

**STATE OF COLORADO
IN THE OFFICE OF THE SECRETARY OF STATE**

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

DURANGO SCHOOL DISTRICT 9-R

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”), and the Durango School District 9-R (“Respondent”).

Recitals

A. Respondent, as a Colorado school district, is a political subdivision of the state of Colorado subject to section 1-45-117, C.R.S.

B. On January 24, 2024, the Division received a Complaint filed by Kelly Hegarty against Respondent alleging that “a featured article on the House District 59 Democrat candidate” had appeared on Respondent’s website and appeared “to give preference to one candidate over another.” The Complainant additionally alleged that the article appeared to be “an endorsement and/or a donation in kind” in violation of section 1-45-117, C.R.S., which places limitations on contributions by state and political subdivisions. Notice of the Complaint was delivered by the Division to the Respondent on January 24, 2024.

C. On January 18, 2024, Respondent posted on its official website a news story advising that Katie Stewart, a current director on Respondent’s School Board, was running for the Colorado General Assembly House District 59 seat in the November 2024 election. The news story also was included in two weekly newsletters published by and email blasted by the Respondent: We R 9-R sent to 1,123 of Respondent’s employees on January 18, 2024; and, Community Update sent to 6,135 of Respondent’s school parents on January 19, 2024. In the news story, Respondent

advised that under Colorado law a school board director could hold both offices simultaneously. The news story also indicated that “Katie would like to share the following message with our school staff and school families” and contained a link to a letter from Stewart.

D. The linked letter from Katie Stewart was written by the Respondent’s public information officer with the help of ChatGPT artificial intelligence software and was approved for publication by the Respondent’s superintendent. In effect, the letter asserts that Stewart can be effective for the benefit of the letter’s reader while simultaneously holding both offices. After receiving notice of the Complaint and written objections from two members of the public, Respondent removed the news story and Stewart’s letter from the Respondent’s website and published a clarification in the editions of the two newsletters during the first week of February, 2024. Additionally, the Respondent’s public information officer reimbursed the Respondent for the expense it incurred in producing the letter.

E. The Division has advised Respondent that the Division must file an administrative complaint with the Administrative Hearing Officer (the “Administrative Proceedings”) before this proposed Settlement Agreement can be presented to the Deputy Secretary of State for approval. The Administrative Proceedings, including the administrative complaint, shall be dismissed only if the Settlement Agreement is approved by the Deputy Secretary of State.

F. The Division and Respondent desire to resolve and settle this matter without expending the time and expense of continued litigation.

THEREFORE, IN CONSIDERATION OF the mutual covenants contained in this Settlement Agreement, the parties agree and covenant as follows:

Section 1. Recitals Are Part of the Agreement. The foregoing recitals are true and correct, are binding on the parties hereto, and are part of the terms of this Settlement Agreement.

Section 2. Deputy Secretary of State Approval. This Settlement Agreement and all promises contained herein are contingent upon approval of the Settlement Agreement by the Deputy Secretary of State. In the event the Deputy Secretary of State does not approve this Settlement Agreement, nothing in this Settlement Agreement shall be binding upon, or enforceable against, the Division or Respondent.

Section 3. Payment of Stipulated Penalty. Within 14 calendar days of the Respondent’s receipt of an invoice from the Division, **Respondent shall pay a stipulated penalty in the amount of \$500.00 to the Division.** If Respondent fails to comply with this term or any other terms of the Settlement Agreement, the Division shall be entitled to pursue all remedies allowed under state or federal law.

Section 4. Determination of Stipulated Penalty. This stipulated penalty derives from Rule 23.3.3(e) of the Colorado Secretary of State's Rules Concerning Campaign and Political Finance (8 CCR 1505-6). Rule 23.3.3(e) pertains to violations of section 1-45-117, C.R.S., which provides three penalty options. Under Rule 23.3.3(e)(1), a violation that has been cured before an election requires a fine of at least \$500.00 if there has been no substantial compliance. Under Rule 23.3.3(e)(2), a violation that is not cured before an election requires a fine of at least \$1,000.00. A violation under subsection 23.3.3(e)(3) involves improperly used funds and does not apply. Although, there was a partial cure when Respondent unpublished the letter from its website on January 30, 2024, the email blast of each newsletter could not be cured, notwithstanding the clarification published approximately two weeks later. As a result, Rule 23.3.3(e)(2) suggests a base penalty of at least \$1000.00.

