

BETHLEHEM AREA SCHOOL DISTRICT
Bethlehem, Pennsylvania

MISSION STATEMENT

The Bethlehem Area School District, in partnership with the home and community, is committed to providing a safe and supportive environment in which each student will attain the knowledge, skills, and attitudes necessary to become a productive citizen and lifelong learner in our technologically demanding and culturally diverse society.

A G E N D A
REGULAR MEETING – December 8, 2008

1. Roll Call
2. Pledge of Allegiance
3. Silent Meditation
4. Student Recognition
5. District Financing Discussion
6. Courtesy of the Floor to Visitors (30 minutes allowed)
7. Reports of Student Representatives
8. Approval of Minutes
October 13, 2008 – Special Board Meeting
October 20, 2008 – Regular Board Meeting
9. Approval of Committee Minutes
10. Financial Report/Payment of Bills
11. President's Communication/Special Meetings
12. Superintendent's Report/Federal Program Update
13. Unfinished Business
14. Recommendations of Administration
15. Reports of Committees
16. New and Miscellaneous Business
17. Courtesy of the Floor to Visitors
18. Adjournment

MEMORANDUM

DECEMBER 5, 2008

TO : BOARD OF SCHOOL DIRECTORS

FROM : STANLEY J. MAJEWSKI, JR., BOARD SECRETARY

SUBJECT : REGULAR MONTHLY MEETING – DECEMBER 8, 2008

The Regular Meeting of the Board of School Directors of the Bethlehem Area School District for December will be held on *Monday, December 8, 2008, at 7:00 p.m. in the Auditorium of East Hills Middle School, 2005 Chester Road, Bethlehem, PA 18017.* The agenda is attached.

SJM:ace

Att.

cc: Dr. Lewis
Mr. Washington

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1. ***Authorization to Expend 2007 Bond Funds – Roof Repairs/Replacement – Transportation Building – Change Order Deduct***

INFORMATION:

The roof repairs to the Transportation Building are substantially complete. The contractor, Atlantic Roofing Corporation, has agreed to issue credit for unused project material allowance for a deduct in the amount of \$4,000.

RECOMMENDATION:

That the Board of School Directors approves a change order credit in the amount of \$4,000 to Atlantic Roofing Corporation for the unused project material allowance.

Account Code: 30-4400-330-000-0805-00001

Bond fund account, no General Operation Fund appropriation – monies to be returned

2. ***Authorization to Restore Capital Reserve Funds – Fire Alarm System Replacement – Thomas Jefferson Elementary School and William Penn Elementary School***

INFORMATION:

The installations of the Thomas Jefferson Elementary School and William Penn Elementary School Fire Alarm Systems are substantially complete. The contractor, Albarell Electric Inc., has agreed to issue credit for unused project material allowance for a deduct in the amount of \$1,242.

RECOMMENDATION:

That the Board of School Directors approves a change order credit in the amount of \$1,242 to Albarell Electric Inc. for the unused project material allowance.

Account Code: 23-2600-762-100-0607-00001
Capital Reserve account – monies to be returned

3. *Approval of Proficiency Requirement for Graduation*

INFORMATION:

Beginning with the Class of 2010, our current juniors, students will be required to demonstrate proficiency to be eligible for graduation. Some Special Education students with prior individual determination and Level 1 and 2 ELL students would be exempt from this requirement.

This information was reviewed with the Board of School Directors at the October 27, 2008, and November 3, 2008, Board Curriculum Committee Meetings. In addition, information was posted on the district's Website for public input. The recommendation was brought forward to the board at the November 17, 2008, Regular Board Meeting and was tabled at which concerns were raised over the proposed proficiency requirements.

Following the November 17, 2008, Regular Board Meeting, the administration held a meeting with representatives from the BEA, the Office of Curriculum and Instruction, department chairs, and building administrators to address the concerns. This meeting produced the attached requirements. The board received this information on November 26, 2008, to review.

RECOMMENDATION:

That the Board of School Directors approves the following:

- a. Beginning with the Class of 2010, that students will be required to demonstrate proficiency in reading and mathematics in order to be eligible for graduation.
- b. Some Special Education students with prior individual determination and Level 1 and 2 ELL students would be exempt from this requirement.
- c. Demonstration of proficiency would be accepted through multiple routes as outlined on the attached requirements.



Proficiency Requirements for Graduation Effective with Class of 2010

The following requirements are being proposed for students in the BASD as means by which students can demonstrate proficiency in skills related to reading and mathematics, and therefore, be eligible for graduation. These requirements are in addition to earning the necessary credits and passing all courses. As noted in (6), there are students whose proficiency would be measured by other means.

It should also be noted that support is also available for students as they work toward meeting these requirements, both before and after taking the PSSA.

- 1) Students are expected to meet proficiency on the reading and math portions of the PSSA during the spring administration. Demonstrating proficiency on the PSSA at this time will give the student the most direct route toward graduation.
- 2) Only those students who demonstrate proficiency in reading and mathematics on the PSSA in 11th grade will be eligible for the Senior Exemption from any Final Exam in the 12th grade.
- 3) Students who do not demonstrate proficiency in reading and mathematics on the PSSA in 11th grade will have the opportunity to do so in one of the following ways:
 - a) Retake the PSSA in fall of senior year and demonstrate proficiency.
 - b) Pass a 9-week Math GAP (Geometry, Algebra, PSSA Prep) class and/or a 9-week English CAT (Comprehension, Analysis, Test-Taking) class. The purpose of these classes is for the student to show progress in the deficient areas.
 - c) Demonstrate proficiency on the 11th grade May 4-Sight (or equivalent standardized test) in Math and/or English, as needed, and the requirement for the respective GAP or CAT class will be deemed to have been met for that subject.
- 4) Students who do not show sufficient progress within the options outlined above in #3 will have an opportunity to be eligible for graduation by completing an administrative appeals process by one of the following means:
 - a) For students who were unsuccessful in either reading or in math, the administrator, in consultation with a content expert, conducts a review of student

work in the non-proficient subject to determine that progress had been made since exiting the GAP or CAT course.

- b) Students who did not meet proficiency in both reading and in math have an opportunity to demonstrate proficiency in specific skills through progress monitoring of their work.
- 5) All students who do not demonstrate proficiency in reading and/or in math will have the opportunity to attend tutoring sessions outside of the school day in addition to the options they have for meeting proficiency requirements. While tutoring is not mandatory, students who participate would be able to include their attendance as one aspect of evidence in an appeals process.
- 6) Some special education students, as determined through the IEP process, would be exempt from these requirements. ELL students at Levels 1 and 2 (pre-production and beginner levels) would be exempt from having to show proficiency on the PSSA. In addition to the options above, other ELL students at Levels 3 and 4 (intermediate and advanced) may also demonstrate proficiency in one of the additional ways:
 - a) Demonstrate growth on the yearly WIDA assessment as evidence of progress.
 - b) Demonstrate substantial growth in the four facets of English language (listening, speaking, reading, and writing), as documented on the ESOL stage forms, which track the ELL's academic history while in the BASD. (This would not be an option for transient ELL students.)
 - c) Develop ESOL portfolios as a cumulative compilation of work over time as they move through the ESOL continuum of skills. Scholastic Reading Inventory (SRI) results to determine reading Lexiles would demonstrate growth in literacy.

Note that currently, 11th grade students are provided with supports through specific English and mathematics courses. They also continue to have opportunities for tutoring.

The teachers and administrators noted below have contributed to and endorsed the proposed document for proficiency requirements.

Kathleen Bast, Coordinator of Literacy/ELA, K-12

Natalie Chickey, English Department Chair, Liberty High School

Doris Correll, Coordinator of English Acquisition Programs

Joann Durante, Principal, Liberty High School

Jodi Evans, Math teacher, Freedom High School and BEA Representative

Kim Harper, Assistant to the Principal for Curriculum, Freedom High School

Mary Katona, Assistant Superintendent for Curriculum and Instruction

Dan Krasnick, Math teacher, Liberty High School and BEA Representative

Michael LaPorta, Principal, Freedom High School

Anthony Markovich, Social Studies Department Chair, Liberty High School

Eric Smith, Supervisor of Science, K-12

Julie Victory, Supervisor of Mathematics, K-12

Craig Zieger, Gifted teacher, East Hills Middle School and BEA Representative

4. *Community Service Agencies*

INFORMATION:

A very important component of the Bethlehem Area School District's Community Service Program is the involvement of agencies and organizations to serve as hosts for students participating in the program. These organizations must not discriminate against any race, religion, or sex, and must provide assurances that the approved experience is free from religious doctrinal motivation. In addition, each agency must commit to provide our students with opportunities to benefit others.

As part of the Community Service Program, the Board of School Directors must approve each community service sponsor prior to students participating with the agency.

RECOMMENDATION:

That the attached community service sponsors be approved to participate in the Bethlehem Area School District's Community Service Program and be included in the Community Service Directory of Participating Organizations and Agencies.

Name of Agency/Organization: Northampton Community College,
Center for Adult Literacy & Workforce Development

Address: 511 E. Third Street, Bethlehem, PA 18015

Phone number: 610-861-4147

Contact Person: Karen Zaun

Email address: KZaun@northampton.edu

Web Site address: www.northampton.edu

Number of students requested: 1-5 ***Minimum age:*** 16

Description of service opportunities: Tutoring in English or math, assist with department functions such as celebrations of achievement.

Minimum Time of Service per Shift or Session: 2 hours

Hours agency is open to community service students: 9:00 a.m. to 9:00 p.m.

Dress requirements: Business casual

Supervision provided by: Karen Zaun

Training and/or orientation: Yes

Additional information or comments:

This agency carries liability insurance covering students on site. (Yes)

This agency participates in court ordered community service activities. (No)

This agency requires Act 34 (criminal history) clearance for employees. (Yes)

This agency conducts events/activities where alcohol is served. (Yes)

(Parental Waiver is needed if alcohol is served)

Name of Agency/Organization: Project Child (a program of Valley Youth House)

Address: 531 Main Street, Bethlehem, PA 18018

Phone number: 610-954-4561

Contact Person: Rochelle Freedman

Email address: projectchildlv@aol.com

Web Site address: www.projectchildlv.org

Number of students requested: 1-2 ***Minimum age:*** 16

Description of service opportunities: Varied office assistance, creation of flyers and marketing materials, and help with program evaluation data.

Minimum Time of Service Per Shift or Session: 2 hours

Hours agency is open to community service students: 8:30 a.m. to 4:30 p.m.

Dress requirements: Casual

Supervision provided by: Rochelle Freedman, Program Coordinator and Janice Testman, Administrative Assistant

Training and/or orientation: On site

Additional information or comments:

This agency carries liability insurance covering students on site. (Yes)
This agency participates in court ordered community service activities. (No)
This agency requires Act 34 (criminal history) clearance for employees. (Yes)
This agency conducts events/activities where alcohol is served. (No)
(Parental Waiver is needed if alcohol is served)

Name of Agency/Organization: East Hills Moravian Church

Address: 1830 Butztown Road, Bethlehem, PA 18017

Phone number: 610-868-6481

Contact Person: Rev. Christine Johnson

Email address: easthillsmc@enter.net

Web Site address: www.easthillsmc.org

Number of students requested: varies ***Minimum age:*** none

Description of service opportunities: Nursery Care Aid; Program assistant helping with music/crafts/recreation; Tour Guide/Host for the Christmas Putz; set-up/take-down crew for large scale events, Table Waiter for church and/or community dinners.

