1. January 22, 2020 Children With Disabilities Education Board Meeting Agenda
   Documents:
   JANUARY 22, 2020 CDEB AGENDA.PDF

2. January 22, 2020 Children With Disabilities Education Board Meeting Packet
   Documents:
   JANUARY 22, 2020 CDEB PACKET.PDF

3. January 22, 2020 Walworth County Children With Disabilities Education Board
   Documents:
   JANUARY 22, 2020 CDEB HANDOUT.PDF
1. Call to order
2. Roll call of committee members
3. Agenda withdrawals, if any
4. Agenda approval
5. Approval of minutes
   a) Joint HR & CDEB Meeting December 11, 2019 (pg. 1-4)
6. Public Comment Period

7. New Business
   a) Space Availability for Open Enrollment Requests 2020/2021 (pg. 5-8)
   b) Wisconsin Statutes 118.22 Renewal of Teacher Contracts: Timeline for sending out written notices of renewal (pg. 9-10)
   c) Establishing School Year Calendars

8. Reports and Correspondence
   a) CDEB Chair

   b) CDEB Director
      ➢ Special Olympics Update
      ➢ Update on Capital Projects, Pool, Phab Lab, LSYou Brew

9. Set time and date of next meeting – February 19, 2020 @ 4:30 pm
10. Adjourn

It is possible that a quorum of the County Board or a committee of the County Board could be in attendance.

Submitted By: Tracy Moate, Director WCCDEB
Dave Weber, CDEB Chair
Posted January 16, 2020
Memorandum

To: WCCDEB Supervisors
Cc: Dave Bretl, County Administrator
From: Tracy L. Moate, Director WCCDEB
Date: January 16, 2020
Re: WCCDEB Meeting Agenda Items

As the holiday season comes to a close, I look forward to a new year of “work” with all of you. A friend left the following quote on my desk as I returned to work. I liked it so much that I decided to share it with you as well.

“May the New Year bring to you the warmth of love, and a light to guide your path towards a positive destination. — Happy New Year 2020”

Your agenda includes the following items for discussion:

➢ Wisconsin Statute 118.51(5)(a) provides that school boards establish the school’s space availability numbers relating to special education enrollment in the January meeting. This allows nonresident school districts to make space determinations for open enrollment purposes. Although we do not accept open enrollment requests directly at Lakeland School, we must be prepared to answer any requests that Walworth County School Districts may present to the CDEB. I will prepare that packet of information for the CDEB meeting.

➢ I included a copy of the Wisconsin Statute 118.22 that addresses the renewal of teacher contracts. In hopes of getting a start on filling any potential vacancies for the 2020-21 school year, I would like to discuss a potential timeline for sending out the written notices of renewal.

➢ It is time to start planning ahead for the upcoming school years and this starts with establishing our school calendars. I would like to bring forward proposals for the next two school years and will be seeking your input and approval of those calendars.

➢ Finally, in Reports and Correspondence, I would like to share a few updates on some happenings at the school.

➢ Thank you and enjoy your weekend!
Human Resources Committee Chair Tim Brellenthin called the meeting to order at 3:30 p.m.

Roll call was conducted:

Human Resources Committee. All members were present: Chair Tim Brellenthin, Vice Chair Ken Monroe, and Supervisors Kathy Ingersoll, Susan Pruessing and Rick Stacey. A quorum was declared.

Children with Disabilities Education Board (CDEB). All members were present: Chair David Weber, Secretary Charlene Staples, and Supervisors Kathy Ingersoll, Ken Monroe and William Norem. A quorum was declared.

Others in Attendance
County Board Supervisors: County Board Chair Russell
County staff: County Administrator David Bretl; Human Resources (HR) Director Kate Bishop; Director of Special Education Tracy Moate; Assistant Corporation Counsel/Director of LURM Michael Cotter; Finance Director Jessica Conley; Benefits Manager Lisa Henke; Health and Human Services Director Elizabeth Aldred; Assistant Corporation Counsel Estee Scholtz, Director-Public Works Richard Hough; County Treasurer Val Etzel; County Clerk Kim Bushey
Members of the public: Ryan Barbieri, M3 Insurance

Supervisor Stacey made a motion, seconded by Supervisor Monroe, to approve the agenda as presented. Motion carried by voice vote.

Supervisor Ingersoll made a motion, seconded by Supervisor Stacey, to approve the November 20, 2019 Human Resources Committee meeting minutes. Motion carried by voice vote.

Secretary Staples made a motion, seconded by Supervisor Norem, to approve the October 16, 2019 Children with Disabilities Education Board Meeting minutes. Motion carried by voice vote.

Public comment — There was none.

