

**BUCHANAN COMMUNITY SCHOOLS, BERRIEN COUNTY, MICHIGAN**

**FEBRUARY 16, 2021**

**REGULAR MEETING**

**VIRTUAL MEETING**

**CALL TO ORDER**

**PRESIDENT:** Dr. Harvey Burnett opened the virtual meeting at 6:00pm

**ROLL CALL**

**VIRTUALLY PRESENT:** C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

**ABSENT:** None

**OTHERS VIRTUALLY PRESENT:** Superintendent Patricia Robinson, Mark Kurland, Phil Place, Tricia Lowery

**ADOPTION OF AGENDA**

**MOTION** by **K. Laesch**, **SECONDED** BY Member **R. Writer** the agenda for the board meeting of February 16, 2021 be adopted as written.

**ROLL CALL VOTE:** C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

**NAYS:** None **MOTION ADOPTED**

**RECOGNITION OF VISITORS**

Mrs. Robinson welcomed Principal Dunn who was presenting this evening. Dr. Burnett welcomed all to the virtual meeting.

**SUPERINTENDENT/  
DEPARTMENT REPORTS**

Buck Staff Recognition February Winner: Brandon Flowers, Guidance Counselor at Buchanan High School. Board Secretary Mrs. Laesch recognized Mr. Flowers as this month's winner. Buchanan High School Principal, Mrs. Stacey DeMaio, thanked Mr. Flowers for working tirelessly to ensure that student's needs are met, paperwork is complete, teachers are supported and parents are contacted. Mr. Flowers was also nominated by BHS Interventionist, Miranda Capron, who acknowledged Mr. Flowers for going above and beyond to help insure students he works with feel understood and supported.

Nominees included:

- Al Berget, BCS Operations Director Interim
- Bobby Cauffman, BHS Operations Utility Staff
- Brianna Curtis, BHS Operations Utility Staff
- Bryan Pearson, BHS Interventionist
- Carlie Miller, BCS Food Service / Copy Central & Dispatch
- Chad VanBeek, BCS Maintenance
- Cody Cauffman, BHS Operations Utility Staff
- Dawn Spielman, BHS Operations Utility Staff
- Jennifer Fiero, BMS Administrative Assistant
- Judy Heckathorn, BCS Food Service
- Maggie Patnoudes, Ottawa Speech & Language Pathologist
- Mahlon Williams, BCS Transportation Supervisor
- Paula Grove, Ottawa Paraprofessional
- Sandy Emerick, Ottawa Interventionist
- Wendy Murphy, Ottawa Literacy Coach

Updates for BHS, BMS, Moccasin, Ottawa, Athletics/BVA/CTE, Special Education, Business Office, Operations, Food Service, Information Technology, Transportation and Assistant Superintendent were provided respectively.

**PRESENTATIONS**

School Highlight – Dr. Michael Dunn, Moccasin Elementary Principal, presented to the board. He shared and discussed Moccasin’s NWEA scores. He compared pre-pandemic scores to current scores. Board members joined in the conversation and thanked Dr. Dunn for his presentation.

Executive Team Updates - Superintendent Robinson and the Executive Team provided their updates respectively.






Extended COVID-19 Learning Plan – Assistant Superintendent, Mark Kurland reviewed BCS extended COVID learning plan and the items required by the state. He advised with school being in-person, there was no major changes this time around.

**COMMUNITY DIALOGUE  
CITIZENS CONCERNS**

None.

**ADOPTION OF CONSENT  
AGENDA**

MOTION by **C. Lee**, SECONDED BY Member **H. Burnett**, the consent agenda for the regular board meeting of February 16<sup>th</sup>, 2021 be adopted as written:

1. Minutes:
  -  1-12-2021 Organizational Meeting
  -  1-18-2021 Regular Meeting
2. Warrants:
  -  Treasury & Expenditure Reports – January 2021
3. Employment Contract for 2020-21 School Year:
  -  Lucie Behrle, KidKare Director
  -  Rebecca Kaltenbach, Food Service Supervisor (continuation from 6 month probationary contract)
4. Recommendations to Hire as submitted by:  
BMS Principal, Mrs. Shelby Beasley

Recommended Employee	Title
Jody Tittle	6 <sup>th</sup> /7 <sup>th</sup> Grade ELA Interventionist

5. Coaching Recommendation for Winter 2020-21 submitted by Assistant Athletic Coordinator, Mr. Ryan Frontczak:

Coach	Position	Class/Level	Step	CAP
Derek Tefft	7 <sup>th</sup> Grade Girls Basketball Coach	7	9	1,2,3,4,5,6

6. Reconfirmation of Buchanan Community Schools Extended COVID-19 Learning Plan

Mrs. Robinson welcomed new staff.

ROLL CALL VOTE: C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

NAYS: None **MOTION ADOPTED**

**BUCHANAN VIRTUAL  
ACADEMY GRADUATION  
CERTIFICATION**

MOTION by **R. Writer**, SECONDED BY Member **C. Lee**, upon satisfactory completion of district requirements for high school graduation, the Board of Education hereby approves:

Buchanan Virtual Academy Students:

- Abigail Baker
- Abigail Patton
- Hannah Baker
- Jack Bertrand
- Laylah Draper
- Liam Emerick
- Wesley Merklng

Mrs. Robinson congratulated our BVA graduates and thanked them for their dedication to online studies.

ROLL CALL VOTE: C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

NAYS: None **MOTION ADOPTED**

**BUCHANAN VIRTUAL  
ACADEMY COURSE  
OFFERINGS 2020-21**

MOTION by **K. Laesch**, SECONDED BY Member **C. Lee**, the Buchanan Board of Education approves the following courses for the 202-21 school year to be offered through Buchanan Virtual Academy as submitted by BVA Director, Mark Frey:

- Integrated Math (K-8)
- Integrated English (K-8)

Mrs. Robinson explained that these courses will help bridge the gap for some students that may need some remedial work prior to moving into the next grade level.

ROLL CALL VOTE: C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

NAYS: None **MOTION ADOPTED**

**SAT CROWDFUNDING**

MOTION by **C. Lee**, SECONDED BY Member **K. Berry**, the Buchanan Board of Education approves crowdfunding for the Buchanan High School Advanced SAT Prep Group.

Mrs. Robinson informed the board the privilege to have the SAT Prep Group run by Dr. Scott Carlin, for the community to donate through Michigan Gateway Foundation and hopefully last for years to come.

ROLL CALL VOTE: C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

NAYS: None **MOTION ADOPTED**

**MASB BOARD OF  
DIRECTORS VOTE**

I, **R. Writer**, nominate Don Myers, to serve as a representative for MASB Region 6 Board of Directors.

Mrs. Writer stated that Don had the most experience on the board. One candidate had only been on the board for two years. Don has ten years of experience, he's the incumbent, and he has a background in education.

ROLL CALL VOTE: C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

NAYS: None **MOTION ADOPTED**

**RESOLUTION  
AUTHORIZING THE  
ISSUANCE AND  
DELEGATING THE SALE OF  
BUCHANAN COMMUNITY  
SCHOOLS 2021  
REFUNDING BONDS**

MOTION by **C. Lee**, SECONDED BY Member **R. Writer**,

**WHEREAS:**

1. Part VI of Act 34, Public Acts of Michigan, 2001, as amended, the Revised Municipal Finance Act (the "Act"), permits the Issuer to refund all or part of its bonded indebtedness; and
2. The Issuer has received a proposal from Stifel, Nicolaus & Company, Incorporated, Okemos, Michigan (the "Underwriter"), to refund all or part of that portion of the Issuer's outstanding 2013 School Building and Site Bonds, dated June 27, 2013, in the original amount of \$14,740,000, which are callable on or after May 1, 2023, and are due and payable May 1, 2024, May 1, 2025, May 1, 2028, May 1, 2029, May 1, 2031, and May 1, 2033 (the "Prior Bonds"); and
3. The Board determines that it is in the best interest of the Issuer to consider refunding the Prior Bonds; and
4. Prior to the issuance of bonds, the Issuer must either achieve qualified status or secure prior approval of the bonds from the Michigan Department of Treasury pursuant to the Act.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. Bonds of the Issuer designated 2021 Refunding Bonds (General Obligation - Unlimited Tax) (Federally Taxable) (the "Bonds") be issued in the aggregate principal amount of not to exceed \$11,850,000, as finally determined upon sale thereof, for the purpose of refunding all or a portion of the Prior Bonds. The Bonds shall be dated the date of delivery, or such other date as established at the time of sale; shall be numbered in the direct order of their maturities from 1 upwards; shall be fully registered Bonds as to principal and interest; shall bear interest at a rate or rates to be hereafter determined upon sale, payable on November 1, 2021, or such other date as may be established at the time of sale, and semiannually thereafter on May 1 and November 1 in each year; and shall mature on May 1 in each year to be subsequently determined by the Superintendent or the Executive Director of Business and Operations of the Issuer (each an "Authorized Officer"), in the final principal amounts determined upon sale and may be subject to redemption, as determined by an Authorized Officer, in the amounts, at the times, in the manner, and at the prices determined upon sale of the Bonds.
2. The Bonds may consist of serial or term Bonds or any combination thereof which may be issued in one or more series, all of which shall be determined upon sale of the Bonds.
3. The Bonds shall be in denominations of \$5,000 or any whole multiple thereof.

