

Meridian CUSD #223 School Board

Agenda and Board Packet

Regular Meeting

June 5, 2008

Meridian Junior High Board Room

7:00 p.m.



*“Our mission is to educate students to be self-directed learners,
collaborative workers, complex thinkers, quality producers and community
contributors”*



Mission

Our mission is to educate students to be self-directed learners, collaborative workers, complex thinkers, quality producers and community contributors.

Long Range Vision

As an exemplary School District we continually strive to:

- Engage in highly effective communication to Community, School Board, Administration, Faculty, Support Staff and Students.
- Achieve organizational trust through integrity, collaboration, reliability, accountability, transparency, fairness and loyalty.
- Utilize an aligned, well- rounded and comprehensive curriculum that focuses on life- long learning skills.
- Promote high learning expectations for all students.
- Practice visionary district leadership to create and implement district goals.
- Value and maintain a safe environment for Students, Staff and Community.
- Provide educational facilities that support and enhance the students' educational experience.
- Make decisions using research and best practice that incorporates fiscal responsibility, collaboration and impact on the Community, School Board, Staff and Students.

MERIDIAN C.U.S.D. #223

BOARD AGENDA

Thursday, June 5, 2008

7:00 P.M.

Meridian Junior High Board Room

1. **Call to Order**
2. **Roll call**
3. **Pledge of Allegiance**
4. **Review/approve consent agenda** (*Items listed under the consent agenda are considered to be routine by the Board of Education and will be enacted by one motion. There will be no separate discussion of the items unless a board member or citizen requests, in which event the item will be removed from the consent agenda and considered individually.*)
 - 4.1 **Approve minutes of May 22, 2008 Board Meeting**
 - 4.2 **Approve payroll of June 20, 2008**
 - 4.3 **Approve accounts payable for June 2008 per review by Mr. Tim Jagielski**
5. **Report of the Superintendent:**
 - 5.1 IASB / IASA / IASBO 2008 Joint Annual Conference, November 21, 22, and 23, 2008, Chicago, IL; need registration information at JULY 2008 meeting
6. **Notices and communications**
 - 6.1 Available at meeting
7. **Community Input:** (*This is the time when visitors may request to address the Board of Education on any item relating to the role and function of the Board of Education. When the Board President so directs, persons should stand, give their name and address and begin their statements. Persons are asked to refrain from making any personal comments regarding any individual. The Board President reserves the right to limit presentations to five minutes.*)
8. **Old Business:**
 - 8.1 Annual Library Report (Dana Kunce)
 - 8.2 Continue discussion on District Dashboard (data reports)
 - 8.3 Continued review of the proposed FY08 Budget Amendment; Budget Amendment Hearing, Thursday, June 19, 2008, 7:00 p.m.
9. **New Business:**
 - 9.1 Review suggested modifications to Educational Support Staff Policy regarding 26 pay spread for school year only employees
 - 9.2 Review priorities list for 2008-2009
 - 9.3 Preliminary review of the School Board meeting schedule for 2008-2009
 - 9.4 Review of monthly "Accounts Payable" schedule for 2008-2009
10. **Board Comments**
11. **Adjourn to Closed Meeting to Discuss: The appointment, compensation, discipline, performance of specific employees of the District; the purchase or lease of real property for the use of the District, including meetings held for the purpose of discussing whether a particular parcel should be acquired; deliberations concerning salary schedules for one or more classes of employees.**
12. **Reconvene in open session**
13. **Approve the minutes of the May 22, 2008 Executive Session**
14. **Action items**
15. **Adjourn**

Meridian Community Board Minutes

Minutes of a regular School Board Meeting of May 22, 2008

Call to Order and Roll Call

A regular meeting of the Board of Education of Meridian Community Unit School District #223 was called to order by President Ron Steenken at 7:00 p.m. in the Meridian District Board of Education Room located in the Meridian Junior High School. Members present: Bonne, Glendenning, Jagielski, King and Reeverts. Superintendent Prusator and District Administrator of Business/HR Porter were also present. The Pledge of Allegiance followed.

Consent Agenda

A motion was made by Glendenning, seconded by Reeverts, to approve the consent agenda including the minutes of the May 8, 2008 board meeting; payrolls of May 30th and June 5th, 2008; and authorize the Superintendent to begin preparation of the FY09 Budget. Ayes: Bonne, Glendenning, Jagielski, King, Reeverts and Steenken. Motion carried unanimously.

Superintendent's Report

5.1 Recognition of SVHS students who earned Illinois State FFA and American FFA Degrees

Mr. Prusator opened by congratulating the students on their great accomplishments which required tremendous commitment and hard work. Jay Williams described the process for receiving the awards. Mr. Steenken presented certificates to Becca DeVries, Beth Myelle, Jade Glendenning, Cindall Marsh and Jordyn Strohman. Lauren Larson and Cassie Glendenning were not able to attend.

The board recessed for a few minutes to congratulate the students.

Mr. Larson arrived at 7:10 p.m.

