SCHOOL BOARD ACTION REPORT

DATE: April 2, 2021
FROM: Greg Narver, Chief Legal Counsel

For Introduction: April 7, 2021
For Action: April 7, 2021

1. TITLE

Authorizing the District to pay the necessary expenses of defending Seattle School Board Director Brandon Hersey in judicial proceedings to determine the sufficiency of recall charges.

2. PURPOSE

This Board Action Report authorizes the District to pay the necessary costs and attorney's fees that will be incurred in defending Director Hersey in judicial proceedings to determine the sufficiency of recall charges that were filed with the King County Department of Elections on March 22, 2021.

3. RECOMMENDED MOTION

I move that the School Board authorize the District to pay the necessary expenses of defending Director Brandon Hersey in judicial proceedings to determine the sufficiency of recall charges that were filed with the King County Department of Elections on March 22, 2021. Immediate action is in the best interest of the District.

4. BACKGROUND INFORMATION

a. **Background** On March 22, 2021, six sets of recall charges were filed with the King County Department of Elections, one each against School Board Directors DeWolf, Hampson, Harris, Hersey, Rankin and Rivera-Smith. The charges relate to actions taken by the directors in the scope of their official duties.

Under the procedure established by state law, a hearing will be set in King County Superior Court at which the court must determine "whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed." RCW 29A.56.140. Any appeal from the superior court's decision would be heard by the Washington Supreme Court. *Id.*

State law provides that "[t]he necessary expenses of defending an elective officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge . . . shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity." RCW 4.96.041(3). The expenses authorized by the statute include those incurred in the superior court proceedings, as well as in any appeal of the superior court's decision to the Washington Supreme Court. *Id.*

As required by RCW 4.96.041(3), Director Hersey has requested that the District provide a defense to the recall charges, including payment of necessary legal expenses incurred in the judicial hearing to determine the sufficiency of the charges. As also required by RCW 4.96.041(3), the District's Chief Legal Counsel, as the District's chief legal officer and as the District employee responsible for retaining outside counsel to represent the directors in the judicial proceedings, has approved the request. The remaining required step is for the Board, as the "legislative authority of the local government entity," to approve this request.

b. **Alternatives** The alternative is to deny Director Hersey's request. This is not recommended. RCW 29A.56.140 requires the superior court to set the hearing to determine the sufficiency of the recall charges on an expedited basis. Outside counsel needs to be retained as soon as possible, in order to be prepared to meet court deadlines and otherwise participate in the superior court proceedings.

c. **Research** RCW 4.96.041(3); RCW 29A.56.140.

5. FISCAL IMPACT/REVENUE SOURCE

The anticipated amount of the contract with outside legal counsel will be $30,000 to represent the six directors against whom recall charges have been filed, which will be paid from the Legal Department's budget.

Expenditure: ☒ One-time ☐ Annual ☐ Multi-Year ☐ N/A

Revenue: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

☒ Not applicable

☐ Tier 1: Inform

☐ Tier 2: Consult/Involve

☐ Tier 3: Collaborate

Approval by the School Board of Director Hersey's request is a requirement established by state law for the District to pay the necessary expenses incurred in connection with the judicial hearing to determine the sufficiency of the recall charges. Community engagement is not applicable to this action.

7. EQUITY ANALYSIS

Equity analysis was not conducted for this Board Action Report.

8. STUDENT BENEFIT

N/A.

9. WHY BOARD ACTION IS NECESSARY

☐ Amount of contract initial value or contract amendment exceeds $250,000 (Policy No. 6220)

☐ Amount of grant exceeds $250,000 in a single fiscal year (Policy No. 6114)

☐ Adopting, amending, or repealing a Board policy

☐ Formally accepting the completion of a public works project and closing out the contract

☒ Legal requirement for the School Board to take action on this matter (RCW 4.96.041(3))

☐ Board Policy No. _____, [TITLE], provides the Board shall approve this item

☐ Other: _____

10. POLICY IMPLICATION

N/A.

11. BOARD COMMITTEE RECOMMENDATION

This motion was not discussed at a Board Committee meeting.

12. TIMELINE FOR IMPLEMENTATION

Upon approval of this motion, the District's Chief Legal Counsel will retain outside counsel to represent Director Hersey in the judicial proceedings to determine the sufficiency of the recall charges.

13. ATTACHMENTS

N/A.