

**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  
June 10, 2016  
12:00 noon**

**Kathleen C. Wright Administration Center, School Board Meeting Room**

**1. Call to Order**

Chair Stermer called the June 10, 2016 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:

- Eisinger, Debby
- Freedman, Abby M.
- Furr, Beam
- Graziose, Gerald
- Naylor, Lew
- Resnick, Gary
- Rogers, Roy
- Stermer, Daniel J.
- Tingom, Peter
- Wexler, Lois

**3. Approval of Minutes – April 13, 2016 Meeting**

Committee Member Eisinger made a motion to approve the minutes of the April 13, 2016 meeting. Committee Member Rogers seconded the motion, and the minutes were approved unanimously.

**4. Additions to the June 10, 2016 Meeting Agenda**

There were no additions to the June 10, 2016 meeting agenda. Committee Member Tingom asked what impact the Legislative changes to the open seat policy would have on school zones. Leslie Brown stated that the District currently has a very robust choice program in place. She said that staff was waiting for a technical assistance report to interpret the new choice law which is anticipated this summer. Ms. Brown said that the new choice law would not be implemented until school year 2017/18, however, she advised that the District was way ahead of what that law requires. Committee Member Tingom asked for a parallel structure of the new law.

**5. Approval of the Final Agenda for the June 10, 2016 Meeting**

Committee Member Rogers made a motion to approve the final agenda for the June 10, 2016 meeting. Committee Member Eisinger seconded the motion, and the motion passed unanimously.

**6. Excused Absences from April 13, 2016 Meeting - Chair Stermer and Committee Members Hunschofsky, Resnick, and Rich Levinson**

Committee Member Tingom made a motion to approve the excused absences from the April 13, 2016 meeting for Chair Stermer and Committee Members Hunschofsky, Resnick and Rich Levinson. Committee Member Furr seconded the motion, and the motion passed unanimously.

**7. Excused Absences for June 10, 2016 Meeting - Committee Members Cooper and Good**

Committee Member Furr made a motion to excuse the absences of Committee Members Cooper, Good, Hunschofsky, Rich Levinson and Schwartz from the June 10, 2016 meeting. Committee Member Eisinger seconded the motion, and the motion passed unanimously.

Discussions followed regarding what constituted an excused absence. Committee Member Tingom advised that two consecutive absences constituted removal from the Committee. Discussions continued regarding absences, and Chair Stermer advised that he understood the Members comments and would take all comments under advisement, review the issue and make a decision. Committee Member Rogers pointed out that he had offered his resignation to the Chair whenever there was someone who wanted to sit on the Committee.

Chair Stermer thanked the Committee for their comments and concerns over his health issues.

**8. PUBLIC INPUT**

There was no public input.

**9. SUBCOMMITTEE REPORTS**

None

**10. OLD BUSINESS**

**10.1 Staff Working Group Recommendation Regarding Third Amendment of the Interlocal Agreement for Public School Facility Planning**

Chair Stermer asked that the record reflect that Committee Member Resnick was present.

Ms. Brown stated that District staff had some good conversations with Municipal Educational Advisory Boards (EAB) concerning the Level of Service Standards (LOS). She gave a brief overview of the Alternate LOS option and said that it was the implementation of LOS at the higher of either 100% gross capacity or 110% permanent capacity. She said that the documentation from the State showed that the option was appropriate, and they agreed that the District does have two different types of schools. Ms. Brown said that in order to help the communities better understand Option 1, staff had separated the schools into School Type A and School Type B. Ms. Brown explained that School Type A was any school that had the equivalent of at least 10% of its permanent Florida Inventory of School Houses (FISH) capacity available onsite in relocatables and the LOS used would be 100% gross capacity and School Type B was any school that had less than the equivalent of 10% of its permanent FISH capacity available onsite in relocatables and the LOS used would be 110% permanent FISH capacity.

Ms. Brown said that the Committee had requested an opinion regarding the possible impacts if Public School Concurrency (PSC) were eliminated in Broward County. She stated that Alan Gabriel had written that opinion. Mr. Gabriel said that he took a neutral position when he wrote the Memorandum and trying to analyze the implications of the elimination of PSC. He said it was apparent to him that under The Bert J. Harris Jr., Private Property Right Projection Act Statute, there was the implication that any mitigation agreements that were currently in place may potentially be attacked. Mr. Gabriel stated that voluntary mitigation was grandfathered into the PSC system currently in place. He said if that system were changed, he could not make a determination on whether the Declaration of Restrictive Covenants now in place would still be enforceable. Mr. Gabriel stated that Broward County has the authority regarding school impact fees. He said that there was no question that the Second Amended Interlocal Agreement for Public School Concurrency (SILA) could be changed to eliminate PSC, but said that there would be impacts to that change.

