MEMORANDUM

To: Members of the Board of Education

From: Joshua P. Starr, Superintendent of Schools

Subject: Governance Matters Relating to the Montgomery County Public Schools 403(b) and 457(b) Plans

The Board of Education of Montgomery County, Maryland (the “Board”) sponsors and maintains two separate defined contribution plans (“Defined Contribution Plans” or “Plans”) that allow employees to voluntarily save amounts for retirement on a pre-tax basis: the Montgomery County Public Schools Tax-Sheltered Savings Plan, a “403(b) plan,” and the Montgomery County Public Schools Tax-Sheltered Savings Plan, a “457(b) plan.”

The Montgomery County Public Schools Defined Contribution Advisory Work Group recently completed a detailed and comprehensive review of the operations and administration of the Defined Contribution Plans and has made recommendations to the Board of Education Fiscal Management Committee at its September 8, 2014, meeting that are designed to improve the administration and operation of these plans. The Defined Contribution Advisory Work Group’s findings and recommendations are detailed in the attached memorandum of September 5, 2014, from Mr. Larry A. Bowers, chief operating officer, to members of the Board of Education Fiscal Management Committee.

In order to implement the recommendations of the Defined Contribution Advisory Work Group, I am recommending that the Board adopts certain amendments to the Defined Contribution Plans. Those amendments would:

- Provide for a single recordkeeper to be appointed by the Board in order to streamline plan administration and operation.

- Establish a Defined Contribution Investment Committee (“DCIC”) to be appointed by the Board. The DCIC will be responsible for selecting and monitoring a suitable menu of investment options to be offered by the Plans. The DCIC will be authorized and expected to retain professional investment advisors to assist it in this process, the expense of which will be paid by the Plans.
• Authorize the Board to select a firm to provide investment education and/or advice to Plan participants with respect to the investment of their Plan contributions. The expense of any such education or advice would be paid by the Plans.

In addition, to facilitate technical amendments that are required from time to time when there are changes in the laws that govern the Defined Contribution Plans, I recommend that the Board delegates limited authority to the superintendent of schools to adopt amendments to the Plans that are required or advisable to comply with applicable law and do not substantially change the nature, design, or cost of operating the Plans.

The resolutions below also authorize the initiation of appropriate Request for Proposals to implement the recommendations of the Defined Contribution Advisory Work Group and the resulting Plan amendments. Prospective candidates will be provided at the next Board meeting for appointment to the DCIC, which will be established to provide ongoing recommendations and advice to the Board with respect to the Plans.

WHEREAS, The Board of Education of Montgomery County, Maryland (the “Board”) sponsors and maintains the Montgomery County Public Schools Tax-Sheltered Savings Plan, a “403(b) plan,” and the Montgomery County Public Schools Tax-Sheltered Savings Plan, a “457(b) plan,” which are defined contribution retirement savings plans for eligible employees (together, the “Plans”); and

WHEREAS, The Board of Education Fiscal Management Committee has reviewed the recommendations of the Montgomery County Public Schools Defined Contribution Advisory Work Group in the memorandum of September 5, 2014, from Mr. Larry A. Bowers, chief operating officer, to the Board of Education Fiscal Management Committee, and has determined that it is advisable and in the best interests of the Board to adopt those recommendations; now therefore be it

Resolved, That the Plans, as amended and restated, in substantially the forms attached hereto, are hereby approved and adopted; and be it further

Resolved, That the appropriate MCPS staff are hereby authorized and directed to commence the Request for Proposals process to select a single recordkeeper for the Plans upon expiration of the existing contracts on December 31, 2015, and to select a provider of investment education and advice to Plan participants; and be it further

Resolved, That the Board delegates limited authority to the superintendent of schools to adopt amendments to the Plans that are required or advisable to comply with applicable law and do not substantially change the nature, design, or cost of operating the Plans; and be it further

Resolved, That the appropriate individuals are hereby authorized and directed to take such further actions and execute such documents as may be necessary or advisable to effect these resolutions, including executing the amended and restated Plans.

JPS:LAB:SD:mg

Attachments
MONTGOMERY COUNTY PUBLIC SCHOOLS
DEFERRED COMPENSATION PLAN

Amendment and Restatement
Effective as of January 1, 2014

[September 9, 2009]
TABLE OF CONTENTS

| ARTICLE I INTRODUCTION AND PURPOSE OF PLAN | ................................................................. | 1 |
| 1.1 ESTABLISHMENT OF PLAN | ........................................................................ | 1 |
| 1.2 PURPOSE OF PLAN | ........................................................................ | 1 |
| ARTICLE II DEFINITIONS | ........................................................................ | 1 |
| 2.1 ADMINISTRATOR | ........................................................................ | 1 |
| 2.2 BENEFICIARY | ........................................................................ | 1 |
| 2.3 CODE | ........................................................................ | 1 |
| 2.4 COMPENSATION | ........................................................................ | 1 |
| 2.5 DEFERRAL DCIC | ........................................................................ | 1 |
| 2.6 DEFERRAL | ........................................................................ | 2 |
| 2.7 DEFERRED COMPENSATION ACCOUNT | .................................................. | 2 |
| 2.8 ELIGIBLE EMPLOYEE | ........................................................................ | 2 |
| 2.9 EMPLOYER | ........................................................................ | 2 |
| 2.10 INCLUDABLE COMPENSATION | .................................................................. | 2 |
| 2.11 INVESTMENT OPTIONS | .................................................................. | 2 |
| 2.12 INVESTMENT SPONSOR | .................................................................. | 2 |
| 2.13 PARTICIPANT | .................................................................. | 2 |
| 2.14 PLAN | .................................................................. | 2 |
| 2.15 RECORDKEEPING AGREEMENT | PLAN YEAR | .................................................. | 2 |
| 2.16 RECORDKEEPER | .................................................................. | 2 |
| 2.17 REQUIRED BEGINNING DATE | .................................................. | 2 |
| 2.18 SEVERANCE FROM EMPLOYMENT | .................................................. | 23 |
| 2.19 SUPERINTENDENT | .................................................................. | 3 |
| 2.20 UNFORESEEABLE EMERGENCY | .................................................. | 3 |
| 2.21 VOLUNTARY SALARY DEFERRAL AGREEMENT | ........................................ | 3 |
| ARTICLE III PARTICIPATION IN THE PLAN | .................................................................. | 3 |
| 3.1 ENROLLMENT- VOLUNTARY SALARY DEFERRAL AGREEMENT | ....................................... | 3 |
| 3.2 ACCEPTANCE OF ROLLOVERS | .................................................................. | 4 |
| ARTICLE IV DEFERRAL OF COMPENSATION | .................................................................. | 4 |
| 4.1 MAXIMUM DEFERRAL | .................................................................. | 4 |
TABLE OF CONTENTS

(continued)

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2 MODIFICATIONS TO AMOUNT DEFERRED.</td>
<td>5</td>
</tr>
<tr>
<td>4.3 REVOCATION OF DEFERRAL</td>
<td>5</td>
</tr>
<tr>
<td>4.4 DURATION OF DEFERRAL ELECTION</td>
<td>5</td>
</tr>
<tr>
<td>4.5 CANCELLATION OF DEFERRAL ELECTIONS IN THE EVENT OF HARDSHIP DISTRIBUTIONS.</td>
<td>5</td>
</tr>
</tbody>
</table>

ARTICLE V DISTRIBUTION OF BENEFITS: |

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 DISTRIBUTION UPON SEVERANCE FROM EMPLOYMENT OR AGE 70-1/2.</td>
<td>5</td>
</tr>
<tr>
<td>5.2 IN-SERVICE DISTRIBUTION DUE TO UNFORESEEABLE EMERGENCY</td>
<td>6</td>
</tr>
<tr>
<td>5.3 IN-SERVICE DISTRIBUTIONS OF CERTAIN SMALL ACCOUNTS.</td>
<td>6</td>
</tr>
<tr>
<td>5.4 DISTRIBUTION OPTIONS</td>
<td>6</td>
</tr>
<tr>
<td>5.5 DEATH DISTRIBUTION PROVISIONS</td>
<td>6</td>
</tr>
<tr>
<td>5.6 MINIMUM REQUIRED DISTRIBUTIONS</td>
<td>6</td>
</tr>
<tr>
<td>5.7 DIRECT ROLLOVER PERMITTED</td>
<td>7</td>
</tr>
<tr>
<td>5.8 PLAN TO PLAN TRANSFERS</td>
<td>8</td>
</tr>
<tr>
<td>5.9 LOANS</td>
<td>8</td>
</tr>
</tbody>
</table>

ARTICLE VI BENEFICIARY INFORMATION: |

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1 DESIGNATION</td>
<td>9</td>
</tr>
</tbody>
</table>

ARTICLE VII PLAN ADMINISTRATION: |

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1 PLAN ADMINISTRATION</td>
<td>9</td>
</tr>
<tr>
<td>7.2 OWNERSHIP OF ASSETS</td>
<td>10</td>
</tr>
<tr>
<td>7.3 ACCOUNTS AND EXPENSES</td>
<td>10</td>
</tr>
<tr>
<td>7.4 INVESTMENTS</td>
<td>10</td>
</tr>
<tr>
<td>7.5 TIMING OF CONTRIBUTIONS</td>
<td>11</td>
</tr>
<tr>
<td>7.6 SPECIAL RULES RELATING TO VETERANS’ REEMPLOYMENT RIGHTS AND MILITARY SERVICE.</td>
<td>11</td>
</tr>
</tbody>
</table>

ARTICLE VIII AMENDMENT OR TERMINATION OF PLAN: |

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1 AMENDMENT OF PLAN</td>
<td>11</td>
</tr>
<tr>
<td>8.2 TERMINATION</td>
<td>11</td>
</tr>
</tbody>
</table>

ARTICLE IX MISCELLANEOUS |

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.1 LIMITATION OF RIGHTS</td>
<td>12</td>
</tr>
</tbody>
</table>

-ii-
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.2</td>
<td>NO CONTRACT OF EMPLOYMENT</td>
<td>12-13</td>
</tr>
<tr>
<td>9.3</td>
<td>LIMITATION ON ASSIGNMENT</td>
<td>12-13</td>
</tr>
<tr>
<td>9.4</td>
<td>DOMESTIC RELATIONS ORDERS</td>
<td>12-14</td>
</tr>
<tr>
<td>9.5</td>
<td>TRANSFERS TO A DEFINED BENEFIT PLAN</td>
<td>12-14</td>
</tr>
<tr>
<td>9.6</td>
<td>REPRESENTATIONS</td>
<td>12-14</td>
</tr>
<tr>
<td>9.7</td>
<td>SEVERABILITY</td>
<td>12-14</td>
</tr>
<tr>
<td>9.8</td>
<td>APPLICABLE LAW</td>
<td>13-14</td>
</tr>
</tbody>
</table>
MONTGOMERY COUNTY PUBLIC SCHOOLS
DEFERRED COMPENSATION PLAN

Amendment and Restatement
Effective as of January 1 [September 9], 2009 [2014]

ARTICLE I

INTRODUCTION AND PURPOSE OF PLAN

1.1 ESTABLISHMENT OF PLAN.

This amendment and restatement of the Montgomery County Public Schools Deferred Compensation Plan (the “Plan”) is effective as of January 1 [September 9], 2009 [2014].

