

MINUTES OF THE SPECIAL MEETING OF THE BOARD OF TRUSTEES OF SD #4

Since Jason Matt is calling in to be present at the meeting, he will turn over the meeting to Joel Junso to run.

The trustees met in special session, Thursday, August 1, 2019 at 6:30 p.m. in the library. Those present throughout the meeting were Chair Jason Matt (present electronically as per Board policy 1420, p3), Trustee/Vice Chairman Joel Junso, Superintendent Brent Lipp, Amanda Agyeman-Budu, Trustee, Jamie Wegner, Trustee and Business Manager/Clerk Jeanne Carroll.

The vice-chair called the meeting to order and led the group in the pledge of allegiance.

PUBLIC COMMENT--None

Closed Session

1. To Discuss Litigation Strategy Entitled Wendy Bekkedahl vs. CANYON CREEK SCHOOL DISTRICT #4 By and through its BOARD OF TRUSTEES.

The board adjourned into Closed Session (Executive Session) at 6: 40 p.m. They returned to Open Session at 7:11 p.m.

Open Session

2. Board Action on Proposed Settlement Agreement

Mr. Martin explained the settlement agreement that was agreed upon and signed by Wendy Bekkedahl, and the four teachers. The board of trustees met to decide whether to finalize and sign on their part, which they have. He read the settlement agreement and terms aloud to the public.

*Jamie hereby moved that the settlement agreement of the lawsuit *Bekkedahl v. Canyon Creek School District #4*, as attached to these minutes, be and the same is approved and that the Vice-Chair sign the agreement on behalf of the Board of Trustees with the understanding that the teachers' resignation letters will be signed and delivered to the District. Amanda seconded the motion. All in favor.*

There being no further business, Amanda moved to adjourn the meeting at 7:21 p.m. Jamie seconded the motion. All in favor.

Respectfully submitted,

Jeanne Carroll, District Clerk

Joel Junso, Vice-Chair

Settlement Agreement and General Release

This Settlement Agreement and General Release is entered into and effective this ____ day of July 2019 by and between Canyon Creek School District #4 by and through its Board of Trustees (“School District” or “District”) and Wendy Bekkedahl (“Bekkedahl”), Haylee Donovan, Dannicah Petak, Jessica Kugler and Andrea Benson (collectively the “teachers”).

WHEREAS on May 20, 2019, the Board of Trustees of the School District passed four motions, each of which non-renewed the teaching contract of the non-tenured teachers without cause, thereby terminating their employment relationships with the School District;

WHEREAS on June 6, 2019, Bekkedahl filed a petition and complaint in the Montana District Court, Thirteenth Judicial District, Yellowstone County, designated *Wendy Bekkedahl v. Canyon Creek School District #4* (Cause No. DV 19-0659), seeking to void the motions to non-renew the teaching contracts of the teachers on several grounds including an alleged violation of the constitutional and statutory provisions for public participation in governmental affairs, violation of Montana meeting law, and violation of School District policy;

WHEREAS on June 19, 2019, a First Amended Petition was filed joining the teachers as plaintiffs with Bekkedahl, and asserting additional claims seeking a writ of mandamus and damages pursuant to the constitutional tort doctrine;

WHEREAS the teachers contend that, if the motions to non-renew their contracts are voided by the Court, they will be entitled to a teaching contract for the 2019-2020 school year; and

WHEREAS the parties entered into settlement negotiations in order to completely and finally resolve any and all claims related to the teachers’ employment and non-renewal of employment and the Board meeting at which the motions to non-renew were passed by the Board. As a result, the parties have agreed to settle the litigation on the terms and conditions set forth below.

NOW THEREFORE in consideration of mutual promises contained herein, the parties to the above named lawsuit have agreed to settle the litigation as follows:

1. Settlement Terms

- Within 30 days after the execution of this Agreement, and the expiration of the seven-day revocation period thereafter, pursuant to the provisions of Section 2 below, the School District’s Board of Trustees will rescind its motions to non-renew the teachers.
- Immediately thereafter, the teachers will resign their employment with the School District by a written non-revocable resignation letter.

- The parties will agree upon language that will be used by the School District if potential employers ask for a reference for any of the teachers.
- The School District has agreed to pay the plaintiffs' attorneys' fees in the amount of \$10,000.00
- At the request of Bekkedahl, the Board of Trustees will hear public comment at one of its regular monthly meetings following the opening of the school year 2019-2020 regarding the District's policy and method employed for renewing or non-renewing teacher contracts, retaining staff and staff continuity.

