



WESTE
SCHD

ATTACHMENT IV

DISTRICT OFFICE
1970c Easton Turnpike
Lake Ariel, Pennsylvania 18436

Telephone: 1-800-321-9973

Web: www.westernwayne.org

Fax: (570) 341-1221

MATTHEW BARRETT, Ed. D.
Superintendent of Schools

ELLEN M. FALISKIE
Assistant Superintendent

ROSE E. EMMETT
Business Manager / Board Secretary

June 11, 2018

Ms. Connie L. Derr
Audit Coordinator
Bureau of Budget and Fiscal Management
Department of Education
333 Market Street – 4th Floor
Harrisburg, PA 17126-0333

Dear Ms. Derr:

Western Wayne School District's Response and Corrective Action Plan to the State Audit Report for period July 1, 2012 through June 30, 2016:

Finding: The District Amended its Retired Superintendent's Contract to Add Spousal Benefits in Exchange for a Non-Contractual Consulting Arrangement that could cost the District Approximately \$86,000 Over 8 Years:

The audit found that a former Superintendent who worked for the Western Wayne School District for less than two years derived an eight-year benefit soon after he retired because the District's Board of School Directors failed to keep the District's best financial interest in mind. On February 6, 2017, the District's Board approved a contract amendment for the former Superintendent after he had already separated from the District. The amendment added health benefits for the former Superintendent's spouse, costing the District at least \$86,000 over an approximate eight-year period.

Statement of Concurrence or Non-concurrence:

Management disagreed with the finding and provided the following response:

The District disagrees with the finding that the arrangement with the former superintendent to add health benefits in exchange for consulting services may have constituted a severance or buyout option. The District believed the agreement for consulting services was in the District's best interest when the School Board unanimously passed the motion. The District confirms that it has received, and continues to receive consulting services of the former superintendent. While the District disagrees with the finding, the District acknowledges that a formal contract with the former superintendent was not created. As a result, the District will take the following steps to address the finding:

BOARD OF EDUCATION

Bernice Fiorella, President Rick Hoch, Vice President Jeffrey Gogolski, Treasurer
Gary Enslin, William Gershey, Joseph Gombita, Michael Ochlan, Roger Shaffer, Jr., Ethan Wood

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- #1. The School Board will meet in a public session on 3/26/18 to review the amendment.
- #2. The Board will consider developing a written contract with the former superintendent that will include specific terms.
- #3. The Board will consider establishing a policy pertaining to contract amendments.

Response, Resolution, Supporting Documentation:

The District formally approved the contract amendment for the retired Superintendent four days after his retirement, however, the discussion leading up to the formal meeting approval was ongoing for three months, with final agreement, in concept, acceptable to all eight Board members involved (one Board member had not attended a meeting for many months and since resigned) and the former Superintendent was made prior to the February 6, 2017 meeting. A special meeting was not called to approve the amendment, and certainly should have been.

The Board and former Superintendent agreed on adding spousal health care in exchange for consulting services. There were two separate, but consecutive, motions that were both approved with an 8 – 0 vote. Two letters from the new Superintendent acknowledging the two actions were dated February 8, 2017 and sent to the former Superintendent (Attachments I, II).

The contract amendment was not a termination, buyout or severance. The consulting agreement was memorialized by the two Board motions and corresponding letters. Additionally, the former Superintendent declined health benefits from his new appointed position as a Wayne County Commissioner and his departure from the district was amicable.

In Figure 1 of the Finding, regarding the timeline, there is no mention of the agreement discussion and conceptual acceptance of both parties. The discussion was in the months of October, November and December 2016 and January 2017. Figure 1 also does not include the two letters dated February 8, 2017 regarding Board approval of the terms and tasks of the consulting services, and the approval of the amendment to the former Superintendent's contract.

The justification for the amendment and consulting services agreement is the Board determined that it was in the best interest of the District both financially and operationally. The former Superintendent is to consult on capital assets, facilities and construction projects (which were ongoing at the time) for the next 4-6 years; provide assistance in grant writing; and assist in future labor negotiations. All of these items were outlined in the February 8, 2017 letter. The prior Administrations were unable to succeed in

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these items. When the retired superintendent was hired, buildings were in much need of repair and both labor union contracts were unsettled into the second and third years respectively for teacher and support employees. All items were resolved during the former Superintendent's time with the District.

The former Superintendent's expertise, experience and future mentoring of the newly hired Administration, with their abilities in the educational areas, was felt to be an excellent approach to save the taxpayers money, and be in the best interest of the District both financially and operationally.

