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## Board of Education

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Minutes

The Board of Education

A Work Session of the Board of Education of Fort Smith Public Schools was held Monday, September 13, 2021, beginning at 5:30 PM in the Service Center, Bldg. B, Auditorium, 3205 Jenny Lind, P.O. Box 1948, Fort Smith, AR 72901.

### **CALL TO ORDER**

Ms. McFerran, president, called the meeting to order. Other board members present were: Ms. Talicia Richardson, Mr. Dalton Person, Ms. Dee Blackwell, Mr. Matt Blaylock, Ms. Yvonne Keaton-Martin and Mr. Troy Eckelhoff. District administration present included: Dr. Terry Morawski, Superintendent; Mr. Martin Mahan, Deputy Superintendent; Dr. Chris Davis, Assistant Superintendent of Human Resources and Campus Support; Dr. Tiffany Bone, Assistant Superintendent of Curriculum and Instruction; Mr. Charles Warren, Chief Financial Officer; Mr. Darian Laves, Executive Director of Student Services; Mr. Vance Gregory, Executive Director of Technology; Ms. Zena Featherston Marshall, Executive Director of Communication and Community Partnerships; Mr. Shawn Shaffer, Director of Facilities, and Ms. Nadine Brooks, Office Manager to the Superintendent.

Mr. Marshal Ney, Friday, Eldredge and Clark and District Attorney was also present.

### **SUPERINTENDENT'S REPORT**

Dr. Morawski reported the following meeting dates for board members: September 27 Regular Board Meeting, ASBA Regional Workshop on October 4, October 11 Work Session, PLC Training for Board Members October 13, Oct 25 Regular Board Meeting, November 15 Regular Board Meeting, December 8 -10 ASBA Annual Conference. and the December 13 Regular Board Meeting,

Dr. Morawski reported that an open house for the community to see completed capital improvements of renovated facilities will be held on November 14 from 1:30 - 4:30 p.m.

Dr. Morawski reported that the board meeting on September 27 would be the last meeting before the mask mandate is set to expire should the board chooses to review at that time to extend it or let it expire.

Dr. Morawski presented an update of positive COVID cases to date, noting a peak of 167 students and staff cases on August 21. He provided a comparison of 2021-2022 to 2020-2021 COVID data of students, staff and close contacts excluded from school.

Highest Number of Total Positive Cases	167	143
Highest Number of Student Cases	143	90
Highest Number of Staff Cases	24	64
Highest Number of Total Close Contacts	595	878
Highest Number of Student Close Contacts	582	817
Highest Number of Staff Close Contacts	13	109

Dr. Morawski reviewed the following timeline:

April 29, 2021 - Act 1002 Ending Mandatory Face Coverings (for Public Schools)

August 6, 2021 - Judge Timothy Fox Rules Act 1002 "Cannot Be Enforced..."

August 9, 2021 - FSPS Board Approves Student Mandatory Face Coverings for 60 Days

August 12, 2021 - FSPS Board Approves Staff Mandatory Face Coverings

September 27, 2021 - Last Scheduled Meeting to Consider Extending Face Coverings

October 8, 2021 - 60 Day Face Covering Requirement Expires

Mr. Ney presented a mask litigation update. He reported on Bentonville, Cabot, and Pulaski County cases. Mr. Ney stated that the Bentonville case would be the only one that a quick decision could be made. Other two cases could be heard as late as November or December.

Mr. Ney stated that state legislators filed an appeal of Judge Fox's order to the Arkansas Supreme Court. Appellants' brief is due on October 10, 2021. Mr. Ney stated that more guidance could come from Judge Fox in November but he did not expect to see anything from the Supreme Court before December.

Mr. Person indicated that he would be in favor of extending the mask mandate another 30 to 60 days due to the staff low numbers, and staffing issues if the mask mandate is not in place. He stated that although he did not like it, he thinks it is working to keep the numbers low and that it should be kept in place until there is a precipitous decline in COVID cases.

Ms. Blackwell stated that the low transmission rate and close contacts has allowed schools to continue in person. Ms. Blackwell is in favor of continuing the 60 days with the option of ending it if conditions improve.

Ms. Richardson was agreeable to considering another 60 days option for the same reasons.