In settlement of all claims, including the damage claim asserted in Count III of the Amended Petition, the School District will pay the sum of \$20,000.00 each to teachers Donoven, Kugler and Benson, and the sum of \$35,000.00 to teacher Petak. Such sums will be paid within 15 days after each of the teachers have submitted a non-revocable resignation letter to the School District. The District will provide the teachers with a form 1099 for calendar year 2019 reflecting the above sums paid.

2. Complete Waiver, Release, and Discharge

In consideration of the terms and conditions of this agreement, Bekkedahl and the teachers knowingly and voluntarily waive, release, and discharge the District from all charges, grievances, complaint, claims, suits, obligation, liabilities, demands, or causes of action, known or unknown, fixed or contingent, which they may have or may claim to have against the District, under any theory under the law, whether common, statutory, regulatory, or constitutional, including but not limited to, claims relating to or arising out of alleged violation of constitutional or statutory rights, open meeting violations regarding meetings prior to the date of execution of this agreement, policy violations, employment and non-renewal of employment, claims under the Wrongful Discharge from Employment Act, discrimination claims, emotional distress, negligence, loss of back or front wages and benefits, compensation of any kind, equitable relief, injunctive relief, rights to reinstatement/promotion/continued employment, compensation for unused leave of any kind, loss of earning capacity, retirement contributions, compensatory damages of any kind, and any losses or debts, except for claims for breach of any provision of this Agreement.

In particular, but solely by way of example and without limiting the generality of the immediately preceding release, Bekkedahl and the teachers specifically waive and release any right to pursue and/or recover damages or other legal or equitable relief against the District or file or cause to be filed any grievance, lawsuit, or other claim for relief

with any federal, state or local court or administrative agency, including, without limitation, any claim for relief under any collective bargaining agreement, civil rights claims, Montana Wrongful Discharge from Employment Act, Americans with Disabilities Act, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, Section 1981 of the Civil Rights Act of 1986, the Fair Labor Standards Act, Family Medical Leave Act, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, the Montana Human Rights Act, any other policy, federal or state law or statute or constitution, or any federal or state statute or common law doctrine regarding the existence or breach of oral or written contracts or employment, violation of law or policy, interference with contract relations, claims or loss of earning capacity, claims for punitive damages, breach of privacy, fraud, misrepresentation, wrongful discharge, constructive discharge, blacklisting, interference with contract, negligent or intentional infliction of emotional distress, breach of an implied covenant of good faith and fair dealing, defamation, slander, libel, retaliation, age discrimination, sex discrimination, disability discrimination or any other form of discrimination.

This agreement contains a waiver of the teachers' rights and claims under the Age Discrimination in Employment Act (ADEA). Their waiver is knowing and voluntary, which means, as a minimum, that they understand that:

- The waiver is part of an agreement between the teachers and the District and is written so that they understand it;
- The waiver specifically refers to rights or claims under the ADEA;
- The teachers do not waive any rights or claims that may arise after this Agreement is executed by them;
- The teachers' waiver is in exchange for consideration that is more valuable than what they are already entitled to;
- The teachers have been and are advised to consult with an attorney prior to executing this Agreement and have done so;
- The teachers have up to 21 days after receipt of this Agreement to decide whether to execute it. Should they execute this Agreement prior to the expiration of the 21-day consideration period, they have knowingly waived their right to consider this Agreement for 21 days;
- The teachers have 7 days after they execute this Agreement to revoke it, and this Agreement will not be effective or enforceable until this 7-day revocation period has expired;

- The teachers understand that they are not eligible to receive the benefits provided herein until they execute this Agreement and the revocation period has expired;
- The teachers' execution of this Agreement acknowledges that they understand the above points, and, therefore, their waiver is knowing and voluntary.

3. **No Admission of Liability**

This Agreement expresses the intention of the parties to settle and resolve, once and forever, all disputes which have arisen between them including but not limited to claims relating to, arising out of, or in any way associated with the teachers' employment with the District and termination therefrom and the Board meeting at which the non-renewal motions were passed, without the expenditure of further time and expense and to avoid the risk and expenses attendant upon additional litigation.

