

# ORCHARD PARK CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION

**REGULAR MEETING**  
DISTRICT OFFICE

**November 8, 2016**

2240 Southwestern Blvd, West Seneca NY

Board of Education

Members Present: Mr. Dwight Eagan  
Dr. Christine Gray-Tinnesz, Vice President  
Mrs. Karen Kane  
Mr. Robert Mahany  
Mr. Dwight Mateer  
Mr. David Nielsen, President  
Mrs. Elizabeth Quinlan

Members Excused: n/a

Others Present: Dr. Lisa Krueger, Assistant Superintendent – Curriculum  
Mr. Jeffrey Petrus, Assistant Superintendent – Business  
Mr. David Lilleck, Executive Director of Personnel & Pupil Services  
Mrs. Cheryl A. Connors, District Clerk

Estimated Audience: 55

Mr. Nielsen called the meeting to order at 7:00 pm and led all in attendance in the Pledge of Allegiance.

## Announcements

- Dr. Krueger made the following announcements:
- The High School Drama Club will be performing their fall drama “Play On” November 17<sup>th</sup> & 18<sup>th</sup> at 7 pm and November 19<sup>th</sup> at 2:30 p.m.
  - You can help the Windom PTO by dinning at Chipotle on Milestrip Road on November 9 from 4 p.m. – 7 p.m. Tell them you are there to support Windom’s PTO and 50% of the proceeds of your purchase will be donated to the Windom PTO.
  - School will be closed on November 11 in honor of Veterans Day. In Orchard Park many of our students, staff, and parents will be taking time this week to thank and honor our local Veterans.
  - November 16<sup>th</sup> is a half-day for elementary students with dismissal at 11:30 a.m. and an early dismissal for high school students at 12:45 p.m. Thanksgiving recess begins on November 23. School will resume on November 28.
  - *E pluribus unum* Latin for “Out of many, one” is what the symbol reads on the National Blue Ribbon award and Orchard Park High School is one out of many high schools – but only one of two in the WNY area to be selected as a 2016 National Blue Ribbon Recipient. Earlier today Superintendent McGarrity, Mr. Wolf our high school principal and Mrs. Julie Bastedo one of our high school teachers were in Washington DC. They attended the awards ceremony hosted by the United States Department of Education on behalf of our high school.
  - Mr. Lilleck announced that the district has submitted their Annual Professional Performance Review (APPR) to the state. He thanked Mr. Ziccardi, Ms. Giallella, Mr. Wolf and Mr. Tryon for their time and professionalism throughout the process.

**ANNOUNCEMENTS**

## Recognition

- The Board recognized the 2017 National Merit Scholarship Commended Students and the Semifinalists from Orchard Park High School. Commended Students placed among the top five percent of more than 1.6 million students who took the 2015 Preliminary SAT. Matthew Chiavetta, Joseph Even, Erin O'Rourke, Lauren Smith, Cole Wilkinson, Emily Zhang and Adam Ziccardi are the Orchard Park High School National Merit Scholarship Commended Students. Less than one percent of U.S. high school seniors are named as semifinalists which indicates that they had one of the top scores in each state. Tanner Probst and Hope VanDerwater were named Semifinalists for 2017. These two academically talented high school seniors now have an opportunity to continue in the competition for some 7,500 National Merit Scholarships worth about \$33 million.

**RECOGNITION**

## Presentation

- **CDEP** - Dr. Krueger presented a review of the Comprehensive District Education Plan (CDEP) to the Board. She stated a CDEP is generally 3-5 years in length and created with involvement and input from all constitute groups. A CDEP is intended to provide focus, establish goals (SMART goals), and focus district resources (time, money and professional development) all toward student achievement

**PRESENTATION**

## Consensus Items

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) to approve the following consensus items as presented:

**CONSENSUS**

### **Approval of Minutes**

- October 11, 2016 & October 19, 2016

**MINUTES**

### **Financial Matters (attachment #1)**

- Treasurer's Report – September 2016
- Revenue Budget Detail – September 2016
- Appropriation Status Report – October 2016
- Warrant Report – October 2016
- Health & Welfare Service Rates for 2016-17

**FINANCIALS**

## Personnel Considerations

**RESOLVED THAT**, upon the recommendation of the Superintendent, the Board of Education approves the following Personnel actions:

**PERSONNEL**

### **Personnel Considerations - Teachers and Administrators**

#### **Appointments - Probationary and Regular Substitute**

Name	Title	Cert Area / Status	Tenure Area	Initial Location	Type / Effective Date	Annual Salary
<b>Susan Toth</b>	Elementary Teacher	Childhood Ed (Gr 1-6) Initial Reissuance	Elem Ed	MS	Part Year Reg Sub 10/12/16 - 02/14/17 LOA - E. Mansour	1 M (30) (pro-rated)
<b>Jennifer McKeone</b>	Business Teacher	Business & Marketing / Initial	Business	HS1	(0.9) Part Time 08/31/16 - 06/30/17 (% amended)	1 M (30) (pro-rated)
<b>Erin Calder</b>	Social Studies Teacher	Social Studies 7-12 / Professional	Soc Stud	HS2	Full Year Reg Sub 08/31/16 - 06/30/17 LOA - J. Hofschneider (end date amended)	1 M (30)

\* This expiration date is tentative and conditional only. Except to the extent required by the applicable provisions of Section 30123 of the Education Law, in order to be granted tenure the teacher must receive composite or overall annual professional performance review ratings pursuant to Section 3012-c and/or 3012-d of the Education Law of either effective or highly effective in at least three (3) of the four (4) preceding years, and if the teacher receives an ineffective composite or overall rating in the final year of the probationary period the teacher shall not be eligible for tenure at that time.

**Appointments - Extra Class Activity Advisor (Teachers and Others)**

Name	Title / Activity	Effective Dates	Employee Group	Salary / Stipend
<b>Kathleen Holtermann</b>	Orchard Park Education Outreach Advisor (HS) (amended)	2016/17	OPTA	\$533 Group VI / Step 2 (amended)
<b>Christopher Betrus</b>	Medical Career Interest Group Advisor	2016/17	OPTA	\$485 Group VI / Step 1 (amended)

**Appointments – Coordinators & Instructional Leaders (Teachers and Administrators)**

Name	Title / Activity	Effective Dates	Employee Group	Salary / Stipend
<b>Lisa Sosnowski</b>	Instructional Leaders - Math (MS)	2016/17	OPTA	\$3,495 (amended)
<b>Kristen Casto</b>	Instructional Leaders - Business (HS)	2016/17	OPTA	\$2,254 (amended)

**Appointments – Per Diem Substitutes (Teachers and Others)**

Name	Title / Activity	Effective Dates	Certification
<b>Riley Schwartzott</b>	Substitute Teacher / Home Instructor	10/19/2016	Early Childhood (B - Gr 2) Childhood Ed (Gr 1-6)

**Appointments – Coaching (Teachers and Others)**

Name	Title / Activity	Effective Dates	Employee Group	Salary / Stipend
<b>James Wegelin</b>	Basketball - Boys' Mod B (Rescind)	Winter 2016/17	OPTA	\$4,316 Exp. 17 / Step 4
<b>Douglas DeLozier</b>	Wrestling Varsity (Rescind)	Winter 2016/17	OPTA	\$6,604 Exp. 23 / Step 4
<b>Jared Teal</b>	Wrestling Assistant (Rescind)	Winter 2016/17	OPTA	\$4,316 Exp. 19 / Step 4
<b>Kim Caligiuri</b>	Bowling - Girls' Varsity	Winter 2016/17	OPTA	\$2,438 Exp. 1 / Step 1
<b>Charles Hillegas</b>	Basketball - Boys' Mod B	Winter 2016/17	OPTA	\$3,293 Exp. 1 / Step 1
<b>Jared Teal</b>	Wrestling - Boys' Varsity	Winter 2016/17	OPTA	\$5,340 Exp. 2 / Step 2

**Leaves of Absence (Teachers and Administrators)**

Name	Position	Effective Dates	Comment
<b>Erin Mansour</b>	Elementary Teacher	10/05/16 - 02/16/17	Unpaid LOA - Section 4.4
<b>Jennifer Hofschneider</b>	Social Studies Teacher	08/31/16 - 06/30/17 amended dates	Unpaid LOA - Section 4.4

## **Personnel Consideration – Support Staff**

### **Appointments (Support Staff)**

<b>Name</b>	<b>Position (Initial Location)</b>	<b>Type of Appointment</b>	<b>Effective Date</b>	<b>Compensation (Initial Schedule)</b>
<b>Steven Meyer</b>	Auto Mechanic Crew Chief Full-time / 12 mo (Transportation)	Probationary 10/17/16 - 04/16/17	10/17/2016	\$25.04 / hour Salary B Schedule (8.0 hrs/ day)
<b>Kristin Guadagno</b>	Transportation Clerk	Provisional Permanent	10/24/2016	\$24.49 / hour Salary A Schedule (8.0 hrs / day)
<b>Leslie Garcia</b>	Senior Clerk Typist Full-time / 12 mo (WE)	Permanent	11/1/2016	\$17.93 / hour Salary E Schedule (8.0 hrs / day)
<b>Lynn Kruska</b>	Teacher Aide Part-time 10 month (HS)	Probationary 11/07/16 - 05/06/17	11/7/2016	\$17.10 / hour Salary B Schedule (3.5 hrs/day)
<b>Lisa Sayoc</b>	Teacher Aide Part-time 10 month (EL)	Probationary 11/01/16 - 05/06/17	11/1/2016	\$15.69 / hour Salary E Schedule (6.0 hrs/day)
<b>Christine Stewart</b>	Teacher Aide Part-time 10 month (WE)	Probationary 11/07/16 - 05/06/17	11/7/2016	\$15.69 / hour Salary E Schedule (6.25 hrs/day)
<b>Todd Weber</b>	Maintenance Mechanic Full-time 12 month (B&GR)	Probationary 11/07/16 - 5/06/17	11/7/2016	\$24.20 / hour Salary B Schedule (8.0 hrs/day)
<b>Herman Hody</b>	School Monitor Part - time 10 month	Recall from P.E.L.	11/7/2016	\$14.66 / hour Salary B Schedule (3.0 hrs.day)
<b>Ryan Brady</b>	Cleaner Full-time 12 month	Permanent	11/7/2016	\$15.69 / hour Salary E Schedule (8.0 hrs/day)

### **Appointments (Support Staff Substitutes)**

<b>Name</b>	<b>Title Activity</b>	<b>Effective Dates</b>	<b>Civil Service Title</b>
<b>David Lillis</b>	Support Staff Substitute	10/14/16 - 06/30/17	Monitor

### **Leaves of Absence (Support Staff)**

<b>Name</b>	<b>Title Activity</b>	<b>Effective Dates</b>	<b>Civil Service Title</b>
<b>Kristin Guadagno</b>	Bus Driver	10/24/2016	In order to accept the Transportation Clerk FT/12 month Provisional Permanent position in the Transportation Department (see Item No. 3.3.B.1.2)