**PRESENTATION - CONSIDER ADOPTING UPDATES FOR STUDENT RELATED POLICY CHANGES FOR FIRST READING**

Mr. Layes presented 13 policies for review. He stated that two were new policies: 4.44 National Anthem and Policy 4.60 is related to student restraint. The remaining policy changes were minor, mostly legal references.

Mr. Person asked if Policy 4.44 was based on a new law that was passed. Mr. Layes stated that it was the passage of a new law for adding the moment of silence at athletic or school events.

Mr. Layes stated that Policy 4.60 deals with student restraint. He explained the necessity of having reaction teams, completing a documentation and debriefing form, and communicating with parents if a student has to be restrained. He indicated that restrain is a last resort in dealing with behavior. Mr. Layes referenced Capturing Kids Hearts as a more positive approach to dealing with students with behavior issues.

Dr. Bone spoke briefly about Capturing Kids Hearts.

Ms. Richardson appreciated the explanation provided by Mr. Layes and Dr. Bone.

Ms. Blackwell asked if a flag was present in all classroom. Mr. Mahan stated that he would check to see that there was a flag in every class.

These policies will be presented at the September 27 Board Meeting

**PRESENTATION - Census, Zoning and Next Steps**

Dr. Morawski introduced Attorney Marshall Ney to present Census, Zoning and next steps.

Mr. Ney stated that this process was quite complex. He reviewed the following Ark. Code Ann. § 6-13-631 law and differing opinions related to the rezoning after census. Fort Smith Public Schools elected to go with four zones and three at large before this law was passed.

**Ark. Code Ann. § 6-13-631**

(a) The qualified electors of a school district having a ten percent (10%) or greater minority population out of the total population, as reported by the most recent federal decennial census information, shall elect the members of the board of directors as authorized in this section, using selection procedures complying with the Voting Rights Act.

(b)(1) At least one hundred twenty (120) days before the annual school election held [in 2022], the local board of directors shall:

(A) By resolution, choose to elect members of the board of directors from 5 or 7 single member zones or from 5 single-member zones and 2 at large; and

(B) With the approval of the county board of election commissioners, divide each school district into 5 or 7 single-member zones in accordance with the federal Voting Rights Act.

(2) Zones shall have substantially equal population, with boundaries based on the most recent available federal decennial census information

c) A board of directors choosing to elect members of the board of directors by 5 single member zones and 2 at-large positions may fill the 2 at-large positions by drawing lots from among the current members of the board of directors

(d) Except as provided in subsection (e), a member of a school district board of directors shall serve a five-year term.

(e) At the first meeting of a new board of directors, the members shall establish initial terms by lot so that, to the extent possible, an equal number of positions are filled each year and not more than two (2) members' terms expire each year.

(f)(1) At least ninety (90) days before the filing deadline for the annual school election held [in 2022], the board, with the approval of the county board of election commissioners, shall:

(A) Divide each school district having a ten percent (10%) or greater minority population into single-member zones; and

(B) File a copy of the plan with the county clerk of the county where the school district is administratively domiciled.

(2) The zones shall be based on the most recent federal decennial census information and be substantially equal in population.

(3) At the annual school election following the rezoning, a new school district board of directors shall be elected in accordance with procedures set forth in this section.

Penalty for noncompliance: DESE “shall withhold twenty percent (20%) of the annual state funds allocation to a school district not in compliance with this section.” Ark. Code Ann. § 6-13-631(h)(2).

#### Exemptions to the Statute

A school district that is currently operating under a federal court order enforcing school desegregation or the federal Voting Rights Act of 1965;

A school district that is operating under a pre-consolidation agreement that is in compliance with the federal Voting Rights Act of 1965;

A school district that has a zoned board of directors meeting the requirements of the federal Voting Rights Act of 1965; and the lawsuit has been finally resolved.

A school district that a federal court has ruled is not in violation of the federal Voting Right Act of 1965, so long as the court order is in effect.

A school district which on August 13, 1993, was in the process of defending a lawsuit brought under the federal Voting Rights Act of 1965, is exempt

Fields v. Marvell Sch. Dist., 352 Ark. 483 (2003)

1) Held that Marvell School District was exempt from statute and was not required to elect an entirely new school board after district rezoned its boundaries after the 2000 census.

