

October 15, 2019

TO: Trustees of the Everett School Employee Benefit Trust; and  
Darla Van Duren, Everett School Employee Benefit Trust

FROM: Melanie K. Curtice

RE: **Everett School Employee Benefit Trust Termination Checklist**

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**\*\* Attorney-Client Privileged Communication\*\***

On June 28, 2019, through a letter agreement between the Everett School District No. 2 (“District”) and the Everett Education Association (“Association”), the District and the Association provided the Everett School Employee Benefit Trust (the “Trust”) with written notification of termination of the Trust on December 19, 2019, or the date upon which final distribution of all remaining assets of the Trust occurs and all actions have been taken to finalize termination of the Trust. The following is an updated version of our June 11, 2019 checklist for the termination of the Trust. We can discuss these items during the October 23, 2019 meeting.

- **Notification and Payment Arrangements with Service Providers** – If not already completed, the Trust should notify all service providers (e.g., plan recordkeepers, auditors, insurers, administrators, consultants, accountants, etc.) (“Third-party Service Provider”) that the Trust will be terminated on December 19, 2019, and that the Trustees will be depleting assets and winding down the Trust on or after that date in accordance with the Trust Agreement and applicable law. Arrangements should be made with each Third-party Service Provider to address the Trust’s termination, including:
- Notification that December 31, 2019 is the effective date for termination of benefits and most services (which may require contract amendments (e.g., terminating group insurance contracts). Some services (provided to the Trust) such as accounting and legal may continue past December 31, 2019, and those service providers should be made aware that the Trust will be terminated as soon as all actions have been taken to finalize the termination of the Trust and all Trust assets have been depleted to \$0.00.
  - We understand that EAP services may continue past December 31, 2019. If so, coordination with the EAP will be necessary (i) to facilitate payment for EAP services after December 31, 2019, and (ii) to address contract issues (the EAP contract is between the Trust and the EAP). As an example, the Trust could decide to extend EAP services to December 31, 2020, and that it will make a one-time payment to the EAP service provider to cover the one-year extension period. In this example, it is likely the contract will need be amended to allow for assignment of it to the District upon the Trust termination, again as an example, so that contractual obligations, other than payment, are fulfilled.

- Arrangements for payment of final or revised Trust fees and expenses (including benefits claims (if any)). If Trust assets remain on December 19, 2019, fees or expenses that relate to a date before December 19, 2019 but are received after December 19, 2019, as well as fees and expenses incurred after December 19, 2019 to effectuate Trust termination (e.g., accounting fees), can be paid from those remaining Trust assets. The Trust will continue to exist until all actions have been taken to finalize the termination of the Trust and all Trust assets have been depleted to \$0.00.
    - Trust fees and expenses incurred but not paid as of the date assets are depleted to \$0.00 will have to be paid by another source.
    - Per the Trust Agreement and applicable law, no Trust assets can revert to the District or the Association.
  - Provision of any final Trust reports (if any) and filing of a final IRS Form 990 following depletion of all Trust assets (discussed below).
- **Trustee Actions** – Trust Agreement Section 6.2 Termination tasks the Trustees with implementing all actions necessary to fully wind-down the Trust and vests the Trustees with the authority necessary to wind-down the trust. Trust Agreement Section 6.3 Continuation of Powers and Duties of Trustees imposes all otherwise-applicable duties on the Trustees for the duration of the wind-down period. The Trustees should take the following actions on behalf of the Trust to fully wind-down the Trust:
- Formally adopt a termination resolution. (For this purpose, resolution effectuating Trust termination is attached to this checklist.)
  - Oversee the winding down of the Trust and depletion of the Trust’s assets through the payment of benefits and Trust fees and expenses.
  - Work closely with the Trust’s auditor and legal counsel to ensure that all final audits, reports (if any), and forms (such as IRS Form 1099-MISC) are completed.
- **Final Form 990** – With respect to the Trust’s fiscal year that includes its termination (i.e., the year in which the assets of the Trust are fully depleted), file an IRS Form 990 designated in Section B as “Final return/terminated”. Generally, the Trust must file its IRS Form 990 by the 15th day of the fifth month following the end of the Trust’s fiscal year on June 30 (i.e., by November 15). In the case of termination, however, the final IRS Form 990 must be filed by the 15th day of the fifth month following the later of (a) the Trust’s December 19, 2019 termination date, or (b) the date that all Trust assets are depleted. Therefore, if any assets remain undistributed after the close of the Trust’s 2019/2020 fiscal year (i.e., the year in which the Trust would have otherwise terminated but for the existence of remaining funds), a regular IRS Form 990 should be filed for the 2019/2020 fiscal year (and any subsequent fiscal years in which assets remain in the Trust), and a short-year final IRS Form 990 should be filed by the 15th day of the fifth month following the date on which all Trust funds are fully depleted.