4. The principal of the Bonds and the interest thereon shall be payable in lawful money of the United States of America at or by a bank or trust company to be designated by an Authorized Officer at the time of sale (herein called the "Paying Agent"), which shall act as the paying agent and bond registrar or such successor paying agent-bond registrar as may be approved by the Issuer, on each semiannual interest payment date and the date of each principal maturity.
5. Book Entry. Unless otherwise requested by the Underwriter, the ownership of one fully registered bond for each maturity, in the aggregate principal amount of such maturity, shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"). So long as the Bonds are in the book entry form only, the Paying Agent shall comply with the terms of the Blanket Issuer Letter of Representations to be entered into between the Issuer and DTC, which provisions shall govern registration, notices and payment, among other things, and which provisions are incorporated herein with the same effect as if fully set forth herein. An Authorized Officer is authorized and directed to enter into the Blanket Issuer Letter of Representations with DTC in such form as determined by an Authorized Officer, in consultation with bond counsel, to be necessary and appropriate. In the event the Issuer determines that the continuation of the system of book entry only transfer through DTC (or a successor securities depository) is not in the best interest of the DTC participants, beneficial owners of the Bonds, or the Issuer, the Issuer will notify the Paying Agent, whereupon the Paying Agent will notify DTC of the availability through DTC of the bond certificates. In such event, the Issuer shall issue and the Paying Agent shall transfer and exchange Bonds as requested by DTC of like principal amount, series and maturity, in authorized denominations to the identifiable beneficial owners in replacement of the beneficial interest of such beneficial owners in the Bonds, as provided herein.

So long as the book-entry-only system remains in effect, in the event of a partial redemption the Paying Agent will give notice to Cede & Co., as nominee of DTC, only, and only Cede & Co. will be deemed to be a holder of the Bonds. DTC is expected to reduce the credit balances of the applicable DTC Participants in respect of the Bonds and in turn the DTC Participants are expected to select those Beneficial Owners whose ownership interests are to be extinguished or reduced by such partial redemptions, each by such method as DTC or such DTC Participants, as the case may be, deems fair and appropriate in its sole discretion.

6. In the event the Bonds are no longer in book entry form only, the following provisions would apply to the Bonds:

The Paying Agent shall keep or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Bonds, which shall at all times during normal business hours be open to inspection by the Issuer; and, upon presentation and surrender for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred on said books, Bonds as herein provided.

Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by a duly authorized agent, upon surrender of the Bond for

cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Paying Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall furnish or cause to be furnished a sufficient number of manual or facsimile executed Bonds and the Paying Agent shall authenticate and deliver a new Bond or Bonds for like aggregate principal amount. The Paying Agent shall require the payment of any tax or other governmental charge required to be paid with respect to the transfer to be made by the bondholder requesting the transfer.

7. If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Bonds, shall furnish or cause to be furnished, and the Paying Agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution of the mutilated Bond, upon surrender to the Paying Agent of the mutilated Bond. If any Bond issued under this resolution shall be lost, destroyed or stolen, evidence of the loss, destruction or theft and indemnity may be submitted to the Paying Agent, and if satisfactory to the Paying Agent and the Issuer, the Issuer at the expense of the owner, shall furnish or cause to be furnished, and the Paying Agent shall authenticate and deliver a new Bond of like tenor and bearing the statement required by Act 354, Public Acts of Michigan, 1972, as amended, being sections 129.131 to 129.134, inclusive, of the Michigan Compiled Laws, or any applicable law hereafter enacted, in lieu of and in substitution of the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond, the Paying Agent may pay the same without surrender thereof.
8. The President and Secretary are authorized to provide the Bonds in conformity with the specifications of this resolution by causing their manual or facsimile signatures to be affixed thereto, and upon the manual execution by the authorized signatory of the Paying Agent, the Treasurer is authorized and directed to cause said Bonds to be delivered to the Underwriter upon receipt of the purchase price and accrued interest, if any.

Blank bonds with the manual or facsimile signatures of the President and Secretary of the Board affixed thereto, shall, upon issuance and delivery and from time to time thereafter as necessary, be delivered to the Paying Agent for safekeeping to be used for registration and transfer of ownership.

9. There is hereby created a separate depository account to be kept with a bank located in the State of Michigan and insured by the Federal Deposit Insurance Corporation, previously approved as an authorized depository of funds of the Issuer, to be designated 2021 REFUNDING BOND DEBT RETIREMENT FUND (hereinafter referred to as the "DEBT RETIREMENT FUND"), all proceeds from taxes levied for the fund to be used for the purpose of paying the principal and interest on the Bonds authorized herein as they mature or are redeemed. Upon receipt of the Bond proceeds from the sale of the Bonds, the accrued interest, if any, shall be deposited in the DEBT RETIREMENT FUND. DEBT RETIREMENT FUND moneys may be invested as authorized by law.

Commencing with the 2021 tax levy, there shall be levied upon the tax rolls of the Issuer in each year for the purpose of the DEBT RETIREMENT

FUND a sum not less than the amount estimated to be sufficient to pay the principal and interest on the Bonds as such principal and interest fall due prior to the next year's tax levy, the probable delinquency in collections and funds on hand being taken into consideration in arriving at the estimate. When funds are borrowed from the School Loan Revolving Fund, such funds may be taken into consideration in arriving at the estimated required tax levy. In determining the amount to be levied in 2021, there shall be taken into account any money in the DEBT RETIREMENT FUND. Taxes required to be levied to meet the principal and interest obligations may be without limitation as to rate or amount, as provided by Article IX, Section 6, and Article IX, Section 16 of the Michigan Constitution of 1963.

10. The proceeds of the Bonds shall be used to pay the costs of issuance of the Bonds and to secure payment of the Prior Bonds set forth in the Bond Purchase Agreement. Upon receipt of the proceeds of sale of the Bonds, the accrued interest, if any, shall be deposited in the DEBT RETIREMENT FUND for the Bonds. From the proceeds of the Bonds there shall next be set aside a sum sufficient to pay the costs of issuance of the Bonds in a fund designated 2021 BOND ISSUANCE FUND (hereinafter referred to as the "BOND ISSUANCE FUND"). Moneys in the BOND ISSUANCE FUND shall be used solely to pay expenses of issuance of the Bonds. Any amounts remaining in the BOND ISSUANCE FUND after payment of issuance expenses shall be transferred to the DEBT RETIREMENT FUND for the Bonds.
11. The balance of the proceeds of the Bonds, together with any moneys transferred at the time of closing of the Bonds from the debt retirement fund for the Prior Bonds, shall be invested in direct obligations of the United States of America, or obligations, the principal and interest of which are unconditionally guaranteed by the United States of America; or other obligations the principal and interest of which are fully secured by the foregoing (the "Escrow Funds"), and used to pay principal and interest on the Prior Bonds. The Escrow Funds shall be held by an escrow agent (the "Escrow Agent") in trust pursuant to an escrow agreement (the "Escrow Agreement") which shall irrevocably direct the Escrow Agent to take all necessary steps to call any Prior Bonds specified by an Authorized Officer upon sale of the Bonds for redemption, including publication and mailing of redemption notices, on the earliest date specified by an Authorized Officer that the respective series of Prior Bonds may be called for redemption. The investment held in the Escrow Funds shall be such that the principal and interest payments received thereon will be sufficient, without reinvestment, to pay the principal and interest on the Prior Bonds as they become due pursuant to maturity or the call for redemption required by this paragraph. Following establishment of the Escrow Funds, any amounts remaining in the debt retirement fund for the Prior Bonds shall be transferred to the DEBT RETIREMENT FUND for the Bonds.
12. An Authorized Officer, subject to final approval of the Board, is authorized to select an Escrow Agent to serve under the Escrow Agreement.
13. The Bonds shall be in substantially the form attached hereto and incorporated herein as Exhibit A.