2) The district had elected its school board via an at-large election system until the 1990 census. After the 1990 decennial census, the District changed to a zone election system with 5 zoned districts and 2 at-large.

3) After the 2000 census, the district hired a demographer from ASU to review its zones and to determine if it remained in compliance with the statute.

4) According to Dr. England's 2000 report, the district remained in compliance because it maintained a plan for five single-member zones.

5) Because the 2000 census revealed a population change in zones three and four, Dr. England recommended shifting the boundary line by approximately one block. The board voted to adjust the boundary line between zones three and four.

Fields v. Marvell Sch. Dist., 352 Ark. 483 (2003)

The trial court held that the statute did not require the district to elect an entirely new school board because it was still operating under a federal desegregation order and was in compliance with the Voting Rights Act. The Supreme Court affirmed, reasoning that: ☐ The desegregation order was introduced at trial; ☐ Dr. England's report was introduced at trial and stated that the school district was in compliance with the Voting Rights; and Act because it elected its school board members from zoned districts ☐ Plaintiffs produced no evidence to dispute the fact that these two exceptions applied in this case. The Supreme Court did not consider the argument that the district was not entitled to exemptions because it had re-zoned after the census.

Attorney General Opinions

2002 Opinion: "It is my opinion that after a district has been rezoned, an entirely new board must be elected." Involved the West Memphis and Marion School Districts. Both had five member zones and two at-large members and were realigned after the 2000 census.

2003 Opinion: Reaffirmed the position above and noted that the Marvell decision did not address whether a district that re-zones after the census waives its exemption.

Arkansas School Board Association's Opinion is:

- 1) that after the 2020 census data is issued, districts should: hire a demographer or use the secretary of state to assess and establish new zones;
- 2) Redraw zones so as to be substantially equal in voting age population;
- 3) Zone plan must be approved by county election commission; and
- 4) at the regular school election in 2022, all school board positions must be up for election, including any at-large positions.

One interpretation: Disagrees that all positions must be up for election in 2022.

Relies on the exemption for districts that have a zoned board of directors meeting the requirements of the Voting Rights Act.

Claims that the Marvell decision held that zone boundaries could be modified without causing the re-election of the entire board.

Essentially, these districts take the position that if they come into compliance with the Voting Rights Act after the census, they qualify for the exemption.

#### District View

We believe that interpretation is too aggressive, particularly when school funding is on the line. Until a court rules otherwise or the General Assembly clarifies the intent of the statute, we believe that any district that re-zones as a result of the 2020 census must re-elect all board members.

Mr. Ney stated that board members would need to take action in November to determine new zones and the two at large positions to represent. After the election, board members would need to draw again for length of terms to have staggered terms up to five years in length.

Ms. Blackwell asked if the rezoning affected school districts and students that attended those schools. Mr. Ney stated that it did not.

Dr. Morawski reported that the District has hired EFS Incorporated Geo Technologies to clarify the District zones and provide updated electronic maps in late October. The board would need to take action by November 2 to have a resolution for the election. The new zones would need to be approved by the voting commission by December 2 and sent to the State.

Mr. Person stated that board members would need to review the maps once rezoning is complete to determine best route forward for all seven seats up for election.

Board members, Dr. Morawski, and Mr. Ney discussed drawing for positions and how to stagger the terms.

Ms. McFerran stated that this was a presentation and no further action is required at this time.

#### **PRESENTATION - Vision 2023 Capital Improvement Update**

Mr. Shaffer provided a capital improvement update on Northside High School, Southside High School, Darby Middle School, Peak Innovation Center, Cook Elementary School, Access and Security Package B, Access and Security Package C.

Mr. Shaffer also provided a storm damage update at Morrison Elementary School.

Ms. McFerran asked about access to Northside from the street.

Ms. Richardson thanked the community for passage of the millage.

Mr. Eckelhoff asked about the installation and training for the scoreboard at the Northside arena. Mr. Shaffer stated that the floor had to be cured for 30 days before the scoreboard could be installed and training will be provided.

#### **BOARD MEMBERS FORUM**

Ms. Blackwell stated that she's happy to be delivering star awards again to students.

**ADJOURN**

There was no further business and the meeting was adjourned at 6:50 p.m.

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Susan McFerran, President

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Dee Blackwell, Secretary