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March 20, 2019

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED**

VIA E-MAIL

School District of Milton

Attn: Karen Hall, Board Clerk ([hallk@milton.k12.wi.us](mailto:hallk@milton.k12.wi.us))

Mike Pierce, Board Treasurer ([piercemi@milton.k12.wi.us](mailto:piercemi@milton.k12.wi.us))

448 East High Street

Milton, WI 53563

RE: School Board Investigation - Supplemental  
Our File: 759.81913

Dear Ms. Hall and Mr. Pierce:

At the request of the Milton School Board, I conducted a supplemental independent investigation addressing the following issues:

- (1) Prior to the Board approving administrator contracts on January 22, 2018, was the Board aware that the contracts included an increase in the administrators' retirement benefits from 40% to 60% of their exit salary.
- (2) Did the Board unknowingly approve a contract authorized by Mary Ellen Van Valin, Director of Business Services, in March of 2016?
- (3) Did anyone disclose confidential records to Chuck Jackson and perhaps other members of the public before Board member Brian Kvapil disclosed those records to the media?
- (4) Did any Board member violate the attorney directive not to talk about the prior investigation while that investigation was pending?
- (5) Did the vacation payout to Superintendent Tim Schigur in July of 2018 violate any Board policy or law?

To undertake this investigation, I conducted interviews of all current Board member as well as the following District employees: Tim Schigur, Jerry Schuetz, Chris Tukiendorf, Mary Ellen Van Valin and Debra Ytzen. I also reviewed numerous documents.

My report will be organized into three sections. First, I will outline my factual findings that are supported by substantial evidence. My factual findings will be organized by the five issues raised above. Second, I will provide direct answers to each of the above questions. Third, I will provide the Board with recommendations for consideration moving forward.

**I. Factual Findings.**

**A. 2018 Administrator Contracts With Increased Retirement Benefits.**

On January 22, 2018, the School Board approved the 2018-20 administrator contracts. The meeting minutes indicate that the Board went into closed session immediately preceding the motion. The Board returned from closed session and the minutes indicate the following motion was made:

A motion was made by Betsy Lubke and seconded by Tom Westrick to approve the administrator contracts as presented in closed session. Motion carried.

The minutes do not indicate what was presented in closed session regarding the administrative contracts.<sup>1</sup>

By way of background, the 2017-19 administrator contracts included the following provision:

If the Administrator retires at a minimum of age fifty-five (55) pursuant this provision with at least ten (10) years of service in the School District of Milton shall receive [sic] a retirement stipend in the amount equal to 40% of their exit salary. The stipend will be divided into four (4) equal installments and distributed in four (4) annual payments. Should the retiree pass away before all stipend payments have been made, the remaining payments shall be made to the retiree's estate.

The 2018-20 administrator contracts contain the identical provision but the amount of the retirement stipend increase from 40% to 60% of the administrators' exit salary.

Board member Brian Kvapil initially believed that the Board was not apprised that the proposed administrator contracts for the 2018-20 term increased the administrators' retirement benefit from 40% to 60%. Several administrators and Board members with whom I interviewed recalled that this increased retirement benefit was discussed both at an administrative level and at a Board level and was recommended to the Board due to the prior removal of another benefit (long term care

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<sup>1</sup> Based on my review of minutes from multiple Board meetings, use of the phrase "as presented" is common for the Milton School Board.

benefit) from the administrators' contracts with no corresponding increase in other benefits. The removal of long-term care benefits is well documents in prior Board meeting minutes.

As noted above, the Board minutes for January 22, 2018, reflect that the motion to approve the administrator contracts was made by Betsy Lubke. Ms. Lubke is a former Board member. I requested Ms. Lubke's notes and her notes document that during the closed session on January 22, 2018, the increased retirement benefit from 40% to 60% was discussed. I also asked Board member Kvapil to attempt to locate his notes from the same meeting, and after diligently searching his notes Mr. Kvapil also provided me with his own notes from the same closed session meeting. Those notes also document that the proposed increase in retirement benefit from 40% to 60% was discussed in that closed session. As a result, based on his own notes, Mr. Kvapil concedes that this issue is no longer of concern to him.

To be clear, no person I interviewed claimed that the Board was not advised of the increased retirement benefit, and again Mr. Kvapil conceded after review of his notes that the increased retirement benefit was discussed.

**B. Debra Ytzen's 2016 Contract.**

Prior to February 1, 2016, Debra Ytzen was employed by the District under a letter of employment, not an employment contract. She was not a supervisory employee. On February 8, 2016, Mary Ellen Van Valin completed an Employee Recommendation form recommending Debra Ytzen be assigned as a Payroll Supervisor and Business Office Support commencing February 1, 2016. Again, Ms. Ytzen was not a supervisor up to this time.