5.2 Reminder: June board meetings schedule

Mr. Prusator reminded the board that the June board meetings are scheduled for Thursday, June 5th and Thursday, June 19th.

Notices and Communications

Mr. Prusator reviewed a flyer that was handed out by Mrs. Porter. The flyer announced a Celebration in Recognition of Support Staff for all they do for our students and District 223. Board members are invited to attend the Celebration on Thursday, May 29, 2008 from 12:00-2:00 p.m. at the Transportation Garage.

Community Input

There was no Community Input.

Old Business

8.1 Continued discussion on District Dashboard (data reports)

The Board continued discussion on current and potential items that would be appropriate for the district dashboard. Mrs. Porter shared an example of another district's dashboards that was used as a presentation at the IASBO Conference. Discussion will continue to decide what items should be included in our dashboards.

8.2 Continued review of FY08 budget amendment (placed on display May 8, 2008)

Mrs. Porter stated that she continues to work on the budget. Adoption will be at the June 19th board meeting.

New Business

There was no new business.

Board Comments

Under Board Comments, Mr. Jagielski thanked the board for the plant sent because of his mother's death. Mr. Larson handed out an article, Global Competitiveness Demands Better Education. Mr. Glendenning asked about the latest Joint Library Meeting and the status of pending agreements.

Adjourn to Closed Session

A motion was made by King, seconded by Jagielski, to adjourn to closed session to discuss the appointment, compensation, discipline, performance of specific employees of the District; and the purchase or lease of real property for the use of the District, including meetings held for the purpose of discussing whether a particular parcel should be acquired. Ayes: Glendenning, Jagielski, King, Larson, Reeverts, Bonne and Steenken. Motion carried unanimously. Time: 8:07 p.m.

Reconvene in Open Session

A motion was made by Larson, seconded by Bonne, to return to open session. Motion carried unanimously. Time: 10:50 p.m.

Approve the minutes of the May 8, 2008 Executive Session

A motion was made by Reeverts, seconded by Jagielski, to approve the minutes of the May 8, 2008 executive session. Motion carried unanimously.

Approve the Personnel Report

A motion was made by King, seconded by Reeverts, to approve the personnel report including the **employment** of Joseph Blume, high school math instructor for the 2008-2009 school year; **resignations** of Kay Mork, SVHS science teacher, effective at end of 2007-2008 school year; Ryan Dessing, SVHS sophomore boys basketball coach, effective at end of 2007-2008 school year; and Jeremy Mueller, SVHS assistant boys soccer coach, effective end of 2007-2008 school year. The personnel report also includes the **family medical leave** of Beth Kleinschmidt, SVHS math teacher, effective April 25,

2008 through May 29, 2008. Ayes: Larson, Reeverts, Bonne, Glendenning, Jagielski, King and Steenken. Motion carried unanimously.

Approve Contract to Purchase Real Property

A motion was made by Steenken, seconded by Glendenning, to approve the Purchase and Sale Agreement for 148.84 acres of real property located south of the existing high school campus from Nordic Investments Corp and authorize the Superintendent to sign agreement on behalf of the School Board and negotiate terms and conditions excluding price. Ayes: Reeverts, Bonne, Glendenning, Jagielski, King, Larson and Steenken. Motion carried unanimously.

Adjourn

A motion was made by Larson, seconded by Bonne, to adjourn the meeting. Motion carried unanimously.

Respectfully submitted,
Donna Fruin, Secretary

Consent Agenda Items: 4.1; 4.2, 4.3

Consent agenda items 4.1, 4.2 and 4.3, include approving the minutes of the regularly scheduled May 22, 2008 meeting; the June 20, 2008 payroll; and approving accounts payable for June (per review by Mr. Tim Jagielski).

Agenda Item 8.1: Annual Library Report (Dana Kunce)

Information/Background

This annual item is placed on the agenda to provide the opportunity for the K-8 District Librarian, Dana Kunce, to present the annual library report. This board report is required in order to continue receiving state funds for the district's library program. Ms. Kunce will provide background on the status of the library program.

Recommendation:

This is a discussion topic. No School Board action is required for this meeting.

Agenda Item 8.2: Review potential items for District Dashboard

Information/Background

This item is placed on the agenda to provide an opportunity for School Board members to review and consider possible items for district dashboard items. A dashboard report is a way to visually present critical information about a specific topic in summary form, in much the same way that a car dashboard works. The School Board has discussed this agenda item at the past two meetings and is working toward identifying the data reports that will prove most meaningful to the School Board. Since the last meeting, the administration researched potential summary reports generated from the district's student management and financial software program and will provide the information at the meeting.

Recommendation:

This is a discussion topic. No School Board action is required for this meeting. It is anticipated that the School Board will approve dashboard items prior to the beginning of the next school year.

Agenda Item 8.3: Continued review of FY 08 Budget Amendment; Budget Amendment Hearing scheduled for June 19 at 7:00 p.m. at Meridian Junior High Board Room

Information/Background

This item is on the agenda for the purpose of reviewing the fiscal year 2008 budget amendment. The final approval of the amended budget will be recommended at the June 19, 2008 board meeting. The budget amendments were placed on display at the regularly scheduled May 8, 2008 meeting. The amendment recommendations will be available at the board meeting.

