

**GERMANTOWN SCHOOL DISTRICT
NOTICE OF BOARD OF EDUCATION MEETING
MacArthur Elementary School – Library
W154 N11492 Fond du Lac Ave.
Germantown, WI 53022**

**Monday, January 23, 2012
7:00 p.m.**

AGENDA

- 7:00 I. Meeting Called to Order and Pledge of Allegiance
A. Official Meeting Notification
B. Roll Call
- 7:00 II. Citizen Comments (15 Minutes):
Community Members are invited to share their questions, comments, or concerns with the School Board. When speaking, citizens should state their name for the record. The presentation time frame shall be determined by the Board President once an indication of the number of people wishing to speak is made. Wisconsin law authorizes the school board to receive information from members of the public. Where possible, the Board will answer factual questions immediately or may provide a written response if information is not available. If a response would involve discussion of Board Policy or decisions which might be of interest to citizens not present at the meeting, the Board may place the item on a future meeting agenda. Comments which may be injurious to school district personnel or other individuals will not be allowed.
- 7:15 III. Approval of Agenda
- 7:15 IV. Approval of Minutes
A. January 9, 2012 Board of Education Meeting
B. January 9, 2012 Board of Education Closed Session
- 7:15 V. Consent Agenda
A. Donations
- 7:15 VI. Correspondence, Reports, and Information Items
A. MacArthur Elementary School Presentation
B. School Counseling Model
C. ESEA Update
- 7:40 VII. Finance Committee
A. Update on items discussed at January 23, 2012 Finance Committee meeting.
- 8:00 VIII. Old Business
A. Discussion with appropriate action regarding Long Term Care response from legal counsel.
- 8:30 IX. New Business
A. Discussion with appropriate action regarding approval of facility use request.
B. Discussion with appropriate action regarding approval of Open Enrollment seats for 2012-2013.
C. Discussion with appropriate action regarding 2012-2013 school calendar.
D. Discussion with appropriate action regarding Gifted and Talented program.
E. Discussion with appropriate action regarding retirements.

GERMANTOWN SCHOOL DISTRICT
GERMANTOWN, WISCONSIN 53022
MINUTES OF THE BOARD OF EDUCATION
January 9, 2012

1. The meeting of the Board of Education was called to order by Board President Lester Spies with the Pledge of Allegiance and a moment of silence in the District Office Board Room at 7:05 p.m. Superintendent Borden read the official meeting notification. Roll Call: Spies – Yes, Kline – Yes, Brust – Yes, Fischer – Yes, Bowe – Yes, Warnimont – absent (excused), Soderberg - absent (excused).
2. Citizen Comments: District resident Sarah Larson and Phil Datka, Jack Stever, and Dave Wyrwas, retired teaching staff from the Germantown School District, encouraged the Board to not drop long term care insurance benefits for retirees. Phil Datka also addressed the Board regarding the sculpture donated to the school district in memory of former teacher Patrick Cornell.
3. Motion by Kline, second by Brust to approve the agenda revised to place Item VIII.E. Donation of Artwork to immediately follow IV.A. Approval of Minutes. Motion carried (unanimous).
4. Motion by Brust, second by Kline to approve the December 12, 2011 Board of Education meeting minutes. Motion carried (Fischer and Bowe – abstain).
5. Motion by Bowe, second by Fischer to accept the donation of a *Warhawk in Flight* sculpture, thank the family of former Germantown teacher Patrick Cornell who made the donation in memory of Mr. Cornell and his 32 years of service in the district, and refer placement discussion to the Buildings and Grounds Committee. Motion carried (unanimous).
6. Student representative Sam Marchewka reported on the high school turnabout theme which will be *Dancing through the Decades* this year.
7. Library Media Specialist Barb Duenk and Principal Lynn Bub gave a presentation on student and staff use of iPads for instruction at Rockfield.
8. Director of Human Resources and Assistant Superintendent Cynthia Coley provided an enrollment update.
9. Director of Teaching and Learning Jennifer Ganske and Superintendent Borden provided an update on the Read-to-Lead initiative.
10. Dr. Borden and STEP Coordinator Jayne Borst reported on the district Senior Tax Exchange Program (STEP).
11. Recommendation from Personnel Committee to rescind the Letter of Termination eliminating long term care insurance benefits for all certified staff under individual teacher letters of employment.

Motion by Brust, second by Kline to amend the motion to proceed with rescinding the current Letter of Termination of long term care benefits on February 1, 2012 but issue another Letter of Termination effective March 1, 2012. Motion carried 3 – 2 (Kline – yes, Brust – yes, Fischer – yes, Spies – no, Bowe – no).

