

Alexandra Hall
Director, Division of Labor
Department of Labor and Employment
State of Colorado

**DENVER PUBLIC SCHOOLS REQUEST FOR INTERVENTION
BY THE DEPARTMENT OF LABOR IN A DISPUTE THAT
AFFECTS THE PUBLIC INTEREST**

School District No. 1, in the City and County of Denver (a/k/a “Denver Public Schools” or “DPS”) submits the following request for intervention pursuant to C.R.S. § 8-1-125, to the Director of Division of Labor, Department of Labor and Employment, State of Colorado and responds to the Notice of Intent to Strike filed by the Denver Classroom Teachers Association (“DCTA”) dated January 8, 2019, as follows:

1. DPS and DCTA have two primary agreements: the Agreement and Partnership between School District No. 1 in the City and County of Denver and the Denver Classroom Teachers’ Association (the “[Master Agreement](#)”) and the Professional Compensation System for Teachers Agreement (the “[ProComp Agreement](#)”).

2. The Master Agreement contains all of the provisions regarding employment for DPS teachers and Specialized Service Providers (SSPs) (e.g. school nurses and psychologists). The parties renegotiated the Master Agreement in 2017 and signed a five-year contract in the early hours of the morning on September 1, 2017. The agreement was ratified by just under 90% of DCTA members and unanimously approved by the DPS Board of Education. That contract included financial terms, which covered new investments in teacher compensation for a three-year term (the “[Financial Agreement](#)”). DPS committed to invest an estimated \$45 million “new” dollars to fund this financial agreement (new dollars being an investment above and beyond the \$400+ million that the district was already investing in teacher and SSP compensation). This investment guaranteed pay increases for teachers and SSPs for the 2017-18, 2018-19, and 2019-20 school years. In accordance with this 2017 agreement, teachers and SSPs received increases in the 2017-18 and 2018-19 school years (on average, a 10% increase over the two years). Under this 2017 agreement, teachers and SSPs were also guaranteed an estimated average increase of just under 5% for 2019-20. As explained further below, DPS has now agreed to double this increase for 2019-20 if DPS and DCTA can reach an agreement on ProComp.

3. Whereas the financial terms of the Master Agreement address the \$400+ million that DPS invests in teacher compensation, the ProComp Agreement covers the \$33 million that DPS receives annually from Denver voters pursuant to a 2005 mill levy. The ballot language that DPS and DCTA jointly took to voters states that the funds should be used to provide compensation for teachers for:

- Teaching in hard-to-staff schools;

- Teaching in hard-to-fill positions, such as math, science and special education;
- Increasing teaching knowledge and teaching skills by successfully completing ProComp approved advanced degrees, professional teaching standards licenses, and additional training to improve classroom skills;
- Positive professional evaluations; and
- Achieving distinguished school status.

4. DPS and DCTA have amended the ProComp Agreement numerous times through their financial agreements over the years. The agreement also has an implementing body called the ProComp Transition Team, which is made up of half DCTA members and half district members. For an explanation of how the ProComp incentives currently work and how DPS allocates that \$33 million, see the explanation on this [website](#).

5. Even with the financial terms of the Master Agreement in place through 2020, DPS and DCTA still had to negotiate the ProComp Agreement because it was due to expire. DPS and DCTA's negotiations of the ProComp agreement began in November 2017 and continued through January 18, 2019. For a quick summary of the history of negotiations, please see the linked [Negotiation Timeline](#). For an in-depth history of the negotiations, please see Appendix A.

6. One of the most important pieces to note is that DPS could have taken the position that DPS and DCTA were only negotiating the \$33 million in ProComp incentives. Instead, DPS voluntarily agreed to revamp and improve the entire compensation system, with its corresponding \$400+ million budget. DPS heard from teachers and agreed that the current system was too complex and that teachers and SSPs deserved a transparent salary schedule with fewer incentives and more invested in base pay. Although DPS was not required to do so, DPS agreed to re-open the financial terms of the 2017 Master Agreement and **double** the compensation increases for 2019-20. As explained below and in the attached Appendix, if DPS and DCTA reach an agreement on ProComp, **DPS will invest \$20.5 million ongoing dollars and \$6 million one-time funds**. This is on top of the money previously committed for the 2019-20 increase. With this significant new investment, teachers and SSPs would now receive an **average base pay increase of 10% for 2019-20**.

7. After fourteen months of negotiations, DPS and DCTA were not able to reach agreement and the ProComp Agreement expired on midnight of January 18. Despite the outcome, we believe that the [final DPS proposal](#) is generous, highly competitive with Colorado districts, and responsive to what we have heard from teachers and from the union. For example:

- Highest starting salary in the metro area with one \$2,500 incentive (\$48,000); second-highest starting salary, after Boulder, with no incentives.
- Pathways to make \$100,000+ (current teacher calendar is 187 workdays per year).
- Teachers with a bachelor's or bachelor's plus 30 credits would have the highest lifetime earning potential of any of the school districts in the metro area. Unlike many other districts, DPS does not set caps on any of the lanes and allows for 30 years of continuous growth in any lane.
- With one \$2,500 incentive for either working in high-poverty schools or hard-to-fill positions (which 72% of DPS teachers/SSPs would receive), educators with a masters

would have the highest lifetime earning potential of any of the school districts in the metro area.

