



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

KIMBERLEY HARRINGTON
Acting Commissioner

April 12, 2017

Mr. Christopher Cerf
State District Superintendent
Newark Public Schools
2 Cedar Street
Newark, New Jersey 07102

Dear Mr. Cerf:

The Newark Internal Audit Unit has completed a review of district legal expenses. The attached report details our review, findings and recommendations.

The district is required, pursuant to N.J.A.C. 6A:23A-5.6, to publicly review and discuss the findings in this report at a public board meeting no later than 30 days after receipt of the report. Within 30 days of the public meeting, the board must adopt a resolution certifying that the findings were discussed in a public meeting and approving a corrective action plan which addresses the issues raised in the findings. A copy of the resolution and the approved corrective action plan must be sent to this office within 10 days of adoption. Direct your response to my attention.

Also, pursuant to N.J.A.C. 6A:23A-5.6(c), you must post the findings of the report and the corrective action plan on your district's website.

If you have any questions, please contact Steven Hoffmann via phone at (973) 621-2750 or via email at steven.hoffmann@doe.state.nj.us.

Sincerely,


Robert J. Cicchino, Director
Office of Fiscal Accountability and Compliance

RJC/SH:Newark Transmittal Legal
Attachments

c: Kimberley Harrington
Karin Garver
Robert Bumpus
Christopher Snyder
Steven Hoffmann
Clarence Joffrion

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE

NEWARK INTERNAL AUDIT UNIT
NEWARK PUBLIC SCHOOLS
REVIEW OF LEGAL EXPENSES
JULY 1, 2015 – JUNE 30, 2016
APRIL 2017

Confidential: This report is solely for management purposes and is not intended for any other use.

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OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
NEWARK INTERNAL AUDIT UNIT
NEWARK PUBLIC SCHOOLS
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JULY 1, 2015 – JUNE 30, 2016

Distribution List of Final Audit Report

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State Operated School District of Newark

Robert Bumpus, Assistant Commissioner
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Newark Public Schools

NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
NEWARK INTERNAL AUDIT UNIT
NEWARK PUBLIC SCHOOLS
REVIEW OF LEGAL EXPENSES
JULY 1, 2015 – JUNE 30, 2016

EXECUTIVE SUMMARY

The Newark Internal Audit Unit has conducted a review of legal fees incurred by the Newark Public Schools (District) during FY 2015-2016. In addition, the auditors reviewed the District's current policies and procedures to determine if the District was in compliance with current regulations and district policy.

As a result of the review, the following deficiencies were noted:

- The District did not execute contracts with firms providing legal services.
- During FY 2015-2016 the District failed to follow State Administrative Code and New Jersey Public Schools Contract Law (PSCL) when retaining outside legal services.
- The District did not issue timely purchase orders for legal services.
- Some invoices presented by law firms and paid by the District lacked sufficient detail as required by State Administrative Code.
- Expenditures to three firms totaling \$148,024.00 were charged to the incorrect general ledger accounts.
- The District did not publish legal notices in compliance with the requirements of PSCL - N.J.S.A. 18A:18A-5.
- The District's policies and procedures are in need of updating to comply with current standards.

REVIEW SCOPE

The scope of the review included analyzing each payment for legal services and the related supporting documentation including the purchase order, vendor invoice, and voucher and receiving report. For each expenditure, the auditors attempted to verify whether there was an applicable contract, and if payments were appropriately authorized and made in accordance with the terms of the contract. The auditors reviewed 28 purchase orders for legal services which covered 389 invoices. The auditors also reviewed the District's current policies and procedures to determine if the District was complying with current regulations including PSCL.

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BACKGROUND

The District incurred legal fees for outside counsel in the amount of \$2,713,976.60 for FY 2015-2016. In addition, the general ledger on June 30, 2016, reflected in house salaries of \$865,958.99, temporary services of \$112,808.00, judgments against the District of \$2,195,041.25 and other expenses of \$108,459.76 for a total of \$5,996,244.60 in legal fees for FY 2015-2016. The auditors did not review the in house salaries and other expenses. The District made payments to 14 different firms during the audit period at attorney rates ranging from \$100.00 to \$ 225.00 per hour. The per-pupil expenditure for legal fees was approximately \$105.00 per student for FY 2015-2016.

