



LEGAL SERVICES MEMORANDUM

Date: January 27, 2011

APPENDIX MMM-7-33

To: School Board Members

January 31, 2011

From: Matthew W. Bell, Legal Counsel *MWB*

cc: Daniel Nerad

Subject: 4k Intergovernmental Agreements

Attached please find a proposed intergovernmental agreement with the Middleton/Cross Plains Area School District. The proposed agreement with Middleton/Cross Plains Area School District (MCPASD) allows the District to establish a 4k site in a nursery school (Orchard Ridge Nursery School) that lies within the MCPASD's border. The rationale for the District's desire to do so is the fact that Orchard Ridge is within ¼ mile of MMSD's boundary and it serves primarily (70-80%) Madison residents. The agreement would also allow the District to serve MCPASD 4k students who chose to enroll at Orchard Ridge in exchange for direct non-resident tuition reimbursement by MCPASD to Orchard Ridge. Conversely, MCPASD will be allowed to establish 4k sites at two centers (LaPetite and Middleton Preschool) that are within MMSD's border. MCPASD's rationale for wanting to contract with those sites is identical to MMSD's desire to contract with Orchard Ridge (i.e. proximity and demographics of children already at the center). MCPASD would also serve MMSD residents who chose to attend those sites in exchange for MMSD directly reimbursing LaPetite and Middleton Preschool. The agreement with MCPASD is attached for your review and action.

A similar agreement has been presented to Verona in order to allow the District to establish a 4k program at Head Start- Red Arrow Trail. At this time, Counsel for Verona is reviewing the proposed Agreement and it is our hope that we will be able to bring that Agreement to you for your consideration within a short period of time.

INTERGOVERNMENTAL COOPERATION AGREEMENT

Between

Madison Metropolitan School District

and

Middleton-Cross Plains Area School District

(Relating to contracting with licensed child care center providers for 4 year-old kindergarten programs)

WHEREAS, Section 66.0301, Wisconsin Statutes provides that municipalities, including school districts, may cooperate with one another and jointly exercise any power or duty authorized or required by law; and

WHEREAS, Wisconsin Statutes authorize a school board to provide 4-year old kindergarten programming and to enter into an agreement with a licensed child care center in order to provide instruction in a prekindergarten or kindergarten program; and

WHEREAS, Section 120.13, Wisconsin Statutes, authorizes school boards to "do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils"; and

WHEREAS, Madison Metropolitan School District, a public school district in the state of Wisconsin, and Middle-Cross Plains Area School District, a public school district in the state of Wisconsin, recognize the potential educational benefits of providing families with options for 4-year-old kindergarten programs in licensed centers located in and near communities and neighborhoods in which families work and live, and wish to cooperate and collaborate in the possible provision of instruction in 4-year-old kindergarten programs in licensed child care center(s) near the shared boundary between the Districts;

NOW THEREFORE, in consideration of the foregoing preamble, the parties mutually agree as follows:

1. PARTIES.

This is a contract between the Madison Metropolitan School District, hereafter referred to as "MMSD;" and the Middleton-Cross Plains Area School District, hereafter referred to as "MCPASD"

2. AUTHORIZATION.

Authorization for this agreement is provided by Board of Education Resolution or Motion adopted on the dates set forth at the signature line below.

3. PURPOSE & SCOPE

A. The purpose of this agreement is to allow 4-year old kindergarten students who are qualified residents of one party to attend a 4-year kindergarten at specified licensed child care centers located outside that resident party's boundaries and within the boundaries of the non-resident party as if the students were attending within their own boundaries provided that (1) the resident party has entered into a contract with the licensed child care center for the provision of a 4-year-old kindergarten program to the resident-party's students at that location; and (2) the licensed child care center is a center named within this agreement. To that effect:

- The party's agree that MCPASD may enter into a separate agreement with LaPetite (located at 970 N Gammon Rd) and/or Middleton Preschool (located at 7118 Old Sauk Rd.) for the provision of 4-year-old kindergarten instruction.
- The party's agree that MMSD may enter into a separate agreement with Orchard Ridge Nursery School (located at 1025 McKenna Boulevard, Madison, WI 53719) for the provision of 4-year-old kindergarten instruction.
- Neither party shall transfer any funds to the other in connection with this Agreement or with any services provided hereunder, except as may be expressly identified below or as may be identified in any written addendum to the Agreement that may be separately executed at a later date.