Minimum Time of Service Per Shift or Session: Varies

Hours agency is open to community service students: Varies

Dress requirements: Varies but please dress moderately and respectfully

Supervision provided by: Pastor or volunteer church leader

Training and/or orientation: As appropriate to the task

Additional information or comments:

This agency carries liability insurance covering students on site. (Y)

This agency participates in court ordered community service activities. (N)

This agency requires Act 34 (criminal history) clearance for employees. (Y) * except PT office and music staff

This agency conducts events/activities where alcohol is served. (N)
(Parental Waiver is needed if alcohol is served)

5. *Student Discipline - #1001628 - Petition*

INFORMATION:

The Board of School Directors of the Bethlehem Area School District has received and reviewed the following petition to return from expulsion from one student.

RECOMMENDATION:

That the Board of School Directors adopts the petition relating to Student Number 1001628.

6. PA CARES – Olweus Bullying Prevention Grant

INFORMATION:

The Center for Safe Schools through a unique partnership with the Highmark Foundation, its Healthy High 5 Initiative, and the Pennsylvania Department of Education, has announced the availability of grants of up to \$7,500 for Pennsylvania schools to address the serious issue of bullying.

The Center for Safe Schools administers the PA CARES (Creating an Atmosphere of Respect and Environment for Success) initiative. This program strives to help school personnel strengthen their efforts to eliminate bullying behaviors and provide safe and nurturing learning environments.

Selected schools will be expected to fully implement the Olweus Bullying Prevention Program which is targeted for elementary and middle schools only. It is required that the school district be located in one of the Highmark regions.

RECOMMENDATION:

That the administration be authorized to submit to the Pennsylvania Department of Education a grant application for funds to operate an Olweus Bullying Prevention program at Northeast Middle School, East Hills Middle School, and Nitschmann Middle School in the amount of \$7,500 per school for a total of \$22,500.

7. *Title I School Improvement Grant*

INFORMATION:

The Pennsylvania Department of Education (PDE) has notified the Bethlehem Area School District regarding eligibility for a Title I School Improvement grant. These funds are available to be used around PDE's framework for school improvement in Title I schools in the higher stages of school improvement. Bethlehem Area School District schools are eligible for a total of \$235,000. The two eligible schools for the 2008-2009 school year are Donegan and Fountain Hill Elementary Schools.

RECOMMENDATION:

That the administration be authorized to submit to the Pennsylvania Department of Education a grant application for Title I School Improvement funds in the amount of \$235,000.

8. *Field Trip Attendance***RECOMMENDATION:**

That the following overnight student trips for students and staff be approved:

December 27, 2008-January 4, 2009

(240 Liberty High School Students)

Liberty High School Grenadier Band Trip to the 2009

“Tournament of Roses” Parade

Pasadena, California

\$885.75

May 8-9, 2009

(200 East Hills Middle School Students)

Music in the Park Competition – Band and Orchestra

Washington, D.C.

0.00

May 15-16, 2009

(125 Northeast Middle School Students)

Music in the Park Competition - Instrumental and Vocal Students

Washington, D.C.

0.00

9. *Resignations*

RECOMMENDATION:

Instructional

- | | | |
|----|-------------|----------------------------|
| 1. | NAME: | Pizzino, Ashley |
| | ASSIGNMENT: | Liberty, Chemistry Teacher |
| | REASON: | Personal |
| | EFFECTIVE: | December 2, 2008 |

9. *Resignations*

RECOMMENDATION:

Noninstructional

1. NAME: **Parenti, Brenda**
 ASSIGNMENT: Liberty, General Kitchen Help
 REASON: Personal
 EFFECTIVE: November 10, 2008

2. NAME: **Spruiell, Grace**
 ASSIGNMENT: Regional Academic Standards Academy, (.5)
 Health Assistant/(.5) Teacher Assistant
 REASON: Personal
 EFFECTIVE: November 26, 2008

3. NAME: **Vargas, Arlene**
 ASSIGNMENT: Education Center, Minority Affairs,
 Governmental Programs and Grants
 Department, 0-3 Secretary/Clerk, 12 months
 REASON: Personal
 EFFECTIVE: December 9, 2008

9. *Resignations*

RECOMMENDATION:

Miscellaneous

1. NAME: **Chickie, Natalie**
 ASSIGNMENT: Liberty, Drama Club Advisor
 REASON: Personal
 EFFECTIVE: November 17, 2008

2. NAME: **Justice, Gayle**
 ASSIGNMENT: Liberty, Drama Club Advisor
 REASON: Personal
 EFFECTIVE: November 17, 2008

10. *Leaves of Absence***RECOMMENDATION:*****Instructional***

1. NAME: **Anderko, Karen**
 ADDRESS: Danielsville
 ASSIGNMENT: Liberty, Biology Teacher
 REASON: Continuance of Childrearing Leave of Absence
 EFFECTIVE: January 20, 2009, until the end of the 2008-2009
 school year

2. NAME: **Check, Patricia**
 ADDRESS: Hellertown
 ASSIGNMENT: Spring Garden, Art Teacher
 REASON: Family Medical Leave of Absence
 EFFECTIVE: November 10, 2008, intermittently, until the end of
 the 2008-2009 school year

3. NAME: **Ibarra, Adrienne**
 ADDRESS: Bangor
 ASSIGNMENT: Broughal, Grade 6 Teacher
 REASON: Continuance of Childrearing Leave of Absence
 EFFECTIVE: December 22, 2008, until the end of the 2008-2009
 school year

4. NAME: **Moren, Michelle**
 ADDRESS: Allentown
 ASSIGNMENT: Freemansburg, Grade 5 Teacher
 REASON: Family Medical/Childrearing Leave of Absence
 EFFECTIVE: Family Medical Leave of Absence to begin January 5,
 2009, until the end of the day on March 31, 2009
 Childrearing Leave of Absence to begin April 1, 2009,
 until the end of the 2008-2009 school year

10. *Leaves of Absence***RECOMMENDATION:*****Instructional (continued)***

- | | | |
|----|-------------|--|
| 5. | NAME: | Preletz, Jayne |
| | ADDRESS: | Bethlehem |
| | ASSIGNMENT: | Northeast, Art Teacher |
| | REASON: | Continuance of Childrearing Leave of Absence |
| | EFFECTIVE: | December 11, 2008, until the end of the 2008-2009 school year |
| | | |
| 6. | NAME: | Windfelder, Susan |
| | ADDRESS: | Quakertown |
| | ASSIGNMENT: | Freemansburg, Grade 3 Teacher |
| | REASON: | Family Medical/Childrearing Leave of Absence |
| | EFFECTIVE: | Family Medical Leave of Absence to begin January 20, 2009, until the end of the day on April 17, 2009
Childrearing Leave of Absence to begin April 20, 2009, until the end of the 2008-2009 school year |

11. *Nominations for Appointment***RECOMMENDATION:*****Instructional***

1. NAME: **Burke, Stacey M.**
 ADDRESS: Bethlehem
 COLLEGE, DEGREE: Bloomsburg University, B.S.
 Lehigh University, M.Ed.
 ASSIGNMENT: Liberty, Special Education, Emotional Support Teacher
 EXPERIENCE: 2 years, Pennsylvania
 STATUS: Long-term Substitute
 SALARY: \$46,456, prorated (Master's +30, Step 3)
 EFFECTIVE: December 9, 2008, and terminating at the end
 of the 2008-2009 school year, or upon the return
 of M. Delillio

2. NAME: **Deater, Anthony**
 ADDRESS: Bethlehem
 COLLEGE, DEGREE: Kutztown University, B.S.
 ASSIGNMENT: Liberty, Social Studies Teacher
 STATUS: Temporary Professional Employee
 SALARY: \$39,389, prorated (Bachelor's, Step 1)
 EFFECTIVE: January 20, 2009

3. NAME: **Lushinsky, Susan C.**
 ADDRESS: Bethlehem
 COLLEGE, DEGREE: Moravian College, B.A.
 Pratt Institute, M.P.S.
 Gwynedd Mercy College, Certification
 ASSIGNMENT: Broughal, Guidance Counselor
 STATUS: Long-term Substitute
 SALARY: \$44,917, prorated (Master's +30, Step 1)
 EFFECTIVE: December 9, 2008, and terminating at the end of the
 2008-2009 school year or upon the return of M. Houser

11. *Nominations for Appointment***RECOMMENDATION:*****Instructional (continued)***

4. NAME: **Maldonado, Candy**
 ADDRESS: Bethlehem
 COLLEGE, DEGREE: St. Joseph's College, B.A.
 Long Island University, M.S.
 ASSIGNMENT: Freemansburg, (.5) Kindergarten Teacher
 EXPERIENCE: 6 years, New York
 STATUS: Temporary Professional Employee
 SALARY: \$23,626, prorated (Master's, Step 7)
 EFFECTIVE: December 9, 2008

5. NAME: **Swartz, Bradley**
 ADDRESS: Temple
 COLLEGE, DEGREE: Moravian College, B.S.
 ASSIGNMENT: Freedom, Mathematics Teacher
 STATUS: Long-term Substitute
 SALARY: \$39,389, prorated (Bachelor's, Step 1)
 EFFECTIVE: January 20, 2009, and terminating at the end
 of the 2008-2009 school year, or upon the return
 of A. Jones

6. NAME: **Truby, John**
 ADDRESS: Bethlehem
 COLLEGE, DEGREE: Shippensburg University, B.S.
 ASSIGNMENT: Liberty, Social Studies Teacher
 EXPERIENCE: 1 year, Bethlehem
 STATUS: Long-term Substitute
 SALARY: \$39,689, prorated (Bachelor's, Step 2)
 EFFECTIVE: November 18, 2008, and terminating at the end of the
 2008-2009 school year, or upon the return of K. Bush

11. *Nominations for Appointment***RECOMMENDATION:*****Noninstructional***

1. NAME: **Vargas, Arlene**
 ADDRESS: Allentown
 ASSIGNMENT: Education Center, Business Office, Confidential
 Secretary
 SALARY: \$36,494, prorated (Noninstructional Meet and Discuss,
 Category H, Step 7, to be adjusted upon completion of
 Noninstructional Meet and Discuss agreement)
 EFFECTIVE: December 9, 2008

2. NAME: **Williams, LaTanya**
 ADDRESS: Northampton
 ASSIGNMENT: Freedom, Monitor
 SALARY: \$16,298, prorated (Noninstructional Meet and Discuss,
 Category KK, Step 1, to be adjusted upon completion of
 Noninstructional Meet and Discuss agreement)
 EFFECTIVE: December 9, 2008

11. *Nominations for Appointment***RECOMMENDATION:*****Miscellaneous***

1. **Coaches**
Code: 29-3250-126-353-0905-00001
Freedom High School
Wrestling
Assistant Coach **Dellatore, Scott** New \$3,857.00

Code: 29-3250-126-350-0918-00001
Liberty High School
Girls Softball
Head Coach **Giering, Richard** New 5,063.00
2. **Credit Acquisition Program**
Code: 10-1100-111-300-3200-00001
Teacher
Majewski, Jennifer
SALARY: \$32.04 per hour
3. **Extracurricular Activity Advisors**
Freemansburg Elementary School
School Store **Maunz, Irene** 357.00

Liberty High School
Drama Club **Jacoby, Kristin** 357.00
4. **Transportation**
Part-time Bus Drivers
Cruz-Diaz, Jose
Kale, Trevor
Lee, Helen
Maloney, Francis
Martin, Jessica
SALARY: \$15.68 per hour

11. *Nominations for Appointment*

RECOMMENDATION:

Substitutes

Instructional

Crawford, Sally
Bethlehem

Gerber, Jonathan
Bethlehem

Guerreri, Tori
Bethlehem

León, Omar
Allentown

Patti, Nicole
Easton

Perry, Jonathan
Bethlehem

11. *Nominations for Appointment*

RECOMMENDATION:

Substitutes

Noninstructional

Fritz, Timothy
Albrightsville

Jones, Megan
Bethlehem

Nelms, Samuel
Allentown

Reyes, Onix
Bethlehem

Williams, George
Allentown

12. *Reassignments*

RECOMMENDATION:

Administrative

1. NAME: **Hilton, Jennifer**
 FROM: East Hills, Grade 6 Teacher
 TO: Interim Coordinator of Literacy/ELA K-12
 SALARY: Current Salary – No Adjustment
 EFFECTIVE: Upon absence of K. Bast

12. *Reassignments*

RECOMMENDATION:

Instructional

1. NAME: **Faulhefer, Sandra**
 ASSIGNMENT: Liberty, Social Studies Teacher
 FROM: Long-term Substitute
 TO: Temporary Professional Employee
 REASON: Successful Candidate
 EFFECTIVE: December 9, 2008

2. NAME: **Katra, Stephanie**
 ASSIGNMENT: Broughal, Special Education Teacher
 FROM: Temporary Professional Employee
 TO: Professional Employee
 REASON: Satisfied statutory criteria
 EFFECTIVE: August 23, 2006

12. *Reassignments*

RECOMMENDATION:

Noninstructional

1. NAME: **Haldaman, Judith**
 FROM: East Hills, General Kitchen Help, 3 _ hours daily
 TO: Freedom, General Kitchen Help 4 _ hours daily
 SALARY: \$11.86 per hour
 REASON: Successful Candidate
 EFFECTIVE: December 9, 2008

2. NAME: **Kaminski, Kathleen**
 FROM: Northeast, Teacher Assistant, Long-term Substitute
 TO: Northeast, Teacher Assistant, 6 _ hours daily
 SALARY: \$13.68 per hour
 REASON: Successful Candidate
 EFFECTIVE: December 9, 2008

3. NAME: **Weaver, Florence T.**
 FROM: Nitschmann, General Kitchen Help, 3 _ hours daily
 TO: Regional Academic Standards Academy, General
 Kitchen Help 3 _ hours daily
 SALARY: \$12.18 per hour
 REASON: Successful Candidate
 EFFECTIVE: December 9, 2008

13. *Salary Allowances for Additional Credits Under the Incentive Program*

INFORMATION:

In accordance with Article XV, “Advancement to Higher Classification,” of the Collective Bargaining Agreement between the Board of School Directors and the Bethlehem Education Association, the following teachers are certified by the superintendent of schools as having met all requirements for incentive increments as listed.

Salary adjustments will be in accordance with the Base Step Salary Schedule of the Collective Bargaining Agreement for all categories listed as approved by the Board of School Directors for the 2008-2009 school year.

RECOMMENDATION:

That the administration be authorized to place the following employees on the appropriate salary lane in accordance with the Collective Bargaining Agreement effective September 1, 2008:

BACHELOR’S +15

Ammary, Neiad – Liberty High School

14. *Bond Counsel*

INFORMATION

The Board of School Directors is interested in reducing the cost of existing debt financing and seeks to hire bond counsel. The bond counsel will work with the school district's financial adviser, Public Financial Management, on refinancing opportunities authorized by the Board of School Directors.

RECOMMENDATION:

That the Board of School Directors approves the attached resolution appointing Rhoads & Sinon LLP as bond counsel in connection with bonds and interest rate swap transactions as per the attached Resolution and Letter of Engagement.

**BETHLEHEM AREA SCHOOL DISTRICT,
Lehigh and Northampton Counties, Pennsylvania**

**RESOLUTION OF THE BOARD OF SCHOOL DIRECTORS
OF THIS SCHOOL DISTRICT APPOINTING BOND
COUNSEL IN CONNECTION WITH THE BONDS AND
INTEREST RATE SWAP TRANSACTIONS OF THIS
SCHOOL DISTRICT.**

WHEREAS, The Bethlehem Area School District, Lehigh and Northampton Counties, Pennsylvania (the “School District”) is a school district of the Commonwealth of Pennsylvania, governed by its Board of School Directors (the “Board”); and

WHEREAS, This School District has multiple series of outstanding bonds (the “Bonds”), which may require modification, restructuring or refunding, and the issuance of new bonds or notes; and

WHEREAS, This School District has interest rate swap transactions (“Swaps”), in effect for the Bonds, which may require analysis, negotiations or modification, where appropriate; and

WHEREAS, The Board of this School District, has determined that it requires the services of recognized Bond Counsel to assist it in matters pertaining to the Bonds, the Swaps and related matters.

NOW, THEREFORE, BE IT RESOLVED, by the Board of this School District, as follows:

SECTION 1. The Board of this School District does hereby engage Rhoads & Sinon LLP, Attorneys at Law (the “Bond Counsel”) to serve as bond counsel to this School District in connection with all matters pertaining to the Bonds and the Swaps.

SECTION 2. The Board of this School District shall enter into an Engagement Letter with Bond Counsel, under terms approved by it, from time to time, the execution thereof by authorized officers of the Board to constitute conclusive evidence of such approval.

SECTION 3. The administrative officers, solicitor, financial advisor and previous advisors of this School District, are hereby authorized and directed to participate and cooperate with Bond Counsel in all matters pertaining to the Bonds and the Swaps.

SECTION 4. This Resolution shall become effective immediately.

DULY ADOPTED, by the Board of School Directors of the Bethlehem Area School District, Lehigh County, Pennsylvania, in lawful session duly assembled, this 8th day of December 2008.

**BETHLEHEM AREA SCHOOL DISTRICT,
Lehigh and Northampton Counties,
Pennsylvania**

By: _____
(Vice) President of the Board of School
Directors

ATTEST:

Secretary of the Board of School
Directors

(SEAL)

December 1, 2008

Re: Bond Counsel and Special Counsel Services

Board of School Directors of the
Bethlehem Area School District
1516 Sycamore Street
Bethlehem, PA 18017

Ladies and Gentlemen:

Thank you for choosing Rhoads & Sinon LLP (“R&S” or “we”) to represent the Bethlehem Area School District (the “School District” or “you”), through its Board of School Directors (the “Board”) as Bond Counsel with respect to indebtedness of the School District, and as Special Counsel with respect to the School District’s interest rate management agreements (swaps) and related financial matters. A productive relationship between client and attorney requires mutual confidence and understanding, therefore we believe it will be helpful to inform you of our general policies, procedures and fee structures to establish a basis for successful completion of your objectives and to avoid any possible misunderstandings.

Scope of Bond Counsel Services.

The School District hereby engages R&S to serve, and we agree to serve, as bond counsel to the School District in connection with indebtedness to be incurred or issued by you hereafter (together, the “Bonds” of the School District). As bondcounsel, we will:

- (1) supervise the relevant debt proceedings of the School District, including such approvals, permissions and exemptions as we determine to be necessary or appropriate in connection with the issuance of the Bonds under applicable laws of the Commonwealth and under Federal tax laws;
- (2) prepare or review the documents necessary or appropriate for the authorization, sale, issuance and delivery of Bonds, including (a) the Pennsylvania Local Government Unit Debt Act, (b) the Resolutions and other relevant documents pursuant to which any Bonds will be issued and secured, (c) such other documents as may be required by the financing or which we deem necessary for rendering our legal opinion as bond counsel, and (d) the forms of such closing documents, certificates and opinions of counsel as may be required by the terms of the financing, applicable federal and state laws and customary practice;

- (3) review legal issues relating to the structure of each financing based upon the economic and project decisions affecting the School District (we understand that in making certain decisions the School District will rely upon its financial advisor);
- (4) consult with the parties to the transaction and their counsel prior to the issuance of any Bonds, including the representative(s) of the School District identified by the Board;
- (5) attend at least one Board meeting per transaction, including the meeting at which the enabling resolution is adopted; and
- (6) subject to the completion of appropriate debt proceedings to our satisfaction, render our legal opinion as bond counsel regarding the validity of each series or subseries of Bonds, and the Federal and Pennsylvania income tax treatment of interest thereon.

The primary responsibility of bond counsel is to render objective legal opinions with respect to the authorization and issuance of debt obligations. Our bond opinions will be executed and delivered by us in written form on the date the obligations are exchanged for their purchase price and will be based on facts and law existing as of their date(s). Upon delivery of the opinions, our responsibilities as bond counsel will be concluded with respect to that particular financing; specifically, but without implied limitation, we do not undertake (unless separately engaged) to provide continuing advice to any party concerning (1) any actions necessary to assure that interest paid on the obligations will continue to be excluded from gross income for federal income tax purposes, including, without intending to limit the foregoing, advice concerning ongoing compliance with the arbitrage yield restrictions and rebate requirements of Section 148 of the Code (including rebate spend-down exceptions), and (2) any action that may be necessary to assure compliance with applicable continuing disclosure requirements of applicable Federal or state securities laws.

In rendering the opinions, we will rely upon representations of the School District set forth in the financing documents, the certified proceedings, and other certifications of public officials, officials of the School District and other persons (including certifications as to the use of the Bond proceeds and various tax matters), without undertaking to verify the same by independent investigation. We do not review the financial condition of the School District or any other party, the feasibility of the project to be financed with the proceeds of the obligations, and we will express no opinion relating thereto. We provide no opinion on matters pertaining to the Official Statement or other disclosure material pertaining to any Bonds except as described in any supplemental opinion we sign and deliver.

We assume that the School District will at all times be represented by its duly appointed Solicitor, or such other independent counsel as the School District may from time to time appoint, that such counsel will represent and advocate the interests of the School District, and that such counsel will render such opinions as may be required of School District counsel regarding the corporate powers of the School District and the authorization and enforceability of relevant documents entered into by the School District.

During the course of the financings, we will undertake and be compensated for representation of the School District as bond counsel on a fixed fee basis per transaction. Such fixed fees will be quoted on or in advance of the date on which the School District adopts a Resolution to issue Bonds and will be based upon: (i) our understanding of the terms, structure size and schedule of the financing, (ii) the duties we will undertake pursuant to this letter, (iii) the time we anticipate devoting to the financing, and (iv) the responsibilities we assume. Such fees are payable on the closing date of the Bonds or, when applicable, within 45 days following the adoption of the Resolution securing the Bonds. Such fees may vary if the structure of the Bonds changes materially from the date of our quote, or if unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility. If, at any time, we believe that circumstances require an upward adjustment of this fee quote, we will consult with you. In addition, we will expect to be reimbursed for all out-of-pocket expenses, including travel costs, photocopying, deliveries, long distance telephone charges, in an amount not to exceed \$1,000 unless we state otherwise at the time of our fee quote. In addition, filing fees, advertising costs and the creation of CD-ROMs containing closing documents, which are payable to third parties, shall be paid directly by the School District or reimbursed if paid by us. We will also charge for preparation and processing of Bond certificates in the amount of \$2,500 per series or subseries of Bonds.

Scope of Special Counsel and other Legal Services

By entering into this agreement, the School District is engaging R&S to assist you and your financial advisor in addressing issues, through litigation, negotiations or otherwise, related to the School District's existing and future interest rate management agreements, including extension, suspension and termination options and procedures and, where appropriate and desirable, challenges to the validity and enforceability of such agreements in lieu of termination.

In the absence of a mutual written agreement to the contrary, the terms set forth in the remainder of this letter of engagement automatically will govern all Special Counsel services related to the School District's interest rate management agreements and any other legal services R&S may render on the School District's behalf on an hourly basis (exclusive of bond counsel or other flat fee or contingent fee services typically requiring the delivery of a legal opinion).

R&S' Duties. R&S will provide such legal services as may be requested and reasonably required to represent the School District in connection with the School District's interest rate management agreements and other financial matters for which R&S' input is sought. With respect to those matters, R&S will endeavor to represent the School District in a professional manner and to promptly respond to School District's inquiries. Lawyers, law clerks and legal assistants may participate in rendering services for the School District as R&S considers appropriate. R&S' acceptance of representation of the School District on any matter shall be within the sole discretion of R&S.

