

**SCOTTSDALE UNIFIED SCHOOL DISTRICT #48
MARICOPA COUNTY, ARIZONA**

In re:

DR. A. DENISE BIRDWELL,

Superintendent.

**STATEMENT OF CHARGES
AND PLACEMENT ON
ADMINISTRATIVE LEAVE OF
ABSENCE**

Pursuant to A.R.S. §15-539, Acting Superintendent Dr. Amy Fuller presents this Statement of Charges against Superintendent Dr. A. Denise Birdwell (“Superintendent”) to the Governing Board of the Scottsdale Unified School District #48 (“the District”), at its meeting held on March 20, 2018.

The Administration charges that one or a combination of the following charges provides good and just cause for dismissal of Superintendent, and her immediate placement on Administrative Leave of Absence with pay pursuant to A.R.S. § 15-540 pending the outcome of this matter.

I. STATEMENT OF RELEVANT GOVERNING BOARD POLICIES, ADMINISTRATIVE REGULATIONS, STATUTES, RULES AND CONTRACT PROVISIONS ALLEGEDLY VIOLATED BY ADMINISTRATOR.

A. Governing Board Policy (“Policy”) CB, Superintendent

Superintendent is charged with violating Governing Board Policy (“Policy”) CB, *Superintendent*, which provides in pertinent part:

The Superintendent shall enforce the statutes of the state of Arizona, the rules of the Arizona Administrative Code, and the policies of the Governing Board of the District.

The administration of the school system in all aspects is the responsibility of the Superintendent, whose functions shall be carried out in accordance with the policies of the Board.

B. Policy CBA, Qualifications and Duties of the Superintendent

Superintendent is charged with violating Policy CBA, *Qualifications and Duties of Superintendent*, which provides in pertinent part:

The Superintendent shall supervise, either directly or through delegation, all activities and all personnel of the school system according to the laws of the

state of Arizona, rules of the Arizona Administrative Code, and adopted policies of the Governing Board.

The Superintendent is the District's chief executive officer and the administrative head of all divisions and departments of the school system. It is the Superintendent's duty to administer the policies of the Board and to provide leadership for the entire school system.

The Superintendent provides the initiative and the technical guidance for the improvement of the total program of the school system. The delegation of authority for the operation of the various functions of the school system is one of the Superintendent's duties. The Superintendent is, however, responsible to the Board for all functions of the District, including those listed below. * * *

Management:

- Ensures that all activities of the District are conducted in accordance with the laws of the state of Arizona, the regulations of the Arizona Board of Education, and the policies of the Governing Board. * * *
- Establishes and maintains efficient procedures and effective controls for all expenditures of school funds in accordance with the adopted budget, and direction and approval by the Board. * * *
- Prepares and submits to the Board recommendations relative to all matters requiring Board action, placing before the Board such facts, objective information, and reports as are needed to ensure the making of informed decisions. * * *

Personnel:

- Recommends to the Board the appointment or dismissal of all employees of the District.
- Ensures that all employees are evaluated in accordance with the schedule established by the Board.
- Determines assignments and duties, and coordinates and directs the work of all District employees.
- Recommends all promotions, demotions, and salary changes to the Board.

C. Policy GBEA, Staff Ethics

Superintendent is charged with violating Policy GBEA, *Staff Ethics*, which provides in pertinent part:

All employees of the District are expected to maintain high standards in their school relationships. These standards must be idealistic and at the same time practical, so that they can apply reasonably to all staff members. The employees acknowledge that the schools belong to the public they serve for the purpose of providing educational opportunities to all. However, every employee assumes responsibility for providing leadership in the school and community. This responsibility requires the employee to maintain standards of exemplary conduct. It must be recognized that the employee's actions will be viewed and appraised by the community, associates, and students. To these ends, the Board adopts the following statements of standards.

