



# State of New Jersey

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**KEVIN D. WALSH**  
Acting State Comptroller

April 19, 2023

David Cappuccio Jr., Superintendent  
Buena Regional School District  
914 Main Avenue  
Richland, NJ 08350

**Re: Follow-Up Report – Buena Regional School District  
A Performance Audit of Selected Fiscal and Operating Practices**

Dear Superintendent Cappuccio:

On July 10, 2020, we issued an audit report, *Buena Regional School District – A Performance Audit of Selected Fiscal and Operating Practices (2020 Audit)*,<sup>1</sup> in which we made recommendations to address identified weaknesses. Pursuant to N.J.S.A. 52:15C-11, we have conducted a follow-up review of the corrective action plan of Buena Regional School District (Buena or District) to assess the implementation of the recommendations contained in the 2020 Audit. Our findings and conclusions are set forth below.

## **Background, Scope, and Objective**

Our 2020 Audit identified weaknesses with fiscal and operating practices. Specifically, Buena had failed to comply with federal regulations for income verification in the school lunch program; state regulations for the procurement of insurance brokers; the District's own policies and procedures for procuring an insurance broker; and terms in employment contracts and collective bargaining agreements addressing health benefit opt-out waiver payments.

The objective of our follow-up review was to determine if the District has implemented the five recommendations contained in our 2020 Audit report.

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<sup>1</sup> Available at: [https://www.nj.gov/comptroller/news/docs/buena\\_audit\\_report.pdf](https://www.nj.gov/comptroller/news/docs/buena_audit_report.pdf).

## Summary Conclusion

We found that Buena has partially or fully implemented all five recommendations set forth in the 2020 Audit report. We urge Buena to continue its efforts to comply with the recommendation not yet fully implemented.

## Status of 2020 Audit Recommendations

### Recommendation 1

*Develop policies and procedures to ensure compliance with the National School Lunch Program regulations on income verification.*

#### ***Status: Implemented***

Our 2020 Audit found that the District failed to comply with National School Lunch Program (NSLP) regulations for conducting income verification in fiscal years (FY) 2016 and 2017. Further, the District was unaware of the U.S. Department of Agriculture (USDA) verification for cause requirement and did not conduct a review to determine if any of the applications required income verification pursuant to USDA regulations. The District advised in its corrective action plan that personnel administering the program participated in training on the NSLP verification process conducted by the New Jersey Department of Agriculture. Additionally, the corrective action plan indicated that the District would review and approve applications chosen for verification.

During our review, we confirmed that the District implemented a revised procedure for ensuring compliance with the NSLP regulations on income verification.<sup>2</sup> We also confirmed that District personnel attended NSLP verification requirements training and found that the school business administrator reviews and approves error prone applications. We reviewed both error prone and for cause applications identified by the District for FYs 2021 and 2022 to determine compliance with NSLP rules and found no exceptions.

### Recommendation 2

*Revise policies and procedures to ensure that insurance broker contracts are procured and awarded in compliance with the Public School Contracts Law.*

#### ***Status: Partially Implemented***

Our 2020 Audit found that the District did not comply with the Public School Contracts Law requirements in the award of two insurance broker contracts for services in FY 2017. Specifically, the District did not file certifications with the Board of Education (Board) stating that the contracts met the “extraordinary unspecifiable services” (EUS) exception, which allows a local government

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<sup>2</sup> Local education agencies are responsible for ensuring compliance with income requirements for the NSLP, including evaluating error prone applications (those that report monthly income within \$100, or annual income within \$1200, of income eligibility limits) and verification for cause (questionable applications, such as those that report zero income or where the District is aware of additional income or persons in the household.) See 7 C.F.R. § 245.6a.

to award contracts for certain services without competitive bidding. N.J.A.C. 5:34-2.3(b) required the District to have a designated administrative official file a certificate with the Board “describing the nature of the work to be done, stating that it is not reasonably possible to draft specifications, describing the informal solicitation of quotations, and describing in detail why the contract meets the provisions of the [Public School Contracts Law] and [applicable] rules.” N.J.A.C. 5:34-2.3(b) states that “[a] mere recitation of the language in the statute shall not be sufficient” and requires that the certification “be kept with the resolution awarding the contract.”

We also found that the contract awards and details of those awards were not published in the District’s official newspaper, as required by N.J.S.A. 18A:18A-5(a)(1) and N.J.A.C. 5:34-2.3(c). The District advised in its corrective action plan that insurance broker services would be procured in accordance with the Public School Contracts Law.

During our review, we confirmed that the District established policies and procedures to ensure that insurance broker contracts are procured and awarded in compliance with the Public School Contracts Law. However, our analysis identified issues related to the procurement of the broker contracts and revealed that contracts were not fully awarded in compliance with the Public School Contracts Law.

