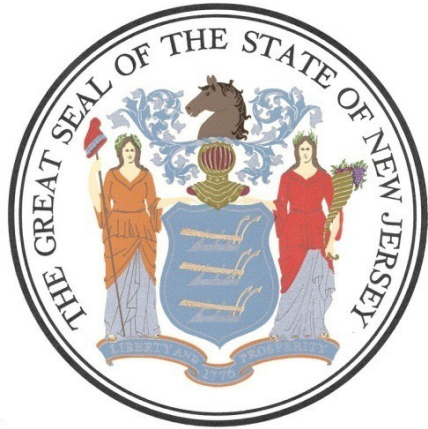


**State of New Jersey  
Office of the State Comptroller**



***NORTH BERGEN SCHOOL DISTRICT  
A PERFORMANCE AUDIT OF  
SELECTED FISCAL AND OPERATING PRACTICES***

**PHILIP JAMES DEGNAN  
State Comptroller**

**August 1, 2019**

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## BACKGROUND

The North Bergen School District (North Bergen or District), located in Hudson County, operates seven schools with a total student population of approximately 8,000. In Fiscal Year (FY) 2016, the District employed 965 full-time equivalent employees, reported total revenue of approximately \$133 million, expended about \$73 million for payroll, and received over \$74 million, approximately 56 percent, of its total revenue in State Aid.

The District is governed by the North Bergen Board of Education (Board), which consists of nine elected officials and one representative from the Guttenberg Board of Education, whose high school students attend North Bergen High School. The Board appoints the superintendent, who is responsible for the overall administration of the District.

The Office of the State Comptroller (OSC) engaged the audit of the North Bergen School District in 2015. The District, however, initially refused to cooperate with the audit as required by *N.J.S.A. 52:15C-14(a)*. As explained in its response to a draft of this report, the District “maintained a good faith concern over the OSC’s authority to undertake the audit of the District without fulfilling certain requirements set forth in its enabling statute . . . .” See Appendix A. In a unanimous published decision, the appellate court held that the State Comptroller was not required to disclose his reasons for selecting the District for a performance audit before commencing the audit. Marc Larkins, Acting State Comptroller v. George J. Solter, Jr., Superintendent, 450 *N.J. Super.* 519 (App. Div. 2017). In so holding, the court stated that “an auditee [the District] is therefore unambiguously required to fully cooperate and assist the State Comptroller with any audit. Such cooperation and assistance is mandatory.” *Id.* at 534. As a result of the court’s decision, the audit proceeded in April 2016.

# AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY

OSC conducted a performance audit of the North Bergen School District. The objective of our audit was to review the District's controls over selected fiscal and operating practices. Our audit covered the period July 1, 2014 through June 30, 2016, except for legal fees, which were examined through December 31, 2016.

To accomplish our objectives, we reviewed relevant laws, regulations, District policies and procedures, collective bargaining agreements (CBAs), as well as employment and vendor contracts. We examined Board meeting minutes and resolutions, audit reports, and financial records, including budget reports and supporting documentation for financial transactions. We also interviewed certain District personnel to obtain an understanding of their job responsibilities, overall operations, and the District's internal controls.

As part of our review, we selected a judgmental sample of employee payroll and benefit payments, legal agreements and invoices, expenditures, and other financial transactions of the District. Our samples were designed to provide conclusions about the validity of the sampled transactions and the adequacy of internal controls and compliance with applicable laws, regulations, policies, and procedures with regard to the same. Because we used a non-statistical sampling approach, the results of our testing cannot be projected over the entire population of like transactions or contracts.

This audit was performed pursuant to the State Comptroller's authority set forth in *N.J.S.A. 52:15C-1 et seq.* We conducted our audit in accordance with Generally Accepted Government Auditing Standards applicable to performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# SUMMARY OF AUDIT RESULTS

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Our audit identified weaknesses with certain District fiscal and operating practices and identified opportunities for potential cost savings. The District lacks key internal controls for the management and administration of employee benefits and the processing of payments related to such benefits, failed to comply with the Public School Contracts Law (PSCL) and applicable regulations for certain procurements, and lacked appropriate administration and oversight of legal services that resulted in overpayments.

