

**EXECUTIVE SUMMARY OF INVESTIGATION INTO
ALLEGATIONS SURROUNDING A GRIEVANCE
FILED BY AN SMSD EMPLOYEE**

**I.
DIRECT FINDINGS RELATED TO THE
SUPERINTENDENT'S CONTRACT**

A. Do discrepancies between the Board approved contract for the Superintendent and the contract signed on March 4, 2021 exist?

FINDING: THERE ARE DISCREPANCIES BETWEEN THE CONTRACT SUBMITTED TO THE BOARD OF TRUSTEES ON FEBRUARY 17, 2021 AND THE CONTRACT SIGNED BY THE SUPERINTENDENT ON MARCH 4 2021. THE SIGNED CONTRACT DIFFERS IN THAT IT INCLUDES A DEFERRED COMPENSATION PLAN PAYMENT AND A CHANGE IN THE START OF THE CONTRACT, WHICH RESULTS IN ADDITIONAL COMPENSATION.

B. Are the discrepancies between the contracts due to improper considerations or intent on the part of any of the parties to circumvent the role of the Board of Trustees in evaluating and approving the Superintendent's Contract?

FINDING: THE DISCREPANCY BETWEEN THE CONTRACTS IS THE RESULT OF TWO DIFFERENT ATTORNEYS WORKING ON THE MATTER, AN ERROR BY THE FINANCIAL ADVISOR IN SENDING AN INCORRECT VERSION OF THE CONTRACT, WHICH DIFFERED IN SOME IMPORTANT RESPECTS FROM THE CONTRACT WHICH HAD BEEN UNDER NEGOTIATION. THE INCORRECT CONTRACT PRESENTED TO THE BOARD OF TRUSTEES WAS THE RESULT OF IMPERFECT COMMUNICATION BETWEEN ALL PARTIES INVOLVED IN THE DEVELOPMENT OF THE CONTRACT. THE INVESTIGATION DID NOT SUBSTANTIATE ANY IMPROPER INTENT OR INTENT TO CIRCUMVENT THE ROLE OF THE BOARD OF TRUSTEES IN EVALUATING THE SUPERINTENDENT AND IN DETERMINING THE SCOPE OF THE SUPERINTENDENT'S CONTRACT, THOUGH, IT IS RECOMMENDED THE CONTRACT BE SUBMITTED TO THE BOARD FOR CONSIDERATION/RATIFICATION.

II.

DIRECT FINDINGS RELATED TO CLAIMS OF RETALIATION

- A. Has there been unlawful retaliation against Complainant based upon her filing of a grievance or based upon her notification she has filed a report with law enforcement?**

FINDING: THE COMPLAINANT HAS HAD PERFORMANCE CONCERNS THAT HAVE BEEN LONGSTANDING. I DO NOT FIND THERE HAS BEEN RETALIATION, EITHER RELATED TO PURPORTED STATUS AS A WHISTLEBLOWER, OR ADVERSE ACTIONS TAKEN, THAT ARE NOT RELATED TO LEGITIMATE CONCERNS REGARDING THE COMPLAINANT'S PERFORMANCE.

III.

ADDITIONAL ALLEGATIONS RAISED BY THE EMPLOYEE THAT HAVE BEEN INVESTIGATED

- 1. Sterling Staffing Contract and allegations by the former CFO.**

Although not directly relevant to the grievance, the circumstances of the departure of the prior CFO was investigated. The submission to TEA was reviewed. The former CFO voluntarily agreed to be interviewed. He provided the documents related to the contract he provided to law enforcement. He was asked about his allegations of retaliation. The main element of retaliation he expressed was imposition of short-fused requests for information from the Superintendent. He stated he was unable to provide emails and he accepted other employment shortly after making his allegation.

Based upon the documentation, reports and statements reviewed, it appears that the Sterling Staffing contract was initially authorized by the Board with a limitation of \$40,000.00. The hiring of family members of a Trustee and of the Superintendent to perform services at SMSD, while legal, minimally presents an appearance of impropriety.

Once the contract exceeded \$50,000.00, it became subject to procurement requirements for competitive bidding and the contract had not been bid. It was terminated shortly after the matter was disclosed by the former CFO. **The investigation revealed no additional facts or legal issues beyond those already identified in the prior investigation.**

- 2. RIF and reclassification of employees that have impacted the ability of the Complainant to do her job.**

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This was not a significant focus of investigation, however, in an effort to comprehensively review any allegations or related allegations, the matter was investigated. The decision to perform a Reduction in Force or reclassification of personnel is a matter within the purview of the Board of Trustees, based upon financial considerations and judgment with respect to prudent business practices. The record indicates the reclassification was based upon a Texas Association of School Boards salary study. Whether the resulting job classifications and position salaries makes the positions competitive with respect to current market conditions is a matter within the purview of the Administration and the Board of Trustees. Many of Complainant's issues relate to problems with the Business Office or Human Resources. Both are critical functions.

Some of the witnesses interviewed indicated there have been issues with the Business Office. The Business Office reports to Complainant. Human Resources, based upon correspondence, interviews and documentation reviewed, has also had some struggles.