Recommendation

This is an informational item only. No Board action is required for this meeting.

Agenda Item 9.1: Review suggested ESP policy modification regarding 26 pay spread and payroll schedule

Information/Background

This item is on the agenda for the purpose of reviewing the status of suggested modifications to the Educational Support Staff policies on 26 pay spread for school year only employees and the payroll schedule. The goal of the recommended modifications to the ESP policy is to come into compliance with the *Illinois Wage Payment and Collection Act* regarding the time frame in which employees work and are paid and the practice of spreading pay for school year only employees over 26 pay periods. Both of these are issues because the support staff is not part of a collective bargaining unit.

Attached is our legal counsel's opinion regarding employees being paid within the required 13 days. One option to comply would be to initiate a new employer established work week of Sunday through Saturday (instead of current Monday through Sunday) and have an every other Friday payroll schedule. This work week and pay schedule would bring us into compliance with this component of the *Illinois Wage Payment and Collection Act*. Also included in the packet is a tentative payroll schedule using the every other Friday schedule. It would also be important to work with the Association to modify the certified staff to the same every other Friday payroll.

The other compliance issue to resolve is to come into compliance with the *Illinois Wage Payment and Collection Act* is the pay spread for employees who are not on a 12-month contract. Again, attached is our legal counsel's opinion on the issue along with supporting documentation.

Recommendation

This is an informational item only and provided as a discussion topic. No formal board action is required. It is anticipated that a recommendation on a policy modification will be provided at a future board meeting.

Hodges, Loizzi, Eisenhammer, Rodick & Kohn

Barbara A. Erickson
berickson@hlerk.com

March 19, 2008

Via Electronic Mail

Ms. Jennifer Porter
Meridian Community Unit
School District No. 223
207 West Main Street
Stillman Valley, Illinois 61084

Re: Wage Payments

Dear Ms. Porter:

Pursuant to your request, we reviewed the "Pay Schedule [for] Hourly Employees 2008-2009" ("schedule") you provided us that details the dates upon which the District's hourly employees have been and will be paid for the 2007/2008 school year. You asked us whether the scheduled payment dates violate the *Illinois Wage Payment and Collection Act* (the "Act"). It is our opinion that the District's payment practice for hourly employees violates the Act.

As you may be aware, Section 4 of the Act states that "[a]ll wages earned by any employee during a semi-monthly or bi-weekly pay period shall be paid to such employee not later than 13 days after the end of the pay period in which such wages were earned. All wages earned by any employee during a weekly pay period shall be paid no later than 7 days after the end of the weekly pay period in which the wages were earned... Wages of executive, administrative and professional employees, as defined in the Federal Fair Labor Standards Act of 1938, may be paid on or before 21 calendar days after the period during which they are earned." 820 ILCS 115/4. However, the above wage payment terms shall not apply "if there exists a valid collective bargaining agreement which provides for a different date or for different arrangements for the payment of wages." *Id.*

It is our understanding that the District's hourly employees are not members of a union and thus, no collective bargaining agreement exists that would provide for a different date or for different arrangements for the payment of wages. Therefore, the Act applies. The schedule that the District provided indicates that, generally, the hourly employees are paid every two weeks with some exceptions and wages are earned during bi-weekly pay periods. However, the time lapse between the close of the pay period and the actual date of pay exceeds 13 days most of the time. Thus, the payment schedule is not in compliance with section 4 of the Act, which states that all wages earned by employees during a semi-monthly or bi-weekly pay period shall be paid not later than 13 days after the end of the pay period in which such wages were earned. Violations of the WPCA could result in penalties and fines to the District.

Ms. Jennifer Porter
March 19, 2008
Page 2

Please contact us if you have any questions or comments.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN

A handwritten signature in black ink, reading "Barbara A. Erickson". The signature is written in a cursive style with a large initial 'B' and a long, sweeping tail.

Barbara A. Erickson

cc: Robert A. Kohn

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**IRC SECTION 409A NONQUALIFIED DEFERRED COMPENSATION PLANS
AS APPLICABLE TO PUBLIC SCHOOLS**

AN OVERVIEW

Question 1: What is 409A?¹

The *American Jobs Creation Act of 2004*, **Public Law 108-357**, enacted in October 2004, established new tax rules governing nonqualified deferred compensation arrangements by creating the new Internal Revenue Code (hereinafter “Code”) section 409A. The law provides that, *unless certain requirements are met* (see discussion under Question 7), amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. In addition, such amounts are subject to immediate income tax, a 20% federal excise tax plus interest and penalties.²

Nonqualified deferred compensation arrangements can involve not only employer-employee relationships, but other contractual relationships pursuant to which compensation is paid. For this reason the section 409A and its related regulatory documents refer more broadly to “service providers” and “service recipients.” The authors of these outline materials have elected to use the terms “employer” and “employee” for ease of reading and because such an approach is reflective of the bulk of public school compensation arrangements.