It was very clear to the Board and the former Superintendent what each party's responsibilities were with the new amendment and consulting arrangement. The Board motions were consecutive and the Board approval votes were 8 – 0 for both. In addition, the letters to the former Superintendent were both signed and sent February 8, 2017, in the same envelope, with both the amendment to add spousal benefits and consulting items to be performed. Although a single, specific consulting agreement with terms and conditions and spousal benefits as compensation was not signed by both parties, it was clearly understood and entered into verbally and conceptually and formally approved in separate motions and addressed in both February 8, 2017 letters. The terms and conditions of the consulting arrangement and the spousal coverage due to the arrangement have been honored by both parties and continue to be honored by both parties.

There were 33 documented meetings/discussions (attached) that the former Superintendent performed for the District through November 2017. Additional meetings/discussions will be on-going for the next 3-5 years.

In regards to the AG Recommendations:

1. The District had a review in an open and public forum on March 26 at a public Board Committee Meeting. All items regarding the amended contract including costs were discussed.
2. The District formalized a Board approved consulting contract with terms, conditions, and compensation at their May 7, 2018 Board Meeting (Attachment III).
3. The District revised our Board Policy regarding contract amendments at the same May 7, 2018 meeting (Attachment IV).

In conclusion, the Board believes that the amendment to the former Superintendent's contract and resulting consulting services agreed to by the former Superintendent were absolutely in the best interest of the District both financially (with proven cost savings and potential further cost savings and revenues) and operationally (with highly capable current Administrators learning from the former Superintendent's experience and expertise.)

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Monitoring Procedures to Ensure Implementation of the Corrective Action:

The School District has formalized a contract with the former Superintendent and revised the policy: "Employment of Superintendent/Assistant Superintendent. The District and Board will continue to monitor as per the terms of the contract with the former Superintendent.

Matthew Barrett, Superintendent
Western Wayne School District

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February 8, 2017

Joseph W. Adams
[REDACTED]
[REDACTED]

Dear Mr. Adams:

The Board of Education at their Public Meeting held on Monday, February 6, 2017 appointed you as a consultant to the School District when requested by the Superintendent in the following tasks:

- Develop a long term capital asset schedule for ongoing facility maintenance and annual budget planning by incorporating projects identified by CM3.
- Assist on current and future construction projects for next 4-6 years.
- Provide guidance in grant writing to help position the District in a most favorable position for future State grants.
- Assist in future labor negotiations.

Sincerely,

Matthew Barrett, Ed.D.
Superintendent

MB:sr

Cc:file

enclosure

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February 8, 2017

Joseph W. Adams
[REDACTED]
[REDACTED]

Dear Mr. Adams:

The Board of Education at their Public Meeting held on Monday, February 6, 2017 approved the amendment to your contract to reflect retirement benefit language under Article 6 of your contract to read husband and wife health insurance coverage instead of single, thereby continuing current medical, dental & vision (for husband & wife) until age 65.

Please sign and return the enclosed Amendment to your Employment Contract.

