

STATE OF WISCONSIN

CIRCUIT COURT 5

OUTAGAMIE COUNTY

STATE OF WISCONSIN ex rel.  
JOHN KRUEGER  
2410 West Cortland Drive  
Appleton, WI 54914,  
Plaintiff,

v.

APPLETON AREA SCHOOL DISTRICT  
BOARD OF EDUCATION  
122 East College Avenue, Suite 1A  
Appleton, WI 54911,

and

COMMUNICATION ARTS 1 MATERIALS  
REVIEW COMMITTEE, a committee of the  
Appleton Area School District Board of Education  
122 East College Avenue, Suite 1A  
Appleton, WI 54911,  
Defendants.

Declaratory Judgment

Case Code: 30701

Case No. 13-CV- 868



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SUMMONS

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THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Clerk of Circuit Court, Justice**

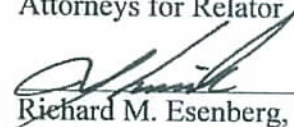
Center, 320 South Walnut Street, Appleton, WI 54911, and to Wisconsin Institute for Law & Liberty, Inc., plaintiff's attorney, whose address is: 1139 East Knapp Street, Milwaukee, WI 53202.

You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 26<sup>th</sup> day of July, 2013.

WISCONSIN INSTITUTE FOR LAW & LIBERTY  
Attorneys for Relator

  
Richard M. Esenberg, WI Bar No. 1005622  
414-727-6367; rick@will-law.org  
Michael Fischer, WI Bar No. 1002928  
414-727-6371; mike@will-law.org  
X Thomas C. Kamenick, WI Bar No. 1063682  
414-727-6368; tom@will-law.org  
CJ Szafir, WI Bar No. 1088577  
414-727-6373; cj@will-law.org  
Brian W. McGrath, WI Bar No. 1016840  
414-727-7412; brian@will-law.org  
MAILING ADDRESS:  
1139 East Knapp Street  
Milwaukee, WI 53202-2828  
414-727-9455  
FAX: 414-727-6485

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Defendants.

Declaratory Judgment

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CLERK OF CIRCUIT COURT  
OUTAGAMIE COUNTY  
FILED

JUL 29 2013

AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_

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**COMPLAINT**

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NOW COMES the Plaintiff, State of Wisconsin by its Relator, John Krueger, pursuant to Wis. Stat. § 19.97(4), by his attorneys Wisconsin Institute for Law & Liberty, and alleges to the Court as follows:

1. The Relator, John Krueger, is an adult resident of the State of Wisconsin, residing in the City of Appleton. He brings this action by his relation and in the name of the State of

Wisconsin pursuant to Wis. Stat. § 19.97(4). He is an Appleton Area School District ("AASD") taxpayer and the parent of a child who attends a school in AASD.

2. Defendant Appleton Area School District Board of Education ("Board") is the governing body of AASD, maintaining its place of business at 122 East College Avenue, Suite 1A, Appleton, Wisconsin 54911.

3. The Board is a governmental body within the meaning of § 19.82(1) and is subject to the various requirements of the Wisconsin Open Meetings Law, §§ 19.82 – 19.98.

4. Defendant Communication Arts I Materials Review Committee ("CAMRC") is a 17-member committee created by the Board, maintaining its place of business at 122 East College Avenue, Suite 1A, Appleton, Wisconsin 54911.

5. Upon information and belief, CAMRC is a committee and/or subunit of the Board and was created either by the Board or by a District official delegated authority by the Board to create such a committee.

6. The Board is ultimately responsible for the creation and operation of CAMRC and CAMRC was acting as an authorized agent of the Board at all times relevant hereto.

7. The 17 members of CAMRC include AASD administrators, teachers, and staff.

8. CAMRC's members are Nan Bunnow, AASD Director of Humanities, James Huggins, Principal of AASD's North High School, Tom Morrissey, April Vandehei, Mary Bend, Lana Thiel, Eric Ward, Marcia Wiese, Samantha Sawitski, Mary Hermansen, Julie Wohlt, Corey Otis, and other individuals with the first names of Erin, John, Katie, Cassie, and Nate.

9. CAMRC was formed to review instructional materials to meet the ninth-grade Communication Arts I curriculum.

10. More specifically, CAMRC was tasked with taking a list of approximately 93 fiction books, reading them, assessing their suitability to meet various curricular needs, and forwarding a recommended list books to the Programs & Services subcommittee of the Board.

11. Minutes of the Board's April 23, 2012 meeting state that the CAMRC "was formed to review instructional materials that meet the CA I curriculum." A true and accurate copy of the relevant pages of those minutes is attached as Exhibit A.

12. The Minutes also state, "In light of the new Common Core State Standards-English Language Arts and [a citizen request for an alternative Communication Arts course with a different reading list], a 17-member Communication Arts I Materials Review Committee was formed to review instructional materials that meet the Communication Arts I (\*1000/1010) curriculum, the District Preview Checklist, the criteria stated above, and additional criteria identified by the committee."

13. State statutes place responsibility on school boards to: (1) create curricula, Wis. Stat. § 121.02(1)(k); (2) adopt textbooks, § 118.03(1); and (3) annually evaluate the district's reading curriculum, § 118.015(4).

14. AASD's own policies reflect this responsibility. AASD Rule 361.1 states, "The Board of Education, as the governing body of the District, is legally responsible for all educational material utilized within the instructional program of the Appleton Area School District." A true and accurate copy of Rule 361.1 is attached as Exhibit B.

15. The Board has delegated that authority. AASD Rule 361.1 also states, "The selection of educational materials is delegated to the professional trained and certified personnel employed by the school system. The responsibility for coordinating and maintaining qualitative standards in the selection process rests with the Assessment, Curriculum, and Instruction (ACI)

Department. Textbooks, however, must be formally adopted by the Board of Education since they often constitute the major content of the curriculum.”

16. AASD Rule 361.1 defines “Textbooks” as “the book *or set of materials* which serves as the foundation for more than fifty percent of the content of any Board-approved course” (emphasis added).

17. The set of books making up the reading list for a communication arts class serves as the foundation for more than fifty percent of the course’s content.

