

**CONFIDENTIAL
M E M O R A N D U M**

TO: Board of Education – Wausau School District

FROM: Kevin J.T. Terry, Esq.
Ruder Ware, L.L.S.C.

DATE: December 16, 2013

RE: Music Programs Investigation Report

This report is the result of the independent investigation our firm has conducted at the request of the Wausau School District Board of Education. The scope of the investigation was defined by memorandum dated November 4, 2013. As part of the investigation, the following individuals were interviewed: Dr. Kathleen Williams (“Dr. Williams”), Phil Buch (“Buch”), Andrea Sheridan (“Sheridan”), Marie Northup (“Northup”), Nell Anderson (“Anderson”), Tom Hahn (“Hahn”), Jeb Steckbauer (“Steckbauer”), Attorney Frank Sutherland (“Attorney Sutherland”), and each member of the Wausau School District Board of Education. The purpose of this investigation, and the following report, is to give a factual history of events that occurred leading up to two events: (1) the interruption of the Master Singers group at Wausau West; and (2) the initial decision to hold all Elementary School Concerts in the Spring.

MASTER SINGERS

I. HISTORY.

- In August of 2009, the Freedom From Religion Foundation (the “Foundation”) contacted Stephen Murley, former District Superintendent, regarding the Wausau West High School’s 2008 graduation ceremony, which Buch conducted. The Foundation believed that the graduation’s inclusion of certain religious selections violated the First Amendment as promoting religion. The Foundation asked that the District commence an investigation into its music programs.
- In February of 2010, Anderson, Director of Education and Equality, responded to the Foundation. In her letter, she states that a change in Administrative Rule now requires that any musical selections chosen for a District-sponsored event such as graduation must be approved by the building principal. Anderson outlines the questions that will be posed by each principal when reviewing selections.

- At a December 2010 Administrative Team Meeting¹, Anderson introduced the revised Administrative Rule, which was to include principal review of song selections. Dr. Williams did not see the revised Administrative Rule prior to Anderson's presentation at the December meeting.
- At some point in 2011, Anderson presented a memorandum to all District Music Staff regarding holiday celebrations. Anderson recalls addressing both the graduation complaint from the Foundation at that time and addressing the revised Administrative Rule. Anderson noted that the Spring 2011 concerts were reviewed by building principals and that none of the principals reported any concerns.
- Sometime in the Fall of 2011, Dr. Williams, Marla Berg (Coordinator for Music), Michelle Schaefer, and Anderson met with Buch to discuss his music selections. Each of the individuals in the meeting explained that the goal of the discussion was to assure that Buch, along with all choral directors, maintained balance in their music selections.

II. DECEMBER 2012 WINTER CONCERT.

- Steckbauer, Dr. Williams, and President Schaefer attended Wausau West's Winter 2012 Concert at the Grand Theater. Dr. Williams and President Schaefer both expressed concern that the program was not balanced and focused too much on the celebration of Christmas. Steckbauer confirmed that he had reviewed and approved the program music list and believed it to be a balanced program. Steckbauer stated that he did research into the music included on the program list. After the concert, Anderson also expressed concern regarding the balance of the program.

III. SPRING CONCERT ISSUE.

- On or about January 9, 2013, the Longfellow Administrative Team² met and discussions were held regarding the recent Winter Concert and Buch's upcoming

¹ The Administrative Team is comprised of all principals and all administrators within the District. At the time, they met once a month.

² The Longfellow Administrative Team consists of Kathleen Williams - Superintendent, Jeff Gress – Director of HR, Amy Arlen - Communication Coordinator, Bryon Kolbeck – Director of Technology & Media Services, Tammy Nyen – Director Special Ed, Jeff Lindell – Director Pupil Services, Cherna Gorder – Chief Finance & Business Services Officer, Nell Anderson - Director of Elementary Education, Thom Hahn - Director of Secondary Education, and Andrea Sheridan – Director of Teaching, Learning, and Leadership Integration. This group meets once a week to discuss with Dr. Williams and each other what is happening in their departments and what they would like to Board to know.

Spring Concert. It was suggested Northup³, Director of Fine Arts, review Buch's Spring Concert selection.

- On January 10, Sheridan, Director of Teaching, Learning and Leadership Integration, sent an e-mail to Northup explaining that Buch's Spring Concert has not been balanced in the past and that she would like Northup to review his upcoming Spring Concert selection prior to practices and the performance.
- Northup and Buch exchanged a number of e-mails between January 10 and February 8, attempting to arrange a time to meet and discuss the Spring Concert. However, it was not until February 8, 2013, that Buch provided Northup a repertoire list for the March 10th and March 11th Spring Concert.
- On February 10, 2013, Northup e-mailed Sheridan, Steckbauer, Hahn, Anderson and Dr. Williams, stating that she had reviewed the Spring Concert repertoire and that she was OK with the selections. Anderson responded via e-mail the same day and noted that the only religious pieces were Christian. Anderson asked if there was any chance of convincing Buch to find other faiths to include in the Spring Concert. In reply to Anderson's e-mail, Northup responded to the group explaining that there is not much music available for other faiths. Additionally, Northup suggested that it may be a good idea to form a review committee to review the selections made by music teachers. Northup notes that she believes the Holiday Concert in Winter 2012 was heavily weighted with Christian music and not a balanced program.
- On February 11, 2013, Northup e-mailed Steckbauer, Sheridan, Hahn, Anderson and Dr. Williams explaining that if she were to recommend the removal of any of the songs, that she would recommend the Martina McBride piece.
- On February 14, 2013, Northup e-mailed Sheridan, Steckbauer, Hahn, Anderson and Dr. Williams asking for the group to confirm Buch's music selection as presented originally. Anderson responded saying that she was fine with the repertoire. On February 15, 2013, Sheridan e-mailed in response asking if, in Northup's professional opinion, Buch's concert agenda was balanced.
- On February 16, 2013, Northup e-mailed Steckbauer, Sheridan, Hahn, Anderson and Dr. Williams explaining that, after speaking with a Fine Arts Director from the Madison Public Schools, she would recommend the removal of the Martina McBride piece and the Joyful, Joyful We Adore Thee piece.⁴ She said that she would speak to Buch on Monday about these pieces being removed. She also suggested again that a