Sincerely,

Matthew Barrett, Ed.D.
Superintendent

MB:sr

Cc:file

enclosure

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Joseph Adams

Hours logged for services for Western Wayne School District

<u>DATE</u>	<u>TIME</u>	<u>EVENT</u>
1. 2/2/2017	3-4:30 PM	Meet with Matt Barrett and Don Olsommer regarding transition
2. 3/8/2017	2-5 PM	WW Construction Mtg
3. 4/5/2017	10 AM- 2 PM	WW Construction Mtg
4. 4/12/2017	10 AM – 1 PM	WW Child First mtg with State Police and Legislature
5. 6/6/2017	11 AM – 1 PM	WW Construction mtg
6. 6/26/2017	9 – 11 AM	WW Construction Mtg at RDW
7. 6/26/2017	1 – 3 PM	WW Construction Mtg
8. 7/3/2017	1 – 3 PM	WW Construction Mtg
9. 7/10/2017	1 – 3 PM	WW Construction Mtg
10. 7/17/2017	1 – 3 PM	WW Construction Mtg
11. 7/31/2017	1 – 3 PM	WW Construction Mtg
12. 8/2/2017	11 AM – 12 PM	Wayne County Redevelopment Auth regarding RACP
13. 8/6/2017	12 – 1 PM	Cassandra Coleman, Governor's Action Team RACP
14. 8/7/2017	1 – 3 PM	WW Construction Mtg
15. 8/11/2017	9 – 11 AM	WW Construction Mtg RDW
16. 8/14/2017	1 – 3 PM	WW Construction Mtg
17. 8/16/2017	2 – 4 PM	WW Construction Mtg
18. 8/21/2017	1 – 3 PM	WW Construction Mtg
19. 8/22/2017	10 AM – 12 PM	WW RACP Mtg
20. 8/24/2017	12 – 1 PM	WW Construction Call CM3
21. 8/28/2017	1 – 3 PM	WW Construction Mtg
22. 9/11/2017	1 – 3 PM	WW Construction Mtg
23. 9/11/2017	6 – 8 PM	WW School Board Mtg
24. 9/18/2017	1 – 3 PM	WW Construction Mtg
25. 9/22/2017	1 – 3 PM	WW Construction/Tech Mtg
26. 9/25/2017	10 – 11:30 AM	WW Construction MTG RDW
27. 9/25/2017	1 – 3 PM	WW Construction Mtg
28. 10/16/2017	9 – 11 AM	WW with Matt Barrett
29. 10/24/2017	10-11 AM	WW RACP discussion
30. 10/25/2017	3 – 5 PM	WW School Board
31. 10/30/2017	6 – 8 PM	WW School Board
32. 11/1/2017	2 – 7 PM	WW interviews for Maintenance Director
33. 11/6/2017	6 – 8 PM	WW School Board

INDEPENDENT CONTRACTOR CONSULTING AGREEMENT

THIS AGREEMENT, made the 7th day of May, 2018, by and between **Western Wayne School District**, of 1970c Easton Turnpike, Lake Ariel, Pennsylvania 18436, (hereinafter "District") and **Joseph W. Adams**, of ~~1875 1st Street, Lake Ariel, Pennsylvania 18436~~ (hereinafter "Consultant");

WHEREAS District desires to engage the services of Consultant who is willing to serve as a Consultant to the District on an "as needed" basis;

WHEREAS, District and Consultant desire that such services be made available under the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound the parties agree as follows:

SECTION 1. Duties and Responsibilities of Consultant

Upon request of the Superintendent of the District, the Consultant agrees to assist the District with the following tasks:

- 1.1 Develop a long term capital asset schedule for ongoing facility maintenance and annual budget planning by incorporating projects identified by CM3.
- 1.2 Assist on current and future construction projects through the end of school year 2021-2022.
- 1.3 Provide guidance in grant writing to help position the District in a most favorable position for future State grants through September 2, 2025.
- 1.4 Assist in future labor negotiations through the end of school year 2021-2022.
- 1.5 To provide quarterly log and through the completion of items 1.1 through and including 1.4 above. Included in the report will be savings and/or revenue derived by the District for each item reported. Once the tasks are completed, the Consultant's duties and responsibilities have been met and no other tasks and/or reports are expected.

SECTION 2. Duties and Responsibilities of District

- 2.1 District agrees to engage Consultant, as an independent contractor, to provide the services set forth in this agreement

2.2 District agrees to develop and maintain a log book monitoring the time and attention being provided by Consultant to the District. District agrees to report to the Board at least quarterly on the progress of the assistance of Consultant with the tasks identified in Section 1.

SECTION 3. Compensation

3.1 District agrees to compensate Consultant by providing spousal medical, dental and vision health coverage during the pendency of this Agreement. *

3.2 The compensation will be considered earned in full upon completion of tasks 1.1 through 1.5 inclusive, as noted above, as defined in Duties and Responsibilities of the Consultant. Compensation earned in spousal benefits will be paid out through September 2, 2025 as defined in Section 4.1.

SECTION 4. Term/Termination

4.1 Unless earlier terminated pursuant to the terms herein, this Agreement shall be effective February 3, 2017 and shall continue until September 2, 2025.

4.2 This Agreement may be terminated with ninety (90) days written notice to the other party once the cost of the compensation to the Consultant is greater than the derived benefit received by the District.

4.3 The contract may be terminated prior to the end of the term upon mutual agreement of both parties.

SECTION 5. Notices

All notices and communications related to this Agreement must be in writing and will be deemed given when delivered:

If to District: Western Wayne School District
1970c Easton Turnpike
Lake Ariel, PA 18436

If to Consultant: Joseph W. Adams
[REDACTED]
[REDACTED]

SECTION 6. Entire Agreement

This Agreement sets forth the entire agreement among the parties. Any prior agreements, promises, negotiations or representations, whether oral or written, not expressly set forth in this

agreement are of no force or effect. Except, as otherwise expressly stated herein, this Agreement may not be amended except by a writing signed by the parties. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original but all of which together shall constitute on and the same instrument.