There are mitigating factors. The Respondent partially cured its publication of the news story and linked letter from the candidate by removing them from its website without prompting from the Division. Although unsuccessful, Respondent did make an effort to mitigate the publication in the newsletters. Additionally, the Respondent cooperated timely and fully with the Division's investigation of the Complaint, including providing all information and documents requested by the Division well before the deadlines imposed by the Division. The public information officer's reimbursement of the Respondent without prompting from the Division is another mitigating factor. Accordingly, the Division finds that a reduced penalty of **\$500.00** for Respondent's violations is appropriate.

Section 5. Dismissal of Administrative Proceedings. The Division will move to dismiss the Administrative Proceedings with prejudice after the Secretary of State approves this Settlement Agreement.

Section 6. Admissions. Respondent admits that Respondent violated section 1-45-117, C.R.S. by preparing and publishing on its website and in two newsletters the letter from Katie Stewart.

Section 7. Release and Covenant Not to Sue. Respondent Durango School District 9-R, for itself and for its respective agents, assigns, representatives, attorneys and subrogees, release and forever discharge the Division, the Secretary of State, the State of Colorado, and all of their former, current, and successor officers, employees, agents, and attorneys, from any and all claims, actions, causes of action, debts, demands, liabilities, losses, injuries, and/or damages arising from or relating to the Complaint filed on January 24, 2024, the Division's initial review and investigation of the Complaint, and the Administrative Proceedings. Respondent further expressly agrees and covenants that it will not sue or assert any claim or cause of action at law or in equity in or before a court of law, administrative agency or any other forum, against the Division, the Secretary of State, the State of Colorado,

or any of their former, current, and successor officers, employees, agents, and attorneys, for any claim arising from or relating to the Complaint filed on January 24, 2024, the Division's initial review and investigation of the Complaints or the Administrative Proceedings.

Section 8. Waiver of Appeal Rights. Respondent expressly waives any right for further administrative or judicial review of any matter related to the Administrative Proceedings or this Settlement Agreement, including but not limited to any rights provided by §§ 24-4-105, C.R.S., and 24-4-106, C.R.S.

Section 9. Public Records. Respondent understands and agrees that this Settlement Agreement will be made available to the public on the Secretary of State's TRACER Campaign Finance reporting system and may also be made available to members of the public who serve a request under the Colorado Open Records Act, Part 2, § 24-72-200.1, *et seq.*, C.R.S.

Section 10. Full and Complete Agreement. This Settlement Agreement constitutes the full and complete agreement of the parties and shall supersede any and all prior agreements and understandings, whether written or oral.

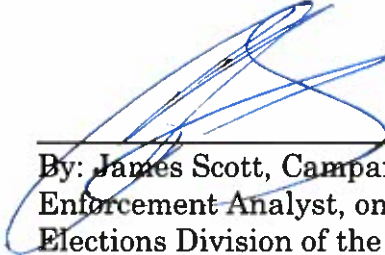
Section 11. Final Agency Action. Upon its approval by the Deputy Secretary of State, this Settlement Agreement shall become final agency action under the State Administrative Procedure Act, §§ 24-4-101 *et seq.*

Section 12. Warranties. Respondent and the Division expressly warrant that they have carefully and completely read the terms of this Settlement Agreement. Respondent and the Division expressly warrant that they have had an adequate opportunity to consult with legal counsel before executing this Settlement Agreement, that they fully understand the terms of this Settlement Agreement, and that they enter into this Settlement Agreement knowingly and voluntarily, and without coercion, duress or undue influence. Respondent and the Division warrant that in signing this Settlement Agreement, neither has relied upon any promise, warranty, or representation made by anyone, including but not limited to the Respondent or the Division, except as to those promises, warranties, or representations that are expressly stated in this Settlement Agreement.

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ELECTIONS DIVISION OF THE SECRETARY OF STATE

3/7/24
DATE


By: James Scott, Campaign Finance
Enforcement Analyst, on behalf of the
Elections Division of the Secretary of State


DURANGO SCHOOL DISTRICT 9-R

March 7, 2024
DATE


By: Dr. Karen Cheser, Superintendent,
Durango School District 9-R

ADOPTED AND APPROVED BY:

April 17, 2024
DATE


By: Christopher P. Beall
Deputy Secretary of State