Ms. Van Valin had recommended that Ms. Ytzen's salary be increased to \$61,800.00 per year, which was the same salary as Chris Tukiendorf received under his supervisory contract. At that time, Mr. Tukiendorf was the Human Resources Supervisor.

Ms. Van Valin signed the Employee Recommendation form and provided it to Mr. Schigur who also signed it. She then provided it to Mr. Tukiendorf who would be responsible for preparing the letter of employment and/or contract. Mr. Tukiendorf questioned the ER form prepared by Ms. VanValin in two respects: first, that supervisors are employed pursuant to contracts, not letters of employment; and second, he had concerns about tying Ms. Ytzen's salary to his salary. He raised those concerns with Ms. Van Valin. Ms. Van Valin then spoke with Mr. Schigur about Ms. Ytzen.

There is a dispute as to what was discussed between Ms. Van Valin and Mr. Schigur, but ultimately the decision was made that Ms. Ytzen did not need a supervisor contract for the remainder of that school year, but that she would be issued a supervisor contract for the next school year (2016-17).

However, prior to this conversation, Mr. Tukiendorf had prepared a supervisory contract for Ms. Ytzen covering the five-month period of February 1, 2016, to June 30, 2016. Mr. Tukiendorf explained that the contract that he prepared for Ms. Ytzen, like all other contracts, are prepared with electronic signatures added for the Board President and Clerk. He would have provided the contract to Ms. Ytzen for her review and signature in advance of the Board meeting on March 14, 2016.

This contract, however, was not presented to the Board. Mr. Tukiendorf was directed by Ms. Van Valin not to include Ms. Ytzen's supervisor contract on the staffing report for the Board meeting on March 14, 2016, and as a result, Ms. Ytzen's name does not appear on the staffing report for that meeting. Thus, the Board was not presented with Ms. Ytzen's contract covering that five-month period.

The existence of a contract purportedly signed by the Board and Ms. Ytzen was never approved by the Board because it was never brought to the Board. However, Ms. Ytzen did receive a salary increase beginning on February 1, 2016. Ms. Ytzen's salary increase was calculated based on an annual increased salary of \$61,800.00, which again was identical to the salary being paid to the Human Resources Supervisor, Mr. Tukiendorf.

In short, the Board never approved a contract for Ms. Ytzen covering the five-month period referenced above because the decision was made that she did not need to receive a contract to make this salary increase. Again, there is a dispute as to who made this decision, but ultimately the contract was not presented or approved by the Board.

Ms. Ytzen has been began working as a supervisor under a supervisor contract beginning July 1, 2016 to the present. She has remained a supervisor and paid as a supervisor since February 1, 2016.

**C. Disclosure of Confidential Information to Chuck Jackson And Possibly Others Before Documents Were Provided To The Media.**

As outlined in my prior report dated March 4, 2019, Board member Kvapil provided documents that he obtained as a Board member (not through a public records request) to the media prior to giving required notices to local public officials of their right to augment the record to be released. The issue I am now investigating arose because of a conversation Board member Don Vruwink had with Chuck Jackson, a resident of the City of Milton, at some time prior to the previous investigation I conducted. During that conversation, Mr. Jackson presented information to Mr. Vruwink that led Mr. Vruwink to believe that Mr. Jackson had received documents that Mr. Vruwink had never seen. Mr. Vruwink does not know whether Mr. Jackson received

documents or just had information, but it was clear to Mr. Vruwink that Mr. Jackson had received information about the subjects of my prior investigation which was not public knowledge.

Every person I interviewed denied that they provided documents to Mr. Jackson. None of the persons I interviewed knew whether anyone else provided documents to Mr. Jackson. I contacted Mr. Jackson asking if he would be willing to speak with me, explaining the nature of my investigation that related to him. Mr. Jackson responded that he had no interest in talking with me.

As a result, I have no information from any source that anyone provided documents to Mr. Jackson without providing an augmentation notice to the affected persons. However, I cannot confirm that this did not occur.

**D. Whether Any Board Member Violated The Attorney Directive Not To Talk About The Investigation During The Investigation.**

At the Board meeting on February 11, 2019, the Board made the decision to initiate an investigation (which the undersigned subsequently conducted). Attorney Shana Lew was present at that meeting. I reviewed the video of the meeting and there was no clear directive given by Attorney Lewis at that meeting admonishing Board members not talk with each other or any witnesses while the investigation was pending. There was a discussion about not making statements about the investigation to the public, but there was not a clear directive to Board members not to speak with each other or anyone in administration during the investigation.