Chair Stermer asked whether the District's Voluntary Mitigation Agreements that have been in place since PSC was initiated, would remain in full force and effect. Mr. Gabriel said that if PSC were modified or eliminated, only school impact fees would remain. He said that if that happened, new developers/property owners would be responsible to pay only school impact fees and would not be responsible for voluntary mitigation and therefore, would be treated differently than previous developers/property owners which may or may not open the door for potential litigation. Mr. Gabriel stated that under the current SILA, the opportunity for litigation does not exist because the Agreement specifically states that anything that happened previously was grandfathered in and was not challengeable.

Committee Member Wexler asked what the process would be, if the alternate LOS option were in place, regarding schools moving from 100% gross capacity to 110% permanent capacity from one year to the next. Ms. Brown said that at the last meeting there had been concerns regarding a level of consistency being applied for each school. She stated that the FISH capacity cannot change without going through a rigorous State process which requires a Spot Survey and a change in the Plant Survey. Ms. Brown advised that the State requires that portable capacity be included in the FISH capacity. She said the FISH Report includes both permanent and gross (portable plus permanent) FISH capacity. Mr. Akagbosu said that as far as he knew, portable capacity had always been considered in the FISH capacity in the state database. He stated that portable capacity plus permanent capacity equals gross capacity, and both are considered FISH capacity. Committee Member Wexler said it was important that promises made to communities be kept and that old portables be removed from schools. She stated that she supported either the elimination of PSC or using 100% gross capacity. Committee Member Wexler said that she felt that supporting 100% gross capacity gave the flexibility that the District was looking for. Ms. Brown stated that the challenge in understanding the components of FISH capacity was that when there was a school without portables, there may actually be existing student space in the school that is not counted as classrooms in determining the capacity of the school as a part of the State calculation of permanent capacity such as resource rooms, music rooms, etc. and that the school may have empty rooms to use, but does not have the flexibility to count those rooms to meet LOS. She said that was why the alternate LOS was suggested, because it creates flexibility in appropriate ways.

Discussions followed regarding the Municipalities that had not voted for Option 1 (Deerfield Beach, Fort Lauderdale, Hallandale Beach, Parkland, Wilton Manors) at the SWG meeting. Ms. Brown advised that staff had attended two Fort Lauderdale Educational Advisory Board (EAB) meetings, and the EAB had recommended support for Option 1. Ms. Wight advised that it was the first meeting for the SWG appointees at the Cities of Deerfield Beach, Parkland and Wilton Manors, and they did not feel they were ready to make a recommendation, and the City of Hallandale Beach had gone through a new change in administration and was not ready to make a recommendation. Discussions followed regarding the design of schools and the needs and wants of the Communities.

Committee Member Rogers said that Option 1 had both consistency and flexibility. He said that schools without portables should not be penalized, and he believed that Option 1 would be an excellent tool to give to the schools to be able to be consistent and flexible. He said that it made sense for developers to do the right thing for the students and gave the City of Weston as an example of developers who had stepped up and done what was in the best interest of the students. He said that the answer was for developers to cooperate with the District instead of being coerced into doing more. Discussions continued regarding developer cooperation, the changing landscape based on community need, city zoning changes, and the choices between public and charter schools.

Chair Stermer asked Maite Azcoitia, Deputy County Attorney, if she had reviewed the Memorandum written by Mr. Gabriel, and Ms. Azcoitia answered that she had not reviewed the Memorandum. Committee Member Wexler said that the County's vote at the SWG meeting did not support Option 1, however, she said that if the Oversight Committee supported Option 1 and it moved forward to the Board of County Commissioners, she would attempt to explain the option to the County Commissioners. Discussions followed regarding the Committee's charge and the direction that they wanted to go.