**Appointments – Mentors (Support Staff)**

Name	Title / Activity	Effective Dates	Employee Group	Salary / Stipend
Joyce Kish	Mentor to Darlene Bonetto Teacher Aide (HS2)	10/19/16 - 04/16/17	OPSRPA	\$100.00
Kimberly Artmeier	Mentor to Leslie Garcia Senior Clerk Typist (WE)	11/01/16 - 11/1/17	OPSRPA	\$200.00
JoAnn Alba	Mentor to Gretchen Buchanan Senior Account Clerk (DO)	10/17/16 - 4/17/17	OPSRPA	\$100.00
Kyle Burger	Mentor to Amanda Pirrami Teacher Aide (District Wide)	10/31/16 - 10/30/17	OPSRPA	\$200.00

**Resignations and Retirements (Support Staff)**

Name	Title Activity	Effective Dates	Civil Service Title
Steven Meyer	Auto Mechanic Full-time / 12 mo (Transportation)	10/17/2016	In order to accept the Auto Mechanic Crew Chief FT/12 month Probationary position in the Transportation Department (see Item No. 3.3.B.1.1)
Lynn Kruska	School Monitor Part - time 10 month	11/6/2016	In order to accept the Teacher Aide PT/10 month Probationary position at the High School (see Item No. 3.3.B.1.4)
Todd Weber	Laborer Full-time 12 month	11/6/2016	In order to accept the Maint. Mechanic FT/12 month Probationary position with B&GR (see Item No. 3.3.B.1.7)

**SPECIAL  
EDUCATION****Special Education (attachment #2)**

- Recommendation by the Committee on Special Education for **Annual Reviews** of **Six (6)** Resident Children
- Recommendation by the Committee on Special Education for the **Program Review** of **Twenty-Two (22)** Resident Children
- Recommendation by the Committee on Special Education for **Re-Evaluation** of **Two (2)** Resident Children
- Recommendation by the Committee on Special Education for the **Initial Educational Placement** of **Three (3)** Resident Children
- Recommendation by the Committee on Special Education for **Amendments** of **Twenty-Nine (29)** Resident Children
- Recommendation by the 504 Committee for the **Accommodation Plan** of **Fifteen (15)** Resident Children
- Recommendation by the Committee on Preschool Special Education for the **Preschool Program Review** of **Two (2)** Resident Child
- Recommendation by the Committee on Preschool Special Education for the **Preschool Initial Educational Placement** of **Four (4)** Resident Children
- Recommendation by the Committee on Preschool Special Education for the **Preschool Amendments** of **Two (2)** Resident Children

**TEXTBOOK  
ADOPTIONS****Textbook Adoptions (attachment #3)**

- *The Thing About Jellyfish*, by Benjamin Ali, published by Blackstone Audio Inc./Little, Brown and Co., copyright 2015, HS – Grade 9
- *500 AP Literature Questions to Know by Test Day*, by Miller, Shveta (ed.), published by McGraw Hill Education, copyright 2011, HS Grade 12
- *Literature and Composition: Reading, Writing, Thinking*, by Jago, Carol (et.al), published by Bedford/St. Martin's, copyright 2011, HS Grade 12

## Board/Committee Reports

- **Policy Committee** – Dr. Krueger stated the committee reviewed the sports and athletic participation policy and visitors to school policy.
- **STAP Comm** – A member of the committee reported on the Leadership Lock-in. They also spoke about trying to get the OPCSD Alma Mater communicated to the younger students. The next STAP-Comm meeting is November 14 at 7 pm.
- **NYSSBA** – Several of the Board members discussed the programs they attending during the October NYSSBA Convention in Buffalo.

REPORTS

## Discussion

- **Under Armor Donation** – Mr. Petrus stated that Under Armor would like to donate two pairs of Boys Basketball sneakers for students to use during the 2016-17 season as a test of a new product.
- **Quaker Athletic Booster Club Donations** - Mr. Petrus stated that the Quaker Athletic Booster Club would like to donate a total of \$719 to the Orchard Park athletics to pay for the cost of Officials for Boys & Girls Varsity Basketball Scrimmages, reimbursement to Mr. Albano (Boys Volleyball Coach) and to pay for the costs associated with attending the American Volleyball Coaches Association Coaching Clinic (\$559).
- **Donation for Modified Cross-Country Team Transportation** – Mr. Petrus stated that an anonymous donor would like to make a donation of \$58.53 to the District to pay for the transportation of the Boys & Girls Modified Cross Country teams to their end of the season party.
- **Ellicott Elementary PTO Donation** – Mr. Petrus stated the Ellicott Elementary PTO would like to donate up to \$4,000 to pay for transportation expenses for Ellicott student field trips for 2016-17.
- **Orchard Park Foundation for Academic Excellence Donation** – Mr. Petrus stated the Orchard Park Foundation for Academic Excellence would like to donate \$1,000 to help support a speaker on mental health from Rachel's Challenge for Eggert and South Davis Elementary students.
- **43 North Donation for Business Students Transportation** – Mr. Petrus stated that 43 North would like to donate \$230 to reimburse the district for the cost associated with busing students from the high school to the 43 North finals on October 27, 2016.
- **Middle School Roof Change Order** – Mr. Petrus stated that as discussed at a previous Board meeting there is a section of the Middle School roof that needs immediate repair. Mr. Noga (Gordon Jones Associates) reports that this section of roof was reviewed in the fall of 2015 as part of the Building Condition Survey, at the time the condition of the roof left no indication it would not last another 4 or 5 years. This deterioration happened quite rapidly within the last year. Mr. Petrus also stated that Utica National Insurance is looking at the roof, to see if it can be covered by insurance.
- **Middle School Pool Wall Change Order** – Mr. Petrus stated that as discussed with the board periodically over the last few months, we have to reconstruct the Middle School pool west wall due to the unforeseen condition of corrosion of the steel beams in the wall. The corrosion is so extensive that we have to put additional steel supports in the wall to make sure it is structurally sound. This condition was discovered when the wall was opened up in the spring to replace the wall covering that was planned in the project.

DISCUSSION

- **Surplus Athletic Equipment** – Mr. Petrus stated that the athletic department would like to declare 15 football helmets, 1 wrestling scale and 1 basketball cart as surplus.
- **2016-17 Capital Outlay Project SEQRA** – Mr. Petrus stated that the State Environmental Quality Review Act (SEQRA) for the 2016-17 \$100,000 Capital Outlay Project has been completed for the project. The project this year is the replacement of the emergency generator at Windom Elementary as it is in poor shape and is in desperate need of being replaced. The SEQRA determinations are required to be done for every project. This project is considered a Type II action, which does not require a review under SEQRA, as the Project will not result in a significant adverse impact on the environment.
- **Post-Issuance Tax Compliance & Continuing Disclosure Compliance Procedures** – Mr. Petrus stated that our attorneys have reviewed our practices and procedures regarding tax compliance and disclosure procedures. Although our practices are in line with current IRS procedures, our written procedures need to be updated. The Post-Issuance Tax Compliance is an IRS initiative that urges issuers of tax-exempt bonds and notes to establish formal written procedures to monitor post-issuance compliance with federal tax rules. The second set of procedures and resolution addresses the Securities and Exchange Commission increased scrutiny of issuers' compliance with their continuing disclosure requirements. School districts must promise to undertake continuing disclosure through annual updates on their financial status in the form of an Official Statement in order to have their bonds sold through an underwriter. We already follow these procedures in practice this is just an update to the formal written procedures.
- **2017-18 Budget Development Calendar** – Mr. Petrus shared a few of the key dates in the calendar for this year including February 7th 1st draft of 2017-18 budget presented to the Board, March 1<sup>st</sup> submission of tax cap calculation information & district's calculation of tax levy limit and April 4<sup>th</sup> is the target date for Board adoption of the 2017-18 budget.
- **Future Work Sessions** – The Board discussed adding two work sessions, one for budget priorities and another for in-service opportunities regarding district programs and goals.
- **Out of Country Field Trip** – Mrs. Connors stated the high school foreign language students would like to plan a trip to France and Spain in 2018 and are looking for Board approval prior to fundraising.
- **Final Read of Policy 8460 – Field Trips - Off Site and Out of Country** – Dr. Krueger stated that while it has been the long-standing practice of the Board to take action on field trips out of the country, our current policy does not require the action. The policy revision will not only align to our practices, but will address the Board's desire to approve/deny field trips outside of the continental United States.
- **First Read of Policy 8340 – Textbooks/Workbooks/Calculators/Instructional Computer Hardware and Computer Hardware** - Dr. Krueger stated that current policy states a student will be charged for loss or excessive damage to a textbook. The policy, however, was silent to such procedures for other district owned materials/equipment issued or loaned to students. The revised policy now specifies students will be charged for lost, damaged/broken calculators and instructional computer hardware (i.e. graphing calculators, Chromebooks, etc.).

**ACTION**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby accepts the donation of two pairs of boys' basketball sneakers (valued at \$250) from Under Armor.

**ACTION**  
  
**ACCEPTANCE OF DONATION FROM UNDER ARMOR**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby accepts the donation of \$719 from the Quaker Athletic Booster Club to pay for Officials for Boys & Girls Varsity Basketball Scrimmages (\$160) and reimbursement to Ricky Albano, boys volleyball coach, for cost associated with attending the American Volleyball Coaches Association Coaching Clinic (\$559).

**ACCEPTANCE OF DONATION FROM QABC**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby accepts the donation of \$58.83 from an anonymous donor to pay for transportation of the modified cross country teams to their end of the year season celebration.

**ACCEPTANCE OF DONATION FROM DONOR**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby accepts the donation of up to \$4,000 from the Ellicott Elementary PTO to pay for transportation expenses for student field trips at Ellicott Elementary for the 2016-17 school year.

**ACCEPTANCE OF DONATION FROM ELLICOTT PTO**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby accepts the donation of \$1,000 from the Orchard Park Foundation for Academic Excellence to help support the cost of a speaker on mental health from Rachel's Challenge for Eggert Road and South Davis Elementary students.

**ACCEPTANCE OF DONATION FROM OPFAE**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby accepts the donation of \$230 to pay for transporting students from the high school business department to the 43 North Finals on October 27, 2016

**ACCEPTANCE OF DONATION FROM 43 NORTH**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby approves the change order with Progressive Roofing, Inc. for \$172,600 to replace the northwest 3<sup>rd</sup> floor section of the middle school roof.