School District's Duties. The School District agrees to keep R&S informed regarding all matters and expectations which are the subject of this engagement, including identifying the persons to which communications shall be directed when R&S is not addressing the Board as a whole. The School District agrees to cooperate fully and timely with R&S and to participate as requested in all proceedings related to representation by R&S of the School District. The School

District also agrees to ensure that R&S is provided with any information, documents or other materials within the School District's possession or control that may bear on the matters for which R&S is retained. The School District further agrees to pay R&S' bills as provided below and comply with the other provisions of this letter.

Fees. R&S' hourly fees shall be based primarily on the time spent by attorneys, legal assistants and other personnel on behalf of the School District (including any travel time) at R&S' then current hourly billing rates for the individuals involved, which the School District agrees to pay such fees. R&S' hourly billing rates currently range between \$230 and \$310 per hour for partners; between \$140 and \$250 per hour for associate attorneys; between \$120 and \$150 per hour for legal assistants; and \$100 per hour for law clerks. Individuals' rates are based on their years of professional experience, specialization, and level of professional attainment. R&S' overall billing rate structure is reviewed by the firm's Executive Committee on an annual basis, and annually or from time to time, at the discretion of the firm's Executive Committee, the billing rate structure or individuals' hourly rates may be adjusted to take into account increased experience, costs and other factors. Upon request made at any time, R&S will provide the School District with specific information concerning any individual's billing rate or R&S' current rate structure. R&S may, under the terms of this engagement, change or adjust the individuals' rates or overall billing rates charged to the School District. However, should R&S' overall billing rate structure be materially changed, R&S will provide the School District with written notice of the new structure and its effective date.

The undersigned will be the responsible partner for this matter and charges a rate of \$290 per hour. Jonathan W. Cox, an associate attorney in the municipal finance group, is expected to work on this matter with the undersigned and charges an hourly rate of \$170 per hour. Other partners, associates and paralegals may work on this matter as the undersigned may determine from time to time to be in the best interest of the School District.

If the engagement in question requires us to render a legal opinion, or if approved by the Board, we will quote a flat fee in lieu of all or a portion of the hourly rate billing. The flat fee will be identified as in the manner provided for Bond Counsel services.

Costs and Expenses. The School District agrees to pay all costs and expenses in addition to billed fees. Costs and expenses commonly include filing fees, court reporters' fees, long distance and local toll calls, telephone charges, outgoing facsimile charges, messenger and delivery charges, postage, travel expenses, printing and reproduction costs, charges for online computer research and other similar vendor charges. The amount charged by any outside vendor is determined by the vendor of those services. Internally-generated charges are determined by R&S in its discretion. R&S may advance money to pay invoices of outside vendors if it would be cumbersome or impractical to forward the invoice to the School District for direct payment or the amount is small. Any such advances will be included in R&S' bill to the School District and shall be reimbursed by the School District. On matters requiring sizable disbursements to vendors, typically involving \$200 or more, R&S generally forwards the bill directly to the School District for payment. The School District agrees to pay any such bills promptly. The School District agrees to pay transportation, meals, lodging and other necessary costs of any out of town travel by R&S'

personnel resulting from R&S' representation of the School District. Should it become necessary for R&S, in representing the School District, to retain consultants, experts or investigators, the School District agrees to pay all fees and charges of such persons on a timely basis. No expert, consultant or investigator shall be retained without the School District's advance approval.

Billing Statements. R&S will send the School District monthly bills for time and expenses incurred on behalf of the School District on matters which are subject to hourly billings. Bills will identify the attorney performing the service, the amount of time involved (in increments of 1/10 hour) and briefly describe the type or scope of the service performed. Each bill is due on receipt. the School District agrees to pay a late charge of 1% per month on amounts not paid within thirty days from the date of the bill, but the rate of the late charge may be changed upon 30 days' prior written notice from R&S to the School District. If any bill remains unpaid after 60 days without written consent of R&S, or if any advance is not paid as required by this letter of engagement, the approval of R&S' Executive Committee may be required before further work will be performed for the School District, and the School District agrees that under such circumstances R&S may cease work on the School District's behalf within the rules of professional conduct. In the event that R&S commences collection proceedings in order to recover fees and expenses that have been outstanding for more than 60 days, and R&S is successful in a legal proceeding seeking to collect such fees, the School District agrees to pay R&S' expenses and for the value of time expended by R&S attorneys and employees (at R&S' then current hourly rates) in connection with such collection efforts (including but not limited to any litigation which may result). the School District agrees to notify R&S promptly and in writing if the School District has any questions or comments regarding any bill, or if the School District disputes any aspect of any bill. The School District and R&S agree to endeavor in good faith to resolve any billing disputes expeditiously.

Discharge and Withdrawal. Any client may discharge R&S at any time by written notice to R&S. R&S may withdraw from representing any client at any time, except to the extent R&S is explicitly precluded from doing so by the Pennsylvania Rules of Professional Conduct or by a tribunal before which a matter is pending. The School District acknowledges that R&S may withdraw from its representation of the School District without the School District's consent under a variety of circumstances, as permitted by the Rules of Professional Conduct, including without limitation, breach of the School District's obligation to pay fees, costs and expenses. When R&S' services are concluded or terminated, regardless of the reason, all unpaid charges will become due and payable immediately by the School District.

School District File. R&S will, on the School District's request, deliver the School District's file (excluding attorney work product material) to the School District or as otherwise directed by the School District, along with any of School District's funds or property in R&S' possession. Unless returned, R&S will retain each of the School District's files for a minimum of two years after a matter is completed and its file is closed. The School District agrees that if it desires any of its files, or the contents thereof, to be retained for longer than two years or to be delivered to it, it will make that request in writing to R&S within such two year period.

Opinions as to Outcome. The outcome of legal representation is typically uncertain. Accordingly, nothing in this letter of engagement, and nothing in any other written or oral statement

now or hereafter made by any R&S representative to the School District, shall constitute a promise or guarantee about the outcome of any matter or about possible adverse consequences arising from claims, counterclaims or appeals, whether initiated by the School District or an adverse party.

Additional Conditions. The terms of the engagement set forth in this letter will automatically take effect when the School District returns a signed copy of this letter. The effective date shall be retroactive to the earliest of (i) the date of this letter, or (ii) the date R&S first performs services for the School District with respect to the matter described in this letter. In view of the time constraints imposed upon the School District by the aforementioned Letter of Intent to sell its property, and following request made by the School District's local counsel, R&S attorneys have already begun work on this engagement and the School District is obligated to pay for all time expended and costs incurred prior to the time when R&S is notified by the School District to cease further work for the School District.

By executing and returning a copy of this letter to us, you agree that R&S may disclose its attorney-client relationship with you to others, in its sole discretion, including for purposes of marketing and on the firm's website.

In this engagement, R&S (and any of its attorneys or employees) is authorized by the School District to consult with, and to disclose confidential information to, the School District's Solicitor, concerning the terms of this engagement and the subject matter of this engagement, unless the School District shall provide R&S with written instructions to the contrary (which instructions shall be effective only upon and following actual receipt thereof by R&S).

Entire Agreement. When accepted by you, the terms and provisions of this letter of engagement shall constitute an agreement, and the entire agreement, between the School District and R&S, and shall supersede all prior or contemporaneous negotiations, correspondence, understandings and agreements between R&S and the School District, regarding the subject matter of this letter of engagement.

Counterparts. This letter of engagement may be signed in counterparts, all of which shall be taken together as a single instrument.

Governing Law. The agreement between the School District and R&S represented by this letter of engagement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to the conflict of laws principles.

Together, we are working to accomplish a result that is satisfactory to you. This can be achieved only by combining your knowledge of the facts, your perceptions of the people and issues involved, our understanding of the law and the legal process itself. We promise you our complete support and cooperation along with the full resources of this firm. With your understanding and help, we will pursue all matters with diligence and expediency.

December 1, 2008

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After reviewing this letter of engagement, please return a signed copy to the undersigned. If you have any questions, please do not hesitate to call. We look forward to working with you.

Very truly yours,

RHOADS & SINON LLP

By:

Jens H. Damgaard

AGREED AND ACCEPTED:

**BETHLEHEM AREA SCHOOL DISTRICT,
Lehigh and Northampton Counties, Pennsylvania**

By: _____
(Vice) President of the Board

Date: _____

15. *LERTA Tax Abatement Program*

INFORMATION:

The Bethlehem Area School District has been participating with the City of Bethlehem and the Counties of Lehigh and Northampton in the LERTA Tax Abatement Program. This program has an expiration date of December 31, 2008.

RECOMMENDATION:

That the Board of School Directors approves the LERTA Tax Abatement Program that includes the City of Bethlehem, the County of Northampton, and the Bethlehem Area School District in the City of Bethlehem until December 31, 2010.

16. *Petition for Approval of Three Voting Regions in the Bethlehem Area School District*

INFORMATION:

A settlement agreement was signed by all parties in a Federal lawsuit, which challenged the method of electing school directors in the Bethlehem Area School District. The district agreed to alter and/or modify its current at-large election method and adopt a hybrid method of election, whereby one (1) school director shall be elected from each of three (3) single member voting regions created and depicted on a redistricting map which was attached to the settlement agreement. The intent of the redistricting plan was to maintain – to the extent possible – the integrity of the wards and precincts, thereby minimizing the administrative impact on existing polling practices which the district considers a matter of important governmental and public concern. The settlement agreement was approved by a Federal Court Order on August 27, 2008. The Order must be implemented under the Public School Code by filing a Petition in Northampton County Court, which has jurisdiction to formally establish the regions in both Lehigh and Northampton Counties.

RECOMMENDATION:

That the Board of School Directors authorizes the Office of the Solicitor to file a Petition for Approval of Three Voting Regions in the Bethlehem Area School District in the Northampton County Court of Common Pleas which requests the court to adopt the redistricting plan approved by the Federal Court.

17. *Tax Sheltered Annuities 403(b) Plan Document***INFORMATION:**

In response to recently released IRS regulations establishing a requirement for written documentation of the 403(b) tax sheltered annuity program offered to employees of the Bethlehem Area School District (the “District”), the District wishes to adopt the plan document, consisting of the 403(b) Plan Document for Public Education Organizations and the Adoption Agreement for 403(b) Plan Document for Public Education Organizations (both of which are referred to hereinafter as the “Plan Document”), a copy of which is attached to this resolution. The Plan Document is based on model language released by the IRS for such purpose.

RECOMMENDATION:

RESOLVED, that the Board does hereby adopt the Plan Document which will, at all times, conform to the requirements of Section 403(b) of the Internal Revenue Code and applicable regulations.

FURTHER RESOLVED that it is the intention of the Board that the 403(b) program will conform with all federal and state statutory and regulatory requirements applicable to 403(b) plans, except that the program set forth above shall not be subject to the requirements of Title I of ERISA because the employer is exempted from such requirements.

FURTHER RESOLVED that the Board authorizes the Assistant to the Superintendent for Finance and Administration to act on the Board’s behalf with respect to this plan, and to take any and all actions necessary or desirable to implement, maintain, and administer the plan set forth above in accordance with the Board’s intentions, and all applicable state and federal laws.

403(b) Plan Document

Bethlehem Area School District

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Bethlehem Area School District

403(b) Plan Document

Preamble

This plan document includes the IRS model language set forth in Rev. Proc. 2007-71 and has been modified to delete certain optional features and include provisions that were not included in the IRS model language. It is expected that school districts will, with the assistance of counsel, modify this plan document by selecting certain options as provided in the Adoption Agreement, the terms of which are incorporated into this plan document.

Section 1 – Definitions

The following words and terms, when used in the Plan, have the meaning set forth below.

