

Agenda for Board of Education Meeting for Vassar Public Schools
Special Meeting of the Board of Education

Date: June 6, 2017

Time: 6:30pm

Place: High School, Room 201

A. Call to order:

B. Roll Call:

Members Present:

Members Absent:

Others Present:

C. Pledge of Allegiance

D. Approval of Agenda:

E. Public Participation:

F. Personnel Issue:

G. Operational Issue:

H. Closed Session:

1. Negotiations presented by Ms. Blackwell and Mrs. Auernhamer

2. Update from Thrun

I. Adjournment:



THRUN

LAW FIRM, P.C.

U.S. MAIL ADDRESS:
P.O. Box 2575
EAST LANSING, MI 48826-2575
PHONE: (517) 484-8000
FAX: (517) 484-0041
FAX: (517) 484-0081

ALL OTHER SHIPPING:
2900 WEST ROAD, SUITE 400
EAST LANSING, MI 48823-6386

MICHAEL B. FARRELL
GORDON W. VANWIJEN, JR.
MARTHA J. MARCERO
LISA L. SWEM
JEFFERY J. SOLES
ROY H. HENLEY

ROBERT G. HUBER
MICHAEL D. GRESENS
CHRISTOPHER J. IAMARINO
RAYMOND M. DAVIS
MICHELE R. EADDY
KIRK C. HERALD

MARGARET M. HACKETT
MATTHEW F. HISER
KARI K. SHAY
ROBERT A. DIETZEL
JENNIFER K. STARLIN
RYAN J. NICHOLSON

FREDRIC G. HEIDEMANN
KATHERINE WOLF BROADDUS
DANIEL R. MARTIN
TIMOTHY T. GARDNER, JR.
PHILIP G. CLARK
PIOTR M. MATUSIAK

CRISTINA T. PATZELT
KEVIN S. HARTY (OF COUNSEL)
TRAVERSE CITY

May 26, 2017

Confidential: Attorney-Client Privileged Communication

Board of Education
c/o Dorothy Blackwell
Vassar Public Schools

Via e-mail dblackwell@vassar.k12.mi.us

Re: Status Update - MEP

Dear Board Members:

We write to update you on the current status of the MEP issue and to advise you on next steps.

Brief History

Several years ago, the District entered into a contract with a company called “Michigan Educational Partnership” or “MEP” at the urging of the District’s former superintendent. MEP claimed that it would educate at-risk students from outside the District in an online setting. The contract provided that MEP would educate the students and keep all required documentation. The District would claim the students for state aid purposes. The District would then pay 90% of the state aid for those students to MEP. The District would keep the remaining 10% as compensation for claiming the students and to cover any administrative overhead resulting from the arrangement.

During the summer of 2015, the Michigan Department of Education’s Office of Audits conducted an audit of MEP’s online program. The audit uncovered significant pupil accounting deficiencies.¹ The state auditor determined that all state aid collected for MEP students had to be repaid. The obligation to repay fell on the District – the entity that had claimed the students.

The District terminated the contract with MEP and sent MEP’s attorneys notice of the right to appeal the deductions. Given the slim chance of prevailing in an appeal and concerns about the propriety of the program, the District, through its attorneys, notified MEP that the District would file any appeal that MEP presented, but MEP must draft the appeals and attach relevant documents. Pursuant to that arrangement, MEP’s attorneys appealed the deductions. The appeals were denied at each level.

¹ At that time, students in seat-time waiver programs were required to log in to their online programs 10 times and have weekly two-way communication with their mentor teacher(s) during each count period. Each class required a designated “teacher of record” who was a certificated teacher employed by the District. See, Pupil Accounting Manual, Section 5-O-B, 2014-15 Edition.