**APPROVAL OF MIDDLE SCHOOL ROOF CHANGE ORDER**



**APPROVAL  
OF MIDDLE  
SCHOOL  
POOL WALL  
CHANGE ORDERS**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby approves the change orders (total 719,796) for the Middle School Pool West Wall as follows: Rodems (General Contractor) \$563,730, Window Specialists (Windows) \$35,303, Progressive Roofing (Roofing) \$25,134, MLP Construction (HVAC) \$62,755, Weydman Electric (Electric) \$12,874 and Cerrone (Abatement ) \$20,000

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**DECLARATION  
OF ATHLETIC  
EQUIPMENT  
AS SURPLUS**

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby declares 15 football helmets (10 years old and no longer useable), 1 wrestling scale (lost part, replacement part cost more than new scale) and 1 basketball cart (broken leg/wheel) as surplus.

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan to approve the following resolution:

**APPROVAL  
OF 2016-17  
CAPITAL OUTLAY  
PROJECT SEQRA**

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby approves the following 2016-17 Capital Project SEQRA:

**RESOLUTION OF THE ORCHARD PARK CENTRAL SCHOOL DISTRICT, ERIE COUNTY, NEW YORK (THE “DISTRICT”) CONFIRMING THE DISTRICT’S CAPITAL IMPROVEMENTS PROJECT INVOLVING MODEST SITE WORK (INVOLVING AN EMERGENCY GENERATOR AT THE WINDOM ELEMENTARY SCHOOL) TO BE A TYPE II ACTION UNDER SEQRA, AND CONFIRMING SUCH WORK AS CONSTITUTING A “CAPITAL OUTLAY PROJECT” UNDER THE DISTRICT’S APPROVED 2016-2017 ANNUAL BUDGET**

WHEREAS, the Orchard Park Central School District, Erie County, New York (the “District”), after consultation by District officials with the District’s retained architectural firm (Gordon W. Jones Associates, Architects), has determined to undertake, during the District’s current (2016-2017) fiscal year, a modest capital improvements project involving, but not limited to, the removal of an emergency generator located inside the Windom Elementary School building and the installation of a new emergency generator on a pad, and possibly with an enclosure, outside of the building, with associated electrical modifications (collectively, the “Project”); and

WHEREAS, the estimated maximum cost of the Project, including all incidental costs relating thereto, has been determined by Gordon W. Jones Associates, Architects to be \$100,000; and

WHEREAS, the qualified voters of the District have approved the District’s 2016-2017 budget calling for the application of \$100,000 to fund the Project, with the work on the Project to occur during the District’s 2016-2017 fiscal year; and

WHEREAS, Section 617.5 of the State Environmental Quality Review Act (“SEQRA”) regulations (6 NYCRR Part 617) provides that certain activities are Type II actions which are not subject to review under SEQRA, and that such activities include routine activities of educational institutions; maintenance or repair involving no substantial changes in an existing structure or facility; and replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site; and WHEREAS, the Project constitutes such routine activities of educational institutions; maintenance or repair activities; and/or in-kind, same-site replacement, rehabilitation or reconstruction activities; NOW THEREFORE, BE IT RESOLVED, that the District’s Board of Education hereby confirms and formalizes its prior determination that the Project is a Type II action, which is not subject to review under SEQRA, and that the Project will not result in a significant adverse impact on the environment; and be it further

**RESOLVED,** the Project shall continue to be funded by means of a “transfer to capital” (not exceeding \$100,000 in amount) in the District’s approved budget for the 2016-2017 fiscal year, so that such Project can be undertaken and completed in the District’s 2016-2017 fiscal year; and be it further **RESOLVED,** that this resolution shall take effect immediately.

**Yes - Nielsen, Tinnesz, Quinlan, Mateer, Kane, Eagan and Mahany**

No – n/a

**Motion Carried 7-0**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolutions:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby adopts the Post Issuance Tax Compliance and Continued Disclosure Compliance Procedures as written.

**RESOLUTION, DATED November 8, 2016, OF THE BOARD OF EDUCATION OF THE ORCHARD PARK CENTRAL SCHOOL DISTRICT, ERIE COUNTY, NEW YORK (THE "DISTRICT") ADOPTING POST-ISSUANCE TAX COMPLIANCE PROCEDURES**

WHEREAS, the Internal Revenue Service has issued regulations requiring issuers of tax-exempt obligations to certify on various forms that they actively monitor compliance with federal tax rules following the issuance of such obligations; and

WHEREAS, the District is an occasional issuer of tax-exempt obligations and thus is subject to the aforementioned compliance requirements which are critical for the preservation of the preferential tax status of those obligations; and

WHEREAS, it is therefore in the best interest of the District to adopt formal written procedures to ensure such compliance and to designate an official responsible for ensuring that such procedures are followed; and

WHEREAS, the District previously adopted interim post-issuance tax compliance procedures (the "Original Procedures"); and

WHEREAS, it was intended that the Original Procedures would be periodically updated and supplemented; and

WHEREAS, Hodgson Russ LLP, as bond counsel to the District, has prepared and has recommended that the District adopt updated and more comprehensive post-issuance tax compliance procedures;

NOW THEREFORE, BE IT RESOLVED, that the District hereby adopts the updated and more comprehensive post-issuance tax compliance procedures that are attached hereto as "Schedule A" and resolves to be governed thereby; and be it further

RESOLVED, that such Schedule A will be placed in its entirety in the official records, files and minutes of the District and adhered to going forward; and be it further

RESOLVED, that this resolution shall take effect immediately upon its adoption.

**Schedule A**

**ORCHARD PARK CENTRAL SCHOOL DISTRICT,  
ERIE COUNTY,  
NEW YORK**

**Post-Issuance Tax Compliance Procedures  
for Tax-Exempt Bonds and Notes**

**Statement of Purpose**

These Post-Issuance Tax Compliance Procedures (the "Procedures") set forth specific procedures of the **Orchard Park Central School District, Erie County, New York** (the "Issuer") designed to monitor, and ensure compliance with, certain requirements of the Internal Revenue Code of 1986, as amended (the "Code") and the related Treasury regulations, promulgated thereunder, post-issuance tax compliance with the Internal Revenue Service ("IRS") in connection with the Issuer's issuance of tax-exempt bonds and notes ("Obligations").

These Procedures describe various systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations to ensure that the interest on such Obligations is eligible for exclusion from gross income for federal income tax purposes. The federal tax law requirements applicable to the Obligations will be described in the tax questionnaire and/or tax certificate prepared by bond counsel and signed by officials of the Issuer. These Procedures establish a permanent, ongoing structure of practices that will facilitate compliance with the requirements for individual borrowings.

To ensure compliance with applicable federal tax requirements, the Issuer must monitor the various direct and indirect uses of proceeds of the obligation and the investment of such proceeds, including but not limited to:

- (1) Monitoring the use of financed property over the life of the obligation.
- (2) Determining the sources of debt service payments and security for the obligation.
- (3) Calculating the percentage of any nonqualified use of the financed property.
- (4) Calculating the yield on investments of proceeds.
- (5) Determining appropriate restrictions on investments.
- (6) Determining the amount of any arbitrage on the investments.
- (7) Calculating any arbitrage rebate payments that must be paid to the U.S. Treasury.

The Issuer recognizes that compliance with the pertinent law is an on-going process, necessary during the entire term of the Obligations. Accordingly, the implementation of the Procedures will require on-going monitoring and consultation with bond counsel and the Issuer's accountants and advisors.

#### **General Procedures**

The following procedures relate to monitoring post-issuance tax compliance generally.

A. **The Assistant Superintendent for Business & Support Services (currently, Jeffrey R. Petrus) (the "Compliance Officer")** shall be responsible for monitoring post-issuance tax compliance issues.

B. The Compliance Officer will coordinate procedures for record retention and review of such records.

C. All documents and other records relating to Obligations must be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable IRS requirements, such as those contained in Revenue Procedure 97-22 (see attached).

D. The Compliance Officer shall be aware of remedial actions under Section 1.141-12 of the Treasury Regulations (see attached) and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program (VCAP) and take such corrective action when necessary and appropriate.

E. The Compliance Officer will review post-issuance tax compliance procedures and systems on a periodic basis, but not less than annually.

F. The Compliance Officer will be responsible for training any designated officer or employee who is delegated any responsibility for monitoring compliance pursuant to this procedure. To the extent the Compliance Officer needs training or has any questions with respect to any item in this procedure, he or she should contact bond counsel and/or Issuer's accountants and advisors. The IRS recognizes that the Compliance Officer and any delegated individual are not expected to act as lawyers who know the proper response to all compliance situations that may arise, but they should be familiar enough with federal tax issues that they know when to ask for legal or other compliance advice.

#### **Issuance of Obligations: Documents and Records**

With respect to each issue of Obligations, the Compliance Officer will:

A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the "Transcript").

B. Confirm that the applicable information reports (e.g., Form 8038 series) for such issue are filed timely with the IRS. Issuer should consult with their accountants and/or bond counsel with questions regarding the filing of such forms.

C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations.

#### **Arbitrage**

The following procedures relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Compliance Officer will:

A. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.

B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the Transcript.

C. Maintain a system for tracking investment earnings on the proceeds of the Obligations.

D. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.

E. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations (see attached).

F. Monitor compliance with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.

G. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.

H. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.

I. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

J. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.

K. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.

L. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.

M. Arrange for timely computation and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable.

**Private Activity: Use of Proceeds**

The following procedures relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Compliance Officer will:

A. Maintain records for determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.

B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

C. Maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.

D. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.

E. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:

1. Sale of the facilities, including sale of capacity rights;
2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
5. Joint-ventures, limited liability companies or partnership arrangements;
6. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);

7. Development agreements which provide for guaranteed payments or property values from a developer;
8. Grants or loans made to private entities, including special assessment agreements; and
9. Naming rights arrangements.

Monitoring of private use should include the following:

1. Procedures to review the amount of existing private use on a periodic basis but not less than annually; and
2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.

If the Compliance Officer identifies private use of facilities financed with tax-exempt debt, the Compliance Officer will consult with bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

#### **Reissuance**

The following procedures relate to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes.

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

#### **Record Retention**

The following procedures relate to retention of records relating to the Obligations issued.

The Compliance Officer will:

- A. Coordinate with staff regarding the records to be maintained by the Issuer to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.
- C. Coordinate with staff to generally maintain the following:
  1. The Transcript relating to the transaction (including any arbitrage or other tax questionnaire, tax regulatory agreement, and the bond counsel opinion);
  2. Documentation evidencing expenditure of proceeds of the issue;
  3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation;
  4. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);
  5. Documentation evidencing all sources of payment or security for the issue; and
  6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.
- E. Keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

### **REFERENCE MATERIALS**

#### **Revenue Procedures**

**Rev. Proc. 97-22, 1997-1 CB 652, 3/13/1997, IRC Sec(s). 6001**

#### **SECTION 1 . PURPOSE**

This revenue procedure provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media, such as an optical disk. Records maintained in an electronic storage system that complies with the requirements of this revenue procedure will constitute records within the meaning of § 6001 of the Internal Revenue Code.