- 1.1. **Account** means the account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.
- 1.2. **Account Balance** means the value of the aggregate amount credited to each Participant's Account under all Accounts, including the Participant's Elective Deferrals, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, if such contributions are authorized under the Adoption Agreement, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).
- 1.3. **Administrator** means TSA Consulting Group, Inc. Notwithstanding this appointment, the Employer may delegate, by separate agreement, any administrative responsibilities hereunder to one or more persons, committees, Vendor, or other organization.
- 1.4. **Annuity Contract** means a nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in the state in which the Employer or Participant, as applicable, resides and that includes payment in the form of an annuity.
- 1.5. **Beneficiary** means the designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

- 1.6. **Custodial Account** means the group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.
- 1.7. **Code** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 1.8. **Compensation** means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election under Section 2 of the Plan made to reduce compensation in order to have Elective Deferrals under the Plan).
- 1.9. **Disabled** means the definition of disability provided in the applicable Individual Agreement.
- 1.10. **Elective Deferral** means the Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions, unless the Employer has authorized Roth 403(b) Contributions on the Adoption Agreement that conform to the requirements of Section 10.
- 1.11. **Employee** means each individual, whether appointed or elected, who is a common law employee of the Employer performing services for a public school as an employee of the Employer. This definition is not applicable unless the Employee's compensation for performing services for a public school is paid by the Employer. Further, a person occupying an elective or appointive public office is not an Employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a state or local government.
- 1.12. **Employer** means the public education organization identified in the Adoption Agreement as the Employer.
- 1.13. **Employer Contributions** means any non-elective contributions made to the Plan by the Employer as provided in the Adoption Agreement.
- 1.14. **Funding Vehicles** means the Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and authorized by Employer for use under the Plan.
- 1.15. **Includible Compensation** means an Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$230,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws.
- 1.16. **Individual Agreement** means an agreement between a Vendor and the Employer or a Vendor and a Participant that constitutes or governs a Custodial Account or an Annuity Contract.
- 1.17. **Participant** means an individual for whom Elective Deferrals or other contributions permitted under the Plan are currently being made, or for whom such contributions have

previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

- 1.18. **Plan** means the name given to this Plan by the Employer in the Adoption Agreement and may include separate documents that govern special provisions if so indicated in the Adoption Agreement.
- 1.19. **Plan Year** means the calendar year.
- 1.20. **Related Employer** means the Employer and any other entity which is under common control with the Employer under section 414(b) or (c) of the Code. For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.
- 1.21. **Roth 403(b) Contribution** means, if authorized in the Adoption Agreement, any contribution made by a Participant which is designated as a Roth 403(b) Contribution in accordance with Section 10 of the Plan that qualifies as a Roth 403(b) Contribution under section 402A of the Code.
- 1.22. **Severance from Employment** means severance from employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).
- 1.23. **Vendor** means the provider of an Annuity Contract or Custodial Account, or any organization acting on their behalf under this Plan.
- 1.24. **Valuation Date** means each business day of the Plan Year.

Section 2 - Participation and Contributions

- 2.1. **Eligibility.** Unless otherwise provided in the Adoption Agreement, each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer. However, an Employee who is a student-teacher (i.e., a person providing service as a teacher's aid on a temporary basis while attending a school, college or university) or a student-worker is not eligible to participate in the Plan.
- 2.2. **Contributions.** (a) Elective Deferral Contributions. An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed to the Plan as an Elective Deferral on his or her behalf) and filing it with the appropriate Administrator. This Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time. The participation election shall also include designation of the Funding

Vehicles and Accounts therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. Unless otherwise provided in the Plan or Adoption Agreement, all Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee's election.

(b) Roth 403(b) Contributions. If authorized in the Adoption Agreement and if permitted under an Employee's Individual Agreement(s), an Employee may elect to make Roth 403(b) Contributions to the Plan in accordance with Section 10 of the Plan. The Participant's election to make Roth 403(b) Contributions shall be made on the agreement provided by the Administrator and shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election is filed.

(c) Employer Contributions.

(1) If authorized in the Adoption Agreement, the Employer may make non-elective Employer contributions to Accounts of designated Employees. Employer contributions shall be determined in accordance with the Adoption Agreement. Contributions made under this Section 2.2(c) shall be deposited into each Participant's Account in accordance with Sections 2.4 and 2.5 of the Plan.

(2) Employer may make contributions into the 403(b) Accounts of former Employees, provided that any such contributions satisfy all of the following conditions:

A. Contributions may not be made later than the fifth calendar year following the year in which the former Employee ceased to be an Employee.

B. Contributions may not be made following the month of the former Employee's death.

C. Contributions shall be 100% vested at all times.

D. Contributions shall be based on "includible compensation" as defined in section 403(b)(3) of the Code as modified by IRS regulations and shall be subject to the limitations of section 415(c)(1) of the Code.

Subject to (2)B. above, amounts not contributed by Employer to any former Employee's 403(b) Account due to the contribution limitations of section 415(c) of the Code shall be contributed in the next Plan Year (and each succeeding Plan Year) until the Employer contributes all amounts due to Participant. No contributions may be made after the last day of the fifth year following the Plan Year in which the Participant's Severance from Employment occurred.

(d) External Plan Contributions. If authorized in the Adoption Agreement, Employer may make additional contributions to the Plan and permit Employees to make contributions in accordance with the terms of an Optional Retirement Plan and/or a Supplemental 403(b) Program. Contributions made under an external 403(b) plan shall be made in accordance with the requirements of the applicable plan as indicated on the Adoption Agreement.

- 2.3. **Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.
- 2.4. **Change in Elective Deferral Election.** Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals, a change in the allocation of his or her Elective Deferrals to reflect pre-tax or Roth 403(b) Contributions (if permitted under the Plan), and/or a change to previous investment directions. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.
- 2.5. **Contributions made Promptly.** Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant, unless an earlier date is required by applicable state law. Employer contributions shall be transferred to the applicable Funding Vehicle within a reasonable period of time but in no event later than thirty (30) days after the end of the Employer's standard work year for which such contributions were owed.
- 2.6. **Leave of Absence.** Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

Section 3 - Limitations on Amounts Deferred

- 3.1. **Basic Annual Limitation.** Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the "applicable dollar amount" or (b) the Participant's Includible Compensation. The "applicable dollar amount" is the amount established under section 402(g)(1)(B) of the Code, which is \$15,500 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under section 415(d) of the Code.
- 3.2. **Special Section 403(b) Catch-up Limitation for Employees with 15 Years of Service.** If authorized in the Adoption Agreement, the applicable dollar amount under Section 3.1(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:
- (a) \$3,000;
 - (b) The excess of:
 - (1) \$15,000, over

- (2) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or
- (c) The excess of:
 - (1) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over
 - (2) The total Elective Deferrals made for the employee by the qualified organization for prior years.

For purposes of this Section 3.2, a “qualified employee” means an employee who has completed at least 15 years of service taking into account only employment with the Employer.

- 3.3. **Age 50 Catch-up Elective Deferral Contributions.** An Employee who is a Participant who will attain age 50 or more by the end of the tax year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under the Code.
- 3.4. **Coordination.** If the Adoption Agreement authorizes contributions under Section 3.2 of the Plan, amounts in excess of the limitation set forth in Section 3.1 shall be allocated first to the special 403(b) catch-up under Section 3.2 and next as an age 50 catch-up contribution under Section 3.3. However, in no event can the amount of the Elective Deferrals for a year be more than the Participant’s Includible Compensation for the year.
- 3.5. **Special Rule for a Participant Covered by Another Section 403(b) Plan.** For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the Elective Deferral limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 3.2 only if the other plan is a section 403(b) plan.
- 3.6. **Correction of Excess Elective Deferrals.** If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the Employer under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of

the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant in accordance with applicable IRS guidance.

- 3.7. **Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, this right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).
- 3.8. **Annual Contribution Limits.** The aggregate annual amount contributed into a Participant's Account shall not exceed the amount permitted under section 415(c) of the Code. If any Employer Contributions cause a Participant's 403(b) Contract to exceed the annual contribution limitation of section 415(c)(1) of the Code, the excess contributions shall be segregated and treated in a manner consistent with applicable IRS guidance on excess "annual additions."

Section 4 – Loans

- 4.1. **Loans.** If authorized in the Adoption Agreement, loans shall be permitted under the Plan to the extent permitted by and in accordance with the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured. An Employee who has previously defaulted on a loan from any retirement plan or deferred compensation arrangement sponsored by the Employer and who has not repaid the loan, in full, shall not be permitted to take a loan from his or her Account under the Plan.
- 4.2. **Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Sections 4.1 and 4.3, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Vendors and to transmit information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

- 4.3. **Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of (a) or (b) below:
- (a) \$50,000, reduced by the greater of:
- (1) The outstanding balance on any loan from the Plan to the Participant on the date the loan is made or
 - (2) The highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period).
- (b) One half of the value of the Participant's vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator).
- For purposes of this Section 4.3, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.
- 4.4. **Loan Repayments for Employees in Military Service.** Notwithstanding any other provision of the Plan or any Annuity Contract or Custodial Account, loan repayments by eligible uniformed services personnel may be suspended as permitted under section 404(u)(4) of the Code and the terms of any loan shall be modified to conform to the requirements of the Uniformed Services Employment and Reemployment Rights Act.

Section 5 - Benefit Distributions

- 5.1. **Benefit Distributions at Severance from Employment or Other Distribution Event.** Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 5.3 (relating to withdrawals of amounts rolled over into the Plan), or Section 5.4 (relating to Hardship Distributions), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, Dies, becomes Disabled, or Attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.
- 5.2. **Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Treas. Reg. §1.408-8, except as provided in Treas. Reg. § 1.403(b)-6(e).
- 5.3. **In-Service Distributions from Rollover Account.** If the Funding Vehicles in which a Participant's Account is invested has established and maintains a separate account

attributable to rollover contributions to the Plan and if permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in such rollover account.

- 5.4. **Hardship Distributions.** If authorized under the Adoption Agreement, (a) hardship distributions shall be authorized under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. No Elective Deferrals to any retirement or deferred compensation plan sponsored by the Employer shall be allowed during the six (6) month period beginning on the date the Participant receives a distribution on account of hardship.
- (b) No hardship distribution is permitted unless the Vendors agree to the exchange of information between the Administrator and the Vendors to the extent necessary to implement the Individual Agreements. Notwithstanding any Individual Agreement, the Plan only permits hardship distributions that satisfy the “safe harbor” standards with respect to establishing an immediate and heavy financial need (under Treas. Reg. §1.401(k)-(d)(3)(iii)(B)). For purposes of satisfying the lack of other resources requirement (under Treas. Reg. §1.401(k)-1(d)(3)(iv)(E)), the Plan shall follow the provisions of the applicable Individual Agreements, except that all Participants shall suspend Elective Deferrals for a period of six (6) months following the date of the hardship distribution. Vendor shall notify Employer of any hardship distributions in order for the Employer to implement the resulting 6-month suspension of the Participant’s right to make Elective Deferrals under the Plan.
- 5.5. **Rollover Distributions.** (a) A Participant or the Beneficiary of a deceased Participant (or a Participant’s spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant’s death was neither the spouse or former spouse of the Participant or alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).
- (b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.
- 5.6 **Distributions From External Plans.** Employees participating in ORP and/or Supplemental 403(b) Plans may have different rules applicable to Distributions, Exchanges, Transfers and Loans from those plans. Distributions from an external 403(b) plan shall be made in accordance with the requirements of the applicable plan as indicated on the Adoption Agreement.

- 5.7 **Vesting.** All Accounts under the Plan are nonforfeitable at all times, except that the portion of a Participant's Account that reflects any contributions made under an ORP or Supplemental 403(b) Retirement Program will be subject to the vesting requirements of that plan.

