

BEFORE THE KANSAS DEPARTMENT OF LABOR

Board of Education of
Shawnee Mission School District
U.S.D. No. 512, Johnson County, Kansas,

Employer,

and

National Education Association
of Shawnee Mission,

Union.

Issue: Fact Finding
Case No. 72-I-6-2020

**PRE-HEARING BRIEF OF
BOARD OF EDUCATION OF SHAWNEE MISSION SCHOOL DISTRICT
U.S.D. NO. 512, JOHNSON COUNTY, KANSAS**

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I. INTRODUCTION

Shawnee Mission School District is incredibly proud of its teaching staff and recognizes that having qualified educators is critical to student achievement. SMSD teachers are hard-working, dedicated professionals. The District has maintained a strong commitment over the years to ensure that its teaching staff remains amongst the most highly compensated, if not the highest compensated, in the State. The District's final compensation proposal provides for a continuation of this standard while maintaining a sound fiscal plan to provide for the other services and needs that support our students.

The Board of Education of Shawnee Mission School District U.S.D. No. 512, Johnson County, Kansas (the "District") seeks the following changes to the Professional Negotiated Agreement¹ between the District and the National Education Association of Shawnee Mission ("NEA-SM"). Each of these changes was proposed with the goal of enabling the District: (a) to best serve its students, its teaching staff, and its classified staff during the current and upcoming school years; and (b) to fulfill the defined objectives of its 2019-2024 Strategic Plan.

- **Issue 1: Compensation**

The District would like to increase compensation for the 2019-20 school year by 3.22%, broken down as follows: 1% base salary increase; step movement on the salary schedule (1.31% increase); column movement on the salary schedule for professional growth (.43% increase); and an additional \$45/month contribution to health insurance premiums (.47% increase - bringing the monthly total District-paid health insurance contribution to \$694²).³

¹ The PNA for July 1, 2018 through June 30, 2019 is provided for reference and marked as Exhibit 00.

² On Wednesday, November 20, 2019, the District extended an offer to NEA-SM to proceed with increasing the individual health insurance contribution by \$45/month, so that teachers would benefit from

In addition, the District would like to enter into a 2-year agreement with NEA-SM whereby compensation is increased by 6.87% over the 2-year period. For year 1, the increase in compensation would be as set forth above. For year 2 (the 2020-21 school year), the District would provide as follows: 1.25% base salary increase; step movement on the salary schedule (1.31% increase); column movement on the salary schedule for professional growth (.43% increase); and an additional amount per month equal to the premium increase of the most costly individual health plan premium (.65% increase bringing the estimated total District-paid health insurance contribution to \$734).

- **Issue 5: Staff Meetings**

The District would like for the following underlined language to be added to Article XII, section B of the PNA, which currently only permits staff meetings to be scheduled on Tuesdays:

“Except for emergencies, school staff meetings will be scheduled on Tuesdays, Wednesdays, or Thursdays as determined by the building administrator with input from the building leadership team.”

- **Issue 6: Late Resignations - Suitable Replacement**

The District would like to eliminate the requirement that teachers pay liquidated damages in order to be released from their contract and instead require that a suitable replacement be identified prior to release, by deleting paragraphs 1 and 2 in Article V, section H of the PNA and replacing it with the following language:

the increased contribution before premium increases go into effect on January 1, 2020. NEA-SM accepted the offer the next day, and a MOU memorializing the parties' agreement was signed on Friday, November 22, 2019. Note that the \$45 increase was awarded to all of the District's pay groups, including classified staff, parents as teachers, school psychologists, and administrators.

³ The differential between 3.22% and the sum of these figures is due to rounding.

Professional employees requesting a release from a contract shall provide a letter to the Department of Human Resources to be considered by the Board of Education. Professional employees who request a release from contract after the statutory notice period set forth in Kansas Statutes Annotated K.S.A. § 72-2251 shall not be released from that contract until a suitable replacement has been secured to assume the position they wish to vacate. Ultimately, the Board of Education reserves the right to decline any such request that does not include at least one of the criteria listed below and as such will require the professional employee to fulfill his/her contract.

Criteria for post statutory notice contract release:

1. Bona fide move of fifty miles or more outside of district boundaries
2. Extreme illness of self or immediate family member
3. Professional promotion

II. JOINT ISSUE - ISSUE 1: COMPENSATION

As an initial matter, it is critical to understand the components of teacher⁴ compensation. The only way to: (a) understand the total financial benefit paid by the District to SMSD teachers; and (b) conduct “apples-to-apples” pay comparisons between school districts, is to use a compensation figure that includes all financial benefits conferred on teachers and that aligns with the compensation data submitted by school districts to the Kansas Department of Education (KSDE)⁵. Compensation increases for the District’s teachers are comprised of the following:

1. Step movement on the salary schedule. For each year of teaching in the District, a teacher will move one step on the schedule, which results in: (a) a higher salary; (b) movement toward a higher salary at later steps; or (c) achieving the highest salary in a particular column (the “career salary”). Under the SMSD negotiated salary schedule, each step movement does not necessarily correspond to a salary increase. Over the course of past negotiations, the District and NEA-SM have negotiated a schedule whereby teachers arrive at higher compensation levels earlier in their tenure and sometimes stay at those levels for a number of years, rather than slow, incremental increases to the higher compensation levels. As a result of this structure, the SMSD salary schedule is “richer” than the schedules of other districts, meaning that a teacher

⁴ In this brief, “Professional Employees” as defined by the PNA are referred to as “teachers.”