Specifically, our audit found that the District:

- a. Lacked formal policies and procedures and appropriate controls for the administration of employee leave entitlement and payment processing for various employee benefits.
- b. Failed to properly monitor and oversee its legal services engagements and performed little to no review of the monthly invoices for such services resulting in duplicate payments and payment of improperly invoiced amounts.
- c. Violated the PSCL and applicable Department of Education (Education) regulations in procuring legal services and public relations and communications consulting services. In addition, the District failed to comply with *N.J.S.A. 52:15C-10*, which requires contracting entities to notify OSC of contracts exceeding \$2 million.
- d. Obtained services from a public relations and communications consultant without a formal contract or agreement and prior to the Board's authorization for such services.

Through development of stronger policies and procedures, the District will be better positioned to improve its monitoring and oversight, provide greater efficiencies in operational practices, and achieve compliance with state statutes and regulations and internal policies and procedures.

OSC makes 15 recommendations to enhance the North Bergen School District's monitoring and oversight of fiscal and business operations.

# AUDIT FINDINGS AND RECOMMENDATIONS

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## **Employee Benefits**

*The District lacks adequate internal controls and appropriate monitoring and oversight of employee benefits. There is no formal policy addressing employee leave entitlements. Employment contracts and collective bargaining agreements do not adequately describe all benefits provided to employees, are inconsistent, vague, and ambiguous.*

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### **Employee Leave Benefits**

District employees are entitled to various benefits, including vacation, sick, and administrative leave. Most employees are covered by a CBA and some are covered by employment contracts. Leave entitlements differ for the various employee types (instructional, non-instructional supervisory/administrative, maintenance). The District does not have a formal policy that addresses leave entitlement and instead relies on CBAs or employment contracts to define those benefits. Our review of the CBAs and employment contracts, however, found that both lacked appropriate details concerning employee leave benefits.

Specifically, our audit found the District:

- a. Lacked a formal process for determining the vacation leave entitlement for non-instructional supervisory/administrative employees. The annual vacation leave entitlement was not based on a specific formula or years of service. The District advised that the non-instructional supervisory/administrative employees receive up to 31 vacation days a year. This vacation leave is excessive when compared to the maximum 25 days granted to current state employees with 20 or more years of service.
- b. Executed employment contracts with the non-instructional supervisory/administrative employees that were not consistent in the level of detail or disclosure of all employee benefits. Only 2 of the 16 employment contracts reviewed included specific provisions for annual vacation leave

entitlement. In addition, many of the contracts stated that the employee receives the same benefits that are specified in the CBA for the Council of Administrators and Supervisors. However, that CBA did not include provisions for all employee benefits and excluded any mention of vacation leave.

### **Vacation Payouts**

The District has a policy that allows administrative employees not covered by a CBA to be reimbursed at the end of each school year for up to 20 unused vacation days. Vacation leave payouts were not separately identified in the payroll data provided to OSC and were included in an employee's gross pay for the final pay run of the school year. Our review of the FY 2015 payroll data identified 11 employees with significantly higher pay in the last pay cycle for the year. The District confirmed that vacation leave payouts totaling approximately \$95,000 were issued to these 11 employees.

We reviewed the supporting documentation for the vacation leave payouts to these 11 employees and found that the amounts were correctly computed. The District, however, did not use a formal process or standard template that includes relevant information (such as the employee's rate of pay, number of vacation days earned and remaining, etc.) for computing the payments. The supporting documentation did not clearly indicate how the payment was computed. In addition, the District failed to follow its own policy when it paid an employee who was covered by a CBA. In FY 2015, the employee improperly received \$19,469 for the vacation leave payout.

### **Health Insurance Opt-Out Payments**

The District participates in the School Employees' Health Benefits Program (SEHBP). Pursuant to *N.J.S.A. 52:14-17.31a* and *N.J.A.C. 17:9-1.7*, the District provides health benefit opt-out payments to employees that waive insurance coverage from the District when they are covered by another plan. The opt-out payments are limited to 25 percent of the amount saved by the employer or \$5,000, whichever is less.

In FY 2015, health insurance opt-out payments totaling approximately \$90,000 were issued to 24 employees. Our testing included a judgmental sample of 5 employees who

received a total of \$14,854. The District did not provide supporting documentation for any of the five payments and was not able to explain how the calculations were computed. Absent the supporting documentation, OSC was not able to verify the accuracy of the payments or determine whether the District complied with the statute and regulations.