Vassar Board of Education
May 26, 2017
Page 2 of 4

Confidential: Attorney-Client Privileged Communication

After contract termination, the District demanded return of all student records and information. A review of the limited number of records that were returned to the District raised concerns about the legitimacy of MEP's program. Since then, numerous other concerns about MEP have arisen, including:

1. A review of student login times revealed alarming patterns. Often, series of student logins ran alphabetically without overlapping. For example, Student A logged on from 8:04-8:06; Student B logged on from 8:07-8:11; Student C logged on from 8:13-8:14; Student D logged on from 8:17-8:20. Such series occurred frequently enough to raise questions as to whether a single individual was logging students on and off.
2. A review of emails between students and mentor teachers in Vassar reveals particular language patterns among many different students, again giving the impression that one person was sending all of the emails.
3. After the state aid deduction was announced, MEP reached out to an Ithaca employee and informed the employee that she had been the "teacher of record" for all of the students. That employee denied any knowledge of or responsibility for any MEP student.
4. The limited number of student records that were returned to the Districts raises questions about whether students were actually enrolled in the program.
5. MDE conducted site visits to MEP's learning centers on Count Day. The first center had no students. The second center had 3-4 students present; none had computers. MDE expressed concerns about the state of the building.
6. It is our understanding that the police have opened an investigation and have executed search warrants at the homes of those involved with MEP. To our knowledge, no charges have been filed.
7. It is also our understanding that some individuals identified as MEP students were contacted by law enforcement and denied ever enrolling in MEP's online program.

In 2015, we contacted the Michigan Department of Education on behalf of the Districts and requested that the pupil accounting deduction be spread over 5 years. The request was granted.

We have sent letters to MEP's attorney demanding repayment of the money owed. MEP's attorney has shared that MEP will not pay and has no money to repay the District.



Vassar Board of Education
May 26, 2017
Page 3 of 4

Confidential: Attorney-Client Privileged Communication

Next Steps

We believe that MEP is contractually obligated to repay the Districts. We do not, however, believe that collecting the money owed will be easy. At this time, the Board has two options: 1) take no action; or 2) file a lawsuit against MEP and its owners.

If the District chooses to take no action at this time, the police investigation will still continue. If charges are filed and the individuals plead or are found guilty, the District may have the option to seek restitution. We do not know if or when charges will be filed. If the District waits until the conclusion of any criminal matter, the statute of limitations may expire and the District may lose the opportunity to sue in civil court.

The District may file a lawsuit against MEP and its owners at any time. The District should be aware, however, of the following factors before making a decision:

1. ***It may be difficult to obtain a verdict against MEP's owners.*** At this time, we believe that MEP is effectively defunct and has no funds. Because we believe that fraud occurred, we will seek to "pierce the corporate veil" and name MEP's owners individually. "Piercing the veil" is typically difficult, but not impossible. If successful, the District could try to collect the personal property of the owners.
2. ***Collection will be difficult.*** If we are unable to pierce the veil, as briefly explained above, it is unlikely that the District will collect any money from MEP. If we are able to pierce the veil, collection from the individual owners will still be difficult. At this point, we have no information about what assets, if any, MEP's owners have.
3. ***Litigation costs will likely not be covered by insurance.*** Most insurance policies only cover litigation costs if the District is sued. It is unlikely that any costs and legal fees would be covered if the District initiates the lawsuit. We suggest consulting with the District's insurance carrier to determine coverage before making any decision. If there is no coverage, litigation will be costly and time-consuming.
4. ***Statute of limitations.*** There is a 6-year statute of limitations period on breach of contract actions. MCL 600.5807(8). Because the claim arose in 2015, there is still sufficient time to file a breach of contract claim.

If the District decides to pursue litigation, it should reach out to Ithaca to determine if there is interest in proceeding jointly to split costs. The District may continue to await any criminal determination, or it may decide to proceed with litigation today or at some point in the future. This letter is intended only to inform the District of available options.



Vassar Board of Education
May 26, 2017
Page 4 of 4

Confidential: Attorney-Client Privileged Communication

If you have any questions, or if you would like us to meet with the Board in closed session to consider this correspondence, please contact us.

Very truly yours,

THRUN LAW FIRM, P.C.

A handwritten signature in black ink that reads 'Robert A. Dietzel'.

Robert A. Dietzel
(517) 374-8858
rdietzel@thrunlaw.com

A handwritten signature in black ink that reads 'Jennifer K. Starlin'.

Jennifer K. Starlin
(517) 374-8834
jstarlin@thrunlaw.com

RAD/jmw

This document constitute privileged attorney-client communication to remain confidential among the members of the Board of Education and administrative staff for the School District. As such, this document is exempt from disclosure under the Michigan Freedom of Information Act, MCL 15.243(1)(g), and the Board of Education may meet in a closed session to consider its contents pursuant to the Michigan Open Meetings Act, MCL 15.268(h).

w:\wdsystem\wddocs\cliedoc\5555\56\01312113.docx