⁵ KSDE includes base salary, supplemental pay for extra duty assignments, and fringe benefits in its compensation reports. *See*

https://www.ksde.org/Portals/0/School%20Finance/reports_and_publications/Teacher%20Salary%20Intro.pdf Note that, for SMSD and the majority of other Kansas school districts, “fringe benefits” include only health insurance premium contributions. Some districts may also contribute to vision and/or dental insurance premiums.

generally will earn more over the course of a career than he/she would in a district with a more incremental schedule. This schedule structure is a contributing factor to SMSD having the highest average teacher compensation in the state of Kansas.

2. Column movement on the salary schedule. Teachers who have achieved certain levels of professional growth will move to the appropriate column on the schedule, which results in a higher salary. SMSD permits teachers to submit an application for professional growth movement up until the last work day of April. Once approved, a teacher will be awarded column movement starting on the date that the professional growth level was achieved, and the salary increase will be prorated through the school year.
3. Base increase to the salary schedule. Through negotiations, the parties may agree to increase the amount in each cell of the salary schedule by a percentage. A base increase would result in every teacher receiving a higher salary, regardless of where he/she fell on the schedule.
4. Health insurance contribution. The amount of money that the District contributes toward a teacher's individual health insurance premium, will either: (a) reduce the teacher's contribution toward their selected plan; or (b) pay the entire premium so that the teacher does not have to contribute any amount toward their health insurance.

Note that the District is advised by a Benefits Committee comprised of both classified and licensed staff members (including direct representation from NEA-SM and their Uniserv director). This Committee reviews plan options and costs, and provides recommendations for selection of benefit options.

Insurance costs increased 6-8% this year, depending on the plan selected.

5. Stipends. A flat amount paid to teachers divided evenly across payroll periods. Most commonly, stipends are paid to teachers who take on "extra duty" or supplemental contracts to coach sports or to sponsor student activities/clubs. *See* K.S.A. § 72-2217. Stipends also can be awarded under a negotiated salary schedule. For example, under the 2018-19 PNA, SMSD teachers who did not receive a pay increase as a result of a step on the salary schedule received a one-time stipend equal to 1% of their base salary.⁶

For the 2019-20 school year, the District's final compensation proposal was a 3.22% increase. To the extent that NEA-SM has taken the position that the District has "offered

⁶ Note that this stipend primarily benefited teachers who hit their career salary or who were on a longevity step on the salary schedule, as opposed to those who were at the beginning or middle of the schedule.

teachers a 1% raise”⁷, such communications are inaccurate and ignore major components of compensation (step increases, column increases, health insurance, supplemental pay, and professional learning reimbursement) paid by the District to its teaching staff.

Additionally, as indicated in section C(1) below, the District plans to reimburse teachers for college credit, to provide a stipend to Advanced Placement and International Baccalaureate teachers, to increase the supplemental pay for high school counseling department coordinators, and to raise the base for teacher supplemental pay.

A. The Parties’ Final Compensation Proposals

The District’s final proposal is attached as Exhibit 1A, and NEA-SM’s final proposal is attached as Exhibit 1B. Note that the parties have agreed on all components of compensation, except for: (a) the base salary increase; and (b) the duration of the contract. The parties are in agreement as to step movement, column movement, and health insurance contribution. A side-by-side comparison of the proposals, including a calculated cost for each component of the proposals⁸, is attached as Exhibit 1C.

B. Teacher Compensation and the SMSD Salary Schedule, Including Comparison Data

1. Current Teacher Compensation

The current (2018-19) SMSD salary schedule appears at page 52 of the PNA (Ex. 00). As noted on the schedule, for the 2018-19 school year, teachers who did not receive a salary increase because they were already at their career salary or on a longevity step were awarded a one-time stipend equal to 1% of their base salary. For the current school year, the District has

⁷ See, e.g.,

<https://www.kmbc.com/article/shawnee-mission-teachers-stand-together-for-higher-pay/29766309>

⁸ All costs projections appearing on Exhibit 1C were calculated by the District. NEA-SM provided no cost projections for their proposals during the negotiation process.

proposed to pay **all** teachers an additional 1% base salary increase plus step movement. Thus, even those teachers at their career salary will receive a 1% increase. Under this proposal, no teacher will earn a lower salary for the 2019-20 school year than they earned during the 2018-19 school year⁹, and most teachers will earn a higher salary for 2019-20 than they earned the previous year (due to moving to a step with a higher salary and/or achieving column movement).

The District is proud of the fact that its teachers are, on average, the highest paid teachers in the state of Kansas.¹⁰ A chart showing average teacher compensation for the 2018-19 school year for SMSD and for comparable Kansas school districts¹¹ is attached as Exhibit 1D. As shown, in the 2018-19 school year, the average SMSD teacher earned compensation of \$69,409. KSDE's 2018-19 teacher *salary* report, which is publically available on its website, is attached as Exhibit 1F. As shown, in the 2018-19 school year, the average contracted *salary* of SMSD teacher was \$63,389. KNEA acknowledges on its website¹² that the average teacher salary in Kansas is \$49,422, which is nearly \$14,000 less than the average teacher salary in SMSD.

