

# SHARED-TIME AGREEMENTS

January 22, 2014



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# Shared-Time Agreements

## Shared-time agreements between public and nonpublic schools.

- Overview of Subtopics.
  - Explanation of Shared Time.
  - Statutory Requirements.
  - Constitutional Requirements.
  - Practical Suggestions.

# Explanation of Shared Time

A public school can receive state school aid by enrolling nonpublic school students in nonessential courses to be taught by a public school certified teacher at the nonpublic school site.

## What are nonessential courses?

- Pupil Accounting Manual first defines what is essential to a pupil's curriculum – mathematics, reading, English, social studies, writing, and history.
- Nonessential courses include advanced placement level classes, art, physical education, music, computer skills, and study skills, presently, language classes also qualify.

# Explanation of Shared Time

## Why consider shared-time agreements?

- In theory, a public school district should realize a profit from sending public school teachers into nonpublic schools to teach nonessential courses. The school district receives the FTE state aid allowance at essentially the cost of providing the school teacher.
- The advantage to the nonpublic school is that it saves money by utilizing public resources to teach nonessential courses to nonpublic school students.

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# Statutory Requirements

MCL 388.1766b, as amended by Public Act 130 (2012).

- Geographic location: The nonpublic school site is located, or the nonpublic students are educated, within the geographic boundaries of the district.

# Statutory Requirements

## Exception

- If the nonpublic school has submitted a written request to the district in which the nonpublic school is located for the district to provide certain instruction under this subsection for a school year and the district does not agree to provide some or all of that instruction by May 1 immediately preceding that school year or, if the request is submitted after March 1 immediately preceding that school year, within 60 days after the nonpublic school submits the request, the instruction is instead provided by an eligible other district.

# Statutory Requirements

## Exception (*continued*)

- This subparagraph does not require a nonpublic school to submit more than one request to the district in which the nonpublic school is located for that district to provide instruction under this subsection, and does not require a nonpublic school to submit an additional request to the district in which the nonpublic school is located for that district to provide additional instruction under this subsection beyond the instruction requested in the original request, before having the instruction provided by an eligible other district. A public school academy that is located in the district in which the nonpublic school is located or in another eligible district also may provide instruction under this subparagraph under the same conditions as an eligible other district.

# Statutory Requirements

MDE – Interprets this Exception to mean that a nonpublic school only has to submit a request once to the public school district in which the nonpublic school is located. Even if the “resident” public school district provided satisfactory shared time services, the nonpublic school can still go elsewhere the next year.

# Statutory Requirements

On August 6, 2013, the Attorney General issued an opinion endorsing the MDE's interpretation. Once a nonpublic school makes a request to the home district, the nonpublic school is not required to make any subsequent request before seeking shared-time services from an "eligible other district."

# Statutory Requirements

## Exception (*continued*).

- As used in this subparagraph, “eligible other district” means a district that is located in the same intermediate district as the district in which the nonpublic school is located or is located in an intermediate district that is contiguous to that intermediate district.

# Statutory Requirements

## Other Conditions.

- The nonpublic school is registered with the Michigan Department of Education as a nonpublic school and meets all state reporting requirements.
- The instruction is scheduled to occur during a regular school day.
- The instruction is provided directly by an employee of the public school district, a public school academy, or of an intermediate school district.
- The curricular offering is also available to full-time pupils in the minor's grade level or age group during a regular school day at a public school site.
- A curricular offering is restricted to nonessential elective courses for pupils in grades 1-12.

# Constitutional Requirements

## United States Constitution First Amendment.

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press ...

# Constitutional Requirements

## Michigan State Constitution.

- Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes, or other rates for the support of any ministry of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges, and capacities of no person shall be diminished or enlarged on account of his religious belief.

# Constitutional Requirements

- *Lemmon v Kurtzman*, 403 US 602 (1971).
  - ✓ Three-part test.
    - Does the government statute or activity have a secular purpose.
    - The principal or primary effect of the government action must neither advance nor inhibit religion (principle of neutrality).
    - The government activity must not foster excessive government entanglement with religion.

# Constitutional Requirements

- *School District of Grand Rapids v Ball, 473 US 373 (1985).*
  - ✓ The Supreme Court struck down a shared-time program that offered classes during regular school days in nonpublic schools that were taught by public school teachers financed by State aid.
  - ✓ This case also struck down a community education program that offered courses to children and adults that commenced after regular school days. These courses included arts and crafts, home economics, Spanish, gymnastics, yearbook production, humanities, *etc.*

# Constitutional Requirements

- *School District of Grand Rapids v Ball, 473 US 373 (1985) (continued).*
  - ✓ Most community public school education teachers were part-time school employees, who were already were teaching within the nonpublic school.
  - ✓ The Supreme Court struck down the program in this case as well as a companion case, *Aguilar v Felton, 473 US 402 (1985)* (involved New York cities' Title I programs in nonpublic schools).