- For those educators with a masters plus 30 credits or doctorate degrees, DPS would be among the top three school districts in the metro area.
- Supports retention (a top district priority) with a salary increase of at least \$3,500 after 10 years of serving Denver kids in DPS classrooms.
- A salary schedule with multiple ways for teachers to earn base pay increases, including years of experience, college credits, advanced degrees, advanced licensure, national board certification, and ten years of commitment to DPS classrooms.

8. At the end of negotiations on January 18, 2019, the total cost difference between the DPS and DCTA proposals was at least \$8.5 million. However, DPS has been clear that the district is not willing to eliminate incentives to recruit educators in the district's 30 highest-priority schools or decrease incentives for educators in Title I (high poverty) schools. The DPS Board has named this as a key priority. Recruitment and retention of educators in these schools is a critical tool for closing the opportunity and achievement gaps. If that commitment to our highest-priority and high-poverty schools remains in place, the difference between the DPS and DCTA proposals is actually \$15 million.

9. DPS is committed to deep cuts in its central administration, which will result in the elimination of a significant number of administrative positions. Staff whose positions are eliminated will be notified in February, at which time the district will be able to share more information about the extent of the cuts. To put the reductions into perspective: DPS is cutting its non-discretionary central administration spending by over 7% in order to fund the \$10.5 million in cuts that are committed toward teacher compensation. (Note: most of our spending is not discretionary, like special education and funding for our English Language Learners under the consent decree.) The cuts are deeper than 7% because DPS will also increase compensation for its hourly school-support employees (like paraprofessionals) and increase spending on key needs for special education. Cutting an additional \$8.5 million would require DPS to undertake another 6% reduction in the district's non-discretionary central administration spending.

10. We are deeply disappointed that we were not able to reach agreement with DCTA on the terms of our ProComp Agreement. However, DPS believes that through the support of state intervention, DPS and DCTA can find more areas of alignment, resolve this dispute, and move forward in mutual partnership to support our students, our educators, and our schools. Accordingly, DPS requests that the Director assume jurisdiction of this dispute.

11. Pursuant to C.R.S. § 8-1-125, the Director

may exercise jurisdiction over any dispute between employer and employee affecting conditions of employment, or with respect to wages or hours, only when the employer and the employee request such intervention or when the dispute, as determined by the executive director, affects the public interest, and such jurisdiction shall continue until after the final hearing of such dispute and the entry of the final award therein or until said director shall enter an order disposing of or terminating such jurisdiction.

12. The potential of a teacher strike in the largest school district in Colorado undeniably affects the public interest. There is a direct and negative impact to over seventy thousand students attending DPS schools and their families. Among the expected impacts:

- A. **Loss of Instructional Time from Teachers on Strike:** If we are forced to close schools, there is a loss of instructional time that cannot be recovered. This is critical for all of our students, but most critical where we are trying to close the achievement gap. When our lowest performing students miss out on instructional time, they suffer the most, and have the most difficulty catching up. Every day matters. This is also particularly true for our seniors who are on track to graduate in 2019 and may lose vital instructional time, putting them at risk of not attaining necessary credits in order to graduate on time. Even if we are able to keep schools open through use of guest teachers/subs, we know that our students are best taught by their current teachers and best served by the SSPs who know them.
- B. **Students with Special Needs:** Currently, DPS serves approximately 10,073 students with disabilities under the Individuals with Disabilities Education Act (IDEA) and approximately 2,648 additional students through 504 plans authorized by Section 504 of the Rehabilitation Act. IDEA requires the development of individualized education programs to serve students eligible for services, and Section 504 requires the development of plans to ensure that students with disabilities receive accommodations and other services to enable them to access education. These plans require individually designed instruction, modifications, accommodations, and supports to meet the needs of the students (Supports and Services). Failure to provide the necessary Supports and Services required by an individualized education program or 504 plan to students with disabilities would necessitate the provision of “compensatory services” to redress any negative consequences of the denial. Payment for these compensatory services would come from either the general fund or the District’s Maintenance of Effort funding which could have significant financial consequences on the District once the strike ends and the District resumes the provision of Services and Supports to students with disabilities. In the past, payment of compensatory services included private tutoring, summer instructional activities, and even private educational facilities to meet a student’s individual educational needs. Additionally, many students with individualized education programs or 504 plans receive social and emotional supports, occupational therapy, speech therapy, nursing supports, physical therapy, and other related services. Disrupting the continuity of those services greatly impacts student progress and can expose students to significant regression in areas of their lives (i.e. impacts on basic life skills).
- C. **English Language Learner Students:** Our English Language Learners rely on our bilingual teachers not only for instruction and for the commitments

made within our Consent Decree but also as the gateway to access and communication in our buildings. Absent these qualified instructors, our English Language Learners may be isolated and denied the opportunity to fully participate in many substitute activities that will be provided during a strike. In the event of school closure or staffing through guest teachers, DPS may be unable to provide the full services and supports required by the Consent Decree. For example, the Consent Decree requires 45 minutes of English Language Development (ELD) per day and Spanish instruction. If not provided, the district may be legally required to increase summer school opportunities to catch students up on English acquisition. There would be additional expenses required to expand those programs during the summer.