By email dated Saturday, February 16, 2019, Attorney Lewis provided Board members with a clear directive to refrain from speaking with any District employee regarding matters that relate to the subjects under investigation. Likewise, by email dated Monday, February 18, 2019, Attorney Lewis provided a written directive to all Board members and the administrators involved in the investigation as follows: "Please do not talk about the investigation and/or the subjects to be covered by the investigation, with others, including with the media." Directives like those given by Attorney Lewis' are common during investigations and are given for sound reasons including avoiding collusion and other interference with an investigation.

Based on my interviews, the only information I received that I consider conversations concerning the subject of my investigation occurred between Board member Joe Martin and Superintendent Tim Schigur. However, that conversation occurred prior to the first directive that was made by Attorney Lewis on Saturday, February 16, 2019. Mr. Martin and Mr. Schigur discussed some of the topics that I investigated earlier including background information regarding the stipends, but again that discussion was prior to the first directive from Attorney Lewis. After receiving the information that was discussed, and reviewing my notes from the prior interviews, I do not find

any interference with my prior investigation relating to this conversation between Mr. Martin and Mr. Schigur.

**E. Vacation Payout To Tim Schigur In July 2018.**

Mr. Schigur's 2017-19 administrator contract provided in relevant part:

b) The Administrator shall be entitled to eleven (11) all-purpose days annually, cumulative to a total of 180 days. The Administrator will have the option of returning up to five (5) all -purpose days back to the district at a rate of \$100 per day. Payment through payroll will be made in June in each fiscal year.

c) The Administrator shall be entitled to twenty (20) days of paid vacation each fiscal year (July 1 to June 30). Vacation time may be taken within the 260 day work year. A maximum of ten (10) days of vacation may be carried over to the next contract year. Should the Administrator terminated his/her employment during the course of this contract year, the annual vacation time allotment will be pro rated.

The contract treats all-purpose days separate from vacation time. The contract allows for the return of up to five all-purpose days of a rate of \$100 per day. The contract is silent as to whether vacation that cannot be carried over into the next contract year may be paid out to the administrator. The absence of such provision may imply that it cannot be paid out, but that is not clear from the contract.

In July of 2018, Mr. Schigur received a payout of his vacation benefit from the 2017-18 school year for vacation that he did not use during that school year and that could not carry over to the next school year.

The District does not have any Board policy, handbook provision or any other written documentation that governs payout of unused vacation time for administrators and supervisors that cannot be carried over the next contract year pursuant to the terms of a contract. The only document that exists that addressed this issue are the administrators' contracts. Supervisors' contracts have identical provisions for vacation, although the allotment of vacation days is different.

Unlike administrators, teachers are not given vacation but receive PTO days. Pursuant to the teachers' Employee Handbook, teachers who have in excess of 110 unused PTO days at the end of a school year are paid out for the unused PTO days in excess of 110 days at a rate of \$40 per day. Again, there is no policy, handbook or other written directive regarding paying out

administrators' and supervisors' vacation that cannot be carried over pursuant to the terms of the employment contracts.

Prior to June of 2018, several administrators and supervisors were paid out vacation that could not be carried over to the next year. These payouts were based on what Ms. Van Valin described as unusual or exceptional circumstances. The circumstances occurred predominantly in situations where the employees could not use their vacation benefits due to the extent or nature of their work. Examples since July 1, 2013, include the following<sup>2</sup>:

- (1) On June 30, 2015, Christine Watson received a vacation payout of \$2,457.00;
- (2) On July 14, 2017, Debra Ytzen received a vacation payout of \$379.25;
- (3) On July 14, 2017, Christina Rupnow received a vacation payout of \$886.80;
- (4) In multiple years, Stephen Schantz received payouts of unused vacation:
  - a. On July 15, 2014, he received \$1,625.05 in a vacation payout;
  - b. On July 14, 2017, he received \$1,941.76 in a vacation payout; and
  - c. On July 13, 2018, he received \$1,707.8 in a vacation payout.

Ms. Van Valin and Ms. Ytzen confirmed that when an employee leaves the District through a resignation, retirement or termination, the employee is paid out for their unused vacation time.

In late June or early July of 2018, Ms. Van Valin and Mr. Schigur were talking and Mr. Schigur mentioned that he had a lot of vacation time that would be lost. Mr. Schigur was not able to use very much of his allotted vacation time due to the significant work and hours he spent on the referendum that school year. Ms. Van Valin told him that the District could pay him for his unused vacation that he could not carry over due to the unusual circumstances, which involved the added work for the referendum.