2. Historical Teacher Compensation, Including Teacher Salaries during the School Funding Crisis

Compensation increases for the past 5 years are shown on Exhibit 1G. While the District was not able to offer base salary increases in the 2015-16, 2016-17, and 2018-19 school years,

⁹ Due to increasing health insurance costs, teachers who: (a) experience a base-only increase of 1% because they have reached their career salary; AND (b) select one of the 3 "top end" individual health insurance plans, will experience a decline in take-home pay due to the employee-paid portion of the premium increasing for those plans. The District estimates, based on its data concerning individual health insurance plans selected by teachers, that 22% of teachers will experience this decline in take-home pay. See Ex. 1E.

¹⁰ See, e.g.,

<https://www2.ljworld.com/news/2018/jun/11/lawrence-school-district-looks-be-attractive-optio/>

¹¹ Comparable school districts include all Johnson County, Sedgwick County, Shawnee County, Wyandotte County, and Douglas County school districts.

¹² <http://www.nea.org/home/49847.htm>

during the height of the school funding crisis¹³, it “operated” the schedule each year and both step and column (professional growth) movement was provided, which resulted in all teachers getting a raise except for those who had reached their career salary or longevity step. Further, in the 2016-17 and 2018-19 school years, a stipend was awarded to teachers who were at their career salary. The District has endeavored to give its teaching staff steady compensation increases and advance them toward their career salary. The District has awarded compensation increases in past years when revenue from the State was uncertain, inadequate, and faltering. The District did this by deficit spending and tapping into operating fund balances. *See* Ex. 1T. Other Kansas school districts were forced to freeze their salary schedules (meaning no step movement *or* increase to the base) in past years due to the school funding crisis. Budgetary

¹³ In 2005, the state of Kansas settled the *Montoy* school funding lawsuit, promising to add hundreds of millions of dollars to the school funding formula over the next three years. The State’s current education funding crisis began in 2008 during the Great Recession, as state legislatures across the United States scrambled to cut spending, and Kansas went back on the promises it made during *Montoy* to fund schools adequately. After the recession ended, rather than restoring revenue to schools, the Kansas legislature went in the other direction. While federal funds helped keep education and other social services afloat for several years, in 2012, at the urging of then Governor Sam Brownback, Kansas lawmakers passed sweeping income tax cuts, just as federal funds were running out. State revenues fell \$700 million in the first year of the tax cuts. SMSD was forced to cut \$30 million from its budget. Base state aid per pupil (BSAPP) peaked in the 2008-09 school year at \$4,440, which fell short of the \$4,492 level required by Kansas law. Per pupil funding levels then fell through 2017.

In the 2010 lawsuit *Gannon v. Kansas*, local school districts sued the state, on the grounds that the Kansas legislature was again underfunding schools. The Kansas Supreme Court ruled in 2016 and 2017 decisions that funds were unconstitutionally low, and required the legislature to “adequately and equitably” fund education as written in the State constitution. In 2017, Kansas lawmakers passed a new funding formula in an attempt to satisfy the Supreme Court’s mandate, but justices determined the formula unconstitutional with regard both to adequacy and equity, and gave lawmakers an April 30, 2018 deadline to find a solution.

In the Spring of 2018, the legislature passed a five-year plan to restore more than a half billion dollars (\$525 million) in annual school funding. Thereafter, the Supreme Court ruled that the legislature also needed to restore an additional \$90 million per year to adjust for inflation. In the Spring of 2019, the legislature approved the \$90 million in funding for schools per year for four years. This translates roughly to a 3% increase to the general aid that school districts get from the State. In June 2019, the Kansas Supreme Court found that, with the funding restoration, the State had “substantially complied” with its previous decisions. The decision came nearly a decade after the filing of the *Gannon* lawsuit accusing the State of inadequate funding.

planning that prioritized employees has allowed the District to provide regular compensation increases.

Between 2010 and 2017, average teacher salaries in Kansas, when adjusted for inflation, decreased nearly 8 percent, and in 2016 ranked 42nd in the United States.¹⁴ During this time period, teachers in SMSD continued to receive compensation increases. The District ensured that its teachers continued to receive compensation increases through the “Great Recession”, with the exception of the 2010-11 school year, which followed a 2-year contract that included a 3.5% base salary increase each year. In two years during this time period, the compensation increase was modest and achieved through a stipend and deficit spending. *See Exs. 1G & 1T.*

a. Cost of Living

Exhibit 1H shows historical inflation figures along with **salary-only** gains under the salary schedule (not considering step movement, column movement, health insurance, one-time stipends, supplemental pay, and professional learning reimbursement, which would favorably impact total earnings). Over a 20-year time span, the average annual gain of the teacher salary-only schedule matched the average annual rate of inflation. During the course of the 10-year State funding crisis, the average annual gain of the salary-only schedule fell behind the average inflation rate. However, in the last three years, the average annual gain of the salary-only schedule has begun to catch up with inflation.

3. The SMSD Salary Schedule

Under the SMSD negotiated salary schedule, a SMSD teacher can anticipate higher career earnings than other Kansas teachers. NEA-SM has negotiated that teachers reach certain salary thresholds earlier in their careers, in exchange for salary levels staying flat across steps in

¹⁴ http://www.nea.org/assets/docs/2017_Rankings_and_Estimates_Report-FINAL-SECURED.pdf

certain parts of the schedule (referred to as “longevity steps”). SMSD teachers will often reach salary levels earlier in their careers than teachers working in comparable districts, and they reach their top rate (referred to as their “career salary”) earlier. For example, a teacher with a bachelor’s degree only would reach their career salary after only 5 years with the District (during their 6th year, step 8 on the salary schedule¹⁵).