New Business
- Ordinance Amending Section 15-359 of the Walworth County Code of Ordinances Relating to Special Pay Premiums for Substitute Aides and Substitute Teachers

Director of Special Education Tracy Moate said it is becoming increasingly difficult for schools to recruit and retain reliable substitute teachers and aides. In order to remain competitive, staff requests an increase from $110 to $120/day. The increase has been included in the 2020 budget. Supervisor Monroe made a motion, seconded by Secretary Staples, to recommend approval of the ordinance. Motion carried: Human Resources 5-0; CDEB 5-0.

Reports and Correspondence
- CDEB Chair – There were none.
- CDEB Director
Holiday Show – “Snowmen at Night” – December 13th at 1:15 p.m. Mcate encouraged Supervisors who plan on attending to arrive by 1:00 p.m.

Lions Club Donation for Classroom Gifts, December 20th at 1:15 p.m. Santa will be joining the Lions Club to distribute gifts to students. Everyone is welcome.

Confirmation of next CDEB meeting: Wednesday, January 22, 2020 at 4:30 p.m.

Adjournment of CDEB
On motion and second by Supervisor Monroe and Secretary Staples, Chair Weber adjourned the CDEB meeting at 3:34 p.m.

New Business
- Resolution Authorizing the Reclassification of an Assistant Corporation Counsel II Position in the Corporation Counsel Office
  County Administrator David Bretl said a Deputy Corporation Counsel position was approved in the 2020 budget. Deputy Corporation Counsel/Director of LURM Michael Cotter reported that an internal candidate has been selected for the position, which will leave the Corporation Counsel II position vacant in January. Cotter feels an Assistant Corporation Counsel I would better serve departmental needs and will produce a cost savings of $24,696 in 2020. Supervisor Stacey made a motion, seconded by Supervisor Ingersoll, to recommend approval of the reclassification. Motion carried 5-0.

- Resolution Revising the Pay Range for the LHCC Administrator Position at the Lakeland Health Care Center
  Human Resources Director Kate Bishop reported with Elizabeth Aldred taking the position of Superintendent of Institutions, some administrative responsibilities formerly performed by the LHCC Administrator will fall to the Superintendent. After evaluating the position, staff recommends revising the pay range one step lower for the Administrator, which will produce an approximate savings of $19,184 in 2020. Bretl recommended that Aldred’s position be upgraded because of her additional duties. Supervisor Stacey made a motion, seconded by Vice Chair Monroe, to approve the pay range revision for the LHCC Administrator position. Motion carried 5-0.

- Resolution Setting Salaries for Register of Deeds, County Treasurer and County Clerk for 2021-2024
  Bretl said the salaries for the Register of Deeds, County Treasurer and County Clerk for 2021-2024 have to be established before candidates take out papers for election. He reminded the Committee that the salaries are based on the positions themselves, not the individuals who currently hold office. Bishop distributed a list of salaries for the same positions in other counties that are higher than Walworth County; a list of salaries for those positions in our region and with similar populations; and a list of counties in which those positions have different salaries. Bretl noted Treasurer Val Etzel and County Clerk Kim Bushey were in the audience and asked if they wished to address the Committee. Etzel distributed a memo prior to the meeting, in which she requested the Committee consider setting the 2021-2024 Treasurer’s salary independently from the County Clerk and Register of Deeds. She asked them to consider a similar pay range as that of the Clerk of Circuit Court and the Sheriff. Etzel said the statutory responsibilities of the Treasurer are numerous, and have expanded within the last seven years. In addition, her office has taken on responsibility for the In Rem County Owned Property sales and absorbed the County print shop and mail services. In 2016, the payroll study conducted by the Hay Consulting Group determined that the salary for the Deputy Treasurer position would be increased because of the responsibilities and number of staff supervised by that position. As a result, the Deputy Treasurer’s salary has been higher than the Treasurer’s beginning this year. Bishop said that the Committee did not have to take action on this item today, but it has to be approved at the March
2020 County Board meeting. Chair Brellenthin noted that most counties in Wisconsin pay the same salary for the three offices and asked Etzel why she feels the Treasurer’s salary should be higher. Etzel said the duties of the Treasurer in each county vary; her office has taken on additional in-house duties above and beyond the statutory requirements. She added management staff continues to receive merit raises which are higher than the 2% increase the elected officials have received each year of the current terms. Supervisor Ingersoll asked if an independent pay study of the elected positions has ever been conducted, and Bretl replied in the past, other county comparisons have been used as a guideline. He reminded the Committee that the elected positions have no educational or experience requirements. Bishop stated she will send Committee members a copy of the salaries paid by each county from 2017-2020 to help in their evaluation. Supervisor Stacey asked if it was possible to hold continued discussions in closed session. Bretl said he would consult Deputy Corporation Counsel on the issue.