The Public School Contracts Law permits insurance and insurance brokerage services to be considered an EUS. However, the EUS certification must still provide a description of the work and the informal solicitation of quotations. To meet this requirement the standard certification requires school districts to list vendors contacted and prices and terms provided, including the lowest quotation.<sup>3</sup> Our review found that that District filed EUS certifications documenting the contract award for insurance brokerage services, but the certifications were deficient. Specifically, the District’s description of the informal solicitation of quotations merely recited the statutory requirement that, “Quotations are required when awarding an EUS contract.” The EUS certifications stated that “Notice of Requests for Proposals are also posted on the District website,” but the District did not provide any detail as to the brokers contacted or the prices and terms quoted.

We reviewed Buena’s Request for Proposal (RFP) for an EUS Employee Benefits Broker and the RFP for an EUS Insurance Broker. The RFPs state that the “School District intends to award the EUS professional services contracts for the defined scope of work as an Extraordinary Unspecifiable Service in accordance with N.J.S.A. 18A:18A-37(a).” N.J.S.A. 18A:18A-37(a) requires that “the award shall be made to a vendor whose response is most advantageous, price and other factors considered.” However, the RFPs did not ask bidders to include a fee or commission in their proposals, making it impossible to determine which proposal was most advantageous to Buena, taking price and other factors into consideration as required by law. One benefit of requesting this information is to evaluate self-interest of a broker based on the different commissions. For FY 2022 one insurance broker received commissions of approximately \$141,000, and another received approximately \$50,000.

Also, the RFP’s minimum requirements state that the “location of central office must be within 20 (or 30) miles of the board office.” Specifications are to be drafted to “encourage free, open and

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<sup>3</sup> The Department of Community Affairs issued Local Finance Notice AU-2002-2 and developed a standard form of certification to assist school districts in complying with EUS requirements.

competitive bidding.” N.J.S.A. 18A:18A-15. When we asked about this geographic restriction, the District stated that “the mileage limitation of the central office is to have insurance brokers that are accessible and responsive in time of need and further have knowledge of the district.” The RFP does not identify any circumstances that would require a broker to be physically present in the Board office within a short timeframe. We note that the RFP was issued after the onset of the COVID pandemic which resulted in many changes to business practices, including the ability to participate in meetings virtually and conduct business without physical accessibility to a client. We also note that physical proximity to the District does not necessarily demonstrate knowledge of the District. Knowledge of a district itself is a criterion that should not be used because it will interfere with competition and undermine the salutary goals of public bidding laws. Therefore, we find that because the mileage restriction was not related to the function or activity of providing brokerage services, the District imposed an unlawful restriction on competition in violation of N.J.S.A. 18A:18A-15. Making matters worse is that the District, after discouraging competition, then waived the requirement when it awarded the contract to a broker that was outside of the 30-mile limit.

The District properly placed a notice of the contract awards for insurance broker services and the details of those awards in the District’s official newspaper, but the advertisement failed to include the amount of the contract as required by N.J.S.A. 18A:18A-5(a)(2) and N.J.A.C. 5:34-2.3(c).

To fully implement this recommendation, the District must require bidders to include a fee or commission in their proposals. In addition, if physical proximity of a service provider is necessary for contract performance, the District should include parameters related to responsiveness and economic performance in the request for proposals, and then evaluate proposals based on definite and clear criteria. Such limitations should be sparingly, if ever, used because they undermine competition. In the absence of clear justification for such a limitation, the District must remove the central office location requirements from the RFP to ensure full and open competition. For transparency and clarity, the District should include the amount of the contract, or an estimate, when publicizing the awards in its official newspaper.

### **Recommendation 3**

*Revise policies and procedures to ensure that health insurance brokers disclose any commission, service fee, brokerage, or other valuable consideration received as a result of the contract pursuant to N.J.S.A. 17:22A-41.1(a).*

#### ***Status: Implemented***

Our 2020 Audit found that the District’s health insurance broker did not disclose its commissions pursuant to N.J.S.A. 17:22A-41.1(a) for FY 2017. The District advised in its corrective action plan that bid specifications for insurance broker services would be revised to include submission of required statutory disclosure compliance language pursuant to N.J.S.A. 17:22A-41.1(a).

