

TO: BOARD OF EDUCATION

DISCUSSION

11/19/15

FROM: SANDRA LYON / JANECE L. MAEZ

7:30 p.m.

RE: RECEIPT OF AND DISCUSSION REGARDING UPDATED INFORMATION FROM THE FINANCIAL OVERSIGHT COMMITTEE (FOC) REPORT ON BUDGETARY IMPLICATIONS OF A MALIBU UNIFICATION

DISCUSSION ITEM NO. D.01

At the July 15, 2015, joint meeting between the SMMUSD Board of Education (Board) and the district's Financial Oversight Committee (FOC), the Board heard reports from the FOC related to a proposed action to reorganize the existing Santa Monica-Malibu Unified School District by forming a new Malibu Unified School District from parts of the existing District. The FOC had studied several aspects of the proposed unification and reported on two major areas of consideration: 1) the division of assets and liabilities and 2) the impact to the district on fiscal operations. The scope of the study included the impact to the budget of a Santa Monica USD as well as the fiscal viability and sustainability of a Malibu USD. The FOC was charged by the Board to determine if potential "deal breakers" existed in either of these areas. The entire scope of the FOC's work was financial in nature and not intended to formulate an opinion on the subject of unification. The general conclusion at the time of the FOC report in July was that significant "deal breakers" in terms of the financial aspects of unification did not exist.

When the 2014-15 Unaudited Actuals report for SMMUSD was presented to the Board on September 2, 2015, staff described a new set of circumstances relative to the LCFF revenue calculation. The report and presentation by staff described how SMMUSD is now considered a Minimum State Aid district and why the revenue for the year was much greater than had been expected. The Minimum State Aid calculation increased the 2014-15 revenue and fund balance by greater than \$7.0 million.

The Board asked the FOC to update their analysis based on the new information with regards to the Minimum State Aid calculation. WestEd, contracted by Advocates for Malibu Public Schools (AMPS) to prepare a potential Malibu USD budget, updated its report with the new information. Similarly, SMMUSD staff updated the potential Santa Monica USD budget. The subcommittee of the FOC met twice to review the analysis. The subcommittee led a discussion of the updated information at a full FOC meeting on November 12, 2015. Representatives of the FOC will be present at tonight's Board meeting to present the updated information.

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Public Comments:

- *Kevin Shenkman, Debbie Mulvaney, Seth Jacobson, and Tom Larmore addressed the board regarding this item.*

Ms. Maez's presentation can be found under Attachments at the end of these minutes.

Staff answered board members' questions regarding the three-year trend of the financials presented, potential budgetary trends for Basic Aid districts, what factors have been included in the updated budgetary analysis, and how property tax revenue is currently distributed between Santa Monica and Malibu.

The board discussed their individual opinions regarding the data that was presented.

TO: BOARD OF EDUCATION

DISCUSSION

11/19/15

FROM: LAURIE LIEBERMAN / JOSE ESCARCE

ADDENDUM

RE: POTENTIAL NEXT STEPS FOLLOWING THE UPDATED INFORMATION FROM THE FINANCIAL OVERSIGHT COMMITTEE (FOC) ON BUDGETARY IMPLICATIONS OF A MALIBU UNIFICATION, INCLUDING THE POSSIBILITY OF A BOARD RESOLUTION; CONSIDERATION OF PROPOSED BOARD RESOLUTION SUBMITTED BY BOARD MEMBER FOSTER

DISCUSSION ITEM NO. D.01a

In initial planning for the November 19 Board agenda, Board leadership and staff recognized the need for Board discussion regarding potential next steps in response to the new financial analysis being presented by the Financial Oversight Committee in Item No. D.01. Board leadership assumed this discussion and further staff direction would take place as part of Item No. D.01.

During the November 5, 2015, board meeting, however, Board Member Foster had requested that a resolution regarding Malibu unification be brought forward for Board discussion and consideration. Mr. Foster subsequently submitted the attached resolution (and the exhibit following the resolution), but he was unfortunately unable to submit it prior to this meeting agenda going to print. Board leadership and staff believe that a full discussion and consideration of Mr. Forster's resolution should take place in the context of a broader discussion about potential next steps. Consequently, this discussion item has been added as a follow-up to Item No. D.01 and Board Member Foster's resolution is included for consideration as part of this item.

During this item, staff would like to receive input and direction from the Board regarding next steps following the board's receipt of the new financial analysis in Item No. D.01. An action item will be developed for a subsequent agenda, if the Board so desires.

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Public Comments:

- *Andrew Mitchell, Scott Morrison, John Sibert, Skylar Peak, Lou La Monte, Laura Rosenthal, Sam Hall Kaplan, Kevin Shenkman, Maryanne Riggins, Laureen Sills, Colleen Baum, Roui Israel, Desi Bradley, Karen Farrer, Bonnie Lockram, Michelle Delrahim, Teresa Earle, Martha Quinn, Lili Foster, Sunshine Armstrong-Silverstein, Seth Jacobson, Stacie Cox, Ingrid Peterson, Susan Emerling Torres, Tom Larmore, Manel Sweetmore, Carl Randall, Heather Anderson, Katy Henrikson, Rochelle Fanali, Megan Hstand, Ryan Embree, Sarah Braff, Lisa Maier, Kim Bonowitz, Lori Whitesell, and Cameron Farrer addressed the board regarding this item.*

Ms. Lieberman suggested the district establish a small committee that could negotiate several of the concerns with a subcommittee established by the Malibu City Council. A legislator would then need to sponsor special legislation that would allow for Malibu unification. Simultaneously, the petitioners could submit their petition to LACOE to begin that process. Ms. Leon-Vazquez said she would need evidence of financial stability before moving forward with supporting an MUSD. She suggested the petitioners submit their petition to LACOE to see what their analysis produces. Dr. Tahvildaran-Jesswein suggested that a negotiating subcommittee be a blue ribbon panel. Dr. Escarce said he would consider supporting a Malibu unification if it could be determined how to make an SMUSD financially whole. Mr. Foster suggested developing aspirational language about the board's support of a Malibu unification. The board decided that its subcommittee on Malibu unification would meet and return to the full board with recommendations regarding next steps.

**BEFORE THE BOARD OF EDUCATION OF THE SANTA
MONICA-MALIBU UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

RESOLUTION NO. _____

WHEREAS, the City of Malibu and the unincorporated area surrounding the City of Malibu (collectively, hereafter, “greater Malibu”), is currently within the territory of the Santa Monica Malibu Unified School District (“SMMUSD”);

WHEREAS, greater Malibu, and specifically the City of Malibu, has developed significantly since greater Malibu was organized as part of SMMUSD;

WHEREAS, under current law the organization of SMMUSD including both Santa Monica and greater Malibu would not be permissible, as California Education Code Section 35543, enacted in 1980, provides that “a school district shall not be formed or reorganized to include territory which is separated from other portions of the territory of the district by the territory of one or more other school districts,” and greater Malibu is separated from Santa Monica by the Los Angeles Unified School District.