## **SECTION 2 . BACKGROUND**

.01 Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever necessary, the Secretary may require any person, by notice served upon that person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not that person is liable for tax.

.02 Section 1.6001-1(a) of the Income Tax Regulations provides that, except for farmers and wage-earners, any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

.03 Section 1.6001-1(e) provides that the books or records required by § 6001 must be kept available at all times for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law.

## **SECTION 3. SCOPE**

.01 This revenue procedure applies to taxpayers who maintain books and records using an "electronic storage system." An electronic storage system is a system to prepare, record, transfer, index, store, preserve, retrieve, and reproduce books and records by either:

- (1) electronically imaging hardcopy documents to an electronic storage media; or
- (2) transferring computerized books and records to an electronic storage media using a technique such as "COLD" (computer output to laser disk), which allows books and records to be viewed or reproduced without the use of the original program.

.02 The requirements of this revenue procedure pertain to all matters under the jurisdiction of the Commissioner of Internal Revenue including, but not limited to, income, excise, employment, and estate and gift taxes, as well as employee plans and exempt organizations.

.03 A taxpayer's use of a third party (such as a service bureau or timesharing service) to provide the taxpayer with an electronic storage system for its books and records does not relieve the taxpayer of the responsibilities described in this revenue procedure.

.04 Except as otherwise provided in this revenue procedure, all requirements of § 6001 that apply to hardcopy books and records apply as well to books and records that are stored electronically pursuant to this revenue procedure.

## **SECTION 4. ELECTRONIC STORAGE SYSTEM REQUIREMENTS**

### *.01 General Requirements.*

(1) An electronic storage system must ensure an accurate and complete transfer of the hardcopy or computerized books and records to an electronic storage media. The electronic storage system must also index, store, preserve, retrieve, and reproduce the electronically stored books and records.

(2) An electronic storage system must include:

(a) reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system;

(b) reasonable controls to prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records;

(c) an inspection and quality assurance program evidenced by regular evaluations of the electronic storage system including periodic checks of electronically stored books and records;

(d) a retrieval system that includes an indexing system (within the meaning of section 4.02 of this revenue procedure); and

(e) the ability to reproduce legible and readable hardcopies (within the meaning of section 4.01(3) of this revenue procedure) of electronically stored books and records.

3) All books and records reproduced by the electronic storage system must exhibit a high degree of legibility and readability when displayed on a video display terminal and when reproduced in hardcopy. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a group of letters or numerals as words or complete numbers. The taxpayer must ensure that the reproduction process maintains the legibility and readability of the electronically stored document.

(4) The information maintained in an electronic storage system must provide support for the taxpayer's books and records (including books and records in an automated data processing system). For example, the information maintained in an electronic storage system and the taxpayer's books and records must be cross-referenced in a manner that provides an audit trail between the general ledger and the source document(s).

(5) For each electronic storage system used, the taxpayer must maintain, and make available to the Service upon request, complete descriptions of:

(a) the electronic storage system, including all procedures relating to its use; and

(b) the indexing system (see section 4.02 of this revenue procedure).

(6) At the time of an examination, or for the tests described in section 5 of this revenue procedure, the taxpayer must:

(a) retrieve and reproduce (including hardcopies if requested) electronically stored books and records; and

(b) provide the Service with the resources (e.g., appropriate hardware and software, personnel, documentation, etc.) necessary to locate, retrieve, read, and reproduce (including hardcopies) any electronically stored books and records.

(7) An electronic storage system must not be subject, in whole or in part, to any agreement (such as a contract or license) that would limit or restrict the Service's access to and use of the electronic storage system on the taxpayer's premises (or any other place where the electronic storage system is maintained), including personnel, hardware, software, files, indexes, and software documentation.

(8) The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of the Internal Revenue laws under § 1.6001-1(e).

(9) The taxpayer may use more than one electronic storage system. In that event, each electronic storage system must meet the requirements of this revenue procedure. Electronically stored books and records that are contained in an electronic storage system with respect to which the taxpayer ceases to maintain the hardware and the software necessary to satisfy the conditions of this revenue procedure will be deemed destroyed by the taxpayer, unless the electronically stored books and records remain available to the Service in conformity with this revenue procedure.

(10) Taxpayers may use reasonable data compression or formatting technologies as part of their electronic storage system so long as the requirements of this revenue procedure are satisfied.

*.02 Requirements of an Indexing System.*

(1) For purposes of this revenue procedure, an "indexing system" is a system that permits the identification and retrieval for viewing or reproducing of relevant books and records maintained in an electronic storage system. For example, an indexing system might consist of assigning each electronically stored document a unique identification number and maintaining a separate database that contains descriptions of all electronically stored books and records along with their identification numbers. In addition, any system used to maintain, organize, or coordinate multiple electronic storage systems is treated as an indexing system under this revenue procedure. The requirement to maintain an indexing system will be satisfied if the indexing system is functionally comparable to a reasonable hardcopy filing system. The requirement to maintain an indexing system does not require that a separate electronically stored books and records description database be maintained if comparable results can be achieved without a separate description database.

(2) Reasonable controls must be undertaken to protect the indexing system against the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of any entries.

*.03 Recommended Practices.* The implementation of records management practices is a business decision that is solely within the discretion of the taxpayer. Records management practices may include the labeling of electronically stored books and records, providing a secure storage environment, creating back-up copies, selecting an off-site storage location, retaining hardcopies of books or records that are illegible or that cannot be accurately or completely transferred to an electronic storage system, and testing to confirm records integrity.

## **SECTION 5. DISTRICT DIRECTOR TESTING**

.01 The District Director may periodically initiate tests of a taxpayer's electronic storage system. These tests may include an evaluation (by actual use) of a taxpayer's equipment and software, as well as the procedures used by a taxpayer to prepare, record, transfer, index, store, preserve, retrieve, and reproduce electronically stored documents. In some instances, the District Director may choose to review the internal controls, security procedures, and documentation associated with the taxpayer's electronic storage system.

.02 The tests described in section 5.01 of this revenue procedure are not an "examination," "investigation," or "inspection" of the books and records within the meaning of § 7605(b), or a prior audit for purposes of § 530 of the Revenue Act of 1978, 1978-3 (Vol. I) C.B. 119, as amended by § 1122 of the Small Business Job Protection Act of 1996, because these tests are not directly related to the determination of the tax liability of a taxpayer for a particular taxable period.

.03 The District Director must inform the taxpayer of the results of any tests under this section.

## **SECTION 6. COMPLIANCE**

.01 A taxpayer's electronic storage system that meets the requirements of this revenue procedure will be treated as being in compliance with the recordkeeping requirements of § 6001 and the regulations thereunder.

.02 A taxpayer's electronic storage system that fails to meet the requirements of this revenue procedure may be treated as not being in compliance with the recordkeeping requirements of § 6001 and the regulations thereunder. See section 9 of this revenue procedure for applicable penalties. However, even though a taxpayer's electronic storage system fails to meet the requirements of this revenue procedure, the penalties described in section 9 of this revenue procedure may not apply if the taxpayer maintains its original books and records, or maintains its books and records in micrographic form in conformity with Rev. Proc. 81-46, 1981-2 C.B. 621.

## **SECTION 7. DESTRUCTION AND DELETION OF ORIGINAL BOOKS AND RECORDS**

This revenue procedure permits the destruction of the original hardcopy books and records and the deletion of the original computerized records (other than "machine-sensible" records required to be retained by Rev. Proc. 91-59, 1991-2 C.B. 841), after the taxpayer:

(1) has completed its own testing of the electronic storage system that establishes that hardcopy or computerized books and records are being reproduced in compliance with all the provisions of this revenue procedure; and

(2) has instituted procedures that ensure its continued compliance with all the provisions of this revenue procedure.

## **SECTION 8. IMPACT ON MACHINE-SENSIBLE RECORDS**

The provisions of this revenue procedure regarding electronically stored books and records do not relieve taxpayers of the responsibility of retaining any other books and records required to be retained under § 6001. Such other books and records may include "machine-sensible" records required to be retained by Rev. Proc. 91-59 in connection with the taxpayer's use of an automatic data processing (ADP) system.

## **SECTION 9. PENALTIES**

The District Director may issue a Notice of Inadequate Records pursuant to § 1.6001-1(d) if the taxpayer's books and records are available only as electronically stored books and records and the taxpayer's electronic storage system fails to meet the requirements of this revenue procedure. Taxpayers whose electronic storage system fails to meet the requirements of this revenue procedure may also be subject to applicable penalties under subtitle F of the Code, including the § 6662(a) accuracy-related civil penalty and the § 7203 willful failure criminal penalty.

## **SECTION 10. INTERNAL REVENUE SERVICE OFFICE CONTACT**

.01 Questions regarding this revenue procedure should be directed to the Office of the Assistant Commissioner (Examination). The telephone number for this office is (202) 622-5480 (not a toll-free number). Written questions should be addressed to: Assistant Commissioner (Examination)



Attention: CP:EX, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224  
02 Questions regarding the application of this revenue procedure to a specific factual situation should be directed to the appropriate District Director.

## **SECTION 11. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1533.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information are in sections 4 and 5 of this revenue procedure. This information is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of § 6001. The collections of information are mandatory for a taxpayer who chooses to electronically store its books and records. The likely respondents are individuals, state or local governments, farms, business or other for-profit institutions, federal agencies or employees, nonprofit institutions, and small businesses or organizations.

The estimated total annual recordkeeping burden is 1,000,400 hours.

The estimated annual burden per recordkeeper will vary from 20 hours to 22 hours, depending on individual circumstances, with an estimated average of 20 hours. The estimated number of recordkeepers is 50,000.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Federal Regulations**

#### **Reg §1.141-12. Remedial actions.**

(a) Conditions to taking remedial action. An action that causes an issue to meet the private business tests or the private loan financing test is not treated as a deliberate action if the issuer takes a remedial action described in paragraph (d), (e), or (f) of this section with respect to the nonqualified bonds and if all of the requirements in paragraphs (a) (1) through (5) of this section are met.

(1) Reasonable expectations test met. The issuer reasonably expected on the issue date that the issue would meet neither the private business tests nor the private loan financing test for the entire term of the bonds. For this purpose, if the issuer reasonably expected on the issue date to take a deliberate action prior to the final maturity date of the issue that would cause either the private business tests or the private loan financing test to be met, the term of the bonds for this purpose may be determined by taking into account a redemption provision if the provisions of §1.141-2(d)(2)(ii) (A) through (C) are met.

(2) Maturity not unreasonably long. The term of the issue must not be longer than is reasonably necessary for the governmental purposes of the issue (within the meaning of §1.148-1(c)(4)). Thus, this requirement is met if the weighted average maturity of the bonds of the issue is not greater than 120 percent of the average reasonably expected economic life of the property financed with the proceeds of the issue as of the issue date.

