



Denver Public Schools
Professional Compensation System for Teachers

ProComp

MEETING MINUTES

ProComp Trust Board of Directors FY20 Meeting #3

March 3, 2020

4:45 – 6:15 pm

Emily Griffith Campus (EGC)

1860 Lincoln St., Denver, CO 80203

11th Floor – Conf. Room 1135A OR

720-423-7777; Conf. ID 1212561

In Attendance: Angela Cobian, Brian Weaver, Scott Murphy, Tom Buescher, Chuck Carpenter, Jim Carpenter

In Attendance (phone): Kris Bethscheider

Others: Emily Marcus, Cara Sterling

Not in Attendance: Jeff Buck

Invited: *Kris Bethscheider, Jeff Buck, Cara Sterling, Chuck Carpenter, Jim Carpenter, Angela Cobian, Emily Marcus, Scott Murphy, Tom Buescher, Brian Weaver (Waller), Cara Sterling; Michelle Hix & Ramona Lewis*

Called to order: 4:48pm by Buescher

General Discussion

- Reintroduction of all Board members and people in attendance

Action Item: Approve 11/14/2019 Meeting Minutes

- Buescher asks for motion to approve. Murphy moves to approve. C. Carpenter seconds the motion.
- All vote in favor to approve minutes. No abstentions or nays.
- Minutes are approved.

Action Item: Discussion/Action Item: Trust Overview

- *How Trust Functions as an Independent Body*
- *Addition of Amendments and Updating Language to Agreement*
Presentation from and discussion with counsel; verify and discuss new amendments and updating the language to the agreement
- Buescher introduces C. Sterling and the reason for this discussion and action item – to reiterate the responsibilities of the Trust and review previously-passed Amendments.

Cara Sterling:

- Explained the Trust Agreement Restatement. Not proposing any new amendments. The ones stated and mentioned here have already been accepted and passed. The Trust Agreement was last restated in 2006, so this new version now pulls it all together and cleans the document up with everything.
 - Example of changes
 - Changed number of meetings per year from 6 to 4
 - Reiterated timing issue for payroll and payment amounts – language added for timing changes
 - All amendments have been passed and approved historically and now pulled into the document.
 - Asking to have the Trust Document restated and signed. Already approved by the Trust Board and now must be ratified by the District and DCTA separately from the Trust Board.
 - C. Carpenter clarifies that the Trust Board will sign it now and then it will go to the District and DCTA to be ratified. Sterling reiterates that it's approved here and then ratified by the District (Board of Education)/DCTA and the Board.
 - Article X Amendments clarifies this – vote today for approval then ratified by the others

Action Item – Approve Restated Trust Agreement:

- Buescher asks for motion to approve restated Trust agreement
 - Angela moves to approve the restated Trust agreement. Murphy seconds
 - No discussion prior to the vote. All vote in favor of approving the restated Trust agreement. No abstentions or nays.
 - Motion passes.
- Buescher asks Weaver and Bethscheider to tell DCTA that it needs to be ratified on their side

Discussion Item:

Sterling moves on to the Presentation – Fiduciary Duty as Trustees

- Familiarize the Board with the fiduciary duties of being on the ProComp Trust Board. These are mandatory that you must follow by being on the Board.
- Reviewed the presentation in its entirety
- Highlights:
 - Duty is to the Trust in these meetings – not to who appointed you (District, Community, DCTA)
 - Process and procedures are key for decision making
 - Duty of Loyalty – beneficiaries

Questions/Comments:

- Buescher clarifies that this is a Joint Trustee Board and discussed how conflicts of interest can work and how all must make decisions based on role as a Trustee. Even though members are appointed by that body, you are only appointed by them – you do not represent them when you are on the Trust Board.
- Buescher asks for copy of presentation to be included in the minutes.

Discussion Item: Future Agenda Items & General Discussion

- Next meeting in April/Spring for Budget review
- Buescher confirmed that meeting will be soon for budget review and timing may be tight due to deadlines of the Implementation team and District budget guidelines. Asks for flexibility with meeting times.

Adjourned: 5:18pm by Buescher

 Brownstein Hyatt
Farber Schreck



Fiduciary Duty as Trustees

DPS Professional Compensation for Teachers Trust

Presented By
Cara R. Sterling
Shareholder (Denver)

Today's Objectives

Familiarize (or re-familiarize) you with key fiduciary duties that you *must* satisfy as you exercise your considerable authority

– *not permissive—mandatory*

TOPICS

- The ProComp Trust is a separate, independent legal entity.
- Why should you care about fiduciary duties?
- There is some good news.
- Your duties are mandatory, not permissive
- Duty of loyalty
- Duty of prudence
- Process, process, process

The Pro Comp Trust is a Separate, Independent Entity

The Trust for the Denver Public Schools Professional Compensation System for Teachers (the “**Pro Comp Trust**”) was created by the Pro Comp Agreement between the District and the Teachers’ Association.

As Trustees, you are fiduciaries for this Trust. In this role, you are obligated to ensure the Trust is meeting its purpose and other requirements set forth in the Trust Agreement.

The Trust's Primary Purpose

The Trust's primary purpose is to receive, manage and distribute the monies that are raised each year from the Pro Comp mill levy. Funds are placed into the Trust to ensure that they will be available in perpetuity to pay ProComp educators.