Question 2: What regulates 409A?³

On December 20, 2004, the IRS issued **Notice 2005-1**, which set forth initial guidance with respect to the application of section 409A and supplied transition guidance.

On October 4, 2005, the Department of the Treasury and the IRS published **proposed regulations** in the Federal Register implementing section 409A. Several additional guidance documents were issued following the proposed regulations setting forth various transition rules and relief involving income tax withholding and reporting obligations.⁴

* These materials and the presentation made based on these materials are solely educational in nature and do not constitute legal advice to any person. These materials and the presentation based on these materials are not intended to create an attorney/client relationship between the presenter or the presenter’s law firm and any attendee of the presentation.

On April 10, 2007, the Department of the Treasury and the IRS issued **final regulations** under Code section 409A. The final regulations adopted much of the language contained in the proposed regulations but also made several amendments. The final regulations were effective January 1, 2008.⁵

On August 7, 2007, the IRS issued **News Release (IR 2007-142)**, which addressed concerns raised by the final regulations and their effect on certain compensation arrangements of school employees who work only part of the year but elect to receive compensation over an annualized period. The News Release provided that, while the provisions of the final regulations go into effect January 1, 2008, they will not affect such arrangements for the 2007-2008 school year.

On September 17, 2007, the Department of the Treasury and the IRS issued **Notice 2007-78**, which provided transition relief and additional guidance on the application of section 409A. Subject to limited requirements regarding the timely written designation of a time and form of payment, the Notice extended the deadline to adopt documents that comply with section 409A to December 31, 2008. The Notice also provided additional relief addressing certain issues raised by the application of section 409A and the final regulations to employment agreements and cash-out features.

On October 22, 2007, the Department of the Treasury and the IRS issued **Notice 2007-86**, which provided further transition relief regarding the application of section 409A. This Notice extended the transitional period for general compliance with the final regulations to December 31, 2008.

On October 23, 2007, the Department of the Treasury and the IRS issued **Notice 2007-89**, which provided guidance to employers and taxpayers on their reporting and wage withholding requirements for calendar year 2007 with respect to amounts includible in gross income under section 409A and with respect to all deferrals of compensation under section 409A. It also provided guidance to employees (i.e. employees) on their income tax reporting and tax payment requirements with respect to amounts includable in gross income under section 409A.

On December 3, 2007, the Department of the Treasury and the IRS issued **Notice 2007-100**, which providing transition relief and guidance for the correction of certain nonqualified deferred compensation plan operational failures with respect to compliance with section 409A.

Question 3: What is non-qualified deferred compensation?⁶

In general, deferred compensation is compensation paid to an individual in any taxable year following the taxable year in which it was earned.

For purposes of section 409A, a nonqualified deferred compensation plan is one that provides for the deferral of compensation only if a participant has a legally binding right during a taxable year to compensation that, pursuant to the terms of the plan, is payable or may be payable to (or on behalf of) the participant in a later taxable year. Such a plan is subject to taxation in the year the right accrues, to the extent the compensation is not subject to a substantial risk of forfeiture. (For a discussion of exceptions and exemptions from section 409A coverage, see Questions 5 and 6.)

1. Deferral of Compensation

For purposes of 409A, a deferral of compensation does not result solely because compensation is paid after the last day of an employee's taxable year when the timing arrangement is one under which the employer normally pays its employees for services performed during a payroll period described in Code section 3401(b); or with respect to a non-employee service provider, a period not longer than the payroll period, or if no such payroll period exists, a period **not longer than the earlier of** the normal timing arrangement under which the non-employee service providers are normally paid or 30 days after the end of the service provider's taxable year.⁷

2. Legally Binding Right

A legally binding right to compensation may exist even when the right is subject to conditions.⁸ Such right is typically created by construction of law or contract. In addition, a legally binding right to future *nontaxable* compensation does not constitute deferred compensation for purposes of 409A unless the participant had the opportunity to exchange the nontaxable compensation for taxable compensation not part of a Code section 125 plan.

3. Substantial Risk of Forfeiture

Compensation is subject to a substantial risk of forfeiture if entitlement is conditioned upon the performance of substantial services by any person or the occurrence of a condition related to the purpose of the compensation, and the possibility of forfeiture is substantial.⁹

Question 4: What types of arrangements may be considered nonqualified deferred compensation plans for purposes of 409A coverage?

