

BEFORE THE IOWA BOARD OF EDUCATIONAL EXAMINERS

SEP 15 2017

|                 |   |                                |
|-----------------|---|--------------------------------|
| In the Matter : | ) | Case No. 16-184                |
|                 | ) |                                |
| ARTHUR W. TATE, | ) | <b>RESPONDENT'S ANSWER AND</b> |
|                 | ) | <b>REQUEST FOR MORE</b>        |
| Respondent      | ) | <b>DEFINITIVE AND DETAILED</b> |
|                 | ) | <b>STATEMENT OF CHARGES</b>    |

Respondent, Dr. Arthur W. Tate, by his attorneys Richard A. Davidson and Wendy S. Meyer of Lane & Waterman LLP, states as follows for his Answer and Request for More Definitive and Detailed Statement of Charges:

**A. TIME, PLACE AND NATURE OF HEARING**

1. Dr. Tate acknowledges the date, time, and place of the hearing but requests the hearing be held in front of the entire membership of the Board of Educational Examiners ("BOEE" or "Board"). *See* Respondent's Request for Hearing Before the BOEE Board filed contemporaneously with this Answer.

2. No response necessary.

3. Dr. Tate acknowledges the hearing procedures and will participate in person but may wish to present telephonic testimony of some of his witnesses.

4. Dr. Tate will determine at a later date if he wishes to request a pre-hearing conference.

5. No response necessary.

6. No response necessary.

**B. SECTIONS OF STATUTES AND RULES INVOLVED**

7. Dr. Tate denies he failed to comply with state law (in violation of 282 Iowa Administrative Code rule 25.3(6)(m)). Dr. Tate requests a more definitive and detailed

Statement of Charges be provided, including a citation to the particular law with which he is charged with noncompliance.

8. Dr. Tate denies willfully departing from or failing to conform to the minimum standards of acceptable and prevailing educational practice in Iowa. To the extent the Davenport Community School District exceeded its spending authority, in the last four years, there have been 36 instances of districts overspending their spending authority. In none of those situations was a BOEE complaint brought against a district superintendent nor has a superintendent's license been affected on such basis.

#### **C. JURISDICTION AND LEGAL AUTHORITY**

9. Dr. Tate agrees the Board has jurisdiction over this matter and the authority to take disciplinary action if it determines there has been an ethical violation. Dr. Tate requests, based on such jurisdiction and authority, the full Board be present for the hearing. *See Respondent's Request for Hearing Before the BOEE Board filed contemporaneously with this Answer.*

#### **D. FACTUAL CIRCUMSTANCES**

10. Allegation: Respondent holds a Professional Administrator LICENSE (FOLDER # 998209). Respondent's license is current and will expire on 8/31/2022.

Respondent's Response: Admit.

11. Allegation: During the relevant facts of this matter, Respondent was employed as Superintendent with the Davenport Community School District.

Respondent's Response: Dr. Tate is not aware nor does he admit to what the "relevant facts" are of this matter but does admit he has been employed as Superintendent with the Davenport Community School District since July 1, 2011.

12. Allegation: On December 14, 2016, the Board of Educational Examiners received a complaint against Respondent alleging a violation of the Code of Ethics.

Respondent's Response: Dr. Tate admits a complaint was filed against him but is not aware of the exact date such complaint was received by the Board of Educational Examiners.

13. Allegation: On April 7, 2017, the Board found probable cause to proceed to hearing based upon the facts set forth in paragraph 14 below.

Respondent's Response: Dr. Tate admits the Board found probable cause to proceed to hearing but is not aware of the alleged "facts" on which the Board based such finding.

14. Allegation: Investigation revealed that Dr. Tate purposefully and publicly advocated for the Davenport School Board to exceed its lawful spending authority, based upon his belief that the Iowa school funding formula is unfair and should be amended.

Respondent's Response: Dr. Tate admits he exercised his free speech rights by expressing his opinion the Iowa school funding formula is unfair, should be amended, and results in discrimination in education funding, specifically that his students are treated as if they are "worth-less" than other students in the state. He has advocated for fairness in the school funding formula for his students.

#### **E. ADDITIONAL FACTS**

1. The Davenport Community School District consists of 29 schools serving Davenport, Blue Grass, Buffalo, and Walcott, and consists of nearly 15,000 students.