- D. **Potential Denial of H1-B Visas.** DPS recruits educators from other countries in order to meet the high demand for bilingual teachers. Based on federal rules, the district's 14 pending H1-B visas may be denied by the U.S. Citizenship and Immigration Service (USCIS) due to a strike.
- E. **Students Enrolled in Affective-Needs/Autism Center Programs:** These students rely upon DPS social workers and school psychologists to provide consistent, reliable mental health services. For these students, the immediate and abrupt interference with services threatens their social-emotional well-being and may also lead to dysregulation in the home where families lack sufficient resources to address their students' individual needs.
- F. **Students Receiving Mental Health Services:** DPS mental health providers often provide significant expertise to evaluate suicide risks, threat assessments, and develop Individual Supervision and Management Plans (ISMPs) (e.g. safety plans for juveniles on pretrial release or probation). School-based staff are often the first line of defense in these areas and offer critical mental health services to address significant threats that impact the student and the community. Both the identification of students who could benefit from these services and the provision of services to students already identified as needing these services will be drastically affected by the strike.
- G. **Students Receiving Medical Care Services:** DPS provides nursing services to students in our moderate/severe center-based programs as well as students with chronic health issues. Many of the services provided to these students are unavailable in the home and a strike may force those students to go without critical care.
- H. **Students Dependent on Schools for Food and Nutrition:** Many DPS students rely on the free breakfast and free or reduced price meals available each day in their school; for some of our students, these are the only meals they may have access to throughout the day. A strike which could result in

closing DPS schools or otherwise disrupting Food and Nutrition services will deny kids these vital opportunities.

- I. **Students Dependent on Schools for Shelter from the Elements:** We are in the coldest season of the year, and families who are experiencing homelessness or unable to afford heat will rely on our schools as a place of warmth for their students during these cold January and February days.
- J. **Gifted and Talented Students:** Currently, DPS serves approximately 7,960 gifted and talented students as well as an additional approximately 3,113 magnet eligible/talent development students (collectively GT Students). GT Students receive services from the District through an Advanced Learning Plan (ALP). ALPs require certain Supports and Services to meet GT students' specific educational needs, very similar to students with disabilities. If DPS fails to meet those needs through a protracted strike, DPS would be forced to re-evaluate those students to ensure it is meeting Colorado's Exceptional Children's Educational Act (ECEA) requirements. Under ECEA, DPS may be obligated to provide similar compensatory services and/or may lose its funding under ECEA for failing to provide services required by an ALP.
- K. **Student Athletes Seeking Scholarships:** National Signing Day for our Student Athletes is February 6th. Many of our teachers are also coaches; students who have worked extremely hard for the last four years or more to move on to college-level athletic opportunities will not have their coaches and mentors available to support them on this incredibly special occasion.
- L. **Students Taking Concurrent College Classes:** High school students taking concurrent enrollment classes or receiving college credit will have opportunities compromised if we are unable to locate a substitute adjunct teacher. Filling concurrent enrollment positions is already a tremendous challenge, and the likelihood that we would be able to find qualified substitutes is low, leaving these students who may be relying on the college savings at a loss.
- M. **Financial Hardship on Families:** Families of our youngest students rely on school to not only be a place for great instruction but also safety and supervision. Should our elementary schools in particular not be able to stay open, not all families will have a safe space for their students while they are at work. Should these families need to then take personal, sick, or vacation time to care for their children, there will be a financial impact on families, leading to severe consequences not unlike those we are seeing in the current government furlough.
- N. **Absence of Childcare for Families:** Parents may feel compelled to keep their students home; families of younger children are not likely to be able to skip work or arrange childcare for multiple days, and so older children may need to

take on the caretaking and supervision of younger siblings. This is not ideal for either the younger or older child, both of whom need to be in school.

- O. **Fewer Resources for New American Families:** Many of our families in our newcomer centers, which are specially designed centers to support students and families who have emigrated from other countries, do not speak English and have experienced interrupted access to education. They deeply rely on the language and expertise of our newcomer center teachers and support staff. If these teachers are not available, these vulnerable families will be less likely to successfully navigate community services, including housing and healthcare, and their students will be unable to effectively access the educational opportunities in our buildings.

13. A strike will also substantially affect the public interest because a strike will deeply affect the culture of our schools long after the strike is over. Our superintendent, one of our current Board members, and other current DPS leaders were teachers with DPS after the strike in 1994. They recall the scars that it left on our schools: high teacher and school leader turnover, challenges with recruiting, and high levels of tension in buildings between those who participated in the strike and those who crossed the picket lines. As we have heard from our teachers in negotiations, a strong and supportive school culture is critical to teacher retention. The impact on our students resulting from the tension and division between staff in buildings will be long lasting. A strike is an extremely serious measure that should be undertaken only if the parties have worked in good faith to take advantage of every opportunity and every resource available to them in order to reach agreement.

14. A strike also affects our ability to hire teachers for the 2019-20 school year. Hiring season is currently underway and we have already seen a decline in our recruitment numbers during the final stages of negotiations that led to this strike vote. DPS anticipates that the negative impact on our ability to recruit strong teachers could last for years after a strike occurs.

15. A strike will also substantially affect the public interest by negatively impacting the community as a whole. Such negative impacts, both direct and indirect, are difficult to anticipate in their entirety. However, the most significant community impact is that, if DPS were forced to close schools, there will be seventy thousand students that may not have supervision or structure during those days. Unstructured time absent supervision will increase the likelihood that students make choices that are damaging to both their own and the community's health, safety, and future well-being.

