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 REPLY BRIEF OF
BOARD OF EDUCATION OF SHAWNEE MISSION SCHOOL DISTRICT
U.S.D. NO. 512, JOHNSON COUNTY, KANSAS

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I. <u>INTRODUCTION</u>

This Reply Brief is being submitted to the Fact Finder in order to address questions raised by the materials submitted by NEA-SM on December 5, 2019.[1] The primary issues that have surfaced from the parties' previous fact-finding meetings are teacher compensation (percent increase to the base salary) and the move to a 5:7 teaching schedule at middle schools and high schools. The District values all of its employees and endeavors to attract the most highly-qualified, experienced, and skilled candidates by offering a competitive salary and benefits. Teachers in SMSD are, and have been for the past several years, amongst the most highly compensated teachers in the State of Kansas. This fact does not appear to be in dispute.

The District's final 1-year compensation proposal (1% to the base, plus step movement at 1.31%, column movement at .43%, and an additional $45 health insurance contribution at .47%, for a total package of 3.22%) would keep SMSD teachers at the top of state compensation levels. A review of NEA-SM's materials indicates that it is suggesting that the District could instead adopt their compensation proposal, which would result in deficit spending (*i.e.* spending more money out of the operating fund than is received in the fiscal year). Such an approach is not financially responsible. The Board elected to give raises in prior years through deficit spending, but has consistently acknowledged that the practice of deficit spending cannot be sustained. **The 3-year impact of NEA-SM's compensation proposal (including 5:7) is that SMSD would have irresponsibly low fund balances <u>(an estimated $2.2 million at the end of year 3)</u>.** *See* Ex. 1V. Cash balances are important for the District's cash flow given that state aid payments

[1] Because minimal narrative was provided by NEA-SM, the District was unable to interpret the significance of many of the documents submitted by NEA-SM to the Fact Finder on December 5, 2019. As a result, the District has limited this Reply to those documents from which apparent positions or arguments could be gleaned.

fluctuate throughout the school year. Cash balances also are necessary for covering unexpected costs and maintaining current bond rating.

In regard to a 5:7 teaching schedule for secondary teachers (grades 7-12), that issue is not properly before the Fact Finder because the issue was not noticed by NEA-SM as required by statute. NEA-SM noticed the issue of "plan time", but never provided any proposals to modify the current PNA language on plan time. Even if the issue had been properly noticed, it is not mandatorily negotiable under Kansas law and the parties' Agreement. The PNA contains no language regarding class load.

Regardless, a 5:7 schedule for secondary teachers could not be implemented during the 2019-20 school year (which is the subject of this impasse) or during the 2020-21 school year from a financial or practical feasibility standpoint. During negotiations, the District consistently communicated: (a) the importance of studying increased planning and collaboration time and professional learning community time for all teachers; and (b) that the issue of increased collaboration and planning time for all teachers is best addressed through the Strategic Plan. The District has committed, as part of the community-developed Strategic Plan, to study the threshold issue of how best to achieve increased planning and collaboration time. Once that question is answered, then the District must study all of the associated variables, including future student enrollment, building capacity, and additional staffing. The final step is determining how to pay for and financially sustain the plan developed for increased planning and collaboration time.

Finally, NEA-SM appears, based on the materials submitted, to argue that the number of administrators and administrator compensation in SMSD is somehow not appropriate and/or out of alignment with other districts. Administrator compensation is not a negotiable issue. SMSD's administrative team and administrative compensation is very similar to that of comparable districts, such as Blue Valley and Olathe. The District has an efficient administrative team, and it has restructured administrative positions in an effort to further improve efficiency. Past increases to administrator compensation were reasonable and critical to attracting and retaining qualified administrators who have the experience and capabilities necessary to support a District with over 27,000 students and over 3,800 employees. Past changes to the administrative team and to administrator compensation have not jeopardized the District's ability to grow its teaching staff or to provide fair compensation increases to its teachers. Notably, the District has a practice of not awarding compensation increases to its administrators until after it has settled contract negotiations with NEA-SM.