1.2 PURPOSE OF PLAN.

The purpose of this Plan is to enable Employees who become covered under the Plan to enhance their retirement security by permitting them to enter into agreements with the Employer to defer a portion of their Compensation and receive benefits at retirement, death, or other severance from employment, or in the event of financial hardship due to an unforeseeable emergency. Participation in this Plan shall not be construed to establish or create an employment contract between the Employee and the Employer.

ARTICLE II

DEFINITIONS

Whenever used in the Plan, the following capitalized terms shall have the meanings as set forth in this Article unless a different meaning is clearly required by the context.

2.1 ADMINISTRATOR means the Superintendent or any person designated by the Superintendent for any or all purposes under the Plan.

2.2 BENEFICIARY means the person, persons, or legal entity entitled to receive benefits under this Plan which become payable if a Participant dies.

2.3 CODE means the Internal Revenue Code of 1986, as amended, and any regulations thereunder.

2.4 COMPENSATION means the total amount of remuneration earned by an Employee for personal services rendered to the Employer for the calendar year including amounts deferred under this Plan and any other deferred compensation plan. To the extent required by a collective bargaining agreement, Compensation shall include amounts payable for accumulated sick and vacation pay.

2.5 DCIC means the Defined Contribution Investment Committee, appointed by the Employer and as may be constituted from time to time. The Employer shall determine the
number of members of the DCIC and may appoint or remove the members of the DCIC in its discretion.

2.52.6 **DEFERRAL** means (i) the annual amount of Compensation that a Participant elects to defer pursuant to a properly executed Voluntary Salary Deferral Agreement and (ii) any amount that the Employer contributes on any Participant’s behalf, as determined by the Employer in its sole discretion.

2.62.7 **DEFERRED COMPENSATION ACCOUNT** means the account established and maintained on behalf of a Participant as provided in Section 7.3.

2.72.8 **ELIGIBLE EMPLOYEE** means any person who performs services for the Employer, is classified by the Employer as an “employee” and receives Compensation from the Employer. Elected or appointed members of the Board of Education shall also be Eligible Employees during their tenure as such.

2.82.9 **EMPLOYER** means the Board of Education of Montgomery County.

2.92.10 **INCLUDABLE COMPENSATION** means compensation for services performed for the Employer determined without reduction by reason of (i) Deferrals under this Plan or any other plan subject to Code section 457(b), (ii) any salary deferral agreement pursuant to Code section 403(b), as defined in Code section 457(e)(5) or (iii) any elections made under Code section 125.

2.102.11 **INVESTMENT OPTIONS** means (i) shares of open-end, regulated investment companies registered under the Investment Company Act of 1940, (ii) interests of common trust funds or collective investment funds qualified under sections 401 and 501 of the Code, (iii) annuity contracts, and (iv) bonds and equity securities actively traded on the New York Stock Exchange, American Stock Exchange or the Nasdaq National Market.

2.112.12 **INVESTMENT SPONSOR** means any insurance company, regulated investment company, or other entity that the **DCIC** allows to provide Investment Options under the Plan.

2.122.13 **PARTICIPANT** means an Employee or former Employee who has been enrolled in this Plan and who retains the rights to benefits under the Plan.

2.132.14 **PLAN** means the Montgomery County Public Schools Deferred Compensation Plan as it may be amended from time to time.

2.142.15 **PLAN YEAR** means the twelve (12) consecutive month period beginning each January 1 and ending the following December 31.

2.152.16 **RECORDKEEPING AGREEMENT** means the agreement by and between the Employer and any **RECORDKEEPER** means the recordkeeper appointed by the Employer.

2.162.17 **REQUIRED BEGINNING DATE** means the date by which distributions are required to begin, as defined in Section 5.1.
SEVERANCE FROM EMPLOYMENT means the severance of a Participant’s employment with the Employer including retirement, termination and death. Any Participant who is granted a leave of absence by the Employer will not be treated as incurring a Severance from Employment as long as the leave of absence is approved by the Employer. If an approved leave of absence is terminated by the Employer or Employee without the resumption of the employment relationship, the Participant shall be treated as incurring a Severance from Employment under this Plan as of the date of termination of such leave. With respect to a person who is an Eligible Employee by virtue of serving as an elected or appointed member of the Board of Education of Montgomery County, a Severance from Employment shall occur upon termination of such service.

SUPERINTENDENT means the Superintendent of Schools of Montgomery County.

UNFORESEEABLE EMERGENCY means a severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant’s or Beneficiary’s spouse, or the Participant’s or Beneficiary’s dependent (as defined in section 152(a) of the Code), loss of the Participant’s or Beneficiary’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. The circumstances that will constitute an “Unforeseeable Emergency” will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

(i) Through reimbursement or compensation by insurance or otherwise;

(ii) By liquidation of the Participant’s assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or

(iii) By cessation of deferrals under the Plan.

The need to send a Participant’s child to college or the desire to purchase a home shall not be considered an Unforeseeable Emergency. The determination of what constitutes an Unforeseeable Emergency shall be made by the Administrator in accordance with the terms of the Plan, the Code and the applicable regulations and rulings.

VOLUNTARY SALARY DEFERRAL AGREEMENT means the agreement between a Participant and the Employer to defer receipt by the Participant of Compensation not yet paid or otherwise made available. Such agreement shall be in such form as may be prescribed by the Administrator and subject to such uniform administrative rules as the Administrator shall establish from time to time subject to the terms of this Plan.
ARTICLE III
PARTICIPATION IN THE PLAN

3.1 ENROLLMENT- VOLUNTARY SALARY DEFERRAL AGREEMENT.

Each Eligible Employee may become a Participant as of the date his or her employment begins by completing a Voluntary Salary Deferral Agreement and submitting it to the Employer on or before that date. An Eligible Employee who does not become a Participant as of the date his or her employment begins may become a Participant on the first day of the month next following the date on which the Eligible Employee enrolls in the Plan by completing a Voluntary Salary Deferral Agreement and submitting it to the Employer. Any person elected or appointed to a term of office on the Board of Education of Montgomery County shall be deemed to begin employment at the time he or she assumes duties as a member of such Board. Deferrals may commence as of the first pay date on or after the date me Eligible Employee becomes a Participant, or as soon as administratively practicable thereafter.

3.2 ACCEPTANCE OF ROLLOVERS.

A Participant may make a rollover contribution to the Plan to the extent such rollover contribution constitutes an Eligible Rollover Distribution (as defined in Section 5.7(b)) from an Eligible Retirement Plan (as defined in Section 5.7(c)) and to the extent allowed by the applicable Investment Option. The Plan will not accept a rollover of any after-tax employee contributions. The Plan shall separately account for all rollover contributions.

ARTICLE IV
DEFERRAL OF COMPENSATION

4.1 MAXIMUM DEFERRAL.

(a) Primary Limitation. A Participant’s Deferral amount in any calendar year shall not exceed the lesser of (1) the Applicable Dollar Amount or (2) 100 percent (100%) of the Participant’s Includable Compensation for the year. “Applicable Dollar Amount” means the amount specified by Code section 457(e)(15)(A), as adjusted automatically each calendar year to reflect increases in cost-of-living in accordance with Code sections 457(e)(15)(B) and 415(d).

(b) Age 50 or Older Alternative Catch-up Limitation. Any Participant who has attained age fifty (50) before the close of the Participant’s taxable year, and who has contributed the maximum amount permissible under Section 4.1(a), may make catch-up contributions for the taxable year equal to the lesser of: (1) the Applicable Catch-Up Dollar Amount, or (2) the excess of (i) the Participant’s Compensation for the taxable year, over (ii) the Participant’s Deferrals for such taxable year. “Applicable Catch-Up Dollar Amount” means the amount specified by Code section 414(v)(2)(B)(i), as adjusted automatically each calendar year to reflect increases in cost-of-living in accordance with Code sections 414(v)(2)(C) and 415(d).

(c) Coordination With Other Plans. If a Participant participates in more than one Code section 457(b) plan, the maximum deferral under all plans shall not exceed the Applicable
Dollar Amount (subject to modification by the catch-up limitation described in (b) above). Sections 4.1(a) and 4.1(b) shall not apply to a qualified governmental excess benefit arrangement (as defined in Code Section 415(m)(3)) and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.

(d) The Employer, in its sole discretion, shall determine if any reduction in contributions is required by reason of the limitations set forth in Section 4.1(a). No Participant shall be entitled to any contributions in excess of such limitations. If the Employer determines at any time that it has erred by accepting contributions by or on behalf of a Participant for any Plan Year in violation of such limitations, then the amount of any required reduction in the Participant’s Deferrals made pursuant to a Voluntary Salary Deferral Agreement (with allocable net earnings) shall be returned to him or her, in a manner consistent with applicable law.

4.2 MODIFICATIONS TO AMOUNT DEFERRED.

A Participant may change Deferrals with respect to Compensation not yet earned or paid by submitting a new properly executed Voluntary Salary Deferral Agreement to the Employer. Such change shall take effect as soon as administratively practicable but not earlier than the pay date on or after the first day of the month following receipt by the Employer of the properly executed Voluntary Salary Deferral Agreement. The Administrator may, in its sole discretion, limit the number of times a Participant may change his or her Deferrals during any Plan Year or portion of a Plan Year.

4.3 REVOCATION OF DEFERRAL.

Any Participant may revoke his or her election to have Compensation deferred by so notifying the Employer in writing. The revocation will be effective as soon as administratively practicable, but no earlier than the first pay period beginning on or after receipt of such written notice by the Employer.

