



**STATE OF SOUTH CAROLINA**  
**DEPARTMENT OF EDUCATION**

August 22, 2024

Superintendent Craig Witherspoon  
Richland One Board of School Commissioners  
Stevenson Administration Building  
1616 Richland Street  
Columbia, SC 29201

Dear Dr. Witherspoon and Commissioners:

On August 12, 2024, the SC Department of Education's (Department) Office of School Facilities (OSF) received an email from Richland One's (District) architect renewing the request for a School Building Permit to be issued for the Vince Ford Early Learning Center (VFELC). As noted in prior communications, the Department was awaiting clarity from the State Inspector General's (SIG) investigation and report to determine if additional consideration of the VFELC may be warranted. After reviewing the SIG's findings and affirmation of the Department's determinations, there is no just cause to reopen this matter and depart from the Department's final determination communicated to the District on December 15, 2023.

Even if the matter of the VFELC were to be reopened, State Superintendents of Education cannot separate their various obligations under the law. Rather, these authorities must be harmonized and considered as whole. In this instance, that means considering both the laws surrounding School Building Permits (SC Code § 59-23-220 and SC Code § 10-5-270) and the Fiscal Practices Act (SC Code 59-20-90(D)(e)) as they relate to this project.

**1. School Building Permits and the VFELC**

In order to require the review and approval of the Department, the primary purpose of the building in question must be for state-funded full-day 4K (CERDEP), K-12, or other secondary education classroom instruction.<sup>1</sup> Anything outside of this, including 3K and younger, belongs to a different Authority Having Jurisdiction (AHJ).

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<sup>1</sup> This would include the Child Early Reading Development and Education Program (CERDEP established by SC Code § 59-156-110, et seq. Adult education is secondary education and SC Code § 10-5-270 requires plans for secondary public school buildings to be submitted to the Department.

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As for the law surrounding School Building Permits, the Department affirms its December 15, 2023 decision that VFELC is not a public school building requiring a Certificate of Approval from the Superintendent of Education under § 59-23-220.

This decision is bolstered by a straightforward review of the fact pattern established in the July 2024 report of the SIG, which reveals that from the beginning, the District's intent in building the VFELC has been to provide childcare and related community health services, as well as administrative office space.<sup>2</sup> While intervening (and belated) votes of the Board appear to be technical window dressing intended to force the Department's review, the District's primary purpose for the VFELC still does not require the Department's review and approval.

The attached timeline, drawn directly from the SIG's report, only includes plan review and construction activity associated with the VFELC and does not touch on the significant deficiencies in the District's procurement decisions and timeline. It does, however, demonstrate the District's pattern of disregard for legal authorities, making representations to Department staff that were not authorized by the Board, and what appears to be a general willingness to say whatever it takes in attempting to move the project forward.

While many things remain unclear about the District's decision-making to-date, what is not unclear is the District's "build at any cost" approach to completing the VFELC. Perhaps the most accurate thing the District has said to-date regarding this project was reported on August 10, 2024 by *The State*:

"As it stands, Witherspoon said the building will be meant for 3-year-old preschool through second grade, though he said that might change. 'What we don't want to do is confuse programming with the facility,' Witherspoon said. 'Our intention is to build a building.'"<sup>3</sup> (*emphasis added*)

This build-it-now, figure-it-out-later approach misses the core issue at play: everything hangs on the intended programming and purpose of the building. Proper zoning, proper permitting (determining the correct AHJ), proper program licensure, and proper budgeting for not just the construction of the building but for ongoing staffing, operations, and maintenance all flow from the intended purpose and use of the building. Districts typically don't construct facilities with a vacuum of intent and no plan in place other than to "build a building."

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<sup>2</sup> Richland County Planning Commission, June 5, 2023, Case No 23-016 MA

**Ms. Frierson:** "I have a question of the Applicant, too. We heard the term school. Is the intended use an elementary school or just an early childhood center? Could you elaborate, please?"

**Dr. Witherspoon:** "Yes ma'am, this intended use is an early learning center. Birth to four, birth to five. So, it would be young people, and, and the majority if we're talking birth to four, you know, would be brought, dropped off and then services would be provided just like they would at any, any early learning center during that time."

