



NORTH BERGEN BOARD OF EDUCATION

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Christopher Jensen
Acting Director – Audit Division
Office of the State Comptroller
P.O. Box 024
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June 17, 2022

Dear Mr. Jensen,

Please accept this correspondence as the North Bergen School District's Response to the Office of the State Comptroller's ("OSC") follow-up report to the OSC's 2019 Audit and Corrective Action Plan ("CAP"). We have reviewed your findings and determinations, and while we disagree with the assertion that the District has ever failed to comply with the Public School Contract Laws for any procurement or limiting terminal leave payments, we will agree to amend certain policies for transparency purposes. Furthermore, the District will continue to utilize the recommendations of the OSC to recognize additional operational efficiencies and cost reductions, as it has since the 2019 Audit.

However, the District disagrees and objects to any statement or categorization that it engaged in any unlawful behavior, lacked internal controls or that it failed, in practice, to comply with any law and regulation related to employee benefits, procurements or contracted services. The District has, and will continue, to follow and adhere to the law. The District does recognize, however, that certain benefits are not limited to the same extent as state contracts but that such recommendations are not legally obligated to be implemented. Even still, the District has implemented a number of the recommendations of the OSC and will continue to work to implement some of the recommendations identified in the OSC's report. In the interest of clarity, the District responds to the Comptroller's recommendations as follows:

Recommendation 1- The OSC recommended that the Board: a) implement a policy setting forth all employee leave benefits b) provide consistent leave benefits for all employees and c) the District should seek to align their benefits with the benefits provided to current state employees.

In 2019, the Comptroller determined that the Board lacked a policy addressing the three issues listed above. In response to the Audit, the District enacted a policy which addressed the concerns listed above. In response to this follow-up report, the District offers some clarification.

The District, historically, has several groups of employees who are entitled to various amounts of vacation, dependent on several factors. These factors include whether they are covered under a Collective Bargaining Agreement (“CBA”), if they have or are subject to certification requirements as condition of employment and if the employee is in a supervisory position.

The various groups of employees are:

- a) Certificated employees covered by a CBA;
- b) Certificated employees not covered by a CBA;
- c) Non-certificated employees who are covered by a CBA;
- d) Non-certificated employees not covered by a CBA, and;
- e) Supervisory employees.

Upon best information, the OSC has taken issue with the portion of Board Policy 3420.1 which states as follows: “All administrators and confidential employees not covered by a collective bargaining agreement . . . shall be entitled to 20 to 30 vacation days.” For clarification, historically, non-certificated supervisory employees who are not covered by a CBA are allotted 20 days’ vacation, which is identical to the negotiated days for those non-certificated staff members who are covered by a CBA. Certificated supervisory employees not covered by a CBA are allotted 30 days’ vacation , which is identical to negotiated days for those certificated non-supervisory employees who are covered by a collective bargaining agreement. Any employee who is not governed by a CBA is entitled to the same number of days as their supervisor, in accordance with Policy 3420. While the OSC is requesting that we provide consistent leave benefits, the District responds that it is, in fact, providing consistent leave benefits, but those benefits depend on the category of employee. While the District acknowledges that this may differ from the State’s formula for vacation days, the District believes that their policies have assisted in the District’s mission of competing for quality staff members both locally and across the state. However, the District will continue to consider the recommendations of the OSC in an effort to realize cost-savings moving forward.

Later in this recommendation, the OSC states that a number of the district policies related to longevity pay, attendance bonuses and extended sick leave exceed the benefits provided to state employees. The District believes that retaining skilled employees is critical to ensuring the efficient and successful operation of the schools and incentivizes those employees to remain in the district through benefits such as longevity pay. Similarly, the District has found that providing a perfect attendance bonus facilitates efficient school operations by limiting employee absences. The District also provides, in certain circumstances, “extended sick leave” as it would seem unfair to penalize otherwise competent and essential employees for health conditions outside of their control. By offering the possibility for “extended sick leave” we assist those employees who work diligently on behalf of the district, in the reasonable belief that it will lead to skilled employee retention.