WHEREAS, the City of Malibu was incorporated in 1991, and greater Malibu, despite significant population growth, has strived to maintain its rural character, while Santa Monica has developed into a densely-populated urban community.

WHEREAS, the city centers of Malibu and Santa Monica, respectively, are separated by several miles, and Santa Monica and Malibu have become distinct communities very different from one another;

WHEREAS, for several years, concerned residents and community groups within greater Malibu have expressed the desire to organize a separate Malibu school district;

WHEREAS, SMMUSD believes it is important that residents choose whether to organize a separate Malibu school district;

WHEREAS, the Malibu City Council unanimously approved a Resolution, pursuant to Section 35721(c) of the California Education Code, seeking to organize a Malibu unified school district;

WHEREAS, residents of greater Malibu have expressed displeasure over the at-large system of election, employed for selecting members of the SMMUSD Board, however the City of Santa Monica adopted a city charter in 1946 that requires its city council and the governing board of SMMUSD to be elected at-large, and that charter provision prevents SMMUSD from adopting district-based elections.

WHEREAS, the principle civic group that has advocated for the organization of a Malibu Unified School District - Advocates for Malibu Public Schools (“AMPS”) - has worked cooperatively with SMMUSD staff to investigate the feasibility and desirability of organizing a Malibu Unified School District from the existing territory of SMMUSD, and in that effort jointly retained the services of WestEd to prepare a report on the feasibility and desirability of the contemplated unification;

WHEREAS, the comprehensive report of WestEd, presented to SMMUSD’s governing board on July 15, 2015, confirms that unification of a Malibu Unified School District is both feasible and desirable.

WHEREAS, the nine criteria for unification of a school district set forth in Section 35753 of the California Education Code are all satisfied by the contemplated organization of a Malibu Unified School District;

WHEREAS, SMMUSD seeks to ensure that the distribution of assets and liabilities, as part of the organization of a Malibu unified school district, is equitable and allows both resulting school districts to provide excellent educational services to their respective students

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MALIBU RESOLVES AS FOLLOWS:

SECTION 1. Unification of Malibu Unified School District. Pursuant to section 35700 of the California Education Code, the Board of SMMUSD hereby petitions the Los Angeles County Superintendent of Schools to allow the electorate to decide the organization a new Malibu Unified School District (“MUSD”), consisting of the area labeled “Malibu” in the map attached as Exhibit 1, from the territory of the existing SMMUSD.

SECTION 2. Equitable Distribution of Assets and Liabilities and Continuation of Existing Parcel Tax. Pursuant to the authority of the Los Angeles County Board of Education and the Los Angeles County Committee on School District Organization to include plans, recommendations and conditions on a unification plan presented to the affected electorate, the question of unification of MUSD presented to the voters should include the following provisions:

- In the equitable distribution of assets of SMMUSD, the operating reserve should be distributed such that any annual operating shortfall of the remaining Santa Monica Unified School District (“SMUSD”) is ameliorated;
- MUSD, not SMUSD, should be responsible for any reasonably necessary remediation of environmental contaminants, including polychlorinated biphenyl, from the schools located within MUSD;
- The existing parcel tax (Measure R) should continue for both Santa Monica and Malibu, benefiting the respective districts; and
- Malibu residents should continue to pay their assessed share of all bonded indebtedness that has already been issued, and SMUSD should be entitled to issue all remaining approved bonds, with the payment of those bonds being the responsibility of residents of SMUSD.

SECTION 3. By-Trustee Area Elections. Pursuant to Sections 35734 and 35762 of the California Education Code, and the general authority of the Los Angeles County Board of Education and the Los Angeles County Committee on School District to include plans, recommendations and conditions on a unification plan presented to the affected electorate, the unification plan presented to the affected electorate should provide for the election of the governing board of MUSD through by-trustee-area elections in conformity with the trustee-area map attached as Exhibit 2.

The foregoing Resolution was adopted by the Board of Education of the Santa Monica-Malibu Unified School District on the ___ day of _____, 2015 by the following vote:

Ayes: _____
Noes: _____
Abstentions: _____
Absent: _____

Laurie Lieberman, President
Board of Education of the
Santa Monica-Malibu Unified School District

I, Sandra Lyon, Secretary of the Board of Education of the Santa Monica-Malibu Unified School District, do certify that the foregoing Resolution was regularly introduced, passed and adopted by the Board of Education at its regular meeting held on _____, 2015.

Sandra Lyon, Secretary
Board of Education of the
Santa Monica-Malibu Unified School District

LEGISLATIVE AUTHORITY:

California Education Code Section 35700.

The process of unification of a school district in California, which culminates in approval or rejection by the voters in an election conducted by the County Registrar, can be initiated by a petition from a variety of sources – the governing board of an existing school district, a sufficient portion of the registered voters in an affected area, or a city council that has jurisdiction over at least a portion of the affected area, among others. See Cal. Ed. Code §§ 35700, 35721. Accordingl to staff of the Los Angeles County Committee on School District Organization, a governing board of an existing school district may initiate the process for unification of a new school district within its current boundaries by adopting a resolution.

Specifically, Section 35700 of the California Education Code, entitled “Reorganization of School Districts by the Electorate,” provides, in relevant part:

An action to reorganize one or more districts is initiated upon the filing, with the county superintendent of schools, of a petition to reorganize one or more school districts signed by any of the following:

... (d) A majority of the members of the governing boards of each of the districts that would be affected by the proposed reorganization

The Santa Monica Malibu Unified School District (“SMMUSD”) is the only existing “district that would be affected by the proposed reorganization.” *Id.*

BACKGROUND:

The City of Malibu and the unincorporated area surrounding the City of Malibu (collectively, hereafter, “greater Malibu”), is currently within the territory of SMMUSD. When SMMUSD was first organized, greater Malibu was sparsely populated, and therefore had very few school-age children.

At that time, it made sense for greater Malibu to be part of a larger school district, and thus greater Malibu was organized as part of SMMUSD. However, under current law the organization of SMMUSD would not be permissible. Specifically, California Education Code Section 35543, enacted in 1980, provides that “a school district shall not be formed or reorganized to include territory which is separated from other portions of the territory of the district by the territory of one or more other school districts.” Greater Malibu is separated from Santa Monica by the Los Angeles Unified School District.

For several years, children residing in greater Malibu would attend high school at Santa Monica High School, until the construction of Malibu High School was completed. Currently, children residing in greater Malibu attend one of three elementary schools located in Malibu, then Malibu Junior High School, and Malibu High School – all located within the City of Malibu.