During our review, we confirmed that the District revised its policies and procedures to require health insurance brokers to disclose any commission, service fee, brokerage, or other valuable consideration received as a result of the contract. However, we found that the health insurance broker provided the District with undated letters disclosing commissions *after* the signing of the contracts. This timing may have complied with the minimum requirements of the law, but did not adequately protect taxpayers. Guidance from the New Jersey Department of Banking and

Insurance states that the disclosure should be made no later than the effective date of the contract.<sup>4</sup>

As noted above, the District should receive commission information during the procurement process in order to properly evaluate proposals and award the contract to the broker whose proposal is most advantageous. Receiving commission information when the deal has been all but finalized prevents Board members from taking into account that brokers who receive fees dependent on the amount of health insurance premiums could face conflicting incentives in seeking lower cost health insurance alternatives for their clients. If the broker receives commissions directly from the insurance companies based on a percentage of insurance coverage costs, rather than a flat fee rate, this creates an inherent conflict between the broker and a local government seeking the most cost-efficient insurance coverage. As noted in OSC's Brigantine Audit,<sup>5</sup> and as recognized by the Division of Local Government Services' 2021 best practices,<sup>6</sup> insurance brokers who get paid by commission from the insurance companies face conflicting incentives that may harm local taxpayers. The District should revise its policies and procedures to ensure that the broker's commission and financial self-interest are revealed as soon as possible and considered at every step of the procurement process.

Finally, we note that the federal law regarding disclosure of commissions has recently changed. The recently enacted No Surprise Act (part of P.L. 116-260) requires that group health insurance providers disclose to enrollees, in writing prior to entering into the contract, direct and indirect compensation paid to a service provider, affiliate, or subcontractors. The District should update its policies and procedures to ensure it receives this disclosure prior to contract approval in conformance with federal law.

#### **Recommendation 4**

*Develop policies and procedures regarding the administration of health insurance coverage and the processing of health benefit opt-out waiver payments to ensure that employees are not receiving duplicate benefits.*

#### ***Status: Implemented***

Our 2020 Audit found that the District did not adequately monitor health benefit coverage. The District improperly provided health benefit waiver payments to nine employees for the same period they had received District-provided health insurance, resulting in duplicate benefits that totaled \$35,469 in FY 2017. The nine employees included three that received health benefit waiver payments for the same time period they were covered under District-provided health insurance and six couples that included individuals who were both employed by the District. Buena advised

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<sup>4</sup> The Department of Banking and Insurance issued Bulletin Number 08-16, [https://www.state.nj.us/dobi/bulletins/blt08\\_16.pdf](https://www.state.nj.us/dobi/bulletins/blt08_16.pdf).

<sup>5</sup> STATE OF N.J. OFFICE OF THE STATE COMPTROLLER, A PERFORMANCE AUDIT OF EMPLOYEE BENEFITS: CITY OF BRIGANTINE, 16 (December 2022) ("Brigantine Audit") [https://www.nj.gov/comptroller/news/docs/brigantine\\_audit\\_report.pdf](https://www.nj.gov/comptroller/news/docs/brigantine_audit_report.pdf).

<sup>6</sup> NJ DIVISION OF LOCAL GOVERNMENT SERVICES, 2021 Best Practices Inventory (2021), [https://www.nj.gov/dca/divisions/dlgs/programs/best\\_practices\\_docs/2021%20DLGS%20Best%20Practices%20Inventory%20Questions%20.xlsx](https://www.nj.gov/dca/divisions/dlgs/programs/best_practices_docs/2021%20DLGS%20Best%20Practices%20Inventory%20Questions%20.xlsx) at Question 10 ("Insurance broker fees dependent on the amount of health insurance premiums or fees paid by the municipality are vulnerable to abuse as brokers could face conflicting incentives in seeking lower-cost health insurance alternatives.").

in its corrective action plan that the business administrator would be responsible for reviewing and verifying waiver payments to ensure there is no duplication of benefits.

During our review, we confirmed that policies and procedures were developed regarding health benefit waiver payments. In 2021, the District paid 47 employees waiver payments. We noted three exceptions that involved two couples hired and married prior to July 1, 2010. The couples received health benefits in addition to \$7,646 in waiver payments. We note that this practice is permissible under the current collective bargaining agreement and that the individuals were previously identified in the 2020 Audit. We note, however, that this practice is wasteful and contrary to the purpose of a waiver payment as these employees were able to receive health benefits while collecting payment for opting out of the same benefits.

As discussed in more detail in the next recommendation, Buena provided documentation demonstrating that the District attempted to remove the provision permitting such payments. We found no additional exceptions.

As noted below in Recommendation 5, we urge the District to continue its efforts to remove the provision in the collective bargaining agreement allowing for duplicative benefits to some employees.