**A RESOLUTION BY THE TRUSTEES OF THE EVERETT SCHOOL  
EMPLOYEE BENEFIT TRUST EFFECTUATING TERMINATION OF THE EVERETT  
SCHOOL EMPLOYEE BENEFIT TRUST**

WHEREAS, the Everett School Employee Benefit Trust is a voluntary employees' beneficiary association formed pursuant to Section 501(c)(9) of the Internal Revenue Code ("Code") and was approved as such by the Internal Revenue Service on May 18, 1988, to provide for the payment of certain health, accident, disability, death and other benefits as described in Section 509(c)(9) of the Code and the Trust Agreement (defined below) to benefits-eligible Trust participants and beneficiaries ("Trust"); and

WHEREAS, the Trust is maintained in accordance with the terms and conditions set forth in the Restatement of Everett School Employee Benefit Trust Agreement between the Everett School District ("District"), the Everett Education Association ("Association"), and signatory individuals who were appointed by the District and the Association as trustees (collectively referred to as "Trustees"), as most recently amended and restated effective June 30, 2017 (the "Trust Agreement"); and

WHEREAS, Trust Agreement Section 6.2 Termination authorizes the District, the Association or both to terminate the Trust;

WHEREAS, On June 28, 2019, the District and the Association provided written notice to the Trustees of termination of the Trust, effective December 19, 2019, pursuant to a Letter Agreement between the District and the Association ("Letter Agreement");

WHEREAS, the Letter Agreement directs the Trust to continue providing Trust benefits to current Trust participants and beneficiaries through December 31, 2019, and that as of December 19, 2019, no District employee or a District's employee's dependent may become a participant in or beneficiary of the Trust's benefits or make contributions to the Trust for Trust benefits;

WHEREAS, the District and Association agreed in the Letter Agreement, in accordance with Trust Agreement Section 6.3 Continuation of Powers and Duties of Trustees, that from and after December 19, 2019, and until final distribution of all remaining assets of the Trust and until all actions necessary to finalize termination of the Trust have been completed, that the Trustees shall continue to have all the powers and duties provided under the Trust Agreement which are necessary and expedient for the orderly liquidation and distribution of all remaining Trust assets; and

WHEREAS, in accordance with the Letter Agreement and in accordance with Trust Agreement Section 6.3 Continuation of Duties of Trustees, the Trustees now wish to effectuate termination of the Trust on December 19, 2019, and to take actions necessary and expedient for orderly liquidation and distribution of all Trust assets that remain after December 19, 2019.

NOW THEREFORE, BE IT RESOLVED, that the Trustees hereby terminate the Trust effective as of December 19, 2019, or such later date when the assets of the

Trust have been fully distributed in accordance with the Trust Agreement's terms and applicable law.

RESOLVED FURTHER, that the Trust continue to provide Trust benefits to current Trust participants and beneficiaries through December 31, 2019, and that as of December 19, 2019, no District employee or a District's employee's dependent may become a participant in or beneficiary of the Trust's benefits or make contributions to the Trust for Trust benefits.

RESOLVED FURTHER, that, in accordance with Trust Agreement Sections 6.2 Termination and 6.3 Continuation of Powers and Duties of Trustees, the Trustees will take actions as such Trustees, or any one of them, deem necessary or advisable to effectuate the foregoing resolutions, including, without limitation, payment of benefits, payment of fees and expenses in connection with settling the Trust's accounts, and filing of a final Form 990 with the Internal Revenue Service with respect to the Trust.

PASSED AND APPROVED by the Everett School Employee Benefit Trust Trustees, this \_\_\_ day of October 2019.

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Larry Fleckenstein, Trust Chair

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Gregg Elder, Trust Secretary

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Adam Goldstein, Trustee

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Susan Lindsey, Trustee

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Jeff Moore, Trustee

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Kelly Shepherd, Trustee