II. DEFICIT SPENDING

Due primarily to cash flow issues, and the fact that school districts have no ability to leverage debt for operating expenses such as salaries, the District's budget must allow it to maintain a financially responsible operating fund balance. Deficit spending results in decreased operating fund balances, and would eventually place the District in an insolvent position. For that reason, deficit spending must be avoided as a financially unsound practice. Should it become necessary to deficit spend, such as during economic recessions and funding declines, the District must take measures to surplus spend in subsequent years to recover fund balances.

Deficit spending and the financial impact it has on operating fund balances over time is depicted in Exhibit 1T. The term "deficit spending" means that operating expenditures have exceeded operating revenues in any given fiscal year. Vice versa, if operating revenues exceed operating expenditures it is called "surplus spending." Either situation impacts the operating fund balances at the end of the fiscal year. If the District deficit spends, the deficit would be covered from the District's operating fund balances. Operating fund balances would decrease from the prior year, leaving a smaller balance for the next year's expenditures. This issue is further compounded when the expenditures added are recurring, such as salaries. The balance could not be restored unless the District experienced a funding increase and/or made budget reductions.

The concern with continued deficit spending is that it reduces operating fund balances, eventually to the point that it affects cash flow. In the case of NEA-SM's proposal, this would happen sometime in year 2. As fund balances decrease, the ability to cover one month of expenditures becomes more difficult, especially as total operating expenditures increase. *See* Ex. 1T. The Kansas Association of School Boards (KASB) provides a summary of school district cash balances here: https://kasb.org/blog/key-facts-about-school-district-cas/. The article highlights some of the clash flow issues experienced by school districts.

The District is below its operating fund balance target of 8.3% (one month) of expenditures. Finance associations and state organizations have recognized 10% operating fund balances as a bottom line, with higher operating fund balances being recommended where economic risk is high. *See* Ex. 1T; https://kasb.org/blog/key-facts-about-school-district-cas/. The District's efforts to reach an operating fund balance that would allow it to cover one month of expenditures is <u>not conservative and does not represent an effort to add to its reserves/fund balances</u>. Rather, the District is making an effort to slowly return operating fund balances to an appropriate level after years of deficit spending.

The Kansas cash-basis law, K.S.A §§ 10-1101, *et seq*., requires school districts to operate on a cash basis - not to spend money they do not have. *See Unified Sch. Dist. No. 207 v.*

Northland Nat. Bank, 20 Kan. App. 2d 321, 325 (1994) (providing the legislative history of the cash-basis law). The cash-basis law make it illegal for a school district to "create any indebtedness in excess of the amount of funds actually on hand in the treasury", except in limited circumstances, none of which are applicable here.[2] *Id*. Continued deficit spending over an extended period would cause the District to eventually run out of money and violate the cash-basis law. For this reason, the District's compensation proposal should be recommended by the Fact Finder.

III. CAPITAL OUTLAY

As an initial matter, any discussion of capital outlay funds is outside the purview of negotiations. NEA-SM's materials imply that the District could shift expenditures to capital outlay to free-up money in the operating fund. This does not change the fact that the District would still be deficit spending if NEA-SM's proposal was adopted - it would be analogous to shifting credit card debt from one card to another. Tapping into the capital outlay fund in order to fund increased compensation for teachers is not a viable solution. The capital outlay fund is a separate fund from the operating fund. Capital outlay funds are restricted to specific purposes, and allocating additional expenses to those funds would impair the District's ability to meet those purposes. The capital outlay fund receives approximately $34 million a fiscal year from

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[2] Likewise, the budget law provides that "[i]t shall be unlawful for the governing body of any taxing subdivision or municipality in any budget year to create an indebtedness in any manner or in any fund after the total indebtedness created against such fund shall equal the total amount of the adopted budget of expenditures for such fund for that budget year." K.S.A. § 79-2935.
Note that the cash-basis laws apply in contracting with teachers. *Gragg v. Unified Sch. Dist. No. 287*, 6 Kan. App. 2d 152, 154 (1981). Under K.S.A. § 10-1116(b), school districts may contract with teachers despite not having the funds on hand to pay next year's salaries. However, the total obligations incurred cannot exceed 100% of the previous fiscal year's expenditures.

local taxes. The fund is restricted by law for specific purposes which includes bond debt, leases, construction, renovation, repair, software, and maintenance salary.

