

Presentation to Governing Board by Joel Sannes, attorney at Udall Shumway

Presented for your possible approval today is a Severance Agreement between Scottsdale Unified School District and Dr. Denise Birdwell and a Severance Agreement between the District and Mr. Louis Hartwell.

With the Board's permission, I would like to share the reasons that we are recommending that the Board approve the Agreements and to answer questions that Board members and the public may have. I will present the information in a question/answer format because I think that will be a helpful way for you to receive this information.

Q1. Why must the District go through a hearing process to dismiss the administrators?

A1. Under Arizona law and pursuant to their contracts, these administrators are entitled to receive the same full blown due process rights as teachers. This means they are entitled to an evidentiary hearing. Timelines for the hearing process and other aspects of the dismissal process are set forth in statute (ARS 15-541(A)(22) and 15-539 through 15-543).

It also means that administrators, like teachers who request a hearing, are paid their salaries and benefits until the hearing ends, the hearing officer makes his recommendations, the hearing is transcribed, the Board reads the transcript, the Board meets and votes to either agree or disagree with the hearing officer. This is also a requirement of Arizona statutes, ARS 15-539(F).

Mr. Hartwell has already requested a hearing. Dr. Birdwell is expected to request a hearing by her deadline, which is Monday, April 9th.

Q2. If these matters are not resolved through severance agreements, what is the estimated time frame for the proceedings to be completed?

A2. The most realistic estimate is that the proceedings would be completed in 2.0 – 2.5 months for Mr. Hartwell and between 2.5 – 3.0 months for Dr. Birdwell. Pending the final determination, the administrators must be paid their regular salary and benefits.

Following the final administration decision, the employees could file an appeal in Superior Court, which could take many months to conclude.

Q3. Is it fiscally prudent and in keeping with the Board's fiduciary responsibilities to resolve these employment matters through the proposed severance agreements?

A3. Yes. I will address each Severance Agreement in turn.

Denise Birdwell: Here are the numbers:

- The total value remaining on Dr. Birdwell's current contract, which extends through June 30, 2019, is over \$447,000.00.
- The severance agreement provides for a payment of \$150,000.00.
- If the District proceeds to hearing, it will continue to incur the expenses associated with paying Dr. Birdwell her full salary and benefits, which will cost a minimum of \$69,000.00 and could cost over \$120,000.00 if the proceedings do not conclude prior to June 30, 2018.
- The District's direct costs to go to hearing costs, payable from M&O, is likely to be in the \$30,000.00 - \$40,000.00 or more range. This includes costs associated with the following:
 - 3-4 days of hearing plus pretrial hearings with hearing officer
 - Attorney's fees for the Board (the attorney representing the Board in the hearing process should be different from the attorney representing the District at the hearing to avoid a potential due process objection).
 - Attorney's fees for the hearing officer.
 - Subpoena service of process.
 - Witness fees.
 - Court reporter fees.
 - Copying costs for evidence.
 - Cost of the transcript.
 - Possible expert witness fees.
 - Time of employees who will testify
- In addition to the monetary expenditures that will come directly from M&O funds, the District's insurance rates may be raised for next fiscal year based upon the District's attorney's fees usage for these hearings, which are expected to be in the range of \$30,000.00 - \$40,000.00.
- That does not count the potential costs of appeal.
- This proposed budget is an estimate only. These types of proceedings can be unpredictable.

Louis Hartwell

- The total value remaining on Mr. Hartwell's contract is \$57,602.00.
- The Severance Agreement provides for a payment of \$30,000.00.

- If the District proceeds to hearing, Mr. Hartwell will continue to incur the expenses associated with his contract, which means that it will likely pay Mr. Hartwell most of, if not all of the balance remaining on his contract.
- The District's direct costs to go to hearing costs, payable from M&O, is likely to be in the \$14,000.00 - \$20,000.00 or more range.
- In addition to the monetary expenditures that will come directly from M&O funds, the District's insurance rates may be raised for next fiscal year based upon the District's attorney's fees usage for these hearings.
- Thus, it will cost the District much more to proceed to hearing than it will cost to resolve Mr. Hartwell's dismissal through a Severance Agreement.

Q4. Are there other advantages of resolving these matters through a Severance Agreement rather than a hearing?

A4. Yes. Examples include:

- Focus on Mission & Students - all of the following points would be a distraction from the mission of the District to engage, educate, and empower every student every day.
- Timeliness – the matters can be resolved today, which will allow the District to move forward and begin the search process for a new Superintendent. The Agreement with Dr. Birdwell will allow the District to move forward and initiate a search for a new Superintendent, a process that will be delayed by potentially drawn out proceedings.
- Certainty of outcome – the District will avoid the risks associated with the possibility of losing the cases at hearing or on appeal. There is no guaranteed outcome despite how strong the District's position is on the Statements of Charges. There is also no way to account for the costs of any counterclaims that might be brought by the employees.
- A waiver and release of claims – this means that the District need not be concerned that the employees will later bring claims against the District (whether founded or not).
- Staff time and attention to District operations – staff will be able to focus their time and attention on their work, rather than preparing for and participating in the hearing. Staff will be spared the undue stress of being put through a hearing and cross-examined. Resolving the matter will conserve District resources.

Q5. What impact does settling or not settling today have on the District's ability to hire an Interim Superintendent and begin a Superintendent search?

A5. As I've already mentioned, the sooner the matters are resolved, the sooner the District act to appoint a new Interim Superintendent (if needed) and begin the search process for a new Superintendent. The District cannot hire a new Superintendent while the current Superintendent remains employed.

Q6. What impact, if any, will the Severance Agreements have on the employees' ability to receive their state retirement benefits?

A6. There is no impact upon the employees' ability to receive state retirement benefits, whether the employees are terminated through a dismissal proceeding or whether their employment is severed through the Severance Agreements.

Forfeiture of public retirement system benefits is addressed in ARS 13-713. Under that statute, a public employee that is convicted of or pleads no contest to a class 1,2,3,4 or 5 felony and that was committed in the course of their public employment can have those benefits forfeited. However, the employer has no role whatsoever in a forfeiture action.

Optional Content

- To the District's knowledge, Dr. Birdwell has not been charged with criminal wrong-doing to date. The District has no way of knowing if or when that will occur in the future.
- The Statement of Charges against the employees pertain to alleged violations of the District's Policies and Administrative Regulations and civil rules relating to procurement. The only matter over which the District has control right now is the matter of their continued employment with the District.
- The Severance Agreements do not prohibit, restrict or otherwise impede the District's ability to make required reports, or cooperate as needed with any federal or state authorities. The District has and will continue to do cooperate with the Attorney General's office.
- The Severance Agreements do not contain any confidentiality provisions or non-disparagement provisions.

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