A chart showing a calculation of career earnings for SMSD and Blue Valley School District, based in part on their respective 1999-2000 salary schedules, on the most recent salary schedules, and reasonable assumptions about professional growth and future pay increases, is attached as Exhibit 1J. This chart illustrates that a SMSD teacher would earn \$57,954 more over the course of his/her career than a teacher in Blue Valley. While NEA-SM has tried to recharacterize teachers who have reached a longevity step or their career salary as being in so-called “dead zones” under the salary schedule¹⁶, it is important to note that: (a) this schedule was developed over years of negotiations with NEA-SM and it is *their* negotiated schedule; and (b) the “dead zones” are precisely why SMSD teachers can anticipate higher career earnings. Regardless, NEA-SM did not make any proposal in these negotiations to restructure the schedule, and so this issue is not before the Fact Finder.

SMSD starting salary for its teachers is competitive. Exhibit 1L shows SMSD’s and comparable districts’ starting salaries for the current school year (assuming the District’s proposed schedule for the 2019-20 school year). Exhibit 1M shows that SMSD’s comparable salary ranking increases as teachers move through the salary schedule. For example, a teacher in their 5th year of teaching with their Bachelor's degree would have the 2nd highest salary on the

¹⁵ New hires without previous experience are hired at step 3. *See* Ex. 00, p. 52.

¹⁶ *See* NEA-SM Faculty Meeting presentation slide, attached as Exhibit 1K.

scale, as compared to the other districts. By way of another example, a teacher in their 15th year of teaching with their Masters plus 30 hours of course work would have the highest salary on the scale, as compared to the other districts. SMSD's "top end" salary is the highest in the State. See Exhibit 1N.

C. SMSD's Budget for the 2019-20 and Future School Years

The budget presentation presented to the NEA-SM negotiation team by Russ Knapp, the District's CFO, on May 29, 2019 is attached as Exhibit 1O. During this presentation, Mr. Knapp provided a summary of the 2019-20 operating budgets, which included funding assumptions, expenditure changes, personnel added, items for consideration, and salary increase cost factors. The goal of this presentation was to educate NEA-SM bargaining team members about the status of the budget and available funds to spend on teacher compensation increases.

Budget adoption for school districts follows a statutory process. The timeline is set forth in Exhibit 1P. The complete and approved budget documents are publicly available on the District's website.¹⁷

1. Increased Operating Revenue

For the 2019-20 school year, the District anticipates receiving \$9,632,849 in additional funding. See Exhibit 1R. This represents an increase of approximately 4.1% in total operating revenue. As shown in the May 2019 budget presentation (Ex. 1O), the District anticipates the following additional expenditures:

- Classified staff compensation increases: \$961,076
- Teacher compensation: professional growth column movement at \$500,000;
- Teacher compensation: additional employees purchasing health insurance with a district match expense of \$675,154;

¹⁷ <https://www.smsd.org/about/budget-finance>

- Buses: contractually obligated additional increases to transportation of \$346,576;
- Electricity: contractually obligated utility rate increases of \$1,209,674;
- Resources: increased expenditures for supplies and services of \$1,484,519; and
- Teacher workload: 28.44 additional full-time employee positions at \$1,673,450.

The additional staff include 13.75 new special education staff positions, 2 additional social workers (helping the district move towards having a full-time social worker for each building), shifting 9.4 Title I employees into operational funds in order to cover the loss of \$1 million dollars in Title I funding this year, along with adding a Project Finish program coordinator, fine arts curriculum coordinators, and additional preschool care providers. (Part of the loss of Title I funding was offset by \$680,000 in cuts to upper-level administration, including eliminating an associate superintendent position for the 2019-20 school year and reducing two additional cabinet-level positions for the 2020-21 school year.)

Exhibit 1Q summarizes the funding and expenditure changes from 2018-19 to 2019-20.¹⁸ Ultimately, when the budget was approved in August 2019, \$4,693,957 remained unallocated. This amount was available for compensation increases for all pay groups, as follows:

- The District's proposal for a 1-year contract with NEA-SM, representing a total compensation package of \$3,916,613¹⁹
- Increased health insurance contribution for non-teachers, totalling \$363,745
- Compensation increases for school psychologists, parents as teachers, and administrators
- The District tentatively agreed to the following additional cost items proposed by NEA-SM:

¹⁸ Exhibit 1Q is based on the August approved budget. Note that, given the fluid nature of budgets, there were some updates from the May budget scenario to the August approved budget. The explanations above remain accurate, but the amounts have been updated.

¹⁹ This includes an increase of \$1,650,733 from last school year.

- To reimburse teachers up to 18 credit hours of expenses for tuition to a college or university for a teacher to be qualified to teach College Now courses at the high school. Projected Cost: \$17,000-\$20,000
- To provide a stipend of \$100.00 per day to Advanced Placement (AP) and International Baccalaureate (IB) teachers who attend required summer training. Projected Cost: \$10,000-\$15,000
- To increase the supplemental pay for 5 high school counseling department coordinators from \$2,637 to \$3,610. Projected Cost: \$4,865
- Historically, when the District has raised the base for teachers, it has also raised the base for supplemental pay by the same percent. The District is willing to follow that practice for this school year, which will be an estimated \$32,000 expense.

Once these compensation increases are approved, the District estimates that there will be \$341,734 available to address overages, *e.g.* increased substitute teacher costs, inclement weather expenditures.

