

Wednesday, June 19, 2019

Board of Directors Meeting Agenda

The Board reserves the right to change the order of items on the agenda, with exception of public hearings. One or more members of the Board may participate in the meeting by telephonic communications. The Board Members and members of the public may join this meeting by dialing 1-877-820-7831, code 236985. Pursuant to A.R.S. §38-431.02(H) the Board will not discuss, consider, or decide those matters not listed on the agenda.

A. Special Session

1. Call to Order – George Dean
2. Pledge of Allegiance – George Dean
3. Roll Call – Board Clerk

B. Public Participation

1. Call for Public Participation - George Dean
2. Adjourn to Executive Session

C. Notice of Executive Session

Executive Session is requested pursuant to A.R.S. § 38-431.03 (A.7) to discuss the following items:

1. Discuss Settlement Agreement between ASU Preparatory Academy and the Arizona Department of Education.
2. Resume to Regular Session

D. Approval of Action Items

1. Request Approval of the Settlement Agreement between ASU Preparatory Academy and the Arizona Department of Education.

E. Informational Items

1. Next Board Meeting is Tuesday, June 25, 2019.

F. Adjournment

1. Adjournment

Agenda Item Details

Meeting	June 19, 2019 - Board of Directors Meeting - Notice of Public Meeting - Notice of Special Session
Category	C. Notice of Executive Session
Subject	1. Executive Session is requested pursuant to A.R.S. § 38-431.03 (A.7) to discuss the Settlement Agreement between ASU Preparatory Academy and the Arizona Department of Education.
Access	Private
Type	Discussion

Recommended Action – Executive Session

The Board of Directors will discuss the Settlement Agreement between ASU Preparatory Academy and the Arizona Department of Education.

Agenda Item Details

Meeting	June 19, 2019 - Board of Directors Meeting - Notice of Special Session
Category	D. Approval of Action Items 1. Request Approval of the Settlement Agreement between ASU Preparatory Academy and the Arizona Department of Education.
Access	Public
Type	Action

Recommended Action

It is requested that the Board of Directors approve the Settlement Agreement between ASU Preparatory Academy and the Arizona Department of Education.

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into between the Arizona Department of Education (the “Department”) and ASU Preparatory Academy (“ASU Prep”) (collectively, the “Parties” and individually, a “Party”). This Agreement shall be effective as of the last date signed below (the “Effective Date”).

RECITALS

A. On March 22, 2019, the Department notified ASU Prep in writing that the Department had determined that ASU Prep schools were ineligible to receive Small School Weight funding pursuant to A.R.S. §§ 15-185(B) and 15-943.

B. The Department adjusted its payments to ASU Prep for April 1, May 1, and June 1, 2019 to withhold approximately \$600,000, which is attributable to ASU Prep’s Small School Weight funding for fiscal year 2018-19.

C. Pursuant to A.R.S. § 15-915(A), on March 22, 2019, the Department also notified ASU Prep that the Superintendent of Public Instruction had determined that ASU Prep’s state aid for the previous three fiscal years did not conform with statutory requirements and resulted in an overpayment, which would be corrected by reduction in future payments.

D. On April 19, 2019, ASU Prep filed a Notice of Appeal with the Department, challenging the Department’s March 22, 2019 determinations.

E. In May 2019, the Arizona Legislature enacted 2019 Ariz. Session Law ch. 265 (1st Reg. Sess. 2019) (the “Legislation”). Section 23 of the Legislation provides that, notwithstanding A.R.S. § 15-185(B)(1)(b), ASU Prep shall receive the full amount of Small School Weight funding through fiscal year 2019-20, and the Department shall restore any monies it previously withheld; sixty-seven percent of its Small School Weight funding in fiscal year 2020-21; and thirty-three percent of its Small School Weight funding in fiscal year 2021-22. The Legislation also prohibits the Department from seeking repayment of Small School Weight funding paid to ASU Prep in previous years.

F. The Legislation is effective on August 27, 2019, the general effective date for legislation passed during the 54th Arizona Legislature, First Regular Session.

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants, conditions, representations, and releases contained herein, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. The Parties acknowledge and agree that the foregoing recitals are true and correct and are hereby incorporated as a material part of this Agreement.
2. The Department shall pay to ASU Prep in its June 30, 2019 payment the amount of the Small School Weight funding withheld by the Department in April, May, and June 2019, in addition to all other funding to which ASU Prep is entitled.
3. The Department's regular monthly payments to ASU Prep before September 2019 shall include the full amount of Small School Weight funding prescribed in A.R.S. § 15-943.
4. The Department shall no longer seek reimbursement of, or take any action to withhold from ASU Prep, any Small School Weight funding that was provided to ASU Prep before the effective date of this Agreement.
5. As of the Effective Date, ASU Prep shall withdraw its April 19, 2019 appeal of the Department's March 22, 2019 determination.
6. Each Party releases and forever discharges the other Party, its employees, agents, representatives, successors, assigns, insurers, officers, directors, affiliates, and attorneys from any and all liability, rights, actions, claims, obligations, demands, fees, and costs, as they relate to the March 22, 2019 determination and/or the related appeal, which could have been made in any forum whatsoever including, but not limited to, any claims for attorneys' fees and/or costs, with the sole exception being an action to enforce the terms of this Agreement.
7. The Parties have read this Agreement carefully, know and understand its contents, and have made such investigation as they deem necessary or desirable. ASU Prep acknowledges that it has the right to consult with independent counsel before entering into this Agreement and that it has received ample time within which to consider the Agreement and its terms.
8. Neither this Agreement nor any of its provisions will be deemed prepared or drafted by any one Party or its attorneys and will not be construed more strongly against either Party.
9. No promise, inducement, or agreement not herein expressed has been made or entered into between the Parties, relating to the subject matter of this Agreement. This Agreement constitutes and embodies the full and complete understanding and agreement of the Parties hereto with respect to the matters addressed herein and supersedes all prior understandings and agreements.
10. This Agreement is not binding upon either party until ASU Prep accepts it by a majority vote of its governing board at a public meeting.
11. The Parties represent that they have full authority to settle all claims associated with this Agreement.

12. If any part of this Agreement is held to be invalid, void, or unenforceable for whatever reason, that provision will be severed, with all remaining provisions to continue in full force and effect.

13. This Agreement will be construed, interpreted, and enforced in accordance with the laws of the State of Arizona. The proper venue for any proceeding at law or in equity or under the provisions for arbitration will be Maricopa County, Arizona, and the Parties waive any right to object to the venue.

14. If any proceeding or action is brought for or on account of any breach of, or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party will be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which will be fixed by the court, and will be made a part of any award or judgment rendered.

15. Notwithstanding Paragraph 14, each party shall be responsible for its own attorneys' fees and costs in this matter through the execution of this Agreement.

16. Both Parties understand that this Agreement, once approved and signed, will constitute a public record.

17. The Parties may sign this Agreement in counterpart and/or at different times and agree to accept scanned copies of the Agreement for the sake of convenience. This Agreement will not be effective until both parties have signed this Agreement, after which the Effective Date will be the date of the last signature.

ASU PREPARATORY ACADEMY

**ARIZONA DEPARTMENT OF
EDUCATION**

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Agenda Item Details

Meeting	June 19, 2019 - Board of Directors Meeting - Notice of Public Meeting - Notice of Special Session
Category	E. Informational Item
Subject	1. Upcoming ASU Prep Board Meeting
Access	Public
Type	Informational Item

Recommended Action –

The next ASU Prep. board meeting will take place next Tuesday, June 25, 2019.