The undersigned, intending to be legally bound, hereby set their hands and seals the day and year first written above.

District:

Bernice Leosella

Western Wayne School District

5/7/18

Consultant:

Joseph W. Adams

Joseph W. Adams

Western Wayne Quarterly Consultation Report

Month/Year:

[illegible]



Book	Policy Manual
Section	300 Employees
Title	Employment of Superintendent/Assistant Superintendent
Number	302
Status	Active
Adopted	February 18, 2015
Last Revised	May 7, 2018

Purpose

The Board places the primary responsibility and authority for the administration of the district in the Superintendent and Assistant Superintendent. Therefore, selection of a Superintendent or Assistant Superintendent is critical to the effective leadership and management of the district.[1]

Authority

During the last year of the Superintendent's term or any other time the position of Superintendent becomes vacant, the Board shall meet to appoint, by a majority vote of all members of the Board, a properly qualified district Superintendent. The appointed Superintendent shall enter into a written contract with the Board for a term of three (3) to five (5) years.[2][3][4]

An Assistant Superintendent shall be appointed by a majority vote of all members of the Board upon nomination of the Superintendent. An Assistant Superintendent may serve through the term of the Superintendent or enter into a contract for a term of three (3) to five (5) years.[2][3][5][6]

At a public Board meeting occurring at least ninety (90) days prior to the expiration date of the Superintendent's or an Assistant Superintendent's term of office, the Board meeting agenda shall include an item requiring affirmative action by five (5) or more Board members to notify the Superintendent or Assistant Superintendent that the Board intends to retain him/her or that other candidates will be considered for the office. If the Board fails to take such action, the term of office which the Superintendent or Assistant Superintendent is serving shall be extended one (1) time for a one-year period. Prior to the end of the one-year extension, the Board shall take action necessary to retain the Superintendent or Assistant Superintendent. If no action is taken prior to the conclusion of the one-year extension, the term of office for the current Superintendent or Assistant Superintendent shall terminate.[4][6]

Anytime the Board votes to retain a Superintendent or Assistant Superintendent, the Superintendent may be retained for a term of three (3) to five (5) years, and the Assistant Superintendent may be retained for a term of three (3) to five (5) years or for a term extending through the term of the Superintendent.[4][6]

Whenever the Board finds it impossible or impractical to immediately fill a vacancy in the office of Superintendent or Assistant Superintendent, the Board may appoint an acting Superintendent or Assistant Superintendent to serve not longer than one (1) year from the time of appointment.[7]

Guidelines

Recruitment and Assessment of Candidates

The Board shall actively seek candidates who meet the qualifications and requirements for the position of Superintendent and/or Assistant Superintendent. It may be aided in this task by a committee of Board members, the services of professional consultants, and/or the counsel of the retiring Superintendent.

When undertaking a search to fill the position of Superintendent or Assistant Superintendent, recruitment procedures shall be prepared and may include the following:

1. Preparation of a job description for the position, written in accordance with the requirements of federal and state laws and regulations.[8]
2. Preparation of written qualifications, in addition to applicable state requirements, for all applicants. [9][10][11][12][13]
3. Preparation of informative materials describing the school district, the Superintendent/Assistant Superintendent position, and the district's educational goals.
4. Opportunity for selected applicants to visit the district schools, meet with internal staff and external stakeholders at the Board's invitation.

Recruitment, screening and evaluation of candidates shall be conducted in accordance with Board policy, Board established leadership criteria and state and federal law.[8]

The Board shall determine prior to interviewing finalists which expenses associated with such interviews will be reimbursed by the school district.

A candidate's misstatement of fact material to qualifications for employment or determination of salary shall constitute grounds for dismissal by the Board.

