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February 22, 2024

Via E-mail ONLY to: cpl@pattersonbuchanan.com

Patterson Buchanon Fobes & Leitch, P.S.
c/o Charles P. Leitch
1000 Second Avenue, 30th Floor
Seattle, WA 98104

Re: John Cerna Notice of *Loudermill* Response

Mr. Leitch-

This letter is written in response to your communications date January 24, 2024 and February 7, 2024, wherein you set forth Toppenish School District's (hereinafter "TSD" or "the District") allegations against Mr. John Cerna during his long-term tenure as Superintendent.

This letter is intended to provide background and insight into the untruthful and ill-informed allegations levied against Mr. Cerna. Mr. Cerna and counsel will be present at the *Loudermill* hearing on February 14, 2024 at 10:00am – despite it being unilaterally set by the District and over the objection of Mr. Cerna. It should also be noted that Mr. Cerna fully and completely participated in this investigation. An investigation that lasted for over a calendar year, whereas Mr. Cerna has been forced to respond in less than a calendar month.

Loudermill hearings are focused not only on "notice," but on "an opportunity for hearing appropriate to the nature of the cause." *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487 (1985). Indeed, "the opportunity to present reasons, either in person, or in writing, why proposed action should not be taken is a fundamental due process requirement." *Id.*, at 546.

Here, the District has provided hundreds of pages of investigative findings. It has levied numerous unsubstantiated allegations against Mr. Cerna. The allegations range as far back as Mr. Cerna's first year as Superintendent, roughly 12 years ago. The timeline for the *Loudermill* hearing proposed by the District does not adequately provide Mr. Cerna an "opportunity for hearing appropriate to the nature of the cause." This is not just some procedural hoop the District must jump through, but rather, an opportunity for Mr. Cerna to be provided his constitutional right, one with substantive grit. Indeed, "the governmental interest in immediate termination does not outweigh [the interests in retaining employment, and affording an employee an opportunity to

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present his side of the case].” *Id.*, at 542-543. “Affording the employee an opportunity to respond prior to termination would impose neither a significant administrative burden nor intolerable delays.” *Id.*, at 544.

With all that said, it seems the District is set on depriving Mr. Cerna with an adequate opportunity to respond, as is his constitutional right. As such, Mr. Cerna will do his best to address the veracity of the spurious allegations slated against him, given the limited time in which he was allotted to respond.

First and foremost, Mr. Cerna’s tenure as Superintendent of the TSD was marked by advances in student enrollment, student participation, extra-curricular activities, and graduation rates. Mr. Cerna more than doubled the TSD’s “general,” “capital projects,” and “payroll” funds. Mr. Cerna also devoted much of his free-time to the community and made a concerted effort to highlight Toppenish’s star athletes in wrestling, bringing back-to-back State Championships to Toppenish School District and helping to establish a successful wrestling program – bringing pride to the students and the community at large.

Mr. Cerna loves his community and has devoted his professional career to serving Toppenish School District in an exemplary fashion – in and outside of his professional capacity as Superintendent. Mr. Cerna started, organized, and regularly participated in numerous non-profit and community organizations. Organizations that still benefit the at-large Toppenish community today. His record, covering roughly 12 years of service, speaks for itself.

With all that said, and in the insufficient and extremely limited time afforded Mr. Cerna, the following is provided in brief response to the allegations contained in your January 24, 2024 letter:

Mr. Cerna’s Compensation

- Every single salary increase afforded Mr. Cerna was approved by the School Board. This is reflected in the minutes of the School Board’s meetings. A simple reading of the minutes will reveal this.
- The “safety and insurance stipends” were also approved by the School Board. Again, a reading of the applicable meeting minutes reveals this as well.
- All optional days claimed were not only approved by the School Board, but were signed off by at least two (2) other administrators. Mr. Cerna followed the uniform criteria for claiming optional days, along with all other TSD employees claiming said days. The fact that the District “had no written policy, process, or definition of what an ‘optional day’ consisted of,” if true, is a School Board issue, not a Superintendent issue. Mr. Cerna was simply following the uniform criteria for claiming the optional days in which he chose to devote his time, effort, and skill, to bettering the District and its student programs. If claiming these “optional days” in the manner Mr. Cerna did is a “for cause” justification

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for termination, then there are countless Toppenish School District employees who should also be facing the same outcome as Mr. Cerna.

- Mr. Cerna's contract states he is to receive a vehicle allowance, as well as ability to claim mileage reimbursement "at the regular district rate."
- All safety stipends were approved by the School Board. This is referenced in the minutes. This allegation also does not state which "safety stipends" were not approved by the School Board. As such, any response will be necessarily incomplete without a complete factual recitation of the allegation.
- Again, all compensation Mr. Cerna received was approved by the School Board. The School Board has the control of all expenditures within the District. All administrators, directors, and central office administrators have and continue to receive the same health care benefits as Mr. Cerna.
- All administrators, directors and board members receive phone and internet stipends. Once again, the School Board approves all district wide expenditures.
- There is no policy prohibiting accumulating frequent flyer-miles for District related travel. If the District wants to prohibit this conduct, that is up to the School Board to draft and pass a policy prohibiting this conduct. No one ever informed Mr. Cerna this was not allowed. "Other staff" is vague and ambiguous and does not allow for a complete response.