³ After Marla Berg's retirement at the conclusion of the 2011-2012 school year, the District hired Northup in August 2012 as Principal for Maine Elementary and Director of Fine Arts due to her Masters degree in Music K-12, which was the successor position to Coordinator for Music.

⁴ At this time, Northup was at a conference in Washington D.C. Attendees at the conference included Fine Arts Directors from across the country.

committee be formed and a policy developed to help guide teachers in the selection of music for future performances. Anderson responded to this e-mail, thanking Northup, and explaining that there was an Administrative Rule in place that would accompany a policy regarding this issue.

- On Monday, February 18, 2013, Northup e-mailed Buch and copied Hahn, Dr. Williams, Sheridan, Steckbauer, and Anderson to follow up regarding a meeting Northup and Buch had to discuss his concert repertoire for the Spring Concert. The e-mail confirmed that Buch was being asked to remove two songs from the concert in March: Joyful, Joyful We Adore Thee and the Martina McBride piece.
- On February 21, 2013, Northup forwarded an e-mail from Brad Burrill (“Burrill”), Choral Director at Wausau West, that voiced concerns over the level of oversight of the music selection process to Sheridan, Hahn, Dr. Williams, and Anderson. Northup empathized with Burrill’s concern and stated that she had never been required to submit choral music selections for approval when she was a music teacher. On Monday, February 25, Anderson responded stating that the District must review all performances as it was investigated by the Foundation and that there was an agreement that all concerts and performances be reviewed for balance.
- On February 27, 2013, Attorney Richard Mast from the Liberty Council wrote a letter to Dr. Williams and the entire Wausau School District Board of Education on behalf of Buch. Liberty Council is a non-profit litigation, education, and policy organization with an emphasis on religious liberties issues. The letter addressed the administrative directive that Buch change his music repertoire for the Spring Concert. Further, the letter specifically addressed the Foundation’s contact with the District in 2008 regarding Buch’s selection of music at the graduation ceremony.
- Dr. Williams was out of the District on February 27, 2013, so Anderson became the point of contact person for Attorney Sutherland, who was contacted and updated regarding the letter from Liberty Council.
- Attorney Sutherland had most of his contact with the District through Northup and Anderson during the following days. Attorney Sutherland believed the best course of action for the District to be to allow the Spring Concert to continue as proposed by Buch. Attorney Sutherland sent a letter to Liberty Council on March 6, 2013, informing it of the District’s intent to allow the program to proceed as proposed and that the District would be doing an independent review of its policy. Steckbauer, through a memorandum, informed Buch of the decision to allow the Spring Concert to proceed as proposed.

IV. SUMMER 2013.

- On June 1, 2013, Northup e-mailed Buch, Hahn, and Sheridan informing Buch that prior to his 2013 Holiday Concert, that they will need to meet. Northup asked for available dates. Buch informed the group on June 7, 2013, that he would not be available to meet during the Summer, so they should plan on meeting in September.
- On August 9, 2013, a meeting was held with Northup, Sheridan, Hahn, Anderson, and Sheridan to discuss all concert repertoire in the District and the application of the Administrative Rule. At the meeting, Northup shared with the group a draft form for music teachers to fill out and return to administration to outline each concert's proposed song list.
- On August 28, 2013, a meeting was held by Northup with all of the music teachers in the District to discuss the form drafted by Northup. There is a great deal of discussion amongst the group regarding this issue, and a consensus from the teachers that further discussion take place including Anderson and Dr. Williams regarding the changes. Northup informed Anderson, Sheridan and Dr. Williams of the request made by teachers and also suggested that Attorney Sutherland be available to answer questions as it related to any First Amendment issues.

V. SEPTEMBER 17, 2013, MEETING WITH FRANK SUTHERLAND.

- The meeting with all District music staff was introduced by comments from Dr. Williams explaining that Attorney Sutherland would be giving a presentation to provide clarity regarding the review of music selections and the impact of the First Amendment on the District's music performances. Attorney Sutherland makes it clear to the group that the purpose of the meeting is not to answer specific hypothetical situations or to provide specific answers to music lists. He also explains that the District will be working toward an updated rule and a policy that will be used as a tool and as a guidepost to address those practical questions. The focus of the meeting is on the Establishment Clause of the First Amendment and the constitutional limits on individual's actions as an agent of the District. Attorney Sutherland spends a great deal of time explaining the case law interpreting First Amendment restrictions and the tests used by courts. Attorney Sutherland emphasizes that the effect of the performance on the audience is often a key factor that the court looks to. Buch asks Attorney Sutherland about the Master Singers⁵ program specifically. Buch explains