16. Another threat to the public interest is the potential for all DPS teachers and SSPs to see a decrease in their compensation, even if they choose not to strike. ProComp mill levy funds collected from tax payers reside in a trust, which is governed by a Trust Agreement. According to legal counsel for the ProComp Trust Board, that agreement does not allow disbursement of funds to pay for ProComp incentives unless it is pursuant to an agreement. This could immediately affect all teachers/SSPs, but particularly educators who are receiving monthly payments for the hard-to-serve, hard-to-staff, and Title I incentives under the ProComp Agreement. Even more significant, the failure to come to agreement quickly could threaten the ability of DPS to collect the ProComp

mill levy. The language of the mill levy states that the mill levy shall terminate when ProComp terminates. The loss of this \$33 million per year from the 2005 ProComp mill levy would significantly impact what DPS could pay its teachers and SSPs. If the state accepts jurisdiction and the status quo remains in place, there is less risk that the ProComp trust will be barred from making payments from the trust and less risk that DPS could lose access to the 2005 ProComp mill levy funding.

17. The Department of Labor has previously intervened in disputes between DPS and its union based on the impact to the public interest. DCTA previously filed notices to strike in 1991 and again in 1994. Then-Executive Director John Dolan specifically determined in both cases that a teachers' strike affected the public interest.

18. In his 1991 Order, the Executive Director determined that "public education is a public trust and the state a primary provider of this trust." Ex. A. He further determined that "the State of Colorado has a significant financial investment in the Denver schools in that it will provide in excess of \$65 million in 1991 to help pay for the education of Denver Children." *Id.* Accordingly, he found that the "dispute between DPS and DCTA affects the public interest" and took jurisdiction of the dispute. *Id.*

19. In accordance with their statutory authority to intervene in matters that affect public interest, then-Executive Director Dolan and then-Governor Roy Romer conducted an investigation and held hearings during which they heard testimony and received exhibits from witnesses for DCTA, DPS, parents, the community and experts on educational issues. *Id.* They subsequently issued a final order regarding the disputed issues and, through the exercise of jurisdictional powers other than mediation, were successful in helping the parties to reach an agreement. *Id.*

20. In response to DCTA's 1994 notice of strike, Executive Director Dolan again determined that the dispute between DPS and DCTA affected the public interest, again noting that "public education is a public trust" for which the state is a "primary provider." Ex. B. He further found that the State had a "significant financial investment in the Denver schools." *Id.* Executive Director Dolan subsequently assumed jurisdiction of the dispute. *Id.*

21. Public education remains a matter of public interest, particularly in the largest district in the state. It is, as Director Dolan determined, a public trust for which the state is a primary provider and in which the state has a very significant financial investment. In fact, the State will provide in excess of a billion dollars to help pay for the education of Denver children in 2019-20. Accordingly, the Director should take jurisdiction of this dispute and exhaust every avenue available in order to protect the public interest in educating tens of thousands of Denver children.

22. Because the current employment dispute substantially implicates the public interest, the Director can and should immediately exercise jurisdiction over the dispute before January 28.

23. DCTA does not dispute that a teachers' strike affects public interest. Rather, DCTA requests that the Director decline jurisdiction because it asserts that the Director's intervention

would be “futile.” DCTA asserts that the Director can “employ strategies including voluntary arbitration, mediation, or conciliation of the dispute” but that these measures would be “futile” because the parties have already “engaged in a combination of negotiation and mediation for approximately 14 months.” DPS respectfully disagrees with the assertion that the parties have utilized all available tools to reach agreement.

24. Once the Director assumes jurisdiction, the Director can implement several strategies to resolve an employment dispute. As DCTA points out, some of those strategies involve voluntary arbitration, mediation, and conciliation. However, contrary to DCTA’s implication, those are not the only strategies that may be employed. The Director can also directly intervene with his own fact-finding process and/or require the parties to participate in a “final hearing” regarding the dispute and enter a “final award” regarding the disputed issue. C.R.S. § 8-1-125(1); *Martin v. Montezuma-Cortez Sch. Dist. Re-1*, 841 P2d 237, 249 (Colo. 1992).

25. At this point, the parties have only engaged in nonbinding mediation, which has occurred in the public in front of large audiences and news crews filming all conversations. Such a setting does not encourage genuine conversations on hard questions that involve tradeoffs and highly complex financial modeling. The parties have not tried confidential mediation, arbitration, or fact-finding. Thus, contrary to DCTA’s implication, the parties have not exhausted all the interventions that can be employed by the Director.

26. It is also important to note that mediation has been helpful, but only just began in November. With the support of the mediator, DPS and DCTA were able to come to agreement on several ProComp issues. As DCTA notes, the parties have made substantial progress in negotiating ProComp issues such as “how to incentivize ‘hard-to-staff’ positions.” Implementing additional interventions, including fact finding with the Director, arbitration, and/or confidential mediation would likely not be futile. Rather, it would further the negotiations process and enable the parties to reach agreement as it did during the 1991 dispute. DPS has made significant movement in regards to the ProComp issues and has repeatedly expressed its willingness to continue to negotiate with DCTA regarding how those voter-approved ProComp funds will be distributed pursuant to the ProComp Agreement. The Director’s intervention will only serve to further the negotiations process.

27. Finally, it must be noted that Susana Cordova is in day 12 in her role as Superintendent. From day one, she was committed to participating fully in negotiations and putting forward every effort to reach agreement. She engaged immediately in the process to make deep cuts to central office spending and personnel. As a former DPS teacher, DCTA member, and child of a union steward, she feels deep empathy for the concerns of our teachers. She is committed to reaching agreement with the teachers union, but needs additional time in her role and the support of the state to help close the gaps.