Lastly, in Recommendation 1, the OSC raises concerns related to payment for unused vacation days in excess of \$15,000.00. The District responds by stating that any payments to any employee is governed by N.J.S.A. 18A:30-3.6 and applies uniformly to any employee who “commence[d] service with the board of education . . . on or after the effective date of P.L.2010, c.3[]”, such date being May 21, 2010. Any such employee who commenced service before that effective date would not be subject to any such limitation and may be entitled to benefits in excess of the amount, if provided for in any collective bargaining agreement. The District will amend Board Policy 3420.1 and 4420.1 to more clearly reflect the requirements of N.J.S.A. 18A:30-3.6. However, as noted by the OSC, our policy currently prohibits payments for separation for any employee subject to N.J.S.A. 18A:30-3.6, and no payments to any employee subject to this law has, or will be, paid in excess of \$15,000.00 upon retirement or for any other separation from service.

The Board respectfully asserts that in no way has any of its conduct been unlawful. The Board has worked diligently to ensure that their policies accurately reflect the Board’s legal obligations, and the District will continue to conduct a comprehensive review of its policies to ensure that they clearly reflect their obligations under the law. The District believes that upon revision of certain policies, the District will have implemented Recommendation 1 to such an extent as to satisfy any legal or regulatory requirements under the law. The District will continue to consider all other non-obligatory recommendations provided by the OSC if deemed necessary to realize cost savings or other operational efficiencies.

Recommendation 2 – All employment contracts should include all information related to employee benefits.

District responds by stating that, but for the Superintendent and Assistant Superintendent, no non-collectively bargained individual employee is entitled to accrual of vacation days. Any new employee hired or promoted without a collective bargaining agreement is no longer entitled to vacation payout nor accrual of vacation days. It is therefore the District’s opinion that Recommendation 2 has been implemented.

Recommendation 3 – Eliminate vacation leave payout and allow the carry forward of unused vacation leave to the subsequent year, limited to the time earned from the prior year, similar to current state employees.

In response to the 2019 audit, the District implemented a policy for new hires not covered by a collective bargaining agreement which does not permit any vacation leave payout or carry-forward. For those employees who receive vacation days because of any agreement or Board policy, any such payout has been and will continue to be subject to the requirements of N.J.S.A. 18A:30-9.1. As stated above, the District has implemented a policy eliminating vacation leave payouts for any newly hired or promoted employee not covered by a collective bargaining agreement, and it is therefore the District’s position that it has implemented Recommendation 3.

Recommendation 4 – Develop formal policies and procedures, including use of templates, for any employee benefit payments. Payments should be subject to formal

management review and approval to ensure that only eligible employees receive such payments pursuant to District policy, applicable employment contracts or CBA's.

As noted by the OSC, the District implemented policies, procedures, and templates in accordance with the OSC's recommendation. As to the determination that this was "partially implemented," due to the lack of capture of certain information on the templates used by the District for health opt-out payments, the District responds as follows: the template used by the District is Form HA-019-0920 provided by the New Jersey Division of Pension and Benefits ("NJDPB") for the School Employees Health Benefits Program. This document, as supplied by the State, requires that the employee submit proof of coverage with the aforementioned form. Upon submission, the practice of the District is to supply the employee with a breakdown of the amounts to be paid by the District, and upon request, a full breakdown of the standard payment based on salary tranches and type of coverage. This standard template, supplied by the State of New Jersey, does not allow for, or require, the capture of information as recommended by the OSC. The District agrees that any NJDPB form should allow for the recommended capture of information. If an updated template from NJDPB is provided, it will gladly use said form.

As the template used by the District is the one supplied by the agency governing employee health care opt-out payments, the District's opinion is that it has implemented Recommendation 4.

Recommendation 5 - Seek to renegotiate collective bargaining agreements to limit terminal leave benefit for retirees and cap any payment for such benefit like the equivalent state policy.

After thorough review of the District's policies, the District will amend the policy to reflect its practice that for employee hired after May 21, 2010, sick leave payment shall be capped at \$15,000.00 upon retirement. The District thanks OSC for its guidance and will ensure that this legal requirement is incorporated into our policy and collectively bargained agreements moving forward. The District has begun a retrospective review of all payments made and, at this time, has found no payments contrary to state law.

Recommendation 6 - District should assess specific needs for general counsel services and determine the most effective means to obtain such services. The District should conduct a cost analysis to determine the most cost-efficient manner to obtain the services, comparing an outside vendor with a District employee.