⁵ Phil Buch describes Master Singers as a music group of eighteen singers from Wausau West formed to meet the requests from the public to sing at private, public, and corporate Christmas gatherings. It is an extracurricular program that meets every day, which is self-directed by the students while Buch coaches them. During the month of December, the group is asked to perform between 15 and 20 events in the community. Their repertoire is a mix of secular and sacred Christmas music which last 20-25 minutes. Master Singers has been in existence for approximately 31 years, and Buch has been paid for his activities with Master Singers by the District for the past 10 years.

that the performances are done in private businesses, nursing homes, etc. and it is a Christmas celebration consisting of seven to nine selections. Attorney Sutherland responds by saying that this is a kind of situation that would raise concern and that he would want to look at more closely. Attorney Sutherland agrees with the comment that having a committee review the selections may be a good process and at this time the Administrative Rule was to be suspended in favor of the committee.

- After the meeting, Northup creates a review committee as suggested at the meeting. The committee was comprised of four music teachers and a rotation of five administrators. On September 26, the first committee meeting was held to review submissions from teachers. At the meeting were Attorney Sutherland, Northup, Hahn, Marilyn Londerville (“Londerville”) – administrative assistant, Burrill – Wausau West choir teacher, Sue Hintz – Horace Mann music teacher, Margaret Conard – Horace Mann music teacher (instruments), and Karen Zuidema (“Zuidema”) – John Muir music teacher. Of the 70 songs reviewed in approximately three and a half hours, only four were removed from the program lists. Master Singers was one of the last items addressed and the committee decided that they did not have time to address the repertoire and would hold off until the October 3, 2013 meeting.

VI. OCTOBER 3, 2013, MUSIC COMMITTEE MEETING.

- The October 3, 2013, meeting solely addressed the issue of Master Singers. Attendees at the meeting included Attorney Sutherland, Northup, Buch, Londerville, Burrill, Hintz and Zuidema. Early in the meeting there was a discussion about why Masters Singers is different than other concerts and it has to do with the Christmas Caroling in the public. Sutherland specifically says, “What the school would have an obligation to do is not sponsor or support or facilitate Christmas caroling.” Attorney Sutherland states that the reason that this cannot be done is because of the “establishment clause, which requires the district to be neutral with respect to matters of religion.” The conversation then moves to the different options laid out by the District for Buch and the Master Singers.

Option 1: The first option is explained by Attorney Sutherland as, “the safest thing legally...and I know administration is not choosing this option...is to say, we’re not doing any Christmas caroling.”

Option 2: After a bit of discussion about why nobody wants this option, Attorney Sutherland then explains option 2 for the first time which is “ if this were purely secular and could not be regarded as celebrating the religious holiday of Christmas, that is an option.” This option would include no religious songs.

Option 3: Then Attorney Sutherland goes on to explain the third option for the first time and says the following:

“Alternatively, I would say, and if we wanted to be consistent with the kind of approach that’s being taken within the performance venue, that we would—and this is what I’m going to say, I’m just going to be very blunt about this, that we would pursue a course that is not subterfuge to continuing to do um, and that’s not pointed at anyone, it’s pointed at myself as much as anyone, but we would not do something where we say, kind of wink, wink, nudge, nudge, we’re not Christmas caroling, but we’re really are because that will be—so, what does that mean? I think in this context, if you’re doing, you know four to five selections, it would have to be a presentation of music that could, for example, involve perhaps one religious and Christmas themed selection. Perhaps another secular Christmas themed selection and a mixture of other things. This is a route that I think is viable but it kind of has to be with the understanding that we’re not going out Christmas caroling. We’re going out to perform music and changing the practice of what’s been done in the past and we have to arrive a point where this doesn’t become like a tug of war over, that’s why I’m kind of being specific that at least with five groups, I think that the kind of mix I just described would be a way that I could say to the district, ok, you are truly not Christmas caroling, and it would be very hard for someone to establish the way you’re doing as Christmas caroling because there is a real mix of musical selections here.”

At this point, Attorney Sutherland was not looking at Buch’s selections. Attorney Sutherland then states the intention of meeting and that is “to say, can we choose one of these approaches in conversation with Phil and then perhaps adjourn and allow Phil to go back and give some thoughts as to what he would like to put together.”

There is then a discussion about the community’s expectation of what type of performances Master Singers are asked to do. Attorney Sutherland notes that, “we might conclude that the because of the expectations of the community, option one of going with purely secular Christmas arrangements is the route to go because that would take into account some of the, not all, but some of the expectations within the community in a better way than having a real mix with very limited Christmas theme, maybe a couple of selections, but there’s non-Christmas theme. And so, you know, that could factor into that consideration.”

Buch, a bit confused, then confirms the options as described by Attorney Sutherland by stating, “You said you’d have three options. So you’re saying this purely secular, was that your first option or was the no Christmas caroling period, was that option one and then option two was going purely secular?”