28. Given the very substantial public interest in ensuring continuing education for more than seventy thousand Denver children, fulfilling the needs of families and parents of those children related to education, and protecting the \$33 million in funding received from the ProComp mill levy, DPS and DCTA should exhaust every available avenue to resolve this dispute. This includes seeking assistance from the Director.

WHEREFORE, the Board of Education and the Superintendent of Denver Public Schools, through their undersigned counsel and lead negotiator, respectfully request that the Director assume jurisdiction of this employment dispute prior to January 28.

Respectfully submitted this 23rd day of January, 2019

A handwritten signature in black ink, appearing to read "Michelle M. Berge", with a long horizontal flourish extending to the right.

Michelle M. Berge
General Counsel
Denver Public Schools

APPENDIX A: DETAILED HISTORY OF NEGOTIATIONS

1. DPS and DCTA renegotiated the Master Agreement in 2017 and signed a five-year deal in the early hours of the morning on September 1, 2017. That deal included financial terms, which covered new investments in teacher compensation for a three-year term (the “[Financial Agreement](#)”). DPS committed to invest an estimated \$45 million new dollars to fund this financial agreement, which guaranteed pay increases for the 2017-18, 2018-19, and 2019-20 school years (total average 15% pay increase over the three years). Most of those dollars have already been invested in the pay increases for 2017-18 and 2018-19; some of them remain earmarked for 2019-20 pay increases. Regardless of what occurs with the ProComp negotiations, DPS teachers/SSPs are guaranteed an increase for the 2019-20 school year, in accordance with the financial terms of the Master Agreement.

2. After DPS and DCTA finished the Master Agreement and Financial Agreement in September 2017, they started interest-based bargaining with respect to the ProComp Agreement. They utilized the support of Kayla Mack from Federal Mediation and Conciliation Services. They began building off the work that was completed in an extensive Visioning Group Task Force that included teachers, school leaders, bargaining team members, and DPS and DCTA leadership. In order to provide more time to complete interest-based bargaining, they extended the expiration date to March 14, 2018.

3. In February 2018, DCTA provided DPS with its first proposal regarding the ProComp Agreement. The proposal included a near-elimination of ProComp incentives for high-poverty schools and proposed that the money be reinvested in a new step and lane schedule for all DCTA members with twelve salary lanes. On a step and lane schedule, steps are the increments on the y axis of a schedule, generally associated with years of experience. Lanes are the columns on the x axis of the schedule, generally associated with advanced degrees and credit accumulation. When DCTA proposed the schedule, DPS spoke with DCTA’s financial modeler and discovered that DCTA’s model was missing approximately 400 educators. These educators are still on the district’s traditional salary schedule rather than ProComp because they had never opted in. However, since both DCTA and DPS were proposing that traditional salary teachers would be included on the new system, they had to be included in order to capture the total compensation cost for the DCTA bargaining unit. This made the price tag of the first proposal significantly higher than DCTA originally intended. DCTA’s February 2018 proposal cost more than \$30 million new dollars with this calculation error, and DCTA did not adjust their proposal afterward in order to cover that additional cost. This \$30+ million dollars was on top of the estimated \$45 million new dollars that were required to meet the pay increase obligations of the financial terms of the Master Agreement.

4. On March 14, 2018, DPS provided DCTA with a proposal that simplified the ProComp system by eliminating the requirement to complete Professional Development Units (PDUs), added a new way to grow base pay through multiple years of Distinguished evaluation ratings, and created the framework for a new salary schedule. Because DPS had been operating under the existing ProComp system for over ten years without a salary schedule, this proposal constituted a significant move forward in the negotiations.

5. The March 14, 2018 DPS proposal did not include any further financial investments in the ProComp system above the \$33 million that the ProComp mill levy provides annually and beyond what had been agreed to in the financial provisions of the Master Agreement. At that time, DPS was taking the position that the financial components of the Master Agreement would not be reopened (because both parties have to agree to re-open a contract), that those provisions covered all new investments in teacher compensation through 2020, and that the parties needed to work within that budget. Only six months had passed since the parties had signed the Master Agreement with the financial provisions. That agreement had been signed after over one hundred hours of negotiations, with the key financial provisions being worked out around 2am on September 1, 2017 after the agreement had already expired. DPS was hesitant to reopen the financial discussions when the ink of the agreement was barely dry and when the district and DCTA had agreed in contract that those discussions would not happen until 2020.

6. On March 14, 2018, DCTA gave DPS a revised proposal, which included the same near-elimination of high-poverty incentives and a ten-lane salary schedule. However, the price tag of the revised proposal was still more than \$30 million new dollars. In the ten months since they first submitted the revised proposal, as explained further below, DCTA has not made any significant changes to the cost of their proposal. Their best-and-final proposal would cost \$29.2 million new dollars to implement and would still require the near-elimination of the incentives for educators in high-poverty schools.

7. With such significant distance between the DPS and DCTA, including the question of whether the financial terms of the Master Agreement would be reopened and additional funding added, DCTA proposed extending the ProComp Agreement through January 18, 2019. DPS opposed such a long extension, believing that the district and DCTA could reach agreement sooner. DPS proposed an extension of approximately six weeks. DCTA refused, and the ProComp Agreement expired for 48 hours. DPS ultimately agreed to extend the ProComp Agreement through January 18, 2019 in order to continue negotiations.