Since its organization into SMMUSD many decades ago, greater Malibu has grown significantly in population, and further developed into a thriving community, distinct from nearby cities, such as Los Angeles and Santa Monica. Greater Malibu now has a population of approximately 20,000, with nearly 2,000 students attending public schools, and even more who attend private schools in and around greater Malibu. The City of Malibu was incorporated in 1991. While Santa Monica has developed into a densely-populated thriving urban community, greater Malibu, despite significant population growth, has strived to maintain its rural character. Greater

Malibu and Santa Monica are separated by several miles, and have become distinct communities very different from one another.

For several years, concerned residents and community groups within greater Malibu have expressed the desire to organize a separate Malibu school district. Most recently, one of those community groups, Advocates for Malibu Public Schools (“AMPS”) circulated a voter petition, also pursuant to Ed. Code § 35700, and collected thousands of signatures in support of organizing a separate Malibu school district. Additionally, on September 16, 2015, the Malibu City Council unanimously adopted a resolution, pursuant to Ed. Code § 35721, calling for the organization of a separate Malibu school district.

Residents of greater Malibu have expressed displeasure over the at-large system of election, employed for selecting members of the SMMUSD Board. At-large elections are well-known to dilute minority vote where there is a minority community distinct from the overall community, regardless of whether the minority community is a racial/ethnic minority, socio-economic minority, geographic minority, or any other minority community with interests distinct from those of the majority.

Since the enactment of the California Voting Rights Act (Cal. Elec. Code §§ 14025, et seq.) in 2001, well over 100 school districts have converted from at-large elections to district-based elections, to address that very concern. See Legislative Analysis of Assembly Bill 277 (2015). However, the City of Santa Monica adopted a city charter in 1946 that requires its city council and the governing board of SMMUSD to be elected at-large. The provision in Santa Monica’s city charter providing for at-large elections prevents SMMUSD from adopting district-based elections. See Cal. Ed. Code § 35730.

Over the past few years, AMPS has worked cooperatively with SMMUSD staff to investigate the feasibility and desirability of organizing a Malibu Unified School District from the existing territory of SMMUSD. AMPS and SMMUSD jointly retained the services of WestEd, the premiere education consulting firm, to prepare a report on the feasibility and desirability of the contemplated unification. The comprehensive report of WestEd was presented to SMMUSD’s governing board on July 15, 2015. That report confirms that unification of a Malibu Unified School District is both feasible and desirable.

Specifically, WestEd examined the nine criteria for unification of a school district set forth in Section 35753 of the California Education Code:

- (1) The reorganized districts will be adequate in terms of number of pupils enrolled.
- (2) The districts are each organized on the basis of a substantial community identity.
- (3) The proposal will result in an equitable division of property and facilities of the original district or districts.
- (4) The reorganization of the districts will preserve each affected district’s ability to educate students in an integrated environment and will not promote racial or ethnic discrimination or segregation.
- (5) Any increase in costs to the state as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.
- (6) The proposed reorganization will continue to promote sound education performance and will not significantly disrupt the educational programs in the districts affected by the proposed reorganization.

- (7) Any increase in school facilities costs as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.
- (8) **The proposed reorganization is primarily designed for purposes other than to significantly increase property values.**
- (9) **The proposed reorganization will continue to promote sound fiscal management and not cause a substantial negative effect on the fiscal status of the proposed district or any existing district affected by the proposed reorganization.**

WestEd concluded that each of these criteria was satisfied.



SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

Receipt of Updated Information from the Financial Oversight Committee (FOC) on Budgetary Implications of a Malibu Unification

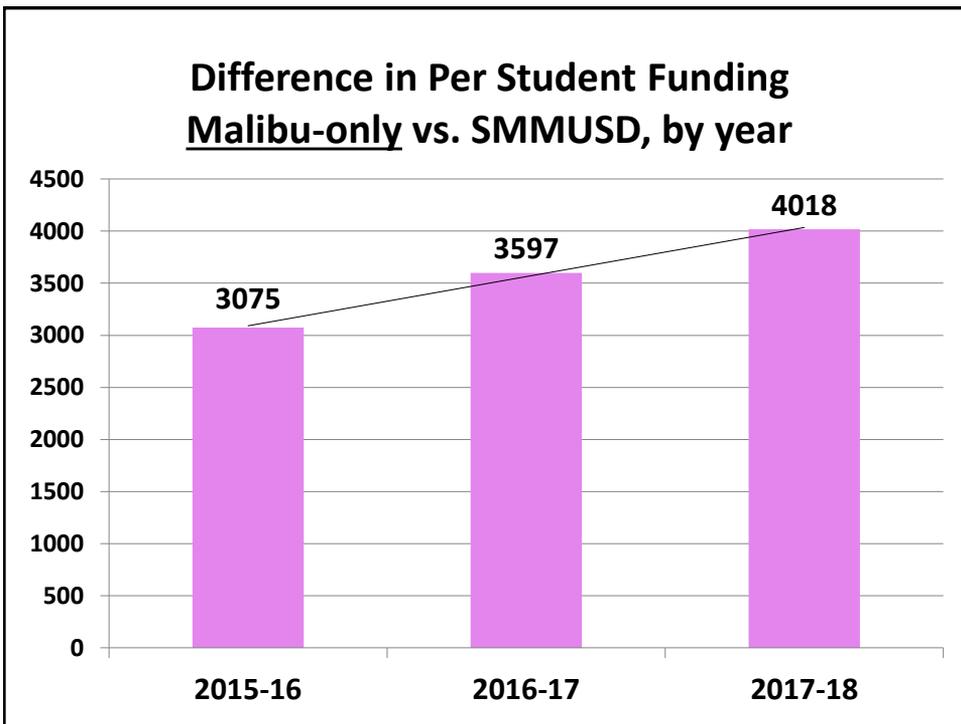
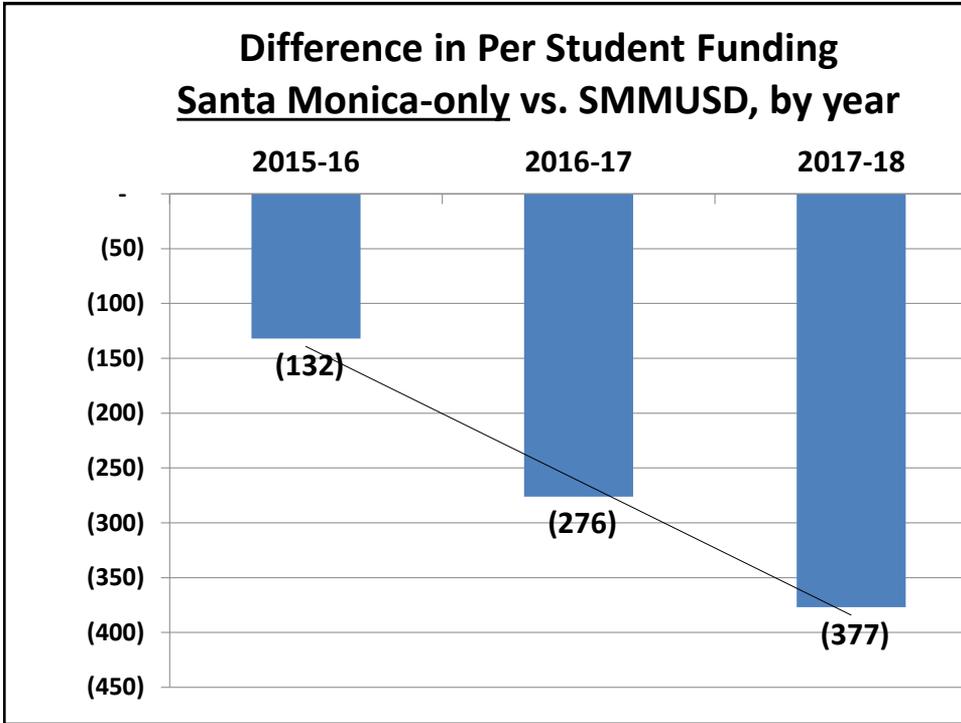
Presented by
Joan Krenik, FOC Chair
Janece L. Maez, CFO
November 15, 2015 Board of Education Meeting
Agenda Item D.o1.