The following is a summary of legal fees paid by firm for FY 2015-2016:

Attorney Firms	Expenses for FY 15-16
Adams, Gutierrez & Lattiboudere, LLC	\$ 762,200.78
Riker, Danzig, Scherer, Hyland & Perretti, LLP	\$ 638,040.58
Fara, A York Risk Company	\$ 586,406.29
Scarinci Hollenbeck, LLC	\$ 456,448.27
Purcell, Mulcahy, Hawkins, Flanagan & Lawless, LLC	\$ 152,839.18
Lite, Depalma, Greenberg & Rivas, LLC	\$ 43,497.67
McManimon, Scotland & Baumann, LLC	\$ 29,589.51
Holland & Knight, LLP	\$ 14,106.37
Chiesa, Shahinian & Giantomasi PC	\$ 10,000.00
McCarter & English, LLP	\$ 9,889.25
Schwartz, Simon, Edelstein & Celso LLC	\$ 9,471.00
Porzio, Bromberg & Newman, PC	\$ 301.50
Sciarra & Catrambone, LLC	\$ 61.20
TOTAL	\$ 2,713,976.60

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DETAILED FINDINGS

1. The District did not execute contracts with firms providing legal services.

The auditors noted for FY 2015-2016 that no written contracts were in place for 11 of the 14 law firms used by the District. Three firms, with fees totaling \$33,577.00, were contracted on a flat fee basis. Sound business practices, as well as, State regulations require that written contracts be executed. N.J.S.A.18A:18A-40 requires that "all contracts for the provision or performance of goods or services shall be in writing." In addition, N.J.A.C. 6A:23A-5.2(a)4 requires that "(Professional) Services to be provided shall be described in detail in the contract."

In order to avoid billing disputes, the contract for legal services should describe the specific services to be provided, the time frame covered, the rates(s) and fee(s), including allowable expenses that will be charged to the District, and a maximum dollar amount and/or a maximum number of hours of service to be provided.

Recommendation

The District should prepare a written contract for every firm retained. In addition, the contract should contain, at a minimum, a detailed explanation of the services to be provided, the hourly rate(s), a maximum dollar amount payable under the contract, and identify expense(s) that are reimbursable and at what rate. Furthermore, all future contracts should comply with the requirements of N.J.A.C. 6A:23A-5.2(a)4(ii).

when retaining outside legal services.

Pursuant to N.J.A.C. 6A:23A-5.2(a)5, "Professional services contracts are issued in a deliberative and efficient manner such as through a request for proposal based on cost and other specified factors or other comparable process that ensures the District receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposal (RFP) based on cost and other specified factors or other comparable process."

The auditors noted there was not any evidence of an RFP or other comparable process for the awarding of legal contracts for FY 2015-2016. The most recent RFP process noted by auditors was for FY 2011-2012, when nine contracts were awarded to law firms after a competitive process. Pursuant to N.J.S.A 18A:18A-42, "All contracts for the provision or performance of goods or services shall be awarded for a period not to exceed 24 consecutive months, except

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that contracts for professional services pursuant to paragraph (1) of subsection a. of N.J.S.A. 18A:18A-5 shall be awarded for a period not to exceed 12 consecutive months.”

N.J.S.A. 18A:18A-5(1) states that although professional services are exempt from bidding, “The board of education shall in each instance state supporting reasons for its action in the resolution awarding each contract ...”. Board resolutions were not prepared as required.

Recommendation

The District must comply with State Administrative Code and Statutes including N.J.A.C. 6A:23A-5.2(a)5 and N.J.S.A. 18A:18A-42. Legal services contracts should be issued through a request for proposal based on cost and other specified factors or other comparable process that ensures the District receives the highest quality services at a fair and competitive price or through a shared service arrangement.

3. The District did not issue timely purchase orders for legal services.

As defined by Title 18A:18A-2(v), the “Purchasing Agent/Business Administrator or Business manager of a Board of Education is assigned the authority, responsibility and accountability for the purchasing activity of a board of education” In fact, a “Purchase Order is a document issued by the Purchasing Agent authorizing a purchase transaction to a vendor to provide goods or services to the board of education.”