14. Stifel, Nicolaus & Company, Incorporated, Okemos, Michigan, is named as senior managing underwriter and further, that an Authorized Officer or designee is authorized to negotiate and execute a Bond Purchase Agreement with the Underwriter, subject to the requirements of paragraph 18 below. Based upon information provided by the Issuer's financial consulting firm and the Underwriter, a negotiated sale allows flexibility in the timing, sale and structure of the Bonds in response to changing market conditions and flexibility in sizing the defeasance escrow necessary to accomplish the refunding of the Prior Bonds.
15. An Authorized Officer is authorized to approve circulation of a Preliminary Official Statement describing the Bonds.
16. An Authorized Officer, or designee if permitted by law, is authorized to:
  - a. File with the Michigan Department of Treasury an application for approval to issue the Bonds, if required, and to pay any applicable fee therefor and, further, within fifteen (15) business days after issuance of the Bonds, file any and all documentation required subsequent to the issuance of the Bonds, together with any statutorily required fee.
  - b. Make application for municipal bond insurance if, upon advice of the financial consulting firm of the Issuer, the purchase of municipal bond insurance will be cost effective. The premium for such bond insurance shall be paid by the Issuer from Bond proceeds.
  - c. Execute and deliver the Continuing Disclosure Agreement (the "Agreement") in substantially the same form as set forth in Exhibit B attached hereto, or with such changes therein as the individual executing the Agreement on behalf of the Issuer shall approve, his/her execution thereof to constitute conclusive evidence of his/her approval of such changes. When the Agreement is executed and delivered on behalf of the Issuer as herein provided, the Agreement will be binding on the Issuer and the officers, employees and agents of the Issuer, and the officers, employees and agents of the Issuer are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed, and the Agreement shall constitute, and is made, a part of this resolution, and copies of the Agreement shall be placed in the official records of the Issuer, and shall be available for public inspection at the office of the Issuer. Notwithstanding any other provision of this resolution, the sole remedies for failure to comply with the Agreement shall be the ability of any Bondholder or beneficial owner to take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Issuer to comply with its obligations under the Agreement.
17. An Authorized Officer is authorized to file with the Michigan Department of Treasury or other authorized state agency the Final Qualification Application for the Bonds approved by this Board and in substantially the form attached hereto as Exhibit C with such changes as



an Authorized Officer shall deem necessary to conform with the final sale of the Bonds pursuant to the parameters set forth herein.

18. An Authorized Officer's authorization to accept and execute a Bond Purchase Agreement with the Underwriter is subject to the following parameters:
  - a. the Underwriter spread shall not exceed \$4.50 per \$1,000 (0.45%); and
  - b. the average true interest rate on the Bonds shall not exceed 2.5%; and
  - c. the present value savings from the refunding shall not be less than 3% of the par of the Prior Bonds; and
  - d. the maximum bond term shall not exceed 13 years; and
  - e. the receipt of express written recommendation of the Issuer's financial consulting firm identified herein to accept the terms of the Bond Purchase Agreement.
19. An Authorized Officer's authorization to accept and execute a Bond Purchase Agreement with the Underwriter is further authorized and directed to (i) execute any and all other necessary documents required to complete the approval and sale of the Bonds to the Underwriter in accordance with the terms of the Bond Purchase Agreement; (ii) appoint a paying agent for the Bonds; (iii) select a bond insurer, accept a commitment therefore and authorize payment of a bond insurance premium to insure any or all of the Bonds if recommended in writing by the Financial Advisor; (iv) deem the Preliminary Official Statement for the Bonds final for purposes of SEC Rule 15c2-12(b)(1); and (v) execute and deliver the final Official Statement on behalf of the Issuer.
20. The President or Vice President, the Secretary, the Treasurer, the Superintendent, the Executive Director of Business and Operations and/or all other officers, agents and representatives of the Issuer and each of them shall execute, issue and deliver any certificates, statements, warranties, representations, or documents necessary to effect the purposes of this resolution, the Bonds or the Bond Purchase Agreement.
21. The officers, agents and employees of the Issuer are authorized to take all other actions necessary and convenient to facilitate the sale and delivery of the Bonds.
22. Thrun Law Firm, P.C. is appointed as bond counsel for the Issuer with reference to the issuance of the Bonds authorized by this resolution. Although Thrun Law Firm, P.C. has informed the Issuer that it represents no other party in connection with the issuance of the Bonds, Thrun Law Firm, P.C. represents the Underwriter on other, unrelated matters. The Board acknowledges the services that Thrun Law Firm, P.C. provides to the Underwriter, consents to the representation of the Underwriter on other, unrelated public finance matters, and waives any conflict of interest that could be asserted with respect to such representation.

23. The financial consulting firm of PFM Financial Advisors LLC, is appointed as financial consultant to the Issuer with reference to the issuance of the Bonds herein authorized.

24. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution are rescinded.

ROLL CALL VOTE: C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

NAYS: None **MOTION ADOPTED**

**BOARD POLICIES – FIRST  
READING**

MOTION by **H. Burnett**, SECONDED BY Member **K. Laesch**, the Buchanan Board of Education approves the first reading of the following NEOLA revised and new policies:

<b>POLICY</b>	<b>Description</b>
8450.05	Emergency Temporary Telecommuting Policy (New)
6114	Cost Principles – Spending Federal Funds
6325	Procurement – Federal Grants/Funds

ROLL CALL VOTE: C. Lee, K. Berry, C. Carlson, K. Laesch, S. Carlin, R. Writer, and H. Burnett

NAYS: None **MOTION ADOPTED**

**PROPOSED IRS CLOSING  
AGREEMENT**

MOTION by **K. Laesch**, SECONDED BY Member **C. Lee**,

**WHEREAS:**

A. The Michigan Public School Employees Retirement System (MPSERS) Act was amended effective September 4, 2012 (2012 PA 300) to require eligible public school employees to contribute 3 percent of their compensation to an irrevocable trust for retiree health benefits (the “3% retiree healthcare contribution”) to be enrolled in the MPSERS health premium subsidy.

B. Since 2012, the Internal Revenue Service (IRS) has variously treated these 3% retiree healthcare contributions for federal income and FICA taxes purposes.

C. In an effort to obtain a system-wide determination from the IRS, the Michigan Office of Retirement Services (ORS), which administers MPSERS, reportedly requested an IRS Private Letter Ruling on the taxable status of the 3% retiree healthcare contributions, which the IRS reportedly declined to issue.

D. Thereafter, the ORS reportedly coordinated with a named taxpaying school district to again request a determination on the taxable status of the 3% retiree healthcare contributions.

E. By email to its ListServ dated December 22, 2020, the ORS notified Reporting Units that “the IRS has recently indicated that they will conclude in a Closing Agreement – relative to the specific claims at issue – that the retiree

healthcare contributions are exempt from federal income and FICA taxes.” (A copy of the ORS email dated 12/22/2020 is attached and incorporated into this Resolution as [Attachment A.](#))

F. The IRS Commissioner (or designee) may enter into and approve a written closing agreement with any taxpayer relating to the internal revenue tax liability of that taxpayer. A closing agreement covering a specific matter is final and conclusive only as to the named taxpayer(s) and may not, in the absence of fraud, malfeasance, or misrepresentation of material fact, be reopened as to the matter agreed upon or be modified by any officer, employee, or agent of the United States for any taxable period covered by the closing agreement.