SMMUSD vs SMUSD-only After the Unaudited Actual Report - with Minimum State Aid Consideration

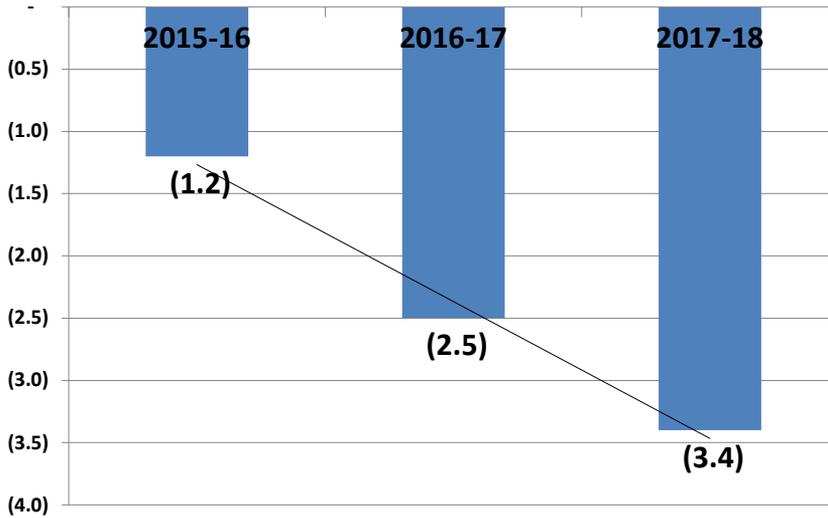
	After Unaudited Actuals-with Minimum State Aid					
	2015-16		2016-17		2017-18	
		per ADA		per ADA		per ADA
SMMUSD						
ADA	10795		10678		10678	
LCFF Revenue Subtotal	86,611,832	8,023	90,419,883	8,468	94,395,035	8,840
Total Revenue	104,431,204	9,674	102,447,111	9,594	106,312,215	9,956
Total Expenditure	102,112,929	9,459	103,631,454	9,705	106,766,412	9,999
Change in Fund Balance	2,318,275	215	(1,184,343)	(111)	(454,197)	(43)
% of Revenues	2.22%		-1.16%		-0.43%	
Beginning Fund Balance	31,534,918	2,921	33,853,193	3,170	32,668,850	3,059
Ending Fund Balance	33,853,193	3,136	32,668,850	3,059	32,214,653	3,017
SMUSD - only						
ADA	8999		8920		8920	
LCFF Revenue Subtotal	69,829,637	7,760	71,977,194	8,069	74,346,637	8,335
Total Revenue	85,867,881	9,542	83,114,420	9,318	85,442,505	9,579
Total Expenditure	86,671,184	9,631	87,888,225	9,853	90,719,826	10,170
Change in Fund Balance	(803,303)	(89)	(4,773,805)	(535)	(5,277,321)	(592)
% of Revenues	-0.94%		-5.74%		-6.18%	
Beginning Fund Balance	26,300,122	2,923	25,496,819	2,858	20,723,014	2,323
Ending Fund Balance	25,496,819	2,833	20,723,014	2,323	15,445,693	1,732
Difference SMUSD - only vs SMMUSD						
ADA	(1,796)		(1,758)		(1,758)	
LCFF Revenue Subtotal	(16,782,195)	(264)	(18,442,689)	(399)	(20,048,398)	(505)
Total Revenue	(18,563,323)	(132)	(19,332,691)	(276)	(20,869,710)	(377)
Total Expenditure	(15,441,745)	172	(15,743,229)	148	(16,046,586)	172
Change in Fund Balance	(3,121,578)	(304)	(3,589,462)	(424)	(4,823,124)	(549)
% of Revenues	16.82%		18.57%		23.11%	
Beginning Fund Balance	(5,234,796)	1	(8,356,374)	(312)	(11,945,836)	(736)
Ending Fund Balance	(8,356,374)	(303)	(11,945,836)	(736)	(16,768,960)	(1,285)

