a bill in Tallahassee that could affect the District's capital dollars which needs to be monitored. Chair Stermer asked if there was

something that showed the present intent and the implementation of the bond money as it relates to new capacity that would replace portables. Ms. Brown said that there was not currently a specific map or chart to share. She said that the basic process was that staff looks at a five year historical and a five year projected analyses for each site across the District in order to bring forward recommendations to the Board regarding replacing portables with a capacity addition. She advised that the Office of Facilities and Construction was working to make sure that all student stations and instructional spaces would replace portable capacity with permanent capacity one for one. Committee Member Rich Levinson said that the above information was an integral part for the SWG meeting in May 2015 because the HSC depends on whether the portables will be replaced one to one. Discussions followed regarding school projections and portable use on campuses. Committee Member Hunschofsky said there are certain schools scheduled for a capacity addition using bond money, and that it was important to know which schools those were and the amount of money allotted. She said that those schools may fall under the existing SILA language which states that portables can be used during the expansion of a facility. Discussions followed regarding other possible uses for portables, moving portables from one campus to another and reducing the net inventory. Ms. Brown advised that the District can move existing portables, but they cannot purchase new portables for a site.

Committee Member Wexler talked about the current planning tool document that is listed on the District website. She said that the planning tool portrays the gross capacity of public schools and shows that the onsite portables are being counted into the gross capacity, whether they are being used or not, and therefore shows schools significantly under capacity. Ms. Brown shared that the Capacity Planning Tool that is located on the District website showed both permanent and gross capacity, and it was updated twice a year. She said that state law requires that every portable must be counted as a part of the District's capacity. Further discussions followed regarding the Planning Tool. Ms. Brown said that if anyone wanted more information, she would be happy to meet with them. Brief discussions followed regarding what is in the best interests of the students.

Committee Member Good said that it was the intent of the District to remove portables, that the District is currently addressing unsatisfactory portables, and that principals have great flexibility in utilizing the space when the portables are not slated for immediate removal. She said that it was the ultimate goal of the District to remove capacity in order for the state to approve the use of capital dollars for classroom additions. Committee Member Good said there is a bill in Tallahassee that has the potential to take away millions of dollars from Broward County Public Schools which would impact the DEFP. Committee Member Rich-Levinson reiterated that District staff is focusing on the removal of portables which are not currently needed.

9. NEW BUSINESS

9.1 Approval and Issuance of the 2014 Annual Status Report on Implementation of the Interlocal Agreement for Public School Facility Planning

Committee Member Tingom made a motion to approve the 2014 Annual Status Report on Implementation of the Interlocal Agreement for Public School Facility Planning. Committee Member Rogers seconded the motion, and the 2014 Report was unanimously approved.

9.2 Legislative Update

Ms. Brown recognized Mohammed Rasheduzzaman, and said that she appreciated him sitting for Mr. Akagbosu who was on vacation. Ms. Wight said that there was much legislation this session, but that she would mention only legislation that was within the scope of the Amended ILA. She said there was one Growth Management Bill that would impact the Amended ILA, House Bill 933, which would limit proportionate share mitigation to 125% of impact fees which was something the District would be concerned about. Ms. Wight said that House Bill 383, Private Property Rights, would provide that for any government that exacts conditions from a property owner that exceed the proportionate impact and does not pass the rational nexus test, the owner could seek damages. She stated that this Bill could limit agreements such as the one the District has entered into with the City of Parkland where the developer had contributed to a 24 classroom addition. Ms. Wight also mentioned the hazardous walking conditions bill which deals with how to remedy a situation where infrastructure is needed because of an existing hazard that would impact students that walk to school. Brief discussions followed. Committee Member Cooper asked if the District's Safety Department evaluated the streets which lead to schools. Ms. Brown said she would have the Safety Department reach out to the City of Hallandale Beach.

10. INFORMATIONAL ITEMS

10.1 March 5, 2015 Staff Working Group (SWG) Draft Not Approved Minutes

There was no discussion on Item Number 10.1.


10.2 Next Scheduled Meeting - June 10, 2015

Chair Stermer thanked the members for their active discussions and said that the important take away from the meeting was to have the two attorneys meet before the SWG meeting. He said that he would determine if the June 10, 2015 meeting would be held after receiving feedback from the May 7, 2015 SWG meeting and looking at the timeline.

11. ADJOURN

Chair Stermer adjourned the meeting at 1:55 p.m.

Respectfully submitted by:



Marilyn Soltanipour, Secretary



Date