G. The proposed closing agreement, CLAG-117897-19, (the “Closing Agreement”) reportedly has not yet been finalized, but the ORS attached to its December 22, 2020 email to Reporting Units a copy of a letter dated November 16, 2020 from the IRS to counsel for the ORS, W. Alan Wilk, Dykema Gossett, PLLC, (the “IRS Letter”) setting forth the three operative paragraphs that reportedly will be included in the Closing Agreement. (A copy of the IRS Letter is attached in its entirety and incorporated into this Resolution as [Attachment B.](#)) The IRS Letter states:

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The closing agreement contains three operative paragraphs, which are applicable with respect to employees who did not opt out of the future right to receive retiree health benefits under the Plan and who continue to be subject to a 3 percent reduction in compensation (affected employees):

- Amounts deducted from the affected employees’ compensation are treated as employer contributions and are not treated as income under section 106 of the Internal Revenue Code (Code).
- Amounts deducted from the affected employees’ compensation are not treated as “wages” for purpose of FICA taxes under section 3121(a) of the Code, or for purposes of income tax withholding under section 3401(a) of the Code.
- In connection with signing the agreement, school districts must file Forms W-2c (Corrected Wage and Tax Statement) for each affected employee for taxable years for which the period of limitations on claims of credit or refund has not expired to reflect that the amounts deducted from the affected employees’ compensation are not treated as income or wages. School districts must also inform the affected employees that they may file Forms 1040-X (Amended U.S. Individual Income Tax Return) to obtain a refund of the income taxes withheld on the 3 percent contributions.

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H. Although the IRS Letter does not limit the term of the Closing Agreement to prescribed tax years, the partially completed IRS Form 2848 elsewhere discussed in this Resolution, and signed by Attorney Wilk, limits the term of the Closing

Agreement to tax years 2013-2026. (A copy of the partially completed IRS Form 2848 is attached and incorporated into this Resolution as [Attachment C.](#))

I. The IRS Letter states, “In order for a Michigan public school district to obtain the closing agreement, the school district must execute a Form 2848 and submit a \$3,000 user fee.” (See Attachments B and C)

J. The IRS charges a “user fee” to recover the cost of providing certain services to the public that confer a special benefit to the recipient; in this case, a Closing Agreement that determines federal income and FICA tax obligations, at least as to tax years 2013-2026, with respect to the 3% retiree healthcare contributions of affected employees.

K. The ORS 12/22/2020 e-mail directs Reporting Units that wish to be covered by the Closing Agreement to do the following:

1. In order to finalize this Closing Agreement, ORS is facilitating the process that will allow each Reporting Unit that wishes to be covered by the Closing Agreement to be a part of that final Agreement. To do so, each Reporting Unit will need to execute a Form 2848 (Power of Attorney) and pay a reduced user fee of \$3,000. ORS is coordinating with MPSEs to make payments on behalf of each Reporting Unit as an administrative expense for each Reporting Unit that elects to be part of the Closing Agreement.
2. The partially drafted Form 2848 is attached. Only line one and line seven – including Reporting Unit name, address, phone, EIN, and signature of authorized official – need to be completed. It can then be scanned and sent to [ORS-Contract-Review@michigan.gov](mailto:ORS-Contract-Review@michigan.gov). This will allow the Closing Agreement to be signed on behalf of and then apply to that Reporting Unit. If you wish to be part of the Closing Agreement, please return the Form 2848 as soon as possible, but no later than February 5, 2021.

L. The ORS advised Reporting Units in the 12/22/2020 Email:

Reporting Units are not required to be part of the Closing Agreement. Reporting Units are encouraged to consult with their own legal, tax and accounting professionals to form their own conclusions based on their own facts and circumstances. Neither ORS nor the Dykema Law Firm are providing any legal counsel to any Reporting Unit regarding whether to be part of the Closing Agreement or any other matters related to the proper tax treatment of employer and employee contributions made to the MPSEs Health Care Trust.

In reality, the nature of a relationship established with an attorney pursuant to IRS Form 2848 is a question of law, and the ability of Reporting Units to meaningfully consult with their own legal, tax and accounting professionals about the proposed Closing Agreement is significantly limited by a process that (1) requires each Reporting Unit to authorize Attorney Wilk to serve as its representative before the IRS and to execute on its behalf a not-yet-finalized Closing Agreement; (2) but precludes each Reporting Unit from consulting with Attorney Wilk, the only attorney known to be engaged in negotiations with the IRS, about the intent, meaning and effect of the proposed Closing Agreement.

M. This Buchanan Community Schools District must now decide whether to authorize participation in a not-yet-finalized Closing Agreement based upon incomplete information; or to forego the protections of the described Closing Agreement that reportedly will conclusively require the IRS to favorably treat 3% contributions to the retiree healthcare trust as exempt from federal income and FICA taxes, at least through tax year 2026, for participating Reporting Units.

N. The ORS originally set a deadline of February 5, 2021 for Reporting Units to sign and submit IRS Form 2848, authorizing Attorney Wilk to sign the not-yet-finalized Closing Agreement on each Reporting Unit's behalf.

O. In response to requests from Reporting Units and their representatives for additional information and clarification about the proposed Closing Agreement, ORS extended the submission deadline for signed IRS Forms 2848 to March 1, 2020 and, on the evening of February 3, 2021, the ORS, in consultation with Attorney Wilk, provided a Q&A document to Reporting Units. (A copy of the ORS Q&A sent to Reporting Units on the evening of February 3, 2021, is attached and incorporated into this Resolution as [Attachment D](#).)

P. Unfortunately, the ORS Q&A further evidences the continuing challenges that school officials face in evaluating this matter.

Q. Neither the IRS Letter (Attachment B), nor the ORS Q&A (Attachment D) explains how the IRS intends to determine whether or when the "period of limitations has expired" on any claims or requests for refunds of overpaid federal income taxes or FICA taxes that may be filed by Reporting Units or their employees. But ORS Q&A Nos. 7 & 8 (Attachment D) state:

- "\*\*\* the ORS is not aware that any limitations periods are affected by the Closing Agreement"; and
- "\*\*\* the ORS is not aware that any currently valid and timely claims are impacted by the Closing Agreement, other than the Closing Agreement appears to confirm the tax treatment of the MPSERS 3% contributions for income and FICA tax purposes."

R. Likewise, neither the IRS Letter (Attachment B), nor the ORS Q&A (Attachment D) explains how the IRS intends to process any claims or requests for refunds of overpaid federal income taxes or FICA taxes that may be filed by Reporting Units or their employees.

S. The Buchanan Community Schools District Administration has performed its due diligence in considering the information thus far made available by or through the ORS.

T. Based on this due diligence review, the Buchanan Community Schools District has determined that the Buchanan Community Schools District began treating the 3% contributions as exempt from federal income and FICA taxes in tax year 2017, treated the 3% contributions as subject to federal income and/or FICA taxes prior to tax year 2017, submitted protective filings to the IRS to toll the statutory 3-year limitations period for requesting a refund of overpaid taxes and therefore has determined that corrected W-2s and IRS Forms 941-X would need to be issued or filed to comply with the third operative paragraph in Section G of this Preamble and Attachment B.]

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. In reliance upon communications directly from the ORS and indirectly from Attorney Wilk, including Attachments A - D to this Resolution, this Board finds it to be in the best interests of the Buchanan Community Schools District to conclusively resolve through at least tax year 2026 the Buchanan Community Schools District federal income withholding and FICA tax obligations with respect to Buchanan Community Schools District employees who continue to be subject to a 3 percent reduction in their compensation to be enrolled in the MPSERS health premium subsidy.

2. The Board hereby authorizes and delegates all necessary authority to the Superintendent (or designee) to execute the partially-completed IRS Form 2848, Power of Attorney and Declaration of Representative (Attachment C) on behalf of the Board of Education, designating W. Alan Wilk of Dykema Gossett, PLLC as the Buchanan Community Schools District representative before the IRS for the purpose of executing Closing Agreement (CLAG – 117897-19), provided that any Closing Agreement executed by Attorney Wilk on behalf of the Buchanan Community Schools District (a) complies with applicable law; (b) contains only the three operative paragraphs detailed in Preamble Para. G above and Attachment A, or other terms materially advantageous to the Buchanan Community Schools District; (c) covers at least tax years 2013-2026; (d) does not impair any protective action previously filed by the Buchanan Community Schools District or affected employees extending the period of limitations for seeking refunds or credits; and (e) is conditioned on the ORS's payment of the \$3,000 user fee to the IRS on behalf of the Buchanan Community Schools District with no additional payment or user fee due from the Buchanan Community Schools District.