Section 6 – Rollovers, Exchanges and Transfers

- 6.1. **Eligible Rollover Contributions to the Plan.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, unless Roth 403(b) Contributions are authorized under the Adoption Agreement, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code or a Roth IRA described in section 408A of the Code.
- 6.2. **Eligible Rollover Distributions.** For purposes of Section 6.1, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include any installment payment payable over a period of ten (10) years or more, any distribution made as a result of a financial hardship or other distribution which is made upon hardship of the employee, or for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, for purposes of Section 6.1, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accept eligible rollover distributions.
- 6.3. **Separate Accounts.** Unless otherwise provided by the terms of applicable Individual Agreements, Vendors shall provide separate accounting for any eligible rollover distributions paid to the Plan.
- 6.4. **Plan-to-Plan Transfers to the Plan.** (a) If authorized under the Adoption Agreement, the Administrator may permit a transfer of assets to the Plan as provided in this Section 6.4. Such a transfer is permitted only if the other 403(b) plan provides for the direct plan-to-plan transfer of each Employee's interest therein to the Plan and the Participant is an Employee or former Employee of the Employer. The Administrator or any Vendor accepting a transfer may require such documentation from the other 403(b) plan as it deems necessary to effectuate

the transfer in accordance with Treas. Reg. §1.403(b)-10(b)(3) and other applicable IRS guidance and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.

(b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions that are not less stringent than those imposed on the transferor plan and the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

6.5. **Plan-to-Plan Transfers from the Plan.** (a) If authorized under the Adoption Agreement, Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with Treas. Reg. § 1.403(b)-10(b)(3). A transfer is permitted under this Section 6.5(a) only if the Participants or Beneficiaries are Employees or former Employees of the Employer under the receiving plan and the other 403(b) plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for the Account of each Participant and Beneficiary after the transfer to at least equal the Account value immediately prior to the transfer.

(b) The other 403(b) plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, it shall impose restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

(c) Upon the transfer of assets under this Section 6.5, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.5 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. §1.403(b)-10(b)(3).

6.6. **Contract and Custodial Account Exchanges.** (a) If authorized in the Adoption Agreement, a Participant or Beneficiary is permitted to change the investment of his or her

Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. The Adoption Agreement may also permit exchanges into the Plan from Funding Vehicles that previously accepted contributions from the Employer but are not currently authorized Vendors under the Plan. Exchanges from the Plan to a Funding Vehicle not currently authorized to accept contributions from the Employer are not permitted. If the Adoption Agreement authorizes exchanges to a Vendor that is not eligible to receive contributions under Section 2, the conditions in paragraphs (b) through (d) of this Section 6.6 must be satisfied.

(b) The Participant or Beneficiary must have an Account balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both section 403(b) Annuity Contracts or Custodial Accounts immediately before the exchange).

(c) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

(d) The Employer enters into an agreement with the receiving Vendor for the other contract or custodial account under which the Employer and the Vendor will from time to time in the future provide each other with the following information:

(1) Information necessary for any current or former Vendor to which Plan contributions have been made in order to satisfy section 403(b) of the Code, including the following:

A. Employer shall provide information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5);

B. If hardship distributions are authorized in the Adoption Agreement, Vendor shall notify Employer of any hardship distribution under Section 5.4 of the Plan; and

C. Vendor shall provide information to the Employer or other Vendors concerning the Participant's or Beneficiary's Annuity Contracts or Custodial Accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship distribution rules of Section 5.4); and

(2) Information necessary for the resulting Annuity Contract or Custodial Account and any other 403(b) contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following:

A. The amount of any plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional Plan loan satisfies the loan limitations of Section 4.3, so that any such additional loan is not a deemed distribution under section 72(p)(1) of the Code; and

B. Information concerning the Participant's or Beneficiary's Roth 403(b) Contributions and after-tax employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.

(e) If any Vendor ceases to be eligible to receive Elective Deferrals under the Plan, the Vendor shall enter into an information sharing agreement as described in Section 6.6(d) to the extent the Employer's relationship with the Vendor does not provide for the exchange of information described in Section 6.6(d)(1) and (2).

- 6.7. **Permissive Service Credit Transfers.** (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of Plan-to-Plan Transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account balance transferred to such defined benefit governmental plan. A transfer under this Section 6.7(a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under this Section 6.7(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.
- (c) If a Plan-to-Plan Transfer under this Section 6.7 does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

Section 7 - Investment of Contributions

- 7.1. **Manner of Investment.** All Elective Deferrals, Roth 403(b) Contributions, Employer Contributions or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.
- 7.2. **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers and exchanges among Annuity Contracts and Custodial Accounts may be made under this Section 7.2 as authorized under the Adoption Agreement and to the extent provided in the Individual Agreements as permitted under applicable Income Tax Regulations.
- 7.3. **Current and Former Vendors.** The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. If a Vendor is not eligible to receive

Elective Deferrals, Roth 403(b) Contributions or Employer Contributions under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan and a Vendor holding assets under the Plan in accordance with Section 6.4 or 6.6), Employer shall keep Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

- 7.4 **Vendors for External 403(b) Plans.** Employees participating in ORP and/or Supplemental 403(b) Plans may have different Vendors authorized to accept contributions and hold Accounts under the external plan. The ORP or the Supplemental 403(b) Plan will identify authorized Vendors for purposes of those plans, which may be different than the Vendors authorized under the Plan.

Section 8 - Amendments to the Plan

- 8.1. **Termination of Contributions.** The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.
- 8.2. **Amendment.** The Employer reserves the authority to amend this Plan at any time, provided that any amendment which reduces the contractual rights or benefits under an Individual Agreement shall apply prospectively only except as required under the Code and applicable regulations.

Section 9 – Miscellaneous

- 9.1. **Non-Assignability.** Except as provided in Section 9.2 and 9.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- 9.2. **Domestic Relation Orders.** Notwithstanding Section 9.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any state ("Domestic Relations Order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the Domestic

Relations Order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the Domestic Relations Order.

- 9.3. **IRS Levy**. Notwithstanding Section 9.1, the Administrator may direct payment from a Participant's or Beneficiary's Account in the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.
- 9.4. **Tax Withholding**. Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals and Roth 403(b) Contributions, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Administrator or Vendor may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.
- 9.5. **Payments to Minors and Incompetents**. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid in conformity with applicable Annuity Contracts or Custodial Accounts. If the applicable Annuity Contracts or Custodial Accounts do not address the issue of payments to minors and incompetents, then the Administrator shall direct payment of the benefit to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.
- 9.6. **Mistaken Contributions**. If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one (1) year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned to the party that made the contribution.
- 9.7. **Procedure when Distributee cannot be Located**. The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. If, after sending the communication by certified mail to the last known address shown on the records of the Employer or the Administrator and not receiving a response within six (6) months, then the terms of the

Funding Vehicle holding the Accounts of the Participant that govern payment of benefits to Participants and Beneficiaries who cannot be located shall be followed.

- 9.8. **Incorporation of Individual Agreements**. The Plan, together with the Adoption Agreement and any Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Adoption Agreement and applicable Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code. In such event, the Individual Agreements shall be interpreted, to the extent possible, in a manner to conform to the Plan and applicable requirements.
- 9.9. **Governing Law**. The Plan will be construed, administered and enforced according to the Code and the laws of the state in which the Employer has its principal place of business.
- 9.10. **Construction**. Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof. Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.
- 9.11. **Indemnification**. If Employer appoints an Employee or a committee of Employees to act as the Administrator of the Plan, Employer shall indemnify any such Employee acting on its behalf in this capacity. Such individuals shall be indemnified from any and all liability that may arise by reason of his action or failure to act concerning this Plan, excepting any willful misconduct or criminal acts.
- 9.12. **No Employer Liability**. Employer shall have no liability for the payment of benefits under the Plan. Each Participant shall look solely to the providers of applicable Annuity Contracts and Custodial Accounts for receipt of payments or benefits under the Plan.

Section 10 – Roth 403(b) Contribution Provisions

- 10.1. **General Application**. This Section 10 shall apply only if the Employer has elected to permit Roth 403(b) Contributions under the Plan as indicated on the Adoption Agreement.
- 10.2. **Roth 403(b) Contributions**. Participants may make Roth 403(b) Contributions to their Accounts under the Plan if authorized by the Employer on the Adoption Agreement. Unless otherwise provided, such contributions shall be treated as Elective Deferrals and are therefore subject to the requirements and limitations imposed by section 402(g) of the Code. A Participant's Roth 403(b) Contributions shall be allocated to a separate account maintained for such deferrals as described in Section 10.3.
- 10.3. **Separate Accounting Requirements**. Contributions and withdrawals of Roth 403(b) Contributions, and earnings or losses thereon, shall be credited and debited to each

Participant's Account and shall be separately accounted for under each Employee's Account. Gains, losses, and other credits or charges shall be separately allocated on a reasonable and consistent basis for each Participant's Roth 403(b) Contributions. Except as provided in Section 10.6, no contributions other than Roth 403(b) Contributions and properly attributable earnings may be credited to each Participant's Roth subaccount.

- 10.4. **Deposit Requirements.** Roth 403(b) Contributions shall be deposited with the applicable Funding Vehicles as soon as practicable in accordance with Section 2.5 of the Plan, unless an earlier date is required under state law.
- 10.5. **Direct Roth Rollovers from the Plan.** Notwithstanding Section 5.5 of the Plan, Participants may only make a direct rollover of a distribution of Roth 403(b) Contributions (and earnings thereon) to another 403(b) plan with Roth 403(b) Contribution features, to a Roth 401(k) plan with Roth contribution features or to a Roth IRA described in Section 408A of the Code, and only to the extent the Rollover is permitted under the rules of section 402(c) of the Code.
- 10.6. **Roth Rollovers into the Plan.** Notwithstanding Section 6.1 of the Plan, and unless otherwise indicated on the Adoption Agreement, direct rollovers of Roth 403(b) Contributions and Roth 401(k) Contributions and earnings thereon from another 403(b) plan with Roth 403(b) Contribution features or from a Roth 401(k) plan with Roth Contribution features are permitted, provided that the Funding Vehicles selected by a Participant will accept Roth 403(b) and/or 401(k) rollovers. Direct rollovers shall only be permitted if the transmitting plan satisfies the conditions set forth in section 402A(e)(1) of the Code and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.
- 10.7. **Correction of Excess Deferrals.** Excess Deferrals shall be corrected by first distributing the amount of Roth 403(b) contributions (plus earnings thereon) made during the Plan Year needed to correct the excess and then by distributing a Participant's pre-tax Elective Deferrals (plus earnings thereon). However, if a highly compensated employee (as defined in Section 414(q) of the Code) experiences an Excess Deferral in any Plan Year, he may designate the extent to which the excess amount is composed of Elective Deferrals and excess Roth 403(b) Contributions, provided that both types of contributions were made by the Employee during the applicable Plan Year. If the highly compensated employee does not designate which type of contributions are to be distributed, then pre-tax Elective Deferrals shall be distributed first, followed by Roth 403(b) Contributions.
- 10.8. **Definition of Roth 403(b) Contributions.** A Roth 403(b) Contribution is an Employee contribution that is designated irrevocably by the Employee on his enrollment form to be a Roth 403(b) Contribution and is treated by the Employer as includible in the Employee's income.
- 10.9. **Roth Caveat.** Employer, Administrator and providers of Annuity Contracts and Custodial Accounts shall utilize good faith compliance efforts to conform to the requirements

applicable to Roth 403(b) Contributions based on applicable IRS guidance related to Roth 403(b) Contributions. The Plan shall be administered and interpreted in the manner necessary to ensure compliance with such guidance.