Conversely, a “Confirming Order” bypasses the purchase order process because goods or services are received without, or prior to, issuing a purchase order with the proper authorization by the District’s “Purchasing Agent/Business Administrator.”

the 389 invoices reviewed, 349 or 89.72 percent were confirming orders where the services were provided prior to the purchase order being created. The auditors also noted there were 17 invoices (not included in the 349) that were partial confirming orders, as some of the invoiced work dates were before and some were after the purchase orders were issued (See Attachment 1).

Failure to execute purchase orders prior to services being rendered can result in the District losing budgetary control by incurring expenses above budgeted amounts without constraint.

Recommendation

The District should strengthen internal controls and procedures to ensure that all purchase orders are approved and issued prior to vendors providing goods or services.

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4. **Some invoices presented by law firms and paid by the District lacked sufficient detail as required by State Administrative Code.**

Per N.J.A.C. 6A:23A-5.2(a)4(iii), "Invoices for payment (of professional services) shall itemize the services provided for the billing period." The auditors noted some invoices that lacked sufficient detail, such as, date of service, nature of service and number of hours billed. For example; one firms invoice read "General Misc." total due \$8,596.50 and did not include detail of the number of hours worked or a description of the services provided.

Without a detailed bill or a contract as noted in Finding #1, the auditors were unable to verify if the amount billed was correct.

Recommendation

The District should require that all invoices submitted for legal services be itemized including date of service, nature of service and number of hours billed as required by N.J.A.C. 6A:23A-5.2(a)4(iii).

5. **Expenditures to three firms totaling \$148,024.00 were charged to the incorrect general ledger accounts.**

The auditors noted that expenditures to three firms were charged to the wrong general ledger accounts. Expenditures to Purcell, Mulcahy, Hawkins, Flanagan & Lawless, LLC for \$19,814.00 and Sciarra & Catrambone, LLC for \$15,405.00, were charged in the general ledger to object code 820 "Judgments Against School District" (account 10-11-000-230-820-311-000-000). According to the Uniform Minimum Chart of Accounts, this account is for judgments against the school District and it reads: "legal expenses for defending against

The auditors reviewed the payment packets of the two vendors and noted the District paid for professional services rendered rather than judgments. In addition, expenditures to Frink-Hamlett Legal Solutions, Inc. for \$112,808.00 were charged in the general ledger to object code 331 "Legal Services" rather than 339 "Other Professional Services," which the District charged \$3,000.00 of the services. Frink-Hamlett Legal Solutions is a placement firm that provides legal and compliance professionals on a permanent or temporary basis. Per the district, this vendor was used to retain a temporary professional to review contracts. Subsequently, the district hired the professional in a full time capacity as a contract attorney.

Recommendation

The District should ensure expenditures are charged to the appropriate general ledger account in accordance with the Uniform Minimum Chart of Accounts.

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6. **The District did not publish legal notices in compliance with the requirements of PSCL – N.J.S.A. 18A:18A-5.**

Title 18A requires the publishing of legal notices for professional services contracts in newspapers as required by law.

Recommendation

Legal notices for professional services contracts should be published in the newspaper as required by law.

7. **The District's policies and procedures are in need of updating to comply with current standards.**

The District's online policy manual is in need of updating. The current policy utilized by the district was adopted January 25, 2005, reviewed/updated in November of 2010 and readopted by the District on December 21, 2010. It should be noted, these policies do not reflect the requirements of the Fiscal Accountability Regulations (N.J.A.C.6A:23A-5.2). The auditors were unable to identify a District policy directly related to legal services. See Attachment 2 for an example of a Legal Services policy.

Recommendation

The District should update all of its legal policies and procedures to be in compliance with the current State Administrative Code and Statutes, including the Fiscal Accountability regulations (N.J.A.C.6A:23A-5.2).