3. The Board hereby directs the Superintendent (or designee) to insert the following italicized text on p. 2, Part I, Section 7 of IRS Form 2848 before signing: *"Signature of Taxpayer. \*\*\* I certify that I have the legal authority to execute this form on behalf of the taxpayer as set forth in the attached Resolution adopted by taxpayer's governing board at a public meeting held on February 16, 2021."*

4. The Board directs the Superintendent (or designee) to forward a signed copy of this Resolution to the ORS, along with the signed IRS Form 2848

5. The Board further authorizes and delegates all necessary authority to the Superintendent (or designee), in such consultation as deemed necessary with the Buchanan Community Schools District's legal, tax and financial advisers to implement the signed Closing Agreement consistent with this Resolution.

6. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution, are hereby rescinded.

Attachment A

1/12/2021

Mercellus Community Schools Mail - Action required: 3% Healthcare contribution ruling



Douglas Nord <douglas.nord@marcelluscs.org>

Action required: 3% Healthcare contribution ruling

1 message

Office of Retirement Services <ORS@public.govdelivery.com>  
Reply-To: ORS@public.govdelivery.com  
To: douglas.nord@marcelluscs.org

Tue, Dec 22, 2020 at 12:01 PM



IRS TO RULE FAVORABLY RELATED TO 3% CONTRIBUTIONS TO THE MPSERS HEALTH CARE TRUST

This provides an update from the State of Michigan (through the Office of Retirement Services, "ORS") related to the current status of the federal tax treatment of the 3% contributions to the MPSERS Health Care Trust, and also provides the opportunity for each Reporting Unit to participate in and be covered by a Closing Agreement with the Internal Revenue Service (IRS) that favorably resolves the tax treatment of these contributions.

As you may know, ORS has for many years been attempting to obtain a system-wide answer from the IRS on the proper tax treatment of employer and employee contributions made to the MPSERS Health Care Trust.

Since at least 2016, ORS confirmed that multiple Reporting Units received consistent favorable guidance from the IRS as to refund claims that had been submitted relative to federal income and FICA taxes that had been reported, deducted, and remitted under 2012 PA 300. ORS, along with the supporting efforts of Dewitt Public Schools, the Michigan School Business Officials and other constituencies, has been working with the IRS to secure a ruling of favorable tax treatment.

ORS is pleased to report that the IRS has recently indicated that they will conclude in a Closing Agreement—relative to the specific claims at issue—that the retiree healthcare contributions are exempt from federal income and FICA taxes. A draft copy of the relevant rulings is attached.

In order to finalize this Closing Agreement, ORS is facilitating the process that will allow each Reporting Unit that wishes to be covered by the Closing Agreement to be a part of that final Agreement. To do so, each Reporting Unit will need to execute a Form 2848 (Power of Attorney) and pay a reduced user fee of \$3,000. ORS is coordinating with MPSERS to make payments on behalf of each Reporting Unit as an administrative expense for each Reporting Unit that elects to be part of the Closing Agreement.

The partially drafted Form 2848 is attached. Only line one and line seven — including Reporting Unit name, address, phone, EIN, and signature of authorized official — need to be completed. It can then be scanned and sent to ORS-Contract-Review@michigan.gov. This will allow the Closing Agreement to be signed on behalf of and then apply to that Reporting Unit. If you wish to be part of the Closing Agreement, please return the Form 2848 as soon as possible, but no later than February 5, 2021.

Reporting Units are not required to be part of the Closing Agreement. Reporting Units are encouraged to consult with their own legal, tax and accounting professionals to form their own conclusions based on their own facts and circumstances. Neither ORS nor the Dykema Law Firm are providing any legal counsel to any Reporting Unit regarding whether to be part of the Closing Agreement or any other matters related to the proper tax treatment of employer and employee contributions made to the MPSERS Health Care Trust.

If you have any questions, please contact ORS\_Web\_Reporting@michigan.gov.

State of Michigan | Department of Technology, Management & Budget | Office of Retirement Services  
P.O. Box 30171 | Lansing, MI 48909-7671 | www.michigan.gov/ors

Please do not reply to this email. This message is not monitored and you will not receive a response. For information, contact ORS\_Web\_Reporting@michigan.gov.

The retirement plan information that appears in this email is intended to summarize basic provisions of Public Act 300 of 1989, as amended. Current laws, rules, and factors are subject to change. Should there be discrepancies between the information reflected here and the actual law, the provisions of the law govern.

This email was sent to douglas.nord@marcelluscs.org on behalf of the Office of Retirement Services - P.O. Box 30171 - Lansing, MI 48909-7671 - 1-800-361-5111

## Attachment B



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

November 16, 2020

W. Alan Wilk  
Dykema Gossett PLLC  
Capitol View  
201 Townsend Street, Suite 900  
Lansing, MI 48933

**VIA FACSIMILE: (855) 256-1485**

RE: Michigan Public Schools Closing Agreement (CLAG-117897-19)

Dear Mr. Wilk:

The following is a summary of the closing agreement that is intended to be made available to those Michigan Public School districts that would like a determination from the Internal Revenue Service on their tax obligations with respect to employees who did not exercise the one-time irrevocable election to opt out of the future right to receive retiree health benefits under the Michigan Public School Employees Retirement System and who continue to be subject to a 3 percent reduction in their compensation.

The closing agreement contains three operative paragraphs, which are applicable with respect to employees who did not opt out of the future right to receive retiree health benefits under the Plan and who continue to be subject to a 3 percent reduction in compensation (affected employees):

- Amounts deducted from the affected employees' compensation are treated as employer contributions and are not treated as income under section 106 of the Internal Revenue Code (Code).
- Amounts deducted from the affected employees' compensation are not treated as "wages" for purposes of FICA taxes under section 3121(a) of the Code, or for purposes of income tax withholding under section 3401(a) of the Code.
- In connection with signing the agreement, school districts must file Forms W-2c (Corrected Wage and Tax Statement) for each affected employee for taxable years for which the period of limitations on claims of credit or refund has not expired to reflect that the amounts deducted from the affected employees' compensation are not treated as income or wages. School districts must also inform the affected employees that they may file Forms 1040-X (Amended U.S. Individual Income Tax Return) to obtain a refund of the income taxes withheld on the 3 percent contributions.



In order for a Michigan Public School district to obtain the closing agreement, the school district must execute a Form 2848 and submit a \$3,000 user fee. We will contact you separately to discuss the proper procedures to submit the additional forms and user fees.

Sincerely,

(Digitally Signed)

Denise Trujillo  
Branch Chief, Health and Welfare Branch  
Office of Associate Chief Counsel (Employee  
Benefits, Exempt Organizations, and Employment  
Taxes)

Attachment C

Form **2848**  
(Rev. February 2020)  
Department of the Treasury  
Internal Revenue Service

**Power of Attorney  
and Declaration of Representative**

OMB No. 1545-0150  
For IRS Use Only  
Received by:  
Name \_\_\_\_\_  
Telephone \_\_\_\_\_  
Function \_\_\_\_\_  
Date / /

Go to [www.irs.gov/Form2848](http://www.irs.gov/Form2848) for instructions and the latest information.

**Part I Power of Attorney**

**Caution:** A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

**1 Taxpayer information.** Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address	Taxpayer identification number(s)	
	Daytime telephone number	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

**2 Representative(s) must sign and date this form on page 2, Part II.**

Name and address W. Alan Wilk, Dykema 201 Townsend, Suite 900 Lansing, MI 48933	CAF No. <u>3205-90117R</u> PTIN _____ Telephone No. <u>517-374-9122</u> Fax No. <u>855-256-1485</u>
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
Check if to be sent copies of notices and communications <input type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

**3 Acts authorized (you are required to complete this line 3).** With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Michigan Public Schools Closing Agreement	CLAG 117897-19	2013-2026

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See Line 4, *Specific Use Not Recorded on CAF* in the instructions.

**5a Additional acts authorized.** In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):  Access my IRS records via an Intermediate Service Provider;  Authorize disclosure to third parties;  Substitute or add representative(s);  Sign a return; \_\_\_\_\_

Other acts authorized: \_\_\_\_\_

b **Specific acts not authorized.** My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.  
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): .....