The District has some limited ability to include certain types of salaries related to capital improvements or maintenance within the capital outlay fund. For example, State guidelines allow custodial salaries to be paid from the capital outlay fund. The District currently expends $4.5 million in salaries and benefits a year out of the capital outlay fund for maintenance personnel. SMSD has approximately $9.3 million in custodial salaries and benefits being paid from operating funds. Of the $34 million funding received annually in the capital outlay fund, $17.3 million pays for bond and lease payments ($10.5 million/year is allocated for paying off debt through the 2021-22 school year), $5 million for technology, $4.5 million for maintenance salaries and benefits, and $2.1 million for instruction and other areas, leaving the remainder to maintain buildings of nearly 5.4 million square feet with a replacement value in excess of $1.2 billion.

At this time, if the capital outlay fund were to absorb $9.3 million in custodial cost, the District would be unable to meet capital infrastructure needs because the capital outlay fund would be exhausted. In addition, shifting custodial salaries and benefits would result in annual expenditures exceeding the fund's annual revenue, meaning that the District would deficit spend. Historical balances of the capital outlay fund, and trends or changes to the allocation of those funds and their availability to support the infrastructure of the District, can also have a negative impact on the District's bond rating.

School districts receive the bulk of their tax distributions from the counties in January and June. School districts maintain capital outlay fund balances in the fall to pay for capital projects completed during the summer time until the next large tax distribution is received in

January. Any allocation of custodial costs to the capital outlay fund would impair the District's ability to meet its capital outlay infrastructure needs. This would decrease the capital outlay fund balances resulting in cash flow issues from July to December of the fiscal year, and reduced money available for capital expenditures. The fiscally responsible practice is to keep custodial salary and benefit costs in the operating funds and to stop the practice of deficit spending each year. In short, shifting expenditures to the capital outlay fund does not provide a long-term funding solution for teacher compensation.

IV. 5:7 TEACHING SCHEDULE AT THE SECONDARY LEVEL

NEA-SM did not notice the issue of a move to a 5:7 teaching schedule at the secondary level. NEA-SM's notice identified that they were seeking "plan time every day." *See* Exhibit 1aA. The notice provision in K.S.A. § 72-2228 is mandatory. *Unified Sch. Dist. No. 252 v. S. Lyon Cty. Teachers Ass'n*, 11 Kan. App. 2d 295, 297 (1986). It mandates that the parties' notices "contain in reasonable and understandable detail the purpose of the new or amended items desired." The Kansas Court of Appeals described this requirement, and the effect of failure to comply with the requirement, as follows:

> ...compliance with the notice provision is **essential to the preservation of the rights of the parties**. The professional negotiation process is facilitated when the notice fully details the purpose behind the proposed additions or amendments to an existing contract. The notice in this case, at best, informed the Board of the general topics to be discussed—each article of the then existing contract—but it fell far short of indicating the purpose of any contemplated new or amended items in reasonable and understandable detail. The statute clearly requires particularity and it is equally clear that particularity is lacking in the notice furnished by SLCTA to the Board. The notice wholly fails to state, in any fashion, the purpose of new or amended items. The notice, thus, does not comply with the dictates of the statute and is therefore insufficient to fulfill the legislative intent; *i.e.*, a reasonably and understandably detailed notice of the purpose of new or amended items desired to be negotiated. A notice such as was given here, which does not fairly apprise a party of the action proposed to be taken, is no notice at all. *State v. Buckle*, 4 Kan.App.2d 250, 255, 604 P.2d 743 (1979). We must then conclude that

> the Board was never served with a timely sufficient notice and is, therefore, **under no duty to enter into professional negotiations**. The lower court erred in its finding of sufficiency and the case must be reversed on this point.

Unified Sch. Dist. No. 252, 11 Kan. App. 2d at 297. NEA-SM's notice of the issue of "plan time" did not apprise the District of its intent to negotiate reduction of the teaching schedule at the secondary level and, as such, did not comply with the statute. The District had no duty to negotiate on 5:7 with NEA-SM, that issue is not properly before the Fact Finder, and accordingly no findings or recommendation should be made on that issue.