1. Employment Agreements
2. Separation Pay Agreements
3. Certain Split-Dollar life Insurance Plans
4. Retirement Incentives

5. Sabbatical Plans
6. Retention Programs
7. Restricted Stock Units
8. Certain Stock Appreciation Rights
9. Certain Stock Options
10. 457(f) plans

Question 5: What types of arrangements are *not* covered by 409A?¹⁰

1. Qualified Employer Plans such as:
 - those described under Code section 401(a) and a trust exempt from tax under section 501(a) or that is described under section 402(d)
 - tax-deferred annuity plans under section 403(a) and tax-deferred annuity contracts described under section 403(b) (i.e. tax-sheltered annuities)
 - simplified employee pensions within the meaning of section 408(k)
 - simplified retirement accounts within the meaning of section 408(p)
 - plans under which active participants make deductible contributions to a trust described in section 501(c)(18)
 - eligible deferred compensation plans within the meaning of section 457(b)
 - plans described under section 415(m)
2. Certain Foreign Plans
3. Certain Welfare Benefit Plans, including:
 - bona fide vacation leave or sick leave plans
 - medical expense reimbursement plans (nontaxable benefits under Code sections 105 and 106)
 - disability plans, and death benefit plans

Question 6: Even if a type of arrangement is covered by 409A, are there exceptions and/or exemptions from coverage? YES

1. Grandfathered Plans
 - In general, section 409A applies with respect to amounts deferred in taxable years beginning after December 31, 2004, and in taxable years beginning before January 1, 2005, if the plan under which the deferral is made is materially modified after October 3, 2004.¹¹
 - Section 409A does not apply with respect to amounts deferred under a plan maintained pursuant to a bona fide collective bargaining agreement in effect on October 3, 2004, for the period ending on the earlier of the date on which such collective bargaining agreement terminates or December 31, 2009.¹²
 - The regulations state that an arrangement is established on the latest of:

- the date on which it is adopted,
- the date on which it is effective, and
- the date on which the material terms of the plan are set forth in writing. The material terms of the arrangement include (1) the amount of deferred compensation and (2) the time in which it will be paid. (See Question 7)

Transition Rule for Written Plans: an unwritten arrangement that was adopted and effective before December 31, 2007, is treated as established as of the later of the date on which it was adopted or became effective, provided that the material terms of the arrangement are set forth in writing on or before December 31, 2007.¹³

2. Short-Term Deferrals¹⁴

In general, deferred compensation is exempt from application of 409A if the employee actually or constructively receives payment on or before the last day of the period ending on the later of the 15th day of the third month following the end of the employee's first taxable year or the 15th day of the third month following the end of the employer's first taxable year¹⁵ in which the right to the payment is no longer subject to a substantial risk of forfeiture. Payment is actually or constructively received if the payment is includible in income, including if the payment is includible under Code section 83, the economic benefit doctrine, Code section 402(b), or Code section 457(f).

3. Certain Types of Separation Pay Plans¹⁶

- *Collectively bargained* separation pay plans that provide for separation pay only upon an involuntary separation from service or pursuant to a window program. An involuntary separation from service means a separation due to the "independent exercise of the unilateral authority of the [employer] to terminate the [employee's] services, other than due to the [employee's] request, where the [employee] was willing and able to continue performing services."¹⁷
- Separation pay provided *outside of a collectively bargained agreement* due to involuntary separation from service or participation in a window program: (1) where the pay does not exceed two times the lesser of the sum of the employee's annualized compensation for the taxable year preceding the year of separation; or the maximum amount that may be taken into account under a qualified plan pursuant to Code section 401(a)(17)¹⁸ for the year in which the employee has a separation from service; and (2) where the plan provides that such separation pay must be paid no later than the last day of the second taxable year of the employee following the employee's taxable year in which the separation occurs.
- Involuntary Separation Pay consideration. An employee's voluntary separation from service will be treated as an involuntary separation from service if the separation from service occurs under certain limited

bona fide conditions, where (1) the avoidance of the requirements of section 409A is not a purpose of including the conditions for separation, and (2) a voluntary separation from service under such conditions effectively constitutes an involuntary separation. These conditions are generally pre-specified under an agreement to provide compensation upon a separation from service for good reason. Such good reason must be detailed in the agreement, including the actions taken by the employer resulting in a material negative change to the employee. The regulations contain safe harbor provisions that may satisfy the conditions.

- Foreign separation pay plans
 - Reimbursements and certain other separation payments, including reimbursements that are not otherwise excludible from gross income for expenses that the employee could otherwise deduct under Code sections 162 or 167 as business expenses incurred in connection with the performance of services, or of reasonable outplacement expenses and reasonable moving expenses incurred by the employee and directly related to the termination of services for the employer, provided the rights to such reimbursements apply during a limited period of time, as defined by the regulations. Additional separation payments exempted from section 409A also may include reimbursement of certain medical benefits, in-kind benefits, and limited payments (where aggregated payments due and owing during the year of separation under the separation pay plan do not exceed \$15,500 for 2008).¹⁹
4. Certain Stock Options and Stock Appreciation Rights
 5. Restricted Property
 6. Certain Foreign Plans
 7. Certain Indemnification and Liability Insurance Plans
 8. Legal Settlements
An agreement to which an employee is a party does not provide for a deferral of compensation to the extent that the agreement provides for amount paid as settlements or awards resolving bona fide legal claims based on wrongful termination, employment discrimination, the FLSA, or worker's compensation.
 9. Certain Educational Benefits (taxable benefits as described under Code section 127(c))

Question 7: What requirements apply to avoid penalties for a plan covered by 409A?