In upcoming school years, the District will receive considerably less funding than in the current school year. In the Spring of 2019, the legislature made adjustments to account for inflationary increases that should have been provided in past years. The result of this adjustment was an increase of \$271 to the BASE. For the 2020-21 fiscal year, the BASE will increase by only \$133, resulting in anticipated increased operating funds of \$2,940,715. The District anticipates an increase of \$5,673,057 (BASE increase of \$137) for 2021-22, and \$6,466,380 (BASE increase of \$140) for 2022-23. *See* Ex. 1R. Future revenue is a critical consideration when evaluating the feasibility of compensation increases, along with other potential changes that the District will need to implement as a result of the Strategic Plan, such as potentially moving to a 5:7 course schedule at the secondary level (Issue 1a) and reducing class size.

Exhibit 1S shows the proportionate amount of the additional funding allocated to compensation. Under the District's 1-year proposal, 45.5% of the additional funding would be allocated to increase teacher compensation, and an additional 15.9% (\$1,369,432) has been allocated to hiring additional teachers and absorbing certified cost from Title I. Under the District's 2-year proposal, 72.6% of the cumulative additional funding would be allocated to increases in teacher compensation.

2. Fund Balances

Exhibit 1T provides a detailed explanation of what constitutes a reasonable fund balance, meaning a combination of the contingency reserve fund and the operating balance. As referenced in Exhibit 1T, GFOA (the General Finance Officers Association) recommends a best practice of two months OR 10% of expenditures in fund balances. The District's target is to maintain 8.3% (one month) of expenditures in fund balances. The District's would like to make progress toward this goal over a multi-year period. Due to three straight years of deficit spending, the District's fund balances are not on target with State recommendations and best practices. At the end of fiscal year 2019, the District's fund balance was \$1,042,484 short of target. The District feels that it is critically important to cease deficit spending and begin slowly returning operating fund balances to the appropriate level. In the event of any future crisis, the District must have the ability to cover expenses (including payroll) for at least one month.

D. Feasibility of the Parties' Proposals

Exhibit 1U details the impact of the District's 1-year and 2-year proposals on operating fund balances.²⁰ Under the 1-year proposal, the District could potentially end the year with

²⁰ In calculating the financial impact of teacher compensation increases, the assumption was made that the same compensation increase would be awarded to the other pay groups. In SMSD, historical practice has been to award the same base pay increase to all pay groups.

\$497,567. However, any remaining funds will be applied to unanticipated budget overages experienced during the fiscal year (*e.g.* sub costs, snow days). Should there be any additional funds remaining at the conclusion of the fiscal year, these funds would remain in the operation fund.²¹ Under the 2-year proposal, the District would end the year with a deficit of \$1,292,272, and the District's fund balances would decrease to \$17,976,652.²² The District's 2-year proposal, which was made during mediation, would not further the District's goal of ceasing to deficit spend. However, a 2-year proposal would provide the District with needed time and flexibility to make budgetary changes with the intent of balancing the budget. The 2-year proposal was a final attempt to get an agreement with NEA-SM.

Exhibit 1V details the impact of NEA-SM's 3-year proposal on operating fund balances. Under NEA-SM's proposal, the District would deficit spend \$1,215,577 in the first year, \$3,433,702 in the second year, and \$3,700,860 in the third year, leaving an ending operating fund balance of \$10,421,220 at the end of three years. This operating fund balance would present significant financial risk to the District, and would not align with the 1-month expenditure target. In fact, it would leave SMSD with significantly less than one month of payroll expenditures in its operating fund balance.²³

²¹ The operation fund is equivalent to the District's checkbook; day-to-day expenses are paid from this fund. The District's contingency reserve fund is a fund permitted under state law for emergency purposes at the discretion of the Board.

²² This analysis assumes that high-density at-risk weighting will sunset at the end of the current school year, resulting in a loss of \$1 million. There is a possibility that the legislature will extend the high-density at-risk weighting. However, even if the District receives high-density at-risk funding in some amount for the 2020-21 school year, the District will still have very limited flexibility to address future issues such as increasing healthcare costs, the 5:7 initiative, class size, hiring additional social workers, etc.

²³ One month of salary and benefits is approximately \$17 million.

III. DISTRICT ISSUES

A. Issue 5: Staff Meetings

The current PNA language limits staff meetings to being scheduled on Tuesdays for a time period of no more than 45 minutes. *See Ex. 00, pp. 42-43.* Due to this schedule constraint, District and building administrators have experienced difficulty in offering additional professional learning opportunities to teachers. Professional learning is often provided by District directors and coordinators. There are a small number of directors and coordinators available to deliver professional learning across the District's 47 schools. Additionally, building-based instructional coaches often pair up to deliver professional learning across multiple sites. More flexibility in staff meeting time is needed to enable these individuals to serve the professional learning needs of our teaching staff, as well as our classified staff, and the students they serve.

The proposal that the District made to NEA-SM is attached as Exhibit 5A. The District requested that the language be revised to allow for staff meetings to be scheduled on Tuesdays, Wednesdays, or Thursdays. The District proposed that the scheduling decision be made by the building administrator, but with input from the Building Leadership Team (BLT). This revision would still permit only one staff meeting per week at each building, scheduled on the same day throughout the year to ensure a consistent schedule for teachers. The different meeting days at different buildings would allow instructional coaches and curriculum coordinators to provide professional development on three different days each week. As outlined in the District's proposal, the District's goal is to reach more educators with support content in a more-timely fashion than exists today. In order to achieve that goal, more flexibility for staff meetings days is needed.

