



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

DATE OF MEETING: July 24, 2012

TITLE: Determination of Whether to Appoint a Hearing Officer to Hold a Hearing, Hear Evidence, Prepare a Record and Issue a Recommendation to the Governing Board Regarding Non-Renewal and Dismissal of Katia Garcia-Huerta, a Guidance Counselor

BACKGROUND: On June 5, 2012, the Governing Board authorized the administration to issue a notice of intention not to renew the contract of Ms. Katia Garcia-Huerta, a certificated guidance counselor, who has been employed at Amphitheater High School for the last four years. The notice of non-renewal which was approved by the Board is attached to this item for reference.

A copy of the notice of non-renewal was delivered to Ms. Garcia-Huerta, and she subsequently requested a hearing to challenge the non-renewal of her contract. Pursuant to A.R.S. § 15-541, the Governing Board must determine whether to hold the hearing itself or appoint a hearing officer to designate a hearing officer to hold the hearing, hear the evidence, prepare a record and issue a recommendation to the governing board for subsequent action.

This item is presented for the Board to make the determination of whether to hold the hearing as a tribunal or to appoint a hearing officer for the same purpose. Further explanation of this determination follows.

In all cases, the Governing Board (for the District) is responsible for all expenses of a hearing. The employee and the governing board do pay their own attorney and witness fees, unless the governing board determines not to dismiss the employee following the hearing, in which case the governing board does pay reasonable attorney and witness fees incurred by the employee.

Board as Tribunal: If the Board determines to hold the hearing itself, a Board meeting for that purpose will need to be scheduled in accordance with the open meeting law. Ms. Garcia-Huerta must also be given three days' advance notice of the hearing date. Ms. Garcia Huerta will have the option as to whether the hearing shall be held in executive session or in public. Regardless of the venue for the hearing (private or public), following a hearing held by the Board itself, the Board would take public action to either affirm or withdraw the resolution for non-renewal.

Hearing Officer: If Board elects to appoint a hearing officer to hold the hearing, the District administration will need to contact Ms. Garcia-Huerta for the purpose of arranging a hearing officer who is suitable to both parties. State law provides the hearing officer cannot have a personal interest which would conflict with the hearing officer's objectivity and requires that the choice of hearing officer be agreeable to both the District and Ms. Garcia-Huerta. If the parties cannot agree upon a hearing officer, then one must be selected from a list provided by the Arizona Department of Education or the American Arbitration Association.

Within ten days after a hearing conducted by a hearing officer, the hearing officer delivers a written recommendation to the governing board that includes findings of fact and conclusions. The Board has ten days to decide how to rule on the recommendation after receiving it. The affected employee and the District administration also have the right to object to the findings of the hearing officer and present oral and written arguments to the Governing Board, before the Board takes action on the recommendation.

RECOMMENDATION: The administration recommends that the Board take action at this time to determine whether to serve as tribunal concerning the notice of intent not to renew or dismiss Ms. Katia Garcia-Huerta or to appoint a hearing officer for the same purpose. Alternative forms of motion are suggested below:

If the Governing Board intends to serve as tribunal itself: "I move that the Governing Board act as tribunal to hear evidence, prepare a record and take final action to affirm or withdraw the notice of intention not to renew the employment contract of Katia Garcia-Huerta. I further move that the Superintendent be authorized to coordinate with Ms. Garcia-Huerta, or her legal counsel, for scheduling of the hearing to be held within 30 days of the date of her request for the hearing, or as expeditiously as possible thereafter, as the parties may agree."

If the Governing Board intends to have a hearing officer hold the hearing: "I move that Governing Board appoint a hearing officer to hold a hearing, hear the evidence, prepare a record and issue a recommendation to the governing board for subsequent action as to whether to affirm or withdraw the notice of intent not to renew the employment contract of Katia Garcia-Huerta. I further move that the Superintendent be authorized to determine a list of hearing officers acceptable to the District for submission to Ms. Garcia-Huerta or her counsel for selection and that, if a hearing officer cannot be promptly agreed to, that the Superintendent select one from a list provided by the Arizona Department of Education or the American Arbitration Association. I further move that the hearing be held within 30 days of the date of Ms. Garcia-Huerta's request for a hearing, or as expeditiously as possible thereafter, as the parties may agree."

INITIATED BY:



Todd A. Jaeger, Associate to the Superintendent

Date: July 18, 2012



Patrick Nelson, Superintendent