4.4 DURATION OF DEFERRAL ELECTION.

Once a Deferral election has been made by the Participant, the election shall continue in effect until the Participant’s Severance from Employment, unless the Participant modifies the Deferral in accordance with Section 4.2 or revokes the Deferral in accordance with Section 4.3.

4.5 CANCELLATION OF DEFERRAL ELECTIONS IN THE EVENT OF HARDSHIP DISTRIBUTIONS.

In the event a Participant receives a hardship distribution under the Employer’s Tax-Sheltered Savings Plan, the Participant’s Voluntary Salary Deferral Agreement shall be cancelled automatically and the Participant shall not be eligible to make a new Voluntary Deferral Agreement or make Deferrals under this Plan for a period of six (6) months from the date on which such hardship distribution is made.
ARTICLE V

DISTRIBUTION OF BENEFITS

5.1 DISTRIBUTION UPON SEVERANCE FROM EMPLOYMENT OR AGE 70-1/2.

(a) General Rule. A Participant is entitled to receive a distribution from his or her Deferred Compensation Account upon the earliest of his or her Severance from Employment or the calendar year in which he or she attains age 70-1/2. The Participant may elect to receive his or her distribution in any form of payment permitted under Section 5.4. The Participant will elect the time at which distribution will be made or begin, subject to the provisions of paragraph (b). No distribution may be made on account of any Severance from Employment to an Eligible Employee who was a Participant after such individual has again become an Eligible Employee.

(b) Required Beginning Date. In no event may distribution of a Participant’s Deferred Compensation Account begin later than the April 1 following the calendar year in which the Participant attains age seventy and one-half (70-1/2) or retires, whichever is later.

5.2 IN-SERVICE DISTRIBUTION DUE TO UNFORESEEABLE EMERGENCY.

A Participant may request an in-service distribution due to severe financial hardship by submitting a written request to the Administrator accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency. The Administrator shall have the authority to require such evidence as deemed necessary to determine if a distribution is warranted. If an application for a hardship distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the emergency plus any estimated tax liability. The allowed distribution shall be payable in a lump sum as soon as practicable after approval.

5.3 IN-SERVICE DISTRIBUTIONS OF CERTAIN SMALL ACCOUNTS.

To the extent allowable under the applicable Investment Option, a Participant may elect a lump sum distribution of his or her benefits prior to Severance from Employment if (i) the total amount held under the Plan for the Participant, not including rollover contributions, does not exceed the dollar limit under Code section 411(a)(11)(A), (ii) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution, and (iii) the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan.

5.4 DISTRIBUTION OPTIONS.

Distributions shall be made in any manner allowed by the applicable Investment Option.

5.5 DEATH DISTRIBUTION PROVISIONS.

(a) Death After Commencement of Benefits. If the Participant dies after distribution of his or her Deferred Compensation Account has begun, the remaining portion of his or her Deferred Compensation Account will be distributed to the Participant’s Beneficiary according to
the method of distribution in effect under Section 5.4, subject to the Beneficiary’s right to change
the timing or form of payments as described therein.

(b) Death Before Commencement of Benefits. If the Participant dies before
distribution of his or her Deferred Compensation Account has begun, the Participant’s
Beneficiary is entitled to receive a distribution of the Participant’s Deferred Compensation
Account in a form of payment set forth in Section 5.4. The Beneficiary will elect the form of
payment and the time at which distribution will be made or begin, subject to Section 5.6.

5.6 MINIMUM REQUIRED DISTRIBUTIONS.

(a) General. This Section 5.6 is included in the Plan to comply with Code
section 401(a)(9). To the extent that there is any conflict between the provisions of Code
section 401(a)(9) and the provisions in this Plan, the provisions of Code section 401(a)(9) will
control.

The provisions set forth in this Section are intended to reflect the regulations under Code
section 401(a)(9).

(b) Distributions During the Participant’s Lifetime. Distributions to a Participant
occurring after the Participant’s Required Beginning Date must be at least equal to the
Participant’s Deferred Compensation Account at the end of the preceding year, divided by the
“applicable divisor” determined under applicable IRS regulations.

(c) Distributions After the Participant’s Death.

(i) If the Beneficiary is an individual who is not the Participant’s spouse,
unless the Beneficiary elects application of the five-year rule described below, each year after the
year of the Participant’s death the Beneficiary must receive an amount at least equal to the
Deferred Compensation Account balance as of the end of the preceding year, divided by the
Beneficiary’s single life expectancy as of the Beneficiary’s birthday in the year following the
year of the Participant’s death (determined under applicable IRS regulations), reduced by one for
each elapsed year since the year following the Participant’s death. Alternatively, the Beneficiary
may elect to have the Participant’s entire Deferred Compensation Account be distributed on or
before December 31 of the calendar year in which the fifth anniversary of the Participant’s death
occurs.

(ii) If the Beneficiary is the Participant’s spouse, the distribution rule set forth
in paragraph (i) above shall apply; however, distributions will not be required to begin by
December 31 of the calendar year following the calendar year in which the Participant dies and
instead may be delayed until December 31 of the year in which the Participant would have
attained age seventy and one-half (70-1/2). If the spouse dies before payments begin, subsequent
distributions shall be made as if the spouse had been the Participant.

(iii) If the Beneficiary is not an individual, and if the Participant dies on or
after his or her Required Beginning Date, each year after the year of the Participant’s death the
Beneficiary must receive an amount at least equal to the Deferred Compensation Account
balance as of the end of the preceding year divided by the Participant’s single life expectancy as
of Participant’s birthday in the year of death (determined under applicable IRS regulations), reduced by one for each elapsed year since the year of death.

(iv) If the Beneficiary is not an individual, and if the Participant dies before his or her Required Beginning Date, the Participant’s entire Deferred Compensation Account must be distributed to his or her designated Beneficiary on or before December 31 of the calendar year in which the fifth anniversary of the Participant’s death occurs.

(d) 2009 Suspension. Notwithstanding the foregoing provisions of this Section 5.6, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years (“Extended 2009 RMDs”), will either receive or have those distributions for 2009 suspended as described in the chart below with respect to the Investment Options provided by the Investment Sponsors described in the chart below and subject to the procedures implemented by the Investment Sponsors and communicated to such Participants and Beneficiaries. In addition, solely for purposes of applying the direct rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs will also be treated as eligible rollover distributions in 2009, to the extent provided by the Investment Sponsors.

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<thead>
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<th>2009 RMD/Extended 2009 RMD Suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lincoln Financial</td>
<td>Participant or Beneficiary may elect to suspend RMD or receive RMD. If the Participant or Beneficiary makes no election, active RMD Participants’ RMD will be suspended and terminated RMD Participants’ RMD will be paid.</td>
</tr>
<tr>
<td>Lincoln Investments</td>
<td>RMD will be paid unless the Participant or Beneficiary requests suspension.</td>
</tr>
<tr>
<td>ING</td>
<td>RMD will be suspended unless the Participant or Beneficiary requests payment.</td>
</tr>
<tr>
<td>TIAA-CREF</td>
<td>RMD will be paid unless the Participant or Beneficiary requests suspension.</td>
</tr>
<tr>
<td>Fidelity</td>
<td>RMD will be paid unless the Participant or Beneficiary requests suspension.</td>
</tr>
<tr>
<td>T. Rowe Price</td>
<td>RMD will be suspended unless the Participant or Beneficiary requests payment. Installment payments will continue unless the Participant or Beneficiary requests suspension.</td>
</tr>
<tr>
<td>VALIC</td>
<td>RMD will be suspended. Installment payments will continue unless the Participant or Beneficiary requests suspension.</td>
</tr>
</tbody>
</table>
5.7 DIRECT ROLLOVER PERMITTED.

(a) Election. The Recipient (as defined in Section 5.7(d)) of a distribution may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan.

(b) Eligible Rollover Distribution means any distribution to a Recipient which qualifies as an eligible rollover distribution under Code section 402(c)(4) or any successor provision.

(c) Eligible Retirement Plan means any of the following that accepts the recipient’s eligible rollover distribution: an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), a qualified trust described in Code section 401(a), an annuity contract described in Code section 403(b), an eligible plan under Code section 457(b) of the Code which is maintained by a state, political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, and effective for distributions made on or after January 1, 2008, a Roth IRA under Code section 408A. To the extent federal law so provides, an “eligible retirement plan” also includes the federal Thrift Savings Plan.

(d) Recipient means (i) a Participant or former Participant, (ii) the Participant’s or former Participant’s surviving spouse, (iii) the Participant’s or former Participant’s spouse or former spouse who is an alternate payee under a Domestic Relations Order, as defined in Section 9.4, and (iv) to the extent allowed by Code section 402(c)(11), a designated Beneficiary who is not the surviving spouse.

5.8 PLAN TO PLAN TRANSFERS.

Notwithstanding any other provisions of the Plan, to the extent permitted by law, all or any part of the Deferred Compensation Account of a Participant may be transferred to another eligible governmental deferred compensation plan if (a) the plan receiving such transfer provides for acceptance of such transfers and (b) the Participant gives written direction to the Investment Sponsor in satisfactory form to make such transfer. The Investment Sponsor shall be solely responsible for effecting such transfer and the Employer shall have no liability with respect to such transfer.

5.9 LOANS.

Loans shall be permitted under the Plan only to actively employed Eligible Employees. Such loans may be made only to the extent permitted by the Investment Option controlling the Deferred Compensation Account assets from which the loan is made and by which the loan will be secured.

(a) Each Investment Sponsor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans...
from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 5.9, including the collection of information from Investment Sponsors, and transmission of information requested by any Investment Sponsor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Investment Sponsors, and transmission of information to any Investment Sponsor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

(b) No loan to a Participant under the Plan may exceed the lesser of:

   (i) $50,000 reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period) or;

   (ii) one half of the value of the Participant’s vested Deferred Compensation account balance (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 5.9, any loan from any other plan maintained by the Employer and any entity under common control with the Employer under section 414(b) or (c) of the Code shall be treated as if it were a loan made from the Plan, and the Participant’s vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

ARTICLE VI

BENEFICIARY INFORMATION

6.1 DESIGNATION.

A Participant shall have the right to designate a Beneficiary or Beneficiaries, and amend or revoke such designation at any time, in writing. Such designation, amendment or revocation shall be effective upon receipt of such written designation pursuant to rules established by the applicable Investment Sponsor.

ARTICLE VII

PLAN ADMINISTRATION

7.1 PLAN ADMINISTRATION.

(a) Duties of the Employer. The Employer shall have the sole authority to designate a single Recordkeeper. In addition, the Employer may, in its discretion, enter into a contract with the Recordkeeper or another third party to provide investment education and/or advice to
Participants. Recordkeeping expenses and expenses relating to investment education and advice will be paid by the Plan unless paid by the Employer.