Skylar Academy and Yolanda Paez

- Mr. Cerna traveled to Alaska to finalize the contract with Skylar Academy. This travel was approved by the Board. Mr. Cerna had no idea where her Board of Directors were located. Mr. Cerna made no such misrepresentations to the School Board.
- To Mr. Cerna's knowledge and understanding, Skylar Academy was an O.S.P.I.-approved distance learning provider.
- Staff never informed Mr. Cerna that Skylar Academy's documentation did not support its invoices. Jeanette Ozuna was assigned to Skylar Academy and was responsible for making sure Skylar Academy met the O.S.P.I. guidelines.
- Mr. Cerna ended up meeting with Ms. Paez on the Coast in order to finalize the contract between the District and Skylar Academy. He never even traveled to Alaska a second time, thus saving the District time and money.

- Mr. Cerna did not know Skylar Academy was not an O.S.P.I.-approved distance learning provider. To Mr. Cerna's knowledge and recollection, as of August 2014, Skylar Academy was indeed an O.S.P.I.-approved distance learning provider.
- The "delay" in litigation did not harm the District, nor did it violate any District policies. As far as Mr. Cerna knows, lawsuit and litigation take time to develop. If this is a violation of District policy, it should be taken up with the lawyers who handled the lawsuit on behalf of the School District, and not Mr. Cerna. Also, it is the School Board who decides to bring a lawsuit on behalf of the District, not the superintendent. In consultation with legal counsel, it was decided to not pursue collection efforts as Skylar Academy was an LLC and could simply declare bankruptcy in order to avoid collection on any judgment. In other words, we would be throwing "good money after bad."

Other Allegations of "Misconduct"

- Community Safety Network (or "CSN") was founded to fill the gap between school families and students and access to social services and scholarships. Part of its mission was to also beautify the Toppenish Community at large. There is a need for these types of services within the Toppenish School District, and prior to CSN being founded, a lack of accessibility and education. Many of Toppenish's local community providers supported CSN, including: Toppenish Social Services, Yakima Valley Farm Workers Clinic, Toppenish Hospital, Yakama Nation Counseling Services Providers, Children Protective Services, University of Washington, Gear Up, Toppenish City Police Chief as well as the City Manager and representatives from local food banks and churches. Mr. Cerna vehemently disagrees that Community Safety Network posed a conflict of interest. CSN helped beautify the Toppenish Community and helped students obtain scholarships that would otherwise be unavailable to them. This is not a conflict of interest, but rather, a Superintendent going above and beyond the call of duty. CSN was recognized at the State and National level in Washington D.C. for excellent work in bringing together all of the social providers for Toppenish's families, students, and communities.
- Mr. Cerna never received gifts or favors from district vendors. He did not organize any wrestling tournaments in order to benefit the high school wrestling team. CSN is a non-profit organization and carries the necessary insurance for all different activities. This is a community organization doing good things for Toppenish's students, families, and community, Mr. Cerna's understanding is that the District does not charge for usage of the facilities when non-profit organizations utilize them. The SAO had no such finding regarding "lending of credit." Mr. Cerna used the District credit card and the treasurer of CSN then wrote a check to the District the next day to cover the expenses. Mr. Cerna, at the time, was unaware that could be seen as "lending of credit." CSN never made any donations to the District or the wrestling team.

- Mr. Cerna vehemently disagrees that he put any untoward “pressure” on Shawn Meyers to put Mr. Cerna Jr. on probation. As stated in his interview, Mr. Cerna did ask Mr. Meyers if he would extend the deadline for appeal because Mr. Cerna Jr. was never informed that he only had ten (10) days to appeal the decision, but rather, that he had as much time as he would need.
- Mr. Cerna denies he ever asked the athletic director to pay Mr. Cerna Jr.’s coaching salary. The Human Resources director handles all contracts and the finance department pays all wages and bills as approved by the School Board. The athletic director does not pay coaches.
- Over Mr. Cerna’s tenure with the School District, the District conducted business with Mr. Moran’s company. Mr. Cerna was able to save the District well over 1,500,000.00 in insurance fees. Mr. Cerna traveled to Spokane to negotiate insurance costs with several different providers. Mr. Cerna denies he ever required District staff to attend sales presentations from any vendors.
- Without more specific information, Mr. Cerna cannot respond to the allegation regarding “issues with your use of your District-issued credit card.” Mr. Cerna always had his assistant code the expenses. Mr. Cerna’s spouse rarely, if ever, traveled with him for work related activities. When she did, Mr. Cerna always used his personal credit card for her expenses.
- Mr. Cerna is only aware of three lawsuits over his decade-plus tenure as Superintendent. These were not personal, but work related. The most recent lawsuit, involving Brenda Mallonee, exonerated Mr. Cerna and the District from any wrongdoing whatsoever. The cost of these lawsuits was minimal, as it was all covered by the insurance provided to the District.

This response is intended as a supplement to Mr. Cerna’s testimony at the *Loudermill* hearing. He is specifically requesting that the hearing be in person and not over Zoom or some other web-application. Again, this response is only intended to be a supplement to Mr. Cerna’s testimony at the *Loudermill* hearing. He is hopeful that the parties at the *Loudermill* hearing will have an open mind and listen to what he has to say, instead of merely jumping through the hoops to reach a pre-determined decision.

Thank you for your attention in this matter.

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Very truly yours,
LARSON GRIFFEE & PICKETT, PLLC


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