OBSERVATION

1. **Legal expenses exceeded 130 percent of the statewide average per pupil amount.**

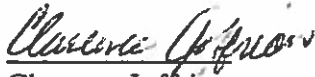
The FY 2015-2016 statewide budgeted average for legal services was \$53.00 per pupil. The District's budgeted per pupil for that time period was \$83.00 per student or 156 percent of the statewide average. The auditors calculated the actual cost to be \$105.00 per student (total legal expenditures net of settlements \$3,801,203 divided by student enrollment of 36,035).

When legal fees exceed 130 percent of the statewide average, N.J.A.C. 6A:23A-5.2(a)3 requires that the District establish specific procedures in an effort to reduce costs. The District should review and implement the procedures as detailed by N.J.A.C. 6A:23A-5.2(a)3.

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NEWARK PUBLIC SCHOOLS
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Auditors:
Dwayne Ortiz
Patricia Sewak

Submitted by:



Clarence Joffrion
Supervising Auditor

Approved by:



Steven Hoffmann
Director, State Operated Audit Unit

Newark Public Schools
 Internal Audit Unit
 Review of Legal Expenses - Confirming Orders
 2015/2016 Fiscal Year

Attorney Firms	Expenses for 15/16 FY	Confirming Orders	Partial Confirming Orders
Adams, Gutierrez & Lattiboudere, LLC	\$ 762,200.78	19	3
Riker, Danzig, Scherer, Hyland & Perretti, LLP	\$ 638,040.58	148	0
Fara, A York Risk Company	\$ 586,406.29	14	0
Scarinci Hollenbeck, LLC	\$ 456,448.27	128	0
Purcell, Mulcahy, Hawkins, Flanagan & Lawless, LLC	\$ 152,839.18	12	13
Lite, Depalma, Greenberg & Rivas, LLC	\$ 43,497.67	15	1
McManimon, Scotland & Baumann, LLC	\$ 29,589.51	2	0
Holland & Knight, LLP	\$ 14,106.37	1	0
Chiesa, Shahinian & Giantomasi PC	\$ 10,000.00	1	0
McCarter & English, LLP	\$ 9,889.25	4	0
Schwartz, Simon, Edelstein & Celso LLC	\$ 9,471.00	2	0
Eugene G. Liss, ESQ	\$ 1,125.00	1	0
Porzio, Bromberg & Newman, PC	\$ 301.50	0	0
Sciarra & Catrambone, LLC	\$ 61.20	2	0
TOTAL	\$ 2,713,976.60	349	17

TOTAL PURCHASE ORDERS REVIEWED 389

% OF PURCHASE ODERS THAT ARE CONFIRMING 89.72%

Bylaws

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Legal Services
M

0174 LEGAL SERVICES

In accordance with N.J.A.C. 6A:23A-5.2; the Board of Education adopts this Policy and its strategies to ensure the use of legal services by employees and the Board of Education members and the tracking of the use of legal services.

The Board of Education authorizes the Superintendent of Schools, Superintendent of Schools' designee and the district's General Counsel or his/her designee as designated contact persons to request services or advice from contracted legal counsel.

The General Counsel shall be responsible to review all legal bills and confer with designated contact persons in reviewing such legal bills.

In accordance with the provisions of N.J.A.C. 6A:23A-5.2(a)2, the Board designates the administrative staff member to review all legal bills and designates contact persons to ensure the prudent use of legal services.

School districts with legal costs that exceed one hundred thirty percent of the Statewide average per pupil amount should establish the procedures outlined in 1., 2., 3., and 4. below not result in a reduction of costs.

1. The designated contact person(s) shall ensure that contracted legal counsel is not contacted unnecessarily for management decisions or readily available information contained in district materials such as Board policies, administrative regulations, or guidance available through professional source materials.
2. All requests for legal advice shall be made to the designated contact person(s) in writing and shall be maintained on file in the district offices. The designated contact person shall determine whether the



Bylaws

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Legal Services
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request warrants legal advice or if legal advice is necessary.

3. The designated contact person(s) shall maintain a log of all legal counsel contact including the name of the legal counsel contacted, date of the contact, issue discussed, and length of contact.
4. All written requests for legal advice and logs of legal counsel contacts shall be forwarded to the office of the district's General Counsel, who shall be responsible to review all legal bills and compare all legal bills to the contact logs and to investigate and resolve any variances.