(b) Duties of the Administrator. The Administrator shall have the power and authority to adopt, interpret, alter, amend or revoke rules and regulations necessary to administer the Plan, delegate ministerial duties and make recommendations to the Employer regarding the employment of such outside professionals as may be required for prudent administration of the Plan. The Administrator, if otherwise eligible, may participate in the Plan, but shall not be entitled to make decisions solely with respect to his or her own participation.

(c) Duties of the Recordkeeper. The Recordkeeper shall maintain the records of the Plan and perform such other administrative tasks pursuant to and in accordance with an administrative services agreement entered into with the Employer.

(d) Duties of the DCIC. The DCIC shall have the authority, duty, and responsibility to: (i) select the Investment Options available under the Plan; (ii) monitor and evaluate the performance of the Investment Options and the Plan’s investment line-up; (iii) remove and replace Investment Options available under the Plan; and (iv) retain an advisor to assist the DCIC in the exercise of its authority, duties, and responsibilities. Expenses to retain the advisor shall be paid by the Plan unless paid by the Employer.

7.2 OWNERSHIP OF ASSETS.

All amounts of Compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in accordance with Code section 457(g) in a trust and/or in one or more custodial accounts or contracts described in Code section 401(f), for the exclusive benefit of Plan Participants and Beneficiaries. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the laws of the State of Maryland. Any annuity contract must be issued by an insurance company qualified to do business in the state where the contract was issued. The custodian of any custodial account created pursuant to the Plan must be a bank, as described in Code section 408(n), or a person who meets the non-bank trustee requirements of paragraphs (2)-(6) of Treas. Reg. Section 1.408-2(e) relating to the use of non-bank trustees. Each Investment Sponsor shall be responsible for satisfying the requirements of this Section 7.2 with respect to each of the Investment Options it provides under this Plan.

7.3 ACCOUNTS AND EXPENSES.

Each Investment Sponsor shall establish and maintain a Deferred Compensation Account on behalf of each Participant who elects to invest in any Investment Option made available by such Investment Sponsor. Such Deferred Compensation Account shall be valued at fair market value as of the last day of the Plan Year and such other dates as the Administrator shall determine. Each Participant shall receive an accounting at least annually, or more frequently at such intervals as the Administrator shall determine, of his or her Deferred Compensation Account balance following such valuation. Such accounting shall be rendered thirty (30) days after the end of the quarter or as soon as administratively practicable thereafter. Each Participant’s Deferred Compensation Account shall be credited with the amount of any Deferrals
and any amounts rolled over or transferred to this Plan pursuant to Sections 3.2 or 5.8, and shall be further credited or debited, as applicable, with (i) any increase or decrease resulting from investments pursuant to Section 7.4 and (ii) the amount of any distribution.

7.4 INVESTMENTS.

(a) Each Participant shall be solely responsible for the investment of his or her Deferred Compensation Account and Deferrals among the available Investment Options. Neither the Employer nor the Administrator shall have any duty or responsibility regarding any Participant’s investment of amounts allocated to his or her Deferred Compensation Account. Each Investment Sponsor shall be solely responsible for the selection, operation, and communication of Investment Options it makes available pursuant to the Plan, and neither the Employer nor the Superintendent shall be deemed to have endorsed, approved or agreed to the suitability of any such Investment Option made available by any Investment Sponsor.

(b) The initial investment allocation request may be made at the time of enrollment. Once made, an investment allocation request shall remain in effect for all subsequent Deferrals until changed by the Participant. A Participant may change his or her investment allocation at such times as permitted by the Investment Sponsors. While the Employer intends that Deferrals be invested according to the Participants’ requests, it reserves the right to invest Deferrals without regard to such requests. Deferrals may be invested in Investment Options which commingle the assets of the Plan with assets of other Code section 457 plans in a group trust, and/or which commingle the assets of the Plan with the assets of other Code section 457 plans. If a Participant fails to make an investment election, his or her Deferrals and Deferred Compensation Account, if applicable, shall be invested in a default election determined in accordance with the Plan.

7.5 TIMING OF CONTRIBUTIONS.

All amounts of Compensation deferred under the Plan shall be transferred to a trust established under the Plan, or to a custodial account or annuity contract described in Code section 401(f), within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.

7.6 SPECIAL RULES RELATING TO VETERANS’ REEMPLOYMENT RIGHTS AND MILITARY SERVICE.

Effective January 1, 2010, an individual performing service in the uniformed services who is receiving a differential wage payment from the Employer while on active duty for a period of more than 30 days, as described in Code section 3401(h)(2), shall be treated as an Eligible Employee, and the differential wage payment shall be treated as Compensation. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credits with respect to qualified military service will be provided in accordance with the mandatory provisions of Code section 414(u). In addition, qualified reservist distributions (within the meaning of Code section 72(t)(2)(G)) may be made.
ARTICLE VIII

AMENDMENT OR TERMINATION OF PLAN

8.1 AMENDMENT OF PLAN.

The Employer shall have the right to amend the Plan, at any time and from time to time, in whole or in part. The Superintendent (or his designee) has the authority, without any action by the Employer, to adopt amendments to the Plan that are required or advisable to maintain the tax-favored status of the Plan, or are otherwise required or advisable to comply with applicable law, that do not substantially change the nature, design or cost of maintaining the Plan.

8.2 TERMINATION.

Although the Employer has established this Plan with the intention and expectation to maintain the Plan indefinitely, the Employer may terminate or discontinue the Plan in whole or in part at any time without any liability for such termination or discontinuance. Upon Plan termination, all Deferrals shall cease. Upon termination, amounts credited to Deferred Compensation Accounts shall be distributed in accordance with Article V. The investment of accounts pending distribution shall continue to be subject to the provisions of this Plan regarding investments.

ARTICLE IX

MISCELLANEOUS

9.1 LIMITATION OF RIGHTS.

Neither the establishment of this Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or other person any legal or equitable right against the Employer except as provided in the Plan.

9.2 NO CONTRACT OF EMPLOYMENT.

Nothing in this Plan shall be deemed to be an agreement, consideration, inducement or condition of employment, nor shall the rights or obligations of the Employer or of any employee employed by the Employer to continue or terminate employment at any time be affected hereby.

9.3 LIMITATION ON ASSIGNMENT.

Except as provided in Section 9.4, benefits under this Plan may not be assigned, sold, transferred, or encumbered, and any attempt to do so shall be void. A Participant’s or Beneficiary’s interest in benefits under the Plan shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment or other legal process.
9.4 **DOMESTIC RELATIONS ORDERS.**

Amounts held for the benefit of a Participant in the Plan may be assigned or paid at any time, in accordance with a domestic relations order that the Administrator determines complies with the requirements of Code Section 414(p)(1)(A)(i).

9.5 **TRANSFERS TO A DEFINED BENEFIT PLAN.**

A Participant in this Plan may, at any time, transfer funds directly to a Code section 401(a) defined benefit plan for purchase of service credit or to repay a lump sum amount previously withdrawn in accordance with applicable IRS guidance.

9.6 **REPRESENTATIONS.**

The Employer does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Employer does not represent or guarantee successful investment of Deferrals, and shall not be required to repay any loss which may result from such investment or lack of investment.

9.7 **SEVERABILITY.**

If a court of competent jurisdiction holds any provisions of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

9.8 **APPLICABLE LAW.**

This Plan shall be construed in accordance with applicable federal law and, to the extent otherwise applicable and to the extent not superseded by applicable federal law, the laws of the State of Maryland.

IN WITNESS WHEREOF, this Plan has been duly executed by the Employer effective as of [September 9, 2009] September 9, 2014.

WITNESS/ATTEST

BOARD OF EDUCATION OF
MONTGOMERY COUNTY

By: ________________________________

Jerry DDr. Weast, EdJoshua P. D.
Starr
Superintendent

Date: ________________________________
MONTGOMERY COUNTY PUBLIC SCHOOLS
TAX-SHELTERED SAVINGS PLAN

Amendment and Restatement
Effective as of January 4 [September 9], 2009 2014
# TABLE OF CONTENTS

**ARTICLE I**  
DEFINITIONS ........................................................................................................... 1  
1.1 ACCOUNT .............................................................................................................. 1  
1.2 ACCOUNT BALANCE .......................................................................................... 1  
1.3 ADMINISTRATOR ............................................................................................... 1  
1.4 BENEFICIARY ..................................................................................................... 1  
1.5 CODE .................................................................................................................. 1  
1.6 COMPENSATION ............................................................................................... 1  
1.7 DISABLED DCIC ............................................................................................... 2  
1.8 EMPLOYEE DISABLED ..................................................................................... 2  
1.9 EMPLOYER EMPLOYEE .................................................................................... 2  
1.10 EMPLOYER .................................................................................................... 2  
1.11 FUNDING VEHICLE .......................................................................................... 2  
1.12 PARTICIPANT ................................................................................................... 2  
1.13 PLAN YEAR .................................................................................................... 2  
1.14 PLAN YEAR .................................................................................................... 2  
1.15 RECORDKEEPER ............................................................................................. 2  
1.16 VENDOR .......................................................................................................... 2  

**ARTICLE II**  
ELIGIBILITY AND Participation .............................................................................. 3  
2.1 ELIGIBILITY AND ANTICIPATION .................................................................. 3  
2.2 TERMINATION OF PARTICIPATION ................................................................ 3  

**ARTICLE III**  
CONTRIBUTIONS AND INVESTMENTS ................................................................ 3  
3.1 SALARY REDUCTION CONTRIBUTIONS .............................................................. 3  
3.2 EMPLOYER CONTRIBUTIONS .......................................................................... 4  
3.3 ROLLOVERS ...................................................................................................... 4  
3.4 MAXIMUM ANNUAL CONTRIBUTIONS .............................................................. 4  
3.5 DISTRIBUTION OF EXCESS DEFERRALS ....................................................... 5  
3.6 PARTICIPANTS’ INVESTMENT ELECTIONS ...................................................... 5  
3.7 CURRENT AND FORMER VENDORS ............................................................... 6  
3.8 PROTECTION OF PERSONS WHO SERVE IN A UNIFORMED SERVICE ......... 6  