*The Planning Commission voted 8-0 with one absence to move the case forward to County Council with a favorable recommendation for rezoning. The staff had recommended not to re-zone based on the use not matching the County Comprehensive Plan, however the discussion in the minutes from the board make clear that they think an early learning center is a potentially valuable community asset and that it could be approved under the exception of "improving the surrounding community."*

<https://www.richlandcountysc.gov/Portals/0/Departments/CountyCouncil/Committees/Planning%20Commission/Minutes/20230605.pdf>

<sup>3</sup> <https://www.thestate.com/news/local/education/article290919399.html#storylink=cpy>

However, the timeline illustrates that the District in reality *did* understand this core issue, because as documented by the SIG, it changed the age ranges to be served at least four (4) times from March 2023 through January 2024 as it pursued first rezoning from Richland County and then a School Building Permit from the Department.

The timeline highlights significant questions in this regard:

- Why was the Richland County rezoning request withdrawn on August 22, 2023? The SIG report states on Page 17 that by withdrawing this request, “the District could no longer service children as originally intended by the Board,” including dental, health clinic, and childcare services.
- Why did the District’s architect subsequently relabel rooms without modifying any other aspect of the design on August 24, 2023, absent Board authorization? In doing so, the District appears to disguise the intended programming of the building and thus not have to pursue rezoning, as would otherwise be required by law.
- Why did the District begin construction on October 9, 2023 and in the absence of a School Building Permit, then continue to pursue construction after:
  - o October 25, 2023 when formally notified that the matter was pending before the Department’s legal team in regard to unresolved concern regarding the ages intended to be served by the VFELC;
  - o November 16, 2023 when that fact was restated to the District in a meeting;
  - o November 28-29, 2023 when the District is told the Department will not issue a School Building Permit; and
  - o December 15, 2023 when the Department issues its final written legal determination on the matter?
- Under what authority did the District represent to the Department on November 1, 2023 that the age ranges to be served at the VFELC had changed, in the absence of a vote of the Board?

While the District claims it has now changed the age-group served within the building, the District has consistently presented plans for a facility other than a public school building. Since May 8, 2023, there has been no substantive modification of the original drawings other than the relabeling of rooms. Simply renaming rooms as “classroom” or “health room” does not establish a public school building under this area of law. The Department rejects the evident belief of the District that it can effectively change the entire purpose of a building simply by renaming rooms.

Finally, since the Board was brought into the decision loop in January 2024, members of the Board have continued to discuss the VFELC’s focus on 3K and younger children and to refer to the project as “childcare” in public meetings. On January 23, 2024, even as the Board was voting to make the VFELC a “school,” Commissioner Tamika Myers described its purpose as addressing the community’s need for “childcare.”

During the August 9, 2024 board meeting, Commissioner Cheryl Harris questioned Dr. Rhonda Wiley whether the district was out of room for early learning. Dr. Wiley responded, “As it relates to 3K, yes.” Commissioner Harris concluded, “This is a center that we are trying to build,

because we are turning away children whether its 3K, 4K or whatever K.” Taken together, the comments from District leaders further indicate that while labels on rooms have changed the purpose has not.

**Therefore, as for the School Building Permit section of the code, the Department’s final answer on this matter was provided to the District on December 15, 2023.**

## **2. Fiscal Practices Act and Richland One**

As for the Fiscal Practices Act, “the State Superintendent shall declare a school district to be in a state of fiscal caution if the district previously was on fiscal watch and if:”

“the department identifies significant deficiencies, material weaknesses, **direct and material legal noncompliance** or management letter comments **which, in the opinion of the department, the aggregate effect of the reported issues has a significant effect on the financial condition of the district.**” (SC Code 59-20-90(D)(e)) (*emphasis added*).

The threshold for “direct and material legal non-compliance” is met in the findings of the July 2024 report of the State Inspector General (SIG) that the District mismanaged \$31 million dollars by awarding an “unauthorized or illegal procurement.” Therefore, the District was elevated from “fiscal watch” to “fiscal caution” as required by state law.