SMMUSD vs MUSD-only After the Unaudited Actual Report - with Minimum State Aid Consideration						
	After Unaudited Actuals-with Minimum State Aid					
	2015-16		2016-17		2017-18	
	10795	per ADA	10678	per ADA	10678	per ADA
SMMUSD						
ADA						
LCFF Revenue Subtotal	86,611,832	8,023	90,419,883	8,468	94,395,035	8,840
Total Revenue	104,431,204	9,674	102,447,111	9,594	106,312,215	9,956
Total Expenditure	102,112,929	9,459	103,631,454	9,705	106,766,412	9,999
Change in Fund Balance	2,318,275	215	(1,184,343)	(111)	(454,197)	(43)
% of Revenues	2.22%		-1.16%		-0.43%	
Beginning Fund Balance	31,534,918	2,921	33,853,193	3,170	32,668,850	3,059
Ending Fund Balance	33,853,193	3,136	32,668,850	3,059	32,214,653	3,017
MUSD - only						
ADA	1783		1756		1692	
LCFF Revenue Subtotal	21,761,673	12,205	22,357,603	12,732	22,963,972	13,572
Total Revenue	22,730,965	12,749	23,164,093	13,191	23,645,046	13,975
Total Expenditure	19,422,201	10,893	20,031,975	11,408	20,813,139	12,301
Change in Fund Balance	3,308,764	1,856	3,132,118	1,784	2,831,907	1,674
% of Revenues	14.56%		13.52%		11.98%	
Beginning Fund Balance	5,266,331	2,954	8,575,095	4,883	11,707,213	6,919
Ending Fund Balance	8,575,095	4,809	11,707,213	6,667	14,539,120	8,593
Difference MUSD - only vs SMMUSD						
ADA	(9,012)		(8,922)		(8,986)	
LCFF Revenue Subtotal	(64,850,159)	4,182	(68,062,280)	4,264	(71,431,063)	4,732
Total Revenue	(81,700,239)	3,075	(79,283,018)	3,597	(82,667,169)	4,018
Total Expenditure	(82,690,728)	1,434	(83,599,479)	1,703	(85,953,273)	2,302
Change in Fund Balance	990,489	1,641	4,316,461	1,895	3,286,104	1,716
% of Revenues	-1.21%		-5.44%		-3.98%	
Beginning Fund Balance	(26,268,587)	32	(25,278,098)	1,713	(20,961,637)	3,860
Ending Fund Balance	(25,278,098)	1,673	(20,961,637)	3,608	(17,675,533)	5,576

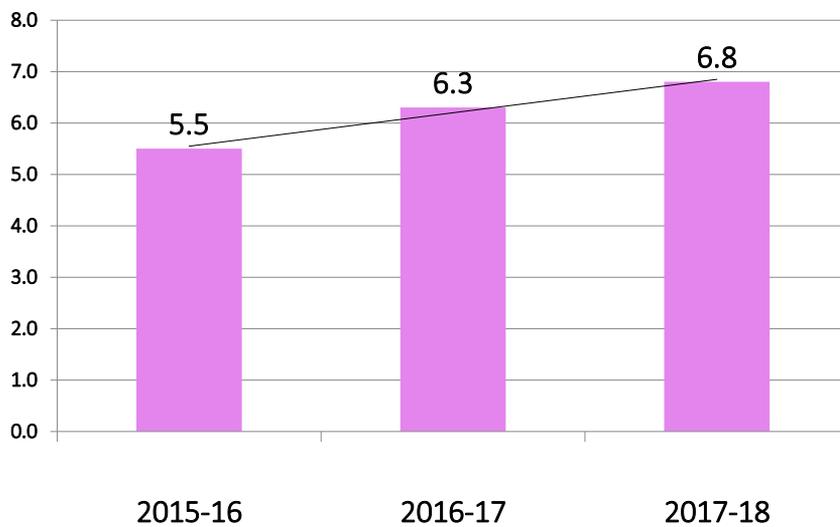
Differences between Individual Districts and SMMUSD		
	SMUSD	MUSD
2015-16		
Per Student Funding	(132)	3,075
Funding	(\$1.2M)	\$5.5M
2016-17		
Per Student Funding	(276)	3,597
Funding	(\$2.5M)	\$6.3M
2017-18		
Per Student Funding	(377)	4,018
Funding	(\$3.4M)	\$6.8M

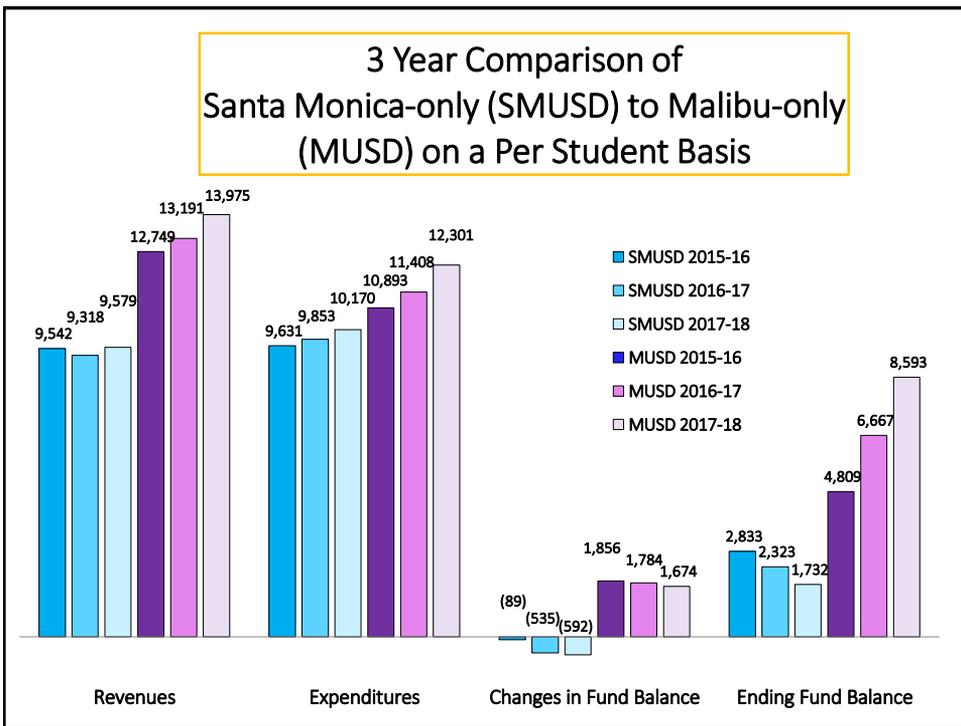
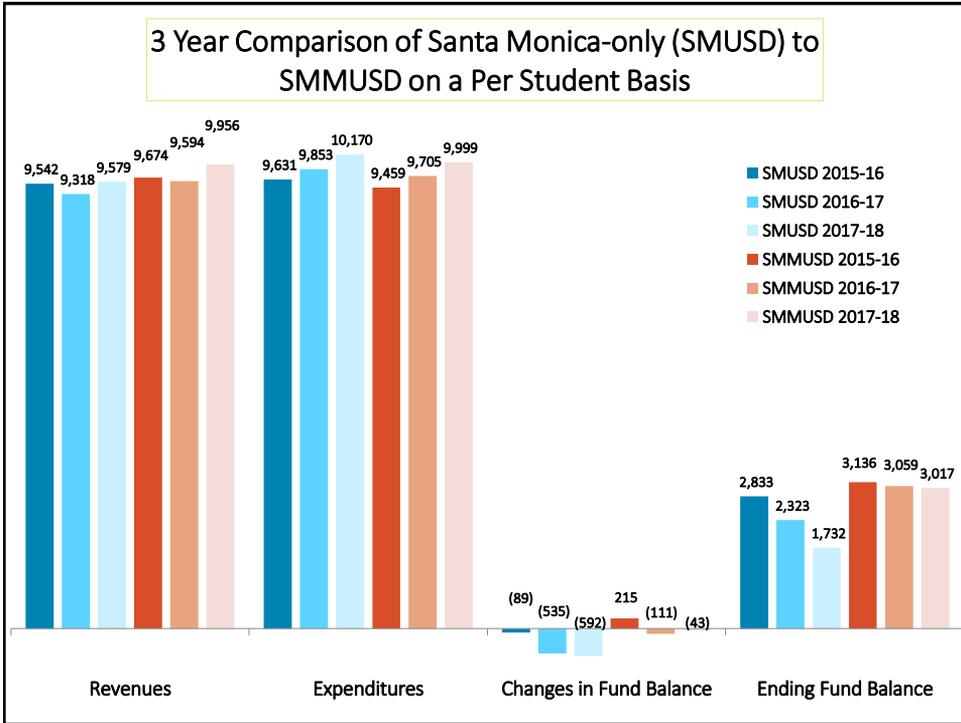