-i-
# TABLE OF CONTENTS

(continued)

| ARTICLE IV | PAYMENT OF BENEFITS | .......................................................... | 7 |
| 4.1 | IN GENERAL | .......................................................... | 7 |
| 4.2 | DIRECT ROLLOVER OPTION | .......................................................... | 7 |
| ARTICLE V | IN-SERVICE DISTRIBUTIONS OF ROLLOVER CONTRIBUTIONS AND HARDSHIP DISTRIBUTIONS | .......................................................... | 8 |
| 5.1 | IN SERVICE DISTRIBUTIONS OF ROLLOVER CONTRIBUTIONS | ........... | 8 |
| 5.2 | HARDSHIP DISTRIBUTIONS | .......................................................... | 8 |
| ARTICLE VI | MINIMUM REQUIRED DISTRIBUTIONS | .......................................................... | 9 |
| ARTICLE VII | LOANS TO PARTICIPANTS | .......................................................... | 10 |
| 7.1 | LOANS | .......................................................... | 10 |
| 7.2 | INFORMATION COORDINATION CONCERNING LOANS | ............ | 10 |
| 7.3 | MAXIMUM LOAN AMOUNT | .......................................................... | 10 |
| ARTICLE VIII | ADMINISTRATION | .......................................................... | 11 |
| 8.1 | ADMINISTRATOR | .......................................................... | 11 |
| 8.2 | INDEMNIFICATION | .......................................................... | 12 |
| ARTICLE IX | CLAIMS PROCEDURE | .......................................................... | 12 |
| ARTICLE X | AMENDMENT OR TERMINATION OF PLAN | ......................................................... | 12-13 |
| 10.1 | TERMINATION OF CONTRIBUTIONS | ......................................................... | 12-13 |
| 10.2 | AMENDMENT AND TERMINATION | ......................................................... | 12-13 |
| 10.3 | DISTRIBUTION ON TERMINATION OF PLAN | ......................................................... | 12-13 |
| ARTICLE X | GENERAL PROVISIONS | .......................................................... | 13 |
| 11.1 | NO EMPLOYMENT CONTRACT | .......................................................... | 13 |
| 11.2 | APPLICABLE LAW | .......................................................... | 13 |
| 11.3 | NON-ALIENATION PROVISIONS | ......................................................... | 13-14 |
| 11.4 | PAYMENTS TO INCOMPETENTS | ......................................................... | 13-14 |
| 11.5 | PLAN COMMUNICATIONS | .......................................................... | 13-14 |
| 11.6 | SOURCE OF BENEFITS | .......................................................... | 14 |
MONTGOMERY COUNTY PUBLIC SCHOOLS
TAX-SHELTERED SAVINGS PLAN

Amendment and Restatement
Effective as of January 1, 2009.

PREAMBLE

The Board of Education of Montgomery County (the “Employer”) has adopted the
Montgomery County Public Schools Tax-Sheltered Savings Plan (the “Plan”) to provide eligible
employees of the Employer with increased retirement security. This Amendment and
Restatement of the Plan is effective as of January 1, 2009, and applies to
eligible employees of the Employer who are employed or have account balances under the Plan
on or after that date.

The Plan is intended to be a “tax-sheltered annuity plan” meeting the requirements of the
applicable sections of the Internal Revenue Code, as amended, including Code section 403(b),
and the Plan shall be so construed and administered.

ARTICLE I

DEFINITIONS

When used in this Plan, the following words and phrases have the following meanings,
unless the context clearly requires a different meaning:

1.1 ACCOUNT means the account or accumulation maintained for the benefit of any
Participant or Beneficiary under a Funding Vehicle. Separate sub-accounts shall be maintained
for salary reduction contributions, Employer contributions, and rollover contributions.

1.2 ACCOUNT BALANCE means the bookkeeping account maintained for each
Participant which reflects separately amounts credited to the Participant’s Account on account of
salary reduction contributions, Employer contributions, rollovers, transfers, the earnings or loss
of each Funding Vehicle (net of expenses) allocable to the Participant and the various sub-
accounts, and any distribution made to the Participant or the Participant’s Beneficiary. If a
Participant has more than one Beneficiary at the time of the Participant’s death, then a separate
Account Balance shall be maintained for each Beneficiary.

1.3 ADMINISTRATOR means the Administrator referred to in Article VIII.

1.4 BENEFICIARY means the person or persons entitled to receive benefits under the Plan
after the death of the Participant, subject to such additional rules as may be set forth in the
applicable Funding Vehicle.

1.5 CODE means the Internal Revenue Code of 1986, as amended, and the regulations
thereunder.
1.6 **COMPENSATION** means the compensation paid by the Employer to the Participant during the Plan Year which is required to be reported as wages on the Participant’s Form W-2. Compensation shall also include any pre-tax salary reduction contributions which are not currently includible in the Participant’s gross income by reason of Code sections 125, 132(f)(4), 403(b) (to the extent such contributions are elective), or 457(b). To the extent required by a collective bargaining agreement, Compensation shall include amounts payable for accumulated sick and vacation pay. Compensation taken into account under the Plan for any Plan Year shall be limited to the amount specified by Code section 401(a)(17), and increased as provided by the cost-of-living adjustments under such section for such Plan Year.

1.7 **DCIC** means the Defined Contribution Investment Committee, appointed by the Employer and as may be constituted from time to time. The Employer shall determine the number of members of the DCIC and may appoint or remove the members of the DCIC in its discretion.

1.8 **DISABLED** means “disabled” within the meaning of Code section 72(m)(7), except as otherwise provided in any Funding Vehicle.

1.9 **EMPLOYEE** means any employee of the Employer except leased employees, as defined in Code section 414(n).

1.10 **EMPLOYER** means The Board of Education of Montgomery County.

1.11 **FUNDING VEHICLE** means (i) the nontransferable annuity contract as defined in section 403(b)(1) of the Code, established for a Participant by the Employer, or by the Participant individually, that is issued by an insurance company qualified to issue annuities in the State of Maryland and that includes payment in the form of an annuity, or (ii) the group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code established for a Participant by the Employer, or by a Participant individually, to hold assets of the Plan; provided, however, that such annuity contract or custodial account shall be treated as a Funding Vehicle hereunder only to the extent that it is specifically approved by the Employer DCIC for use under the Plan as amended and restated hereinafter for the investment of contributions and/or the investment of existing Account Balances. The terms of the Funding Vehicles are hereby incorporated in the Plan by reference.

1.12 **PARTICIPANT** means an Employee who becomes a Participant pursuant to Article II. For purposes of Sections 3.6 and 4.1, a Beneficiary shall be treated as a Participant after the death of the Participant.

1.13 **PLAN** means the Montgomery County Public Schools Tax-Sheltered Savings Plan as herein set forth and as it may hereafter be amended.

1.14 **PLAN YEAR** means the calendar year.

1.15 **RECORDKEEPER** means the recordkeeper appointed by the Employer.

1.16 **VENDOR** means the provider of a Funding Vehicle to the extent approved by the Employer DCIC.
ARTICLE II

ELIGIBILITY AND PARTICIPATION

2.1 ELIGIBILITY AND ANTICIPATION

Each Employee is eligible to participate in the Plan by making salary reduction contributions under Section 3.1 and completing such forms as may be prescribed by the Administrator and subject to such uniform administrative rules as the Administrator shall establish from time to time.

2.2 TERMINATION OF PARTICIPATION

Participation in the Plan terminates on the date a Participant ceases to have an Account Balance.

ARTICLE III

CONTRIBUTIONS AND INVESTMENTS

3.1 SALARY REDUCTION CONTRIBUTIONS.

(a) Amount of Salary Reduction Contribution. Each Employee may make a salary reduction contribution election to reduce his or her Compensation per payroll period, subject to such limitations and rules as may be imposed from time to time by the Employer. Salary reduction contributions shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant. Each Participant shall be one hundred percent (100%) vested in that portion of his or her Account attributable to his or her salary reduction contributions.

(b) Limit on Salary Reduction Contributions. A Participant’s salary reduction contributions to the Plan and all other Employer plans, contracts or arrangements subject to Code section 402(g)(1)(B) during any Plan Year shall not exceed the applicable dollar amount in effect under Code section 402(g)(1)(B) for such Plan Year as adjusted by the cost-of-living adjustment factor prescribed by the Secretary of the Treasury as and to the extent permitted by applicable law.

(c) Elective Catch-up Contributions for Certain Employees. A Participant who has attained age 50 before the close of the Plan Year shall be eligible to make additional salary reduction contributions in the form of catch-up contributions in accordance with Code section 414(v). Catch-up contributions may be made in an amount of up to the catch-up contribution limit as automatically adjusted by the cost-of-living adjustment factor prescribed by the Secretary of the Treasury as and to the extent permitted by applicable law. Any catch-up contributions will not be taken into account for purposes of the limit on salary reduction contributions described in Section 3.1(b) above, or the limit on total annual contributions described in Section 3.4 below.
(d) **Salary Reduction Contribution Elections.** Salary reduction contribution elections must be made in writing on a form prescribed by the Administrator and subject to such uniform limitations and administrative rules as the Employer shall establish from time to time. Except as provided in Section 5.1(c), a Participant’s salary reduction contribution election will remain in effect until it is modified or revoked. A Participant may modify or revoke a salary reduction contribution election at any time in accordance with such uniform procedures as the Employer shall establish from time to time.

(e) **Employer’s Right to Amend or Revoke Salary Reduction Contribution Election.** The Employer shall have the right to amend or revoke a Participant’s salary reduction contribution election if such election causes contributions to the Participant’s tax-sheltered annuity contract and/or custodial account to exceed the limitations in Section 3.1(b), the limitation in Section 3.4, or any other limitation imposed by the Code.

The Employer may amend or revoke a Participant’s salary reduction contribution election by sending written notice to the Participant, stating the amount of the salary reduction contribution which the Employer will accept. If the Employer amends or revokes a Participant’s salary reduction contribution election for a Plan Year, any salary reduction contributions already made for such Plan Year which exceed the contributions allowed to be made by the Participant for such Plan Year shall be returned to the Participant. Any salary reduction contributions which exceed the limitations in Section 3.1(b) shall be returned to the Participant in the manner prescribed by Section 3.5.

### 3.2 EMPLOYER CONTRIBUTIONS

The Employer may, in its sole discretion, make Employer contributions to the Plan on behalf of some or all Participants in such amounts and at such times as the Employer shall determine in its sole discretion. Each Participant shall be one hundred percent (100%) vested in that portion of his or her Account attributable to his or her Employer contributions.