Attorney Sutherland attempts to clarify the options by stating, “So, the three options are truly not doing any of the caroling and we could probably come up with more, so

for example, you know, one of the issues here is being in the Christmas season creates the impression of celebration so we could get into kind of messing around with timing or considering that, but I think the three primary options as I spoke earlier in the week to Marie about were not doing it and then these other two that I've laid out, understanding that the district does not want to shut this down." He also attempts to clarify the third options again by stating, "Yea, what I was saying there on—this is where I really think we all need to be on the same page if we choose that so it doesn't become a push and pull kind of a thing. It has to do with having a real mix so that people would—the reasonable observer would look at it and say, no, you can't regard this as Christmas caroling. This is really an activity that has replaced what could have previously been more appropriately regarded as Christmas caroling. And now there's this selection of various kinds of singing, we're still honoring the tradition of going out in December. But you have to have a real mix in order to get to a place that would be reasonably safe, legally, and that's why I was saying that, you know limiting, if you had for example five selections, limiting it to one religious theme, perhaps one secular themed Christmas, and then mixing the rest of it up, I think is something that you know, you would have to go through the committee process but I think that that kind of an approach could get us to a point where we say, ok, um, you know, we're in a reasonably safe position legally in honoring the constitutional mandate with respect to the establishment clause."

Burrill again states the concern of many and that is that "weren't not going to be giving the people what they expect in terms of the audiences who are asking for these events."

Northup again wants clarification on what the second and third options being proposed are and states, "Right, that would not be. Um, the next choice being, um purely secular Christmas, not celebrating the religious aspect of the holiday, or use of any religious music." Attorney Sutherland agrees with this as the second option. Northup states follows up by stating, "Then the third option being, um, having a um, you know, say four to five selections with involving—having one of those be religious themed and one of them being a secular Christmas, but then the other ones completely unrelated to the holiday." Attorney Sutherland agrees with this summarization of the third option.

Attorney Sutherland then asks for Buch's input regarding his feelings on the options as described and Buch states, "I don't see a great benefit in really any of the three. I can see number one as not obviously, you know, not working at all. Um, to stay with option number 2 strictly secular, just eliminates a vast repertoire of a great choral literature and all of our bands and all of our orchestras will be playing that but we can't sing it because of it having text. And then to have a performance in December when they are designated Christmas parties, families present and all of this stuff to do some literature that isn't related. I don't know what music you could do. I mean you would have to be totally unreal. It'd have to be like, folk songs or ballads or

something that have nothing to do with the Christmas or the holiday season at all. So, I see all three options here as being extremely limiting.”

Attorney Sutherland responds to this statement by saying, “Yeah, and maybe you’re kind of making my point. I mean, the whole point is that we can’t be Christmas caroling around a religious holiday and perhaps we just can’t.”

Buch, in response, states, “With that position then, I think we have to go with option number 1 based on what you just said, then I think we have to really give option number 1 serious consideration.”

Attorney Sutherland refrains from making a decision on the issue and states, “Well then I would follow your lead on that because, you know, any other first amendment lawyer who would hear me give an opinion other than you may not Christmas carol as it relates to the religious holiday of Christmas would think, you know, I don’t know if it’s malpractice or what it could be. So, I don’t have a lot of ambiguity on that being the state of law. I think it is and so getting back to and your point about, I’m not sure the context of the other statements about a band or other musical performances, but same principles apply there. Let me be clear about that.”

There is then some discussion about the formation of a teacher group singing in the schools. After this discussion the conversation returns to Buch’s Master Singers song list.

Attorney Sutherland states, “Well, let me suggest this and Phil, I am going to put you on the spot a little bit more. Do we need more time to think about this because Phil, if I hear you saying you’re not up for pursuing either of those courses of action, what we’re calling option 2 and 3, it may moot the issue.”

For the first time, Buch’s actual song repertoire is discussed when Buch makes the following statement, “Well, what I have here, and I’m not sure if you have my um, repertoire list in front of you. I have a total of seven selections and three of those are sacred four are secular so I don’t see where they fit into any of option number 2 or number 3 without some major renovation.”

Buch attempts to end the meeting, consult with administration and not include Sutherland by stating, “I guess for the sake of time then, I would, I guess consult here with my colleagues. That’s the reason for our committee here and uh, we’ll make the choices and hopefully I can, you know, be satisfied with what is determined and I think we’ll try to work it out and I don’t know what my colleagues think here, but I need to know, I guess is what I’m getting down to. I’d be on the point of no return with this.”

Attorney Sutherland responds by clarifying “Here’s the thing Phil, just to be clear Phil, I have—I mean this is a little bit different for the other committee members than the last meeting, in that I have kind of set the boundaries in terms of advice, so for how to proceed by way of legal advice to the district. So I don’t want to think that here’s the advice and then the committee can say, well, we don’t like that advice and so here’s the route we’re going to go. To be clear, we would ask the committee to act—to take action within the boundaries of the advice that has been provided.”

Until this point, Attorney Sutherland has not been looking at the list of the Master Singers proposed concert.

Northup asks, “Frank, let me ask you, um, you have a copy of Phil’s proposal for the Master Singers in front of you?” Sutherland responds by saying, “Uh, no I apologize. I had reviewed all of this ahead of time but had a meeting immediately before so I was unable to pull it out and I’m just uh, pulling up your e-mail again right now. I’m sorry Marie, I thought you were addressing the group.”

Northup directs the conversation toward moving with Option #2 and states, “I’m thinking here, if we’re looking at option 2, which is purely secular Christmas songs, Phil could ultimately keep the program that he has, minus God rest ye merry gentlemen, joy to the world, and silent night. He could in fact replace those three songs with secular Christmas songs.” There is a discussion about how best to find replacement songs if Option 2 is pursued.

Then a discussion of Option 3 continues, but the group recognizes the biggest issue to be a disconnect between what is being performed and the expectations of the community.