6 **Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here  **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 **Signature of taxpayer.** If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative (or designated individual, if applicable), executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.  
**▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.**

Signature	Date	Title (if applicable)
Print name		Print name of taxpayer from line 1 if other than individual

**Part II Declaration of Representative**

- Under penalties of perjury, by my signature below I declare that:
- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
  - I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
  - I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
  - I am one of the following:
    - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
    - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
    - c Enrolled Agent—enrolled as an agent by the IRS per the requirements of Circular 230.
    - d Officer—a bona fide officer of the taxpayer organization.
    - e Full-Time Employee—a full-time employee of the taxpayer.
    - f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
    - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the IRS is limited by section 10.3(f) of Circular 230).
    - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). See **Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
    - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
    - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

**▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.**

**Note:** For designations d–r, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a–r).	Licensing jurisdiction (State) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable)	Signature	Date
a	MI	P54059	<i>W. J. Wilawille</i>	1-4-21

## Attachment D

### ADDITIONAL INFORMATION RELATED TO THE OPPORTUNITY TO PARTICIPATE IN AN IRS CLOSING AGREEMENT RELATED TO 3% CONTRIBUTIONS TO THE MPSERS HEALTH CARE TRUST

The State of Michigan (through the Office of Retirement Services, "ORS") provided an update on December 22, 2020 related to the current status of the federal tax treatment of the 3% contributions to the MPSERS Health Care Trust, and also provided the opportunity for each Reporting Unit to participate in and be covered by a Closing Agreement with the Internal Revenue Service (IRS) that favorably resolves the tax treatment of these contributions.

Additional questions have been asked by some Reporting Units and those professionals that are advising them related to this matter. ORS is sensitive to those questions, as well as the time frame for making certain determinations. The time frame has been extended to March 1 as communicated last week. ORS also understands that some reporting units and their counsel do not believe they have enough information to make a decision. Hopefully the additional information that is contained here will help, but please understand (and ORS knows that a large number of reporting units have indicated that they do) that ORS and its counsel do not have access to the full contents of the Closing Agreement, nor can they address every scenario for individual reporting units. That being said, ORS is taking further steps to provide as much additional information as possible in this Supplemental Notice to reporting units.

This Notice attempts to address several additional questions, such as the following:

**1. What is the background and context of the proposed Closing Agreement? Is my Reporting Unit obligated to participate in this Closing Agreement?**

No. There is no obligation for any reporting unit to participate. None of the reporting units, other than DeWitt Public Schools, has any facts before the IRS for purposes of this Closing Agreement.

The Closing Agreement was a result of a Private Letter Ruling (PLR) Request in 2018 submitted by W. Alan Wilk at Dykema on their behalf (and paid for by MPSERS because MPSERS had paid for the initial, almost identical, PLR Request in 2016). Rather than issue a PLR, the IRS chose to favorably resolve the tax determinations on the MPSERS 3% contributions (for income and FICA purposes) via the proposed Closing Agreement.

With the original PLR Request filed in 2016 by MPSERS, the intent was to obtain a ruling that covered all reporting units at that time. The IRS would not let MPSERS do this because of the technical reason that MPSERS was not a "taxpayer" (reporting unit) in the retirement system. DeWitt Public Schools then volunteered to be that taxpayer and the 2018 PLR Request was filed. As a result, the proposed Closing Agreement includes operative paragraphs that will be issued to them, resulting in favorable tax treatment for the MPSERS 3% contributions by their employees. The opportunity from the IRS that ORS forwarded in the first Notice on December 22, 2020, provides a process that allows other reporting units to also participate in the same Closing Agreement to be issued to DeWitt Public Schools. It will only cover DeWitt Public Schools unless other reporting units voluntarily choose to sign onto the Closing Agreement.

The IRS also discussed doing a Mass Closing Agreement that would apply for all reporting units, but ultimately decided to provide the ability for reporting units to voluntarily opt-in to be a part of this Closing Agreement, for a reduced user fee of \$3,000 (normally \$30,000) per reporting unit.

ORS has proceeded accordingly with the Notice to reporting units related to this opportunity provided by the IRS. ORS and counsel have tried to provide as much information as possible related to the background and substance of the Closing Agreement, including asking the IRS for as much information related to the Closing Agreement that they could provide, which resulted in the IRS disclosing the three

operative paragraphs of the Closing Agreement. That information was sent in the original Notice to reporting units on December 22, 2020. ORS and counsel have been answering additional questions since that initial Notice, and in this Supplement Notice that includes written answers to a number of follow-up questions. ORS and its counsel are not providing any legal or other advice as to whether or not a reporting unit should participate in this Closing Agreement.

It is a voluntary choice. There is no minimum number of reporting units that have to opt-in. ORS is fine if the Closing Agreement is simply signed on behalf of DeWitt Public Schools and no other reporting units. ORS is also fine if all or any number in between of reporting units want to participate. That is a decision that can be made by each reporting unit, with advice from their own counsel and based on their own facts and circumstances.

**2. Is the IRS requesting \$3,000 per Reporting Unit to provide guidance on tax treatment of a deduction that the IRS has already acknowledged in communications to Reporting Units is exempt?**

Again, there is no obligation for any reporting unit to participate and have funds expended on their behalf. The IRS has set the reduced user fee per taxpayer at \$3,000 for this Closing Agreement. As stated above, each reporting unit will have to decide whether to participate or not. If the reporting unit is comfortable with the IRS communications to the reporting units regarding the current tax treatment of the MPERS 3% contributions, they are certainly free to decline to participate in the Closing Agreement. Likewise, each reporting unit would presumably be free to pursue its own Private Letter Ruling or Closing Agreement based on its own facts and circumstances, if it were not comfortable with the terms, timing, information available, or any other aspect of this Closing Agreement.

**3. What is a Closing Agreement?**

Internal Revenue Code section 7121 authorizes the IRS and taxpayers to enter into closing agreements. While a closing agreement exhibits some of the attributes of a contract, it is not strictly subject to the law of contracts. Closing agreements are legally binding.

Treasury Regulation Section 301.7121-1(a), states:

"In general, the Commissioner may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement."

**4. Is this a "Mass Closing Agreement?"**

No. A Mass Closing Agreement covers a class of taxpayers. The IRS has said that a Mass Closing Agreement in the exempt organizations area is unusual. In those cases, individual agreements with each person in the class will only be negotiated in cases where the class consists of 25 persons or less. If the issue and holding are the same for all members of the class and there are more than 25, the IRS has indicated it will enter into Mass Closing Agreement with the taxpayer who is authorized to represent the class. See 1993 EO CPE Text, p.3.

In this case, the IRS has opted against issuing a Mass Closing Agreement to cover the entire class of Reporting Units, and has instead provided the opportunity for each Reporting Unit to decide on their own whether to sign onto and participate in the Closing Agreement that they have presented.

**5. Will the full Closing Agreement be available for review?**

IRS representatives have indicated, in part due to disclosure restrictions, that it will not provide the full contents of the Closing Agreement. Although the full contents of the Closing Agreement have not been disclosed by the IRS, upon request, the IRS made available the three operative paragraphs of the Closing Agreement and those were included in their entirety with original Notice to Reporting Units on December 22, 2020. It is our understanding that the IRS believed that this was the best case scenario to reach out to additional Reporting Units that were not part of the initial Private Letter Ruling request on these matters, and that Reporting Units may choose whether to participate or not.

**6. What is expected to be in the Closing Agreement?**

The first paragraph concludes that amounts deducted from employee compensation for the MPSERS 3% contribution are treated as employer contributions and are not treated as income under section 106 of the Internal Revenue Code. This conclusion is comparable to the original ruling request that ORS requested in prior Private Letter Ruling requests to the IRS.

The second paragraph concludes that amounts deducted from employee compensation for the MPSERS 3% contribution are not treated as "wages" for purposes of FICA taxes under section 3121(a) of the Internal Revenue Code or purposes of income tax withholding under section 3401(a) of the Internal Revenue Code. This conclusion is also comparable to the original ruling request that ORS requested in prior Private Letter Ruling requests to the IRS.

The third paragraph includes certain requirements as a result of the rulings in the first two paragraphs, including filing of Forms W-2c (corrected wage and tax statements) for affected employees for tax years limitation periods that have not expired, and notifying those employees that they can file Forms 1040-X for a refund on their income taxes for affected years.