# Constitutional Requirements

- *School District of Grand Rapids v Ball, 473 US 373 (1985) (continued).*
  - ✓ The Supreme Court struck down these arrangements for three reasons:
    - There was a substantial risk that public school teachers who were teaching on the premises of religious schools would conform their instruction to the pervasively religious environments.
    - The presence of public school teachers on parochial school grounds created a graphic symbol of union between church and state.
    - A shared-time program impermissibly financed religious indoctrination by subsidizing the primary religious mission of the religious institution.

# Constitutional Requirements

## *Agostini v Felton*, 521 US 203 (1997).

- The Supreme Court would no longer assume that full-time public school teachers assigned to teach in nonpublic religious schools created an automatic risk or presumption of religious indoctrination.
- Majority opinion also rejected an automatic assumption of symbolic union between church and state by virtue of the fact that a public school teacher is assigned to teach in a nonpublic school.
- The Supreme Court had departed from the “all or nothing” rule that any government aid that directly assists education functions of religious schools is invalid.

# Constitutional Requirements

## *Agostini v Felton, 521 US 203 (1997) (continued).*

- *Agostini* was not a blank check for shared-time programs. *Agostini* was based on certain facts:
  - The teachers assigned to a nonpublic school must be (1) selected by the public school district; (2) must be employees of public school districts; and (3) must be subject to the public school district's supervision.
  - The public school district must be responsible for selecting and promoting the nonpublic school pupils enrolled in the nonessential elective courses.

# Constitutional Requirements

## *Agostini v Felton, 521 US 203 (1997) (continued).*

- Precautions must be taken to ensure that public school teachers do not introduce religious material into their teaching or become involved in any way with the religious activities of the nonpublic school.
- Public school teachers should be subject to unannounced visits to ensure that their engagement is for a secular purpose and that they are complying with all public school district policies and procedures with respect to the instruction offered.

# Constitutional Requirements

- **Further Refinement.**

- ✓ *Helms v Picard*, 151 F3d 347 (CA 5, 1998) *rev'd in part Guy v Helms*, 530 US 793 (2000).
  - The case involved assignment of full-time special education teachers in parochial schools in the Jefferson Parish, Louisiana. The Fifth Circuit carefully examined *Agostini* and the *Ball* cases. In *Ball*, shared-time teachers were full-time public school teachers but the community education teachers were part-time school teachers usually hired from the parochial schools. The Fifth Circuit concluded that the public school district that hired nonpublic school teachers to teach as part-time public school teacher in the nonpublic schools risked violating the Establishment clause.

# Constitutional Requirements

- **Further Refinement (*continued*).**
  - ✓ In *Picard*, special education teachers were assigned as full-time public employees and were not concurrently employed by the parochial schools where they worked. The special education teachers were not asked to act in the capacity of a religious school teacher during any part of the day. They assumed a purely secular role and were subject to supervision by the public entity.
  - ✓ Based on these and other factors, the Fifth Circuit concluded that there was no violation of the establishment clause through the full-time assignment of public school special education teachers within the parochial school.

# Constitutional Requirements

- Further Refinement (*continued*).

- ✓ [The Fifth Circuit did find that it was unconstitutional to use public funds to provide instructional materials such as film strip projectors, overhead projectors, television sets, motion picture projectors, video camcorders, computers, printers, phonographs and slide projectors to parochial schools. This part of the decision was overturned by the United States Supreme Court in *Guy v Helms* (Chapter two of the Educational Consolidation Improvement Act of 1981 allows state educational agencies and local education agencies to lend education materials and equipment such as library and reading materials, computer software, hardware to public and private schools.)]

# Best Practices

## Must follow all statutory requirements.

- The public school district must hire the teachers assigned to teach in nonpublic schools through the public school district's normal hiring process. There can be no discrimination based on religion or other protected categories.
- Hiring procedures that merely hire nonpublic school teachers already teaching in the nonpublic school risk legal challenge.
- The best practice is that public school teachers assigned to teach in a nonpublic school have no involvement with the nonpublic school.
- Must follow MCL 388.1766b statutory requirements.
- Shared time should follow public school calendar.

# Best Practices

*Question:* Can a teacher work both part-time as a public school teacher in a nonpublic school and as a nonpublic school teacher in the public school?

- Michigan Department of Education's Pupil Accounting Act says yes: "A public school may hire a certified teacher on a part-time basis to provide the instruction for nonessential courses at a public school. Instructional time must be scheduled and take place within the regular school day. The teacher must be an employee of the public school district, on the public school district's payroll, earning seniority in a public school system, and is entitled to the same benefits available to the other teaching staff members on a pro rata basis. The teacher may also be hired on a part-time basis by the nonpublic school for a distinctly separate portion of the school day."