(3) Fair market value consideration. Except as provided in paragraph (f) of this section, the terms of any arrangement that results in satisfaction of either the private business tests or the private loan financing test are bona fide and arm's-length, and the new user pays fair market value for the use of the financed property. Thus, for example, fair market value may be determined in a manner that takes into account restrictions on the use of the financed property that serve a bona fide governmental purpose.

(4) Disposition proceeds treated as gross proceeds for arbitrage purposes. The issuer must treat any disposition proceeds as gross proceeds for purposes of section 148. For purposes of eligibility for temporary periods under section 148(c) and exemptions from the requirement of section 148(f) the issuer may treat the date of receipt of the disposition proceeds as the issue date of the bonds and disregard the receipt of disposition proceeds for exemptions based on expenditure of proceeds under §1.148-7 that were met before the receipt of the disposition proceeds.

(5) Proceeds expended on a governmental purpose. Except for a remedial action under paragraph (d) of this section, the proceeds of the issue that are affected by the deliberate action must have been expended on a governmental purpose before the date of the deliberate action.

b) Effect of a remedial action—(1) In general. The effect of a remedial action is to cure use of proceeds that causes the private business use test or the private loan financing test to be met. A remedial action does not affect application of the private security or payment test.

(2) Effect on bonds that have been advance refunded. If proceeds of an issue were used to advance refund another bond, a remedial action taken with respect to the refunding bond proportionately reduces the amount of proceeds of the advance refunded bond that is taken into account under the private business use test or the private loan financing test.

(c) Disposition proceeds—(1) Definition. Disposition proceeds are any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue.

(2) Allocating disposition proceeds to an issue. In general, if the requirements of paragraph (a) of this section are met, after the date of the disposition, the proceeds of the issue allocable to the transferred property are treated as financing the disposition proceeds rather than the transferred property. If a disposition is made pursuant to an installment sale, the proceeds of the issue continue to be allocated to the transferred property. If an issue does not meet the requirements for remedial action in paragraph (a) of this section or the issuer does not take an appropriate remedial action, the proceeds of the issue are allocable to either the transferred property or the disposition proceeds, whichever allocation produces the greater amount of private business use and private security or payments.

(3) Allocating disposition proceeds to different sources of funding. If property has been financed by different sources of funding, for purposes of this section, the disposition proceeds from that property are first allocated to the outstanding bonds that financed that property in proportion to the principal amounts of those outstanding bonds. In no event may disposition proceeds be allocated to bonds that are no longer outstanding or to a source of funding not derived from a borrowing (such as revenues of the issuer) if the disposition proceeds are not greater than the total principal amounts of the outstanding bonds that are allocable to that property. For purposes of this paragraph (c)(3), principal amount has the same meaning as in §1.148-9(b)(2) and outstanding bonds do not include advance refunded bonds.

(d) Redemption or defeasance of non-qualified bonds—(1) In general. The requirements of this paragraph (d) are met if all of the nonqualified bonds of the issue are redeemed. Proceeds of tax-exempt bonds must not be used for this purpose, unless the tax-exempt bonds are qualified bonds, taking into account the purchaser's use of the facility. Except as provided in paragraph (d)(3) of this section, if the bonds are not redeemed within 90 days of the date of the deliberate action, a defeasance escrow must be established for those bonds within 90 days of the deliberate action.

(2) Special rule for dispositions for cash. If the consideration for the disposition of financed property is exclusively cash, the requirements of this paragraph (d) are met if the disposition proceeds are used to redeem a pro rata portion of the nonqualified bonds at the earliest call date after the deliberate action. If the bonds are not redeemed within 90 days of the date of the deliberate action, the disposition proceeds must be used to establish a defeasance escrow for those bonds within 90 days of the deliberate action.

(3) Anticipatory remedial action. The requirements of paragraphs (d)(1) and (2) of this section for redemption or defeasance of the nonqualified bonds within 90 days of the deliberate action are met if the issuer declares its official intent to redeem or defease all of the bonds that would become nonqualified bonds in the event of a subsequent deliberate action that would cause the private business tests or the private loan financing test to be met and redeems or defeases such bonds prior to that deliberate action. The issuer must declare its official intent on or before the date on which it redeems or defeases such bonds, and the declaration of intent must identify the financed property or loan with respect to which the anticipatory remedial action is being taken and describe the deliberate action that potentially may result in the private business tests being met (for example, sale of financed property that the buyer may then lease to a nongovernmental person). Rules similar to those in § 1.150-2(e) (regarding official intent for reimbursement bonds) apply to declarations of intent under this paragraph (d)(3), including deviations in the descriptions of the project or loan and deliberate action and the reasonableness of the official intent.

(4) Notice of defeasance. The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date the defeasance escrow is established.

(5) Special limitation. The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (d) if the period between the issue date and the first call date of the bonds is more than 10 1/2 years.

(6) Defeasance escrow defined. A defeasance escrow is an irrevocable escrow established to redeem bonds on their earliest call date in an amount that, together with investment earnings, is sufficient to pay all the principal of, and interest and call premium on, bonds from the date the escrow is established to the earliest call date. The escrow may not be invested in higher yielding investments or in any investment under which the obligor is a user of the proceeds of the bonds.

(e) Alternative use of disposition proceeds—(1) In general. The requirements of this paragraph (e) are met if—

(i) The deliberate action is a disposition for which the consideration is exclusively cash;

(ii) The issuer reasonably expects to expend the disposition proceeds within two years of the date of the deliberate action;

(iii) The disposition proceeds are treated as proceeds for purposes of section 141 and are used in a manner that does not cause the issue to meet either the private business tests or the private loan financing test, and the issuer does not take any action subsequent to the date of the deliberate action to cause either of these tests to be met; and

(iv) If the issuer does not use all of the disposition proceeds for an alternative use described in paragraph (e)(1)(iii) of this section, the issuer uses those remaining disposition proceeds for a remedial action that meets paragraph (d) of this section.

(2) Special rule for use by 501(c)(3) organizations. If the disposition proceeds are to be used by a 501(c)(3) organization, the nonqualified bonds must in addition be treated as reissued for purposes of sections 141, 145, 147, 149, and 150 and, under this treatment, satisfy all of the applicable requirements for qualified 501(c)(3) bonds. Thus, beginning on the date of the deliberate action, nonqualified bonds that satisfy these requirements must be treated as qualified 501(c)(3) bonds for all purposes, including sections 145(b) and 150(b).

(f) Alternative use of facility. The requirements of this paragraph (f) are met if—

(1) The facility with respect to which the deliberate action occurs is used in an alternative manner (for example, used for a qualifying purpose by a non-governmental person or used by a 501(c)(3) organization rather than a governmental person);

(2) The nonqualified bonds are treated as reissued, as of the date of the deliberate action, for purposes of sections 55 through 59 and 141, 142, 144, 145, 146, 147, 149 and 150, and under this treatment, the nonqualified bonds satisfy all the applicable requirements for qualified bonds throughout the remaining term of the nonqualified bonds;

(3) The deliberate action does not involve a disposition to a purchaser that finances the acquisition with proceeds of another issue of tax-exempt bonds; and

(4) Any disposition proceeds other than those arising from an agreement to provide services (including disposition proceeds from an installment sale) resulting from the deliberate action are used to pay the debt service on the bonds on the next available payment date or, within 90 days of receipt, are deposited into an escrow that is restricted to the yield on the bonds to pay the debt service on the bonds on the next available payment date.

(g) Rules for deemed reissuance. For purposes of determining whether bonds that are treated as reissued under paragraphs (e) and (f) of this section are qualified bonds—

(1) The provisions of the Code and regulations thereunder in effect as of the date of the deliberate action apply; and

(2) For purposes of paragraph (f) of this section, section 147(d) (relating to the acquisition of existing property) does not apply.

(h) Authority of Commissioner to provide for additional remedial actions. The Commissioner may, by publication in the FEDERAL REGISTER or the Internal Revenue Bulletin, provide additional remedial actions, including making a remedial payment to the United States, under which a subsequent action will not be treated as a deliberate action for purposes of §1.141-2.

(i) Effect of remedial action on continuing compliance. Solely for purposes of determining whether deliberate actions that are taken after a remedial action cause an issue to meet the private business tests or the private loan financing test—

(1) If a remedial action is taken under paragraph (d) of this section, the amount of private business use or private loans resulting from the deliberate action that is taken into account for purposes of determining whether the bonds are private activity bonds is that portion of the remaining bonds that is used for private business use or private loans (as calculated under paragraph (j) of this section);

(2) If a remedial action is taken under paragraph (e) or (f) of this section, the amount of private business use or private loans resulting from the deliberate action is not taken into account for purposes of determining whether the bonds are private activity bonds; and

(3) After a remedial action is taken, the amount of disposition proceeds is treated as equal to the proceeds of the issue that had been allocable to the transferred property immediately prior to the disposition. See paragraph (k) of this section, Example 5.

(j) Nonqualified bonds—(1) Amount of nonqualified bonds. The nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not meet the private business use test or private loan financing test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the one-year period in which the deliberate action occurs.

(2) Allocation of nonqualified bonds. Allocations of nonqualified bonds must be made on a pro rata basis, except that, for purposes of paragraph (d) of this section (relating to redemption or defeasance), an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer in accordance with this section, is not greater than (ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

(k) Examples. The following examples illustrate the application of this section:

Example 1. Disposition proceeds less than outstanding bonds used to retire bonds. On June 1, 1997, City C issues 30-year bonds with an issue price of \$10 million to finance the construction of a hospital building. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the building. On the issue date, C reasonably expects that it will be the only user of the building for the entire term of the bonds. Six years after the issue date, C sells the building to Corporation P for \$5 million. The sale price is the fair market value of the building, as verified by an independent appraiser. C uses all of the \$5 million disposition proceeds to immediately retire a pro rata portion of the bonds. The sale does not cause the bonds to be private activity bonds because C has taken a remedial action described in paragraph (d) of this section so that P is not treated as a private business user of bond proceeds.

Example 2. Lease to nongovernmental person. The facts are the same as in Example 1, except that instead of selling the building, C, 6 years after the issue date, leases the building to P for 7 years and uses other funds to redeem all of the \$10 million outstanding bonds within 90 days of the deliberate act. The bonds are not treated as private activity bonds because C has taken the remedial action described in paragraph (d) of this section.

Example 3. Sale for less than fair market value. The facts are the same as in Example 1, except that the fair market value of the building at the time of the sale to P is \$6 million. Because the transfer was for less than fair market value, the bonds are ineligible for the remedial actions under this section. The bonds are private activity bonds because P is treated as a user of all of the proceeds and P makes a payment (\$6 million) for this use that is greater than 10 percent of the debt service on the bonds, on a present value basis.