8. DPS and DCTA subsequently met on May 16, 2018, June 18, 2018 (just the small working group on the financial model), June 21, 2018, and September 24, 2018. Large portions of the conversations during this time revolved around Amendment 73, a statewide ballot measure that would have significantly increased funding for Colorado school districts including DPS. On September 24, 2018, DPS proposed that, if Amendment 73 passed, DPS would reopen the financial components of the Master Agreement and add \$36 million new dollars into teacher compensation. DCTA responded by taking a caucus (a break where the parties meet separately) and then they returned to the table and declared impasse on the contract.

9. Impasse is declared when one party believes that further movement cannot be achieved and that the parties must engage a mediator in order to close the gaps and reach agreement before the expiration of the contract. Although DPS continued to believe that further movement was possible, DPS welcomed the support of a mediator and began working with DCTA to select a mediator. Before a mediator could be engaged, DCTA asked to schedule more negotiations sessions.

10. In response to DCTA's request, the district and DCTA subsequently met on October 29, 2018 and again on November 13, 2018 without the intervention of a mediator. At the October 29, 2018 session, DCTA provided the same salary schedule and incentive structure that the union had provided on March 14, 2018 with an additional request for \$50 million new dollars if Amendment 73 passed.

11. During the November 13, 2018 meeting, DPS again offered a transparent salary schedule. In addition, DPS proposed a \$3 million reduction of certain non-base incentives and reinvestment of that money into the base salary for teachers, a move that DCTA had been requesting. DCTA provided DPS with the same salary schedule it provided on March 14, 2018 and again on October 29, 2018 – only with the additional \$50 million request removed because Amendment 73 was not approved by voters. The cost of DCTA's proposal remained above \$30 million new dollars on top of the estimated \$45 million that DPS had agreed to fund in the financial components of the Master Agreement.

12. The parties agreed to enter into mediation and jointly selected Jon Numair as the mediator. Mr. Numair's first mediation session with the district and DCTA was on November 27, 2018. DPS and DCTA met with Mr. Numair twice more on December 4, 2018 and December 12, 2018.

13. At the December 12, 2018 meeting, DPS presented a new proposal with a highly significant change. In order to encourage continued negotiations and demonstrate a good faith willingness to reach agreement, DPS proposed to re-open the financial components of the Master Agreement and add \$11 million new dollars into teacher compensation if DPS and DCTA could come to an agreement on the ProComp issues. The \$11 million would be funded by \$7 million of central administration budget cuts and \$4 million from the Governor Hickenlooper's then-proposed buy-down of the budget stabilization factor. This new money would be in addition to the \$45 million DPS previously agreed to in the Master Agreement and the \$3 million dollars DPS agreed to shift from non-base incentives into base pay. Additionally, DPS proposed a structural change to its transparent salary schedule in order to respond to DCTA's request for more investment in DPS' veteran teachers. DPS added a lane change (a \$3,500 base-pay increase) for educators that spent fifteen continuous years in DPS classrooms (the "Longevity Lane Change"). The proposal also agreed to DCTA's request to eliminate any lane changes connected to teachers who received multiple years of "distinguished" evaluation ratings. DPS also proposed a 25% increase to tuition reimbursement, another change that was responsive to what DCTA was requesting. Last, DPS proposed a simplified ProComp incentive structure for the District's high-poverty schools by consolidating three incentives into two tiers of incentives, responding to DCTA's request for fewer incentives. In response, DCTA made no significant movement in their proposal. DCTA again proposed the same salary schedule it proposed in March 2018 – same number of lanes, same values in every cell of the salary schedule. DCTA also added a request for longevity payments for educators who have more than 20 years in DPS to their proposal, actually increasing the overall cost of the proposal.

14. DPS and DCTA met again on January 8, 2019 with the mediator. At that meeting, DPS continued to improve upon its previous proposal by bringing more money to the schedule and making structural changes. DPS proposed \$11 million of recurring dollars to increase base salaries

and \$6 million of one-time funds to transition educators to the new salary schedule. This took the starting salary for educators from \$42,789 to \$45,500. With the addition of one incentive of \$2,500, which 72% of our teachers receive, this would be the highest starting salary in the region (even assuming all districts increase their schedules by 3% based on this year's anticipated Consumer Price Index (CPI). In response to concerns raised by DCTA around incentivizing educators to teach concurrent enrollment classes, DPS added the potential for a \$3,500 salary increase for educators who became qualified to teach concurrent enrollment. DPS also made the Longevity Lane Change easier to access. Instead of 15 years in the classroom, educators could get a lane change after ten years in DPS classrooms. DPS believes that this will function as a critical recruitment and retention tool. Last, in response to DCTA's request for more lanes, DPS added a sixth lane to the salary schedule.

15. That same day, DCTA presented two changes to their March 2018 salary schedule; however, the numbers in all the cells (starting salary all the way up to highest salary) did not change. They eliminated one lane (the Masters plus 45 credits or "MA+45") and added a "hold harmless" provision for the current employees who have a higher base salary today than what DCTA was proposing on their salary schedule. Their hold harmless would allow some current employees to be placed on the salary schedule at a higher base pay than what future employees would receive. Significantly, the addition of this hold harmless provision actually made DCTA's proposal more, rather than less, expensive. That same day, DCTA filed their Notice with the Department of Labor and Employment stating their intent to commence a strike on January 28, 2019.