Vote on original motion to rescind the Letter of Termination eliminating long term care benefits for all certified staff under individual teacher letters of employment. Motion carried 3 – 2 (Kline – yes, Brust – yes, Fischer – yes, Spies – no, Bowe – no).

12. Recommendation from Personnel Committee to approve the draft teacher contract with the addition of specific lay-off language received from legal counsel. Motion carried 4 – 1 (Spies – no).
13. Board President Spies informed the Board that the calendar committee continues to work on the 2012-2013 school year calendar and has received a 25% survey response which has assisted in the development of the calendar.
14. Board President Spies informed the Board that the Personnel Committee tabled discussion of VIII.D. regarding benefits, schedule and compensation for non-AFSCME staff and VIII.E. regarding the process and procedures for certified staff lane changes. There were no further updates from the January 9, 2012 Personnel Committee meeting.
15. Motion by Brust, second by Fischer to approve the revised School Media Contract for advertising in the schools. Motion carried (unanimous).
16. Motion by Fischer, second by Kline to approve the sale of the Highway View property initially approved at the October 8, 2008 Annual Meeting, for \$100,000 pending legal counsel review of a formal offer to purchase. Motion carried (unanimous).
17. Motion by Bowe, second by Fischer to approve the final suggestions for the all-community survey with the additional modifications indicated by the Board at this time. Motion carried (unanimous).
18. Motion by Fischer, second by Brust to accept the resignation of Amy Stoecker subject to \$500 liquidation damages and thank her for her service in the district. Motion carried (unanimous).
19. Motion by Fischer, second by Brust to approve teacher Letters of Employment for Kimberly Whiting 1.0 FTE at \$11,236.81, Stephanie Pollpeter .50 FTE at \$9,763.13, Jennifer Kryscio 1.0 FTE at \$17,420.98, and Nicole Fain 1.0 FTE at \$23,672.02. Motion carried (unanimous).
20. Motion by Fischer, second by Brust to enter into closed session pursuant to Section 19.85(1)(c) and 19.85(1)(f). Roll call vote: Roll Call: Kline – yes, Bowe – yes, Fischer – yes, Brust – yes, Spies – yes. Motion carried (unanimous).
21. The Board of Education entered into closed session at 9:10 p.m. after a brief recess.

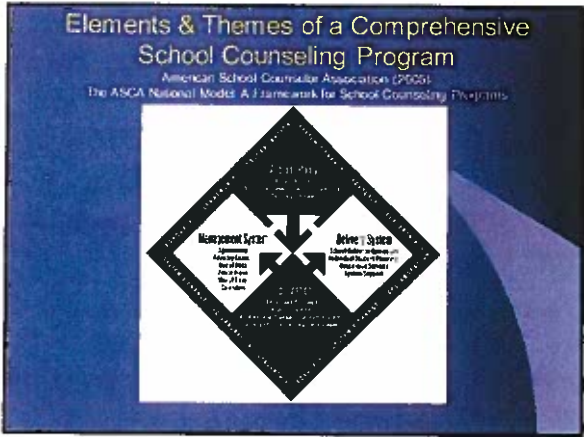
22. The Board of Education discussed administrator contract renewals and renewal of the district administrator contract.
23. The Board of Education returned to open session at 9:55 p.m.
24. Motion by Brust, second by Fischer to approve two-year administrator contract renewals for Cynthia Coley, Joel Farren, Jennifer Ganske, Marc Lehnerer, and Julie Thoreson. Motion carried (unanimous).
25. Motion by Brust, second by Bowe to approve a two-year contract renewal for the District Administrator with liquidation damages revised to \$2,000. Motion carried 4-0-1 (Kline – abstained).
26. Motion by Brust, second by Bowe to adjourn. Motion carried (unanimous).
27. Board President Spies declared the meeting adjourned at 9:56 p.m.