The school employee: * * *

- Strives for the maintenance of efficiency and knowledge of developments in the employee's field of work.
- Fulfill job responsibilities with honesty and integrity.
- Obeys local, state, and national laws * * *
- Implements the Governing Board's policies and administrative rules and regulations.

D. Governing Board Regulation (“Regulation”) GBEB-R, Staff Conduct

Superintendent is charged with violating Governing Board Regulation (“Regulation”) GBEB-R, *Staff Conduct*, which states in pertinent part:

No employee, while on or using school property, otherwise acting as an agent, or working in an official capacity for the District shall engage in:

- A violation of District policies and regulations.
- Any conduct violating federal, state, or applicable municipal law or regulation.
- Any other conduct that may obstruct, disrupt, or interfere with teaching, research, service, administrative, or disciplinary functions of the District, or any other activity sponsored or approved by the Board.

In addition to the foregoing, all staff members are expected to:

- Thoroughly acquaint themselves with the rules, regulations, and other information applicable to them contained within the policies of the Board.

- Conduct themselves in a manner consistent with effective and orderly education and to protect . . . District property.

E. Policy GCA, Professional Staff Positions

Superintendent is charged with violating Policy GCA, *Professional Staff Positions* which states in pertinent part:

- Before recommending the establishment of any new position, the Superintendent will present a job description for the position that specifies the qualifications, the performance responsibilities, and the method by which the performance of such responsibilities will be evaluated. The establishment of any new position will require Governing Board approval.
- The Superintendent will maintain a comprehensive and up-to-date set of job descriptions of all positions in the school system.

F. Policy GBEAA, Staff Conflict of Interest and Related Exhibit

Superintendent is charged with violating Policy GBEAA, *Staff Conflict of Interest*, which states in pertinent part:

Any employee who has, or whose relative has, a substantial interest in any decision of the District shall make known this interest in the official records of the District, and shall refrain from participating in any manner as an employee in such a decision.

Superintendent is charged with failing to disclose her substantial interests in contract or procurement matters by failing to make a full and complete disclosure on the GBEAA-E disclosure form.

G. Policy GCQF, Discipline, Suspension, and Dismissal of Professional Staff Members

Superintendent is charged with engaging in the following misconduct set forth in Policy GCQF, *Discipline, Suspension, and Dismissal of Professional Staff Members*:

- Engaging in unprofessional conduct. * * *
- Neglecting their duties. * * *
- Being involved in misuse or unauthorized use of school property. * * *

H. Policy DI, Fiscal Accounting and Reporting

Superintendent is charged with violating Policy DI, *Fiscal Accounting and Reporting* which states in pertinent part:

The Superintendent shall be ultimately responsible for receiving and properly accounting for all funds of the District.

The Uniform System of Financial Records developed by the State Department of Education and the Auditor General's Office shall be used to provide for the appropriate separation of accounts and funds. * * *

I. Policy DIA, Accounting System

Superintendent is charged with violating Policy DIA, *Accounting System*, which states in pertinent part:

Records of all phases of the business operation shall be kept in strict accordance with the Uniform System of Financial Records, other applicable laws, and the policies of the Board.

J. Policy DIE, Audits/Financial Monitoring

Superintendent is charged with violating Policy DIE, *Audits/Financial Monitoring* which states in pertinent part:

The Governing Board directs the Superintendent to implement procedures that assure District compliance with all state and federal requirements for financial monitoring and audits. * * *

The procurement of the necessary services shall be consistent with the District's policy on bidding and purchasing procedures. Any allocation of costs for the services shall conform to the requirements of the Uniform System of Financial Records (U.S.F.R.). * * *

K. Governing Board Policy DJE, Bidding/Purchasing Procedures

Superintendent is charged with violating Policy DIJ, *Bidding/Purchasing Procedures*, which states in pertinent part:

Verbal price quotations will be requested from at least three (3) vendors for a transaction in excess of ten thousand dollars (\$10,000) but less than fifty thousand dollars (\$50,000).