18. The ACI Department has a handbook that creates a procedure for the revision of curriculum and selection of materials to support the curriculum. Those procedures call for the “[e]stablish[ment of] a representative committee of teachers, administrators and department staff” to “revise the curriculum, write/identify district-wide standards based assessments, *select resources for the delivery of the curriculum*, and recommend staff development” (emphasis added). This handbook was approved by the Board in August, 2009. True and accurate copies of the title page and pages 10-11 of the ACI Handbook are attached as Exhibit C.

19. The statutory term “governmental body” includes advisory committees as well as committees delegated decision-making authority. *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

20. An order or rule creating a committee need not be formal; any directive creating the body and assigning it duties is sufficient. The Open Meetings Law cannot be evaded by resort to informal directives. 78 Op. Att’y Gen. 67, 68-69 (1989).

21. The Attorney General’s “office has interpreted ‘order’ as used in section 19.82(1), to include any directive from an existing governmental body, that authorizes the creation of

another body and assigns duties to that body.” Wisconsin Attorney General, Sherrod Correspondence, October 17, 1991.

22. The Attorney General has already concluded that “a committee appointed by the school superintendent to consider school library materials” is a “governmental body.” DOJ, Wisconsin Open Meetings Law: A Compliance Guide 3 (2010) (citing Staples Correspondence, February 10, 1981).

23. Therefore, CAMRC is a “governmental body” as that term is defined in Wis. Stat. § 19.82(1). It is a “committee” created, upon information and belief, by “rule or order” of the Board and/or is a subunit of the Board, carrying out tasks within the Board’s responsibility as the Board’s agent.

#### **CAMRC Met in Violation of Open Meetings Laws**

24. From approximately October, 2011, through April, 2012, CAMRC held multiple meetings, as that term is defined by § 19.82(2), as a committee and/or subunit of the Board, for the purpose of exercising the responsibilities, authority, power, and duties it had been delegated by the Board to review reading materials and make a recommendation.

25. At some point prior to April 12, 2012, CAMRC forwarded a recommended reading list of 24 books to the Programs & Services subcommittee of the Board.

26. On April 12, 2012, Programs & Services recommended adoption of the CAMRC recommendations to the Board.

27. On April 23, 2012, the Board adopted the CAMRC recommendations.

28. None of CAMRC’s meetings were preceded by public notice as required by § 19.83.

29. None of these meetings were held in open session as required by § 19.83.
30. On November 17, 2011, Krueger wrote an e-mail to Superintendent Allinger criticizing the review process, in particular that it was “being conducted behind closed doors.” The e-mail informed Allinger that the “process is subject to Wisconsin Open Meetings Law” and requested “that the[ meetings] be conducted in accordance with that law.” A true and accurate copy of the text of that e-mail is attached as Exhibit D.
31. Upon information and belief, Mr. Allinger shared that e-mail or its contents with at least some members of CAMRC and the Board.
32. Upon information and belief, CAMRC was given direction and instructions by the Superintendent of AASD, Lee Allinger, as agent and representative of the Board.

#### **ALLEGATIONS**

##### **First Cause of Action – Violations of Wis. Stat. § 19.83(1); Failure to Give Notice**

33. Under § 19.83(1), “Every meeting of a governmental body shall be preceded by public notice,” following the requirements of § 19.84.
34. “Meeting” is defined as “the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” § 19.82(2).
35. None of CAMRC’s several meetings were preceded by any public notice.
36. Thus, CAMRC violated § 19.83(1) on multiple occasions by holding meetings without first giving public notice.



37. Furthermore, as the governmental body responsible for the creation and operation of its agent and subunit, CAMRC, the Board violated § 19.83(1) by failing to ensure that CAMRC gave public notice of its meetings.

**Second Cause of Action – Violation of Wis. Stat. § 19.83(1);  
Failure to Meet in Open Session**

38. Under § 19.83(1), “Every meeting of a governmental body . . . shall be held in open session” and “all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session,” subject to exemptions in § 19.85(1) not relevant here.

39. “Open session” is defined as “a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.” Wis. Stat. § 19.82(3).

40. Upon information and belief, none of CAMRC’s several meetings were open to all citizens at all times. Complainant has no information to gauge whether these meetings were held in a place reasonably accessible to members of the public.

41. Thus, CAMRC violated § 19.83(1) on multiple occasions by failing to hold its meetings in open session.

42. Furthermore, as the governmental body responsible for the creation and operation of its agent and subunit, CAMRC, the Board violated § 19.83(1) by failing to ensure that CAMRC held its meetings in open session.

WHEREFORE, Plaintiff requests the following relief:

1. Judgment against the Defendants finding them in violation of Wisconsin’s Open Meetings Law;
2. For the actual and necessary costs of prosecuting this action, including reasonable attorney fees, to the Plaintiff; and

3. Such other relief as the Court deems proper.

Dated this 26th day of July, 2013.

Respectfully submitted,  
WISCONSIN INSTITUTE FOR  
LAW & LIBERTY  
Attorneys for Relator



Richard M. Esenberg, WBN 1005622

(414) 727-6367

rick@will-law.org

X Thomas C. Kamenick, WBN 1063682

(414) 727-6368

tom@will-law.org

CJ Szafer, WBN 1088577

(414) 727-6373

cj@will-law.org

Michael Fischer, WBN 1002928

(414) 727-6371

mike@will-law.org

Brian W. McGrath, WBN 1016840

(414) 727-7412

brian@will-law.org

1139 E. Knapp St.

Milwaukee, WI 53202

**APPLETON AREA SCHOOL DISTRICT  
BOARD OF EDUCATION  
Meeting Minutes  
April 23, 2012**

The second monthly meeting was called to order at 7:00 p.m. by President Sharon Fenlon at Einstein Middle School, 324 E. Florida Avenue, Appleton, WI.

**I. Roll Call**

*Present:* Sharon Fenlon, Diane Barkmeier, Kay Eggert, John Gosling, John Mielke, and Julie Baker  
*Absent:* Jeffry Knezel

**II. Pledge of Allegiance**

**III. Approval of Minutes**

**A. Board of Education Meeting Minutes April 10, 2012**

Kay Eggert made a motion to approve the Minutes. John Mielke seconded the motion and it carried on voice vote 6-0.