### **Terminal Payout for Unused Sick Days**

Pursuant to the CBAs, covered employees are permitted to receive terminal payouts equivalent to one-half day's pay for each unused sick day, upon retirement, resignation or death. The CBAs do not limit the number of sick days or specify a maximum payment. By comparison, state employees are only entitled to terminal payout upon retirement in an amount not to exceed \$15,000.

In FY 2015, the District issued terminal payouts to 30 employees totaling approximately \$731,000. We selected 10 employees with the highest payouts that totaled approximately \$457,000. The District did not have a formal process or standard template for processing the payments. The supporting documentation for all 10 payments did not clearly indicate how the payment was calculated.

### **Recommendations**

1. Implement a policy specifically setting forth all employee leave benefits, including annual vacation leave. The policy should specify the details for all benefits and provide consistent leave benefits for all employees based on a set formula or years of service. In addition, the District should seek to align employee benefits with those of current state employees.
2. Develop procedures to ensure that employment contracts include details of all employee benefits.
3. Eliminate the vacation leave payout and allow the carry forward of unused vacation leave to the subsequent year, limited to the amount of time earned in the prior year, similar to the policy for state employees.
4. Develop formal policies and procedures, including the 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 benefits pursuant to District policy, applicable employment contracts, or CBA provisions.

5. Seek to renegotiate the CBAs to limit the terminal leave benefit for retirees and cap any payment for such benefit like the equivalent state policy.

## Legal Services

*The District lacks adequate monitoring and oversight of the procurement, contracting, and review of legal services.*

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The District contracts with several private law firms for its legal services. In FYs 2014, 2015, and 2016, total expenditures for legal services were nearly \$2 million. A summary of the legal expenses by legal specialty for FYs 2014, 2015, and 2016 is summarized below:

<b>Legal Expenditures for FYs 2014-2016</b>			
<b>Legal Specialty</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
General Counsel	\$ 430,014	\$ 437,620	\$ 452,920
Special Counsel-Litigation	56,919	76,850	207,668
Special Labor Counsel	66,794	17,222	34,816
Bond Counsel	19,579	5,561	2,295
Other	25,656	13,609	10,508
<b>Total</b>	<b>\$ 598,962</b>	<b>\$ 550,862</b>	<b>\$ 708,207</b>

The 2016 Taxpayers Guide to Education Spending, published by Education, reports that the District spent \$75 per pupil for legal services in FY 2016 compared to the state average of \$41 per pupil, ranking the District's per pupil legal expenses as one of the top ten for similarly sized districts. Pursuant to *N.J.A.C. 6A:23A-5.2(a)*, each school district is required to establish policies to minimize the cost of professional services. Because the District's per-pupil legal expense exceeded 130 percent of the statewide average per-pupil cost, pursuant to *N.J.A.C. 6A:23A-5.2(a)(3)*, it is required to establish enhanced procedures to limit legal costs including: (1) limiting the number of District employees with the authority to request legal services; (2) creating guidance to prevent the unnecessary use of legal counsel for management decisions; (3) requiring that requests for legal advice be made in writing and maintained on file in the District's offices and a process to determine whether a request warrants legal advice; and (4) maintaining a log

of all legal counsel contact, including the name of the attorney contacts, date of contact, issue discussed, and length of contact. Although the Board has a policy regarding the administration and management of legal services, our audit found that the District is not fully complying with the policy. Specifically, District officials are not requiring requests for legal advice be in writing nor are they maintaining a log of all legal counsel contacts as required.

Our audit found that the District lacked appropriate monitoring and oversight of the legal services and failed to properly review and approve the invoices, resulting in overpayments.

### **General Counsel**

For several years, the District has utilized a private firm to provide general counsel services. This legal services agreement for FY 2016, dated July 1, 2015, defined the scope of work as providing legal counsel and advice to the Board and Administration, including written legal opinions, initiating and defending lawsuits, attending Board meetings, and working cooperatively with other legal counsel. The agreement specifies that legal services will be billed at \$125 for attorneys with 1 to 5 years of experience, \$175 for attorneys with 10 or more years of experience, and \$225 for attorneys with 15 or more years of experience. OSC notes that the billing rates exclude attorneys with 6 to 9 years of experience. In addition, the \$175 billing rate appears to apply to attorneys with 10 to 14 years of experience, although not specified, because the \$225 billing rate applies for attorneys with 15 years or more experience.