- Information regarding partnering with Elkhorn Area School District for our Employee Health Care Center

Bretl reported Elkhorn Area School District (EASD) has approached staff regarding partnering with the County for the Employee Health Care Center. M3 Insurance was involved in the initial planning and implementation of the clinic, and Ryan Barbieri of M3 Insurance presented an overview about what the partnership would involve, how it would benefit the County, and potential disadvantages. Barbieri said overall feedback on the Health Care Center has been positive and there have been a number of repeat patients. Employees were polled about the clinic, and the overriding concern was lack of office hours. Currently the clinic is open five days a week for a total of 20 hours. EASD is interested in participating, since the County’s clinic has been underway for a year, and economies of scale can be realized. The County could continue to pay for 20 hours a week of service and EASD could pay for 10 hours, thereby expanding service hours to County employees as well. Barbieri said this would provide the opportunity to grow utilization of the clinic and perhaps complement the core service with other services such as wellness initiatives, mental health services, etc. Camillia Pignotti, the County’s provider, has expressed an interest in expanding her hours at the Health Center. Barbieri said the only potential drawback to a partnership would be with alignment of services, although EASD has expressed similar goals and objectives as the County. Another potential issue could arise if the County decided in the future to change vendors. Benefits Manager Lisa Henke said the current contract with Aurora is for two years, with the option to extend the contract for three one-year periods. Bretl suggested that a multiple year commitment from EASD would be desirable. Henke said that they are in the initial stages of negotiating with EASD, and they brought this issue to the Committee to provide information and ascertain if the Committee is interested in pursuing the partnership. She added that the EASD would have their own agreement with Aurora and pay them directly for services. If EASD commits to the partnership, it would not be implemented until July of 2020. Vice Chair Monroe made a motion, seconded by Supervisor Stacey, to direct staff to continue to pursue the partnership with EASD and to update the Committee as the process progresses. Motion carried 5-0.

- Recruitment video

Bishop said in an effort to improve recruitment efforts and attract top candidates, Human Resources made a recruitment video to be posted on the website, which includes testimonials from employees on why they enjoy employment at Walworth County, and how they have grown in their careers here. She showed the video to the Committee, which was filmed over three days by a firm from Chicago.

Reports/announcements by Chair – There were none.

Confirmation of next Human Resources Committee meeting: There will be a special Committee meeting Thursday, December 19 (time to be determined). The next regular business meeting is Wednesday, January 22, 2020 at 3:30 p.m.
Adjournment of Human Resources Committee
On motion and second by Vice Chair Monroe and Supervisor Stacey, Chair Brellenthin adjourned the meeting at 4:21 p.m.

Submitted by Becky Bechtel, Administrative Assistant. Meeting minutes are not considered final until approved at the next regularly scheduled committee meeting.
Special Education Space Determinations and Reasons for Denial for Open Enrollment

This bulletin covers information specific to special education space determinations for open enrollment purposes and specifically covers school board policies, criteria used to determine special education space, the actual designation of available spaces, reasons for denial, and why the criteria selected must be used consistently.

For more general information related to special education and open enrollment, please see Bulletin-16-05-Special-Ed-and-OE.pdf.

Statutory Reference

Wis. Stat. § 118.51(5)(a)1. provides that a nonresident school board shall determine the number of regular education and special education spaces available within the school district in the January meeting of the school board.

Wis. Stat. § 118.51(5)(a)4. provides that a nonresident school board may consider whether the special education or related services described in the child’s individualized education program under Wis. Stat. § 115.787(2) are available in the nonresident school district or whether there is space available to provide the special education or related services identified in the child’s individualized education program, including any class size limits, pupil—teacher ratios or enrollment projections established by the nonresident school board.

Wis. Admin. Code § PI 36.06(5)(a) provides that at the January board meeting, the nonresident school board shall designate the number of regular education spaces, by grade, and the number of special education spaces, by program or services, in the district using the criteria specified in its policy under Wis. Admin. Code § PI 36.04(2).