Code section 409A and its implementing regulations contain complex and detailed compliance requirements for establishing a nonqualified deferred compensation plan.²⁰ A nonqualified deferred compensation plan must contain certain provisions providing: (1) certain restrictions with respect to initial and

subsequent deferral elections; (2) amendment requirements; (3) aggregation requirements; and (4) distribution limitations.

1. Initial and Subsequent deferral elections²¹

- Section 409A contains restrictions regarding the timing of deferral elections.
- Generally, a participant must make an irrevocable election to defer compensation prior to the beginning of the taxable year in which the compensation is deferred.
- Special rules apply to annualized pay for school employees.
- Special rules apply in certain circumstances including rules for newly eligible participants, performance-based compensation, excess benefit plans, certain separation pay, short-term deferrals and first-year elections as well as for circumstances involving USERRA.
- In the case of a nonelective plan, the plan must specify the time and form of payment by no later than the later of (1) the time the employee first has a legally binding right to the compensation, or (2) the time the employee would be required to make such an election if the employee were provided such an election.
- The final regulations set forth requirements if a plan permits subsequent deferral elections, payment accelerations, and six-month delay rules for specified employees.

2. Amendments²²

The final regulations provide that amendments to plans have differing effects depending on the timing and whether amendment impacts the dollar amount of deferral, timing of deferral, or other plan provisions.

3. Aggregation²³

In general, all compensation amounts elected by an employee to be deferred under various arrangements with one employer are treated as a single plan, and all amounts to be deferred by the employer with respect to an employee are likewise aggregated as a single plan. Exceptions apply.

4. Distributions²⁴

- Section 409A and the final regulations limit distributions from a nonqualified deferred compensation plan to certain events such as: (1) separation from service; (2) disability; (3) death; (4) a specified time (such as age 55) or pursuant to a fixed schedule; (5) a change in control; or (6) the occurrence of an unforeseeable emergency.
- The final regulations set forth how payments will be treated if they are delayed, disputed or where the employer refuses to pay.
- The final regulations set forth a prohibition on acceleration of payments except for under certain conditions.

5. Penalties

Section 409A provides that, when the outlined requirements are not met, the employee must pay the accelerated income tax on the deferred amount and a penalty of 20 percent on the deferred amount. This is true even if the employee does not yet have access to the money. This is in addition to the employee being subject to interest calculated at the IRS tax underpayment rate plus 1 percent on the tax underpayments.

Question 8: Do the final 409A regulations contain additional requirements other than those listed here? Yes

Each employer must review the regulations for specific provisions that may affect the types of deferred compensation arrangements present in its operation. For example, we have not covered the effect of 409A on stock options or foreign arrangements or the effect on nonresidents due to their unlikely presence in public education settings. Further, in order to obtain a thorough understanding of how 409A affects an employer, the reviewer must take into consideration the entire scope of the regulatory world surrounding section 409A. For instance, the final regulations and their preamble mention how section 409A coordinates with another section of the Code, section 457(f).

Question 9: What is Code section 457(f) and how is it affected by section 409A?

Code section 457(f) has been regulating nonqualified deferred compensation plans for many years. A nonqualified deferred compensation plan under section 457(f) may or may not constitute a nonqualified deferred compensation plan for purposes of 409A; 409A and 457(f) are independent provisions in the tax code. The rules of section 409A apply to nonqualified deferred compensation plans separately and in addition to any requirements applicable to nonqualified deferred compensation plans under section 457(f). While regulations and Code provisions regulating 457(f) and 409A use many of the same and similar terms, 457(f) has its own historical set of definitions for many terms and phrases that may differ from the definitions provided for 409A.

Code section 457 applies only to deferred compensation plans established by state and local government and tax-exempt employers.²⁵ An ineligible nonqualified deferred compensation plan is subject to section 457(f).²⁶ However, section 457 does not apply to certain types of plans, including any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plans.²⁷ The rules of 457(f) do not apply to a qualified plan under Code section 401(a) or annuity plan or contract under section 403, that portion of any plan which consists of a transfer of property described in section 83, that portion of any plan which consists of a trust to which section 402(b) applies, a qualified governmental excess benefit arrangement described in section 415(m), or that

portion of any applicable employment retention plan described in section 457(f)(4).²⁸

The *Pension Protection Act of 2006* added new provisions to section 457 affecting 457(f). Specifically, it added to the list of plans exempt from coverage under section 457 “certain voluntary early retirement incentive plans” and “employment retention plans.”²⁹

Compensation under a nonqualified deferred compensation plan subject to section 457(f) is included in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation.³⁰ The rights of a person to compensation are deemed to be subject to a substantial risk of forfeiture if such person's rights are conditioned upon the future performance of substantial services by any individual. Any amount deferred under a section 457(f) plan that is not subject to a substantial risk of forfeiture (i.e., a vested amount) is currently included in gross income (even if not actually or constructively received), and the amount subsequently paid or made available is taxed under section 72.³¹

Thus, in analyzing a nonqualified deferred compensation arrangement you must look not only to 409A but also to section 457(f) and its historical interpretations in order to determine federal tax consequences.

