

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM
Grosse Pointe, Michigan

Agenda Number and Title: 6.2

Engagement of Independent Legal Counsel

PREAMBLE: *A resolution to engage an independent law firm to provide legal counsel directly to the Grosse Pointe Public School System Board of Education ("Board").*

BACKGROUND:

Whereas, in the early years of this century organizations were plagued with scandals that resulted from poor oversight and governance. Specifically, the scandals surrounding Arthur Andersen, Enron, Tyco, and WorldCom;

Whereas, it was determined by experts in governance and in government that independent directors due to their unique position as independent from management and day to day operations must have a larger voice in an organization;

Whereas, the Sarbanes-Oxley Act ("SOX") was enacted in response to the scandals and pursuant to advice from governance experts and, along with the rules of the NASDAQ and NYSE, mandated that publicly-traded companies increase the number of independent directors and independent committees at the highest governance levels, the board of directors;

Whereas, SOX recognized that independent directors as fiduciaries and independent committees as integral to independent oversight must have access to independent legal counsel in order for them to exercise their fiduciary duties;

Whereas, a person who holds a legal position of confidence and trust on behalf of an organization is known as a fiduciary;

Whereas, the law imposes the highest standards of care in law on a fiduciary in the exercise of their judgment on behalf of their beneficiary organization;

Whereas, the use of independent directors has been acknowledged to be best practice for highly-effective governance beyond publicly traded companies and their use has increased in privately held corporations, nonprofit organizations and other highly effective organizations in the United States, Canada, Europe, and Japan;

Whereas, those best practices that deal with internal controls and director independence urge independent directors and independent committees to seek the advice of independent legal counsel in the exercise of their fiduciary duties;

Whereas, the Members of the Board have been entrusted by the residents of the Grosse Pointe Public School System ("System") to act as independent trustees invested with fiduciary duties to provide oversight of the System;

Whereas, the Board creates and sets the policy of the System and the Administration executes on that policy;

Whereas, under the current governance model of the System, there is no independence of the Board from the Administration as all questions by the Members of the Board must go through the Administration;

Whereas, the prudent governance of an organization is measured by the independence of its fiduciaries in order for them to properly exercise their duties of care, loyalty, and good faith; and

Whereas, it is **CONCLUDED** that in order for a Member of the Board to exercise their fiduciary duties they must have access to sound and independent legal advice in order for the Member of the Board to exercise their duty of care and their duty of good faith.

COUNSEL ENGAGEMENT PROCEDURES:

Board Members and Committees shall petition the President of the Board (“President”) to seek legal advice on specific legal matters from sound and independent legal counsel;

Prior to seeking advice from independent legal counsel, the President shall confer with the Superintendent to decide whether the System already has an opinion on the requested matter;

Prior to seeking advice on Board specific matters the Superintendent shall take direction from the President on whether to seek advice from law firms retained by the System;

Upon a determination by the President that a unique legal matter has been presented and that independent legal counsel is the appropriate counsel, the President shall direct independent legal counsel to research and provide advice on the specific legal matter;

All opinions will be shared with the Superintendent, except for privileged matters related to the Superintendent's evaluation or contract;

Any second opinion requested on an issue where the System has already received an opinion from another law firm requires Board approval;

Any requests for advice from independent legal counsel that are expected to cost more than \$5,000 require Board approval;

Any legal matters that incur expenses in excess of \$20,000 will be presented to the Board for additional approval; and

The Board will use independent legal counsel only for the official business of the school district.

REQUEST: *That the Board engage _____ as independent legal counsel.*

SUBMITTED BY:

S. Cotton

February 13, 2023