### **Recommendation 5**

*Seek to renegotiate the terms of any collective bargaining agreements to eliminate the duplication of benefits.*

#### ***Status: Implemented***

Our 2020 Audit found that pursuant to the Buena Regional Education Association (BREA) collective bargaining agreement, the District paid \$30,189 in health benefit waiver payments for six couples that included individuals who were both employed by the District. The BREA collective bargaining agreement provision stated that “[m]arried employees or those in civil union partnerships where both employees are employed by the board prior to July 1, 2010 will retain their ability to individually choose to opt-out of coverage.” The District’s policy of providing health insurance coverage and health benefit waiver payments for married employees is a duplication of benefits that is contrary to the underlying purpose of waiver payments to act as a financial incentive to reduce benefit costs. The District advised in its corrective action plan that the Board was in negotiations with the collective bargaining union and was seeking to modify existing language pertaining to waiver payments where duplication exists.<sup>7</sup>

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<sup>7</sup> It is noteworthy that school districts, in not being prohibited from negotiating opt-out payments, are treated differently under the law than municipalities and other types of government. As noted in LFN 2016-10, “N.J.S.A. 52:14-17.31a and 40A:10-17.1 authorize local units providing employee health benefits through the State Health Benefits Program (SHBP) or non-SHBP coverage, respectively, to make annual payments to employees in exchange for waiving health coverage provided by the local unit. Local units have sole discretion as to whether or not to offer employees payments for waiver of health benefits. Health benefit waiver payments are statutorily prohibited from being subject to the collective bargaining process.” (Emphasis added.) Both N.J.S.A. 52:14-17.31a and N.J.S.A. 40A:10-17.1 state that the decision “to allow its employees to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective bargaining process.”

During our review, we obtained the current collective bargaining agreement between BREA and the District for the period July 1, 2019 to June 30, 2024. The agreement continues to allow for waiver payments and health benefits to couples who are married or in a civil union partnership and employed by the District prior to July 1, 2010. The District's Negotiations Committee attempted to bargain for the removal of this provision, but efforts have been unsuccessful.

As noted in Recommendation 4, the total amount of the opt-out payments was \$7,645.92 for two couples, in addition to their health benefits. We urge the District to continue its efforts to remove this provision from future contracts.

## Reporting Requirements


We provided a draft copy of this report to the Buena for their review and comment. Their response was considered in preparing our final report and is attached as Appendix A.

By statute, we are required to monitor the implementation of our recommendations. To enable us to meet this requirement, within 90 days, the District shall report to our office regarding the actions that have been or will be taken to address the unresolved issues in this report. We will continue to monitor those steps.

We thank the management and staff of the District for the courtesies and cooperation extended to our auditors during this review.

Sincerely,

KEVIN D. WALSH  
ACTING STATE COMPTROLLER

By:   
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Christopher Jensen, CPA  
Director, Audit Division

### Attachment

- c: Dr. Angelica Allen-McMillan, Acting Commissioner Department of Education
- Dr. Jamar E. Purnsley, Director, Department of Education
- James Abba, Board President, Buena Regional School District
- Donna L. Phillips, Business Administrator, Buena Regional School District

## **BUENA REGIONAL SCHOOL DISTRICT**

Mailing Address: PO Box 309, Buena, NJ 08310  
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*Honoring Tradition. Inspiring Futures.*

**DAVID C. CAPPuccio, JR.**  
*Superintendent*

**Bridgette Burt**  
*Director of Curriculum & Instruction*

**Donna L. Phillips**  
*Business Admin./Board Secretary*

Monday, March 27, 2023

Kevin D. Walsh, Acting State Comptroller  
Office of the State Comptroller  
P.O. Box 024  
Trenton, NJ 08625-0024

Re: Response to Follow-Up Report

Dear Mr. Walsh,

Please allow this correspondence to serve as the Buena Regional School District's formal response to the Office of the State Comptroller's (OSC) Follow-Up Report dated March 10, 2023. On behalf of our Superintendent, Mr. David Cappuccio, we thank you for the opportunity to respond and provide comments to your office prior to the release of the report.

After reviewing the report, we were pleased to learn that the status of recommendations 1, 3, 4, and 5 were identified as "Implemented". Recommendation 2; however, was identified as "Partially Implemented". Following our telephone conversation this morning with Mr. Rosenberg, we agree with your stated suggestions to fully implement Recommendation 2. We acknowledge and understand that the District must require bidders to include a fee or commission in their proposals. We agree and understand that, if physical proximity of a service provider is to be included as an advantageous factor, then the District must include detailed, stated criteria as well as clear justification for including such a limitation. Finally, we agree that moving forward, the District will include the actual or estimated amount of the contract when publicizing the awards in its official newspaper.

Again, we would like to thank your department for taking the time to explain the Follow-Up Report and recommendations to fully implement Recommendation 2. We look forward to receiving the template for our action plan and will complete such in a timely manner.

Sincerely,

Donna L. Phillips  
School Business Administrator

c: Mr. David C. Cappuccio, Jr., Superintendent  
File