Because this vacation payout involved the Superintendent rather than a subordinate employee, Ms. Van Valin contacted Board President Tom Westrick<sup>3</sup> on or about July 5, 2018, and recommended this payout of vacation.<sup>4</sup> Ms. Van Valin memorialized this conversation with a handwritten note on a document that indicates that Mr. Westrick approved her recommended payout for Mr. Schigur for 72 hours of unused vacation time for the 2017-18 school year. The note includes the following rationale: "The added work for the referendum warrants this exception." Ms. Van Valin's note indicated "use his contract sal. code please." The hourly rate used was, in fact, Mr. Schigur's hourly rate of \$68.99. This rate was calculated not by any person

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<sup>2</sup> Exceptions were made prior to July 1, 2013, but the records were not coded with an "exception" noted, and therefore to go back prior to July 1, 2013 would require further research, the utility of which the investigator deems unnecessary.

<sup>3</sup> Mr. Westrick does not recall this conversation but does not deny it could have taken place.

<sup>4</sup> Mr. Westrick was not contacted prior to the vacation payouts for Ms. Ytzen, Ms. Rupnow, and Ms. Watson. The decisions regarding those payments were made by Ms. Van Valin and approved by Mr. Schigur.

but by the District's payroll systems. The calculation of the amount of the payout was accurate (72 x \$68.99 equals \$4,967.28). Ms. Ytzen and Ms. Wilder initialed the calculation on the document.

After Mr. Schigur was paid for his 72 hours of unused vacation time that could not be carried over to the next school year, his vacation time was docked 72 hours, leaving only his allowable carryover of 10 days' vacation into the 2018-19 school year.

## II. Conclusions.

- (1) Prior to the Board approving administrator contracts on January 22, 2018, was the Board aware that the contracts included an increase in the administrators' retirement benefits from 40% to 60% of their exit salary.

Yes. The Board was advised of the proposed change in the retirement benefit from 40% to 60% at the meeting on January 22, 2018, prior to voting to approve the administrator contracts as presented. I find no impropriety or violation of any policy or law with regard to this increased benefit in the administrators' contracts.

- (2) Did the Board unknowingly approve a contract authorized by Mary Ellen Van Valin, Director of Business Services, in March of 2016?

No. The Board did not approve a supervisor contract for Ms. Ytzen at the meeting on March 14, 2016. Mr. Tukiendorf removed Ms. Ytzen's name from the staffing report at the direction of Ms. Van Valin. Based on the District's past practice, Ms. Ytzen's promotion to the supervisor position should have resulted in the Board considering a supervisor contract for her, as opposed a letter of employment at that time. Ms. Ytzen has been paid under a supervisor contract since that time.

- (3) Did anyone disclose confidential records to Chuck Jackson and perhaps other members of the public before Board member Brian Kvapil disclosed those records to the media?

This is undetermined. While the information Mr. Jackson relayed to Don Vruwink and the timing of the same suggests that Mr. Jackson received confidential information from someone prior to the completion of the previous investigation, Mr. Jackson's refusal to cooperate with this investigation



hampered the investigator's ability to ascertain the source and substance of the information he received that he relayed to Mr. Vruwink.

- (4) Did any Board member violate the attorney directive not to talk about the prior investigation while that investigation was pending?

No. No Board member violated Attorney Lewis's directive not to talk about the investigation while the investigation was pending. The conversation between Mr. Martin and Mr. Schigur referenced above occurred prior to the directive.

- (5) Did the vacation payout to Superintendent Tim Schigur in July of 2018 violate any Board policy or law?

No. Mr. Schigur was paid out 72 hours of unused vacation in July of 2018 from his 2017-18 contract that he could not carry over into the 2018-19 school year pursuant to the terms of his contract. The payout was made at a rate consistent with Mr. Schigur's hourly rate calculated by the District's payroll systems. The calculation was initialed and thus approved by two employees. The payout originated with Ms. Van Valin who recommended the same to Mr. Westrick. The payout of vacation was consistent with administration's prior decision to payout other administrators/supervisors unused vacation that could not be carried over due to unusual circumstances resulting in an employee not being able to take the vacation that was being paid out. This was an exception to a general practice of not paying out vacation unless an employee resigned or retired. This practice did not violate any Board policy or handbook provision, and did not violate any applicable law.