Jayne Borst
Recording Secretary

Kim Fischer
School Board Clerk

Comprehensive School Counseling Program

Germantown School District

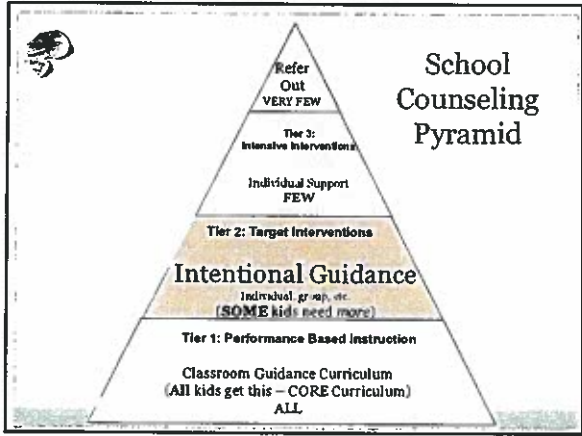


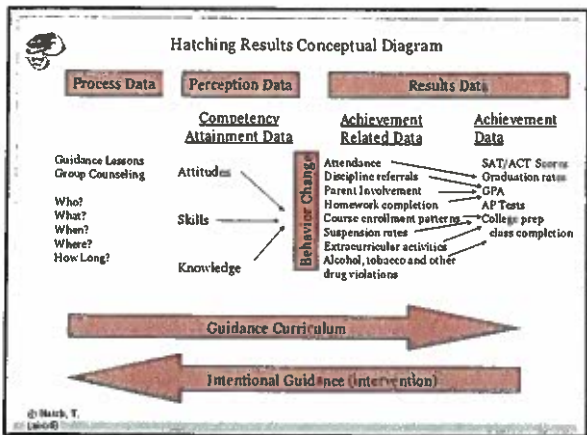
- ## 4 Components
- School Counseling Curriculum
 - Individual Student Planning
 - Responsive Services
 - System Support

Help Students to Acquire the Attitude, Skills, and Knowledge they need to achieve success in the areas of attendance, behavior, and academic achievement!

WE EXIST TO EFFECT CHANGE IN STUDENTS:

Acquire (ASK)	Improve
<ul style="list-style-type: none"> Attitude Skills Knowledge 	<ul style="list-style-type: none"> Attendance Behavior Academic Achievement





G-Talks

5th Grade-occurs March-April

8th Grade-occurs January-February

10th Grade-occurs February through March

Questions?

ESEA Title Allocations and Updates – January 23, 2012 School Board Meeting

Title funds are federal funds allocated to the state. The states allocate dollars to school districts.

Title I -- Improving the Academic Achievement of the Disadvantaged

Currently, MacArthur, Rockfield, and KMS have been identified for targeted assistance through Title I. The stated purpose of Title I is to "ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and State academic assessments." To that end, Wisconsin has developed a comprehensive set of standards to measure what students need to know and be able to do, and an assessment system to determine to what extent Wisconsin students have met these standards.

Appropriate use of funds for Title I Eligible Schools – to be used with Students identified for services:

- Purchased Services (IE CESA contracted services, employee travel between sites, other contracted services, printing/copy services, translation services, professional development, membership fees, parent involvement))
- Non Capital (IE instruction, equipment, instructional materials and supplies, instructional media, instructional software)
- Capital (IE instruction-computers, equipment, site rental)

Title II -- Preparing, Training, and Recruiting High Quality Teachers and Principals

Title II of the ESEA Reauthorization is dedicated to four basic parts: Teacher and Principal Training and Recruitment; Mathematics and Science Partnerships; Innovation for Teacher Quality; and Enhancing Education Through Technology.

Appropriate use of Funds for Title II dollars to increase student academic achievement through strategies and such:

- as improving teacher and principal quality
- increasing the number of highly qualified teachers in the classroom and highly qualified principals and assistant principals in schools, and
- holding local educational agencies and schools accountable for improvements in student academic achievement.
- Professional development (Wisconsin State Reading Association, Jim Wright Response to Intervention, Behavioral Interventions, Best Practices in Reading instruction/interventions, Best Practices in math instruction/interventions, AP College Board, Cardinal Stritch Mentoring program, Screening and Progress Monitoring for RTI, etc).

Title III – Language Instruction for Limited English Proficient and Immigrant Students

The purpose of Title III Part A is to help ensure that children and youth who are limited English proficient, Native American and/or immigrants, attain English language proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic standards that all children are expected to meet.

<http://www.dpi.wi.gov/esea/summaries.html>

- Funds are surrendered to CESA in order to participate in CESA consortium professional development and activities.