- MMSD shall not require a MCPASD resident 4-year old kindergarten student attending, pursuant to this Agreement, a MCPASD 4-year-old kindergarten program at a licensed child care center located within MMSD's boundaries to pay non-resident tuition to or apply for open-enrollment within the MMSD.
 - MCPASD shall not require a MMSD resident 4-year old kindergarten student attending, pursuant to this Agreement, a MMSD 4-year-old kindergarten program at a licensed child care center located within MCPASD boundaries to pay non-resident tuition to or apply for open-enrollment within the MCPASD.
 - Either party exercising the cooperative authority established by this Agreement may, at its discretion and to the extent said party provides transportation to some or all resident students attending 4-year-old kindergarten at a child care center site located outside the geographical boundaries of said party, transport its residents or contract for the provision of the transportation of its residents to/from the child care center located within the geographical boundaries of the other party.
- B. Nothing in this Agreement shall be construed to require either party to:
- Provide or implement a 4-year old kindergarten program for residents of its School District;
 - Utilize licensed child-care centers for or in connection with the provision of any services, program, or instruction related to any 4-year old kindergarten program that may be provided or implemented by the party; or
 - Utilize licensed child-care centers located outside the boundaries of its school district for or in connection with the provision of any services, program, or instruction related to any 4-year old kindergarten program that may be provided or implemented by the party.

4. 4-Year-Old Kindergarten Instruction to Non-Resident Students

- Pursuant to this agreement, MMSD may provide 4-year-old kindergarten instruction to qualified MCPASD residents who enroll at Orchard Ridge Nursery School and MMSD shall not require that MCPASD residents apply for open-enrollment into MMSD's 4-year-old kindergarten program located at Orchard Ridge Nursery School.
- Pursuant to this agreement, MCPASD may provide 4-year-old kindergarten instruction to qualified MMSD residents who enroll at LaPetite or Middleton Preschool and MCPASD shall not require that MMSD residents apply for open-enrollment into MCPASD's 4-year-old kindergarten program located at LaPetite or Middleton Preschool.
- In the event that a MCPASD resident is enrolled in MMSD's 4-year-old kindergarten program located at Orchard Ridge Nursery School, MCPASD shall submit non-resident tuition reimbursement directly to Orchard Ridge Nursery School in the amount of \$3,399.00 per MCPASD resident.
- In the event that a MMSD resident is enrolled in MCPASD's 4-year-old kindergarten program located at either LaPetite or Middleton Preschool, MMSD shall submit non-resident tuition reimbursement directly to the Center in which the student is enrolled (i.e. LaPetite or Middleton Preschool) in the amount of \$3,000 per resident.
- The provision of 4-year-old kindergarten instruction by either party to a non-resident shall not be construed as an acceptance of an open enrollment application by the party providing instruction.

5. EFFECTIVE DATE, TERM AND RENEWAL.

The term of this agreement shall commence on February ____, 2011 and shall remain in effect until June 30, 2012, or until terminated as elsewhere provided in this contract. Parties may renew this agreement for subsequent terms upon written agreement and authorization by their respective Boards of Education.

6. ENTIRE AGREEMENT.

The entire agreement of the parties is contained herein and this contract supersedes any and all oral contracts and negotiations between the parties.

7. ASSIGNABILITY/TRANSFER OF RIGHTS.

Except as expressly authorized herein, neither party shall assign or transfer any interest or obligation under this contract without the second party's prior written approval.

8. **REPORTING/AUDIT.**

Each party shall be responsible provide for completion of its own mandatory or elective reports or audits.

8. **AMENDMENT.**

This agreement shall be binding on the parties hereto, their respective heirs and successors, and cannot be varied or waived by any oral representations or promises of any agent of the parties. Any change in any provision of this contract may only be made by a written amendment, signed by the parties or their authorized agent.

9. **NO WAIVER.**

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of MCPASD or MMSD, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the party therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

10. **NON-DISCRIMINATION.**

In the performance of work under this contract, the parties agree not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status.

11. **AFFIRMATIVE ACTION.**

Each party agrees to comply with its respective affirmative action plans.