*N.J.A.C. 6A:23A-5.2* requires, among other things, that school districts have a policy requiring their attorneys to itemize the services provided for the billing period. In addition, the regulations require that requests for legal advice be in writing. The itemized billing details are necessary for the District to monitor and oversee the legal services and to verify that the rates billed were in accordance with the agreement and Education regulations. The District's policy requires invoices submitted for payment to include an itemization of the services provided for the billing period.

Our audit included a review of all general counsel legal service invoices for the period July 1, 2014 through December 31, 2016. We found that the law firm did not submit invoices with the itemized details necessary for the District to assess whether the hours billed were reasonable in light of the tasks assigned<sup>1</sup> or that the services were billed pursuant to the terms of the agreement. The District's failure to comply with Education regulations and its own policy designed to minimize the cost of professional services lessens its ability to ensure appropriate use of taxpayer funds.

The invoices grouped multiple activities under one entry and did not include details of the specific attorney, the actual hours, or rate billed for each attorney or task. Most billing entries were billed at the \$225 hourly rate even though the assigned attorney was not identified, making it impossible to verify if the billed rate was appropriate or accurate. The lack of detail renders it impossible for the District to determine if the time charged for a particular matter was: (1) authorized; (2) completed by the attorney assigned and who had communicated with the District; (3) reasonable for the task completed; and (4) billed at the appropriate rate.

Our audit also found that the District paid its general counsel in excess of the Board approved contract limits. Specifically, the payment exceeded the contract limit by \$38,000 in FY 2015 and by \$103,000 in FY 2016. Moreover, the Board did not approve or authorize any contract modifications or amendments for general counsel services during these time periods as required by *N.J.A.C. 6A:23A- 5.2(a)(1)*.

### **Procurement and Contracting for Legal Services**

Although legal services are exempt from public bidding as professional services, *N.J.S.A. 18A:18A-5(a)(1)* and Education regulations require certain actions in the procurement and award of professional services contracts. Our audit found that the District did not comply with all required actions. Specifically, North Bergen:

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<sup>1</sup> OSC previously provided guidance to local government units concerning their engagement and management of legal services contracts in its 2013 report titled, "An Analysis of Legal Fees Paid by New Jersey Local Governments." The guidance includes the monitoring and review of invoices for legal services.

- a. Failed to fully comply with *N.J.S.A. 18A:18A-5(a)(1)*, which requires public notice of the professional service contracts that must include the nature, duration, service to be provided, amount of the contract, and advise the public that the resolution and contract can be viewed at the office of the Board of Education. The public notice for all professional service contracts, including legal services, for FYs 2015 and 2016 only included a list of the firms awarded professional service contracts but did not include all the other required information. This failure not only violates the statute but hinders transparency regarding the use of public funds.
- b. Did not solicit competitive fee quotes or cost proposals in the FYs 2015 and 2016 Request for Quotations (RFQs) for legal services. Pursuant to *N.J.A.C. 6A:23A-9.3(c)(11)*, the district should have solicited competitive proposals with fee quotes or used a comparable competitive process to ensure it received the highest quality professional services at a fair and competitive price. We found that many of the firms that responded to the RFQs did not submit fee quotes and North Bergen did not provide evidence of a comparable process used to award legal services contracts at a fair and competitive price.
- c. Awarded the contract for special labor counsel in FY 2015 specifying a billing rate in the Board resolution even though the respondent did not include a rate in its response to the RFQ. The District did not provide supporting documentation of how the rate was obtained or determined.
- d. Awarded the contract for general counsel in FY 2015 without specifying the billing rates either in the contract or the resolution awarding the contract. Neither the response to the RFQ nor the Board resolution included any mention of the billing rates. After the Board authorized the contract, the selected firm issued a letter specifying the hourly billing rates. The billing rate is a fundamental and necessary element of a valid, binding contract. The District's failure to include the billing rate or total cost in the Board's resolution appointing a specific law firm raises a question as to whether those appointments are binding and enforceable.