School Board Policies

If the nonresident school board wishes to consider whether it has available space in the special education or related services required in the Individualized Education Program (IEP) of pupils seeking to open enroll into the district, the board must specify this in its open enrollment policy as well as the criteria it will consider when making its determinations. The policy may not specify that it cannot provide services to pupils with a specific disability. The policy can only consider the availability of space in special education and/or related services.
Criteria for Determining Available Space in Special Education or Related Services

The school board must have criteria for determining whether it has space in any special education or related service. Specific criteria must be applied consistently to ensure decisions about special education space are not arbitrary or unreasonable. Criteria may include:

- Class size limits or pupil-teacher ratios
- Staffing capacity limit, including:
  - The amount of services pupils may need (e.g., minutes/hours, days per week)
  - Class/group size based on intensity of pupil needs (e.g., 1:1, small group, crisis intervention)
  - The type of staff to address various disability-related needs (e.g., special education teacher, pupil services staff, related services, paraprofessional, etc.)
- Projected pupil enrollment and changes to services in pupils' IEPs
- Other considerations concerning availability of space in the special education or related services

Neither state nor federal special education law contain requirements for minimum or maximum space/staffing capacity to provide special education and/or related services. Local school districts are responsible for determining policies and criteria related to space/staff capacity to provide special education services.

The school board's criteria may not include:

- Limits that are based on pupil eligibility category labels (e.g., SLD, Autism, ID)
- Limits that are based on IDEA environment codes (e.g., amount of time in general education classroom, IDEA Env. Code B)
- Limitations related to transportation

Designation of Space

School boards are required to designate the number of regular education and special education spaces available for the next school year. The number of regular education spaces is designated by grade. The number of special education spaces is designated by available special education and related services. Space determinations must only be made and approved by the school board at its January board meeting.

If the board does not intend to deny applicants due to space, it may make that determination and document it in its January board meeting minutes.

Reasons for Denial for Open Enrollment Applicants with IEPs

Both state and federal laws prohibit discrimination against a pupil based on the pupil’s physical, mental, emotional, or learning disability. The board also may not deny open enrollment based on the pupil’s eligibility for or need of a reasonable accommodation in a Section 504 plan. An application may only be denied if there is no space in the special education or related services required in the pupil’s IEP or if the special education or related services are not available in the nonresident district.

The nonresident school board may not deny a pupil’s open enrollment because the pupil has a specific disability. The board must examine the pupil’s IEP to determine whether it has space in the specific special education or related services required by the pupil’s IEP. The board may not make any assumptions about the special education or related services the pupil needs based on the identified disability. The board must review each applicant’s IEP and individually consider whether space is available in the specific special education and related services required by the pupil’s IEP.
Even if the district’s special education and related services are at capacity, the school board may not deny a pupil’s open enrollment without a specific review of the pupil’s IEP. The board must provide the special education and related services required in the pupil’s IEP in its entirety. If the board cannot do so, it may deny the application.

In addition, the school board cannot deny an application on the basis that transportation is required in the pupil’s IEP. Wis. Stat. § 118.51(14)(a)2. states that if a pupil with a disability has transportation required in their IEP, the nonresident district must provide such transportation.

Under Wis. Stat. § 118.51(5)(a)6, a nonresident school board may, but is not required to, deny an application for a child that has been referred for an initial special education evaluation that has not been completed. If the nonresident school board approves the open enrollment application, the nonresident district should complete the evaluation, and if the pupil is found eligible, develop an initial IEP and determine if it has available the special education and related services to provide a placement. If the nonresident district does not have available the special education and related services, it may terminate the open enrollment. The resident district would then be responsible for adopting or revising the IEP and offering a placement to implement the IEP.

If a pupil has been found sometime in the past to have a disability, but does not have a current IEP, the nonresident school board’s decision must be based on the availability of special education and related services required by the most recent IEP. If the IEP cannot be obtained for the pupil, the nonresident school board must review the most recent evaluation for the pupil and, based upon that review, develop an IEP and determine whether it has available the special education and related services to provide a placement. If neither an IEP nor an evaluation is available, the pupil should be considered a nondisabled pupil and the pupil’s application must be considered using the criteria for nondisabled pupils.

If a pupil has an IEP developed or revised after attending the nonresident school district, the nonresident district may consider whether it has available the special education and related services required by the pupil’s revised IEP. If it does, the nonresident district must implement the pupil’s IEP as written. If it does not, the nonresident district may, but is not required to, notify the parent and resident district that the open enrollment will be terminated and the pupil must return to the resident district.

Pupils who were evaluated and found eligible for special education but whose parents either did not provide consent for initial special education placement, or revoked consent for continuing special education placement, are NOT considered pupils with disabilities for the purpose of open enrollment. Under these circumstances, pupils’ open enrollment applications must be considered using the space criteria for nondisabled pupils.

Criteria Must Be Followed Consistently

It is important for a school board to make sure that its criteria is included in its open enrollment policy and to ensure that the criteria is followed exactly and consistently. On appeal, the Department is required to affirm a school board’s decision unless the Department finds that the decision was arbitrary or unreasonable. This means that the Department will most likely uphold a decision if both of the following are true:

- The school board’s policy and criteria are in compliance with state law and are neither arbitrary nor unreasonable.
- The school board properly and consistently applied its policy and criteria, and followed state law and its policies in determining which applications will be approved and denied.