L. Regulation DJE-RA, Bidding/Purchasing Procedures

Superintendent is charged with violating Regulation DIJ, *Bidding/Purchasing Procedures*, which states in pertinent part:

Bidding Methods

All District purchases shall be in accordance with the Arizona school district procurement rules and with the following * * *

M. Policy DK, Payment Procedures

Superintendent is charged with violating Policy DIJ, *Payment Procedures*, which states in pertinent part:

The Superintendent will implement procedures for the review of purchase invoices to determine that items or services are among those budgeted, itemized goods or services have been satisfactorily supplied, funds are available to cover payment, and invoices are in order and for the contracted amounts.

N. Policy DJ, Purchasing

Superintendent is charged with violating Policy DJ, *Purchasing*, which states in pertinent part:

The District's Governing Board members and employees shall not use their offices or positions to receive any valuable things or benefits that would not ordinarily accrue to them in the performance of duties if the things or benefits are of such value or character as to manifest a substantial and improper influence upon the performance of their duties.

O. Violation of Superintendent's Employment Contract (2017-2019)

Superintendent is charged with violating the following provision of Superintendent's Employment Contract:

Duties. Superintendent shall perform the duties of Superintendent of Schools in and for the public schools in the District as prescribed by the laws of the State of Arizona and policies, rules and regulations of the Board. * * *

P. Arizona Administrative Code

The Arizona Administrative Code provides as follows:

- “All school districts shall implement the current version of the Uniform System of Financial Records, as prescribed by the Auditor General.” A.A.C. R7-2-803.
- For purchases of between \$10,000.00 and \$50,000.00, the District must follow the guidelines prescribed by the Auditor General in the Uniform System of Financial Records. A.A.C. R7-2-1002(D)(3).
- “No project or purchase may be divided or sequenced into separate projects or purchases in order to avoid the limits prescribed in Articles 10 and 11.” A.A.C. R7-2-1003(I).

II. SPECIFIC FACTUAL ALLEGATIONS THAT SUPPORT THIS STATEMENT OF CHARGES.

The specific factual allegations set forth below support the charges that Superintendent engaged in objectionable conduct, and conduct that violates District Policy, Administrative Regulations, and Superintendent's Employment Contract with the District.

1. Superintendent failed to disclose a substantial personal interest related to Hunt & Caraway Architects (HCA) at the time she recommended and later approved purchase orders for the District to hire HCA. At no time did Superintendent formally or informally notify the Governing Board, General Counsel or anyone representing the District that she was previously employed by, performing services for or otherwise being paid by HCA. Specifically:
 - a. The District has learned of checks reflecting payment from HCA to Superintendent in significant amounts during 2015. All checks were signed by Brian Robichaux;
 - b. Brian Robichaux issued personal checks to Superintendent.
 - c. During the time that Superintendent was negotiating her employment with the District, HCA issued a check to her for \$15,000.00 dated January 4, 2016, signed by Brian Robichaux as President of HCA. This check was deposited on January 15, 2016.
 - d. HCA issued payment to Individual C dated April 1, 2016, signed by Brian Robichaux, for \$15,000.00. That check was deposited into a joint account held by Superintendent and Individual C.

Superintendent subsequently directed a District employee to issue a purchase order to HCA. Superintendent failed to make adequate disclosure of the substantial relationship with HCA. *See Policy GBEAA, Staff Conflict of Interest; GBEAA-A, Conflict of Interest; DIJ, Payment Procedures.*