16. On January 11, DPS once again improved upon its previous offer by bringing more money to the table. Based on Governor Polis' public statements about funding full-time kindergarten, DPS believed that it could free up even more money for teacher pay by reallocating funds that it is presently using to offset the costs of full-day kindergarten. DPS offered a total of \$17 million in new recurring dollars and \$6 million to fund costs to transition educators to the new salary schedule. Again, this is in addition to the \$45 million DPS already committed to add to educator salaries under the Master Agreement and the \$3 million DPS agreed to shift from non-base incentives to base pay. With this investment, DPS now has a path to a \$100,000 teacher, which DCTA has repeatedly indicated is a primary concern for teachers. Under DPS' proposal, **all DPS teachers would on average receive a 10 percent base salary increase in 2019-20**. DPS also responded to DCTA's request for additional avenues to recognize educational credits by adding an option for a lane change based on completing 30 educational credits after a Master's Degree. DPS negotiators were very clear during this session that they were putting their cards on the table regarding the amount of money available. However, the district felt that it was important to name the full money available early so that DPS and DCTA would have sufficient time to discuss how that pot of dollars be allocated in the system. The District also named that there was significant risk for the District in this proposal because the governor's budget was in the early stages of being proposed.

17. On January 15, DPS awaited a counter proposal from DCTA but no counter proposal was delivered. That morning, DCTA said first that they appreciated the money that DPS had put on the table. However, they were standing on their last proposal and the union delivered an [ultimatum](#): concede to the union's proposed pay structure, which means a salary schedule that

has lanes associated with advanced degrees and the accumulation of credit hours. That structure also would require DPS to cut \$8 million out of the district's commitment to incentives for educators in high-poverty schools and spread it like peanut butter to all teachers across the district. DPS understood from these conversations that the parties were close on money and that the number one key issue for DCTA was a salary schedule structure that looked more similar to DCTA's structure. DPS went to work that afternoon to see if they could come up with a structure that looked like DCTA's structure, but also honored the commitment to the ProComp mill levy language and included the incentives for high-poverty schools. Due to the complexity of the financial modeling needed to build a sustainable system to spend \$450 million per years on over 5,000 educators, this work took multiple days to complete.

18. On January 17, DCTA presented a counter proposal that they said reduced their position by \$1.8 million. After a thorough review of the counter proposal, DPS calculated that the reduction in cost was actually much larger (approximately \$8.5 million). In recognition of the fact that this was likely not intentional, the DPS team alerted DCTA privately. DCTA acknowledged their error, rescinded their counter proposal and returned later in the afternoon with a second version that included a reduction in their position of just over \$2 million. They removed one lane from their proposed salary schedule. DPS also brought forth two proposals on January 17. DPS proposed increasing our current tuition and student loan reimbursement by 50%, up to \$6,000 (\$1,000 a year) to support our educators who pursue additional education. DPS also proposed that teachers/SSPs who have "banked" Professional Development Units will be paid out at \$850 per PDU, with a maximum of two per year for \$1,700. Under the current system, educators must complete one PDU per year in order to receive an \$833 base pay increase. If they complete more than one PDU per year, the extra PDUs are "banked" for future years. Under DPS' current proposal, educators no longer have to complete a PDU to increase base pay and we are offering a cash payout for all banked PDUs.

19. On January 18, DPS shared that they had their own modeling error, which meant that their prior proposal was \$3.5 million more expensive than the district previously thought. Rather than rescind their proposal, DPS committed to make the central administration budget cuts deeper, now agreeing to fund \$10.5 million of the proposal through reduction of central administration personnel and other efficiencies. All in, the DPS proposal now invests \$20.5 million in recurring dollars and \$6 million one-time funds that would go toward cash payouts for 2019-20 and the costs of transitioning to a new transparent salary schedule system.

20. At about 4 pm on January 18, DPS responded to what DCTA had indicated was the union's top priority: a structure that looked more like theirs with lanes based on advanced degrees and attainment of credit hours. DPS presented a new proposal that included lanes for: bachelor's, bachelor's plus 20 credits, masters, masters plus 30 credits, and a PhD. At the same time, the proposal continued to honor the ProComp mill levy language and the district's commitment to incentives for high-poverty schools. It also retained a piece that was not included in DCTA's proposal, but which teachers had responded with enthusiasm – a lane change to honor the service of teachers who stay in DPS classrooms for ten years, which requires no investment in further post-secondary credits by our educators. In response to this proposal on January 18, in which DPS thought they were responding to the top priority, DCTA negotiators and a crowd of almost 100 people responded with chants and speeches expressing anger, frustration, and tears over their belief

that DPS was not providing a living wage. DPS negotiators felt shocked and disappointed that the goal post had changed again and were concerned that the conversations felt more like a planned public protest than a conversation between two groups trying to solve complex problems. However, DPS went back to work on ways to pressure test and better express their belief that the DPS proposal was both generous and highly competitive with other Colorado districts. See linked [Lifetime Earnings](#) under DPS proposal for summary.

21. At about 8:45 p.m. on January 18, DCTA presented a counter that they labeled their best-and-final offer. It did not include any changes to their salary schedule. However, they increased their proposed amount for the incentive for educators in Title I schools (schools with 60% FRL or greater) from \$1,500 to \$1,750 (as compared to the DPS proposal, which offers a \$2,500 incentive for Title I). DCTA's proposal continued to eliminate the additional \$2,500 incentive for the district's 30 high-priority schools, which have extremely high levels of poverty and other significant challenges. In order to fund the change for the Title I incentive, DCTA decreased the amount of tuition reimbursement available to educators. At the same time, DCTA added some new provisions around what qualifies for credits to move lanes and where specialized service providers (like psychologists and school nurses) would be placed on the salary schedule. Based on DPS' quick analysis of the proposal, DCTA was actually increasing the cost of their proposal by at least half a million dollars based on the placement of SSPs and likely much more because of the significantly expanded definition of qualifying credits that could be used for a lane change.