Example 4. Fair market value determined taking into account governmental restrictions. The facts are the same as in Example 1, except that the building was used by C only for hospital purposes and C determines to sell the building subject to a restriction that it be used only for hospital purposes. After conducting a public bidding procedure as required by state law, the best price that C is able to obtain for the building subject to this restriction is \$4.5 million from P. C uses all of the \$4.5 million disposition proceeds to immediately retire a pro rata portion of the bonds.

The sale does not cause the bonds to be private activity bonds because C has taken a remedial action described in paragraph (d) of this section so that P is not treated as a private business user of bond proceeds.

Example 5. Alternative use of disposition proceeds. The facts are the same as in Example 1, except that C reasonably expects on the date of the deliberate action to use the \$5 million disposition proceeds for another governmental purpose (construction of governmentally owned roads) within two years of receipt, rather than using the \$5 million to redeem outstanding bonds. C treats these disposition proceeds as gross proceeds for purposes of section 148. The bonds are not private activity bonds because C has taken a remedial action described in paragraph (e) of this section. After the date of the deliberate action, the proceeds of all of the outstanding bonds are treated as used for the construction of the roads, even though only \$5 million of disposition proceeds was actually used for the roads.

Example 6. Alternative use of financed property. The facts are the same as in Example 1, except that C determines to lease the hospital building to Q, an organization described in section 501(c)(3), for a term of 10 years rather than to sell the building to P. In order to induce Q to provide hospital services, C agrees to lease payments that are less than fair market value. Before entering into the lease, an applicable elected representative of C approves the lease after a noticed public hearing. As of the date of the deliberate action, the issue meets all the requirements for qualified 501(c)(3) bonds, treating the bonds as reissued on that date. For example, the issue meets the two percent restriction on use of proceeds of finance issuance costs of section 147(g) because the issue pays no costs of issuance from disposition proceeds in connection with the deemed reissuance. C and Q treat the bonds as qualified 501(c)(3) bonds for all purposes commencing with the date of the deliberate action. The bonds are treated as qualified 501(c)(3) bonds commencing with the date of the deliberate action.

Example 7. Deliberate action before proceeds are expended on a governmental purpose. County J issues bonds with proceeds of \$10 million that can be used only to finance a correctional facility. On the issue date of the bonds, J reasonably expects that it will be the sole user of the bonds for the useful life of the facility. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the facility. After the issue date of the bonds, but before the facility is placed in service, J enters into a contract with the federal government pursuant to which the federal government will make a fair market value, lump sum payment equal to 25 percent of the cost of the facility. In exchange for this payment, J provides the federal government with priority rights to use of 25 percent of the facility. J uses the payment received from the federal government to defease the nonqualified bonds. The agreement does not cause the bonds to be private activity bonds because J has taken a remedial action described in paragraph (d) of this section. See paragraph (a)(5) of this section.

Example 8. Compliance after remedial action. In 2007, City G issues bonds with proceeds of \$10 million to finance a courthouse. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the courthouse. City G enters into contracts with nongovernmental persons that result in private business use of 10 percent of the courthouse per year. More than 10 percent of the debt service on the issue is secured by private security or payments. In 2019, in a bona fide and arm's length arrangement, City G enters into a management contract with a nongovernmental person that results in private business use of an additional 40 percent of the courthouse per year during the remaining term of the bonds. City G immediately redeems the nonqualified bonds, or 44.44 percent of the outstanding bonds. This is the portion of the outstanding bonds that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not meet the private business use test, treating the amount of private business use as the greatest percentage of private business use in any one-year period commencing with the one-year period in which the deliberate action occurs (50 percent). This percentage is computed by dividing the percentage of the facility used for a government use (50 percent) by the minimum amount of government use required (90 percent), and subtracting the resulting percentage (55.56 percent) from 100 percent (44.44 percent). For purposes of subsequently applying section 141 to the issue, City G may continue to use all of the proceeds of the outstanding bonds in the same manner (that is, for the courthouse and the private business use) without causing the issue to meet the private business use test. The issue continues to meet the private security or payment test. The result would be the same if City G, instead of redeeming the bonds, established a defeasance escrow for those bonds, provided that the requirement of paragraph (d)(5) of this section is met. If City G takes a subsequent deliberate action that results in further private business use, it must take into account 10 percent of private business use in addition to that caused by the second deliberate act.

[T.D. 8712, 62 FR 2298, Jan. 16, 1997, as amended by T.D. 9741, 80 FR 65637, Oct. 27, 2015]

**Reg §1.148-6. General allocation and accounting rules.**

(a) *In general*—(1) *Reasonable accounting methods required.* An issuer may use any reasonable, consistently applied accounting method to account for gross proceeds, investments, and expenditures of an issue.

(2) *Bona fide deviations from accounting method.* An accounting method does not fail to be reasonable and consistently applied solely because a different accounting method is used for a bona fide governmental purpose to consistently account for a particular item. Bona fide governmental purposes may include special State law restrictions imposed on specific funds or actions to avoid grant forfeitures.

(3) *Absence of allocation and accounting methods.* If an issuer fails to maintain books and records sufficient to establish the accounting method for an issue and the allocation of the proceeds of that issue, the rules of this section are applied using the specific tracing method. This paragraph (a)(3) applies to bonds issued on or after May 16, 1997.

(b) *Allocation of gross proceeds to an issue*—(1) *One-issue rule and general ordering rules.* Except as otherwise provided, amounts are allocable to only one issue at a time as gross proceeds, and if amounts simultaneously are proceeds of one issue and replacement proceeds of another issue, those amounts are allocable to the issue of which they are proceeds. Amounts cease to be allocated to an issue as proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are allocated to transferred proceeds of another issue, or cease to be allocated to that issue at retirement of the issue or under the universal cap of paragraph (b)(2) of this section. Amounts cease to be allocated to an issue as replacement proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are no longer used in a manner that causes those amounts to be replacement proceeds of that issue, or cease to be allocated to that issue because of the retirement of the issue or the application of the universal cap under paragraph (b)(2) of this section. Amounts that cease to be allocated to an issue as gross proceeds are eligible for allocation to another issue. Under § 1.148-10(a), however, the rules in this paragraph (b)(1) do not apply in certain cases involving abusive arbitrage devices.

(2) *Universal cap on value of nonpurpose investments allocated to an issue*—(i) *Application.* The rules in this paragraph (b)(2) provide an overall limitation on the amount of gross proceeds allocable to an issue. Although the universal cap generally may be applied at any time in the manner described in this paragraph (b)(2), it need not be applied on any otherwise required date of application if its application on that date would not result in a reduction or reallocation of gross proceeds of an issue. For this purpose, if an issuer reasonably expects as of the issue date that the universal cap will not reduce the amount of gross proceeds allocable to the issue during the term of the issue, the universal cap need not be applied on any date on which an issue actually has all of the following characteristics—

(A) No replacement proceeds are allocable to the issue, other than replacement proceeds in a bona fide debt service fund or a reasonably required reserve or replacement fund;

(B) The net sale proceeds of the issue—

(1) Qualified for one of the temporary periods available for capital projects, restricted working capital expenditures, or pooled financings under § 1.148-2(e)(2), (e)(3), or (e)(4), and those net sales proceeds were in fact allocated to expenditures prior to the expiration of the longest applicable temporary period; or

(2) were deposited in a refunding escrow and expended as originally expected;

(C) The issue does not refund a prior issue that, on any transfer date, has unspent proceeds allocable to it;

(D) None of the bonds are retired prior to the date on which those bonds are treated as retired in computing the yield on the issue; and

(E) No proceeds of the issue are invested in qualified student loans or qualified mortgage loans.

(ii) *General rule.* Except as otherwise provided below, amounts that would otherwise be gross proceeds allocable to an issue are allocated (and remain allocated) to the issue only to the extent that the value of the nonpurpose investments allocable to those gross proceeds does not exceed the value of all outstanding bonds of the issue. For this purpose, gross proceeds allocable to cash, tax-exempt bonds that would be nonpurpose investments (absent section 148(b)(3)(A)), qualified student loans, and qualified mortgage loans are treated as nonpurpose investments. The values of bonds and investments are determined under § 1.148-4(e) and § 1.148-5(d), respectively. The value of all outstanding bonds of the issue is referred to as the *universal cap*. Thus, for example, the universal cap for an issue of plain par bonds is equal to the outstanding stated principal amount of those bonds plus accrued interest.

(iii) *Determination and application of the universal cap.* Except as otherwise provided, beginning with the first bond year that commences after the second anniversary of the issue date, the amount of the universal cap and the value of the nonpurpose investments must be determined as of the first day of each bond year. For refunding and refunded issues, the cap and values must be determined as of each date that, but for this paragraph (b)(2), proceeds of the refunded issue would become transferred proceeds of the refunding issue, and need not otherwise be determined in the bond year in which that date occurs. All values are determined as of the close of business on each determination date, after giving effect to all payments on bonds and payments for and receipts on investments on that date.

(iv) *General ordering rule for allocations of amounts in excess of the universal cap—(A) In general.* If the value of all nonpurpose investments allocated to the gross proceeds of an issue exceeds the universal cap for that issue on a date as of which the cap is determined under paragraph (b)(2)(iii) of this section, nonpurpose investments allocable to gross proceeds necessary to eliminate that excess cease to be allocated to the issue, in the following order of priority—

- (1) First, nonpurpose investments allocable to replacement proceeds;
- (2) Second, nonpurpose investments allocable to transferred proceeds; and
- (3) Third, nonpurpose investments allocable to sale proceeds and investment proceeds.

(B) *Re-allocation of certain amounts.* Except as provided in § 1.148-9(b)(3), amounts that cease to be allocated to an issue as a result of the application of the universal cap may only be allocated to another issue as replacement proceeds.

(C) *Allocations of portions of investments.* Portions of investments to which this paragraph (b)(2)(iv) applies are allocated under either the ratable method or the representative method in the same manner as allocations of portions of investments to transferred proceeds under § 1.148-9(c).

(v) *Nonpurpose investments in a bona fide debt service fund not counted.* For purposes of this paragraph (b)(2), nonpurpose investments allocated to gross proceeds in a bona fide debt service fund for an issue are not taken into account in determining the value of the nonpurpose investments, and those nonpurpose investments remain allocated to the issue.

(c) *Fair market value limit on allocations to nonpurpose investments.* Upon a purchase or sale of a nonpurpose investment, gross proceeds of an issue are not allocated to a payment for that nonpurpose investment in an amount greater than, or to a receipt from that nonpurpose investment in an amount less than, the fair market value of the nonpurpose investment as of the purchase or sale date. For purposes of this paragraph (c) only, the fair market value of a nonpurpose investment is adjusted to take into account qualified administrative costs allocable to the investment.

(d) *Allocation of gross proceeds to expenditures—(1) Expenditures in general—(i) General rule.* Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include any of the following methods if consistently applied: a specific tracing method; a gross proceeds spent first method; a first-in, first-out method; or a ratable allocation method.