**IV. Communications**

<b>A. Wisconsin Taxpayers Alliance</b>	<b>RE: Wisconsin Policy Advisors Service</b>
<b>B. Jane E. Tarr</b>	<b>RE: Retirement</b>
<b>C. John Wuebben</b>	<b>RE: Middle School Staffing</b>
<b>D. CESAS 6</b>	<b>RE: Annual Convention of District School Board Representatives</b>

**V. Approval of Agenda**

Diane Barkmeier made a motion to approve the Agenda. Julie Baker seconded the motion and it carried on voice vote 6-0.

**VI. Community Input**

<b>A. Chris Stickney</b>	<b>RE: AASD Key Clubs</b>
<b>B. Margaret LaFleur</b>	<b>RE: East Band Trip to Washington, D.C.</b>
<b>C. Hank Krokosky</b>	<b>RE: Support for Communication Arts 1 Agenda Item</b>

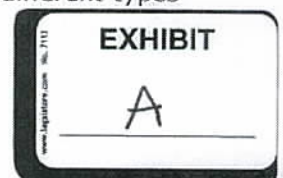
**VII. Special Presentation**

**A. Einstein Migration Project**

Dave Boden, Einstein Principal, introduced Sarah Boge, Art Teacher, and a few of her students. She talked about their Migration Project and how Tom Grade, local papermaking artist/artist-in-residence as well as Bob Smeed, Falconer, helped with the project. Bob Smeed brought in live birds to show the students and taught them about the anatomy of birds. Tom Grade showed the students how to make paper and create their bird projects. Two grants were received (Community First Credit Union and Appleton Education Foundation), which covered the cost of the artist-in-residence. Sarah introduced a few of her students who talked about this exciting project.

Zoe Tjader, 8<sup>th</sup> grade student indicated it was her favorite project. She added that Tom Grade taught them the skills needed to make the birds and then students were on their own to design and create their bird. They learned about the anatomy of birds and watched a video on migration.

Sarah Wiseman, 8<sup>th</sup> grade student said that they learned how to make three different types of pulp during this project and she shared the bird she created with the group.



→ **Request for Appleton eSchool Charter Contract Extension**

Ben Vogel, Erik Hanson, and Matt Mineau presented their request for a one-year extension to the current Appleton eSchool charter contract, which is set to expire June 30, 2012. They indicated that the Appleton eSchool Governance Board has already approved the one-year contract extension and the DPI is also supportive of the extension. The extension will allow eSchool time to explore enhancements and updates to its current structure. It was noted that there are currently digital learning initiatives at the state level and eSchool staff would appreciate time to analyze and explore the direction the state is taking before making revisions to their contract. The eSchool staff's goal is to provide a seamless learning experience for students, including how students select and register for courses, how data is collected, and the different learning options available to students. The one-year contract extension will allow ample time to determine the course eSchool will take to provide the best possible learning experience for students. This is an item on the Agenda for action this evening.

→ **Update: 9<sup>th</sup> Grade Literacy Intervention Project – Lifetime Literacy (North and West) and Literacy Planning, 2012-13 (East, North, and West)**

Kevin Steinhilber, Nan Bunnow, and the three high school principals discussed the efforts and progress they are making in providing reading intervention for 9<sup>th</sup> grade students that are experiencing difficulties and reading below grade level. They indicated that although they have been working hard to help struggling students increase their level of reading ability, they do not feel they are able to provide intervention for all the students that have demonstrated a need. Each principal discussed the current reading support that is being offered to 9<sup>th</sup> grade students at their school along with their plan for the 2012-13 school year to raise the level of literacy instruction in the classroom and meet the needs of struggling students.

→ **Communication Arts 1 (\*1000/1010) – Instructional Materials Recommendation and Alternative Course Request Recommendation**

Kevin Steinhilber, Nan Bunnow, James Huggins, along with the three high school Communication Arts Curriculum Support Specialists, Tom Morrissey, Corey Otis, and Sam Sawitski, presented their recommendations for the Communication Arts 1 instructional materials and for the Alternative Communication Arts 1 course. A request was received for an optional alternative Communication Arts (CA) 1 course that would follow the same curriculum but would use instructional materials that are at the 9<sup>th</sup> grade reading level, contain no profanities or obscenities, and contain no sexualized content. A Communication Arts 1 Materials Review Committee was formed to review instructional materials that meet the CA 1 curriculum including the current Board adopted CA 1 materials, those proposed by AASD staff members, as well as those proposed by the individuals who also requested the alternative CA 1 course. The committee reviewed 93 titles and chose 24 to present to AASD staff, students, parents, and residents for feedback. After reviewing the feedback, the CA 1 Materials Review Committee recommended the books chosen for the Communication Arts 1 course of which 12 will need to be purchased at an approximate cost of \$17,300 (part of the curriculum budget). The remaining books were part of the previous adoption. The Communication Arts 1 Materials Review Committee also considered the alternative course request based on the instructional materials recommended and input. The Communication Arts CSS stated that the committee does not support the alternative CA 1 course proposal and that it was determined the intent of the request can be met within the current CA 1 course. This is an item on the Agenda for action this evening.

**C. Business Services Committee Update:**

John Mielke reported on the Business Services Committee meeting held at 7:35 AM on Monday, April 16, 2012.

