



**GOVERNING BOARD AGENDA ITEM  
AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10**

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**DATE OF MEETING:**        **September 11, 2018**

**TITLE:**            **ASRS Retiree Return to Work Teacher Program and Terms**

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**BACKGROUND:** On March 6, 2018, the Governing Board addressed a plan to hire qualified post-retirement classroom teachers (“RTW Teachers”) as direct employees rather than as leased employees. The plan was advantageous for both the District and the RTW Teachers because it enabled RTW Teachers to participate in the Amphitheater benefits program -- a benefit of approximately \$4,500 per teacher – as was requested regularly at the Superintendent’s Listen and Learn tours that year. It also permitted Amphitheater to qualify for increased teacher experience index funding -- up to 15 years credited experience per qualified RTW Teacher -- through their added years of experience as a direct hire employee.

***1. The Decision to Hire RTW Teachers Directly.***

The District calculated the cost of bringing RTW Teachers back through direct hire in advance of presenting the March 6<sup>th</sup> agenda item to the Governing Board. In doing so, the District determined that it was cost-effective to bring the RTW Teachers back at the same salary paid to them through the third-party vendor, smartschoolsplus, inc. (SSP), in FY 17-18 since the District would likely recoup that money in FY 19-20 through the increased teacher experience index funding gained by their return as direct-hire employees.

As part of its analysis, the District considered the ability to increase the salary for RTW Teachers to be equivalent with their non-retired colleagues. Unfortunately, it was determined that direct hire of RTW Teachers was only feasible if the RTW Teachers are hired at their same SSP salary as FY 17-18. Even then, the District would have to allocate at least \$150,000 for benefits expenses in FY 18-19 when hiring the RTW Teachers directly -- new costs that it could not cover through TEI until FY 19-20. Thus, Administration presented the Governing Board with the March 6<sup>th</sup> Board Agenda Item to permit RTW Teachers to return as direct-hire employees on a “Certificated ASRS Retiree Returning to Work Teacher’s Contract” (“RTW Contract”).

***2. RTW Contract***

The RTW Contract does not include the same contingency language offered to non-retired contract employees. Standard teacher contracts this year included contingency language that allowed contracted teachers to receive compensation increases after they accepted their contracts. The contingency language was new this year. It was included with a goal of confirming teacher appointments for FY 18-19 as early as possible to be able to compete with other school districts who began offering contracts in January. The contingency clause is bolded in the below paragraph from a standard teacher contract:

***“District agrees to pay Teacher a salary of \_\_\_\_\_ together with any salary increase approved for Teacher as part of the 2018-2019 compensation package approved by the Governing Board upon completion of the meet and confer process. District is providing this contract to Teacher to confirm Teacher’s appointment for the 2018-2019 school year. Teacher understands that the District has used Teacher’s current salary, or if new to the District, the approved teacher starting salary for the 2017-2018 fiscal year, here to enable the parties to confirm employment before the Governing Board approves the 2018-2019 employment compensation package. The parties intend, however, that the Teacher salary for***

*this contract be the amount approved for Teacher by the Governing Board as part of the 2018-2019 compensation package and that said amount shall not be less than the salary stated above for Teacher's full-time employment for the 2018-2019 fiscal year. In the event there is a difference between the salary amount stated here and the amount approved by the Governing Board to be paid as salary to Teacher, then the amount approved by the Governing Board shall govern."*

The RTW Contract does not include the bolded contingency language because RTW teachers were specifically approved to return at their SSP 17-18 salary. There is other contingency language in the RTW Contract, but that language is inapplicable. See Section 4 below.

In addition, Policy GCQA requires the District to first attempt to make reductions through leased employees and then retired employees, before reducing non-retired certificated employees directly hired by the District. Therefore, RTW Teachers are offered contracts after positions are filled with returning non-retired teachers. RTW Contracts were for specific amounts consistent with the salary paid by SSP to each RTW Teacher in FY 17-18 with no promise of a salary increase after the contract was accepted.

Unfortunately, the meet and confer process last year was delayed to allow the State to address budget concerns raised by teachers through an unprecedented walkout. It has historically ended in April, but was delayed last year until the end of May with the Board considering and approving the Joint Meet and Confer Recommendation for the 18-19 Compensation Package on June 12, 2018.

### **3. *Legal Limitations on the RTW Contract***

Without the inclusion of the contingency language, the District cannot legally increase salaries in RTW Contracts now because the RTW Teachers have accepted those contracts. Arizona Constitution Article 9, Section 7 includes a clause that prohibits a subdivision of the state from making "any donation or grant, by subsidy or otherwise, to any individual..." The Arizona Attorney General has interpreted this "no gift of public funds" clause to preclude school districts from increasing teacher salaries after a teacher has accepted a contract. See Op.AZ. Atty.Gen. I87-103, I83-115, I82-137 and I80-027.

The AG has opined that it is a gift of public funds to give additional compensation to teachers for the same services after the teacher has already contracted to perform. In 1980, the Arizona Attorney General opined that the Sierra Vista School District could not increase a teacher salary after a teacher signed a contract unless the district also increased the amount of work involved as well. In doing so, the Attorney General said:

"This constitutional provision [Art. 9, Sec. 7] has provided the basis for several Attorney General's Opinions which have considered the legality of certain teacher bonus and benefit plans. Attorney General's Opinion No. 71-16 concluded that payment of a cash bonus to an employee beyond the amount provided for in his or her contract was a violation of Article 9, § 7. Attorney General's Opinions 76-238 and 79-278, involving sick leave, conceded the right of a school board to exercise wide discretion in determining what teachers' benefits are consistent with school purposes and hence supported by consideration. Opinion No. 76-238, also emphasized, however, that an otherwise permissible benefit could be construed as a 'gift' unless such benefit 'had been adopted by the school district governing board prior to the time that the school district's employees have entered into their contract for the ensuing year.' See also Attorney General Opinion No. 76-178.