Some examples of actions that have been found to be arbitrary or unreasonable include:

- The school board did not follow the open enrollment law.
- The school board did not have the required policy upon which the decision was made.
- The school board used criteria that were arbitrary or unreasonable.
• The school board did not follow its policy, was inconsistent in following its policy, or made arbitrary or unreasonable exceptions to its policy.

• The school board did not establish the number of special education spaces available in the district. Instead, the board limited the number of pupils it would accept based on the pupils’ identified disability.
118.22 Renewal of teacher contracts.

(1) In this section:

(a) "Board" means a school board, technical college district board, board of control of a cooperative educational service agency or county children with disabilities education board, but does not include any board of school directors in a city of the 1st class.

(b) "Teacher" means any person who holds a teacher's certificate or license issued by the state superintendent or a classification status under the technical college system board and whose legal employment requires such certificate, license or classification status, but does not include part-time teachers or teachers employed by any board of school directors in a city of the 1st class.

(2) On or before May 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew the teacher's contract for the ensuing school year. If no such notice is given on or before May 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew the teacher's contract for the ensuing school year on or before May 15, shall accept or reject in writing such contract not later than the following June 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew the teacher's contract.


Notice of intent not to renew that part of a contract providing extra pay for extra work as a coach is not necessary. Richards v. Sheboygan Board of Education, 58 Wis. 2d 444, 206 N.W.2d 597 (1973).

Under the facts of the case, the failure to timely provide notice of the right to a private conference under sub. (3) did not provide sufficient grounds to issue a writ of mandamus. Rawhouser v. CESA No. 4, 75 Wis. 2d 52, 248 N.W.2d 442 (1977).

In the absence of evidence of a school board's bias, the trial court had no jurisdiction to hold a de novo hearing regarding the competence of a teacher facing nonrenewal under sub. (3). Nauv v. Sheboygan Falls Joint School District No. 1, 76 Wis. 2d 104, 250 N.W.2d 725 (1977).

Arbitration was proper under a "discharge and nonrenewal" clause in a collective bargaining agreement when the school board did not offer teacher a second contract after rejecting a contract that was signed and returned by the teacher with the title "probationary contract" crossed out. Jefferson Joint School Dist. No. 10 v. Jefferson Education Association 78 Wis. 2d 94, 253 N.W.2d 536 (1977).

Under sub. (2), a board has the exclusive right to hire and fire a teacher. Due process does not require that the board be an impartial decisionmaker. Hortonville Education Association v. Hortonville Joint School District No. 1, 87 Wis. 2d 347, 274 N.W.2d 697 (1979).

An employment contract that recites that a teacher's employment will not be renewed cannot be construed as a waiver of rights granted by this section. There is a presumption of good faith applicable to a board's decisions. Faust v. Ladysmith-Hawkins School Systems, 88 Wis. 2d 525, 277 N.W.2d 303, 281 N.W.2d 611 (1979).

The layoff of a teacher is not the equivalent of a "refusal to renew" when a collective bargaining agreement under s. 111.70 contains layoff provisions incorporated in the teacher's contract. Mack v. Joint School District No. 3, Hales Corners, 92 Wis. 2d 476, 285 N.W.2d 604 (1979).

Arbitrators appointed pursuant to the grievance procedure contained in a collective bargaining agreement properly held a de novo factual hearing to determine whether just cause existed for the school board to terminate a teacher. Fortney v. School District of West Salem, 108 Wis. 2d 167, 321 N.W.2d 255 (1982).

A teacher who forgot to accept an employment offer under s. 118.22 (2) and who was consequently terminated did not voluntarily terminate employment under s. 108.04 (7). Nelson v. LIRC, 123 Wis. 2d 221, 365 N.W.2d 629 (Ct. App. 1985).
Sub. (2) requires written notice of nonrenewal. A district must follow the explicit written notice requirement. Sterlinske v. School District of Bruce, 211 Wis. 2d 608, 565 N.W.2d 273 (Ct. App. 1997), 96-2624.

A "private conference" under sub. (3) on nonrenewal of teacher's contract is a "meeting" within s. 19.82 (2). 66 Atty. Gen. 211.

Civil rights; academic freedom; refusal to hire a nontenure teacher for a constitutionally impermissible reason. 1970 WLR 162.

Fairness of a hearing before a school board on nonrenewal of a teacher's contract. 1971 WLR 354.