2. Of that population, 67.4% qualify for free/reduced lunches or fee waivers and 45.3% are minority.

3. Iowa's current school funding formula, which sets a school district's spending authority (the legal right to spend general fund dollars on operating costs and

salaries), results in a Davenport student being worth up to \$175 less than other students in the State.

4. This \$175 per student equates to approximately \$2.7 million per year in spending authority Davenport cannot spend on its students.

5. Dr. Tate and Davenport school leaders have spent the last three years working through legislative channels to attain legislation to address the disparity in the school funding formula.

6. Davenport also sought permission from the School Budget Review Committee ("SBRC") to spend \$175 more per student using its reserve funds, which the SBRC denied.

7. Dr. Tate has followed the proper channels in bringing the issue of funding disparities to the forefront. Unfortunately, though his candor about the inequity of the funding formula has met with great support, it has not been successful in obtaining a legislative solution.

8. There has been no suggestion: (1) Dr. Tate used any money inappropriately; (2) Dr. Tate departed from acceptable and prevailing educational practice in the state (as noted, other districts routinely incur negative unspent balances); or (3) Dr. Tate violated any law applicable to the fulfillment of his professional obligations.

9. The discharge of professional obligations occurs within the context of "certain fundamental rights and responsibilities." 282 IAC 26.1. The "exercise of these rights and responsibilities may present mitigating facts and circumstances in the board's evaluation of allegations of unprofessional or unethical conduct." 282 IAC 26.1.

10. Dr. Tate's attempt to obtain equal treatment for his students has been done with the utmost transparency and has resulted in this Complaint being filed against him.

### **AFFIRMATIVE DEFENSES**

1. The Notice of Hearing and Statement of Charges fails to state a claim upon which relief can be granted. Dr. Tate has not failed to comply with any state law nor has he departed from or failed to conform to standards of acceptable and prevailing educational practice.

2. The conduct noted in the Complaint consists of Dr. Tate engaging in his right to free speech and to pursue such claims is a violation of Dr. Tate's First Amendment right to free speech.

3. The requested relief of sanctioning Dr. Tate, if granted, would not be in the public interest.

4. Dr. Tate has acted in good faith in his attempts to obtain equal treatment for his students; his discharge of his professional obligations has occurred within the context of certain fundamental rights and responsibilities, which should be considered in determining whether Dr. Tate engaged in unprofessional or unethical conduct.

5. The issue of overspending is moot. Dr. Tate has presented a five year plan to eliminate the District's negative unspent balance. This plan will be submitted to the SBRC for approval and when approved by the SBRC, will eliminate the negative unspent balance.

6. This complaint is based on arbitrary and capricious enforcement; the complaint is based on the Davenport School Board exceeding its spending authority. Historically, a number of school districts have annually exceeded their spending authority

without the Superintendent of those school districts having a complaint filed with the BOEE.

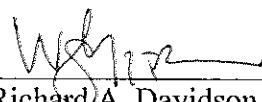
7. Respondent reserves the right to present additional defenses as this matter proceeds.

### **REQUEST FOR RELIEF**

The exercise of professional obligations must occur taking into consideration fundamental rights and responsibilities. 282 IAC 26.1. These rights and responsibilities are to be considered as mitigating circumstances when the BOEE evaluates whether Dr. Tate engaged in unprofessional or unethical conduct. Dr. Tate has not failed to comply with state law; he has not willfully departed from or failed to conform to the standards of acceptable and prevailing educational practice; nor has he engaged in unprofessional or unethical conduct. Dr. Tate respectfully requests this complaint be dismissed in its entirety. In the alternative, Dr. Tate requests a more definitive and detailed Statement of Charges to allow him to prepare for the hearing.

Dated: September 13, 2017

**LANE & WATERMAN LLP**

By   
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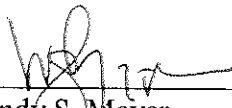
**ATTORNEYS FOR RESPONDENT**

## CERTIFICATE OF SERVICE

I certify under penalty of perjury and pursuant to the laws of Iowa that, on September 13, 2017, I mailed copies of **Respondent's Answer and Request for More Definitive and Detailed Statement of Charges** addressed to the State of Iowa Board of Educational Examiners, Grimes State Office Building, 400 E. 14<sup>th</sup> Street, Des Moines, Iowa 50319-0147, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

Jordan Esbrook  
Assistant Attorney General  
Iowa Department of Justice  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, IA 50319  
**ATTORNEY FOR STATE**

9.13.17  
Date

  
Wendy S. Meyer