The Trust is responsible for monitoring how Denver Public Schools spends the monies derived from the Trust, making certain that they are spent in a manner consistent with the ProComp Agreement:

- Teacher salaries and bonuses
- Reasonable and necessary expenses of administering the Trust

Why should you care about fiduciary duties?

First – You care about teachers

- You are responsible to ~4,700 teachers for ensuring sustainability of a trust that is integral to their compensation.

Second – You are subject to the highest standard of conduct.

- There can be significant personal consequences if you fail to satisfy your fiduciary duties.

The Good News

Courts defer to trustees who follow their governance procedures (trust agreement, bylaws, policies). Courts are not looking to second guess trustees who do their jobs.

“Compliance ...is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.” C.R.S. § 15-1.1-108

YOUR DUTIES AND RESPONSIBILITIES ARE MANDATORY, NOT PERMISSIVE

“A trustee **shall** invest and manage trust assets **as a prudent investor**

would,...” C.R.S. § 15-1.304.1, and Uniform Prudent Investors Act, C.R.S.

§§ 15-1.1-101 *et seq.* UPIA § 102(a)

- This is not permissive: if you choose to serve as a trustee, you “shall” perform the duties—can’t pick and choose or leave to others.

The Trustees' Authority is Expansive

*“The Trustees shall be the named fiduciaries of the Trust and shall have the **power to control the Trust and to perform all such acts, to take all such proceedings, and to exercise all such rights and privileges**, although not specifically mentioned herein, **as the Trustee may deem necessary or advisable to administer the Trust or to carry out the purposes of this Agreement.**”* (emphasis added). Trust Agreement Section 6.1

*“The Trustees shall have **exclusive authority** and responsibility with respect to the custody and management of the Trust,…”* Trust Agreement Section 6.2(a)

- Specific powers include – invest principal, sell and transfer assets, delegate to investment manager and other agents, etc.

It Is Balanced Against Stringent Standard of Conduct

As check on trustees' substantial power, legislature imposed on you the highest standard of conduct recognized by law - that of a fiduciary

Your fiduciary duties include the:

- Duty of loyalty and
- Duty of prudence

Duty of Loyalty

*“A trustee shall invest and manage the trust assets **solely** in the interest of the beneficiaries.”* (emphasis added) C.R.S. §15-1.1-105

Duty of Prudence

*“A trustee shall invest and manage trust assets **as a prudent investor** would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.” (emphasis added)*

C.R.S. § 15-1.1-102

Breaking Down the Duty of Loyalty

“...solely in the interest of the beneficiaries”

Legislative intent clear: you act on their behalf, not on behalf of (1) the taxpayers or citizens of Colorado, or (2) third-parties, including those who appointed or elected you, vendors or service providers.

Duty of Loyalty: Impartiality

*“If a trust has two or more beneficiaries, the trustee shall act **impartially** in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.”*

C.R.S. § 15-1.1-106

- There cannot be any “preferred” beneficiaries.

Duty of Loyalty: Conflicts of Interest

- **Duty to Disclose:** If a Trustee has a direct or indirect financial interest or other potential conflict of interest that arises in any matter before the Pro Comp Trust, this must be disclosed to the full board.
- **Board Consideration:** The other Trustees can weigh the facts and information and determine if a conflict of interest exists.
- **Recusal:** If there is a conflict of interest for a Trustee, the Trustee should recuse himself from any related discussion or votes.

Breaking Down the Duty of Prudence

“...as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust...”

- Your conduct will not be judged against that of an expert
- Rather, against that of a prudent person in similar situation who is familiar with such matters

Trying Isn't Enough

- Good faith isn't enough
- Giving it “the old college try” isn't enough
- “[A] pure heart and empty head are not enough.”
Donovan v. Cunningham, 716 F.2d 1455, 1467 (5th Cir. 1983)
- Ask yourself “what would a person with this responsibility do to prepare himself or herself to serve as a trustee?”

Duty of Prudence Requires You to...

- Prepare for and attend meetings
- Familiarize yourself with the Pro Comp Agreement and the Pro Comp Trust Agreement
- Engage in constructive dialogue with other trustees and Pro Comp administrators and experts
 - you must not be afraid to express minority or even unpopular views; if you hold them you probably should express them

Investments: Diversification

“A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.” C.R.S. § 15- 1.1-103

- You must help ensure that the assets are diversified to the specific risk/return profile of the plan

Investments: Delegation

“A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in: (1) Selecting an agent; (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.” C.R.S. § 15-1.1-109(a)

- Be prudent in selecting, monitoring and evaluating experts
- Document your due diligence
- You are not expected to guarantee a particular return. But, you are obligated to establish and follow a prudent investment process.

Investments: Delegation

- The law of fiduciary duty focuses primarily on process rather than results. But again, that process and the assumptions that underlie it must be prudent

Process, Process, Process

- Importance of process is common thread that weaves through most of what you do
- If your conduct is ever evaluated by a court, its focus will primarily be on whether you followed the correct processes as opposed to the end results
- Make sure meeting minutes reflect your deliberative process and compliance with plan documents

Contact Information

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