Program Plan Summary for Germantown (2058) 2011-2012

Total ESEA Funding Available By Title Area

I-A	I-C	I-D	II-A	II-D	III-A
\$117,137	\$0	\$0	\$57,278	\$0	\$6,523

Funds Available by Title Area *After Planned Actions/Strategies Entered*

I-A	I-C	I-D	II-A	II-D	III-A
\$4,426	NA	NA	\$74	NA	\$0

Actions/Strategies Planned to Achieve Goal	Perf Ind	ESEA Title Amounts Planned						Other Fund Source
		I-A	I-C	I-D	II-A	II-D	III-A	
Goal 1: All students proficient or better in reading and mathematics.								
Purchase books related to best practices in reading instruction and content area reading instruction for staff to conduct book studies through professional learning communities.	1.1	\$0	\$0	\$0	\$3,200	\$0	\$0	Local
Instructional Software will be provided to support Title I eligible students in reading instruction at identified schools.	1.1	\$2,605	\$0	\$0	\$0	\$0	\$0	Local
Contract professional development for teachers and paraprofessionals working with Title I identified students regarding the use of effective teaching strategies to improve student achievement in the area of reading and language arts.	1.1	\$1,000	\$0	\$0	\$3,700	\$0	\$0	Local
Instructional materials and supplies will be provided to support identified Title I eligible students.	1.1	\$1,000	\$0	\$0	\$0	\$0	\$0	Local
Contract with CESA #1 to administer Title I supplemental support at KMS.	1.1	\$5,408	\$0	\$0	\$0	\$0	\$0	Local
To improve student reading achievement, provide supplemental Title I instruction for KMS students identified most at-risk of failing to meet academic standards. Instruction is provided by highly qualified staff.	1.1	\$51,430	\$0	\$0	\$0	\$0	\$0	Local
Contract professional development for teachers and administrators surrounding the implementation of the Common Core State Standards for reading and language arts.	1.1	\$0	\$0	\$0	\$3,000	\$0	\$0	Local
Contract professional development for teachers and paraprofessionals regarding the use of data to inform instruction and assessment in reading.	1.1	\$0	\$0	\$0	\$1,000	\$0	\$0	Local
Provide professional development for staff related to response to intervention mandates in the area of reading.	1.1	\$0	\$0	\$0	\$3,000	\$0	\$0	Local
Contract with CESA #1 to administer Title I supplemental mathematics support at MacArthur and Rockfield Elementary Schools.	1.2	\$5,408	\$0	\$0	\$0	\$0	\$0	Local
Instructional material and supplies for mathematics will be provided to support Title I eligible students at identified schools.	1.2	\$1,000	\$0	\$0	\$0	\$0	\$0	Local
Contract professional development for teachers and	1.2	\$1,000	\$0	\$0	\$2,000	\$0	\$0	Local

paraprofessionals working with Title I identified students regarding the use of effective teaching strategies in math. Instruction provided by highly qualified staff.								
Contract professional development for teachers and administrators surrounding the implementation of the Common Core State Standards for mathematics.	1.2	\$0	\$0	\$0	\$3,000	\$0	\$0	Local
Instructional software will be provided to support instruction in mathematics for Title I eligible students in identified schools.	1.2	\$2,605	\$0	\$0	\$0	\$0	\$0	Local
Contract professional development for teachers and paraprofessionals regarding using data to inform instruction and assessment in mathematics.	1.2	\$0	\$0	\$0	\$1,000	\$0	\$0	Local
Provide professional development for staff related to response to intervention mandates in the area of mathematics.	1.2	\$0	\$0	\$0	\$3,000	\$0	\$0	Local
To improve student achievement, provide supplemental Title I instruction for students identified most at-risk of failing to meet academic standards in math at Rockfield and MacArthur schools. Instruction provided by highly qualified staff.	1.2	\$41,255	\$0	\$0	\$0	\$0	\$0	Local
No actions/strategies planned for this goal or indicator.	1.3	\$0	\$0	\$0	\$0	\$0	\$0	-
Goal 2: Reading, mathematics, and English language proficiency for ELL students.								
Funds from III-A were surrendered to CESA #1. We will participate in consortium activities that include teacher training, development of differentiated lessons, assessment development, and curriculum use.	2.1	\$0	\$0	\$0	\$0	\$0	\$6,523	Local
No actions/strategies planned for this goal or indicator.	2.2	\$0	\$0	\$0	\$0	\$0	\$0	-
No actions/strategies planned for this goal or indicator.	2.3	\$0	\$0	\$0	\$0	\$0	\$0	-
Goal 3: All students taught by highly qualified teachers.								
Contract with Cardinal Stritch and the South Eastern Wisconsin New Teacher Project (SEWNTP) in order become a member in the mentoring consortium	3.1	\$0	\$0	\$0	\$4,000	\$0	\$0	Local
Purchase instructional materials for mentors to use in mentor training.	3.1	\$0	\$0	\$0	\$1,000	\$0	\$0	Local
Contract with lead mentors to provide mentor training for new staff.	3.1	\$0	\$0	\$0	\$1,200	\$0	\$0	Local
Teachers will engage in professional development related to technology integration into the classroom in order to enhance teaching and learning for 21st century skills.	3.2	\$0	\$0	\$0	\$2,000	\$0	\$0	Local
Teachers will engage in professional development activities related to instructional pedagogy in all subject areas in order to maintain highly effective teachers.	3.2	\$0	\$0	\$0	\$8,600	\$0	\$0	Local
Contract staff development opportunities related to implementation of PI-34 and teacher standards, including the training of mentors, and providing ongoing support for new teachers and principals.	3.2	\$0	\$0	\$0	\$10,000	\$0	\$0	Local
Teachers will engage in professional development activities related to grading and assessment to support district academic	3.2	\$0	\$0	\$0	\$2,000	\$0	\$0	Local