12. **NOTICES.**

All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR MMSD: Erik Kass, Assistant Superintendent for Business Services
Madison Metropolitan School District
545 W. Dayton St.
Madison, WI 53703
(608) 663-1658

FOR MCPASD: _____
Tom Wohleber
Middleton-Cross Plains Area School District
7106 South Avenue
Middleton, WI 53562

13. **THIRD PARTY RIGHTS.**

This contract is intended to be solely between the parties hereto. No part of this contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

14. **LAW APPLIED.**

This contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts.

15. **COMPLIANCE WITH APPLICABLE LAWS.**

The parties shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the parties and their agents and employees.

16. **CONFLICT OF INTEREST.**

A. MMSD, and MCPASD warrant that they and their agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this contract.

B. One party shall not employ or contract with any person currently employed by the other party for any services included under the provisions of this contract.

18. **COST.**

It is expressly understood and agreed that other than the reimbursement directly to the specified child care centers and referenced above, there is no cost to the parties for entering into or adhering to the terms of this agreement.

19. **DEFAULT/TERMINATION.**

A. A party may in its sole discretion and without any reason terminate or withdraw from this agreement effective the beginning of any new school year by furnishing the other party with written notice of intent to terminate no later than the December 31st preceding the beginning of said new school year.

B. This Agreement may be terminated by mutual agreement of the parties, expressed in writing, at any time.

C. The Agreement shall terminate in the event that the primary purpose of this Agreement (to wit, an arrangement permitting each party to provide four-year-old kindergarten programming/instruction at and through a licensed child-care center that is located outside but near the geographical boundaries of said party in a manner otherwise consistent with this Agreement) is determined to be contrary to law due to any change in State statute or by the decision of any court or tribunal of competent jurisdiction.

20. **INDEMNIFICATION.**

Each party retains for itself all legal responsibility for any injuries, claims or losses arising from or caused by the acts or omissions of its agents or employees acting within the scope of their employment. Nothing in this Agreement shall be construed as an assumption or indemnification by one party of any legal liability of the other party. The obligations of the parties under this paragraph shall be subject to the limitations set forth in Wis. Stats. sec. 893.80 and 895.46 and shall survive the expiration or termination of this contract.

21. **CONFIDENTIALITY.**

Each party designates the other as a "school official" within the meaning of the Family Educational Rights and Privacy Act and Wisconsin Statute 118.125(2) (i.e, regarding the limited disclosure of pupils' educational records without the consent of a parent or guardian) to the limited extent necessary to accomplish legitimate educational purposes associated with four-year-old kindergarten education (such as when both Districts have agreements with the same child-care center and the 4-year-old programs in question integrate resident students of each party), with the commitment that each party agrees to abide by applicable legal requirements concerning control of such records, and the disclosure, use, and re-disclosure of such records.

Except as otherwise provided herein or as required by law, if a party becomes privy to any confidential information belonging to the other (including any pupil's educational records), during the period that this Agreement is in effect and at all times after its termination, each party shall maintain the confidentiality of said information and not reveal, disclose, copy, use, sell, license, publish, display, distribute, or otherwise make available this information in any manner or form, or any portion of the proprietary or confidential information related thereto.

Notwithstanding the foregoing paragraph, the parties agree and understand that each party is an "authority" as defined in Wis. Stats., section 19.32(1) and subject to the Wisconsin Public Records law, Wis. Stats. sections 19.31 et. seq. If a party receives any request made pursuant to the Public Records law which invokes records containing confidential information of a type described in this Agreement, the party, to the extent practicable and not contrary to law, will notify those other parties whose data/records may be affected of its intended response, including the manner in which compliance will occur.

21. **ASSURANCES AND CERTIFICATIONS.**

The Parties make the following assurances and certifications as part of this contract:

They possess the legal authority to enter into this contract. A resolution, motion or similar action has been duly adopted or passed as an official act of their governing body(ies), authorizing the execution of this contract, including each and every part thereof, and directing and authorizing the persons identified in Section 12 as agents to act in connection with this contract and to provide all required reports and such additional information as may be required.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

MADISON METROPOLITAN SCHOOL DISTRICT
BOARD OF EDUCATION

Erik Kass, Board Secretary

Date

Date of Board of Education authorization: _____

MIDDLETON-CROSS PLAINS AREA SCHOOL DISTRICT
BOARD OF EDUCATION

(Date)

Date of Board of Education authorization: _____