Northup then asks Buch if he has a preference of any of the three options again and Buch states, “2 would, I would lean towards but I’m not comfortable with it in its entirety. I don’t see any sense going out in December singing at Christmas parties with option number 3. That’s a joke. You know, it’s ridiculous to set the students up in that predicament and that’s to throw a sacred piece in there for tokenism. Um, I have to do some more thinking here on it. But out of the three, that would be the one that has—option 2 would be something that uh.”

The committee attempts to move forward with Option 2, but wants Buch’s input and he states, “Um, no, I am not in favor of option 2. Out of the three that are there, I think that’s the one that is somewhat palatable, but I don’t see it as something that’s conducive to the Master Singer’s heritage, uh, to the traditions, um, I think the standards I have at least a dozen to 15 state standards that are met by the singing of this repertoire. I see song number 2, Robert Shaw, the icon in—let’s take away Shakespeare and all that stuff from—this is what Robert Shaw is, ok, to the choral world. You think Glen Miller. I mean this is American, this is a big band tune, this is

viable, educationally sound music. Derek Johnson, his arrangements are awesome, um, and intricate.”

There is then a discussion to have some of the songs presented by Buch approved so that he may begin rehearsal for Master singers if he decides to go with Option 2. Zuidema states, “can I make a amendment then to our—which is still open and it’s still open right now that—our move right? It’s still open? If I can make an amendment to that and just say that—to state that we as a committee would recommend option 2. However, with Phil as a conductor, if he chooses to go route number 1, we certainly would not force him into doing route 2, or for example if he decides that route 3 would be better that his decision as a conductor, those three options that we would support. I wouldn’t want to motion to be on the table that says we have to do option 2 and then you have to do it. That’s what I’m trying to avoid because this is still Phil’s ultimate decision.”

This discussion is what leads to Northup stating that rehearsals should not be occurring without approval. She states, “But we as a committee have to approve and he can’t be getting rehearsal in until its approved. So, if—that’s where we’ve got to decide, you know, how long we’re going to push it off. Because we’re making everybody—everybody’s following that so it can’t be different for one director than all the—you know what I’m saying? In all fairness. We’re making every director and choir orchestra.”

Attorney Sutherland clarifies where the decision making of the committee has lead by stating, “These are approved for option 2 and uh, we’ll leave open the question, leave the discretion to Phil as to whether he wants to consider doing, you know, a different proposal for option 3 that would come back to the committee. Does that make sense?” It is confirmed that if Buch chooses Option 3, a different proposal would be needed.

Attorney Sutherland clarifies what is needed if Option 3 is chosen by saying, “if we’re doing option 3, we are not Christmas caroling, so I know there are some—there’s a gray area with some of those seasonal songs because some are purely associated with Christmas and the concern that I have about having let’s say, all Christmas themed songs and a religious themed song, is that it opens the door to say you’re celebrating Christmas, including religious—the religious aspects of Christmas, and that’s why I’m saying you have to have a true mix. So if we go that route, I want to emphasize again, we need to have real—a real mixture. And that may mean having another seasonal one, but it probably means having some that are not seasonal in that they’re not associated with Christmas. We had this discussion last week about Good King Wenceslas, that someone was saying, hey, this is about feast of Stephen, not necessarily about Christmas if you really listen to it, which I think is a valid point. But the counterpoint is, I don’t know that anyone sings Good King Wenceslas except

in connection with Christmas carols. So that would not be a helpful choice for example.”

Northup then again tries to get an action taken by the committee by stating, “So, with that said, um, do we want to not make a decision today and take some time to think about it and schedule another meeting, or do we want to move forward with a framework today and then solidify that framework at another time?” Steckbauer states, “I want to give Phil some time to digest this. I do think giving him the motion of, you can practice those secular ones if that’s the route you wanna go is fine.” Northup clarifies that, “But that’s only if he does number 2.”

This is when the conversation leads to the shutting down of Master Singers. Northup clarifies her desires by stating, “What I don’t want to happen is for us to get to number 3 and then say yeah, but they’ve been practicing these and I don’t want to take them off the program because the kids have been practicing them and now they’re used to them because if we go to option 3, then we have to change. We can only—we have to limit the number of secular songs. And so, what I want to avoid is what happened last spring with the—well they’ve begun practicing, what do I tell the kids? I don’t wanna pull it away. We can’t—that’s what we can’t have happen again. Do you know what I’m getting at?”

Buch then states, “I’ve been rehearsing already for two weeks because if we don’t start by the third week in the September, we won’t be ready by thanksgiving. Um, so, we’re—I can’t um—it’s either we continue on or we don’t and that’s what I have to consider because there’s no way this group—and five selections, that’s 15, maybe 20 minutes worth of performance. Seven selections works up between 20 to 25 minute performance and um..”

Northup responds by stating, “And the concern I have with that is, nobody is supposed to be rehearsing any of the proposed music until it’s been approved. We talked about that already in August.” Buch responds, “So you’re not going to approve let it snow and winter wonderland? Are we not going to approve?” Northup states, “No, you said you’ve been practicing those for two weeks already.” Buch states, “Yeah, let it snow, winter wonderland.” Northup states, “But nothing on this list should be performed—rehearsed—“ Buch responds, “Then I don’t have Master Singers. Plain and simple.”

After some discussion about possibly increasing the number of songs in the Master Singers repertoire, Sutherland and Buch get on the same page as to what Buch wants to do with Master Singers for the first time when they have the following exchange:

FRANK: Ok, well then that is actually as helpful. And right now, just pull it up—we have what, (counting)—so would you expect in any event to have the seven selections, Phil?