**Difference in Total Funding for
Santa Monica-only Schools vs. SMMUSD, By
Year in Millions of Dollars**



**Difference in Total Funding for
Malibu-only Schools vs. SMMUSD, By
Year in Millions of Dollars**





TO: BOARD OF EDUCATION

ACTION/MAJOR
12/17/15

FROM: LAURIE LIEBERMAN / JOSE ESCARCE / CRAIG FOSTER

RE: PROCESS OF NEGOTIATIONS BETWEEN SANTA MONICA-MALIBU BOARD OF EDUCATION AND REPRESENTATIVES OF A POTENTIAL MALIBU UNIFIED SCHOOL DISTRICT REGARDING RESOLUTION OF ISSUES AND CONCERNS PERTINENT TO UNIFICATION OF A SEPARATE MALIBU UNIFIED SCHOOL DISTRICT

RECOMMENDATION NO. A.16

During its November 19, 2015, meeting, the Board of Education heard two Discussion Items related to the potential unification of a Malibu Unified School District. During the first of those items, the Santa Monica-Malibu Unified School District's Financial Oversight Committee (FOC) presented an update to its July 15 report regarding the financial implications of unification of a separate Malibu Unified School District, based on new information received in September. The second item involved a discussion of how best to respond to the updated information presented by the FOC.

In its report, the FOC concluded as follows:

“After careful analysis of updated operating budgets and projections provided by the District's fiscal services department and WestEd, which now reflect the District's new understanding about the effects of minimum state aid, the FOC concludes that the Santa Monica-only district financial picture would be significantly different than what was reported to the Board by the FOC in July 2015 and is significantly worse on a per-student basis, as compared with continued operation of the existing District. As part of the discussion, the FOC also considered other issues that could affect the overall financial change with a Malibu-only district and a Santa Monica-only district. These changes are outside of the operating budget but could include for a Santa Monica-only district some relief from ongoing legal fees related to facility-related litigation in Malibu and SMMEF funding that will no longer be required by a separate Malibu-only district.”

During discussion of how to respond to the FOC's report, Board of Education members and members of the public expressed their views about certain nonfinancial benefits that would accrue to one or both of the two districts that would be created as a result of unification (the Santa Monica Unified School District and the Malibu Unified School District). However, Board of Education members and members of the public expressed particular concern about the negative financial consequences to the resulting Santa Monica Unified School District arising from unification, as identified by the FOC report. The Board of Education also expressed its unanimous desire for the co-existence of the Santa Monica Unified School District and the Malibu Unified School District as two excellent school districts serving their respective communities and providing the best educational opportunities for their respective students as long as it can be accomplished in a manner that does not have a negative impact on the financial condition of the remaining Santa Monica Unified School District.

The Board's discussion and public testimony also revealed a strong willingness and desire on the part of the respective communities of Malibu and Santa Monica to engage in negotiations in an effort to resolve both the financial concerns raised by the FOC report and any other financial issues regarding unification of a separate Malibu Unified School District that remain unresolved from previous discussions. Consequently, at the conclusion of the discussion, the Board of Education directed the Board's subcommittee on unification to refine the next steps so that Board leadership and District staff could prepare a Major Action Item for Board consideration

that would specify guidelines and a process for conducting such negotiations. This item has been prepared to comply with the Board's direction.

Negotiating teams: Negotiations will be conducted by two teams of negotiators, one appointed by the Superintendent of the Santa Monica-Malibu Unified School District and the other appointed by the City Manager of the City of Malibu. In this item, we refer to these teams as the "Santa Monica team" and "Malibu team," respectively, because the former will represent the interests of a potential separate Santa Monica Unified School District ("SMUSD") in the negotiations, whereas the latter will represent the interests of a potential separate Malibu Unified School District ("MUSD"). Each team shall have a maximum of three members. Both teams are instructed to work cooperatively with one another and with their counterparts, to develop and agree upon terms that promote the aspirations of the Board, as set forth above.

Issues to be negotiated: The issues to be negotiated by the negotiating teams will include, but will not necessarily be limited, to the following financial items:

- Payment(s) to be made to address any significant adverse financial impacts of unification (e.g., by MUSD to SMUSD) including:
 - Payment amount(s) or formula(e)
 - Payment frequency
- Allocation of cash in the General Fund Accounts
- Allocation of cash in the Capital Facilities Fund (e.g., developer fees)
- Allocation of outstanding bond debt
- Allocation of unspent bond proceeds
- Allocation of authorized but unissued bonds
- Elimination of post-unification liability (e.g., liability to a Santa Monica Unified School District for environmental issues at Malibu schools); and
- If needed, a mechanism for review and possible alteration of the agreed upon items (e.g., every 5 years or upon the request of either side as a result of a material change in financial conditions)

If, once negotiations have commenced, the negotiating teams agree that other financial issues should be added to the list, they may address those issues as well and will notify the Superintendent and City Manager, as well as the Board of Education, during monthly presentations on the progress of negotiations (see below).

Board's objectives: The SMMUSD Board of Education's objectives for the negotiations will include, but will not necessarily be limited, to the following:

- Elimination of any significant adverse financial effects of separation on SMUSD.
- Allocation of cash in the General Fund Accounts and the Capital Facilities Fund in a manner which is fair to both MUSD and SMUSD considering the sources and uses of cash in the various funds.
- Allocation of bond debt and authority to issue authorized but unissued bonds in a manner which is fair to both MUSD and SMUSD and establishment of any legal mechanisms which might be required to achieve fairness.
- Establishment of a mechanism which would permit refinancing of outstanding bonds in order to reduce property tax assessments.
- Establish a procedure under which agreements on the preceding four items can be revisited on a reasonable schedule.
- Establishment of a structure under which MUSD assumes responsibility for any remaining remediation of any contamination in Malibu schools and indemnifies SMUSD for any future claims arising from such remediation work or failure to undertake appropriate work.