Even if NEA-SM had noticed the issue of teaching course load, that issue is <u>not</u> mandatorily negotiable under the Kansas Professional Negotiations Act, given the current language in the SMSD PNA. Mandatorily negotiable topics are listed in K.S.A. § 72-2218(l)(1)(C). The PNA is silent on the number of class sections generally assigned to secondary teachers. *See* Ex. 00. This means that the issue of teaching schedule or course load is a permissive topic of negotiation - while it can be discussed, it does not have to be bargained. Where a negotiated agreement contains a clause on the number of class sections assigned, a school district may not unilaterally change the allocation. *See, e.g., Nat'l Educ. Ass'n-Wichita v. Unified Sch. Dist. No. 259, Sedgwick Cty.*, 234 Kan. 512, 515-16 (1983) (identifying applicable contract language). In the absence of a contractual provision, changes may be made unilaterally to the teaching schedule, and teaching schedule is a permissive topic only. Here, NEA-SM is advocating to change the assignment, not the District.

Setting aside the lack of proper notice and the fact that course load is not mandatorily negotiable, modification to teaching schedules at SMSD schools must be carefully studied before any changes could be implemented. Study related to enrollment projections, building capacity, class size, instructional planning by the Teacher and Collaboration Work Group, bonding capacity, and fiscal analysis with long range forecasting are prerequisites to developing a fiscally responsible and sustainable strategy to address additional planning and collaboration time as defined in the strategic plan (*e.g.* secondary 5:7, elementary grade level/individual). Foundational study and planning on these issues is scheduled to be completed by June 2020, making implementation of any change first possible in the 2021-22 school year. Acting without careful study and planning means the District is choosing a path that may lead to an unsustainable strategy. In following a path of study and planning before acting, the District is staying true to our community's Strategic Plan while developing a sustainable path forward, thus avoiding once again abandoning a 5:7 teaching schedule as happened in 2014 or jeopardizing meeting future facility and capital needs that impact the physical learning environment for students and staff.

There are three key components related to this issue: (1) study of the best practices for use of increased planning and collaboration time for elementary and secondary teachers; (2) study of associated variables; and (3) study of the cost to implement and sustain additional plan and collaboration time. Specifically:

1. In regard to the first component, on November 7, 2019, a Staff Work Group began studying increased planning and collaboration time for elementary and secondary teachers, as well as practices in other school districts related to planning and collaboration time. The Work Group anticipates that it will report out in March 2020.

2. In regard to the second component, it is currently unknown if staffing a District-wide 5:7 teaching schedule is feasible with current building capacities. The issue is further complicated when consideration for lowering class is added. The study of enrollment, building capacity, and class size (and the resulting impact on staffing needs) is anticipated to be complete in March 2020.

3. In regard to the third component, the exact cost of increasing plan time including 5:7 at the secondary level is unknown. A fiscal impact study is anticipated to be complete in May 2020. The District, based on additional staffing alone, has estimated a cost of $5.1 million annually.

The issue of additional planning and collaboration time (*e.g.* secondary 5:7, elementary grade level/individual) is moot for the current school year. Time is needed to determine strategies for additional planning and collaboration time at the elementary and secondary levels in financially sustainable and responsible way. The District's 2-year compensation proposal, which allocates 72.6% of new revenue received over that 2-year period to teachers, would leave an estimated unallocated balance of only $341,734 for the 2019-20 school year (which currently is being used to address unexpected expenses) and would result in deficit spending of $1.3 million in the 2020-21 school year unless budget adjustments are made. *See* Ex. 1U. The soonest the District could implement a strategy for additional planning and collaboration time (*e.g.* secondary 5:7, elementary grade level/individual) would be the 2021-22 school year, but the implementation plan has yet to be developed.