Pre-Employment Requirements

The district shall conduct an employment history review in compliance with state law prior to issuing an offer of employment to a candidate. Failure to accurately report required information shall subject the candidate to discipline up to, and including, denial of employment or termination if already hired, and may subject the candidate to civil and criminal penalties. The district may use the information for the purpose of evaluating an applicant's fitness to be hired or for continued employment and may report the information as permitted by law.[14]

A candidate shall not be employed until the individual has complied with the mandatory background check requirements for criminal history and child abuse and the district has evaluated the results of that screening process.[15][16]

Each candidate shall report, on the designated form, all arrests and convictions as specified on the form. Candidates shall likewise report arrests and/or convictions that occur subsequent to initially submitting the form. Failure to accurately report such arrests and convictions may subject the individual to denial of employment, termination if already hired, and/or criminal prosecution.[16]

Before entering the duties of the office, the Superintendent or Assistant Superintendent shall take and subscribe to the oath of office prescribed by law.[17]

After receiving a conditional offer of employment but prior to beginning employment, the candidate shall undergo medical examinations, as required by law and as the Board may require at Board expense or at the candidate's expense.[18]

Employment Contracts

An individual shall not be employed as Superintendent or Assistant Superintendent unless s/he has signed an employment contract expressly stating the terms and conditions of employment. The written contract shall:[4]

1. Contain the mutual and complete agreement between the Superintendent or Assistant Superintendent and the Board with respect to the terms and conditions of employment.
2. Consistent with state certification requirements, specify the duties, responsibilities, job description and performance expectations, including performance standards and assessments as required by law.[19][20][21][22][23]
3. Incorporate all provisions relating to compensation and benefits to be paid to or on behalf of the Superintendent or Assistant Superintendent.[6][24]
4. Specify the term of employment and state that the contract shall terminate immediately, except as otherwise provided by law, upon the expiration of the term unless the contract is allowed to extend automatically as required by law.[4]
5. Specify the termination, buyout and severance provisions, including all postemployment compensation and the period of time in which the compensation shall be provided. Termination, buyout and severance provisions may not be modified during the course of the contract or in the event a contract is terminated prematurely.
6. Contain provisions relating to outside work that may be performed, if any.[25][26]
7. State that any modification to the contract must be in writing.
8. State that the contract shall be governed by the laws of the Commonwealth.
9. Limit compensation for unused sick leave in employment contracts for Superintendents and/or Assistant Superintendents who have no prior experience as a district Superintendent or Assistant Superintendent to the maximum compensation for unused sick leave under the school district's administrative compensation plan in effect at the time of the contract.
10. Limit transferred sick leave from previous employment to not more than thirty (30) days for Superintendents and/or Assistant Superintendents who have no prior experience as a district Superintendent or Assistant Superintendent.
11. Specify postretirement benefits and the period of time in which the benefits shall be provided.
12. The district shall not amend employment contracts during the contract term and after notification of effective retirement and/or resignation dates.

Removal/Severance

A Superintendent or Assistant Superintendent may be removed from office and have their contracts terminated, after a hearing, by a majority vote of all members of the Board and in accordance with law. The Board shall publicly disclose at the next regularly scheduled meeting the removal from office of a Superintendent or Assistant Superintendent.[27][28]

Any negotiated severance of employment prior to the end of the term of the Superintendent's or Assistant Superintendent's specified contract term shall be limited to either:[4]

1. The equivalent of one (1) year's compensation and benefits due under the contract, if the severance agreement takes effect two (2) or more years prior to the end of the contract term; or
2. The equivalent of one-half (1/2) of the total compensation and benefits due under the contract for the remainder of the term, if the severance agreement takes effect less than two (2) years prior to the end of the contract term.

Legal

1. 24 P.S. 1001
2. 24 P.S. 508
3. 24 P.S. 1071
4. 24 P.S. 1073
5. 24 P.S. 1076
6. 24 P.S. 1077
7. 24 P.S. 1079
8. Pol. 104
9. 22 PA Code 49.41
10. 22 PA Code 49.42
11. 24 P.S. 1002
12. 24 P.S. 1003
13. 24 P.S. 1078
14. 24 P.S. 111.1
15. 23 Pa. C.S.A. 6344
16. 24 P.S. 111
17. 24 P.S. 1004
18. Pol. 314
19. 24 P.S. 1073.1
20. 24 P.S. 1081
21. 24 P.S. 1082
22. Pol. 003
23. Pol. 312
24. 24 P.S. 1075
25. 24 P.S. 1007
26. 24 P.S. 1008
27. 2 Pa. C.S.A. 551 et seq
28. 24 P.S. 1080
- 18 Pa. C.S.A. 9125
- 22 PA Code 49.171
- 22 PA Code 49.172
- 22 PA Code 8.1 et seq
- 23 Pa. C.S.A. 6301 et seq
- 24 P.S. 108
- 24 P.S. 1418
- 28 PA Code 23.43
- 28 PA Code 23.44
- 28 PA Code 23.45
- 42 U.S.C. 12101 et seq

Last Modified by Ellen Faliskie on May 31, 2018