Any professional services contract(s) for legal services shall prohibit advance payments. Services to be provided shall be described in detail in the contract and invoices for payment shall itemize the services provided for the billing period. Payments to legal counsel(s) shall only be for services actually provided.

School districts and vocational school districts are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or cause of action

members or pursuing any claim or cause of action for which the damages to be awarded would benefit an individual rather than the school district as a whole.

The Board of Education will annually establish prior to budget preparation, a maximum dollar limit for each type of professional service, including legal services. In the event it becomes necessary to exceed the established maximum dollar limit for the professional service, the Superintendent of Schools shall recommend to the Board of Education an increase in the maximum dollar amount. Any increase in the maximum dollar amount shall require formal Board action.



Bylaws

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Legal Services
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Contracts for legal services will be issued by the Board in a deliberative and efficient manner that ensures the district receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a Request for Proposals (RFP) based on cost and other specified factors or other comparable processes. Contracts for legal services shall be limited to non-recurring or specialized work for which the district does not possess adequate in-house resources or in-house expertise to conduct.

N.J.A.C. 6A:23A-5.2

Adopted: 31 October 2002
Revised: 19 November 2008
Revised: 31 March 2010



State of New Jersey
Department of Education
Office of Fiscal Accountability and Compliance

PROCEDURES FOR STATE-OPERATED SCHOOL DISTRICTS RESPONSE
CORRECTIVE ACTION PLAN AND APPEAL PROCESS

Board of Education Response:

Pursuant to N.J.A.C. 6A:23A-5.6, the following actions shall occur:

- (a) Any school district or county vocational school district that has been subject to an audit or investigation by the Department of Education, Office of Fiscal Accountability and Compliance (OFAC) shall discuss the findings of the audit or investigation at a public meeting of the district board of education no later than 30 days after receipt of the findings.
- (b) Within 30 days of the public meeting required in (a) above, the district board of education shall adopt a resolution certifying that the findings were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings. The resolution shall be submitted to the OFAC within 10 days of adoption by the board of education.
- (c) The findings of the OFAC audit or investigation and the board of education's corrective action plan shall be posted on the district's web site, if one exists.

If the board of education disputes any of the findings of the audit or investigation, it may file a written appeal with the OFAC of any disputed finding(s) within 10 days of adoption of the corrective action plan. The appeal must be filed in accordance with the provisions of (a), (b), and (c) listed above.

Corrective Action Plan:

The corrective action plan is to be used when the state-operated school district is in agreement with any of the findings. To contest a finding the appeal process must be used. After the appeal is settled, a corrective action plan must be filed for any finding upheld during the appeal process.

The corrective action plan must be prepared by completing the attached form. The following information must be submitted by the state-operated school district:

- Recommendation number

- Corrective action (approved by the administration)
- Method of implementation
- Person responsible for implementation
- Completion date of implementation

If the corrective action plan is acceptable, a letter will be sent to the state-operated school district indicating that it has been accepted.

If the corrective action plan is not acceptable, a letter will be sent to the state-operated school district indicating whether further clarification is required or further action is necessary.

Appeal Process:

The appeal process is used to contest findings.

Within 10 days of the board's adoption of the resolution approving an appeal of the findings of the audit or investigation, a written request by the state-operated school district to review the disputed finding(s), recommendation(s) or questioned costs must be submitted to the OFAC Director. The Request for Appeal must indicate the finding(s) in question.

The Request for Appeal must be in writing and the state-operated school district must present any supporting documentation for the appeal. Subsequent to the submission of the Request for Appeal, the OFAC Director will issue a written decision.

If the final determination made by the Director, is still unsatisfactory to the state-operated school district, the state-operated district may file a Petition of Appeal pursuant to N.J.A.C. 6A:3-1.3.

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Attachment

**NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
CORRECTIVE ACTION PLAN**

OFF

RECOMMENDATION NUMBER	CORRECTIVE ACTION	METHOD OF IMPLEMENTATION	RESPONSIBLE FOR IMPLEMENTATION	DATE OF IMPLEMENTATION

Chief School Administrator

Date

Board Secretary/Business Administrator

Date