2. Superintendent knew that District Chief Financial Officer Laura Smith's sister, Individual A, ¹ was the principal of Professional Group Public Consulting (PGPC). Smith was responsible for approving purchase orders that resulted in the District paying over \$40,000.00 to PGPC, and Smith also approved change orders increasing the amount the District was to pay PGPC. Superintendent was responsible for ensuring District conflict-of-interest policies were followed, and she either knowingly permitted the payments to PGPC despite the conflict or was neglectful in failing to identify the conflict. *See Policy GBEAA, Staff Conflict of Interest.* Superintendent was ultimately responsible for ensuring compliance with District conflict of interest regulations. *See Policy CB, Superintendent; CBA, Qualifications and Duties of Superintendent.* Exhibiting incompetence or inefficiency or neglecting duties are bases for dismissal. *See Policy GCQF, Dismissal of Professional Staff Members.*
3. Superintendent made false statements to the Governing Board and the public claiming she did not know that Smith and Individual A were sisters until on or about November 1, 2017. However, Smith, Individual A and Individual B contradict Superintendent's claim. Individual B alleges that Superintendent

¹ To protect the privacy of the Individuals and Employees, their names are omitted, but Superintendent will be provided with their names.

informed Individual B of the relationship between Smith and Individual A in or about the fall of 2010. Superintendent has acknowledged that she was notified in writing that Smith and Individual A were sisters in or about June of 2017 but failed to pay attention to that notice. Exhibiting dishonesty is a basis for dismissal. *See* Policy GCQF, *Dismissal of Professional Staff Members*; Policy GBEEA, *Staff Conflict of Interest*.

4. Superintendent was instrumental in the hiring of Louis Hartwell. At no time in the hiring process did she formally or informally notify the Governing Board, General Counsel or anyone representing the District that Mr. Hartwell was the brother of individual C, with whom she shared a bank account. The evidence also supports a finding that her decision to hire HCA almost immediately after she was hired by the district was based on her personal relationship with Robichaux. *See* Policy DJ, *Purchasing*; Regulation GBEB-R, *Staff Conduct* (protection of District property); Policy GBEEA, *Staff Conflict of Interest*.
5. After he was hired, Superintendent promoted Mr. Hartwell on or about May 8, 2017. When Mr. Hartwell was promoted to Chief Business and Operations Officer, the requirements for that position required that the CBOO have an M.B.A. degree. However, Mr. Hartwell did not (and does not) even have a bachelor's degree. Policy GCA, *Professional Staff Positions*.
6. Superintendent allowed the Board to believe Mr. Hartwell's salary for the 2017-2018 fiscal year was not changed from his fiscal year 2016-17 salary. However, from the time the Governing Board approved Mr. Hartwell's initial employment to the time he was issued his 2017-2018 Administrator Contract, Mr. Hartwell's salary was increased by \$20,000.00. *See* Policy DJ, *Purchasing*; Regulation GBEB-R, *Staff Conduct* (protection of District property); Policy GBEEA, *Staff Conflict of Interest*; GCA, *Professional Staff Positions*.
7. Prior to Louis Hartwell's initial hire as an employee of the District, Superintendent approved provided consulting services pursuant to two separate purchase orders that Sup knew or should have known cumulatively exceeded the allowable amount of \$10,000.00 that would have required three verbal quotes, and that also resulted in a total payment on the second purchase order that exceeded \$5,000.00. Specifically:
 - a. For the 2015-16 fiscal year, the Superintendent issued a purchase order for consulting services in the amount of \$4,900.00; and
 - b. For the 2015-16 fiscal year, the Superintendent issued a second purchase order for \$4,900.00 and subsequently approved an increase of \$417.59 above the approved purchase order amount.

Administrator's alleged misconduct is bid-splitting in violation of A.A.C. R7-2-1003(I). *See also* Policy DJ, *Purchasing*; Regulation GBEB-R, *Staff Conduct* (protection of District property); Policy GBEEA, *Staff Conflict of Interest*; Policy DIJ, *Payment Procedures*. Exhibiting dishonesty is a basis for dismissal. *See* Policy GCQF, *Dismissal of Professional Staff Members*; Policy GBEEA, *Staff Conflict of Interest*.