(ii) *General limitation.* An allocation of gross proceeds of an issue to an expenditure must involve a current outlay of cash for a governmental purpose of the issue. A *current outlay of cash* means an outlay reasonably expected to occur not later than 5 banking days after the date as of which the allocation of gross proceeds to the expenditure is made.

(iii) *Timing.* An issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier. This paragraph (d)(1)(iii) applies to bonds issued on or after May 16, 1997.

(2) *Treatment of gross proceeds invested in purpose investments*—(i) *In general.* Gross proceeds of an issue invested in a purpose investment are allocated to an expenditure on the date on which the conduit borrower under the purpose investment allocates the gross proceeds to an expenditure in accordance with this paragraph (d).

(ii) *Exception for qualified mortgage loans and qualified student loans.* If gross proceeds of an issue are allocated to a purpose investment that is a qualified mortgage loan or a qualified student loan, those gross proceeds are allocated to an expenditure for the governmental purpose of the issue on the date on which the issuer allocates gross proceeds to that purpose investment.

(iii) *Continuing allocation of gross proceeds to purpose investments.* Regardless of whether gross proceeds of a conduit financing issue invested in a purpose investment have been allocated to an expenditure under paragraph (d)(2) (i) or (ii) of this section, with respect to the actual issuer those gross proceeds continue to be allocated to the purpose investment until the sale, discharge, or other disposition of the purpose investment.

(3) *Expenditures for working capital purposes*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3) or paragraph (d)(4) of this section, proceeds of an issue may only be allocated to working capital expenditures as of any date to the extent that those working capital expenditures exceed available amounts (as defined in paragraph (d)(3)(iii) of this section) as of that date (*i.e.*, a “proceeds-spent-last method”). For this purpose, proceeds include replacement proceeds described in § 1.148-1(c)(4).

(ii) *Exceptions*—(A) *General de minimis exception.* Paragraph (d)(3)(i) of this section does not apply to expenditures to pay—

(1) Any issuance costs of the issue or any qualified administrative costs within the meaning of §§ 1.148-5(e)(2) (i) or (ii), or § 1.148-5(e)(3)(ii)(A);

(2) Fees for qualified guarantees of the issue or payments for a qualified hedge for the issue;

(3) Interest on the issue for a period commencing on the issue date and ending on the date that is the later of three years from the issue date or one year after the date on which the project is placed in service;

(4) Amounts paid to the United States under §§ 1.148-3, 1.148-5(c), or 1.148-7 for the issue;

(5) Costs, other than those described in paragraphs (d)(3)(ii)(A) (1) through (4) of this section, that do not exceed 5 percent of the sale proceeds of an issue and that are directly related to capital expenditures financed by the issue (e.g., initial operating expenses for a new capital project);

(6) Principal or interest on an issue paid from unexpected excess sale or investment proceeds; and

(7) Principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a bona fide debt service fund.

(B) *Exception for extraordinary items.* Paragraph (d)(3)(i) of this section does not apply to expenditures for extraordinary, nonrecurring items that are not customarily payable from current revenues, such as casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage. If, however, an issuer or a related party maintains a reserve for such items (e.g., a self-insurance fund) or has set aside other available amounts for such expenses, gross proceeds within that reserve must be allocated to expenditures only after all other available amounts in that reserve are expended.

(C) *Exception for payment of principal and interest on prior issues.* Paragraph (d)(3)(i) of this section does not apply to expenditures for payment of principal, interest, or redemption prices on a prior issue and, for a crossover refunding issue, interest on that issue.

(D) *No exceptions if replacement proceeds created.* The exceptions provided in this paragraph (d)(3)(ii) do not apply if the allocation merely substitutes gross proceeds for other amounts that would have been used to make those expenditures in a manner that gives rise to replacement proceeds. For example, if a purported reimbursement allocation of proceeds of a reimbursement bond does not result in an expenditure under § 1.150-2, those proceeds may not be allocated to pay interest on an issue that, absent this allocation, would have been paid from the issuer’s current revenues.



(iii) *Definition of available amount*—(A) *In general.* For purposes of this paragraph (d)(3), *available amount* means any amount that is available to an issuer for working capital expenditure purposes of the type financed by an issue. Except as otherwise provided, *available amount* excludes proceeds of the issue but includes cash, investments, and other amounts held in accounts or otherwise by the issuer or a related party if those amounts may be used by the issuer for working capital expenditures of the type being financed by an issue without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed.

(B) *Reasonable working capital reserve treated as unavailable.* A reasonable working capital reserve is treated as unavailable. Any working capital reserve is reasonable if it does not exceed 5 percent of the actual working capital expenditures of the issuer in the fiscal year before the year in which the determination of available amounts is made. For this purpose only, in determining the working capital expenditures of an issuer for a prior fiscal year, any expenditures (whether capital or working capital expenditures) that are paid out of current revenues may be treated as working capital expenditures.

(C) *Qualified endowment funds treated as unavailable.* For a 501(c)(3) organization, a qualified endowment fund is treated as unavailable. A fund is a qualified endowment fund if—

(1) The fund is derived from gifts or bequests, or the income thereon, that were neither made nor reasonably expected to be used to pay working capital expenditures;

(2) Pursuant to reasonable, established practices of the organization, the governing body of the 501(c)(3) organization designates and consistently operates the fund as a permanent endowment fund or quasi-endowment fund restricted as to use; and

(3) There is an independent verification that the fund is reasonably necessary as part of the organization's permanent capital.

(D) *Application to statutory safe harbor for tax and revenue anticipation bonds.* For purposes of section 148(f)(4)(B)(iii)(II), *available amount* has the same meaning as in paragraph (d)(3)(iii) of this section, except that the otherwise-permitted reasonable working capital reserve is treated as part of the available amount.

(4) *Expenditures for grants*—(i) *In general.* Gross proceeds of an issue that are used to make a grant are allocated to an expenditure on the date on which the grant is made.

(ii) *Characterization of repayments of grants.* If any amount of a grant financed by gross proceeds of an issue is repaid to the grantor, the repaid amount is treated as unspent proceeds of the issue as of the repayment date unless expended within 60 days of repayment.

(iii) *Definition of grant.* *Grant* means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

(5) *Expenditures for reimbursement purposes.* In allocating gross proceeds of issues of reimbursement bonds (as defined in § 1.150-2)) to certain expenditures, § 1.150-2 applies. In allocating gross proceeds to an expenditure to reimburse a previously paid working capital expenditure, paragraph (d)(3) of this section applies. Thus, if the expenditure is described in paragraph (d)(3)(ii) of this section or there are no available amounts on the date a working capital expenditure is made and there are no other available amounts on the date of the reimbursement of that expenditure, gross proceeds are allocated to the working capital expenditure as of the date of the reimbursement.

(6) *Expenditures of certain commingled investment proceeds of governmental issues.* This paragraph (d)(6) applies to any issue of governmental bonds, any issue of private activity bonds issued to finance a facility that is required by section 142 to be owned by a governmental unit, and any portion of an issue that is not treated as consisting of private activity bonds under section 141(b)(9). Investment proceeds of the issue (other than investment proceeds held in a refunding escrow) are treated as allocated to expenditures for a governmental purpose when the amounts are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the issuer and the amounts are reasonably expected to be spent for governmental purposes within 6 months from the date of the commingling. In establishing these reasonable expectations, an issuer may use any reasonable accounting assumption and is not bound by the *proceeds-spent-last* assumption generally required for working capital expenditures under paragraph (d)(3) of this section.

(7) *Payments to related parties.* Any payment of gross proceeds of the issue to a related party of the payor is not an expenditure of those gross proceeds.

(e) ***Special rules for commingled funds***—(1) *In general.* An accounting method for gross proceeds of an issue in a commingled fund, other than a bona fide debt service fund, is reasonable only if it satisfies the requirements of paragraphs (e)(2) through (6) of this section in addition to the other requirements of this section.

(2) *Investments held by a commingled fund*—(i) *Required ratable allocations.* Not less frequently than as of the close of each fiscal period, all payments and receipts (including deemed payments and receipts) on investments held by a commingled fund must be allocated (but not necessarily distributed) among the different investors in the fund. This allocation must be based on a consistently applied, reasonable ratable allocation method.

(ii) *Safe harbors for ratable allocation methods.* Reasonable ratable allocation methods include, without limitation, methods that allocate these items in proportion to either—

(A) The average daily balances of the amounts in the commingled fund from different investors during a fiscal period (as described in paragraph (e)(4) of this section); or

(B) The average of the beginning and ending balances of the amounts in the commingled fund from different investors for a fiscal period that does not exceed one month.

(iii) *Definition of investor.* For purposes of this paragraph (e), the term *investor* means each different source of funds invested in a commingled fund. For example, if a city invests gross proceeds of an issue and tax revenues in a commingled fund, it is treated as two different investors.

(3) *Certain expenditures involving a commingled fund.* If a ratable allocation method is used under paragraph (d) of this section to allocate expenditures from the commingled fund, the same ratable allocation method must be used to allocate payments and receipts on investments in the commingled fund under paragraph (e)(2) of this section.

(4) *Fiscal periods.* The fiscal year of a commingled fund is the calendar year unless the fund adopts another fiscal year. A commingled fund may use any consistent fiscal period that does not exceed three months (e.g., a daily, weekly, monthly, or quarterly fiscal period).

(5) *Unrealized gains and losses on investments of a commingled fund*—(i) *Mark-to-market requirement for internal commingled funds with longer-term investment portfolios.* Except as otherwise provided in this paragraph (e), in the case of a commingled fund in which the issuer and any related party own more than 25 percent of the beneficial interests in the fund (an *internal commingled fund*), the fund must treat all its investments as if sold at fair market value either on the last day of the fiscal year or the last day of each fiscal period. The net gains or losses from these deemed sales of investments must be allocated to all investors of the commingled fund during the period since the last allocation.

(ii) *Exception for internal commingled funds with shorter-term investment portfolios.* If the remaining weighted average maturity of all investments held by a commingled fund during a particular fiscal year does not exceed 18 months, and the investments held by the commingled fund during that fiscal year consist exclusively of obligations, the mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply.

(iii) *Exception for commingled reserve funds and sinking funds.* The mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply to a commingled fund that operates exclusively as a reserve fund, sinking fund, or replacement fund for two or more issues of the same issuer.

(6) *Allocations of commingled funds serving as common reserve funds or sinking funds*—

(i) *Permitted ratable allocation methods.* If a commingled fund serves as a common reserve fund, replacement fund, or sinking fund for two or more issues (a *commingled reserve*), after making reasonable adjustments to account for proceeds allocated under paragraph (b)(1) or (b)(2) of this section, investments held by that commingled fund must be allocated ratably among the issues served by the commingled fund in accordance with one of the following methods—

(A) The relative values of the bonds of those issues under § 1.148-4(e);

(B) The relative amounts of the remaining maximum annual debt service requirements on the outstanding principal amounts of those issues; or

(C) The relative original stated principal amounts of the outstanding issues.