The North Bergen School District formed a committee which discussed the recommendation and considered any costs or benefits associated with utilizing a District employee compared to using an outside vendor. This committee consisted of the Board Secretary, the Assistant Superintendent for Business, and Superintendent. This committee met on several occasions to discuss the above, and the conclusion of such analysis was that they would continue to use an outside vendor for general counsel services and will continue to monitor the provision of legal services to identify additional cost-reductions and efficiencies. Through implementation of the OSC's prior recommendations, and through self-identified efficiencies,

the Board has realized cost-savings compared to the cost of general counsel legal services in 2016. Therefore, the District believes that it has implemented Recommendation 6.

Recommendation 7 - Implement a process to ensure compliance with the Board's policy regarding the administration and monitoring of legal services as required by N.J.A.C. 6A:23A-5.2(a), including controls on how legal work is assigned and monitored. In addition, require that invoices be submitted with sufficient details, according to Education regulations, and include details of the work performed, identify the attorney who performed the work with billing hours and rate for each task. In addition, the policy should also include specific strategies to minimize the cost of legal services.

In accordance with OSC's recommendation, the District implemented a legal log. However, due to the remote nature of all work during the COVID-19 pandemic, including legal services, use of the log became impracticable. Since return to full-time in-person work has resumed, the District will re-implement utilization of the legal log pursuant to the OSC's recommendation.

The District would like to note that the invoices cited by the OSC in their report contained some errors consisting of administrative errors. For example, one of the invoices identified by the OSC was supplied without an hourly billing rate. However, the hourly rate was contained within the Request for Proposal and Board resolution. When the District identified this administrative error, corrective action was immediately taken and did not result in any over or underpayments of any legal invoice.

In accordance with OSC recommendation, the Board has a specific employee as well as in-house accountants reviewing bills to ensure that any bill submitted satisfy the OSC's recommendation and comply with best practices. The District has specific policies and procedures in place, uses competitive bidding procedures to obtain legal services, and has in all other material ways complied with the OSC's recommendations. Therefore, the District believes that after re-implementation of the legal log, the District has implemented Recommendation 7.

Recommendation 8 - Develop and implement a process to ensure that payments for legal services do not exceed the Board authorized and/or contractual limits.

The District appreciates the OSC's acknowledgment of the District's implementation of legal service payment controls.

Recommendation 9 - Develop policies and procedures to improve compliance with the Public School Contracts Law, including the public notice requirements for professional service contract awards.

Recommendation 10 - Implement procedures regarding the Requests for Qualifications for legal services process to require competitive proposals with fee quotes from all respondents.

During the height of the State of Emergency, the District implemented policies and procedures which were primarily concerned with the safety of their employees, contracted

service providers and the public at large. Given the nature of the pandemic and considering the numerous executive orders relaxing many rules related to State and Local governmental procedures, the District elected to utilize an alternate procedure to evaluate and hire professional services. This procedure primarily utilized an alternative procurement process as opposed to the recommended Request for Proposal (“RFP”) competitive bidding process. While use of this process may not be considered best practice by the Comptroller, it is a lawful process. Since the beginning of the 2021-2022 school year, the District has renewed its use of the RFP process and has required a fee quote as part of the submissions for the RFP process. The District has complied with all statutory and regulatory requirements under the Public School Contracts Law, inclusive of appropriate and satisfactory notice. The District believes it has implemented Recommendations 9 and 10, after conclusion of the state of emergency caused by the COVID-19 global pandemic.

Recommendation 11 - Develop policies and procedures for the evaluation of RFQ submissions. The evaluation scoring sheets should include an explanation of the scoring factors that are consistent with those specified in the RFQ, identify the score range, the maximum score, and include a narrative statement justifying the evaluation, scoring, and selection.

The District has used a scoring sheet since recommended by the OSC in its initial 2019 Audit. While there was a break in the utilization of scoring sheets due the COVID-19 pandemic, upon return to full capacity in-person work, the District renewed its use of scoring sheets in evaluating RFQ proposals. As such the District believes it has implemented Recommendation 11 but will endeavor to create and utilize a more detailed scoring sheet as recommended by OSC moving forward.