It is understood that the above-mentioned settlement provisions payments to the teachers are accepted as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither the payments nor the negotiations for settlement nor performance of the actions required by this Agreement shall be considered or construed as an admission of liability. The School District expressly denies any liability to Bekkedahl and the teachers and further expressly denies that it has engaged in any wrongful acts or conduct, violated any constitutional provisions, local, state, or federal statutes, ordinances, regulations, provisions, orders, or policies, or breached any obligation, express or implied.

4. **Release of Insurer**

Bekkedahl and the teachers further release the District's insurers from all obligations under any part of insurance policies applicable to their claims and from any and all claims arising out of the investigation, handling, adjusting, defense, or settlement of the claim including, without limitation, any claims under Mont. Code Ann. §33-18-242.

5. **Assumption of Tax Liabilities**

The teachers agree that to the extent any additional tax liability (state, federal, or otherwise) may now or hereafter become due because of the payment of any sums pursuant to this Agreement, such tax liabilities, including penalties and interest, shall be their sole responsibility. The District makes no representation or promise as to the tax consequences of this Agreement or any payment made pursuant to this Agreement, and the teachers are not relying on any perceived representations or promises regarding tax consequences.

6. **Non-Disparagement**

The parties agree not to engage in any act or make any comments (written or oral) relating to this dispute or the teachers' employment and non-renewal of employment with the School District which are intended to or do disparage or harm the reputation, character or public image of the other party.

7. **Additional Documents and Dismissal**

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement. The parties stipulate and agree that their attorneys of record shall dismiss with prejudice, as full settled upon the merits, the pending District Court litigation described above.

8. **Governing Law**

This Agreement is governed by the laws of the State of Montana. The parties agree this Agreement is admissible in any action to compel compliance with the terms of this Agreement.

9. **Entire Agreement**

This Agreement contains the entire agreement between the parties and supersedes all other prior oral or written agreements between the parties, and the terms of this Agree-

ment are contractual and not merely recitals. It is understood that no amendment, deletion, addition, modification, or waiver of any provision of this Agreement shall be binding or enforceable unless in writing and signed by all parties.

10. Warranty of Capacity to Execute Agreement

Bekkedahl and the teachers represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Agreement except as otherwise set forth herein, that they have the sole right and exclusive authority to execute this Agreement, and that they have not sold, assigned, transferred, conveyed, encumbered, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

11. Consent and Review

In entering into this Agreement and signing below, Bekkedahl and the teachers declare that they have carefully read the Agreement in its entirety, discussed its meaning, consequences, and legal effect with their legal counsel, understand the contents, terms, and conditions thereof, and voluntarily sign the same of their own free will and accord. They further represent that they have fully investigated to their full satisfaction all facts surrounding the various claims, and that they intend to be legally bound by this Agreement.

This Agreement has been negotiated by the parties and their respective counsel and representatives. The parties warrant, represent and agree that they are not relying on the advice or representation of any other party, or anyone associated with any other party, as to legal, factual, tax or other consequences of any other kind arising out of this Agreement. Further, the parties agree that in the event of any ambiguity and/or dispute regarding the interpretation of this Agreement, the interpretation thereof shall not be resolved by any rule or principle of contract construction providing for the interpretation against the draftsman or against the party who caused the uncertainty to exist.

12. Binding Effect

This Agreement is binding upon the parties' heirs, family members, present and former trustees, administrators, assigns, agents, representatives, employees, insurers, and attorneys.

13. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument. The parties may each furnish an electronic signature to execute this Agreement in accordance with Uniform Electronic Records Act, including without limitation Mont. Code Ann. §30-18-106.

PLEASE READ CAREFULLY.

THIS AGREEMENT AFFECT AND TERMINATES LEGAL RIGHTS.

Wendy Bekkedahl

Date: _____

Haylee Donovan

Haylee Donovan

Date: 7/29/19

Dann Petak

Dannicah Petak

Date: 7/25/2019

Jessica Kugler

Jessica Kugler

Date: 7/25/2019

Andrea Benson

Andrea Benson

Date: 7-26-19

Canyon Creek School District #4

SOBEL JUNISO
Vice Chair, Board of Trustees

Witness
Janice Cusack
Clerk of Board

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PLEASE READ CAREFULLY.

THIS AGREEMENT AFFECT AND TERMINATES LEGAL RIGHTS.

Wendy Bekkedahl
Wendy Bekkedahl,
Date: 7/20/19

Haylee Donoven
Date: _____

Dannicah Petak
Date: _____

Jessica Kugler
Date: _____

Canyon Creek School District #4

By: _____
Chair, Board of Trustees

Witness

Clerk of Board