B. Issue 6: Late Resignations - Suitable Replacement

Under Kansas law, a teacher must give notice that they are resigning “on or before the 14th calendar day following the third Friday in May” K.S.A. § 72-2251. This means that, by no later than the end of the first week of June, school districts know whether a teacher is committed to working the upcoming school year. Any resignation past the statutory deadline is considered to be late and a breach of the teacher’s contract. Under the current PNA language, resignations tendered after the statutory deadline “will be accepted subject to payment of liquidated damages in the sum of \$1,000 to the District.” *See* Ex. 00, p. 6. In simple terms, a SMSD teacher can break their contract at any time and without advance notice upon submitting a \$1,000 check. Note that the statutory references in the resignation section of the PNA are outdated, and need to be updated to reflect new numbering for the Kansas school statutes. *See* Ex. 6A.

During negotiations, the District proposed new language to replace the liquidated damages requirement with a “suitable replacement” requirement. The District’s proposal is attached as Exhibit 6B. Under the District’s proposed language, a teacher would not be required to pay any damages for breach of his/her contract, but rather would be permitted to resign as soon as a qualified replacement was found for his/her position. The “suitable replacement” approach is commonly used by school districts and is in the best interest of students. The Kansas Association of School Boards (KASB), which provides a model Board policy service, historically has recommended the “suitable replacement” approach and only recently suggested the liquidated damages approach as an alternative. *See* Ex. 6C.

Teachers are the greatest difference makers in the classroom. The loss of a teacher during the school year is disruptive academically and, at times, emotionally, for students. Losing a teacher unexpectedly during the school year has a serious impact on the education provided to

that teacher's students. Those students may be forced to transition to a substitute teacher who has had insufficient time to plan for instruction and minimal experience with course content. As a result, students often experience detrimental effects from instability in the classroom and the severing of a teacher-student relationship. In some instances of late resignations, the District is forced to place a long-term substitute in a class, or place a teacher who is not certified in the applicable subject area. The language proposed by the District would allow the District to provide a level of assurance to SMSD families that we will have a qualified, suitable teacher in their student's classroom(s).

Not only is the current resignation process not fair to students, but it also does not make sense in several respects. First, the \$1,000 damage payment does not equate to the costs that a school district incurs when it is forced to replace a teacher mid-year. Second, the District does not want to force teachers who no longer want to serve in SMSD to be faced with the choice of fulfilling their contract or paying a large sum of money to be released. The District would like to release teachers from their contract under the sole condition that a qualified teacher has been found to fill their position. Further, the current process does not address the pragmatic issue of a classroom without a teacher. The new language would remove the financial consequence and instead would release a staff member, without any liquidated damages, once a suitable replacement is secured. A vacancy search for such a replacement would be initiated immediately after Human Resources receives notice of a desire to resign.

As a final note, the District's proposed language addresses circumstances where a teacher's personal circumstances would result in immediate release from their contract. Immediate release would be provided under three conditions: (1) bonafide move of 50 miles or more; (2) professional promotion; and (3) need to care for one's self or family member as a

result of serious illness or injury. If a teacher submitted proof of one of these conditions with their resignation, then the information would be considered by the Board and the teacher would be released from his/her contract regardless of whether a suitable replacement had been secured. The proposed “suitable replacement” procedure would operate only to prevent a teacher from breaching their contract without a replacement where the resignation is based on a desire to take a position with a different employer or some other similar circumstance that would not support immediate release.

IV. NEA-SM ISSUES

A. **Issue 1a: Teacher Workload**

It is not entirely clear that NEA-SM properly noticed this issue. Further, as a practical matter, this issue is moot for the current school year which the agreement being negotiated would cover.²⁴ On June 24, 2019, the SMSD Board of Education approved our community’s Strategic Plan.²⁵ The Plan focuses on three connected objectives: **every student having a personalized plan that prepares students for college/career readiness and ensuring students have the interpersonal skills they need for life success**. The plan identifies five strategies with specific action steps by which to achieve those objectives. The strategy on quality educators, action step 3.2.2 states that we will:

Analyze the feasibility of increasing teacher planning and collaboration time by having secondary teachers teach five classes and elementary teachers have one grade level planning period and one individual planning period. Options to explore: Provide protected Professional Learning Community time for

²⁴ Even if the parties considered a 2-year or 3-year contract, there are financial, staffing, and facilities issues that would need to be considered before any type of proposal could be agreed to, which is precisely why this issue is being studied as part of the Strategic Plan.

²⁵ The approved Strategic Plan is publicly available on the District’s website: <https://www.smsd.org/about/strategic-plan-2019-overview/approved-strategic-plan-2019-2024>

elementary/middle/high by building the time into the schedule for each week. Also, provide a policy which will ensure that the structure of Professional Learning Communities is consistent and applied at all levels.

On March 29, 2019 NEA-SM noticed hours and amounts of work with the following bullets:

- Adjust the current conference schedule
- Define the length of night meetings
- Modify the current plan time language to ensure all teachers have plan time every day
- Modify the current contract language regarding teacher work days
- Define the purpose and length of PLC meetings
- Adjust the date of the second semester PD flex days

See Exhibit 1aA. NEA-SM’s notice did not identify that they were seeking a move to 5 sections taught at the secondary level, but rather identified that they were seeking “plan time every day.”