8. Between November 18, 2016 and February 14, 2018, Superintendent (through Mr. Hartwell) repeatedly gave orders to Employee A to access the District's email

archive on several occasions to search for emails to/from and/or between Governing Board members, other District employees and members of the public during the time when members of the public were bringing their concerns regarding Superintendent and the former Chief Financial Officer to the Board's attention. Employee A was ordered to access and provide the emails to Mr. Hartwell. Employee A did not typically have access to the archiving system and was not the person who would have been responsible for using the archive system to search for and retrieve email. Through Hartwell, Superintendent ordered Employee A not to disclose his searches to any other District employee. Employee was ordered to download batches of emails to an external drive or drives to avoid being detected through the entry logs of the archive system. "Being involved in misuse or unauthorized use of school property" is a basis for dismissal. *See Policy GCQF, Dismissal of Professional Staff Members.* Exhibiting dishonesty is also a basis for dismissal. *See Policy GCQF, Dismissal of Professional Staff Members; GBEAA, Staff Conflict of Interest.*

9. When Employee B (the employee responsible for the system's security) discovered the access attempts, Employee B canceled the other employee's access rights. In response, Superintendent ordered Employee B to restore Employee A's access "immediately" so that Employee A could continue to access Board emails and provide them to her or Mr. Hartwell. "Being involved in misuse or unauthorized use of school property" is a basis for dismissal. *See Policy GCQF, Dismissal of Professional Staff Members.*
10. On or about June 27, 2017, Superintendent approved a purchase order to use District funds to hire and pay her personal counsel, Kraig Marton at Jaburg Wilk. On or about August 14, 2017, Superintendent requested and caused a check to be issued from the District to Jaburg & Wilk in the amount of \$4,732.50. Her assertion that she believed her Contract allowed her to hire a personal attorney to defend her personal reputation, but to have the District pay the attorney, is not supportable. In an email to Superintendent, Mr. Marton himself questioned whether Superintendent had authority to hire him for the District as opposed to his representing her personally. On June 22, 2017, Superintendent wrote an email to the Board where she announced that she was hiring Kraig Marton and wrote she had "informed Matthew Wright of the [Arizona Schools Risk Retention Trust]." The implication was that Wright had authorized the hiring and that the Trust would cover the expenses. This was false. Superintendent was directed to reimburse the District for the \$4,312.50 paid to Jaburg & Wilk. Superintendent did not do so until March 9, 2018, after the Arizona Republic news story reported on Dr. Birdwell's hiring of Marton and use of District money to pay Jaburg & Wilk. "Being involved in misuse or unauthorized use of school property" is a basis for dismissal. *See Policy GCQF, Dismissal of Professional Staff Members.* Exhibiting dishonesty is a basis for dismissal. *See Policy GCQF, Dismissal of Professional Staff Members; Policy GBEAA, Staff Conflict of Interest; Exhibiting dishonesty is a basis for dismissal. See also Policy GCQF, Dismissal of Professional Staff Members; Policy GBEAA, Staff Conflict of Interest.*
11. Superintendent did not properly oversee the financial-control policies of the District or ensure compliance with state laws and U.S.F.R. requirements. Specifically:
 - a. On or about June 29, 2017, Mr. Hartwell approved a purchase order for work on Phase I of the Hopi Elementary Construction project that was blanket

purchase order that did not distinguish line items on purchase orders that segregated costs being paid by Bond Building funds and by the Arizona School Facilities' Board's Adjacent Ways funding. The purchase order also failed to identify an amount for owner's contingency. Hartwell's alleged failure constituted a violation of A.A.C. R7-2-803 and the USFR guidelines referenced above.