learning targets identified for reading, language arts, and mathematics.								
Teachers in grades K-12 will receive training related to the adoption of science materials and the development of common units and assessments.	3.2	\$0	\$0	\$0	\$1,000	\$0	\$0	Local
Technical Education and Science teachers will update programs and incorporate best-practices related to 21st Century learning opportunities (i.e. PLTW, Inquiry Science, intervention software, etc.)	3.2	\$0	\$0	\$0	\$1,500	\$0	\$0	Local
Contract training for teachers in the use of technology to improve teaching and learning, and to aid in the accountability of student progress in the areas of reading, language arts, and mathematics.	3.2	\$0	\$0	\$0	\$2,500	\$0	\$0	Local
No actions/strategies planned for this goal or indicator.	3.3	\$0	\$0	\$0	\$0	\$0	\$0	-
Goal 4: All students will be educated in learning environments that are safe, drug free, and conducive to learning.								
No actions/strategies planned for this goal or indicator.	4.1	\$0	\$0	\$0	\$0	\$0	\$0	-
No actions/strategies planned for this goal or indicator.	4.2	\$0	\$0	\$0	\$0	\$0	\$0	-
Goal 5: All students will graduate from high school.								
No actions/strategies planned for this goal or indicator.	5.1	\$0	\$0	\$0	\$0	\$0	\$0	-
Continue to participate in the training, development, and implementation of the district's plan to decrease the percentage of students who drop out of school.	5.2	\$0	\$0	\$0	\$504	\$0	\$0	Local

Germantown School District – DRAFT for 2012-13 School Year Title I-A Documentation Calendar

Month	TAS
September	<ul style="list-style-type: none"> • Debarment and Assurances to School Board • Approved Debarment and Assurances to DPI • Parent Meeting – review parent involvement guidelines, explain services • Ascertain parent permission is accurate from June collection • Review Title I-A Documentation to keep on file and Title I-A Documentation Calendar. • Verify Staff schedules
October	<ul style="list-style-type: none"> • List of TAS Students sent to Teaching and Learning Office
November	<ul style="list-style-type: none"> • Comparability Report Due Nov 1 to DPI • Progress monitoring assessments
December	<ul style="list-style-type: none"> • Site Visits – Elementary
January	<ul style="list-style-type: none"> • Site visits – Middle School • Data review both elementary and middle school
February	<ul style="list-style-type: none"> • Progress monitoring assessments
March	
April	<ul style="list-style-type: none"> • Teacher Recommendations Filled Out • Title I Review and Evaluation
May	<ul style="list-style-type: none"> • End of year data collection – Progress monitoring, MAP testing, WKCE, Teacher recommendations, grades • Title I enrollment projections/Free and Reduced mailed to Parochial Schools and Due by May 15 – to determine next year's funding • Title I enrollment projections/Free and Reduced public schools – to determine next year's funding
June	<ul style="list-style-type: none"> • Student Selection Criteria for Entrance/Exit Reviewed • Student Selection for Entrance/Exit • Parent meeting to review Title I • Parent notification/permission • Begin scheduling students for Title I services • End of Year Report Due to DPI June 30
July	<ul style="list-style-type: none"> • Work on Program Plan
August	<ul style="list-style-type: none"> • Parochial School Meeting – Assurances/Debarments • Program Plan Due to DPI August 30 • Jump Start Week?



Buelow Vetter
Buikema Olson & Vliet, LLC

January 18, 2012

SENT VIA E-MAIL AND U.S. MAIL
PERSONAL AND CONFIDENTIAL

Dr. Susan Borden
District Administrator
Germantown School District
N104 W13840 Donges Bay Road
Germantown, WI 53022-4499

Re: Vesting of LTC Benefits for Various Groups of Employees/Retirees

Dear Dr. Borden,

You have asked for a legal opinion on the liability the Germantown School District ("District") may have should WEA Trust refuse to provide LTC coverage to certain "secondary" groups of District employees and retirees in light of the Board's decision to eliminate LTC coverage for certified teachers. The question has been raised because many administrators, retired administrators, retired certified teachers and professional staff currently receive LTC benefits, some pursuant to contracts with the District or contracts that were in place at the time the employees retired. The Board recently made the determination to eliminate the LTC benefits for currently employed certified teachers, and had intended to maintain LTC benefits for all remaining employees of the District. However, WEA Trust has informed the District that if the certified teachers do not receive the LTC benefits, it will not provide the LTC benefits to any of the District's other current employees or former employees.