→ **Health Insurance Planning**

Don Hietpas provided a brief overview of the steps taken to-date for health insurance planning. As a result of legislative mandates employees are contributing a larger share of insurance premium costs; those costs increased from 3 - 5 percent up to 9 - 12 percent of the monthly premium. Associated Financial Group (AFG), a benefits consulting firm, was hired to assist the District in developing a strategic plan for insurance benefits. An Insurance/Benefits Committee consisting of representatives from all employee groups had been formed to review and evaluate insurance benefits and proposals. Bids were accepted with a two-year contract awarded to WEA Trust. Don noted there has been increased participation in wellness programs offered to employees; of the 1,645 health insurance subscribers, 874 participated in the blood screening. Of the 874 blood screenings conducted, 150 subscribers still need to complete the online Health Risk Assessment through WEA Trust. The participation level for blood screenings has doubled from the last couple years. The increased participation level indicates a start to healthier lifestyle choices for employees as well as a means of tracking wellness program outcomes. Initially, under the assumption of no plan design changes, WEA Trust issued a 6 month renewal rate effective July 1, 2012 resulting in a 4% percent increase in the current monthly premium; or an annualized increase of 8%. The District and AFG are continuing to work with WEA Trust to evaluate plan design changes which would result in lower monthly premiums than if no plan design changes were made. The possible plan design changes would include increasing deductibles to \$250 Individual/\$500 Family, increased co-payments for office visits, urgent care, and emergency room care as well as increased co-payments for Tier 1, 2, and 3 prescription drugs. WEA Trust is currently calculating premium costing for this type of plan for a one-year renewal; those numbers are anticipated to become available by mid-week. Additionally, the District and AFG are evaluating long-term plan design changes that could offer employees the opportunity to choose a higher deductible plan with the possibility of a Health Reimbursement Account (HRA) incentive.

Don referred committee members to page 4 in their packet; a correction was made to the summary of estimated renewal rates that was distributed at the previous Committee meeting. In the comparison of premium costing while implementing plan design change of increased deductibles, co-payments and prescription drug costs, the percentage of net increase over 18 months was incorrectly stated as 9.59% and has now been corrected to 6.4%.

Further discussion ensued regarding the advantages and disadvantages of a six, twelve, or eighteen month renewal that implements plan design changes as proposed. The discussion also included reasoning for moving toward a calendar year renewal period for insurances as well as flexible spending especially in a scenario of higher-deductible health insurance plans connected to a HRA incentive.

A recommendation was made for the renewal of health insurance with WEA Trust implementing a plan design change effective July 1, 2012 to include increased deductibles to \$250 Individual/\$500 Family, increased co-payments for office visits, urgent care, and emergency room care as well as increased co-payments for Tier 1, 2, and 3 prescription drugs. This is an item on the Agenda for action this evening.

**IX. Report of the Superintendent**

**A. Special Agenda Items**

**1. School Services/Student Services**

Diane Barkmeier made a motion to approve the following items. Julie Baker seconded it. Roll call vote was taken and all members voted aye. Motion carried 6-0.

- a. Communication Arts 1 (\*1000/1010)**
- **Instructional Materials Recommendation**
  - **Alternative Course Request Recommendation**

A request was received for an alternative Communication Arts 1 (\*1000/1010) course that would follow the same curriculum, but would use instructional materials that: (1) are at the 9<sup>th</sup> grade reading level, (2) contain no profanities or obscenities, and (3) contain no sexualized content. This course would be optional; parents/students would select this alternative class when registering.

In light of the new Common Core State Standards-English Language Arts and this request, a 17-member Communication Arts 1 Materials Review Committee was formed to review instructional materials that meet the Communication Arts 1 (\*1000/1010) curriculum, the District Preview Checklist, the criteria stated above, and additional criteria identified by the committee. Current board adopted Communication Arts 1 materials were reviewed. The committee also reviewed additional books proposed by AASD staff members as well as those proposed by the individuals who requested the alternative Communication Arts 1 course. Of the 93 titles that were reviewed by the committee, 24 were presented to AASD staff members, students, parents, and residents for feedback. The Communication Arts 1 Materials Review Committee reviewed this feedback and has included its instructional material recommendations as part of the attached Communication Arts 1 (\*1000/1010) curriculum document.

The Communication Arts 1 Materials Review Committee considered the alternative course request based on the instructional materials recommended and input. The committee does not support the alternative Communication Arts 1 course proposal. The intent of the request can be met within the Communication Arts 1 (\*1000/1010) course.

\$17,300- cost has been included in the curriculum budget.

Of the recommended instructional materials, only the following titles need to be purchased:

<b>Title/Author</b>	
<i>A Long Way Gone: Memoir of a Boy Soldier</i>	Beah, Ishmeal
<i>The Book Thief</i>	Zusak, Marcus
<i>The Boy Who Harnessed the Wind</i>	Kamkwamba, William; Mealer, Bryan
<i>Breathing Underwater</i>	Flinn, Alex
<i>Claudette Colvin: Twice Toward Justice</i>	Hoose, Phillip
<i>Glass Castle</i>	Walls, Jeannette
<i>Hitler Youth</i>	Bartoletti, Susan Campbell
<i>The Latehomecomer: A Hmong Family Memoir</i>	Yang, Kao Kalia
<i>The Long Walk: A True Story of a Trek to Freedom</i>	Rawicz, Slavomir
<i>Night</i>	Wiesel, Elie
<i>October Sky</i>	Hickam, Homer
<i>Step from Heaven</i>	Na, An

The remaining titles were part of the previous adoption and copies are already on hand.

The instructional materials recommended expand the instructional material choices available in the Communication Arts 1 (\*1000/1010) course. In addition, the organization of the CA 1 Book List:

- better reflects research-based best practice in literacy,
- allows greater choice in titles, and
- allows a greater opportunity for students who select an alternative title (opt out) to participate in classroom activities.

**b. Request for Appleton eSchool Charter Contract Extension**

The Appleton eSchool Governing Board recently approved a one-year extension to the current Appleton eSchool charter contract. The charter contract is set to expire June 30, 2012; however, the extension will allow the current charter to remain in effect until June 30, 2013. The Wisconsin Department of Public Instruction (DPI) has been consulted and is supportive of this one-year contract extension.

Appleton eSchool is interested in exploring enhancements and updates to its current structure. While the Appleton eSchool has a solid foundation of online course offerings, we are in the process of exploring ways to seamlessly integrate the entire eSchool experience. This will include how students select courses and learning options, how content is created, how data is collected and how learning and staff development are prescribed. Appleton eSchool's aim is to provide a personalized learning architecture for students and staff.

**c. 2011-12 Approval of an Application for an Overnight Trip Within the Contiguous 48 States and DC**

School	Staff Member(s)	Class or Group	Destination	Dates of Trip	School Days Missed	Approx. Cost Per Student
West High School	Dave Gassner	Grades 10-12 – Varsity baseball	Marshfield	05/18/12 – 05/19/12	.1 (departing West at 2:20 pm)	\$20

**2. Business Services**

John Mielke made a motion to approve the following item. Kay Eggert seconded it. Roll call vote was taken and all members voted aye. Motion carried 6-0.