NEA-SM verbally brought up the issue of planning time, including reducing secondary teaching load from 6 sections to 5 sections, on May 22, 2019 at the opening session. At this time, it was known by NEA-SM²⁶ that the District planned to study reducing class load at the secondary level (and reducing elementary class size) as a component of the Strategic Plan. Accordingly, during these discussions, the District shared that it felt that the issue of class load should continue to be addressed through the community’s Strategic Plan. At the July 16th negotiation meeting, the District formally responded to NEA-SM bargaining team member’s comments regarding the issue of reducing high school/middle school class load and reducing elementary class size. The District’s response, which is attached as Exhibit 1aB, stated:

While the District understands the interest in reducing high school/middle school class load from a six-class schedule to a five-class schedule and investigating the possibility of reducing elementary class size we believe these decisions are more suited for the strategic planning process than they are negotiations. (re. Strategic Plan, Strategy 3, Plan 2).

²⁶ The NEA-SM president, Linda Sieck, served on the Strategic Plan Steering Committee.

This issue continued to be a point of discussion throughout negotiations. On September 3, 2019, NEA-SM provided the District with its proposal, which was included with its 3-year compensation proposal. *See* Ex. 1B.

Analysis of the feasibility of these important ideas is underway. For example, on November 7, 2019, a Staff Work Group began studying increased planning and collaboration time for elementary and secondary teachers, practices in other school districts related to planning and collaboration time, and ways to have consistent Professional Learning Community (PLC) time across all levels. In December 2019, a recommendation will be brought to the Board of Education for approval of an in-depth enrollment projection study and a community survey.²⁷ Understanding SMSD's enrollment trends for the next five to ten years by attendance area and grade level informs facility capacity needs. In turn, information about enrollment projections and facility capacities determines the extent to which SMSD has the space available and necessary finances to add teachers for such purposes as: reducing class size, reducing teaching load, expanding career education opportunities, etc. These data are essential to informing future bond issues as well as use of operating and capital funds.²⁸ This period of study and careful planning will provide the understanding necessary to act in ways that are responsible to the needs of staff, students, and community. This time of study also insures that the solutions that SMSD creates will work for the long-term, are part of a fiscally sustainable plan, and will not be at risk of immediate rollback.

²⁷ The District's issued RFPs for survey services and demographer services on November 14, 2019. *See* <https://www.smsd.org/about/departments/purchasing-bidding/bids-bid-summaries>

²⁸ Exhibit 1aC shows the projected cost associated with reducing the number of class sections taught at the high school and middle school levels. The estimated total cost is \$5.1 million.

It is anticipated that a plan with recommendations on these topics can be presented to the Board of Education by June, 2020. This is subject to the timely completion of the following: demographic study, facility analysis, task force and work group studies, and the community survey. Providing a report by June 2020 allows budget planning for 2020-2021 and beyond. It is reasonable to assume that, given this timeline, implementation of any recommendations could occur as soon as the 2021-22 school year.

Further, the District cannot support adding procedural language to the PNA prescribing the number of class sections that will be taught at various school levels. First, as outlined above, there is an ongoing study process to ensure the feasibility and sustainability of moving to a 5 section teaching schedule at the secondary level. Second, procedural language in the PNA would prohibit the District from making necessary adjustments if the District experienced an influx of students or a shortage of teachers. With PNA language mandating that no teacher teach more than 5 sections, future District leaders would have a severely impaired ability to address changes in District demographics or teacher shortages with even a slight adjustment in teaching assignments. Third, procedural language in the PNA could inhibit innovation in class scheduling and instructional strategies, in that the language would bind the District to a specific class/section schedule at the secondary level.

1. The “Move from 5:7 to 6:7” in SMSD

Since the early 2000s, approximately 20-40% of SMSD high school teachers were teaching on a 6:7 course load. The District is unaware of any period of time in the last twenty years during which SMSD teachers were uniformly assigned a 5:7 course load. For the 2014-15 school year, all secondary teachers were moved to a 6:7 course load, as a management decision in response to enrollment numbers and budget limitations. Given the costs savings associated

with teachers teaching a 6:7 course load, the District agreed to a significant (5.15% overall) compensation increase for teachers during negotiations for the 2014-15 school year. *See* Ex. 1G. Teaching assignments directly impact the number of teachers that the District must retain, as well as the number of classrooms needed. In order to reduce course load at the secondary level, careful studying and planning must take place to ensure that there are adequate finances, facilities, and staff to support a 5:7 initiative and that such initiative can be sustained for years to come. Setting all other issues aside, such a move would require the District to hire approximately 70 additional teachers (at an anticipated cost that exceeds \$5 million). *See* Ex. 1V. The District is committed to conducting necessary study and planning now, and has already worked to retain consultants and to assemble a Staff Work Group as set forth above.

B. Issues 2 and 4: Professional Learning Communities and Building Leadership Teams

As an initial note, the District is studying, defining, and clarifying the purpose of Professional Learning Communities (PLCs) and Building Leadership Teams (BLTs) through its strategic planning process. *See* Strategic Plan, Strategy 3, Plan 2; Strategy 4, Plan 1.

NEA's proposal regarding PLCs is attached as Exhibit 2A. Per its notice letter, NEA-SM indicated that its goal was to "define the purpose and length of PLC meetings." *See* Ex. 1aA. Initially, the District is not opposed to further defining PLCs, as this is a part of the Strategic Plan. The Strategic Plan specifically addresses PLCs and states a plan to: "Provide protected Professional Learning Community time for elementary/middle/high by building the time into the schedule for each week" as well as to "provide policy which will ensure that the structure of Professional Learning Communities is consistent and applied at all levels." *See* Strategic Plan,

Strategy 3, Plan 2. However, the District's position is that defining PLCs is not an appropriate component of the PNA. There currently is no language in the PNA concerning PLCs.

