



**SOUTH DAKOTA HIGH SCHOOL ACTIVITIES ASSOCIATION  
SPECIAL MEETING OF THE BOARD OF DIRECTORS  
SDHSAA OFFICE BUILDING**

February 4, 2014

1:00 p.m.

Pierre, South Dakota

The Board of Directors held a special meeting on February 4, 2014, at the SDHSAA Office Building in Pierre, South Dakota with members present as follows:

Darren Paulson

Eldon Marshall

Rick Weber

Todd Trask

Mike Ruth

Mike Miller

Dan Whalen

Members excused:

Jason Uttermark

Staff members present included Wayne Carney, Jo Auch, James Weaver, and John Krogstrand.

The meeting was called to order by Chairman Darren Paulson at 1:05 p.m. followed by the Pledge of Allegiance.

**Discussion on potential State Legislative Action, Open Meeting Statutes & Open Records Statutes**

Chairman Paulson introduced SDHSAA Attorney, Ms. Lindsey Riter-Rapp, who provided the Board with an overview of pending legislation, SB 90 and HB 1141, that, if passed, would affect the SDHSAA. Please refer to Addendum A, page 3 of the minutes.

Riter-Rapp detailed the three sections of SB 90:

Section 1: That § 13-36-5 be amended to read as follows:

13-36-5. Any association exercising the grant of authority contained in § 13-36-4 to regulate public and nonpublic schools shall be audited annually by the State Department of Legislative Audit and a report of such audit shall be made to the Legislature and shall be made public on the association's website as well as the State Department of Legislative Audit's website. The association shall pay for the audit at the rate prescribed by § 4-11-18.

It was noted that the SDHSAA Audit Report currently is posted on the Department of Legislative Audit's website as well as on the SDHSAA website for public access. In addition, by current state law, the SDHSAA audit is currently made to the Legislature and SDHSAA audit reports have been presented to all SDHSAA member schools on an annual basis for over the past 50 years.

Section 2: That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

Any meeting conducted by an association exercising the grant of authority contained in § 13-36-4 to regulate public and nonpublic schools shall comply with all open meeting and open records laws in this state.

Board member Whalen inquired as to what part of the open meeting laws the Association has not been following. Riter-Rapp replied that the question raised by some is what kind of entity the SDHSAA is; whether the SDHSAA is public, private or voluntary nonprofit. As per SDCL 13-36-4, school boards may delegate, on a year to year basis, the control, supervision, and regulation of high school interscholastic activities to any association which is voluntary and nonprofit if membership in such association is open to all high schools approved and accredited pursuant to this section. While the

SDHSAA is not specifically mentioned in the statute, the legislative authority for the SDHSAA to control, supervise, and regulate high school interscholastic activities, is. By this statute, therefore, Riter-Rapp interprets the SDHSAA not to be a public entity.

Section 3: That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:  
Any association exercising the grant of authority contained in § 13-36-4 to regulate public and nonpublic schools shall annually, or at the call of the chair, report to the Government Operations and Audit Committee.

Board Member Weber asked if open materials should be posted on the SDHSAA website or just made available at the meeting. Riter-Rapp answered that the materials may be posted on the website but one hard copy must be made available at the meeting.

Board Member Trask asked as far as public and private, where does the SDHSAA fall? Riter-Rapp noted that the SDHSAA is not a public body and case law reinforces that position.

Board Member Ruth clarified that each member school board delegates, on a year to year basis, the control, supervision, and regulation of high school interscholastic activities to the SDHSAA.

#### **Executive Session with SDHSAA Legal Counsel**

It was moved by Rick Weber, seconded by Mike Ruth, to enter into executive session at 1:22 p.m. to confer with legal counsel.

Board Member Miller inquired to the purpose of the executive session. Riter-Rapp responded the purpose of the executive session would be to discuss pending legislation and that client-attorney confidentiality should be observed.

The motion to enter executive session passed 5-2 with Mike Miller and Dan Whalen voting no.

Chairman Paulson declared the Board out of executive session at 3:06 p.m.

Following discussion, it was moved by Rick Weber, seconded by Todd Trask, to instruct SDHSAA legal counsel to confer with sponsors of legislation currently proposed in the State Legislature affecting the SDHSAA, and further instruct SDHSAA legal counsel to continue work on a Resolution or Policy to ensure transparency within the SDHSAA.

The motion passed 7-0.

Chairman Paulson set a special meeting of the Board of Directors for Tuesday, February 11, 2014, at 12:00 p.m. in the SDHSAA Office Building to receive a report from SDHSAA Legal Counsel Riter-Rapp with possible adoption to follow.

#### **Adjournment**

There being no further business to come before the Board, it was moved by Mike Miller, seconded by Mike Ruth, to adjourn at 3:12 p.m.

The motion passed 7-0.

Respectfully submitted,

Wayne Carney  
Executive Director

**SENATE BILL NO. 90**

FOR AN ACT ENTITLED, An Act to revise certain provisions related to the High School Activities Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 13-36-5 be amended to read as follows:

13-36-5. Any association exercising the grant of authority contained in § 13-36-4 to regulate public and nonpublic schools shall be audited annually by the State Department of Legislative Audit and a report of such audit shall be made to the Legislature and shall be made public on the association's website as well as the State Department of Legislative Audit's website. The association shall pay for the audit at the rate prescribed by § 4-11-18.

Section 2. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

Any meeting conducted by an association exercising the grant of authority contained in § 13-36-4 to regulate public and nonpublic schools shall comply with all open meeting and open records laws in this state.

Section 3. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

Any association exercising the grant of authority contained in § 13-36-4 to regulate public and nonpublic schools shall annually, or at the call of the chair, report to the Government Operations and Audit Committee.

**HOUSE BILL NO. 1141**

FOR AN ACT ENTITLED, An Act to require the South Dakota High School Activities Association to comply with the open meeting laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as follows:

The South Dakota High School Activities Association shall comply with the provisions of chapter 1-25 requiring meetings of the association to be open to the public.