**a. Health Insurance Renewal and Plan Design**

In June of 2011 the District entered into a two-year agreement with WEA Trust for health insurance for district employees. The current health insurance premium rates expire on June 30, 2012; it is necessary to renew a successor plan for year two. The District has been working with Associated Financial Group (AFG) as advisors to this process. As a first step, WEA Trust issued a 6 month renewal rate effective July 1, 2012 with no plan design changes which resulted in a 4% percent increase in the current monthly premium; or an annualized increase of 8%. The District and AFG continued to work with WEA Trust for plan design changes which would ultimately result in lower premium costs than if no plan design changes were made. The proposed plan design changes include increasing deductibles to \$250 Individual/\$500 Family, increased co-payments for office visits, urgent care, and emergency room care as well as increased co-payments for Tier 1, 2 and 3 prescription drugs. Additional options will continue to be explored and considered but minimally these changes should be made for July 1, 2012.

Savings to the District of at least \$583,019 from a proposal with no design changes. (Estimated premium costs for six months are \$13,272,989 with plan changes compared to \$13,856,008 if no plan changes are made.)

John Mielke made a motion to approve the following item. Kay Eggert seconded it. Roll call vote was taken and all members voted aye. Motion carried 6-0.

## EDUCATIONAL MATERIALS SELECTION

### Responsibilities for the Selection of Educational Materials

In Wisconsin, it is the role of the local school board to establish written policies, procedures, and rules for the operation of the schools within the District and to adopt textbooks. The District also has the responsibility to provide adequate materials and texts which reflect the cultural diversity and pluralistic nature of the American society. In addition, the District shall not discriminate in the selection and evaluation of instructional materials on the basis of sex, race, color, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability or handicap. Discrimination complaints shall be processed in accordance with established procedures.

The Board of Education, as the governing body of the District, is legally responsible for all educational materials utilized within the instructional program of the Appleton Area School District. The selection of educational materials is delegated to the professionally trained and certified personnel employed by the school system. The responsibility for coordinating and maintaining qualitative standards in the selection process rests with the Assessment, Curriculum, and Instruction (ACI) department. Textbooks, however, must be formally adopted by the Board of Education since they often constitute the major content of the curriculum.

### Objective of, and Criteria for, the Selection of Educational Materials

The primary objective of selecting materials is to implement, support, and enrich the educational program of the school system. While specific criteria are developed by the individual curriculum committees, the general criteria utilized in the selection processes are:

- Materials are selected consistent with the educational goals of the District regarding locally designed standards, State standards, and National standards.
- Materials selected are appropriate for the age, social development, and maturity of students.
- Materials and information shall meet high standards of quality in factual content and presentation.
- Materials and information shall have factual, aesthetic, literary, ethical, or social value.
- Materials and information chosen shall be written/produced by competent and qualified authors and producers.
- Materials and information shall be chosen to represent our pluralistic society and to foster respect for all groups of people who form our society.
- Physical format and appearance of materials and information shall be suitable for their intended use.
- Materials are selected on all levels of difficulty with diverse appeal and differing points of view.





- The selection of materials on political theories and ideologies, religion, public issues, and on topics considered by some to be controversial, is directed toward maintaining a balance representing various views.
- Materials are judged as a whole taking into account the author's/producer's intent rather than focusing on single words, phrases, pictures, or incidents taken out of context.

**Procedures for Handling Objections to Educational Materials**

**A. Request for Use of Alternative Materials**

The option is always open for a parent or guardian (hereinafter parent) to object to specific educational materials being used with his/her child as part of the educational program. However, no parent or organization has the right to limit other students' access to materials which are part of the District's educational program.

**B. Request for Reconsideration of Educational Materials and Textbooks**

1. Any adult resident of the District, any parent of a child enrolled in the District, or any employee may raise objection to materials used in the educational program. In the event of an objection to the use of a specific educational material, every effort shall be made to first resolve the matter at the school level.
2. If the matter is not resolved, the complainant may formally challenge the use of specific materials at the District level.
  - a. This complaint must be in writing, using the District's Request for Reconsideration of Educational Material form – Appleton Area School District (AASD) Educational Materials Review Committee, and shall be sent to the Superintendent.
  - b. The Superintendent forwards the form to the chair of the AASD Educational Materials Review Committee, which is composed of citizens, professional staff members, and students. The task of the Committee is to review the material in question and provide a written recommendation to the Superintendent of Schools regarding its continued use in the District.
  - c. The Superintendent shall review the AASD Educational Materials Review Committee's recommendation. The Superintendent may ratify, amend, or overrule the recommendation of the Committee. The Superintendent will provide copies of the AASD Educational Materials Review Committee's recommendation and his/her decision to the complainant within five (5) school days of receipt of the Committee's report. The Superintendent will provide the Board of Education and the AASD Educational Materials Review Committee with copies of his/her decision.

## 361.1 (cont.)

### 3. Appeal Process

- a. If the original complainant is not satisfied with the Superintendent's decision, a request may be filed with the Superintendent to have the matter placed on the agenda of the next regularly scheduled Board of Education meeting. The request needs to be filed with the Superintendent within ten (10) school days of the date of the receipt of the Superintendent's decision. If the appeal request is submitted less than five (5) school days prior to the next regularly scheduled board meeting, the Superintendent may move the matter to the next subsequent regularly scheduled meeting of the Board.
- b. The Board of Education, meeting as a committee of the whole, shall constitute the final step in the appeal process.
  1. The Board shall review the documentation accompanying the Request Form as well as the AASD Educational Materials Review Committee minutes and other related Committee materials to determine whether or not procedural and non-discriminatory guidelines outlined in this policy were followed.
  2. At its discretion, the Board may elect to conduct interviews with all parties pertinent to the material review process.
  3. A decision of the Board with regard to action taken is final.