V. ADMINISTRATOR COMPENSATION

As an initial matter, administrator compensation is not part of the negotiation process, and it is unclear why NEA-SM has included documents in its submission regarding administrator compensation. NEA-SM's documents concerning administrator positions and compensation contain several inaccuracies, calculations based on incorrect assumptions, and/or misleading information void of historical context, as follows:

- The District employs 125.5 FTE administrators, although there are 128 individuals with administrative contracts. The FTE figure is shown on the State budget worksheets provided by NEA-SM.
- The 2 additional administrative positions noted by NEA-SM have been discussed in the context of Strategic Planning, but have not been approved or posted.
- The administrator:teacher ratio presented is misleading and fails to recognize that only building-level administrators directly support and supervise teachers. The ratio of building-level administrators (not including admin. interns but including athletic directors) to teachers is 1:28. Other categories of administrators have District-wide

responsibilities (*e.g.*, leadership and learning, human resources, curriculum, IT), and some categories of administrators have responsibilities that are wholly unrelated to the support or supervision of the District's teaching staff (*e.g.*, organizational support, finance, facilities, communications). The ratio of all administrators to all staff is 1:30.

- The historical chart of "cabinet level" positions provided by NEA-SM contains a number of errors. For 2015-19, the chart includes administrative positions that currently are not cabinet positions. For 2012-15, it fails to list the salaries of several administrative positions that existed during that time period (*e.g.*, Directors of HR, Coord. of HR). It creates the misperception that many new positions were added in recent years, and that the District has doubled it spending on cabinet-level administrators in the past 7 years. The information in the chart is simply not accurate.

- NEA-SM's chart on historical teacher salaries ignores stipends given by the District. In the 2016-17 and 2018-19 school years, a stipend was awarded to teachers who were at their career salary or on a longevity step, such that these teachers received an increase in compensation alongside their colleagues. Teacher compensation was only frozen (meaning no step movement *or* increase to the base) during the 2011-12 school year. There have been no salary freezes during the past 5 years. *See* Ex. 1G. The District has increased spending on its teachers by an average of 3.91% during the past 5 years. *Id*.

Setting these issues aside, there are no facts which indicate that administrator positions or administrator compensation in the past several school years have somehow compromised teacher pay. To the contrary, during each of the past 5 years, the District increased its spending on teacher compensation, with a range of 2.33% to 6.41% in increased spending. *See* Ex. 1G. Due to insufficient funding, the District achieved these compensation increases by deficit spending. *See* Ex. 1T. The District had agreed to deficit spend during past negotiations with NEA-SM in order to come to an agreement on compensation increases for teachers. During these past negotiation sessions, the District has also very clearly communicated to NEA-SM that continued deficit spending was not sustainable and that the District could not commit to future compensation increases that would cause deficit spending and, as a result, irresponsibly low operating fund balances.

The below chart compares administrator positions and administrator salaries with comparable districts for the 2018-19 school year. Current school year data was not used for the comparison because SMSD has not yet awarded its teachers or administrators raises for 2019-20. All data was pulled from the KSDE "Budget at a Glance" document for each school district.[3]

	Blue Valley	SMSD	Olathe
Number of Teachers	1,596.3	1,767.2	2,173.2
Average Teacher Compensation	$62,924	$69,409	$67,124
Number of Administrators (ALL) (Ratio of Teacher:ALL Admin)	105 (15.2)	124.8 (14.2)	154.9 (14.0)
Average Administrator Compensation	$136,449	$123,042	$119,129

This side-by-side comparison shows that SMSD teacher and administrator salaries compare favorably with Blue Valley and Olathe.

VI. CONCLUSION

The District has offered all available funds to its teachers; there is no additional money that can be allocated to teacher compensation without deficit spending. If the District continues to deficit spend, or allocates additional operational costs to the capital outlay fund, it places itself at financial risk. If the District were to contractually obligate itself to a 5:7 teaching schedule for secondary schools without first studying and identifying all pertinent variables, then it risks implementing an unsustainable model that puts the District at financial risk and hampers SMSD's future ability to sustainably implement the Strategic Plan. SMSD has not increased

[3] "Budget at a Glance" documents are publically available here: https://datacentral.ksde.org/budget.aspx

administrative pay or positions in a manner that limits its ability to provide reasonable and fair compensation increases to teachers. The facts show that SMSD teachers are amongst the highest compensated in the State and that the District's 2-year proposal allocates 72.6% of new money over a 2-year period to teacher compensation. This proposal is fair and reasonable and should be adopted as the Fact Finder's recommendation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2019 the following was provided via electronic mail to:

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