

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.

Dr. Tahvildaran-Jesswein requested that 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