BACKGROUND

The District is no longer a party to a collective bargaining agreement with its certified teachers. However, a number of teachers retired from the District during a time period where a collective bargaining agreement was in effect. These collective bargaining agreements previously in effect provided LTC benefits for certified teachers. Specifically, the 2010-11 collective bargaining agreement contained the following provision regarding LTC benefits:

"700.03 Long Term Care

The District shall pay 100% of the WEAIT Group Long Term Care Policy premium for each employee."

Significantly, there is no provision within the 2010-11 collective bargaining agreement that provides retirees with LTC benefits. It is our understanding that teachers have the choice to

maintain LTC benefits upon retirement directly through WEA Trust. The District does not provide any premium payments for these retirees.

The District currently provides its professional staff with LTC premium payments. However, the District does not have any contractual obligation requiring them to do so.

The District employs its administrative employees under individual employment contracts authorized by Wis. Stat. § 118.24. The Germantown standard administrator contract provides the following regarding LTC benefits:

“FRINGE BENEFITS

For the 2010-2012 contract years, the Board shall provide the fringe benefits listed in the attached Administrator Benefit Plan and Supplemental Agreement.”

The Administrator Benefit Plan attached to the administrator contract states:

“Long Term Care (LTC): LTC benefits will be provided for all administrators and their spouses with **full premiums paid by the District.**”

Further, in regards to retirement, the Administrator Benefit Plan states:

“Early Retirement: Effective for all administrators as described below.

A. Description and Eligibility

1. Early retirement benefits shall be available to administrators who are at least **fifty-seven (57) years of age but less than sixty-five (65) years**. The normal qualifications for early retirement are as follows:
 - a. The retiring administrator shall have served in the District for a **minimum of ten (10) years** in the capacity of an administrator in the District.
2. Nothing in these qualifications shall be interpreted as limiting the power of the Board to grant early retirement under usual circumstances.
3. “Age” for the purpose of this policy is defined as the administrator’s age as of July 1 of the school year in which retirement becomes effective.
4. If administrators apply for early retirement by February 15 of the year in which they desire to retire, they will be granted a one-time retirement payment of \$1,000 (for 10 years of District service), \$1,500 (for 15 years of District service), or \$2,000 (for 20 years of District service). Payment shall be made during the last month of service.

- E. Long Term Care (LTC): Benefits will be provided for all administrators and their spouses with full premiums paid by the District. Administrators qualifying for early retirement will have (LTC) premiums fully paid by the District until the administrator attains Medicare eligibility regardless of the age of his or her spouse. Upon attaining Medicare eligibility, the retiree will be allowed continued participating in the group (LTC) program at the retiree's expense."

The District currently maintains its LTC plan through WEA Trust (commonly referred to as WEAIT Group Long Term Care Policy). The Board has determined that it will eliminate the LTC plan for certified teachers as a cost-savings measure. However, WEA Trust has indicated that should the Board eliminate the coverage for the certified teachers, WEA Trust will terminate the policy and District employees (including retired teachers, retired administrators, current administrators and professional staff) will no longer be able to participate in the LTC plan.¹ The specific language of the LTC plan provides:²

"This policy will take effect on the date, and in accordance with the terms, specified on the agreement between the employer and us if the following requirements are met. If these requirements are not maintained, we may terminate this policy.

1. The employer and a bargaining agent affiliated with the Wisconsin Education Association Council **must have negotiated the coverage provided by this policy.**"

LEGAL ANALYSIS AND OPINION

As thoroughly addressed in our October 5, 2011 opinion letter regarding the vesting analysis of various retirement benefits for the District's teachers, the analysis of whether an individual is vested in certain benefits is extremely individualized. As previously discussed, the District must conduct this vesting analysis in order to determine whether certain employees and retired employees have previously vested in the right to obtain LTC benefits. We will briefly address these requirements again below, but based on the information provided it is likely that the following groups will have a strong argument that the LTC benefits are vested: retired administrators and current administrators meeting the retirement criteria. Thus, should the District eliminate LTC benefits for these groups at this time, it will likely face litigation. In addition, current administrators have a strong argument for a breach of contract should the District eliminate their LTC benefits during the term of their contract. Finally, while the District will have an argument that it is not the party taking the action to eliminate the LTC benefits

¹ It is our understanding that none of the District's current employees qualify for the paid up feature of the LTC policy with WEA Trust. Should the employees qualify, they may be eligible for conversion coverage. We would recommend that the District follow up with WEA Trust to determine if any employees qualify for conversion coverage.