### 3.3 ROLLOVERS

An Employee who is a Participant may make rollover contributions to the Plan to the extent such rollover contributions constitute eligible rollover distributions made from another eligible retirement plan to the extent allowed by applicable law and the applicable Funding Vehicle. For purposes of this Section 3.3, the term “eligible rollover distribution” has the same meaning as set forth under Section 4.2(b), and the term “eligible retirement plan” has the same meaning as set forth under Section 4.2(c). Each Participant shall be one hundred percent (100%) vested in that portion of his or her Account attributable to his or her rollover contributions.

### 3.4 MAXIMUM ANNUAL CONTRIBUTIONS

(a) The maximum contributions made on behalf of each Participant for each Plan Year shall not exceed the lesser of:

(i) The maximum dollar amount for the applicable Plan Year specified by Code section 415(c)(1)(A), as adjusted as provided in Code Section 415(d)(1) for Plan Years thereafter), or
(ii) 100% of the Participant’s Compensation.

Elective catch-up contributions as described in Section 3.1(c), and rollover and transfer contributions as described in Section 3.3, shall not be taken into account in determining the limitations under this Section 3.4(a).

(b) If the limitations described in Section 3.4(a) are exceeded with respect to any Participant in any Plan Year, then the contributions made by or on behalf of the Participant for such Plan Year shall be reduced to the minimum extent required by such limitations or such excess shall be maintained in a separate account.

(c) The Employer, in its sole discretion, shall determine if any reduction in contributions is required by reason of the limitations set forth in Section 3.4(a). No Participant shall be entitled to any contributions in excess of such limitations, if the Employer determines at any time that it has erred by accepting contributions by or on behalf of a Participant for any Plan Year in violation of such limitations, then the amount of any required reduction in the Participant’s contributions under Section 3.1 shall be returned to him or her, in a manner consistent with applicable law.

3.5 DISTRIBUTION OF EXCESS DEFERRALS

If the salary reduction contributions under the Plan on behalf of a Participant for any calendar year exceed the limitations set forth in Sections 3.1(b) or (c), or if the salary reduction contributions on behalf of a Participant for any calendar year exceed such limitations when combined with other amounts deferred by the Participant under another plan that permits the Participant to make elective deferrals under Code section 402(g) for which the Participant provides information that is accepted by the Administrator, then the salary reduction contributions, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant,

3.6 PARTICIPANTS’ INVESTMENT ELECTIONS

(a) Each Participant may elect to have his or her Account Balance invested in any of the Funding Vehicles then made available for salary reduction contributions under the Plan. Investment elections shall be in writing and shall be made in accordance with such procedures as the Administrator and the Vendors shall establish. Contributions shall be invested in accordance with the Participant’s most recent investment election filed with the applicable Vendor, or, if none, the default investment established pursuant to the Plan. Each Participant shall have the right to make an investment election as of the date he or she becomes a Participant. Thereafter, a Participant may change his or her investment election with respect to his or her Account Balance at such intervals and in such increments as the Vendors or Funding Vehicles may establish.

(b) Participants shall be solely responsible for the review and selection of any and all Plan investment options. Neither the Employer nor any officer, employee or other person acting for or on behalf of the Employer shall have any liability or responsibility for any investment options selected by any Participant. Each Participant, by electing to participate in the Plan, accepts responsibility for such Participant’s investment decisions and acknowledges and agrees that neither the Employer nor any officer, employee or other person acting for or on behalf of the
Employer shall have any liability or responsibility for any investment decisions made by the Participant. Transfers among annuity contracts and custodial accounts may be made to the extent provided in the applicable Funding Vehicles and permitted under the Code and applicable Income Tax regulations.

(c) An investment change that includes an exchange of an investment from a provider of an annuity contract or custodial account that is not a Vendor eligible to receive contributions hereunder (referred to below as an exchange) is not permitted unless the conditions in paragraphs (i) through (iii) of this Section 3.6(c) are satisfied.

(i) The Participant must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant immediately before the exchange (taking into account the Account Balance of that Participant under both section 403(b) contracts or custodial accounts immediately before the exchange).

(ii) The applicable provisions of the Funding Vehicle with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

(iii) The transfer is to a Vendor eligible to receive contributions under the Plan and the Employer receives sufficient information from the each provider to ensure that the requirements of this Section 3.6(c) and the applicable provisions of the Code are satisfied.

(d) If any Vendor ceases to be eligible to receive contributions under the Plan, the Employer will enter into an information sharing agreement to the extent the Employer’s contract with the Vendor does not provide for the exchange of necessary information.

(e) The Administrator may impose such limitations as it deems appropriate on Funding Vehicles that are legacy annuity contracts or legacy custodial accounts not currently eligible to receive contributions under the Plan.

3.7 CURRENT AND FORMER VENDORS

The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive contributions under the Plan, the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

3.8 PROTECTION OF PERSONS WHO SERVE IN A UNIFORMED SERVICE

An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional salary reduction contributions under Section 3.1 upon resumption of employment with the Employer equal to the maximum salary reduction contributions that the Employee could have elected during that period if the
Employee’s employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the salary reduction contributions, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). Effective January 1, 2010, an individual performing service in the uniformed services who is receiving a differential wage payment from the Employer while on active duty for a period of more than 30 days, as described in Code section 3401(h)(2), shall be treated as an Employee, and the differential wage payment shall be treated as Compensation. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credits with respect to qualified military service will be provided in accordance with the mandatory provisions of Code section 414(u).

ARTICLE IV

PAYMENT OF BENEFITS

4.1 IN GENERAL

Except as permitted under Section 3.5 (relating to Distribution of Excess Deferrals), Section 5.1 (relating to withdrawals of amounts rolled over into the Plan), Section 5.2 (relating to hardship distributions), or Section 10.2 (relating to termination of the Plan), and subject to the terms of the applicable Funding Vehicle, distributions from a Participant’s Account may not be made earlier than the earliest of (a) in the case of amounts distributed from Funding Vehicles other than custodial accounts and amounts not attributable to salary reduction contributions, the Participant’s severance from employment or upon the occurrence of some event such as after a fixed number of years, the attainment of a stated age, or Disability, and (b) in the case of amounts distributed from Funding Vehicles that are custodial accounts and distributions of amounts attributable to salary reduction contributions, the date on which the Participant has a severance from employment or dies, becomes Disabled, or attains age 59-1/2. In addition, qualified reservist distributions (within the meaning of Code section 72(t)(2)(G)) may be made. No distribution may be made on account of any “severance from employment” to an Employee who was a Participant after such individual has again become an Employee.

Distributions from a Participant’s Account shall be made in the manner provided by the applicable Funding Vehicle, provided, however, that no distribution shall be made without the consent of the Participant unless the Account Balance does not exceed $5,000 (determined without regard to any separate account that holds rollover contributions under Section 3.3) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of $1,000).

4.2 DIRECT ROLLOVER OPTION

(a) Election. The recipient of a distribution may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan.
(b) **Eligible rollover distribution** means any distribution to a recipient which qualifies as an eligible rollover distribution under Code section 402(c)(4).

(c) **Eligible retirement plan** means a plan specified by Code section 402(c)(8)(B) and, effective for distributions made on or after January 1, 2008, a Roth IRA specified in Code section 408A.

(d) **Recipient** means (i) a Participant or former Participant, (ii) the Participant’s or former Participant’s surviving spouse, (iii) the Participant’s or former Participant’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), and (iv) to the extent allowed by Code section 402(c)(11), a designated Beneficiary who is not the surviving spouse.

**ARTICLE V**

**IN-SERVICE DISTRIBUTIONS OF ROLLOVER CONTRIBUTIONS AND HARDSHIP DISTRIBUTIONS**

5.1 **IN SERVICE DISTRIBUTIONS OF ROLLOVER CONTRIBUTIONS.**

If a Participant has a separate account attributable to rollover contributions to the Plan, to the extent permitted by the applicable Funding Vehicle, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in such rollover account.

5.2 **HARDSHIP DISTRIBUTIONS.**

Hardship distributions shall be permitted from amounts attributable to salary reduction contributions (and to the extent provided in section 1123(e)(3) of the Tax Reform Act of 1986, amounts held as of the close of the taxable year beginning before January 1, 1989) only if all of the following conditions are satisfied: (i) the Funding Vehicle controlling the Account assets to be withdrawn permits the hardship distribution, (ii) the hardship satisfies the requirements of Treasury Regulation sections 1.401(k)-1(d)(iv)(E) and 1.401(k)-1(d)(3)(iii)(B), and (iii) appropriate agreements are entered into between the Employer and applicable Vendor or provider for the exchange of necessary information. For the avoidance of doubt, hardship distributions are not permitted unless (I) the distribution is for (A) expenses for (or expenses necessary to obtain) medical care that would be deductible under Code section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income); (B) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant; (C) payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, and the Participant’s spouse, children, or dependents (as defined in Code section 152, and without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); (D) payments necessary to prevent the eviction of the Participant from the Participant’s principal residence or the foreclosure on the mortgage on that residence; (E) payments for burial or funeral expenses for the Participant’s deceased parent, spouse, children or dependents (as defined in Code section 152, and without regard to Code section 152(d)(1)(B)); or (F) expenses for repair of damage to the Participant’s principal residence that would qualify for the casualty deduction under Code section 165 (without regard...
to whether the loss exceeds 10% of the adjusted gross income); and (II)(A) the Participant has taken all other currently available distributions and non-taxable loans under the Plan and all other plans maintained by the Employer, and (B) the Participant’s salary reduction contribution election under this Plan and any Voluntary Salary Deferral Agreement under the Employer’s Deferred Compensation Plan shall be automatically cancelled and the Participant shall be prohibited from making elective contributions and employee contributions to this Plan, the Deferred Compensation Plan, and all other plans maintained by the Employer for at least six (6) months from the date on which such hardship distribution is made.

ARTICLE VI

MINIMUM REQUIRED DISTRIBUTIONS

Each Funding Vehicle shall comply with the minimum distribution requirements of Code section 401(a)(9) and the regulations thereunder. For purposes of applying the distribution rules of Code section 401(a)(9), each individual agreement between a Vendor and the Employer of a Participant that constitutes a Funding Vehicle shall be treated as a separate individual retirement account and distributions shall be made in accordance with the provisions of section 1.408-8 of the Income Tax Regulations, except as provided in section 1.403(b)-6(e) of the Income Tax Regulations.