At least one witness stated that some of the issues with staff turnover in the Business Office relate to interpersonal conflicts and the management style of the complainant. Issues with filling some of the positions relate not to "blocking" of her agenda items by President Caldwell or Dr. Bostic, but instead result from her continued failure to timely meet posting deadlines for submission of agenda items or to posting personnel items without going through HR. **It is possible that the RIF and reclassification impacted the ability of the Complainant to do her job; however, there is no discernible difference in job performance over the tenure of the Complainant. Performance concerns have been documented from 2020 to the present and relate to timely provision of information and compliance with deadlines.**

3. Hiring of unqualified personnel that have impacted her ability to perform her duties or impacted the business of SMSD.

This was a matter that was investigated. Complainant provided the names of 4 employees who she stated were hired without requisite qualifications as specified in their job descriptions. Personnel files and job descriptions were requested for each of the positions and compared to determine whether employees had the requisite qualifications as specified in their job description.

In some cases, the employees had the requisite qualifications. In other cases, they did not appear to have the requisite qualifications as specified in the job description. Because of limits to compensation, governmental entities are often at a competitive disadvantage to private employers in the marketplace. This is particularly acute in the IT area, where some school districts have had to deviate or create new salary schedules for employees within the IT area in order to attract and keep employees with those technical skills needed to keep the IT infrastructure running.

It is not unreasonable or unusual to hire an employee without all of the qualifications with the expectation they will obtain the necessary degree or certifications required. Dr. Bostic stated that

with respect to IT, he had to provide a raise in order to keep an employee who had received a generous offer from a neighboring school district.

Position description qualifications are administrative determinations and may be waived within the discretion of the Superintendent. SMSD Board Policy DC(Local) directs the Superintendent to define the qualifications, duties and responsibilities of all positions. The Superintendent has sole authority to recommend and the Board retains final authority for employment of contractual personnel, with the exception of delegating to the Superintendent the authority to employ contractual personnel during the periods of June 1 to August 31 and November 15 to January 15. The Board delegates authority to hire non-contract personnel to the Superintendent.

For the foregoing reasons, the allegation of impropriety or improper conduct with respect to hiring of unqualified personnel was not substantiated, however, it is incumbent upon the Administration to appropriately and timely monitor the performance of staff, provide professional development and assure they are making progress toward the requisite qualifications and are contributing to the mission of SMSD.

IV. RECOMMENDATIONS BASED UPON ISSUES IDENTIFIED DURING THE INVESTIGATION

1. The Superintendent's Contract should be submitted to the Board for consideration/ratification.

The Board is legally responsible for employing and evaluating the Superintendent. This includes the development of the Superintendent's contract. The signed contract may have been intended, however, it differs in two material respects from the contract that was presented to the Board during the Superintendent's Evaluation. The first is the provision for an additional deferred compensation payment. The second is the change in the start date of the deferred compensation. Both changes added to the compensation of the Superintendent. Though the contract was intended, the entire board has not considered it.

Because the contract differs from the contract reviewed during the Superintendent's Evaluation, it is recommended that the contract be presented to the Board of Trustees for consideration/ratification.

2. Respecting the boundaries between Board and Administration Responsibilities

One of the allegations in the Grievance relates to a meeting one Trustee had with some of the transportation employees. While it is entirely appropriate for Board members to meet with groups

around the district, individual Trustees should be mindful of the scope of their duties as Board members and should avoid involvement in day to day business of SMSD.

It is important that the Board work through the Superintendent of Schools and permit the administration to resolve day to day matters. SMSD Board Policy BBE(Local) delineates the responsibilities of the Board of Trustees. Additionally, SMSD Board Operating Procedures specify how public or employee complaints are to be addressed, with specific guidance to refer complainants to the appropriate department and inform the Superintendent.

This extends to inquiries from the public or from individual employees. Such concerns or inquiries should be referred to the Superintendent who will then respond or task the appropriate department with providing a response.

3. Use of Private Email for Public Business

To the extent Trustees or employees are using personal email accounts for SMSD business it is recommended this practice cease to the extent practicable. Using personal email for public business creates legal compliance and risk issues.

It is strongly recommended that use of private email accounts for public business be minimized and the District may consider amending policy to address the matter.

4. SMSD Email Query

A request to query SMSD's email system resulted in no substantial production of emails. Relevant emails were obtained from other sources that enabled satisfactory completion of the investigation.

It is recommended that the system for archiving and searching emails be reviewed and upgraded as necessary to comply with legal requirements.

5. Outside Employment Restrictions

SMSD currently has no policy on outside employment. Any employee is largely unconstrained in the pursuit of outside employment. It is reasonable for SMSD to expect that highly compensated senior staff devote most of their time to SMSD business. Such a policy does not have to be a blanket prohibition on outside employment, however, there needs to be disclosure and transparency with respect to any outside employment, such that there is assurance that such pursuits will not impact professional responsibilities within SMSD. **Accordingly, it is recommended SMSD consider adoption of a policy with respect to outside employment.**