22. DPS returned to the table that night with a counterproposal in order to continue moving the conversations forward before midnight. DPS agreed to DCTA's request to change the expiration date of the new contract so that the ProComp Agreement and the Master Agreement would now expire at the same time. DPS also proposed paying \$3 million dollars toward cash payouts for the 1000+ educators who had banked Professional Development Units or PDUs. Rather than pay out two per year at \$850 per PDU that DPS has previously proposed, DPS now offers to pay out all banked PDUs on November 7, 2019 at 200% of their value or \$1,700. This would mean an additional \$3 million in educators' pockets for the 2019-20 school year. The payout would be funded from the \$6 million in transition costs that DPS previously offered to fund through the ProComp trust fund balance.

23. In response to DPS' proposal to add \$3 million of cash payouts for educators in the 2019-20 school year, DCTA informed DPS that they would start their strike voting the next day. More than an hour remained on the clock before the contract expired.

24. DCTA conducted their strike vote on January 19 and January 22 and at least two-thirds of the DCTA members who voted indicated that they wanted to proceed with a strike.

O R D E R

- WHEREAS, under Colorado Revised Statutes section 8-1-125, John J. Donlon, the executive director of the Department of Labor and Employment, took jurisdiction of a dispute between the Denver Public Schools (DPS) and the Denver Classroom Teachers Association (DCTA) on January 5, 1991;
- WHEREAS, public education is a public trust and the state is a primary provider of this trust;
- WHEREAS, the State of Colorado has a significant financial investment in the Denver schools in that it will provide in excess of \$65 million in 1991 to help pay for the education of Denver children;
- WHEREAS, the dispute between DPS and DCTA affects the public interest;
- WHEREAS, Governor Roy Romer and Director Donlon conducted hearings in the contract dispute between DPS and DCTA;
- WHEREAS, the investigation and hearings in this dispute were conducted pursuant to the authority and under the procedures set forth in Colorado Revised Statutes section 8-1-101 et seq.;
- WHEREAS, Governor Romer and Director Donlon heard testimony and received exhibits from witnesses for DPS and DCTA, parents, the community, and experts on educational issues;
- WHEREAS, the evidence presented at the hearings encompassed the issues of collaborative decision-making, scheduling of the school day and week, teacher assignments and responsibilities, teacher appraisal, teacher transfers, salaries and benefits, and other issues in dispute between the parties;


WHEREAS, after receiving and considering all the evidence, Governor Romer and Director Donlon have ruled on all the issues in dispute between the parties; and

WHEREAS, the rulings of Governor Romer and Director Donlon are embodied in the attached contract for DPS and the DCTA for the term January 1, 1991 through August 31, 1994;


NOW, THEREFORE, Governor Roy Romer and Executive Director John J. Donlon, of the Colorado Department of Labor and Employment, pursuant to Colorado Revised Statutes section 8-1-125, DO HEREBY ORDER:

The contract attached hereto shall govern wages, hours, and conditions of employment between the Denver Public Schools and the Denver Classroom Teachers Association and shall constitute the contract between the Denver Public Schools and the Denver Classroom Teachers Association for the term January 1, 1991 through August 31, 1994.

Dated this 27th day of March, 1991.



Roy Romer
Governor



John J. Donlon
Executive Director
Colorado Department of
Labor and Employment

ORDER

WHEREAS, under Colorado Revised Statutes section 8-1-125, John J. Donlon, the executive director of the Department of Labor and Employment, took jurisdiction of a dispute between the Denver Public Schools (DPS) and the Denver Classroom Teachers Association (DCTA) on September 23, 1994;

WHEREAS, public education is a public trust and the state a primary provider of this trust;

WHEREAS, the State of Colorado has a significant financial investment in the Denver schools in that it supports the education of Denver children;

WHEREAS, the dispute between DPS and DCTA affects the public interest;

WHEREAS, the investigation and hearings in this dispute were conducted pursuant to the authority and under the procedures set forth in Colorado Revised Statutes section 8-1-101 et seq.;

WHEREAS, Director Donlon heard testimony and received exhibits from DPS and DCTA;

WHEREAS, the evidence presented encompassed the issues in dispute pertaining to collaborative decision-making, scheduling of the school day and week, rules, salaries and benefits, and other issues in dispute between the parties;

WHEREAS, after receiving and considering all the evidence, Director Donlon has ruled on all the issues in dispute between the parties; and

WHEREAS, the rulings of Director Donlon are embodied in the attached contract for DPS and the DCTA for the term September 1, 1994 through August 31, 1996;

NOW, THEREFORE, Executive Director John J. Donlon, of the Colorado Department of Labor and Employment, pursuant to Colorado Revised Statutes section 8-1-125, DO HEREBY ORDER:

The contract attached hereto shall govern wages, hours, and conditions of employment between the Denver Public Schools and the Denver Classroom Teachers Association and shall constitute the agreement between the Denver Public Schools and the Denver Classroom Teachers Association for the term September 1, 1994 through August 31, 1996.

Dated this 5th day of October, 1994.



John J. Donlon
Executive Director
Colorado Department of Labor and Employment

Exhibit B