Related to issues established by the SIG’s report, the Department has a substantive list of concerns related to the VFELC that “may have a significant effect on the financial condition of the District:”

- On August 9, 2024, the Board voted to ratify its contract with the construction firm building the VFELC. This ratification occurred after the SIG reported the procurement of the firm to be “unauthorized or illegal” and identified other substantive procurement irregularities related to this project.
- The legal liability associated with pending lawsuits related to alleged stormwater runoff is unknown at this time.<sup>4</sup>
- The SIG’s report establishes that the district has not assessed the financial requirements for future operations and maintenance of the VFELC (Page 7, Recommendation Sec. III-1). Commissioner Robert Lominack stated at the January 23, 2024, meeting of the Board that he has requested this, as well as a personnel plan and budget, none of which have been provided to-date.<sup>5</sup>

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<sup>4</sup> [https://www.postandcourier.com/columbia/education/richland-one-vince-ford-flooding-lawsuit-columbia/article\\_bbf9f994-502f-11ef-929f-235bea5b5442.html](https://www.postandcourier.com/columbia/education/richland-one-vince-ford-flooding-lawsuit-columbia/article_bbf9f994-502f-11ef-929f-235bea5b5442.html)

<sup>5</sup> “I guess one of the things I’m hearing from teachers and administrative staff at other schools is, ‘Holy cow. Now that we know what y’all are doing, that is exactly what we need. We need that support. We need that money.’ And I have to say, for two years, I’ve complained about teacher vacancies and teacher retention, and I most recently complained about how many social workers we’ve run off, and I came up with a solution that I don’t know if anybody cared for it. But I came up with a solution for how I felt we could address it, and I keep being told, ‘There’s a teacher shortage that we can’t control. There’s a shortage of social workers we can’t control, but now we’re going to build a \$31 million building and we’re going to compete with other schools in our district for those same people.

- The District has faced a consistent challenge in teacher shortages, with at least 70 vacancies each school year and a dramatic peak of 175 vacancies at the start of the 2023 school year.<sup>6</sup> While districts across the state face teacher shortages, these numbers are significantly higher than surrounding districts and mean that many students begin the year without access to the most crucial in-school factor for their success—a highly qualified teacher. This ongoing issue not only disrupts the continuity of learning but also threatens the District's ability to meet its educational goals and support long-term student achievement. As noted by Commissioner Lominack on January 23, 2024, this all raises significant questions about how the VFELC would be staffed.
- Since 2014, District enrollment has declined 9% from 23,033 to 20,860.<sup>7</sup> The Department is unaware of any facilities usage or capacity studies of current District infrastructure that would justify the District's need for the VFELC, based on enrollment trends, whether it were to serve as a childcare center *or* as a school.
- There have been numerous reports from parents, teachers, and students that the District has at times neglected to properly maintain *existing* buildings to a reasonable standard,<sup>8</sup> again raising questions about the relative priority of the VFELC project.

Considering each of these facts individually and in totality, it is difficult to see any scenario under which it is fiscally prudent for the future financial condition of the District to proceed further with building the VFELC. The Department cannot endorse continued waste in throwing good taxpayer money after bad, as this could materially weaken the finances of the District and perhaps even contribute to an escalation to Fiscal Emergency.

While the Board may choose to again petition the Richland County Planning and Development Commission to rezone the VFELC property from Residential, Single-Family Low-Density to Office Institutional and—if successful—petition Richland County for a local building permit and the South Carolina Department of Social Services for program licensure, my strong and considered recommendation to the Board is that the District fully decommission the VFELC project, preserve remaining taxpayer assets to the fullest extent possible, and work with

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And that doesn't seem to make sense, when we've got teachers and staff already at our elementary schools who could use this \$31 million with really intentional programming and support services for 3K, 4K, K, and 1st, for families. Do all of that, but spread it out, so that we could more immediately provide more support to those people who are asking for it, rather than do this. Because I'm worried. I mean, our teacher vacancy rate is not going to just magically disappear next year. So, I think that's one of the issues that I've had all along. And I should say that I requested a sustainability plan a year ago or whenever to figure out, how are we going to sustain the operations of that building. Because once you build it, now you're stuck. And that's going to be a yearly budget discussion, and we've never as far as I know, the Board has never been presented with that. So that's another thing that I think we should have gotten long before the Administration made the decision to switch from a Birth to Four to a 3K to 2nd grade." – Commissioner Robert Lominack, January 23, 2024 meeting of the Board (time stamp: 2 hrs. 46 mins.)