Setting aside the issue of the appropriateness of addressing PLCs in the PNA, the District does not agree with several aspects of NEA-SM's proposal. The District does not agree that PLCs should be teacher-directed in all cases. If a PLC is extremely high functioning, then it would be appropriate for the PLC to be teacher-directed, with teachers setting their own agendas. However, in the event that a PLC is not high functioning (internal disagreement, not focusing on student learning, etc.), then it is necessary for a third party (such as an instructional coach, principal, assessment coordinator, curriculum coordinator, or special education coordinator) to facilitate the group's ability to problem solve around student learning. A mandate that PLCs be solely teacher-directed could be detrimental to students. For instance, a building could be facing a critical issue, and the PLC team could decide not to consider or address the issue. With NEA-SM's proposed language, the District would have no ability to guide and facilitate the PLC to examine the issue. Building administrators need an appropriate level of managerial control over PLCs.

NEA's proposal regarding BLTs is attached as Exhibit 4A. Per its notice letter, NEA-SM indicated that its goal was to "to add language to define the role and responsibilities of the Building Leadership Team and how members are selected." *See* Ex. 1aA. Initially, the District is not opposed to further defining BLTs, as this is part of the Strategic Plan. The Strategic Plan specifically addresses BLTs and states a plan to: "Define and state the purpose and role of district and building leadership groups [including] Site Council [and] Building Leadership Team." *See* Strategic Plan, Strategy 4, Plan 1. However, the District's position is that defining BLTs is not an appropriate component of the PNA. There currently is no language in the PNA

concerning BLTs. Further, BLTs function as part of school accreditation. There could be changes in the accreditation model, and the District should not be forced to raise BLTs during a negotiation process in the event that the model is not working. Flexibility in the team structure is needed.

During the September 3, 2019 mediation session, the District provided NEA-SM with language addressing BLTs for inclusion in the District Administrative Guidelines and Operation Procedures, and for Board consideration in April 2020. The District's proposed language and subsequent edits by NEA-SM are provided in Exhibit 4B. The District's proposed language defines the responsibilities of BLTs, their decision-making process, and their membership. The District is not in agreement with several aspects of NEA-SM's proposals on BLTs. NEA-SM's position is that each group represented on the BLT shall select its representative(s) on an annual basis. This process would not ensure consistency in membership, which is important to the effectiveness of BLTs. With the potential of annual turnover of the BLT, sustainability and consistency of school improvement could be compromised. The building administrator is in the best position to identify leaders in the building and to appoint those individuals to the BLT.

C. Issue 3: Student Management

On May 30, 2019, NEA-SM proposed that new language addressing student management be added to the PNA. Their proposed language would mandate that an administrator provide written notification to teachers of consequences assigned to students for behavior that the teacher witnessed and entered into the District's student information system (Skyward). *See* Ex. 3A. The District does not support adding procedural language to the PNA regarding student discipline and the student management system. This is a non-negotiable issue and a management right. *See* K.S.A. §§ 72-2228(b)(1) and 72-2218(l)(1).

Even if student management or student discipline was negotiable, it would be entirely improper for the PNA to address that topic. First, Board Policy already affirms that “it is the combined responsibility of administrators, teachers and students to foster attitudes of respect, good will and concern for the welfare of all persons in the school community” and that “all administrators shall support and assist teachers and students in their efforts to maintain good order and discipline.” *See* Board Policy JCD.²⁹ The administration is responsible and accountable for student discipline under Kansas law. *See* K.S.A. §§ 72-6114, *et seq.* For example, the District is responsible for developing the student discipline code, ensuring that the discipline code is uniformly implemented with no disparate impact, and ensuring that students’ procedural due process rights are honored. By way of further example, there are special education and criminal investigation legal implications that make it inappropriate for this type of provision to be included in the PNA.

Not only is it improper for the PNA to address student discipline, but it is also entirely unnecessary. Initially, NEA-SM’s concerns can be addressed through normal channels of communication between building principals and teachers. There is nothing that prevents a teacher from following-up with a principal on a student behavior issue, or simply asking about the principal's decision. Further, teachers are able to readily access student discipline information through Skyward. Teachers have the ability to enter discipline referrals for any student in their building, to continue to view the discipline referral(s) that they have entered for that student, and to view action comments (which describe any discipline imposed) entered by the building administrator for the referral. *See* Ex. 3B, Affidavit of James Morgan. To the

²⁹ Board policies are publicly available on the District’s website: <https://go.boarddocs.com/ks/smsd/Board.nsf/public#>

extent that teachers are not aware that they can access discipline information in this manner, the District believes that NEA-SM's concern can be resolved by additional training on Skyward, as opposed to through the professional negotiation process.

V. CONCLUSION

The District remains committed to honoring the hard work and dedication of SMSD teachers. In the Shawnee Mission School District, teachers are deeply respected, highly valued professionals. The District's goal is to reach an agreement with NEA-SM that continues to place SMSD educators at or near the top of state compensation levels while continuing to be fiscally responsible with taxpayer dollars. As it has done in past years, the District made its absolute best effort during the negotiation process to provide as much additional compensation to its teachers as possible while remaining within the fiscal constraints that are a reality for public schools. The District's compensation plan would produce the maximum benefit for teachers while remaining financially responsible. The District's proposals regarding staff meetings and late resignations are reasonable and provide benefits for students, administrators, and teaching staff.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of November, 2019 the following was provided via electronic mail to:

Kevin Scarrow
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/s/ Rachel England