**Cross References:** Student Discrimination Complaint Procedures, 411.2-Rule  
Educational Materials Selection, 361.1-Rule

**Legal References:** Wisconsin State Statutes 118.03, 118.13, 119.18, 120.13,  
120.49 and 121.02

**Adoption Date:** June 26, 1993

**Amended Dates:** January 13, 2003 and October 24, 2011

## EDUCATIONAL MATERIALS SELECTION

### Procedures

#### I. Definitions

**Educational materials** - the general term used to refer to all print and non-print materials or resources which are used as a part of the educational program of the District. Throughout this policy, the term "materials" shall be used to mean educational materials.

**Textbooks** - the book or set of materials which serves as the foundation of the content of any Board-approved course. In Wisconsin, textbooks must be formally adopted by the Board of Education.

**Supplementary materials** - books or other non-print materials used within the context of the instructional program which are not included in the definitions of educational materials or textbooks listed above. Other resources used by the school system in its educational program such as field trips, resource persons, speakers or dramatic events, are not within the scope of this policy.

#### II. Procedures for Selection of Educational Materials and Textbooks

Curriculum revision is an ongoing process as defined in the AASD Assessment, Curriculum, and Instruction Handbook. This Handbook is available on the AASD website and delineates the processes leading to Board approval for curriculum revision, adoption of new courses, and implementation of curriculum materials.

#### III. Procedures for Selection of Supplementary Materials

The use of supplementary materials in the educational program is based on the criteria in this policy, the needs of the curriculum, and the judgment of the professional staff. Whenever a teacher plans to utilize supplementary materials beyond the normal parameters of the curriculum, the matter shall be discussed with the building principal or appropriate supervisor.

#### IV. Use of Materials in the Classroom

##### A. Individual Parent or Guardian Request for Alternative Materials

Parents and guardians will be made aware of curriculum materials being used in the classroom for instructional purposes. The option is always open for a parent to object to a specific educational material being used with his/her child as a part of the educational program. The parent has the right to judge whether certain materials are acceptable for his/her child. However, no individual or organization has the right to limit other students' access to materials which are a part of the District's educational program. Should a parent or guardian find any of the educational materials objectionable this must be communicated to the child's teacher and an alternative material will be provided.

## 361.1-Rule (cont.)

### B. **Request for Reconsideration of Educational Materials and Textbooks**

Any adult resident of the District, any parent of a child enrolled in the District, or any employee may raise objection to materials used in the educational program. An objection to educational materials should begin with a contact to the office of the school within the attendance area in which the adult resident lives, the child's teacher, or the employee's supervisor.

### V. **Procedures for Handling Objections to Educational Materials and Textbooks**

The principal will review the Educational Materials Selection policy and the objection procedures with the school's professional staff on an annual basis prior to the start of the school year. The professional staff will be reminded that the right to object to materials is recognized by the Board of Education and that individuals exercising that right shall be treated courteously. The staff will also be reminded of the ethical and practical considerations necessary when handling objections.

#### A. **Initial Objection Procedure**

The school official or staff member receiving a complaint from an adult resident of the District, any parent of a child enrolled in the District, or any employee shall try to resolve the issue informally. The school official or staff member shall:

1. Explain the District's selection procedure, criteria used for selection, and the qualifications of those who made the selection.
2. Explain the place that the material in question occupies in the educational program and its intended educational use (in the event that the official or staff member does not have knowledge of this information, a person who does, such as the department leader or media person, shall be involved).
3. If the person raising the objection is not satisfied with the initial explanation by the staff member, the complainant shall contact the principal regarding his/her objection and schedule a meeting.
4. The principal will meet with the complainant to apprise him/her of the District's selection policy, criteria for selection, the reason for the selection, and the judgment of other outside professionals in the education field, such as reviewers, regarding the material. Appropriate District-level personnel shall be consulted for their expertise, which may contribute to a resolution of the issue.
5. In the event that the complainant is not satisfied after the meeting with the principal, the principal will inform the complainant of the Materials Review Process and provide the Request for Reconsideration of Educational Material form – Educational Materials Review Committee. This form must be completed by the complainant and returned to the Superintendent. The principal will forward any records relating to the complaint to the Office of the Superintendent.

## 361.1-Rule (cont.)

### B. District Educational Materials Review Procedure

The following procedure is for the purpose of bringing reconsideration requests before a District level committee representing the District, students, and the community after the matter has been reviewed at the school level. The committee is charged with weighing the merits of the request against the educational suitability of the material and then making a recommendation on the disposition of the complaint. The committee shall comply with the directive of Wis. Stat. ss. 121.02 (1) (h) that each school board shall provide adequate instructional materials, texts and library services which reflect the cultural diversity and pluralistic nature of American society.

Request for Reconsideration of Educational Material shall not be confused with the normal reviewing process as a part of selection. This will not be considered to reflect adversely on the qualifications of the person or persons who made the selection.

1. All formal requests for review must be made on the Request for Reconsideration of Educational Material form - AASD Educational Materials Review Committee.
2. The Request for Reconsideration of Educational Material form must be signed by the complainant and filed with the Superintendent.
3. Within fifteen school days of the receipt of the formal complaint, the Superintendent or the Superintendent's designee shall present the formal complaint to the chair of the AASD Educational Materials Review Committee for evaluation. The task of the Review Committee will be to make a recommendation for disposition of the material in question to the Superintendent.
4. The challenged material will not be removed from use during the reconsideration process until a decision is made by the Superintendent. However, the Superintendent reserves the right to temporarily remove materials pending the reconsideration process if justified by unusual circumstances.

### C. AASD Educational Materials Review Committees

Two District materials review committees will be established; one to consider complaints from materials used at grades PK - 6 (elementary) and a second to consider complaints from materials used at grades 7 - 12 (secondary).

1. The AASD Educational Materials Review Committee shall be made up of sixteen (16) members.
  - a. Two teachers from the appropriate level appointed biennially by the Superintendent or his/her designee.
  - b. One Library Media Specialist appointed biennially by the Superintendent or his/her designee.