Section 11 – Optional Retirement Plan Provisions

- 11.1. **General Application.** This Section 11 shall apply only if the Employer has indicated that it offers an Optional Retirement Program (ORP) on the Adoption Agreement.
- 11.2. **Incorporation of ORP.** The ORP is established and governed by separate plan documentation which may include a plan document, statutory language and/or regulatory guidance. The terms and conditions of the ORP are incorporated herein by reference. If there is a conflict between the Plan and the requirements of the ORP, the ORP shall govern with respect to those provisions that are exclusive to the ORP. The Plan shall govern in all other circumstances.
- 11.3. **ORP Contributions.** Employer shall make contributions under the ORP to the Accounts of Participants that are also participating in the ORP in accordance with the terms of the ORP and/or as authorized by the Employer on the Adoption Agreement. Unless otherwise provided by the ORP, such contributions shall be treated as Employer Contributions and are therefore subject to the requirements and limitations imposed by section 415(c) of the Code.
- 11.4. **Separate Accounting Requirements.** ORP contributions and withdrawals, including any earnings or losses thereon, shall be credited and debited to each participating Participant's Account and shall be separately accounted for under each Employee's Account.
- 11.5. **Deposit Requirements.** ORP contributions shall be deposited with the applicable Funding Vehicles as soon as practicable in conformity with any requirements established in the ORP.

Section 12 – Supplemental 403(b) Programs

- 12.1. **General Application.** This Section 12 shall apply only if the Employer has indicated that it offers a Supplemental 403(b) Program on the Adoption Agreement.
- 12.2. **Incorporation of Supplemental 403(b) Program.** The Supplemental 403(b) Program is established and governed by a separate plan document. The Plan includes the Adoption Agreement and the document establishing the Supplemental 403(b) Program, as identified

on the Adoption Agreement. If there is a conflict between the Plan and the Supplemental 403(b) Program document, the Supplemental 403(b) Program shall govern with respect to those provisions that are exclusive to the ORP. The Plan shall govern in all other circumstances.

- 12.3. **Supplemental 403(b) Contributions.** Employer shall make contributions as required under the Supplemental 403(b) Contributions to the Accounts of Participants that are participating in the Supplemental 403(b) Program in accordance with the terms of the Supplemental 403(b) Program. Such contributions shall be subject to the appropriate annual contribution limitations based on the type of contribution required under the Supplemental 403(b) Program.
- 12.4. **Separate Accounting Requirements.** Supplemental 403(b) Program contributions and withdrawals, including any earnings or losses thereon, shall be credited and debited to each participating Participant's Account and shall be separately accounted for under each Employee's Account.
- 12.5. **Deposit Requirements.** Supplemental 403(b) Program Contributions shall be deposited with the applicable Funding Vehicles as soon as practicable in conformity with the Supplemental 403(b) Program document.

The Employer has evidenced its intent to adopt this Plan by executing the Adoption Agreement which is a part of this 403(b) Plan document. This Plan document, the Adoption Agreement, documents governing ORPs and Supplemental 403(b) Programs, as applicable, and any underlying Annuity Contracts and Custodial Accounts provided by the Vendors authorized by the Employer, as well as necessary forms and administrative policies and procedures incorporated by the Employer, an Administrator or any Funding Vehicle shall constitute the entire Plan.

ADOPTION AGREEMENT

Bethlehem Area School District hereby adopts the 403(b) Plan Document for Public Education Organizations plan document (the "Plan") as modified by this Adoption Agreement and agrees that the following provisions shall be incorporated as part of the Plan document.

EMPLOYER INFORMATION

Name of Employer: Bethlehem Area School District

Federal Tax ID: 24-0862592

Employer's Address:

1516 Sycamore Street

Bethlehem, PA 18017

Telephone Number: (610) 861-0500 **Fax:** (610) 861-8107

Contact Person: Stanley J. Majewski, Jr.

Telephone/Extension: (610) 861-0500 ext. 60202 E-mail smajewski@beth.k12.pa.us

Type of Organization:



K-12 Public School



Community College



Public College/University

Note: If Employer is not a public education organization, this document may not be used.

PLAN INFORMATION

1. Name of Plan: Bethlehem Area School District's 403(b) Plan

2. Effective Date: This Adoption Agreement:



Establishes a Plan effective as of January 1, 2009 (the "Effective Date") and is the first 403(b) plan document established by the Employer.



Amends and restates a previously established 403(b) Plan document of the Employer. The effective date of this amended Plan is _____ (the "Effective Date").

Default Construction Rule: If no box is checked, that feature is NOT included in the Plan.

3. Eligibility: Under the Plan document, ALL common law employees except student teachers are immediately eligible to make contributions under the Plan, unless an exception is indicated below. Eligibility for Employer Contributions is based on applicable employment agreements or collective bargaining agreements to which an employee is subject, or as determined by the Employer from year to year.

Employers that participate in External Plans may have additional eligibility requirements established by the plan(s). See Appendix 3 for additional conditions, if any, applicable for ORP contribution. Employees that participate in the Supplemental 403(b) Program will have different eligibility requirements which are described in the plan document that establishes the Supplemental 403(b) Plan.

The following employees are excluded from participating in the Plan:



Employees who normally work fewer than 20 hours per week in a working year except as otherwise provided under applicable 403(b) regulations.



Employees who are eligible to participate in another plan sponsored by the Employer that permits salary reduction contributions described under Section 403(b)(12)(A) of the Code.

4. Contributions:

Employee Contributions (in addition to pre-tax Elective Deferrals):

- ☐ Roth 403(b) Contributions are NOT permitted under the Plan.
- ☒ Roth 403(b) Contributions to the Plan are permitted beginning on January 1, 2009. If Roth 403(b) Contributions are permitted to the Plan, direct rollovers from other Roth 403(b) or 401(k) plans are ☐ are not ☒ accepted into the Plan.

Employer Contributions, if any:

- ☐ No Employer Contributions will be made.
- ☒ Employer Contributions will be made in accordance with applicable employment agreements and collective bargaining agreements, or as may be determined from year to year by the Employer.
- ☐ Other (Describe) _____
- ☐ External Plan Contributions will be made as indicated below (See Section 2.2(d)):
- ☐ ORP (Optional Retirement Plan) contributions will be made under the Plan. By checking this box, Employer understands that the provisions of Section 11 of the Plan apply. Appendix 3 must be completed.
- ☐ Supplemental 403(b) Program contributions will be made under the Plan. By checking this box, Employer understands that the provisions of Section 12 of the Plan apply. The Supplemental 403(b) Program is described in the document entitled _____ Plan

5. 15 Years of Service Catch Up Contributions: The Plan will ☐ or will not ☒ permit employees with 15 years of service with the Employer that satisfy the conditions for the Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service (Section 3.2 of the Plan) to increase their Elective Deferrals limitation.

6. Investment Options: Any Annuity Contracts and/or Custodial Accounts that meet the requirements of Section 403(b) of the Code offered by the organizations listed on Appendix 1 are authorized as Vendors under the Plan.

7. Exchanges Within the Plan: The Plan will ☒ or will not ☐ permit Participants to make Exchanges. If permitted, Exchanges may occur between:

- ☐ Those Vendors listed on Appendix 1 only (Vendors authorized to maintain current payroll slots).
- ☒ Those Vendors listed on Appendix 1 and from Vendors not listed on Appendix 1 to Vendors listed on Appendix 1. Exchanges to Vendors not listed on Appendix 1 are not permitted.
- ☐ Those Vendors listed on Appendix 1 and any other Vendor offering annuity contracts and/or custodial accounts that satisfy the requirements of Section 403(b) of the Code and execute the information sharing agreement provided by Employer for purposes of satisfying applicable compliance requirements. Administrator will maintain a list of Vendors that have executed information sharing agreements and will make this list available to Vendors (Appendix 2).

8. Transfers Into the Plan: The Plan will ☐ or will not ☒ accept Transfers from another employer's 403(b) plan.

9. Transfers From the Plan: The Plan will ☐ or will not ☒ permit Transfers from the Plan to another employer's 403(b) plan, if requested by a former Participant.

10. Financial Hardship Distributions: Hardship Distributions are ☒ or are not ☐ available under the Plan.

11. Loans: Loans are ☒ or are not ☐ available under the Plan subject to availability and any additional conditions that may apply under a Participant's 403(b) Individual Agreement(s).

Note: The Plan prohibits loans to any Participant who has previously defaulted on a loan from any retirement or deferred compensation plan sponsored by the Employer.

12. Beneficiary Rights. A Beneficiary of a deceased Participant's Account ☒ may, or may not ☐ designate his/her own Beneficiary.

None

APPENDIX 1

Authorized Vendors under the Plan Are:

AIG Retirement/VALIC
Amerprise Financial
AXA-EquitableAXA/Equitable Insurance Company
Fred Alger Management, Inc.
Horace Mann Insurance Company
Kades-Margolis Corp.
Kemper Investors Life Insurance
Lincoln Investment Planning, Inc.
Oppenheimer Funds
Security Benefit Group
Transamerica (IDEX Mutual Funds
Waddell & Reed, Inc.

Important Note:

As provided under the Plan, any authorized Vendor named above agrees to share information necessary for compliance purposes with Employer, an Administrator and/or with any other 403(b) provider as may be required or desirable to facilitate compliance with the Plan and all applicable laws and regulations.

This Appendix is dated: December 8, 2008

APPENDIX 2

Only to be completed if Employer has elected to permit exchanges from vendors who are NOT currently authorized to maintain an active 403(b) payroll slot with the Employer to vendors that are listed in the Plan. (Question 7)

The following organizations are authorized to send exchanges from Plan Participants to organizations listed in Appendix 1.

Name of Organization

Important Note:

As provided under the Plan, any organization named above agrees to share information necessary for compliance purposes with Employer, an Administrator and/or with any other 403(b) provider as may be required or desirable to facilitate compliance with the Plan and all applicable laws and regulations.

This Appendix is dated: _____

APPENDIX 3

If ORP participation is indicated in item 4, the terms of the ORP program(s) in which Employer participates, if any, are incorporated herein by reference and are included as part of this Plan. Where the ORP includes provisions that are inconsistent with the Plan features selected in this Agreement, the ORP provisions shall govern, as applicable, only to those provisions that are exclusive to the ORP.

ORP contributions may be invested only in Funding Vehicles established with the following vendors:

- ☒ The same Vendors listed on Appendix 1
 - ☐ The vendors authorized by the ORP statute or other authorizing legislative or regulatory authority.
 - ☐ The vendors listed below labeled "ORP Authorized Vendors"
 - ☐ Other (describe) _____
-

ORP Authorized Vendors

Name of Organization

Important Note:

As provided under the Plan, any organization named above agrees to share information necessary for compliance purposes with Employer, an Administrator and/or with any other 403(b) provider as may be required or desirable to facilitate compliance with the Plan and all applicable laws and regulations.

This Appendix is dated: December 8, 2009

18. *Constant Maturity Swap Suspension*

INFORMATION

The Board of School Directors is interested in reducing the cost of existing debt financing and has received the recommendation from its financial adviser to suspend its Constant Maturity Swaps.

RECOMMENDATION:

That the Board of School Directors approves the attached resolution in connection with the suspension of the constant maturity interest rate swap transactions.