Notwithstanding the foregoing provisions of this Article VI, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years (“Extended 2009 RMDs”), will either receive or have those distributions for 2009 suspended as described in the chart below with respect to the Funding Vehicle provided by the Vendors described in the chart below and subject to the procedures implemented by the Vendors and communicated to such Participants and Beneficiaries. In addition, solely for purposes of applying the direct rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs will also be treated as eligible rollover distributions in 2009, to the extent provided by the Vendors.

<table>
<thead>
<tr>
<th>Vendor</th>
<th>2009 RMD/Extended 2009 RMD Suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lincoln Financial</td>
<td>Participant or Beneficiary may elect to suspend RMD or receive RMD. If the Participant or Beneficiary makes no election, active RMD Participants’ RMD will be suspended and terminated RMD Participants’ RMD will be paid.</td>
</tr>
<tr>
<td>Lincoln Investments</td>
<td>RMD will be paid unless the Participant or Beneficiary requests suspension.</td>
</tr>
<tr>
<td>ING</td>
<td>RMD will be suspended unless the Participant or</td>
</tr>
</tbody>
</table>
ARTICLE VII

LOANS TO PARTICIPANTS

7.1 LOANS

Loans shall be permitted under the Plan only to actively employed Employees. Such loans may be made only to the extent permitted by the Funding Vehicle controlling the Account assets from which the loan is made and by which the loan will be secured.

7.2 INFORMATION COORDINATION CONCERNING LOANS

Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 7.3, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

7.3 MAXIMUM LOAN AMOUNT

No loan to a Participant under the Plan may exceed the lesser of:

(a) $50,000 reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period) or;
(b) one half of the value of the Participant’s vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 7.3, any loan from any other plan maintained by the Employer and any entity under common control with the Employer under section 414(b) or (c) of the Code shall be treated as if it were a loan made from the Plan, and the Participant’s vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

ARTICLE VIII
ADMINISTRATION

8.1 ADMINISTRATOR

(a) **Duties of the Employer.** The Employer shall serve as the Administrator except to the extent the Employer appoints another person as Administrator. The Employer shall have the sole authority to designate a single Recordkeeper. In addition, the Employer may, in its discretion, enter into a contract with the Recordkeeper or another third party to provide investment education and/or advice to Participants. Recordkeeping expenses and expenses relating to investment education and advice will be paid by the Plan unless paid by the Employer.

(b) **Duties of the Administrator.** All determinations of the Administrator or the Employer in respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, except as to those functions reserved within the Plan to the Employer, the Administrator shall:

(i) control and manage the operation and administration of the Plan;

(ii) establish rules for the administration of the Plan and the transaction of its business, subject to the limitations of the Plan;

(iii) have the exclusive right and discretion to interpret the Plan and to decide all matters arising thereunder, including the right to remedy possible ambiguities, inconsistencies, or omissions.

(iv) have the power to require any person to furnish such information as it may request for the purpose of the proper administration of the Plan as a condition to receiving any benefits under the Plan;

(v) have the power to make and enforce such rules and regulations and prescribe the use of such forms as it shall deem necessary for the efficient administration of the Plan;
have the power to decide on questions concerning the Plan and the eligibility of any employee to participate in the Plan, in accordance with the provisions of the Plan;

have the power to determine the benefits which shall be payable to any person in accordance with the provisions of the Plan, to inform the Employer of these benefits and to provide a full and fair review to any Participant whose claim for benefits has been denied in whole or in part;

have the power to allocate any of such powers and duties to or among persons serving as Administrator; and

have the power to designate persons other than the Administrator to carry out any duty or power which would otherwise be a fiduciary responsibility of the Administrator under the terms of the Plan.

(c) Duties of the Recordkeeper. The Recordkeeper shall maintain the records of the Plan and perform such other administrative tasks pursuant to and in accordance with an administrative services agreement entered into with the Employer.

(d) Duties of the DCIC. The DCIC shall have the authority, duty, and responsibility to: (i) select the Funding Vehicles available under the Plan; (ii) monitor and evaluate the performance of the Funding Vehicles and the Plan’s investment line-up; (iii) remove and replace Funding Vehicles available under the Plan; and (iv) retain an advisor to assist the DCIC in the exercise of its authority, duties, and responsibilities. Expenses to retain the advisor shall be paid by the Plan unless paid by the Employer.

8.2 INDEMNIFICATION

In the event the Employer appoints any officer or employee to serve as the Administrator or a member of the DCIC, to the extent permitted by law, such officer or employee shall not incur any liability for any acts or for any failure to act hereunder except for willful misconduct or willful breach of this Plan, and the Employer shall indemnify such officer or employee against any and all liability which is incurred as a result of the performance or non-performance of the duties hereunder, except for liability which arises from willful misconduct or willful breach of this Plan.

ARTICLE IX

CLAIMS PROCEDURE

Claims will be processed according to any claims procedures established by the relevant Funding Vehicle or contained in the tax-sheltered annuity contract(s) and/or custodial accounts maintained for the Participant by the Employer.
ARTICLE X

AMENDMENT OR TERMINATION OF PLAN

10.1 TERMINATION OF CONTRIBUTIONS

The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

10.2 AMENDMENT AND TERMINATION

The Employer reserves the authority to amend or terminate this Plan at any time. The Superintendent of Schools of Montgomery County (or his designee) has the authority, without any action by the Employer, to adopt amendments to the Plan that are required or advisable to maintain the tax-favored status of the Plan, or are otherwise required or advisable to comply with applicable law, that do not substantially change the nature, design or cost of maintaining the Plan.

10.3 DISTRIBUTION ON TERMINATION OF PLAN

The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the applicable Funding Vehicles, all Accounts will be distributed, provided that the Employer and any entity under common control with the Employer under section 414(b) or (c) of the Code on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by Federal Tax Regulations.

ARTICLE X

GENERAL PROVISIONS

11.1 NO EMPLOYMENT CONTRACT

Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any employee, or as a right of any employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its employees with or without cause.

11.2 APPLICABLE LAW

The provisions of the Plan shall be construed, administered and enforced according to applicable federal law and, where not preempted by federal law, the laws of the State of Maryland.
11.3 NON-ALIENATION PROVISIONS

No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void. No benefit under the Plan shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person. The Employer shall not in any manner be liable hereunder for or be subject hereunder to, the debts, contracts, liabilities, engagements or torts of any person entitled to Plan benefits.

Notwithstanding the foregoing, amounts held for the benefit of a Participant may be paid in accordance with the applicable requirements of a domestic relations order meeting the requirements of Code section 414(p) or a levy or judgment resulting from an unpaid tax assessment.

11.4 PAYMENTS TO INCOMPETENTS

If the Administrator determines that any person entitled to payments under the Plan is incompetent by reason of physical or mental disability, it may cause all payments thereafter becoming due to such person to be made to any other person for the person’s benefit, without responsibility to follow the application of amounts so paid. Payments made pursuant to this Section 11.4 shall completely discharge the Administrator and the Employer.

11.5 PLAN COMMUNICATIONS

All communications in connection with the Plan made by a Participant shall become effective only when duly executed on forms provided by and filed with the Administrator.

11.6 SOURCE OF BENEFITS

The Funding Vehicles maintained hereunder shall be the sole source of benefits under the Plan. No employee or beneficiary shall have any right to, or interest in, any assets of the Employer upon termination of employment or otherwise.

IN WITNESS WHEREOF, the Employer has caused this Plan to be executed and its seal to be affixed hereto, effective as of January 1, September 9, 2009.

ATTEST/WITNESS: BOARD OF EDUCATION OF MONTGOMERY COUNTY

______________________________ By: __________________________ (SEAL)
       Jerry DDr. Weast, EdJoshua P. D. Starr
       Superintendent

Print Name: _____________________ Date: __________________________
Office of the Chief Operating Officer  
MONTGOMERY COUNTY PUBLIC SCHOOLS  
Rockville, Maryland  

September 5, 2014

MEMORANDUM

To: Members of the Board of Education Fiscal Management Committee

From: Larry A. Bowers, Chief Operating Officer

Subject: Defined Contribution 403(b)/457(b) Work Group Recommendation

Executive Summary

The purpose of this memorandum is to present the recommendations of the Montgomery County Public Schools (MCPS) Defined Contribution Advisory Work Group which will be discussed at the September 8, 2014, meeting. As described in the attached June 4, 2014, memorandum to employees, the work group has been reviewing the current defined contribution 403(b)/457(b) plans in order to propose enhancements to the Board of Education for this key employee benefit. The work group identified four goals for the enhanced plans: increased transparency, lower fees, independent financial advice, and improved oversight. In consultation with Hewitt EnnisKnupp, the work group determined that these goals could be achieved with changes to four critical areas of the plans: administrative structure, investment structure, financial education/advice, and governance.

Therefore, I request that the Board of Education Fiscal Management Committee recommends that the Board of Education approves this resolution at its September 22, 2014, meeting.

The following plan amendments, based on the report of the work group, are presented for your consideration:

- Authorize the plans to use one record keeper effective January 1, 2016.
- Appoint a Defined Contribution Investment Committee to help the Board fulfill plan sponsor responsibilities by selecting and overseeing an investment menu for the plans.
- Offer investment education and/or advice through the record keeper and/or an independent third party.
- Authorize staff to develop a transition plan to implement these changes.

Below is a synopsis of the work group’s findings and recommendations.

Administrative Structure

The administrative responsibilities associated with the defined contribution plans are often referred to as recordkeeping. Plan sponsors can perform recordkeeping internally or hire one or more companies to provide the services to the plan. The record keeper is responsible for
maintaining individual participant records. These records include contributions, investment earnings, withdrawals, required minimum distributions, and loans. The record keeper also manages tax reporting and changes to participant elections such as fund choices or asset allocation. Record keepers also can provide additional services such as financial education and websites for employees to access and manage their accounts.

Currently, the nine MCPS-approved vendors serve as record keepers and provide investment options to the defined contribution plans. There are several inefficiencies associated with having multiple record keepers.

- **More record keepers means greater expense.** The smaller the number of participants on a record keeper’s platform, the higher the costs will be for the company to provide services to each participant account. This is because the company has fewer accounts among which to divide its fixed costs (i.e., the costs it has for the plan regardless of the number of participants). Benchmarking of the MCPS 403(b)/457(b) plans showed participants collectively pay nearly $6 million more a year than they would if the plan accounts were aggregated under one record keeper and the fees were the average amount charged to plans of a similar size.

- **Harder to educate participants.** The most important decisions for participants in the 403(b)/457(b) plans are the amount they save and how they invest their funds. With multiple record keepers, participants are faced with spending time they could allocate to these decisions (i.e., how to invest their funds) on first choosing the right administrative services provider. Outside of cost, that decision has a lesser impact on the savings outcome at retirement.