PHIL: I don't understand your question. Say that again please?

FRANK: So right now you have seven—

PHIL: Correct. This would be my tentative program.

FRANK: So that will remain static for all the performances?

PHIL: That's correct. And a number—

FRANK: I'm still much more comfortable with one, unless we—and part of the issue here is, and the challenge is um, you know, the other—we'd have to have a true mix. I don't know how achievable that's going to be. Um, so for example, if we end up with a bunch of seasonal numbers that are secular but associated with Christmas, we're kind of back in the soup as far as I'm concerned. Let me say this, I will not foreclose the possibility of trying to see if there could be two depending on what the other mix of songs would be. If they were truly a mix and not Christmas related, that helps. I just don't know how achievable that is. It's this whole expectation piece that this is a totally nonlegal comment so, you can discount it if you wish. It seems to me as a parent of students and a member of the public that if I were hearing these—the Master Singers each year, the shift to secular but still Christmas themed music would be easier and it would work more easily than a true mix of other music.

A decision is not able to be reached in terms of which option to pursue, so Attorney Sutherland clarifies the committee's expectations for the meeting on October 8, 2013, by stating: "Just to be clear Marie, what I would envision and that's why I said we need to move quickly so people can practice and get on with it here, but we also need to be fair to Phil, is that I would envision that we really need to have a slate of selections that we're finalizing on Tuesday and that would be the best."

Summary: The intent of the October 3, 2013, meeting was to discuss the Master Singers program. Continuing Masters Singers as it had been conducted in the past was not an option for Administration. Sutherland presented three options for Buch to consider in the alternative. Options 1 and 2 were understood by all, but there was confusion about Option 3. Sutherland attempted to present Option 3 as being a "real mix" of music and something that could not be interpreted as Christmas Caroling. In explaining this option, he used an example of a performance that would include five songs. This example created confusion amongst the group. Part of the confusion may have derived from the fact that Sutherland was not using Buch actual repertoire as submitted during most of the discussion.

The parties left that meeting with the understanding that Buch would bring a new repertoire for Master Singers back to the October 8, 2013.

VII. MEDIA COVERAGE AND RESPONSE.

October 4 2013

Buch - Buch called the Masters Singers organization together and told them that rehearsals were postponed due to directive from administration. It was on this day that Buch also spoke with Liberty Counsel about the Master Singers issue. That morning, Buch contacted the Wausau Daily Herald and left a message for the reporter and gave some general information about the music issue. Around 2:30 p.m., the Wausau Daily Herald called back and Buch spoke directly with reporters about the incident.

Dr. Williams – Dr. Williams was out of the office on October 4. Dr. Williams's administrative assistant was also out of the office on Friday. The morning receptionist working that day was made aware that Dr. Williams was not in, but the afternoon receptionist was not made aware of this information by the morning receptionist. Dr. Williams first arrived briefly at the office at 11:35 a.m. and there was no message for her. Dr. Williams first learned of the issue sometime around 2:30 p.m. when she spoke with Anderson. Dr. Williams had communications with Attorney Sutherland about the story online. Receives advice to be cautious and not to return phone calls to the press until the facts are gathered. Dr. Williams then addresses a District principal's family emergency.⁶

Sutherland – Received a call from the media but did not respond. Called Northup that afternoon and informed her that coordination of contact with the media needed to take place. Tells Northup that if people want to know the District's position on the situation, to contact school district central office. His first conversation with Dr. Williams was not until Saturday October 5, 2013.

October 7 – On Monday, October 7, Dr. Williams, Anderson, Attorney Sutherland, and Northup met for a number of hours to discuss the statement to be released to the public regarding the article and issues presented on October 4. The Statement was released to the public that afternoon and e-mailed to parents.

On Monday, President Schaefer decided that the Board should hold a special meeting to address the issues. Cassie Peck polled the Board to see who would be available for the October 10 meeting.

⁶ On October 3, 2013, one of the principal's in the Wausau School District unexpectedly lost a child. This unfortunate loss became a very important issue for many administrators in the District including Dr. Williams.

VIII. OCTOBER 8, 2013, MUSIC COMMITTEE MEETING.

The October 8, 2013, meeting was intended to be focused on review of Buch's revised Master Singers' repertoire. Attendees at the meeting included Sutherland, Londerville, Margaret Conard ("Conard"), Anderson, Sue Hintz, Sheridan, Hahn, Steckbauer and Northup.

When Buch arrives, Northup asks him if he brought any music along and Buch responds, "Yeah I have my music, but I have not changed the repertoire that was submitted."

Buch follows up that he has "some options with that, okay, cause those are seven selections that I submitted so I have options within those seven."

Attorney Sutherland states that he thinks, "I think it would be worthwhile just for clarity to read for purposes of the record of the meeting the e-mail that went out in terms of the two options."

Northup then reads the e-mail that was sent in response to Buch's query as to what the agenda would be for today and she states as follows: "It says, Phil thanks for your e-mail. The agenda for today's meeting is the same as discussed at the conclusion of our last meeting on Thursday. We adjourned that meeting without a final decision so that you could consider which of the two options you wanted to pursue with Master Singers. We had indicated that the administration did not want to cancel Master Singers' performances. The first option was to perform seasonal and Christmas selections that did not have a religious theme. The second option was to change the format of Master Singers' winter performances from Christmas caroling to another theme. Under the second alternative, Frank indicated that you could consider the inclusion of a Christmas selection with a religious theme and indicated that one selection of that type along with four other types . . . along with other types of selections could be acceptable; however, he emphasized that we would need to truly change the theme of the performances. My expectation at the end of our last meeting is that you would propose musical selections under one of these two approaches for the committee to review today. This is how we intend to proceed at the meeting."