### 361.1-Rule (cont.)

- c. Two principals from the appropriate level appointed biennially by the Superintendent or his/her designee.
  - d. One central office administrator appointed biennially by the superintendent or his/her designee.
  - e. Four parents from the appropriate level (K - 6 or 7 - 12) of AASD students. Principals will notice their parent communities and seek volunteers from their school communities who are interested in serving on the committee. An application/lottery process will be established.
  - f. Three non-parent community members who are residents of the District will be selected through an application/lottery process serving a two year term.
  - g. Three high school students (11th/12th grade) with equal representation from the East, West, and North Clusters selected annually by a process determined by the Superintendent's designee. Student representatives will be non-voting members of the committee.
  - h. The Superintendent's designee, serving as the chair of the Committee to facilitate the process as a non-voting member, voting only in the event of a tie due to an even number of committee members.
  - i. An AASD secretary, assigned by the Superintendent's designee, to take minutes at the meeting and assist the Committee with its work as a non-voting member.
2. Consideration shall be provided in the selection process to ensure the same members are not appointed repeatedly. A rotating schedule within each category of committee representation shall be put into place wherein only a portion of each committee representation category changes each year.
  3. Only those members present may recommend action to be taken on the material being reconsidered. Committee members not present shall not vote on the final decision. The discussion of the group is an important element in the decision making process. In the event of a tie, the Committee Chair or the Superintendent's designee will cast a tie-breaking vote.
  4. Committee members directly associated with the complainant shall be excused from the committee during the deliberation on such materials. The superintendent or his/her designee will appoint a temporary replacement for the excused committee member, but such replacement shall be of the same general qualifications of a member excused.

### 361.1-Rule (cont.)

5. Each year the Committee shall have its first organizational meeting by September 15th at a time and place designated by the chairperson and made known to the members of the Committee at least five (5) school days in advance. This meeting will be officially noticed as a meeting of the AASD Educational Materials Review Committee. Members will be asked to confirm their willingness to serve the second year of their term, if applicable.
    - a. Prior to the first meeting, committee members will receive a copy of the Educational Materials Selection Policy.
    - b. The Committee at its first meeting will review procedures, District selection policies, previous challenges, and specific procedures for handling challenged materials.
  6. Subsequent meetings will be called at the discretion of the chairperson or whenever a formal Request for Reconsideration of Educational Material form – AASD Educational Materials Review Committee is received.
  7. In the event of multiple challenges involving different materials, the review committee may appoint a subcommittee of members and/or nonmembers to consolidate challenges and make recommendations to the full committee. The composition of such subcommittees shall approximate the representation of the AASD Educational Materials Review Committee.
  8. A request to review materials that have previously been before the committee must receive approval of a majority of the committee members before the materials shall be reconsidered. Requests with less than a two-year lapse will not be considered. Every completed Request for Reconsideration of Educational Material form – AASD Educational Materials Review Committee that is submitted to the District office shall receive a written response from the Superintendent or his/her designee.
- D. Review Process**
1. The complainant shall be kept informed by the chairperson concerning the status of the review throughout the committee reconsideration process. The complainant and all known interested parties shall be officially noticed using District Open Meeting guidelines.
  2. At the first meeting following receipt of a Request for Reconsideration of Educational Material form:
    - a. The Superintendent or his/her designee will prepare and distribute the following:
      - Copies of the written Request for Reconsideration of Educational Material form
      - Copies of the material in question for full review
      - Reputable, professionally prepared reviews of the material if available
      - Appropriate checklist form for fiction or nonfiction material

### 361.1-Rule (cont.)

- A timeline of events including copies of any communication from previous steps of the review process
  - b. The Committee chairperson shall review the procedures and process with the Committee.
  - 3. At the second meeting, thorough discussion of the material will be conducted. Interested individuals, including the complainant, will have the opportunity to share their views. The chairperson may request individuals with special knowledge to be present to provide information to the committee. The original complainant will be given up to ten (10) minutes to address the committee, if desired. Other individuals who are residents of the District, parents of children enrolled in the District, or employees of the District and wish to speak at the meeting are required to sign up prior to the scheduled meeting. Each speaker, other than the original complainant, will be given three (3) minutes to speak. This meeting will last no longer than three (3) hours.
  - 4. At the second meeting the Committee shall recommend one of the following actions:
    - a. Take no removal action
    - b. Limit the educational use of the material
    - c. Remove all or part of the material from the total school environment
  - 5. The written recommendation of the committee and its justification shall be forwarded to the Superintendent, to the complainant, and to the appropriate building principal(s) within five (5) school days of the meeting.
- E. Superintendent's Procedure**
1. The Superintendent shall review the AASD Educational Materials Review Committee's recommendation. The Superintendent may ratify, amend, or overrule the recommendation of the Review Committee. The Superintendent will provide copies of the Review Committee's recommendation and his/her decision to the complainant within five (5) school days of receipt of the Committee's report.
  2. The Superintendent will provide the Board of Education and AASD Educational Materials Review Committee with copies of his/her decision.
  3. If the matter reaches the press, the Superintendent or his/her designee will make the response.
- F. Appeal Process**
- If the original complainant is not satisfied with the Superintendent's decision, a request may be filed with the Superintendent within ten (10) school days of the date of receipt of the Superintendent's decision to have the matter placed on the agenda of the next scheduled Board of Education meeting. If the appeal request is submitted less than five (5) school days prior to the next regularly scheduled Board meeting, the Superintendent may move the matter to the next subsequent regularly scheduled meeting of the Board.



### 361.1-Rule (cont.)

The Board of Education, meeting as a committee of the whole, shall constitute the final step in the appeal process.

1. The Board shall review the documentation accompanying the Request Form as well as the AASD Educational Materials Review Committee minutes and other related Committee materials to determine whether or not procedural and non-discriminatory guidelines outlined in this policy were followed.
2. At its discretion, the Board may elect to conduct interviews with all parties pertinent to the material review process.
3. A decision of the Board with regard to action taken is final.