Recommendation 12 - Develop policies and procedures to comply with the contract award notification to the Office of the State Comptroller required by N.J.S.A. 52:15C-10.

The District appreciates the OSC’s acknowledgment of the District’s implementation of policies and procedures compliant with the contract award notification requirements of N.J.S.A. 52:15C-10.

Recommendation 13 - Develop policies and procedures to ensure that public relations consulting services are procured in compliance with the Public School Contracts Law. In addition, the District must ensure that all required vendor forms and certifications are received in accordance with applicable statutory requirements. All contracted services should be obtained or performed only after Board approval.

In response to the recommendation and findings of the OSC, the District respectfully disagrees that it lacks policies and procedures which relate to procuring and utilizing public relation contractors and/or consultants. Policy 9120 was enacted in 2017, which complies with all requirements of the applicable regulations and includes the requirement that “[t]he Board of Education will establish annually . . . a maximum dollar limit for public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14.” It further establishes that “any increase in the maximum dollar amount shall require formal Board action.”

In response to any action which took place during Fiscal Year 2021, the District utilized an alternate procurement process due to the impact of the COVID-19 pandemic. The District has resumed utilization of the RFQ and/or RFP processes to hire legal services and public relation consultants and contractors. The District asserts that it is currently following best practices in its procurement of all outside vendors.

Lastly, the District, in accordance with Recommendation 15, convened a committee consisting of the Superintendent, Assistant Superintendent of Business, Board Secretary and General Counsel to assess the need for public relations and found that public relations consultants are still the most effective way to deliver certain high priority and message sensitive information to the local school community. The primary utilization of the public relations consultant and/or contractor is for interaction with local, state, and national media for mission critical and crisis communication. For most day-to-day communications, the Superintendent of school has independently recorded and broadcast electronic communications to relay important school community messaging with minimal assistance of any hired public relations contractor. Public relations contractors are most important when utilizing a multi-level and multi-media communication campaign, which have been and will continue to be limited by the provisions contained within Policy 9120. Therefore, it is the District's opinion that it has implemented Recommendations 13 and 15.

Recommendation 14 – Develop policies and procedures for the procurement of legal and consultant services that require all such services to be documented with formal purchase requisitions, purchase orders, and contracts. The contracts should define the specific scope of work, duties and responsibilities, period of performance, and include appropriate billing rates and terms, among other things. Any consulting services that include retainer payments should be carefully considered and utilized only when appropriate, and through a formal agreement outlining the scope of work to be covered through the retainer as well as additional billing terms for other services.

The District disputes that this was partially implemented, as the contract documents, including the RFP documents detail the nature of the contract, including scope of services, duties, and responsibilities of the vendor. The District believes that it has implemented Recommendation 14, but the District will agree to further amend legal service contracts to provide more detailed information related to scope of services, duties, and responsibilities.

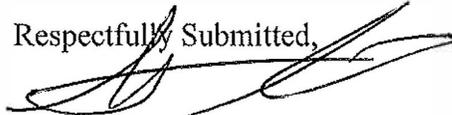
Recommendation 15 – Conduct an assessment for the need of public relations and communications services including a cost-benefit analysis to determine the most efficient manner to obtain such services.

The District contests the determination that this has not been implemented. The District formed a committee and conducted a cost-benefit analysis. This was addressed in the District's response to Recommendation 13.

Summary

The District has worked diligently to implement most of the recommendations in the Office of the State Comptroller's initial 2019 Audit. Utilizing OSC's recommendations, the District has realized cost savings and increased operational efficiencies. The District has and will continue to amend its policies to accurately reflect its statutory and regulatory obligations. Having said that, the District objects, as described above, to many of the characterizations that they have ever engaged in unlawful behavior, moreover, that it has failed to implement in-part, or in full, any number of recommendations provided by the Comptroller. The District's deviations from OSC recommendations either are a result of differing managerial prerogatives or are non-material in nature. The District will continue to consider all recommendations provided by the Comptroller in its continual efforts to reduce costs and operate in a more efficient manner. The District feels that it has continued, after COVID-19 State of Emergency, to implement most material and obligatory requirements proffered by the Office of the State Comptroller and has met the will continue to meet its obligations under the law.

Respectfully Submitted,



Steven Somick

Assistant Superintendent of Business.