- Dismissal of the pending lawsuit against SMMUSD or an enforceable agreement from the plaintiffs that SMUSD will be dismissed from the lawsuit.
- Receipt by the Board of a legal opinion from a firm selected by the Board with respect to any potential continuing exposure of SMUSD following separation and a conclusion by the Board that any such exposure is reasonable.

Negotiation process: The negotiating teams will meet at mutually agreed upon dates, times and locations and at a frequency required to make satisfactory progress toward a successful conclusion of the negotiations (see below). The negotiating teams will identify an objective, impartial facilitator to assist in the negotiations and will agree on the facilitator's role during the negotiations. The identified individual will be approved by the Superintendent and City Manager before negotiations involving the facilitator can begin.

The costs of the services provided to the negotiators by the facilitator will be split evenly between the Santa Monica-Malibu Unified School District and Advocates for Malibu Public Schools ("AMPS").

Resource support for negotiators: The Board of Education anticipates that the negotiators will likely require access to at least three sources of support to address questions that arise during the negotiations: (1) an educational consultant to provide support on questions of a technical budgeting nature, (2) a knowledgeable law firm to provide support on legal questions associated with certain non-budgetary financial issues (e.g., facility bonds); and (3) a separate law firm to provide support on the environmental liability matter. The negotiating teams are also encouraged to communicate with the staff of the Los Angeles County Office of Education to address any questions or concerns of a legal, procedural or budgetary nature and with our various elected representatives and other parties in the State legislature, as appropriate.

Based on past discussions, the Board expects that Advocates for Malibu Public School (AMPS) will agree to pay for all mutually agreed upon services provided to the negotiators by (1) the educational consultant(s), (2) the law firm providing legal support with respect to questions on non-budgetary financial issues, and (3) the firm providing legal guidance relating to environmental liability. The appropriate agreements between the Santa Monica-Malibu Unified School District and AMPS to ensure such payment shall be executed prior to commencement of negotiations.

Period of negotiation: The Board of Education anticipates that negotiations will conclude within 60 days of the first meeting of the two negotiating teams. Upon agreement by the two negotiating teams, and with the consent of the Board of Education, the negotiation period may be extended by an additional 30 days. If successful negotiations (see below) are not concluded after a total of 90 days, the Board of Education or City of Malibu may, at their sole discretion, terminate negotiations.

Reporting on progress of negotiations: The Santa Monica negotiating team will present information on the progress of negotiations at least monthly after negotiations begin. These presentations will be agendaized as Reports under the Communications section of the Board's meeting agenda. The presentations will provide an opportunity for the Santa Monica team of negotiators to answer the Board of Education's questions, ask questions of the Board, and receive direction from the Board.

Final report on negotiations and public input on report: At the conclusion of successful negotiations (see below), the two negotiating teams will prepare a written report documenting all the items that were addressed in the negotiations and the agreements reached on each item. The report will be signed and approved by both negotiating teams. The signed report will be made available for public inspection by posting it on the District's website and press releases and other dissemination approaches will be used to encourage interested members of the public to review the report.

Following a two-week period for public review the board will discuss the final written report on the negotiations as a Discussion Item during a regular Board meeting. At this point, the Board of Education may determine that changes to the negotiated agreement are required, based on comments from the public and its own discussion,. If so, it will communicate the required changes to the Santa Monica negotiating team and ask them to reopen the negotiations with the goal of incorporating the required changes. After the changes are incorporated the written report will be modified as needed. Alternatively, if the Board determines that no changes in the negotiated agreement are required, the final report will be presented to the Board as a Major Action Item at the next regular Board meeting.

Determination of successful negotiations: Negotiations will be determined to have been completed successfully when four conditions are met: (1) the negotiating teams collectively determine that negotiations have achieved the Board's objectives and presents the evidence for their determination in a Discussion Item during a regular meeting of the Board of Education; (2) any technical and legal concerns regarding the negotiated agreements have been resolved satisfactorily, (3) the Board of Education determines that negotiations have achieved its objectives and formally approves the written report and the agreements therein as a Major Action Item during one of its regular public meetings, and (4) the Malibu City Council formally approves the written report and the agreements therein during one of its regular public meetings.

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Dr. Tahvildaran-Jesswein requested that the board ratify the superintendent's choice of three SMMUSD representatives; the board agreed. He also requested that the committee be called a blue ribbon committee; he later withdrew that request. Ms. Leon-Vazquez expressed her opinion that negotiations are premature and should wait until after a petition is submitted to the county and the county responds; however, she later said she would support the item with conditions. The board agreed that the progress reports to the board could come forward in whatever format the superintendent deemed most appropriate.

Ms. Leon-Vazquez MOVED to approve the recommendation with the following amendments: the committee selected by the superintendent will be ratified by the board; Mr. Foster's name will be added to the top of this agenda item; the superintendent will be given flexibility as to the format of the committee's progress reports to the board (e.g., Friday Memo, discussion item, or information item); and that no elected officials will serve on the committee representing SMMUSD (with a strong preference that the City of Malibu follow suit).

SECONDED BY: Dr. Escarce

STUDENT ADVISORY VOTE: N/A

AYES: 7 (Lieberman, Mechur, de la Torre, Escarce, Leon-Vazquez, Tahvildaran-Jesswein, Foster)

NOES: 0

AGREEMENT

This Agreement is executed this _____ day of _____, 2015, by Advocates for Malibu Public Schools, an unincorporated association (“AMPS”), for the benefit of the Santa Monica Malibu Unified School District (the “District”) with reference to the following facts:

A. AMPS has been organized by certain residents of the City of Malibu for the purpose of advocating for the creation of a new public school district to serve children in the City of Malibu and certain surrounding areas, excluding children in the City of Santa Monica. In this connection, a petition for “unification” may be submitted to the County of Los Angeles by either AMPS or the City of Malibu under the laws of the State of California which would separate the geographic area proposed to be served by such new district from the City of Santa Monica. Alternatively, it is the understanding of AMPS and the District that unification of a separate Malibu district may be pursued through special legislation. As a part of any unification process, AMPS desires the District to support AMPS’s efforts with respect to appropriate steps.

B. Through its Board of Education (the “Board”), the District has expressed a willingness to support AMPS’s efforts so long as it can be accomplished in a manner which does not negatively impact the financial or any other material conditions of the remaining Santa Monica schools. Therefore, the Board has appointed a team (the “Santa Monica Team”) that will meet with Malibu representatives in an effort to negotiate a resolution of various financial issues cited by the Board in its action taken on Major Item No. ___ on December 17, 2015 (“Major Item No. ___”) in a manner which meets certain objectives stated in therein and other financial issues which may be identified during the course of discussions.