Attorney Sutherland then confirms that Buch has not provided any additional proposals under either of the two options provided and states, "Okay, well I don't know that the committee has any other business for today then Marie."

Buch and Attorney Sutherland then have an exchange about possibly entertaining more options. Attorney Sutherland explains that rather than discussion the options as discussed at the previous meeting, he thinks having a discussion about that topic is best suited for a different venue or group of individuals.

Buch asks Attorney Sutherland how he came to the formula as he understood it. He states "Then I would go to my question for option two. How was this formula, out of five

selections, with only one being sacred, allowed to be sacred. How did you come about this, Frank? Five selections”

Attorney Sutherland explains that there was not a formula set in place at the October 3 meeting by stating: “There is no formula, and that was communicated as an example last week, and it was made clear that that was an example of a situation where the, uh, governing guideline was that there would be a change from a Christmas caroling theme to another theme. Never in any of our discussions has that been presented as a rule, and toward the end of our last meeting which was recorded for minute-taking purposes, I tried to go out of my way to make clear that a ratio was not the rule, but rather that the emphasis was on whether there would be an opportunity to change the theme of the December Master Singer program.”

Attorney Sutherland, in response to questions from Buch, then explains the following: “In fairness to the committee, you know there certainly may be an opportunity for this kind of a dialogue. I know that having spoken to the superintendent, that there would be a hope to have some good dialogue exchange given the importance of these matters. Given the common interest that everyone shares in the education of children within the music program at the Wausau School District. I do not believe that this committee is the place for the kind of dialogue that you are talking about looking at historical statistics or anything of that sort. I really believe, based on what we’ve heard today, that the committee’s work is done for the time being and that we will have to look at whether there are some other opportunities for dialogue that do involve district leadership at this point for all the reasons that I’ve already stated.

Phil, I’d also mention I think it’s important if you have things to convey that district leadership has the opportunity to hear that directly and again I don’t think it’s necessarily fair to this committee. I think it’s outside the scope of the committee to be getting into those kinds of matters right now.”

The discussion regarding the repertoire ends at this point and Buch follows with a couple additional questions. He asks, “So I am asking, can we at least rehearse sectional, uh, no secular, music.” After clarifying that he had heard Northup’s directive that songs only be rehearsed after a proposal was accepted, he states that the question is best directed toward Dr. Williams.

- October 9 – Nell Anderson, Dr. Williams, Marie Northup, and Michelle Schaefer conduct a planning meeting to prepare documents to be presented to the Board at the October 10, 2013, meeting. The idea was to present a factual timeline based on Nell Anderson’s records.

Dr. Williams left the meeting to meet with Buch, Steckbauer, and Patrick Gilligan (“Gilligan”) in an attempt to resolve the issues surrounding Master Singers. After a lengthy discussion about the issue, Dr. Williams asks Buch whether he has been in

contact with Liberty Counsel. Buch confirms that he has been. Dr. Williams and Buch meet, Steckbauer and Gilligan also present. Dr. Williams suggests Buch to contact Liberty Counsel. Buch agrees that if Liberty Counsel and Attorney Sutherland can come to an agreement about the Master Singers repertoire, he will comply with agreement.

During the days of October 9 and 10, Attorney Sutherland and Attorney Richard Mast of Liberty Counsel discuss First Amendment case law and on drive up to meeting on October 10, Attorney Sutherland and Attorney Mast reach agreement to be discussed at closed session.

ELEMENTARY SCHOOL CONCERTS

- In November of 2011, Sheridan's first year with the Wausau School District, a meeting was held with all elementary principals to discuss potential District wide scheduling changes. Sheridan had concerns about the effectiveness of the current schedule. A decision was made by all of the principals to look at different schedule options. An Elementary School Scheduling Team was arranged including approximately 40 people, 25 of which were teachers. The District also sought the aid of Mike Redding to develop a block schedule rotation. During April of 2013, Redding came to the District and met with fifteen different school teams for approximately ninety minutes each.
- On April 24, 2013, Northup sent an e-mail to Sheridan. In the email, Northup noted that some of the elementary schools were doing two concerts a year and others were only doing one. She further noted that concert preparation takes up valuable class time and that she'd personally like to see only one concert per year at the elementary level. She then posed a number of questions to Sheridan such as, "Is it worth a discussion among the elementary principals? Are buildings set on having December concerts or could we move away from December concerts?"
- Sheridan instructed Northup to have discussions with building principals regarding number of concerts held annually and a potential change in the concerts' timing. Northup then designed a Google document that was distributed to all of the elementary principals. The Google document is distributed to principals on June 3, 2013. Twelve elementary principals were given the opportunity to have input in the Google document. Five of the twelve principals did not respond with a preference regarding having a December concert or, alternatively, a Spring concert. The other seven responses either indicated that they preferred having only one concert and it be in the Spring (5) or that they did not prefer one over the other.
- On August 9, Northup and Sheridan met and discussed the results of the elementary principal Google document. Sheridan supported the move to hold all elementary concerts in the Spring and cited a majority of principal support.

