



MEMORANDUM

TO: Teachers' and State Employees' Retirement System (TSERS) Board of Trustees

FROM: Patrick Kinlaw, Director of Policy, Planning and Compliance

DATE: April 29, 2021

RE: Proposed Withdrawal of Charter School from TSERS

KIPP Gaston (Gaston College Preparatory Charter under TSERS records, or "the school") has participated as an employer under TSERS since April 1, 2001. On March 4, 2021, the school provided written notification to TSERS of its intent to withdraw from TSERS, and stated that it would be notifying its employees by March 31, 2021.

G.S. 135-5.3(f) allows the board of directors of a charter school to elect to cease participation in TSERS by following the procedure set forth under G.S. 135-8(i). G.S. 135-5.3(f) also permits a withdrawing charter school to pay its withdrawal liability (in excess of \$2,000,000) under an installment plan, if approved by the TSERS Board of Trustees (Board). The school wishes to pay its withdrawal liability under the installment plan described in 135.5.3(f)(1) and (2).

Payment Details

If the Board approves the installment payment plan at today's meeting, then the school's "complete withdrawal date" according to G.S. 135-5.3(f) will be April 29, 2021. The Board's consulting actuary, Cavanaugh Macdonald Consulting, has determined the withdrawal liability associated with the school's withdrawal effective April 29, 2021, to be \$5,276,641, based on data for the school's 107 employees eligible for TSERS membership according to the actuarial valuation as of December 31, 2019. Under the installment payment plan, the school would be required to make payments under the following schedule to complete its withdrawal:

Description	Date Set by Board	Amount	Total
50% paid within 90 days	July 28, 2021	\$2,638,321	\$2,638,321
36 monthly payments	Last calendar day of each month, Aug. 2021 through July 2024	\$73,287 (first 35 months); \$73,275 (last month, July 2024)	\$2,638,320
Total Payments			\$5,276,641



Lien and Consequences of Nonpayment

If the Board approves the installment plan, G.S. 135-5.3(f) provides: “The Retirement System shall have a lien upon the real property of a charter school that has received approval... at the time that the installment agreement is entered into and in the amount of the total withdrawal liability owed by the charter school. This lien shall attach to the real property upon the approval of the installment payment plan by the Board of Trustees and shall be perfected upon filing in the office of the clerk of superior court in each county in which the real property is situated. The priority of the lien shall be superior to all nongovernmental liens and rights, whether such liens and rights are prior or subsequent to the lien. The Retirement System may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.”

If a payment under the installment plan is not made within 90 days of the date set by the Board according to the schedule above, and TSERS is unable to recover the payment through enforcement of the lien, then the school will continue to be a participating employer as described under G.S. 135-8(i)(6), must report employee service and compensation during the time that has elapsed since April 29, 2021, and may be subject to late reporting penalties.

Other Provisions

If the school completes its withdrawal from TSERS, all employees of the school will be ineligible to accrue future benefits with TSERS due to employment with the school after the complete withdrawal date. (G.S. 135-8(i)(3).) The school will be ineligible to become a participating employer under TSERS for five years from the date of complete withdrawal. (G.S. 135-8(i)(3).) Employees will not be able to receive retirement benefits or refunds from TSERS until their employment with the school, and with any other TSERS employer, has ceased with no intent or agreement, expressed or implied, to return to service. (G.S. 135-8(i)(4).) TSERS will have no further obligation to the school or its employees; TSERS will not be accountable for the continued future accrual of any retirement benefit rights beyond the complete withdrawal date; any litigation regarding forfeiture of benefits due to the withdrawal will be the sole legal responsibility of the school; and the school will indemnify and hold harmless TSERS, the Board, Retirement System employees, and the State from any claims or costs asserted by any person or entity due to the withdrawal. (G.S. 135-8(i)(7).)

Staff Recommendation

Staff of the Retirement Systems Division (RSD) of the Department of State Treasurer recommends that the Board approve a “motion to approve the installment payment plan as set forth in this memorandum, creating a lien in favor of TSERS upon the real property of KIPP Gaston, as provided by G.S. 135-5.3(f).”