¹ This section only mentions selected Notice and rulemaking events affecting I.R.S Code Section 409A. It does not represent all Department of the Treasury or I.R.S events, issuances, or guidance affecting 409A.

² Application of Section 409A to Nonqualified Deferred Compensation Plans, 72 Fed. Reg. 19234 (April 17, 2007)

³ This list is limited to guidance applicable to public schools. Additional guidance material related to section 409A not listed herein has been issue by the IRS.

⁴ Deferred Compensation Plans, Application of section 409A, 70 Fed. Reg. 57,930 (proposed October 4, 2005)

⁵ Application of Section 409A to Nonqualified Deferred Compensation Plans, 72 Fed. Reg. 19234 (April 17, 2007)

⁶ Treas. Reg. § 1.409A-1(b)

⁷ Treas. Reg. § 1.409A-1(b)

⁸ However, the employee does not have a legally binding right to compensation if that compensation may be unilaterally reduced or eliminated by the employer or other person after the employee has performed the services for which the compensation is payable unless under the facts and circumstances the discretion to eliminate or reduce the compensation is available or exercisable only upon a condition or is not substantially significant. Treas. Reg. § 1.409A-1(b)

⁹ Treas. Reg. § 1.409A-1(d)

¹⁰ Treas. Reg. § 1.409A-1(a)

¹¹ Treas. Reg. § 1.409A-6(a)

¹² Id.

¹³ Date generally extended pursuant to Notice 2007-86. Code section 409A was effective on January 1, 2005, and all affected nonqualified deferred compensation plans have been required to comply with the Code section since then. Prior guidance provided that compliance in operation with the final regulations was necessary as of January 1, 2008. However, Notice 2007-86 generally extends the transitional period for compliance with the final regulation to December 31, 2008.

¹⁴ Treas. Reg. § 1.409A-1(b)

¹⁵ See I.R.C. § 441 (Westlaw 2008) (for definitions of taxable year and fiscal year)

¹⁶ Treas. Reg. § 1.409A-1(b)

¹⁷ Treas. Reg. § 1.409A-1(n)

¹⁸ The 2008 I.R.C. § 401(a)(17) limit is \$230,000

¹⁹ Treas. Reg. § 1.409A-1(b); I.R.C. § 402(g)(1)(B)

²⁰ Treas. Reg. § 1.409A-1(c)

²¹ Treas. Reg. § 1.409A-2(a); (Not all requirements are set forth in this document.)

²² Treas. Reg. § 1.409A-1(c)

²³ Treas. Reg. § 1.409A-1(c)

²⁴ Treas. Reg. § 1.409A-3

²⁵ I.R.C. § 457(e) (Westlaw 2008)

²⁶ I.R.C. § 457(b) (Section 457(b) compensation plans are “eligible” deferred compensation plans)

²⁷ I.R.C. § 457(e)

²⁸ I.R.S Notice 2007-62; I.R.C. § 457(f)(2)

²⁹ I.R.C. § 457(e); I.R.C. § 457(f)

³⁰ I.R.S Notice 2007-62,

³¹ I.R.S Notice 2007-62

Agenda Item 9.2: Review priorities list for 2007-2008

Information/Background

This item is placed on the agenda for the purpose of the School Board reviewing the potential list of priorities to build into the FY 09 budget.

Recommendation

This is an informational item only. No Board action is required for this meeting.

FY09 Preliminary Budget Priorities

		<u>Fiscal Impact</u>	
<u>Highland</u>			
Possible Kindergarten Teacher based on final enrollment		<u>\$ 28,745</u>	
 <u>Monroe Center</u>			
1 FTE 5th Grade Teacher (matches sections for fourth grade this year)		<u>\$ 43,440</u>	
 <u>Meridian Junior High</u>			
 <u>High School</u>			
Additional High School Secretary	10 Month	\$ 17,080	
1 FTE English Teacher		\$ 47,200	
.43 FTE Science Teacher		\$ 20,296	
.5-1 FTE Physical Education		\$ 35,400	
Space Configuration		\$ 15,000	
		<u>\$ 134,976</u>	
 <u>Transportation</u>			
Hiring of Dispatcher		<u>\$ 13,420</u>	Replace a current posi
 <u>Building & Grounds</u>			
Replace Truck		\$ 38,000	
1 FTE Grounds Position	12 Month	\$ 25,376	
1 FTE Flex Position SVHS/Maintenance	12 Month	\$ 25,376	
Replace Technology Roof		\$ 20,000	
		<u>\$ 108,752</u>	
 <u>Food Service</u>			
High School Salad Bar		\$ 1,700	
Jr. High Walk in Freezer		\$ 8,000	
Upright Fridge for Highland		\$ 2,500	
Cashier Positions at Elementary Buildings	Part Time	\$ 5,444	
		<u>\$ 17,644</u>	Self Funded
 <u>Technology</u>			
35 Additional Computers for 5 year Rotation		\$ 28,000	
1 FTE Technology Technician		\$ 30,451	
		<u>\$ 58,451</u>	
 <u>Health Services</u>			
Vision Screening Machine		\$ 1,160	
Two new cots		\$ 1,310	
Two AED's (outdoor athletic fields)	Compliance	\$ 3,790	
Two new thermometers		\$ 440	
		<u>\$ 6,700</u>	
 <u>District</u>			
Sub Calling System		<u>\$ 9,100</u>	
 <u>Total Fiscal Impact</u>		<u>\$ 421,229</u>	
 Ed Fund Impact		\$ 299,057	
OM Fund Impact		\$ 108,752	
Transportation Fund Impact		\$ 13,420	
 Additional Positions			10