- b. On or about July 18, 2017, Mr. Hartwell approved a purchase order for high school track and field improvements at Saguaro, Coronado and Chaparral high schools. The purchase order was a bulk purchase order that did not make allocations to the three schools, nor did it identify an amount to be funded from owner's contingency. In addition, Hartwell failed to issue a second purchase order for a change order of \$68,532.00. Hartwell's alleged failure constituted a violation of A.A.C. R7-2-803 and the USFR guidelines referenced above.
- c. On or about November 17, 2017, Hartwell approved a purchase order for the Pima Elementary School Project Phase I that was a blanket purchase order for \$18,107,142.00 that did not distinguish line items on purchase orders that segregated costs being paid by Bond Building funds and by the Arizona School Facilities' Board's Adjacent Ways funding. The purchase order also failed to identify an amount for owner's contingency. Hartwell's alleged failure constituted a violation of A.A.C. R7-2-803 and the USFR guidelines referenced above. Hartwell's alleged failure constituted a violation of A.A.C. R7-2-803 and the USFR guidelines referenced above.
- d. On or about December 22, 2017 and thereafter, Hartwell failed to ensure that a purchase order was issued prior to allowing the contractor to begin work on Phase II of the Hopi Elementary Construction project. Phase II of the Hopi project has a contract value of \$16,988,366.00. Hartwell's alleged failure constituted a violation of A.A.C. R7-2-803 and the USFR guidelines referenced above.
- e. For work that Hunt & Caraway Architects (HCA) billed to the District, the Master Agreement with HCA provided that its fees would be six percent (6%) of costs of construction. Purchase orders approved by the District stated the rate to be 7%. HCA's invoices billed at the rate of seven percent (7%) alleged conduct was in violation of Policy GEBA, Regulations GBEB-R, DI, DIA, DIE, and A.A.C. R7-2-803.

Superintendent is ultimately responsible for ensuring compliance with the District's purchasing, procurement and financial-control procedures. *See* Policy CB, *Superintendent*; Policy CBA, *Qualifications and Duties of Superintendent*; Regulation GBEB-R, *Staff Conduct*; Policy DI, *Fiscal Accounting and Reporting*; Policy DIA, *Accounting System*; Policy DIE, *Audits/Financial Monitoring*; DIJ, *Payment Procedures*. Exhibiting incompetence or inefficiency or neglecting duties are bases for dismissal. *See* Policy GCQF, *Dismissal of Professional Staff Members*.

- 12. Superintendent was responsible for the operation and functioning of the District's Construction Manager at Risk (CMAR) Committee when the District was reviewing bids for the Cheyenne and Hohokam projects. Also, Superintendent was charged with responsibility "for purchasing, contracting, competitive bidding, and receiving and processing of all bid protests, in accordance with the Arizona school

district procurement rules, including A.A.C. R7-2-1141 *et seq.*” District Regulation DIJ, *Bidding/Purchasing Procedures*. Superintendent failed to confirm and ensure that the CMAR Committee was properly constituted. Superintendent’s failure to provide oversight and management and supervision of the competitive bidding process led to legal action against the District by the Attorney General for the State of Arizona. *See* Policy CB, *Superintendent*; Policy CBA, *Qualifications and Duties of Superintendent*; Regulation GBEB-R, *Staff Conduct*; DI, *Fiscal Accounting and Reporting*; Policy DIA, *Accounting System*; Policy DIE, *Audits/Financial Monitoring*; Policy DIJ, *Payment Procedures*. Exhibiting incompetence or inefficiency or neglecting duties are bases for dismissal. *See* Policy GCQF, *Dismissal of Professional Staff Members*.

III. CONCLUSION.

The above charges and specific facts support a finding that Superintendent engaged in objectionable and unprofessional conduct, in violation of Governing Board Policies and Administrative Regulations, as well as in violation of ethical standards set forth in such policies and conduct that violated the terms of Superintendent employment contract.

The above charges and specific facts constitute good and just cause to recommend Superintendent dismissal to the Governing Board in accordance with A.R.S. §§ 15-539 and 15-540. A copy of the above-referenced exhibits, District policies, and A.R.S. § 15-501, 15-538.01, 15-539 through §15-542, and §15-544 through §15-547, are attached hereto and incorporated herein.

Respectfully submitted to the Governing Board on March 20, 2018.

Scottsdale Unified School District #48 by:

Dr. Amy Fuller, Acting Superintendent

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