<sup>6</sup> <https://ed.sc.gov/newsroom/errtf/documents/03-23/cerra-vacancies-by-district5-years/>

<sup>7</sup> Unweighted Average Daily Membership (135-Day Count, 2014-2024)

<sup>8</sup> [https://wach.com/news/local/enough-is-enough-public-seeks-answers-on-r1-31-million-dollar-learning-center-vinceford-richland-one-school-kids-children-money-taxpayers-dollars-halted-constructionhttps://www.postandcourier.com/columbia/education/richland-one-rats-schools-columbia-sc-rodents/article\\_7c3b158c-d0f9-11ee-8187-07a3d40fb266.html](https://wach.com/news/local/enough-is-enough-public-seeks-answers-on-r1-31-million-dollar-learning-center-vinceford-richland-one-school-kids-children-money-taxpayers-dollars-halted-constructionhttps://www.postandcourier.com/columbia/education/richland-one-rats-schools-columbia-sc-rodents/article_7c3b158c-d0f9-11ee-8187-07a3d40fb266.html)  
<https://www.wltx.com/article/news/local/rats-found-in-richland-one-schools-here-is-what-the-district-has-to-say/101-885c2a54-5153-47a6-83d5-9cb73509b52e>  
<https://www.wistv.com/video/2024/02/15/rat-infestation-reported-7-richland-one-schools/>  
<https://www.wyff4.com/article/south-carolina-schools-rats-roaches-mold/46866205>

appropriate officials in Richland County to review and mitigate alleged stormwater issues associated with the site.

While legally the Board bears the ultimate responsibility for this entire ordeal, a review of the attached timeline raises significant questions about the judgment of top District employees. The District's "build at any cost" attitude has come at a high cost indeed: violation of state building law; unauthorized or illegal procurement; hours of wasted time of District, SCDE, and SIG staff; potential legal liability for alleged damage done to homes adjacent to VFELC; and most tragically, over \$6 million dollars and counting of hard-earned taxpayers funds meant to support the education of K-12 students wasted.

In conclusion, the SCDE will always thoroughly review submissions from any district for compliance with state law and has discharged all of its statutory duties in this instance.

Sincerely,



Ellen E. Weaver  
State Superintendent of Education

cc: The Honorable Henry McMaster, Governor  
Mr. Brian Lamkin, State Inspector General

Enclosure

| <b>Date</b> | <b>Action Taken</b>                                                                                                                                                                                                                                                                                                                                                                        | <b>Source</b>                       |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 4/28/2023   | District submits rezoning application (RS-LD to OI) to Richland County Planning & Development Commission to allow for dental, healthcare, and childcare services to be offered.                                                                                                                                                                                                            | SIG Report - Page 16                |
| 5/8/2023    | Architect uploads VFELC Overall Floor Plan dated 5/5/23 to Department's OSF Portal with rooms that are labeled "Dental," "Family Clinic," "Infant Lab," "Young Toddler," "Older Toddler," "Young Preschool," and "Preschool."                                                                                                                                                              | SIG Report - Page 19;<br>OSF Portal |
| 5/16/2023   | OSF completes tabletop review of Design Development drawings and project moves into Construction Document phase (review of construction plans and specifications).                                                                                                                                                                                                                         | SIG Report - Page 19                |
| 8/8/2023    | Board votes to approve VFELC Pre-construction Phase (\$200,000) and Phase 1 ("early site work" - \$3.8 million) with each following phase of construction to be presented for Board approval.                                                                                                                                                                                              | SIG Report - Pages 10-11            |
| 8/22/2023   | District withdraws rezoning request by letter. SIG report states that by withdrawing the request, "the District could no longer service children as originally intended by the Board" (dental, health, and daycare services).                                                                                                                                                              | SIG Report - Page 17                |
| 8/24/2023   | Architect changes the name of rooms on VFELC Overall Floor Plan that are labeled "Dental" and "Family Clinic" to "Health 1" and "Health 2." "Infant Lab," "Young Toddler," "Older Toddler," "Young Preschool," and "Preschool" on the 5/5/23 Floor Plan are relabeled "Classroom." This was uploaded into the OSF Portal on 12/19/2023.                                                    | OSF Portal                          |
| 10/6/2023   | SC DHEC issues "National Pollutant Discharge Elimination System Permit for Stormwater Discharges From Construction Activities SCR10ZDUE." Permit specifically states that any "additional construction or land disturbing activity beyond the scope of the approved plans is not authorized."                                                                                              | SIG Report - Page 21                |
| 10/9/2023   | Construction activities begin, according to District officials speaking with the SIG.                                                                                                                                                                                                                                                                                                      | SIG Report - Page 21                |
| 10/25/2023  | OSF notifies architect of concerns regarding the age range of the occupants and that a tabletop review of Construction Documents would be postponed pending a legal determination by the SCDE General Counsel.                                                                                                                                                                             | SIG Report - Page 20                |
| 11/1/2023   | District notifies OSF of decision to change age range to children 30 months or older to change the classification of the project from Institutional Group 1 to Educational Group E (according to the International Building Code), which according to SCDSS has no bearing on whether or not a child care facility meets the requirements to be approved as such under South Carolina law. | SIG Report - Page 18                |
| 11/16/2023  | Construction Document Tabletop held, OSF reviewer directed by supervisor that no building permit will be issued until legal questions about student age range and legal jurisdiction are resolved. District claims they were promised a building permit, SIG states that they could not corroborate that claim.                                                                            | SIG Report - Page 20                |
| 11/28/2023  | OSF reviewer speaks with the architect.                                                                                                                                                                                                                                                                                                                                                    | SIG Report - Page 20                |
| 11/29/2023  | OSF director and architect correspond by email, in which the architect states that the OSF reviewer told the architect on 11/28/23 that OSF would not be issuing a building permit.                                                                                                                                                                                                        | SIG Report - Page 20                |