**BETHLEHEM AREA SCHOOL DISTRICT,
Lehigh and Northampton Counties, Pennsylvania**

WHEREAS, The Bethlehem Area School District, Lehigh and Northampton Counties, Pennsylvania (the “School District”), is a public school district in the Commonwealth of Pennsylvania (the “Commonwealth”), and is governed by its Board of School District Directors (the “Board”); and

WHEREAS, This School District entered into an interest rate management agreement pursuant to an ISDA Master Agreement and Schedules, and a confirmation thereto dated May 16, 2005 (the “2005 Bonds CMS”), commonly known as a constant maturity and basis swap, with Morgan Stanley Capital Services Inc. (“Morgan Stanley”), based on a notional amount of \$55,000,000, coinciding with like annual principal payments due on the School District’s General Obligation Bonds, Series of 2005; and

WHEREAS, This School District entered into an interest rate management agreement pursuant to an ISDA Master Agreement and Schedules, and confirmations thereto dated May 16, 2005 (the “2007 Bonds CMS”), commonly known as a constant maturity and basis swap, with JPMorgan Chase Bank, N.A. (“JPMorgan”), based on a notional amount of \$55,000,000, coinciding with like annual principal payments due on the School District’s General Obligation Bonds, Series of 2007; and

WHEREAS, This School District entered into an interest rate management agreement pursuant to an ISDA Master Agreement and Schedules, and a confirmation thereto

dated June 27, 2006 (the “2007 Note CMS”), commonly known as a constant maturity and basis swap, with JPMorgan, based on a notional amount of \$40,000,000, coinciding with like annual principal payments due on the School District’s General Obligation Note, Series of 2007 held by the Shippensburg Borough Authority (Morgan Stanley and JPMorgan are collectively referred to as the “Swap Counterparties”); and

WHEREAS, The Board wishes to authorize a suspension of the payments due under the 2005 Bonds CMS, 2007 Bonds CMS and 2007 Note CMS (collectively, the “CMS Swaps”), under the conditions set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED, by the Board of this School District, as follows:

SECTION 1. Officers and agents of this School District are authorized and directed to suspend, for a period of approximately two years, the payments otherwise due under all three CMS Swaps at such time as the lump sum payments by the Swap Counterparties to this School District in consideration of such suspension total at least \$2,500,000. The School District’s Superintendent and/or Assistant to the Superintendent for Finance and Administration, together with all of the following members of the Board shall participate in the recorded telephone call with each of the Swap Counterparties to confirm the terms of the suspension of the CMS Swaps under the conditions set forth in this Resolution:

Loretta Leeson
Eugene McKeon
Benjamin Tenaglia

The President or Vice President and Secretary of the Board are authorized to execute any and all documents on behalf of the School District to effectuate such suspension, and to amend the CMS Swaps accordingly.

SECTION 2. This Resolution shall become effective immediately.

DULY ADOPTED, by the Board of School Directors of the Bethlehem Area School District, Lehigh County, Pennsylvania, in lawful session duly assembled, this 8th day of December 2008.

**BETHLEHEM AREA SCHOOL DISTRICT,
Lehigh and Northampton Counties,
Pennsylvania**

By: _____
(Vice) President of the Board of School
Directors

ATTEST:

Secretary of the Board of School
Directors

(SEAL)

19. Bid Award – Bids Opened November 24, 2008 – Gasoline and Diesel Fuel**INFORMATION:**

Bids were received and publicly opened at noon, Monday, November 24, 2008, for:

Gasoline and Diesel Fuel

The bids have been tabulated and reviewed by the appropriate administrative and supervisory personnel. The recommendation of award is based upon the lowest responsible bidder meeting specifications. (The Tabulation of Bids is attached.)

RECOMMENDATION:

That the administration be authorized to award a one-year contract to the lowest responsible bidder meeting specifications as indicated on the attached Tabulation of Bids subject to proper execution of contract documents and performance bond as required in the bid specifications.

Gasoline and Diesel Fuel	Fluctuating Price	
Petroleum Traders Corporation 7120 Pointe Inverness Way Fort Wayne, Indiana 46804	\$+.0025 per gallon	gasoline - Transportation
	+.1500 per gallon	gasoline - Maintenance
	+.0358 per gallon	diesel fuel - with winter additive - Transportation
	+.0049 per gallon	diesel fuel - without winter additive – Transportation

Cabinet Code: NT

Account Code: 10-2720-626-000-0000-00001

Budgeted: \$445,634

Expended: 196,178

Available: 249,456

Cabinet Code: NA

Account Code: 10-2600-626-000-0000-00001

Budgeted: \$ 25,000

Expended: 11,837

Available: 13,163

BETHLEHEM AREA SCHOOL DISTRICT
Bethlehem, Pennsylvania

Bid Opening: November 24, 2008

December 8, 2008

**TABULATION OF BIDS
FOR
GASOLINE AND DIESEL FUEL**

	ISO Bunkers, LLC	Petroleum Traders Corporation
UNLEADED GASOLINE - TRANSPORTATION		
Firm price	No Bid	No Bid
Fluctuating price - Net differential to posted price	No Bid	+.0025
UNLEADED GASOLINE - MAINTENANCE GARAGE		
Firm price	No Bid	No Bid
Fluctuating price - Net differential to posted price	No Bid	+.1500
DIESEL FUEL WITH WINTER ADDITIVE - TRANSPORTATION		
Firm price	2.4250	No Bid
Fluctuating price - Net differential to posted price	+.0640	+.0358
DIESEL FUEL WITH WINTER ADDITIVE - MAINTENANCE DEPT.		
Firm price	No Bid	No Bid
Fluctuating price - Net differential to posted price	No Bid	No Bid
DIESEL FUEL WITH WINTER ADDITIVE - LIBERTY GENERATOR		
Firm price	No Bid	No Bid
Fluctuating price - Net differential to posted price	No Bid	No Bid
DIESEL FUEL WITHOUT WINTER ADDITIVE - TRANSPORTATION		
Firm price	2.3900	No Bid
Fluctuating price - Net differential to posted price	+.0290	+.0049

BID AWARD

7 specifications mailed
2 bids received

20. *Bid Award – Bids Opened November 24, 2008 – Oil, Grease, Transmission Fluid, and Gear Lube*

INFORMATION:

A bid was received and publicly opened at noon Monday, November 24, 2008, for:

Oil, Grease, Transmission Fluid, and Gear Lube

The bid has been tabulated and reviewed by the appropriate administrative and supervisory personnel. Approximate cost calculation is based on unit cost times the historical utilization of 1,258 gallons of oil per year. The recommendation of award is based upon the lowest responsible bidder meeting specifications. (The Tabulation of Bids is attached.)

RECOMMENDATION:

That the administration be authorized to award a one-year contract to the lowest responsible bidder meeting specifications as indicated on the attached Tabulation of Bids.

Oil, Grease, Transmission Fluid, and Gear Lube

Craft Oil Corp.
837 Cherry Street
Avoca, Pennsylvania 18641 approximately \$15,611.53

Cabinet Code: NT
Account Code: 10-2720-624-000-0000-00001
Budgeted: \$10,000
Expended: 1,770
Available: 8,230

BETHLEHEM AREA SCHOOL DISTRICT
Bethlehem, Pennsylvania

Bid Opening: November 24, 2008

December 8, 2008

**TABULATION OF BIDS
FOR
OIL, GREASE, TRANSMISSION FLUID, AND GEAR LUBE**

Craft Oil Corp.*

15W - 40 Engine Motor Oil - per gallon	\$ 7.86
Multi-purpose Automotive Grease - per 120 lb. Non-return drum	200.48
Automotive Transmission Fluid Type F - per 55 gal. drum	No Bid
Automotive Transmission Fluid Dexron II - per 55 gal. drum	432.31
Synthetic Transmission Fluid Dexron III - per 55 gal. drum	1,150.87
Gear Lube 85W-140 API GL-5 - per 55 gal. drum	489.20
Gear Lube, SAE50 - Fleetrite per 30 gal. drum	186.00
Prema Lube - per 420 lb. drum	No Bid

BID AWARD

5 specifications mailed

1 bid received

* bidding 16 gallon drum for SAE50 Gear Lube

21. *Budgetary Transfers – 2008-2009*

RECOMMENDATION:

That the administration be authorized to make budgetary transfers in the 2008-2009 General Fund Budget as set forth in the attachment and reviewed at the Board Finance Committee Meeting on November 24, 2008.

BETHLEHEM AREA SCHOOL DISTRICT
Bethlehem, Pennsylvania

BUDGET TRANSFERS
2008-2009 SCHOOL YEAR
DECEMBER 2008

<u>FROM</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
1100	Instruction - Regular Programs	\$ 139
2200	Support Services - Instructional Services	37,000
TOTAL BUDGET TRANSFERS		\$ 37,139

<u>TO</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
2300	Support Services - Administration	\$ 37,139
TOTAL BUDGET TRANSFERS		\$ 37,139

22. *Monthly Bills*

RECOMMENDATION:

That the bills, which have been reviewed as to correctness by the appropriate Business Office staff and verified by the treasurer, be approved for payment. A copy of the bill list is available in the Business Office of the Education Center, 1516 Sycamore Street, Bethlehem, Pennsylvania, for review.

23. *Treasurer's Report*

RECOMMENDATION:

That the Board of School Directors approves the Treasurer's Report dated October 31, 2008 and presented at the November 17, 2008, Regular Board Meeting at which time it was tabled.

BETHLEHEM AREA SCHOOL DISTRICT
Bethlehem, Pennsylvania

REPORT OF THE TREASURER
October 1 through October 31, 2008

BEGINNING CASH AND INVESTMENT BALANCE

Wachovia Bank - Cash Management	3,553,958.73
Bank of America - General Account	1,001,118.09
Pennsylvania School District Liquid Asset Fund	10,713,370.67
Wachovia - Worker's Comp Trust Fund	643,420.79
Pennsylvania Local Government Investment Trust	77,150.60
Pennsylvania State Treasurer Invest Program	2,576,798.54
Wachovia Money Market	54,736.43
Bank of America Money Market	36,028,768.21
Commerce Bank Money Market	1,125.62
Sovereign Bank Money Market	28,828.85
PSDLAF - Term Investments	15,000,000.00
KNBT Bank - Scholarship Fund	45,971.98
KNBT Bank - Scholarship Fund	112,000.00
Baird Public Investment Advisors - 2007A Bond Fund	20,473,266.75

TOTAL CASH AND INVESTMENT BALANCE \$ 90,310,515.26

MONTHLY RECEIPTS

Local Sources	7,072,181.59
State Sources	7,042,025.63
Federal Sources	932,005.54
Other Financing Sources	0.00

\$ 15,046,212.76

MONTHLY DISBURSEMENTS

Monthly Bills Paid	10,048,571.69
Payroll	7,639,127.66
Debt Service	2,346,518.57

\$ 20,034,217.92

TOTAL FUNDS AVAILABLE

\$ 85,322,510.10

ENDING CASH AND INVESTMENT BALANCE

		<u>Interest Rate</u>
Wachovia Bank - Cash Management	2,519,202.79	1.790%
Bank of America - General Account	1,001,371.25	1.370%
Pennsylvania School District Liquid Asset Fund	2,288,454.44	varies 1.50% to 1.99%
Wachovia - Worker's Comp Trust Fund	643,987.43	1.680%
Pennsylvania Local Government Investment Trust	77,314.73	2.510%
Pennsylvania State Treasurer Invest Program	767,955.97	1.931%
Wachovia Money Market	54,745.90	0.200%
Bank of America Money Market	38,108,628.45	3.770%
Commerce Bank Money Market	1,126.91	1.350%
Sovereign Bank Money Market	28,914.74	3.570%
PSDLAF - Term Investments	22,000,000.00	see attachment
KNBT Bank - Scholarship Fund	45,971.98	3.750%
KNBT Bank - Scholarship Fund	112,000.00	4.300%
Baird Public Investment Advisors - 2007A Bond Fund	17,672,835.51	4.410%

TOTAL CASH AND INVESTMENT BALANCE \$ 85,322,510.10

Interest Received for October; to be posted in November \$ 172,095.97

Respectfully Submitted,

Anne M. Morton
Treasurer