² Please note that as of today's date, the District only had available the "WEA Trust Group Long Term Care Plan SAMPLE" brochure and had requested the official policy from WEA Trust. We based our analysis in this opinion letter off the sample provided to us by the District.

(because it is WEA Trust's choice), and thus it should not be liable for any vesting analysis or breach of contract, this argument has some significant risks.

1. Whether Retired Teachers and Professional Staff Are Vested in LTC Benefits.

It is not necessary to analyze the vesting requirements for teachers who retired under the expired collective bargaining agreement because the collective bargaining agreement did not provide for any District coverage of LTC benefits upon retirement. (See Section 1400.03 addressing Retiree Health Insurance only). Thus, the District has no obligation to maintain coverage of LTC benefits for retired teachers based on the specific language of the expired contract. However, this will not prevent a retired teacher from seeking such benefits through litigation based on information outside of the language of expired contract, i.e., verbal statements or past practice.

Similarly, it is not necessary to analyze the vesting requirements for professional staff who currently receive LTC premium payments paid by the District, as the District has no contractual obligation to provide these benefits. In addition, it is our understanding that the District does not have any policy that provides that such benefits will be paid to professional staff. However, similar to the retired teachers, a professional staff employee may still attempt to bring a claim based on statements made by the District that could indicate a vested right to the benefits. At this time, we are not aware of any such statements, but it is possible that an employee would make such an argument.

2. Whether Certain Administrators Are Vested in LTC Benefits.

As outlined in the background section above, the District provides full LTC premium payments to retired administrators who meet the eligibility requirements for retirement. Based on the language of the standard administrator contract alone, it is very likely that the individuals who have previously retired as a result of meeting the retirement criteria are vested in the LTC benefits provided by the District. However, in conducting a vesting analysis the court will likely look to actions by the parties when negotiating the language contained in the contract. Thus, if the parties had verbally agreed that the District had the right to modify the LTC benefits after the administrator retired, this would influence the vesting analysis.

The analysis for vesting for current administrators is more complicated. Specifically, pursuant to the standard administrator contract, in order to vest in the early retirement LTC benefits an administrator must meet two criteria: (1) be at least fifty-seven (57) years of age but less than sixty-five (65) years of age; and (2) have served in the District for a minimum of ten (10) years in the capacity of an administrator in the District. Thus, any administrator who meets both criteria, but has not retired, would have a potential argument for vested rights in retirement benefits, including the LTC premium payments outlined in the Administrator's Benefit Plan. Thus, in calculating the risk of litigation from individuals who have arguably vested in LTC benefits, the District must consider all retired administrators and all administrators who meet the criteria for retirement but have not yet retired.

3. Breach of Contract Claim by Current Administrators for LTC Benefits.

In addition, current administrators who have not met the eligibility criteria for retirement will have a claim for the LTC premium payments provided by the District based on their contracts with the District. Specifically, the standard administrator contract provides that the District is obligated to provide LTC benefits for all administrators and spouses with full premiums paid by the District. Thus, should WEA eliminate its LTC plan for the District and the District does not provide a similar LTC plan for its administrators under contract, it will be in breach of the administrator contract.

The standard administrator contract (unlike the expired language in the collective bargaining agreement) does not specify that the LTC plan must be maintained through WEA Trust. Therefore, the District may wish to consider the option of providing LTC benefits to administrators through a different carrier.

4. Whether the District Is Shielded From Liability Because WEA Trust Will Eliminate the LTC Plan.

Due to the risks associated with WEA Trust eliminating the LTC plan for those vested administrators and current administrators, the District requested an opinion regarding whether the District's liability is reduced because WEA Trust, not the District, has chosen to eliminate the LTC plan. The specific language in the District's sample policy with WEA Trust regarding the LTC plan provides that WEA Trust **may** eliminate the plan, and thus supports the District's argument that WEA Trust is not required to eliminate the plan simply because the District is not providing the benefits to the certified bargaining unit. In addition, the WEA Trust's requirement that the coverage provided by the LTC plan must have been negotiated by the District and a bargaining agent affiliated with the Wisconsin Education Association Council has been fulfilled, as it is our understanding that the District originally negotiated with the teachers' bargaining unit to include LTC benefits. While there is support for the District's argument that the WEA Trust's actions are to blame for the elimination of the LTC plan, there is also an interpretation that without the District's actions in eliminating the benefit for the teachers' bargaining unit, WEA Trust would not need to take any action in eliminating the LTC plan.