C. Major Item No. ___ states that certain outside consultants need to be retained by the District to advise the Santa Monica Team in connection with certain budgetary, technical and legal issues relevant to the negotiations but that the District is willing to proceed only if AMPS agrees to be responsible for the cost of retaining such consultants and AMPS has agreed to pay such expenses in the manner set forth in this Agreement.

NOW, THEREFORE, in order to induce the District to move forward with the negotiations contemplated in the Major Item No. ___, AMPS agrees as follows:

1. On the terms and conditions set forth herein, AMPS shall be financially responsible for the cost of a consultant and legal counsel (the “Consultants”) to be retained by the District to advise the Santa Monica Team, the Board and District staff with respect to the budgetary and legal issues relating to achieving the Board’s objectives set forth in the Resolution.

2. AMPS shall have no obligation to assume responsibility for payment of any such costs unless and until AMPS has received and approved in writing a written scope of work to be performed by each Consultant the District wishes to retain and an estimate of the cost of such work.

3. If such scope of work and cost estimate are approved by AMPS, AMPS shall make an initial deposit (the “Deposit”) with the District in an amount equal to \$10,000 plus the aggregate amount of all retainers and deposits required by the Consultants under engagement letters approved by the District.

4. AMPS shall pay to the District on a monthly basis the amount due to each Consultant for fees and costs within ten days following delivery of a copy of such Consultant’s monthly statement by the District to AMPS. If AMPS fails to make any such monthly payment within thirty (30) days following delivery of any such statement, the District is authorized to pay such statement from the Deposit and AMPS shall, within ten (10) days after written notice from the District, replenish the Deposit by the amount so applied. AMPS acknowledges that its failure to make any such payment or replenish the amount of the Deposit used to make any such payment will give the District the option to cause such Consultant to cease providing services to the District and may result in the District exercising its right under Section 9 below to terminate all negotiations.

5. AMPS’ obligation to make such payments shall not be limited by the cost estimates originally supplied by the Consultants. However, once the aggregate amount of monthly bills for any Consultant has exceeded its original cost estimate, AMPS shall have the right to terminate its obligations hereunder with respect to such Consultant by written notice to the District. Such termination shall be effective upon payment by AMPS of any amounts owing to such Consultant for services rendered and costs incurred prior to the giving of such written notice less any unapplied portion of the Deposit and may result in the District exercising its right under Section 9 below to terminate all negotiations.

6. Upon completion of all services by the Consultants and payment by AMPS in full of all fees and costs due to all Consultants, any remaining balance of the Deposit shall be returned to AMPS.

7. The District shall retain the right at any time to terminate any Consultant retained by it hereunder and seek a new Consultant. In the event of such termination, any arrangement with such new Consultant shall be governed by this Agreement.

8. Nothing in this Agreement or any actions taken by the District in connection herewith shall be deemed to constitute an agreement by the District to approve, or participate in, any petition proposed to be filed by AMPS seeking approval of such a separation. AMPS acknowledges that any decision by the District relating to such a petition will be subject to the consideration of a variety of factors, many of which will be unrelated to the advice of the Consultants contemplated by this Agreement or the results of any negotiations by the Santa Monica Team and that the District must retain the unfettered right to decide whether, and to what extent, to support any such petition and to elect not to do so for any reason whatsoever. No decision by the District to refuse to support a petition shall give AMPS the right to be reimbursed

by the District for any amounts paid by AMPS hereunder except to the extent of any unexpended amount of the Deposit.

9. Nothing in this Agreement obligates the District to continue with any of the negotiations contemplated in the Resolution and the Board retains the right to terminate all such negotiations or modify instructions to the Santa Monica Team at any time for any reason in its sole discretion. Furthermore, nothing in this Agreement shall obligate the Board to accept the recommendations of the Santa Monica Team and the Board retains the right to modify or reject any such recommendations at any time for any reason in its sole discretion. No action by the Board to terminate or modify negotiations or amend or reject any recommendations of the Santa Monica Team shall give AMPS the right to be reimbursed by the District for any amounts paid by AMPS hereunder except to the extent of any unexpended amount of the Deposit.

10. This Agreement shall remain in full force and effect with respect to any Consultant which the District desires to retain, subject to Sections 2 and 5 above and may not be amended without the prior written consent of the District.

11. The individual executing this Agreement for AMPS represents and warrants to the District that she has the authority to execute and deliver this Agreement on behalf of AMPS and that this Agreement constitutes a legal, valid and binding obligation of AMPS.

This Agreement has been executed as of the date first above written.

ADVOCATES FOR MALIBU
PUBLIC SCHOOLS,
an unincorporated association

By: _____
Karen Farrer, President

TO: BOARD OF EDUCATION

ACTION/CONSENT

01/21/16

FROM: SANDRA LYON

RE: RATIFICATION OF THREE-MEMBER COMMITTEE REPRESENTING SMMUSD IN NEGOTIATIONS BETWEEN SANTA MONICA-MALIBU BOARD OF EDUCATION AND REPRESENTATIVES OF A POTENTIAL MALIBU UNIFIED SCHOOL DISTRICT REGARDING RESOLUTION OF ISSUES AND CONCERNS PERTINENT TO UNIFICATION OF A SEPARATE MALIBU UNIFIED SCHOOL DISTRICT

RECOMMENDATION NO. A.26

It is recommended that the Board of Education ratify the following three individuals the superintendent has chosen to represent the Santa Monica-Malibu Unified School District (SMMUSD) in negotiations between the SMMUSD Board of Education and representatives of a potential Malibu Unified School District (MUSD) regarding the resolution of issues and concerns pertinent to the unification of a separate MUSD:

- Tom Larmore
- Debbie Mulvaney
- Paul Silvern

COMMENTS: At the December 17, 2015, special board meeting, the board approved a process by which the two entities – SMMUSD and representatives of a potential MUSD – would negotiate the resolution of issues and concerns regarding the unification of an MUSD.

During the approval of that item, the board agreed that it would ratify the superintendent's choice of three individuals to serve on the negotiating team representing SMMUSD. Tom Larmore, Debbie Mulvaney, and Paul Silvern were chosen to represent SMMUSD due to their in-depth knowledge of the district's and Financial Oversight Committee's issues and concerns associated with a potential unification of an MUSD.

Malibu's City Manager has selected the following three individuals to serve on the committee that will represent a potential MUSD:

- Laura Rosenthal
- Kevin Shenkman
- Manel Sweetmore

MOTION MADE BY: Ms. Leon-Vazquez

SECONDED BY: Dr. Tahvildaran-Jesswein

STUDENT ADVISORY VOTE: N/a

AYES: 7 (Lieberman, Mechur, de la Torre, Escarce, Leon-Vazquez, Tahvildaran-Jesswein, Foster)

NOES: 0

ABSENT: 0