| <b>Date</b> | <b>Action Taken</b>                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Source</b>                                       |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| 11/29/2023  | SIG determines that work commenced for Phase 2 of the VFELC project (early foundation and steel framing), absent Board approval and without a building permit, in direct violation of numerous state laws and the OSF School Facilities Planning & Construction Guide. Construction employee states to the SIG that "a little bit of work" has also been performed on Phase 3.                                         | SIG Report - Pages 11, 20                           |
| 12/15/2023  | SCDE General Counsel informs District via letter that the VFELC "is not a public school building for purposes of Charter 23 of Title 59, and therefore does not fall under the review and approval of the Superintendent or her designee."                                                                                                                                                                             | SIG Report - Page 20                                |
| 1/4/2024    | Requisition for Phase 2 canceled after discovery that the Board had not approved Phase 2.                                                                                                                                                                                                                                                                                                                              | SIG Report - Page 11                                |
| 1/19/2024   | Construction activity halted by District on 1/18/24 in anticipation of Richland County's 1/19/24 stop-work order on the construction site.                                                                                                                                                                                                                                                                             | SIG Report - Page 21                                |
| 1/22/2024   | State Superintendent of Education requests that the SIG conduct a review or investigation of the District regarding the funding, procurement, and construction of the VFELC, as well as any different or additional allegations of fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, or wrongdoing as deemed appropriate.                                                            |                                                     |
| 1/23/2024   | Board formally votes to change ages served at VFELC to 3K-2nd grade. At this meeting, Board Member Lominack notes that he had requested a "sustainability plan" for how the District would sustain operations at the new facility in future years and had, to-date, not been provided with anything. SIG documents that the District changed the age ranges to be served at least 4 times from 3/3/23 through 1/23/24. | SIG Report - Page 21;<br>R1 Board Mtg (2 hr 46 min) |
| 1/26/2024   | District notifies OSF by letter of the change in age range and asks for reconsideration of SCDE's 12/15/23 determination that it did not have jurisdiction.                                                                                                                                                                                                                                                            | SIG Report - Page 22                                |
| 2/8/2024    | SCDE General Counsel responds to the District's 1/26/24 letter, stating that it was "not in a position to further review submissions[...] until clarity is provided by the State Inspector General..."                                                                                                                                                                                                                 | SIG Report - Page 22                                |
| 7/25/2024   | State Inspector General issues report.                                                                                                                                                                                                                                                                                                                                                                                 |                                                     |