### **III. Recommendations.**

In the undersigned's judgment, none of the actions set forth above warrant the Board taking any action against any Board member or employee. However, this investigation raises some District practices that the undersigned believes should be addressed.

First, with respect to Board minutes, the Board may want to consider the detail with which it keeps its minutes. The first two issues enumerated above were raised in large part due to the lack of detail in the Board minutes.

Second, the presentation of amendments to contracts to the Board should be made in written summary or redlined format at least as a template (rather than every single contract) so that the Board can clearly see the proposed changes in the contracts from one year to the next.

Third, the undersigned recommends the District not insert electronic signatures on contracts until after the Board approves the contracts. Likewise, employees should not sign their contracts until after the Board has approved the same. The undersigned recommends the District work with its general counsel, Attorney Lewis, to develop a protocol for the presentation and execution of employee contracts, including the identification of all contracts in the staffing reports.

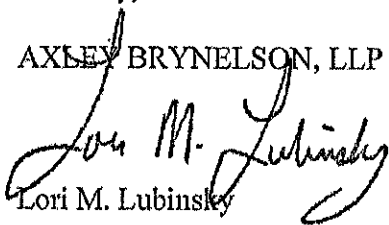
Fourth, the Board should consider adopting a policy and/or amending administrator contracts to address the circumstances under which the District will payout an administrator/supervisor's unused vacation that cannot be carried over into the next year. The Board should consider whether there are circumstances that warrant such payouts and if so, what limitations should be set on the same.

Fifth, the Board should take a careful look at the circumstances under which employees receive additional compensation. When an employee moves to a supervisory position, that employee should receive a contract consistent with the District's past practice, and that contract must be taken to the Board. The use of the Employee Recommendation form was addressed in my prior investigation report dated March 4, 2019, but again the use of this form in this instance calls into question the circumstances under which the form should be used in the first place to provide increased compensation and/or promotions to employees.

I will attend a future Board meeting to present my factual findings and conclusions to the Board upon request.

Sincerely,

AXLEY BRYNELSON, LLP



Lori M. Lubinsky

LML:kjb

cc: Attorney Shana Lewis – Via Email

## Supplemental Investigation Augmented Response

By: Mary Ellen Van Valin on April 18, 2019

This response will be short as I need to move on for both my physical and mental health. I find it interesting that an outcome of the primary investigation was the second (of five) issues was aimed directly at me; given the leadership in the District I was not surprised. The wording of the question in Attorney Lubinsky's supplemental report is written is troubling. In my position as Director of Business Services, I did not have the "authority to approve a contract". The Superintendent gave final administrative approval for employment related contract issuances and changes, and upon approval the Superintendent in communication with human resources decided if the change warranted the full approval by the Board of Education. Again, in the absence of written procedures, I was not sure. While I do not mind being targeted, I do think that it is terribly inappropriate that Debra Ytzen's move to a supervisory status is brought forth publically in isolation. When I asked Attorney Lubinsky if I could discuss other similar situations, she was quick to redirect me back to only discuss the one situation she was requested by the Board to look into.

Debra Ytzen is a highly skilled and quality individual, and the District is very lucky to have her. I did recommend Debra to be moved to a supervisory position. The work she performed within my department warranted this change and would place her position and responsibilities (primarily payroll at the time) parallel with Chris Tukiendorf in human resources. Chris from my perspective may not have liked this change, but I felt it was necessary to provide a better structure in order to improve communication between payroll and human resources. After I noticed Debra's mid-year change to a supervisor was listed on the draft Staffing Report, I did directly ask Dr. Schigur if this change should be listed on the next Staffing Report or not. Dr. Schigur indicated to me that it did not need to be listed, and that he had discussed the change with the Human Resources Committee. After the primary investigation began, Chris was asked to look back at other contracts (letters of employment/requisition, etc.) that did not go to the Board of Education. Chris wrote a memorandum to Dr. Schigur and me apologizing for several contracts that he had missed including on a Staffing Report in the past. I do not wish to place any other individual under public scrutiny, so I will only point to the Staffing Report for April 8, 2019 as evidence of other employment changes that were not listed earlier when the change occurred.

Augmentation in compliance with Wis. Stat 19.356(9)(b)  
Investigative Report prepared by Attorney Lori Lubinsky  
April 14, 2019

Thank you for the opportunity to augment/clarify information found in this document.

I have identified footnote number 3 on the bottom of page 7 that needs further explanation:

To coincide with the statement that I have no recollection of the conversation with Ms Van Valin, I did not sign any authorization form that approved the vacation payout to Mr. Schigur.

*Thomas A. Westrick*