(ii) *Frequency of allocations.* An issuer must make any allocations required by this paragraph (e)(6) as of a date at least every 3 years and as of each date that an issue first becomes secured by the commingled reserve. If relative original principal amounts are used to allocate, allocations must also be made on the retirement of any issue secured by the commingled reserve.

[T.D. 8476, 58 FR 33532, June 18, 1993; 58 FR 44452, Aug. 23, 1993, as amended by T.D. 8538, 59 FR 24045, May 10, 1994; T.D. 8712, 62 FR 2304, Jan. 16, 1997; T.D. 8718, 62 FR 25512, May 9, 1997]

**RESOLUTION, DATED NOVEMBER 8, 2016, OF THE BOARD OF EDUCATION OF THE ORCHARD PARK CENTRAL SCHOOL DISTRICT, ERIE COUNTY, NEW YORK (THE “DISTRICT”) ADOPTING SEC-DRIVEN CONTINUING DISCLOSURE COMPLIANCE PROCEDURES**

WHEREAS, Securities Exchange Commission (“SEC”) Rule 15c2-12 (the “Rule”) generally prohibits underwriters from purchasing or selling municipal securities unless the issuer of such securities has entered into a continuing disclosure obligation; and

WHEREAS, the District is an occasional issuer of municipal securities and thus has entered into continuing disclosure obligations (or will do so) from time to time; and

WHEREAS, Hodgson Russ LLP, as bond counsel to the District, has prepared and has recommended that the District adopt certain SEC-driven continuing disclosure compliance procedures; and

WHEREAS, the Board of Education deems it to be in the best interest of the District to adopt formal written procedures to help ensure continuing disclosure compliance, and to designate an official responsible for ensuring that such procedures are followed;

NOW THEREFORE, BE IT RESOLVED, that the District hereby adopts the continuing disclosure compliance procedures that are attached hereto as “Schedule A” and resolves to be governed thereby; and be it further

RESOLVED, that such Schedule A will be placed in its entirety in the official records, files and minutes of the District and adhered to going forward; and be it further

RESOLVED, that this resolution shall take effect immediately upon its adoption.

**Schedule A**

**ORCHARD PARK CENTRAL SCHOOL DISTRICT ERIE COUNTY, NEW YORK**

**Continuing Disclosure Compliance Procedures for Tax-Exempt Bonds and Notes**

**a. Purpose:** The purpose behind implementation of these continuing disclosure compliance procedures is to ensure that the **Orchard Park Central School District, Erie County, New York** (the “Issuer”) (i) is compliant with its continuing disclosure obligations with respect to the securities it issues, pursuant to Rule 15c2-12, as amended (the “Rule”), promulgated under the Securities Exchange Act of 1934, as amended and (ii) makes accurate reports as to its compliance therewith in connection with its offerings of securities from time to time.

**b. Disclosure Compliance Officer Designation, Education and Training:** The Issuer will designate a “Disclosure Compliance Officer” who will be the primary official responsible for monitoring compliance with the continuing disclosure requirements listed in the Issuer’s continuing disclosure undertakings. The Disclosure Compliance Officer will attend training and educational seminars that are offered on an annual basis by the Issuer’s bond counsel (the law firm of Hodgson Russ LLP) and will consult with the Issuer’s bond counsel and financial advisor as needed to keep current on Securities and Exchange Commission regulations and developments relating to continuing disclosure compliance for its obligations. **The Issuer’s designated Disclosure Compliance Officer is the Assistant Superintendent for Business & Support Services, currently Jeffrey R. Petrus.**

**c. Continuing Disclosure Obligations Review:** The Disclosure Compliance Officer is responsible for reviewing, with the Issuer’s financial advisor, the Issuer’s continuing disclosure undertakings to determine the date(s) by which annual financial information and audited financial information, along with any required material events notices and, if applicable, failure to file notices, must be filed with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (“EMMA”) system in accordance with the Rule.

**d. Preparation of Annual Financial Information and Audited Financial Statements:** If the Issuer’s continuing disclosure undertakings require the filing of annual financial information and audited financial statements with EMMA, the Disclosure Compliance Officer will coordinate with the Issuer’s auditor and financial advisor to ensure that such documents are prepared and submitted in advance of the deadline for such filing.

**e. Monitoring Disclosure Compliance:** The Disclosure Compliance Officer will monitor the filing with EMMA of any and all documents required under the Issuer's continuing disclosure undertakings through consultation with the Issuer's financial advisor and bond counsel when necessary.

**f. Correcting Potential Non-Compliance:** Upon discovery of potential or existing non-compliance with the Issuer's continuing disclosure undertakings, the Disclosure Compliance Officer will promptly take steps, including consultation with the Issuer's financial advisor and bond counsel, to correct such non-compliance, such as by filing failure to file notices with EMMA.

**g. Official Statements:** The Disclosure Compliance Officer will review for accuracy and completeness any descriptions of the Issuer's continuing disclosure compliance history contained in the initial drafts of notices of sale or official statements that are promulgated by the Issuer in connection with its bond and note issues, and will inform the Issuer's financial advisor and bond counsel of any potential inaccuracies or omissions within, so that any discovered inaccuracies or omissions in the draft document(s) can be corrected before such document(s) are finalized and distributed.

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby adopts the 2017-18 Budget Development Calendar as written.

**ADOPTION  
OF 2017-18  
BUDGET  
DEVELOPMENT  
CALENDAR**

November 8, 2016	2017-18 Budget Development Calendar approved by the Board of Education (Board Meeting)
November 21, 2016	Send Budget Development Parameters & Packets to Building - Administrators & Department Heads
January 6, 2017	Completed Budget Development Packets due to the Business Office
January 10, 2017	4 Year Projected Budget Presented to the Board of Education (Board Meeting)
February 7, 2017	1 <sup>st</sup> Draft of 2017-18 Budget presented to the Board (Board Meeting)
February 28, 2017	Additional Board Meeting Date (if necessary)
March 1, 2017	Submission of Tax Cap Calculation Information & District's Calculation of Tax Levy Limit
March 14, 2017	Budget Development Discussions (Board Meeting) Adopt Legal Notice of School Budget Hearing & Budget Vote
March 28, 2017	Budget Development Discussions (Board Meeting)
April 1, 2017	Deadline for First Publication of Legal Notice (First notice published at least 45 days before vote & 3 other
April 4, 2017	Target Date for Budget Adoption (or) Further Discussion if not ready (Board Meeting)
April 17, 2017	Submission of petitions for propositions and Candidate petitions due for Board Election (Deadline 30 days prior to election/vote)
April 18, 2017	Additional Board Meeting Date for Budget Adoption (if necessary)
April 20, 2017	Final date by law for 2017-18 Budget adoption by Board of Education
April 21, 2017	Property Tax Report Card submitted to SED and local newspapers (Within 24 hrs of Budget adoption, but no later than 24 days before vote)
April 25, 2017	Adopted Budget and required attachments available in each building (Must be available 7 days prior to Budget Hearing)
May 2, 2017	Budget Hearing and Candidate Presentations (Board Meeting) (hearing must be 7-14 days before date of vote)
May 10, 2017	Budget Notice and Popular Budget mailing (Budget Notice must be mailed at least 6 days prior to date of vote)
May 11, 2017	List of residents who were given Applications for Absentee Ballots (Must be posted in District Clerk's Office at least 5 days before vote)
May 16, 2017	Annual Budget Vote and BOE Election (7:00 AM to 9:00 P) (3rd Tuesday in May)

**SCHEDULING OF  
WORK SESSIONS  
1/11/17  
&  
1/21/17**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District hereby schedules a Work Session on January 11, 2017 at 5:30 p.m. and January 21, 2017 at 8:00 a.m. in the District Office, 2240 Southwestern Blvd, West Seneca.

**APPROVAL  
OF OUT OF  
COUNTRY  
FIELD TRIP TO  
FRANCE & SPAIN**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby approves of the High School Out of Country Field Trip to France and Spain in 2018.

**RE-ADOPTION OF  
POLICY 8460:  
FIELD TRIPS  
OFF-SITE &  
OUT OF COUNTRY**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) approve the following resolution:

**RESOLVED:** That the Board of Education of the Orchard Park Central School District, upon the recommendation of the Superintendent, hereby adopts policy 8460: Field Trips: Off-Site and Out of Country as follows:

The District considers the safety of its students and staff to be of the utmost importance and is keenly aware of the evolving nature of threats to schools. As such, it will address those threats accordingly through appropriate emergency response planning. The District-wide school safety plan and the building-level emergency response plan will be designed to prevent or minimize the effects of serious violent incidents and emergencies and to facilitate the coordination of schools and the District with local and county resources in the event of these incidents or emergencies. The Board of Education recognizes that off-site trips, such as field trips, are an educationally sound and important ingredient in the instructional and co-curricular programs of the schools.

For purposes of this policy, an off-site trip shall be defined as any journey by a group of students away from the school premises, under the supervision of staff member (i.e. teacher, advisor, coach), which is an integral part of the educational program and conducted for the purpose of affording a first-hand educational experience not available in the classroom. An off-site trip includes educational experiences and/or competitions by athletic teams, clubs, and other such extra-curricular groups off school grounds.

Off-site trips are a part of the educational programming of the schools, and student conduct and attendance on off-site trips are governed by the same rules that govern regular classroom activities. The School System shall obtain written parental/guardian permission for students going on each school-sponsored off-site trip.

**Overnight Trips and Trips Outside of the Contiguous United States**

Each overnight student off-site trip shall be approved by the Superintendent/designee. Any trips outside of the 48 contiguous United States shall be approved by the Superintendent/designee and the Board.

**Funding Off-Site Trips**

The Superintendent shall prepare procedures for the operation of an off-site trip activity. Off-site support shall be determined annually by the Board during its budget deliberations. Regardless of the fiscal support for field trips, the rules of the School District for approval and conduct of such trips shall apply.

The Superintendent/designee may cancel previously approved off-site due to extenuating circumstances.

Note: Refer also to Policies #3410 -- Code of Conduct on School Property, #5720 -- Transportation of Students, #7310 -- School Conduct and Discipline and District Code of Conduct on School Property

### **Comments**

- A member of the audience commented on the recent water testing results. Speaker asked for more information on future retesting. Speaker also commended the Superintendent for the thorough information recently disclosed.

**COMMENTS**

### **Adjournment**

Motion by Dr. Tinnesz, seconded by Mrs. Quinlan, and unanimously carried (7-0) to adjourn at 8:21 p.m.

**ADJOURNMENT**

Respectfully submitted,

Cheryl A. Connors  
District Clerk

### **Official Meeting Attachments**

1. Financials
2. Special Education
3. Textbook Adoptions

### **Other Meeting Attachments**

1. Official Meeting Announcement
2. Meeting Agenda