- On August 23, 2013, Northup sent an e-mail to elementary principals that concerts would be held in Spring as that appeared to be the consensus from the Google document. The rationale shared by Northup and Sheridan was that having two concerts a year impeded instructional time, that a Spring concert is summative in nature and more broadly focused permitting a wider variety of music to be performed.
- At the August 28, 2013, meeting of the entire music department, Northup informed the group of the decision to hold one Spring concert. Buch suggests that the change in elementary concerts and the review of music selections are linked. Northup denies this allegation.
- Northup explains that the plan was to send a letter from herself to all parents regarding the elementary concert change in the October 15th newsletter.
- On October 8, Dr. Williams met with principals and the consensus of all the principals was move concerts to Spring.



WAUSAU SCHOOL DISTRICT

Longfellow Administration Center

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What follows are augmentations to the Music Programs Investigation Report provided by Ruder Ware on December 16, 2013. These augmentations have been provided by Director of Elementary Education, Nell Anderson; Director of Secondary Education, Thom Hahn; Maine Elementary School Principal/Fine Arts Coordinator, Marie Northup; and Director of Teaching, Learning, and Leadership Integration, Andrea Sheridan.

Memo

To: Michelle Schaefer

From: WSD Education Department

Date: January 3, 2014

RE: Augmentation to the records of the "Music Programs Investigation Report"

Page 1 Under Bullet 2

Anderson outlines the questions *listed in the Administrative Rule* that will be posed by each principal when reviewing the selections.

Page 6 September 26, 2013 meeting

Attendance at meeting – Attorney Frank Sutherland attended the meeting by phone on a conference call, he was not there in person and Jeb Steckbauer, Principal of Wausau West , was in attendance at the meeting.

Page 6 October 3, 2013 meeting

Attendance at meeting – Attorney Sutherland attended by phone and Jeb Steckbauer was in attendance.

Page 15 October 8, 2013 meeting

Attendance at meeting – Attorney Sutherland attended by phone.

Page 16 October 9, 2014 meeting

Teacher representative brought to the meeting by Phil Buch was Patrick Galligan (last name misspelled).

Page 17 Comments on Elementary School Concerts

November 2011 was Sheridan's first year as a Director of Teaching, Learning and Leadership Integration. Sheridan joined the district in 2007.

Dr. Michael Rettig (last name misspelled).

Under the third bullet, all 15 Elementary Principals were given the opportunity to have input in the Google Document.

Under the fourth bullet, the August 9, 2013 meeting also had Anderson and Hahn in attendance.

Page 18 Elementary Continued

Under the first bullet, the rationale was shared by Northup, Sheridan, Anderson and Hahn.

Other Comments:

Nell Anderson has been the Director of Equity, Pupil Nondiscrimination and TITLE IX Complaint Officer for the Wausau School District for 23 of the last 24 years. In addition to her other roles and responsibilities in the district, this Director of Equity position requires the filing annually of a pupil nondiscrimination compliance report with the Wisconsin Department of Public Instruction according to Section PI 9.07 of the Wisconsin administrative Code. This report necessitates the complaint officer to file the number and type of discrimination complaints received by the district during the school year, including building- or district-level complaints that were withdrawn or informally resolved, as well as complaints that resulted in an investigation, or formal proceedings before district staff or the school board, or resolution by another agency whether it was verbal or written as required under section 118.13 of the Wisconsin Statutes. The complaint data is based on complaints received alleging pupil discrimination or pupil harassment based on the following protected classes: sex, race, disability, religion, sexual orientation, national origin, ancestry, creed, pregnancy, marital, or parental status.

As a point of reference, Anderson receives 2-4 district level concerns a year from parents and/or community members about music performances.



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What follows are augmentations to the Music Programs Investigation Report provided by Ruder Ware on December 16, 2013. These augmentations have been provided by the Superintendent of Schools, Dr. Kathleen Williams.

Memo

To: Michelle Schaefer

From: Superintendent of Schools, Dr. Kathleen Williams

Date: January 2, 2014

RE: Augmentation to the records of the "Music Programs Investigation Report"

After reading the music investigation report I would like to augment the report in the following ways:

- 1) On page 2 Section II, I would like added that I expressed concern about the religious nature of the Dec. 2012 concert because of the religious vocal selections combined with a melody of religious songs presented by an alumni group also affiliated with a church choral group. I was worried that members of the audience might believe it was heavily influenced by a Christian theme.
- 2) On page 3- Please, note that-
I was out of town from February 8-11 and did not return to the office until the P.M. at which time I was booked solid with appointments, and then thereafter, directly attended a Board meeting.
Please, note that February 16 was a Saturday (when an email was sent).
Please, note that I was involved in business manager interviews all day on February 18 and out of the office all day February 19.
- 3) On p.4- I was out of town on vacation from February 26-March 4, 2013.
- 4) On page 5- The first time anything having to do with Master Singers was raised by Phil Buch himself at the Sept. 17 meeting. It was at that time I first learned that Masters Singers was an extracurricular group that sang to community organizations mainly during the Christmas season. Had Phil not mentioned the Master Singers, their repertoire would have never been discussed.
- 5) Nell Anderson and I did speak with Attorney Sutherland briefly on Friday, Oct. 4. I spoke with him again on Saturday, Oct. 5 to discuss a news release.
- 6) I sent a brief news release to the Wausau Daily Herald with cc to the Board on Saturday, Oct. 5.
- 7) On p. 17- It was not Andrea Sheridan's first year in the district in 2011-12 but rather her first year in a new central office position (Director of Teaching, Learning, and Leadership Integration).
- 8) Correct spelling from Dr. Redding to Rettig.