- **Less confusion for participants.** Currently, participants have to maneuver multiple websites (record keeper, Retirement Manager, mcps.yourplan.info) to complete simple tasks such as fund selection or loan approvals. This can be confusing and time consuming.

- **Employees cannot access consolidated account information.** Employees have to turn to multiple sources to gain a holistic picture of their retirement savings. The interface between the current vendors and the common remitter is imperfect, making it difficult to track loan compliance and distribution requirements.

- **More difficult to maintain an appropriate oversight process for the plans from plan sponsor perspective.** There are nine vendors, each of whom offers both the 403(b) and 457(b) products, which results in 18 plans for MCPS to oversee. Each of these vendors has separate protocols for enrollment, loans, withdrawals, rollovers, hardships, etc.

The work group considered three options (see Figure 1). Option 1 selects one company as the sole record keeper for the plans. This option gives MCPS the best opportunity to negotiate the lowest possible fees for administrative services. It also is the least complex arrangement which would facilitate the offering of plan services such as financial education programs and centralized services for employees. MCPS would still have to gather information from and monitor any legacy providers that have plan assets but no longer work with the system. Option 2
continues with multiple record keepers but designates one as the "lead" record keeper. By having a "lead" record keeper, the plans could offer somewhat more streamlined administration and compliance services. However, Option 2 does not minimize employee costs nor does it significantly reduce plan complexity/employee confusion. Option 3 would be to continue with some number of record keepers, possibly, but not necessarily, up to the number in the current structure.

Figure 1

![Diagram showing complexity levels for record keepers]

The work group decided that the optimal solution for MCPS would be Option 1 because it best addresses all of the inefficiencies that arise from the current structure. A single record keeper would allow employees to have a 'One Stop Shop' for plan related requests; would enable employees to focus more of their time on how much to save and how to invest their funds; and would enable MCPS to most efficiently oversee the services offered through the plans. The work group recommends that the Board of Education move to having one record keeper for the 403(b)/457(b) plans.

**Investment Structure**

Investment structure refers to the actual investment options from which employees can choose. This is a critical decision for participants. Currently, each of the nine vendors has selected an advisor (in some cases a subsidiary of their parent company) to select the funds on the investment lineup for both the 403(b) and 457(b) plans. Across all nine vendors, employees can choose from more than 3,000 funds. To put this in perspective, nearly 75% of defined contribution plans offer a total of between 8 and 17 funds. The presence of so many fund options in the MCPS plans hampers the ability of employees to effectively make good choices. Behavioral finance research has shown that when presented with numerous options, employees tend to contribute less or even to opt out of the plans entirely.

As an alternative to the current structure, the work group evaluated having MCPS, through a body made up of individuals with investment knowledge (see Governance section below),
specify an investment lineup for the plans with three tiers of options for employees to choose from (see Figure 2). Option 1 is target date funds which would appeal to employees looking for a simple solution based on their age with the added advantage of having an automatic rebalancing of the funds in their account to lower risk as they get closer to retirement. Option 2 gives employees the option to choose their asset allocation from a diversified menu of fund options that contain a smaller number of funds that employees could reasonably evaluate. Option 3 is an open mutual fund brokerage window where an employee has access to a broader set of funds.

Figure 2

<table>
<thead>
<tr>
<th>Most complex to least complex</th>
</tr>
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<tbody>
<tr>
<td>2</td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>

- **Current**
  - Many Funds across multiple recordkeepers with no specified investment lineup

- **Dictated Investment Lineup**
  - Option 1 – Target Date Series (list as default)
  - Option 2 – Core Funds to include a diversified list of Active & Passive Funds
  - Option 3 – Brokerage Window

The work group concluded that a dictated line up would provide employees with a balanced and diverse menu of investment options while, at the same time, acknowledging the need for a self-directed brokerage window to maintain a way for employees who desire more choices the ability to do so. The work group recommends that the Board of Education adopt a dictated investment line up for the 403(b)/457(b) plans.

**Financial Education/Advice**

The work group wanted to identify a way that MCPS could ensure that employees receive independent advice regarding their retirement assets in the 403(b)/457(b) plans. Currently, MCPS does not require that advisors who work with employees commit to serving as a fiduciary to employees or the plans. A fiduciary would be in a special relationship of trust requiring undivided loyalty. Presently, advisor compensation can be tied to the amount and type of funds
that they sell. This creates a potential conflict of interest for the advisors which may be to the detriment of employees.

The work group considered two alternatives to the current method of providing investment advice/education (see Figure 3). Option 1, would have the “lead” or sole record keeper manage accounts through a partner’s product while an independent third party provides financial education. With a managed account product, the employee has access to an independent investment manager through an interface with the recordkeeping system, which handles investment decisions, makes portfolio changes based on each participant’s specific needs/risk tolerance, and rebalances the portfolio at predetermined intervals, usually quarterly. Participants who use the service pay a fee for this higher-touch service. The independent third party would be hired and compensated by the Plans for ad-hoc group sessions and online education modules and would be agnostic to the choice of record keeper and funds offered.

![Figure 3](Moving Toward Objective Investment Advice / Education)

Option 2 would have the “lead” record keeper provide onsite representatives and managed accounts. The work group found that this option provides a way for employees to fully delegate the decision making relative to the investment of their retirement accounts, but it did not address the desire to provide the independent objective advice. The work group recommends that the Board of Education choose Option 1 because it results in the greatest increase in transparency and best achieves the goal of independent investment advice.
Governance

Governance refers to the process by which the Board oversees the 403(b)/457(b) plans, including the assurance that the plans are in compliance with applicable rules and regulations. Currently, the Board uses internal staff to fulfill these responsibilities. The work group considered two alternatives that would enhance the Board’s oversight capabilities. The first option is for the Board to establish a committee that meets regularly and uses an external advisor who would be compensated by the Plans (see Figure 4). The committee would consist of Montgomery County residents with knowledge of investments and retirement saving plans and internal MCPS staff. The governance committee would select fund options, if the Board chooses to adopt a dictated investment line up for the plans, with the help of the external advisor. MCPS, as plan sponsor, must oversee the plans and ensure compliance. The external advisor would monitor the investment line up, stay abreast of developments that may affect the plans including new regulations, and advise on proposed changes to the plan design as necessary. This format is similar to how the Board currently oversees the pension plan.

![Figure 4](image)

The second option is for the Board to appoint a committee but to not have it retain an external advisor. Committee members would rely on knowledge gained from other channels to ensure that they exercise proper oversight. The work group recommends that the Board appoint a committee with a standing external advisor. This approach provides the Board with the most robust ability to meet fiduciary obligations.
Summary

The work group believes that the 403(b)/457(b) plans are core benefits used by MCPS to attract and retain talented employees. In order to ensure that the Board maintains the high caliber of this benefit, the work group recommends that the Board:

- Authorize the plan to use one record keeper effective January 1, 2016, for the plans
- Appoint a Defined Contribution Investment Committee to help the Board fulfill plan sponsor responsibilities by selecting and overseeing an investment menu for the plans
- Offer investment education and/or advice through the record keeper and/or an independent third party
- Authorize staff to develop a transition plan to implement these changes.

If you have any questions, please contact me at 301-279-3626.

LAB:SGD:mj

Attachment

Copy to:
- Dr. Starr
- Dr. Zuckerman
- Mrs. DeGraba
This e-mail message has been approved for distribution by Mr. Larry A. Bowers, chief operating officer. No hard copy will be provided.

INFORMATION

Department of Financial Services
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland

June 4, 2014

MEMORANDUM

To: All Montgomery County Public Schools Employees

From: Susanne G. DeGraba, Chief Financial Officer

Subject: INFORMATION—Defined Contribution (403(b)/457(b)) Plan Improvements

The purpose of this memorandum is to follow up regarding a project to improve the defined contribution retirement savings plans—the 403(b)/457(b)—that are available to you. As announced in February 2013, a Montgomery County Public Schools (MCPS) work group, representing the interests of all constituents affiliated with the plans—the Montgomery County Education Association, the Montgomery County Association of Administrators and Principals, the Service Employees International Union Local 500, MCPS retirees, and MCPS management—is overseeing this effort.

As a first step, Graystone Consulting, an independent, third-party, national investment consultant, was commissioned to conduct a benchmarking study to evaluate the 403(b) and 457(b) plans offered to employees. Now completed, the benchmarking study found that:

- MCPS plan participants are being charged higher fees on their investments than participants in comparable plans.
- There is significant opportunity to improve the plans at all levels—customer service, fees, and compliance management.
- The current structure of nine vendors for each plan is well above the average found in the industry and reduces economies of scale, which leads to higher fees for participants.
- The current plan designs can result in participants being charged different fees for investing in the same mutual funds through different record-keepers.
- The current plan designs inhibit transparency of fees, impede effective oversight, and should be improved.
- The current plan designs do not require that financial advisors have a fiduciary responsibility to employees.
Based on the study results, the work group is moving forward to redesign the plans. MCPS has retained Hewitt EnnisKnupp, a nationally recognized investment consultant, to advise the work group during this process. The work group expects that the new plans would have:

- **Increased Transparency**—Create a plan design that allows participants to clearly identify and compare the various fees being paid for record-keeping, investment management, and investment advice.
- **Lower Fees**—Consolidate the number of vendors to improve economies of scale, so that participants will experience lower fees than are available now for administration and investment options.
- **Independent Financial Advice**—Offer option for employees to obtain independent financial advice that is not tied to the sale of investment products.
- **Improved Oversight**—Establish a governance structure that includes stakeholder representatives to oversee the plans and ensure compliance with applicable laws and best practices.

The work group intends to submit proposals for the new plan designs to the Board of Education later this year. If the Board adopts the changes, requests for proposals would be issued to potential service providers with the goal of new plans being in place by January 1, 2016.

There are many steps as we move through this process, and as the plan design materializes, we will reach out to you again with greater details. Our overarching goal is to ensure that employees have retirement savings options that are on par with or exceed the best practices that exist in the industry.

If you have any questions, please contact Ms. Marisa Grant, acting chief investment officer, Department of Financial Services, at 301-517-8100 or via e-mail.

MG:jer

Copy to:
Mrs. Cuttitta  Dr. Mugge  Mr. Changuris
Mr. Israel     Mr. Prouty
Ms. Miller     Mr. Rodich

Approved:  

Larry A. Bowers, chief operating officer