Upon further inquiry related to the third paragraph, IRS representatives indicated that this was included to focus the Reporting Units on the impact and expected actions related to the employees and the necessary forms that needed to be filed as a result of the findings in the first two paragraphs. Those representatives also indicated that it was expected that the applicable Reporting Units would be filing forms on their own behalf, such as Form 941-X for open time periods.

**7. Does the Closing Agreement impact the statute of limitations for filing certain protective, refund and other claims?**

Each Reporting Unit will need to take action based on its own circumstances and based on its own counsel, but ORS is not aware that any limitations periods are impacted by the Closing Agreement.

**8. Does the Closing Agreement impact the current status of certain protective, refund and other claims that have already been filed?**

Each Reporting Unit will need to take action based on its own circumstances and based on its own counsel, but ORS is not aware that any currently valid and timely claims are impacted by the Closing Agreement, other than the Closing Agreement appears to confirm the tax treatment of the MPSERS 3% contributions for income and FICA tax purposes.



**9. Will the IRS be providing required transmittal correspondence to participants with the Closing Agreement, or will it fall to each participant to generate the required correspondence with Affected Employees?**

ORS is not aware of any specific correspondence that has been provided by the IRS.

**10. Are there any additional details related to how Reporting Units can handle various claims in light of favorable tax treatment of the MPSERS 3% contributions?**

Without providing specific guidance, ORS has provided general updates on this matter since the IRS began treating these payments favorably for some Reporting Units as far back as 2016. In addition, ORS has been in consultation with Taxpayer Advocate Services (TAS) (which is separate from the IRS departments that are handling the Closing Agreement) related to their information on these matters. TAS has advised Reporting Units to file Forms 941-X (Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund) and to advise affected employees to file Forms 843 (Claim for Refund or Abatement) to recover overpaid employer and employee FICA taxes.

If it would be helpful to Reporting Units in their review of the Closing Agreement, refer to this [March 18, 2020 letter from the National Taxpayer Advocate](#) that the Taxpayer Advocate Service (TAS) asked ORS to distribute last year to the Reporting Units related to the federal tax treatment of the MPSERS 3% contributions.

That letter addresses a number of matters related to the 3% contributions, but focuses on (1) the time limits applicable under Section 6511 of the Internal Revenue Code, (2) those Reporting Units that need to make a refund or protective claim, and (3) the mechanics of how to handle the implementation of a refund. It appears the letter is focused on those Reporting Units that have either not yet stopped withholding FICA and income taxes on the 3% contributions or those that have stopped current withholding, but need to make claims for prior years.

The TAS also indicated at the time that it might be especially time sensitive to some Reporting Units that have not made a refund or protective claim for certain tax years given the upcoming deadline for such a claims at the time of the letter. The TAS letter also provides background on the TAS and their contact information.

**11. Are all MPSERS Reporting Units eligible to participate in the Closing Agreement?**

Yes, the opportunity to participate in the Closing Agreement covers all MPSERS Reporting Units. As such, ORS sent the December 22, 2020 notice to officials at community colleges, state public universities, self-employed public school academies, district libraries, local and intermediate school districts.

**12. Are any MPSERS Reporting Units required to participate in the Closing Agreement?**

No. Reporting Units are not required to be part of the Closing Agreement. Reporting Units are encouraged to consult with their own legal, tax and accounting professionals to form their own conclusions based on their own facts and circumstances. Neither ORS nor the Dykema Law Firm are providing any legal counsel to any Reporting Unit regarding whether to be part of the Closing Agreement or any other matters related to the proper tax treatment of employer and employee contributions made to the MPSERS Health Care Trust.

**13. Will the Closing Agreement include any representations to Reporting Units that choose not to participate in the Closing Agreement?**

No. The Closing Agreement allows the IRS to agree to certain tax determinations with Reporting Units (as taxpayers). The terms agreed to in this Closing Agreement will only cover those Reporting Units that are a party to the Closing Agreement. As a result, the Closing Agreement almost certainly will not include a statement that the IRS commits to not change its enforcement practice during the Closing Agreement period with regard to the tax treatment for Reporting Units that choose not to participate in the Closing Agreement.

**14. Does this mean the Reporting Units that do not participate in the Closing Agreement will be treated differently?**

No. ORS has no knowledge that choosing not to participate in the Closing Agreement will have any adverse tax consequences as a result of that decision by a Reporting Unit. ORS has been informed by various Reporting Units that a few years ago the IRS treated these 3% contributions differently than the Closing Agreement appears to now conclude, but most of the more recent reports are that they have been treated favorably by the IRS (similar to the operative paragraphs in the Closing Agreement).

**15. Can a Reporting Unit ask for their own Private Letter Ruling or Closing Agreement?**

ORS is not aware of any reason why a Reporting Unit could not ask for their own ruling. Presumably, a Reporting Unit would need to engage in that submission using the IRS normal method for such request.

**16. Will ORS pay the \$3,000 filing fee for each Reporting Unit that chooses to participate in the Closing Agreement?**

Yes, ORS has determined that it will make a single payment to the IRS to cover the fee for each participating Reporting Unit. ORS and the IRS are working on the specific mechanics for such a payment based on the number of Reporting Units that elect to participate in the Closing Agreement.

**17. Will the \$3,000 filing fee come from MPSERS?**

Yes, the expense is being incurred to validate that Reporting Units in MPSERS are properly excluding the 3% contributions from income and FICA taxes. Such expenses will be paid from the reserve for administrative expenses in MPSERS. The reserve for administrative expenses is funded from the reserve for undistributed investment income.

**18. Who is W. Alan Wilk and why is he listed on the Form 2848?**

W. Alan Wilk is an attorney with the Dykema Law Firm that assists MPSERS with federal tax matters as a Special Assistant Attorney General. He has worked with the IRS on the MPSERS 3% contribution matters for several years and originally assisted in submitting a Private Letter Ruling (PLR) Request on this issue in both 2016 on behalf of MPSERS and 2018 on behalf of DeWitt Public Schools. It was the PLR Request that has resulted in the proposed Closing Agreement.

**19. Is ORS, Mr. Wilk or Dykema acting as counsel for the Reporting Units?**

ORS has been very clear that, beyond representing a Reporting Unit as provided in Form 2848 to sign the Closing Agreement once a Reporting Unit makes a decision to participate or not, neither ORS nor the Dykema Law Firm are providing any legal counsel to any Reporting Unit regarding that decision of whether to be part of the Closing Agreement or any other matters related to the proper tax treatment of employer and employee contributions made to the MPSERS Health Care Trust. Reporting Units are encouraged to consult with their own legal, tax and accounting professionals to form their own conclusions based on their own facts and circumstances.



**20. Does listing Mr. Wilk on the Form 2848 mean he is our attorney?**

A Form 2848 is used to authorize an individual to represent you before the IRS in a matter that is specifically named on the Form 2848, which in this case is limited to the signing of the Closing Agreement, if a Reporting Unit chooses to participate. He is listed as an attorney because an authorized individual must be eligible to practice before the IRS, and a licensed attorney is one of the many categories (accountants, actuaries, employees, officers, etc.) that are eligible. He is not engaged as your attorney for any legal advice, and you should consult your own attorney to decide whether or not to participate in the Closing Agreement. Based on your own counsel's advice, he may be authorized via the Form 2848 to sign the Closing Agreement on your behalf.

**21. Will we be charged any fees by ORS or Dykema for their involvement in the Closing Agreement?**

No. Neither ORS nor Dykema are charging any fees to Reporting Units for helping to facilitate the signing of the Closing Agreement for those Reporting Units who choose to participate.

**22. Why does the Form 2848 that was provided included partially completed information that states that the time frame is 2013-2026?**

The Form 2848 was originally drafted to include only the dates when the Closing Agreement was being discussed, which was 2019-2021. Upon review of a draft Form 2848 with that time frame by the IRS, the IRS asked that the time frame be updated to reflect 2013-2026. ORS subsequently updated the time frame on the Form 2848. ORS understands that the time frame reflects what the IRS anticipates to be covered by the Closing Agreement, which are those contributions subject to the election window that closed in 2013 (which began as early as PA 300 of 2012 became effective on September 4, 2012).