Committee Member Eisinger made a motion to recommend Option 1 as the proposed amendment to the SILA subject to the County Attorney's agreement with Mr. Gabriel's opinion. As a point of information, Chair Stermer asked what would happen if the District Cadre Attorney and the County Attorney did not agree. Brief discussions followed, and Committee Member Eisinger said she recommended Option 1 believing that the Memorandum generated by the District Cadre Attorney was correct, and if there was a difference of opinion from the County Attorney, it may influence the votes. Committee Member Naylor seconded the motion. Chair Stermer said the motion was to move forward with a Third Amendment to the SILA adopting Option 1 subject to the concurrence of the County Attorney's Office to the opinion given by Mr. Gabriel with the understanding that should the County Attorney's Office have a difference of opinion, the item would be placed on the Committee's next agenda. Mr. Gabriel said that his opinion stated that there are potential impacts associated with the elimination of PSC. Discussions followed regarding the opinion. Committee Member Wexler as a point of order, said that Mr. Gabriel's opinion addressed the elimination of PSC, did not relate to Option 1, and should have nothing to do with the pending motion.

Committee Member Eisinger, through the seconder of the motion, asked to revise her motion to state that she was recommending Option 1 as to LOS. Mr. Naylor accepted the revised motion. Ms. Brown clarified that any direction from the Committee would allow staff to move forward with next steps. She said her next step would be to bring a draft Third Amendment of the ILA to a School Board Workshop and then move forward to the County and the Municipalities.

Chair Stermer advised that he was still a proponent for the elimination of PSC. He said that the Committee had spent approximately two years discussing the concept of PSC and how to continue it when it was no longer required by Statute. Chair Stermer said if PSC was eliminated, he felt that the School Board would have complete flexibility to decide what to do with each of their schools. Discussions followed regarding PSC, LOS and concerns regarding future development. Ms. Brown advised that from 2003 through April 2016 the District had collected approximately \$89,855,453 in fees and approximately \$17,216,400 in mitigation monies above school impact fees. Mr. Gabriel advised that the District had mitigation agreements that occurred in 2003, which have been modified and amended over the years, and he stated that a voluntary mitigation agreement had been amended within the last two months and additional mitigation monies were accepted above and beyond school impact fees. Chair Stermer asked whether there had been any new agreements since 2008 when PSC was initiated. Mr. Gabriel stated that in 2016, the School Board entered into a Modular Classroom Agreement with the City of Parkland. Additionally, he said that there were pending negotiations with the City of Fort Lauderdale regarding new developments in the Downtown Regional Activity Center which falls within the original Fort Lauderdale Mitigation Agreement and was being amended. Discussions continued regarding Option 1, Option 3 and the use of monies collected above and beyond school impact fees.

Chair Stermer asked for a vote on the motion on the floor made by Committee Member Eisinger and seconded by Committee Member Naylor. The vote passed 7 to 3, with Chair Stermer and Committee Members Resnick and Wexler voting no. Discussions followed regarding new construction of charter schools and cross border issues.

Ms. Brown thanked the Committee for the great conversation and advised that the Third Amendment to the ILA would be presented at a School Board Workshop. She said that the subject workshop information would be emailed to the Committee before that Workshop. Committee Member Furr asked for an opinion from the County Attorney regarding the implications of eliminated PSC in Broward County.

A brief discussion followed regarding approvals to the Third Amendment of the ILA by the municipalities. Chair Stermer stated that it was the School District's position that if there were sufficient signatories to the Agreement, the Agreement would become effective countywide. Ms. Brown stated that in addition to approval from the District and the County, 50% of the population and 75% of the municipalities must approve.

## **11. NEW BUSINESS**

There was no new business.

## **12. INFORMATIONAL ITEMS**

### **12.1 June 2, 2016 SWG Draft (Not Approved) Minutes**

There was no discussion on the above item.

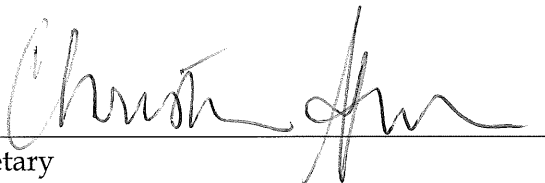
### **12.2 Next Scheduled Meeting – October 19, 2016**

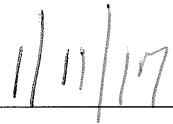
There was no discussion on the above item.

### 13. ADJOURN

Chair Stermer thanked the Committee for their attendance at the special Oversight Committee meeting and adjourned the meeting at 1:50 p.m.

Respectfully submitted by:

  
Secretary

  
Date