In order to address this conflict in the language of policy, we look to how the courts have interpreted such situations in the past. Unfortunately, Wisconsin courts have not definitively addressed the issue of whether the actions by a third party carrier can alleviate any liability on the employer for a vesting claim.

The Wisconsin Supreme Court in *Roth v. City of Glendale*, however, has adopted the standard of a certain prior decision from the Seventh Circuit in evaluating a vesting claim. 2000 WI 100, ¶ 26, 237 Wis. 2d 173, 614 N.W.2d 467 (adopting the analysis of *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993)). In fact, this is the exact opposite of the standard generally applied to private sector employers. Therefore, we can look at other cases that adopted this same *Bidlack* standard for guidance on the issue of the effect of carrier changes in the vesting analysis.

Specifically, in *Diehl v. Twin Disc, Inc.*, the Seventh Circuit evaluated a claim by retired employees and union for breach of contract against a former employer for modifications to insurance coverage. 102 F.3d 301 (7th Cir. 1996). In this case, the court evaluated whether the employer breached its Shutdown Agreement (combined with a separate Insurance Agreement) with the retirees that provided for certain vested health insurance benefits. Specifically, ten years after entering into the Shutdown Agreement, the former employer changed insurance carriers and thus increased costs to retirees. The former employer argued that it was able to make unilateral changes to the benefits as a result of language in insurance booklets that states “Your employer hopes to continue the Plan indefinitely, but, as with all group plans, the Plan may be changed or discontinued.” *Id.* at 308. In evaluating whether the former employer breached the Shutdown Agreement, the Seventh Circuit focused on the agreement between the former employer and employees. The court stated:

“[T]he Insurance Agreement obligated [the former employer] to secure a certain level of benefits, and [the former employer] presumably remained free to negotiate with various insurance carriers (or to self-insure) and to impose cost-savings measures that did not substantially reduce benefits. But in exercising this discretion, [the former employer] could not have been free to arrange for coverage that would eviscerate the promise of benefits. We therefore would read the Shutdown Agreement as requiring [the former employer] to expend reasonable efforts to secure coverage at a level substantially commensurate with the benefits provided under the 1983 Insurance Agreement.”

Id. at 311.

Thus, while the former employer may have some discretion to modify the vested benefits, its discretion, based on the insurance booklet, did not include eliminating the benefit all together.

Applying the *Diehl* case to the District’s situation, the District will have difficulty arguing that that language in its policy with WEA Trust allows the District to avoid liability for eliminating LTC benefits to its vested administrators and current administrators under contract. Specifically, the language in WEA Trust’s policy allowing WEA Trust to terminate the policy likely will not trump the unequivocal language in the administrator contract that obligates the District to **generally provide** LTC benefits, as the language is not specifically tied to the WEA Trust LTC plan. While there is an argument to be made that the WEA Trust’s actions are the sole reason for the necessary change in the LTC plan, there is also a strong argument that the District is contractually bound to provide LTC benefits generally.

Therefore, as an alternative, should the District need to eliminate the WEA Trust LTC plan as part of its cost saving measures, it may wish to consider providing a different LTC plan to its vested administrators and administrators currently under contract, but the coverage should be commensurate to the WEA Trust LTC plan.

CONCLUSION

The District must weigh the cost savings it will achieve should it eliminate the LTC plan for certified teachers against the high likelihood of potential litigation from vested employees if the LTC plan is eliminated in its entirety. Based on our review of the sample WEA policy, the standard administrator contract, and the expired collective bargaining agreement with the teachers, it is our opinion that the retired administrators, administrators who have met the retirement criteria but have not retired, and administrators currently under the standard administrator contract would have a strong claim against the District for violation of their vested rights or contractual rights. On the other hand, the certified teachers, retired teachers and professional staff would have a weaker claim that they are vested in any LTC benefits. However, should this latter group of employees focus on evidence outside of the language of the expired contracts, such as past practice or statements made by the District, they could potentially have a stronger claim for vested benefits.

As an alternative to allowing WEA Trust to eliminate the LTC benefits for all groups, the District could consider providing LTC benefits to, at a minimum, retired administrators, administrators who have met the retirement criteria but have not retired, and administrators currently under the standard administrator contract through a different carrier. However, under this approach, it is imperative that the new LTC benefits are commensurate or equal to the WEA Trust LTC plan.

We understand the District's choice in eliminating LTC benefits is complicated as a result of WEA Trust's hard stance on the issue. Please feel free to contact us to discuss the various risks and possible solutions identified in this opinion letter.

Very truly yours,

BUELOW VETTER BUIKEMA OLSON & VLIET, LLC



Gary M. Ruesch
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cc: Ms. Cynthia Coley, Director of Human Resources/Assistant Superintendent