**23. Why is 2026 being contemplated as the end date of the time frame for the Closing Agreement?**

As stated in the Treasury Regulation cited above, a Closing Agreement may be in respect of any internal revenue tax for any taxable period ending prior or subsequent to the date of such agreement. In this case, the IRS has indicated that it is willing to issue the Closing Agreement for the prior time periods as indicated and for an additional 5 Years, which would be until 2026. Initial discussions also included no additional time periods and a time period of 1 year, but the last indications were for an additional 5 years. Additionally, upon inquiry, there was no indication that the IRS decision on this matter would be changing effective in tax year 2027, even though further time frames would not technically be covered by the Closing Agreement.

**24. Is there a conflict with ORS or Dykema's involvement in the Closing Agreement process?**

ORS and Dykema (as ORS counsel) have been involved in this matter from the beginning, including an initial request in 2016 on behalf of MPSERS to have the IRS make a determination as to the income and FICA tax status of the MPSERS 3% contributions by MPSERS participants (Reporting Unit employees). They were then involved in this matter with DeWitt Public Schools, which stepped up to be a representative Reporting Unit in a subsequent and almost identical request in 2018. From a general review, the operative paragraphs of the Closing Agreement appear to resolve these tax matters favorably for the Reporting Units and employees. But as has been made clear, each Reporting Unit should review its own facts and circumstances to decide whether it wants to participate in this Closing Agreement. If any Reporting Unit is uncomfortable with any perceived conflict with ORS or Dykema's involvement, or based on their own individual reasons, they are not required to participate.

**25. Will ORS submit the Form 2848 for each Reporting Unit?**

Yes, those Reporting Units that wish to participate in the Closing Agreement can submit their Form 2848 to ORS as provided in the December 22, 2020 notice, and ORS will forward all of them to the IRS following the deadline to submit them.

**26. Is it possible that the February 5, 2021 deadline can be extended to accommodate a Reporting Unit that needs to take action to approve participation, but cannot do so until after the current deadline?**

Yes, the new deadline is March 1, 2021. ORS heard feedback from many Reporting Units that want their respective boards to be able to meet to deliberate whether to participate in the Closing Agreement. Most reports were that those boards have regular meetings scheduled in February in which they wanted to address this matter. As such, the extended deadline should accommodate those Reporting Unit requests. If a Reporting Unit knows that it wants to participate in the Closing Agreement but cannot meet the new deadline, that Reporting Unit should contact ORS to discuss their anticipated date of approval.

For those Reporting Units that know that they would like to participate, they are encouraged to get their Form 2848 submitted as soon as possible after approval.

**27. May a Reporting Unit sign onto the Closing Agreement after it has been signed?**

Based on conversations with the IRS, ORS believes this answer is no. It is understood that only the Reporting Units that sign a Form 2848 and have their reduced filing fee paid by ORS will be covered by this Closing Agreement. A Reporting Unit, however, might in the future be able to submit and participate in its own Closing Agreement that it pays for and negotiates with the IRS.

**28. Has the IRS stated when it anticipates generating a completed Closing Agreement for your execution on behalf of each participating Reporting Unit?**

No, the IRS has not provided a specific date or time frame following the submission of the Form 2848s and payment of the filing fee. As such, ORS continues to encourage Reporting Units to consult with their own professionals to maximize any limitations periods, especially if they anticipate that any delay in generating the Closing Agreement may impact the timing of any action required, including those to obtain refunds for the employer and employee.

**29. How will each participating Reporting Unit's participation be denoted on the Closing Agreement?**

While the final form of the Closing Agreement has not been disclosed, it has been discussed with the IRS and the initial response is that each Reporting Unit to be covered by the Closing Agreement will likely be listed on an Addendum to the Closing Agreement.

**30. Why would a Reporting Unit choose to participate in the Closing Agreement?**

Again, ORS is not providing any advice as to whether to participate or not. ORS is aware, however, that some counsel for Reporting Units have indicated that (1) if a Reporting Unit treated the 3% contributions deducted as subject to income and FICA taxes at any time during 2012-present, the Closing Agreement may present the opportunity to take corrective action and obtain a refund of the FICA tax paid by the Reporting Unit [depending on the facts and circumstances as to whether and how any claims were handled at a particular reporting unit]; (2) if a Reporting Unit treated the 3% contributions deducted as exempt from income and FICA taxes, the Closing Agreement will reflect the IRS position that such

treatment was appropriate; and (3) in either case, the Closing Agreement confirms the IRS treatment of the 3% contributions through the end date of the Closing Agreement (which is proposed to be 2026).

**31. Why would a Reporting Unit choose not to participate in the Closing Agreement?**

Again, ORS is not providing any advice as to whether to participate or not. ORS is aware, however, that some representatives for Reporting Units have indicated that a Reporting Unit might not want to participate if (1) the Reporting Unit deems the administrative time and cost required to participate in the Closing Agreement outweighs its benefits; (2) if the Reporting Unit has consistently treated the 3% contribution as exempt from income and FICA taxes and/or they do not believe the IRS will take a contrary position for their Reporting Unit; (3) they do not want MPSERS to expend \$3,000 on their behalf; (4) the Reporting Unit is not comfortable with not seeing the full contents of the Closing Agreement; (5) the Reporting Unit is not comfortable participating in the Closing Agreement that ORS and DeWitt Public Schools (or their counsel) were involved with; or (6) the Reporting Unit is not comfortable with certain terms of the Closing Agreement.

**32. What do I do if I have additional questions?**

ORS encourages you to contact your legal counsel to discuss any specific facts and circumstances related to your Reporting Unit.

If you have any questions related to the Form 2848 submission or generally about the Closing Agreement process, please contact [ORS\\_Web\\_Reporting@michigan.gov](mailto:ORS_Web_Reporting@michigan.gov).

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Distributed by ORS to Reporting Units via ListServ on the evening of February 3, 2021

Mrs. Lowery explained the need for this resolution and answered board members questions.

ROLL CALL VOTE: C. Lee, K. Laesch, S. Carlin, R. Writer, and H. Burnett

NAYS: None ABSTAINED: K. Berry and C. Carlson **MOTION ADOPTED**

**INFORMATION/REPORTS &  
NEW BUSINESS**

Board Policy Committee – Mrs. Berry provided an update to the board. She spoke about the Wellness Policy and the current NEOLE updates. The committee will be working to develop a schedule to review all board policies.

Curriculum & Programming Committee – Mrs. Writer provided an update to the board. The committee had discussed its purpose. They are working to insure money in the budget for curriculum and a plan for advanced courses for the 2021-22 school year. They would like to work on having one advanced placement course in each subject area.

Parent Advisory Committee – Mrs. Robinson spoke of the first advisory meeting with 20 members, 18 in attendance, for around a two hour meeting. Also in attendance was Mark Kurland, Phil Place and Mark Frey. They helped to answer questions. Phil updated the members of the plans for the BCS website. There was great discussion around curriculum. The committee will be dividing into two sub groups. They plan to meet as a whole group four times per year with the sub groups meeting more frequently.

**QUESTIONS & COMMENTS  
FROM BOARD MEMBERS**

Mrs. Laesch heard from several parents that they appreciated the notice of the snow day ahead of time so they could make arrangements. She had attended the Title 1 meeting at Ottawa and gave praises to Wendy Murphy, Stacey Denison and Laura Henckel who provided great information to parents. Mrs. Laesch thanked Buchanan Christian Church for the hand written notes to all staff and the gift card to Union Coffee House. She thanked the BCS staff who had registered to receive their COVID vaccination. She also spoke of the Maple Syrup Camp starting at the school farm and Mr. Nixon will be making sure there is enough help to tap the trees in the upcoming weeks.

Mrs. Berry thanked administrators and coaches for making athletics work.

Dr. Carlin confirmed that the SAT Prep Course is costing Buchanan Community Schools no money nor is he receiving any compensation for his services. He informed the board that Meemic gave a very generous donation to the SAT fund. The money raised will be going towards materials and incentives for the students. There is no profit being made from the crowdfunding.

Dr. Burnett commented to the large amount of staff that received their vaccination.

**NEXT BOARD MEETING**

Wednesday, February 17, 2021 @ 6pm

**ADJOURNMENT**

7:44 pm

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Mrs. Kelly Laesch, Secretary, Board of Education  
*(Minutes adopted at the 3/15/21 meeting)*