**Cross References:** Curriculum Development and Adoption, 330 and 330-Rule Assessment Programs, 346  
Assessment, Curriculum, and Instruction Handbook

**Legal References:** Wisconsin State Statutes 118.03, 118.13, 119.18, 120.13, 120.49, and 121.02

**Adoption Date:** June 26, 1993

**Amended Dates:** January 13, 2003 and October 24, 2011

Appleton Area  
School District

**ASSESSMENT,  
CURRICULUM  
& INSTRUCTION  
HANDBOOK**

*Revised, August 2009*



# AASD 6-Year Curriculum Cycle

## Phase 2: Revision and Materials Selection

Using information and recommendations from Phase One, committees will revise the curriculum, write/identify district-wide standards based assessments, select resources for the delivery of the curriculum, and recommend staff development.

### I. Review Existing Curriculum

- Establish a representative committee of teachers, administrators and department staff (include representation from special populations to the extent possible)
- Establish committee chairs
- Review existing curriculum (course objectives, performance indicators and classroom assessments) for alignment with state and local standards
- Include recommendations from the (P)K-12 Self-Study Planning and Review committee work in revision process
- Make preliminary changes to the curriculum document following the established format (page 22)
- Determine process for writing and disseminating meeting summaries. All teachers at a level or department should receive regular meeting updates.

### II. Review Possible Materials/Resources to Support the Curriculum

- With the same committee, identify possible materials/resources
- Committee Chair will request sample copies and request the company to do an alignment of their product to the AASD standards
- Committee develops an evaluation instrument using established AASD criteria (see appendix) and content specific requirements
- Using the criteria, narrow the choices to two to three vendors who will be asked to do presentations to the committee and a separate presentation to teachers
- Make materials available for preview to teachers
- Systematically collect feedback and information from teachers and site administrators regarding the choices
- Share feedback with the committee; committee makes the selection
- Identify texts/materials and any other resources needed by special populations (EEN, ELL, TAG)
- Utilize Materials Preview Checklists and checklist for K-12 Materials Selection for Special Populations (page 17)

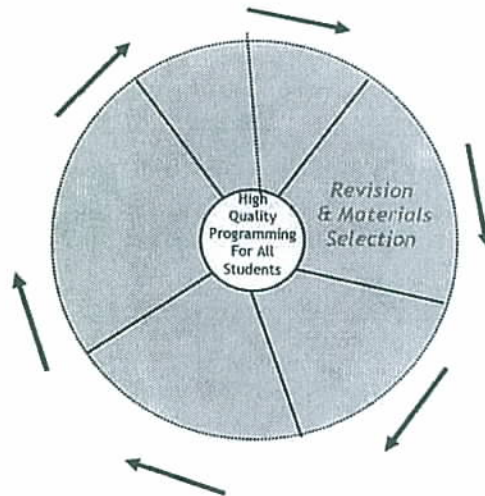
### III. Curriculum Writing

- Identify texts/materials and any other resource costs (include resource needs of special populations).
- Revise curriculum with broad representation throughout the District (TAG/Special Education/ELL involvement)—there must be representation from site administration
- Use the template format (page 22)
- Identify Essential Learning Objectives
- Specifically identify how reading and writing standards will be addressed in each course
- Identify or develop the district-wide assessments to benchmark the major standards (and upload into Eclipse)
- Provide curriculum to department, administrators and ACI department for feedback

- Make any needed adjustments
- Suggest implementation strategies for the following school year
- Curriculum documents reviewed by content steering committee by February

#### IV. BOE Approval Process

- Include topic on ACI agenda before the information is disseminated for Program and Services
- **By the end of the calendar year**, for budgeting purposes, Item for Consideration is presented to Program and Services (from Curriculum Coordinator/Director to Assistant Superintendent)
- Item for Consideration packet includes revised curriculum and list of resources being adopted
- Resources on display second floor of Morgan for public viewing (thirty days before Item is taken to full Board of Education)
- Determine if charter schools will be using materials or budget an equal allocation
- Determine number of textbooks to be purchased by looking at largest class in lower grades (for required classes). Order 10% more of required course texts to accommodate future losses and/or wear
- Purchase orders completed with Materials/Resource Distribution form (see appendix) by July 1<sup>st</sup> (new fiscal year). Be sure to write on PO: "Please bill after July 1."
- Transfer per pupil monies to charter schools if they are not getting the adopted texts and materials
- Provide manuals and as much support material possible to teachers before the summer break
- Post BOE approved curriculum on the web site and on the K drive



To: Lee Allinger and the AASD Board of Education

Dear Mr. Allinger:

In July of this year, Paul Trele and I made a request for an alternative book list for the 9th Grade CA classes that meets three stated criteria. In your letter dated August 19, 2011 you agreed to identify literary materials that meet these criteria. You directed Nan Bunnow to organize a committee to solicit input toward that end. We understood that in order to make this alternative available for the 2012-2013 school year, the literary materials would need to be selected and approved in the current calendar year. Subsequent to our meeting on July 25, 2011, a Materials Selection Committee was formed to carry out these instructions.

On Thursday, November 10, 2011, Paul and I met with Nan Bunnow and Kevin Steinhilber in order that we might better understand the progress of the committee. In that meeting it became evident that it will be impossible to meet the expected December timeline and, in our view, highly unlikely that an alternative will be available as an option for parents in March, 2012. Secondly, it has become apparent that the committee is not intending to provide an alternative selection of literary materials, but rather a broad assortment of materials that will become the 9th Grade CA book list. This is not the same as the alternative we had requested. Third, we were informed that the committee has already eliminated 45 books from an original list of 80 resulting in a short list of 35 potential books.

Another major concern is that the entire process is being conducted behind closed doors. Unfortunately, it is this closed door process that produced the objectionable materials in the first place. In the interest of openness, fairness, and public service, this selection process must be opened to the public. In fact, we believe this process is subject to Wisconsin Open Meetings Law and we request that they be conducted in accordance with that law from this point forward. Finally, Paul and I have reviewed the 35 books remaining on the list and we are gravely disappointed to see that several of the books we recommended as meeting the three criteria have already been deleted. While we understand that the books will undergo further scrutiny and selection, we have no reason to believe that this selection process will produce any more favorable results in the future than it has produced in the past.

Therefore, we respectfully request to meet with you and other board members to discuss this before the next board meeting on November 28<sup>th</sup>. In our view, we are at an important juncture that will determine the direction of events as we move forward.

Sincerely,

John Krueger

Paul Trele