This position was stated even more forcefully in Attorney General's Opinion 78-188 which indicated that: 'We agree that payment of bonuses without a prior contractual agreement is illegal, but we also think such bonuses are legal only if paid for services rendered during a period covered by a contract to pay a bonus for services rendered.'

Under the rule articulated in Opinion No. 78-188, it would certainly appear that your teachers would be obligated to perform extra duties in return for any additional amounts of money they received. Based on the conclusions reached in regard to question number (1), the payment of additional sums of money was not provided for in the original agreement. Thus, a subsequent agreement for additional pay must provide for additional work as well. Unless these added duties are agreed to and, in fact, performed, the board would violate the constitutional prohibition against gifts of public funds in authorizing salary payments in excess of those provided in the original contract.”

Here, the RTW Contracts are a specific salary and they do not include the contingency language that would allow that salary to increase post-acceptance. Thus, Arizona Constitution Art. 9, Sec. 7 precludes the District from increasing RTW Teachers’ salaries now

#### **4. *The New and Undesignated Funds Clause***

Several RTW Teachers mentioned a “New and Undesignated Funds” clause in their contract that they contend permits them to receive the raises permitted to teachers as part of the 18-19 Compensation Package:

*“In addition, if the District receives new and undesignated state or federal funding after execution of this agreement, and such funding may be utilized for staff compensation, the compensation paid under this contract may increase following additional meet and confer proceedings and recommendations and Governing Board action.”*

However, the District has not received “new and undesignated” funding to qualify for an additional meet and confer process. All of the funds received from the state for teacher salary increases were used to pay this raise to the non-retired teachers with a goal of increasing salaries in a manner that will attract more people to the profession. Consistent with this, the Joint Recommendation specifically recommended a flat fee increase rather than a percentage increase to give new teachers a higher salary. It also recommended decreasing the number of positions qualified to receive the \$3,600 raise in order to raise new teacher salaries as high as possible. As further evidence, the Joint Recommendation defined a “teacher” as a person in a position that qualified to receive the 1.06% increases in FY 17/18 and excluded persons in positions previously paid on the certificated salary by stating:

“Professional Non-Teaching (this category expanded to include those employee classifications previously paid on certified salary scale that did not qualify for the 1.06% salary increase authorized by the State of Arizona for the 2017-2018 school year, including athletic trainers, counselors, librarians, and nurses) - \$1,500 increase.”

Notably, the RTW Teachers were not eligible for the 1.06% salary increase authorized by the State of Arizona for the 2017-2018 school year. The state had specifically excluded leased teachers from receiving that increase. They also were not able to participate in the meet and confer process since they were still leased employees working for SSP, rather than direct employees of Amphitheater, at the time of meet and confer.

The balance of the raises provided in the 18-19 compensation package were paid out of the approximately \$1.7 million dollars of District Additional Assistance (“DAA”) received from the State this year. The state has largely cut DAA since 2008. In the Amphitheater District alone, state budgetary cuts since 2008 have exceeded \$99 million dollars. This year, the State of Arizona finally began to restore budgetary cuts to DAA funding for school districts.

While the approximately \$1.7 million that Amphitheater received this year in DAA does not make a dent in the amount of funding needed to restore the District to where it was in 2008, the DAA provides important money needed to cover capital expenses for the District. After the District adopted a new math curriculum last year and purchased math textbooks, the District’s unencumbered capital funds totaled about \$400,000. This placed the District in a critical situation because it could not have afforded foreseeable expenses, such as a broken air conditioner, in one of the buildings where students learn. However, with so many employees expecting raises

after participating with teachers in the RedforEd movement, and recognizing the importance of addressing the vertical pay compression caused by the mandatory minimum wage increases in Arizona, the Joint Recommendation proposed applying ½ of the DAA to pay wage increases for the non-teaching employees of the District. These increases were funded by using over \$800,000 from the DAA.

**5. Conclusion**

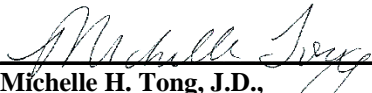
At this point, the District has addressed all of the available, unencumbered funds through the meet and confer process. There is no new, undesignated funding to invoke the New and Undesignated Funds clause mentioned by the RTW Teachers. While these teachers are valued members of the Amphitheater family and they are readily welcomed back into direct hire with the District, a decision was made last year to bring them back to direct hire at their same 17-18 SSP salary. This decision resulted in them receiving the RTW Contract the specified their 17-18 SSP salary with no contingencies allowing for a subsequent salary increase. Going forward, the RTW Teachers could be represented in the meet and confer process since they are once again directly employed by Amphitheater Public Schools. However, it is illegal to increase RTW Teacher salaries this year based on the same contract requirements.

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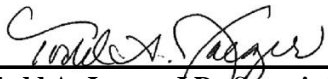
**RECOMMENDATION:** No action is proposed at this time, but the Administration recommends further action in the future to include RTW personnel in the meet and confer process.

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**INITIATED BY:**

  
**Michelle H. Tong, J.D.,**  
Associate to the Superintendent and General Counsel

**Date: September 10, 2018**

  
**Todd A. Jaeger, J.D., Superintendent**