Agenda Item 9.3: Preliminary review of School Board meeting schedule for 2008-2009

Information/Background

This item is placed on the agenda for the purpose of the School Board to establish the board meeting calendar for the 2008-2009 school year. Traditionally, board meetings are scheduled on the second and fourth Thursdays of the month with the exceptions of July, November, December and March when one meeting is scheduled. In the past, meetings have started at 7:00 p.m. and are typically held in the Board Room at the Meridian Junior High. Other meeting sites have included Monroe Center School and Highland School. At this meeting, the School Board will review a potential schedule based on comparable dates from the 2007-2008 school year. The list of meeting dates, times and locations is included.

Recommendation

This is an informational item only. No Board action is required for this meeting. It is anticipated that the School Board will adopt the 2008-2009 board meeting schedule at the June 19, 2008 regularly scheduled board meeting.

MERIDIAN C.U.S.D. #223

BOARD MEETING SCHEDULE

2008-2009

7:00 PM Meridian Junior High Board Room (unless otherwise noted)

If you wish to have an item placed on a School Board meeting agenda, the request must be made in writing with specific details as to any requested action of the Board and received in the Superintendent's office no later than **Wednesday of the week prior to the School Board meeting.** If you fail to meet the above deadline, you may still present your idea/position to the Board of Education at any meeting during the "Community Input" agenda item.

DAY, DATE PLACE, TIME

*Thursday, July 17, 2008	MJH Board Room, 7:00 PM
Thursday, August 14, 2008.....	MJH Board Room, 7:00 PM
Thursday, August 28, 2008.....	MJH Board Room, 7:00 PM
Thursday, September 11, 2008	<u>MONROE CENTER Gym, 7:00 PM</u>
Thursday, September 25, 2008.	MJH Board Room, 7:00 PM
Thursday, October 9, 2008.....	MJH Board Room, 7:00 PM
Thursday, October 23, 2008	MJH Board Room, 7:00 PM
*Thursday, November 13, 2008	MJH Board Room, 7:00 PM
*Thursday, December 18, 2008.....	<u>Highland School, (6:45 p.m. tax levy hearing)</u>
Thursday, January 8, 2009	MJH Board Room, 7:00 PM
Thursday, January 22, 2009	MJH Board Room, 7:00 PM
Thursday, February 12, 2009	MJH Board Room, 7:00 PM
Thursday, February 26, 2009	MJH Board Room, 7:00 PM
*Thursday, March 19, 2009.....	MJH Board Room, 7:00 PM
Thursday, April 9, 2009.....	MJH Board Room, 7:00 PM
Thursday, April 23, 2009.....	<i>MJH Board Room, 7:00 PM</i>
Thursday, May 14, 2009	<u>.MONROE CENTER GYM, 7:00 PM</u>
Thursday, May 28, 2009	retirement dinner....TBA
Thursday, June 11, 2009	<i>MJH Board Room, 7:00 PM</i>
Thursday, June 25, 2009.....	<i>MJH Board Room, 7:00 PM</i>

*= Months with only one meeting; not scheduled for 2nd or 4th Thursday due to holiday; or time change due to conflict.

Agenda Item 9.4: Review of monthly “Accounts Payable” schedule for 2008-2009

Information/Background

Each year the Meridian CUSD #223 School Board members take turns being responsible to review bills payable each month on behalf of the entire School Board. This agenda item is provided for the purpose of reviewing the schedule for Fiscal Year 2009 for reviewing those bills, which begin in July.

The following list reflects the continuation of the order of "volunteers" for reviewing "Accts Payable" prior to the first Board meeting of each month. All current bills for payment (Accts Payable) will be ready for review anytime Wednesday or Thursday of the week of the first Board meeting of every month (this is usually the second week of each month).

Typically, the Board Member who reviews the bills, will make the motion at the Board meeting to approve "Accts Payable" for the month.

<u>MONTH</u>	<u>BOARD MEMBER</u>
July	Mr. Kevin Glendenning
August	Mrs. Barb Reeverts
September	Mr. Ron Steenken
October	Mr. Bruce Larson
November	Mr. Tim King
December	Ms. Deb Bonne
January	Mr. Tim Jagielski
February	Mr. Kevin Glendenning
March	Ms. Barb Reeverts
April	Mr. Ron Steenken
May	Mr. Bruce Larson
June	Mr. Tim King

Recommendation

This is an informational item only. No Board action is required for this item.