- e. Evaluated the responses to the RFQs for legal services in FYs 2015 and 2016 using cost as an evaluation scoring factor although fee quotes or cost proposals were not required in the RFQs or provided from all respondents. In addition, some of the evaluation sheets did not include a scale for the score factors, identify the maximum score possible, or contain a narrative justification of the evaluation, score, or selection. As a result of these process failures, we are unable to determine whether the District complied with applicable regulations in the selection of its legal services.

### **Legal Invoice Review and Payments**

Our audit included a review of the legal service invoices to ensure that the amounts paid were accurate and that the billing rates were in compliance with the contract terms. We selected all legal service invoices for FY 2015 and judgmentally selected the four firms that billed the most for legal services in FYs 2016 and 2017 for the period through December 31, 2016. These invoices totaled about \$1.6 million.

Our audit found that the District lacks a formal process to review and approve legal invoices and failed to identify several billing errors. The District administration failed to ensure its responsibilities to monitor and oversee the work assigned and to verify that invoices reflect the work performed pursuant to the agreements. Our audit identified overpayments totaling more than \$13,000 that resulted from the District's failure to detect duplicate billings, mathematical calculation errors, and the use of a billing rate that was not specified in the contract or resolution.

### **Compliance with Comptroller Statute**

The District lacks a process to ensure compliance with statutory requirements. According to *N.J.S.A. 52:15C-10*, a contracting unit must provide notice to the State Comptroller no later than 20 business days after the award of a contract involving consideration or an expenditure of more than \$2 million but less than \$10 million. During our review of the District's expenditures during the audit period, the District awarded three contracts exceeding \$2 million that were not reported to OSC's Procurement Division.

## **Recommendations**

6. Assess the specific needs for the general counsel services and determine the most effective manner to obtain such services. Conduct a cost analysis to determine the most cost-efficient manner to obtain the services, considering an outside vendor compared with a District employee.
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.
8. Develop and implement a process to ensure that payments for legal services do not exceed the Board authorized and/or contract limits.
9. Develop policies and procedures to improve compliance with the Public School Contracts Law, including the public notice requirements for professional service contract awards.
10. Implement procedures regarding the Requests for Qualifications (RFQ) for legal services process to require competitive proposals with fee quotes from all respondents.
11. Develop policies and procedures for the evaluation of Requests for Qualifications (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.
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*.

## **Purchasing**

*Contract services were obtained after claiming an improper exemption from public bidding pursuant to the Public School Contracts Law and Education regulations. In addition, the services were provided before the Board authorized the contract.*

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In FY 2015, the District expended approximately \$30 million for various purchases, excluding payroll, employee benefits, insurance, and legal services, to support its educational services. We selected a judgmental sample of 233 transactions totaling \$6.8 million to verify that the expenditures were authorized and supported with appropriate documentation.

Our audit found that the District paid \$297,496 to three vendors for services performed without prior Board authorization. One of these vendors also received payments under a monthly retainer agreement for public relations and communication services. The District had improperly awarded the contract under the professional services exemption from public bidding in violation of the PSCL. Pursuant to the PSCL, “professional services” is defined as “services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training.” A person that provides public relations and communications consulting services does not satisfy this definition because he or she is not licensed or otherwise regulated by law and has not engaged in a prolonged course of specialized instruction.

In addition, the public relations firm billed about \$66,000 in FY 2015 which exceeded the Board authorized maximum of \$36,000 by \$30,000. The District did not provide a contract detailing the terms of the monthly retainer or the scope of work or billing terms for any additional services provided. In addition to the PSCL and purchasing violations, OSC was not able to determine if the services provided by the public relations firm were reasonable or necessary without the District’s cost benefit analysis of the services



obtained compared with other sources of acquiring such services, including in-house operations.

Further, the District did not provide evidence of certifications required of all vendors by state law including the business registration certificate, corporate ownership disclosure, and political contribution disclosure form. Our review of the political contributions reported in the New Jersey Election Law Enforcement Commission online database for the relevant period preceding the contract authorization in FY 2015 identified four contributions made by the vendor to various campaigns that the company would have been required to disclose.

### **Recommendations**

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.
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.
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.

# REPORTING REQUIREMENTS

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We have provided a draft copy of this report to District officials for their review and comment. North Bergen School District's comments were considered in preparing our final report and are attached as Appendix A.

The District did not agree with all of the conclusions. North Bergen's response states that OSC did not take into account the District's Collective Bargaining Agreements (CBAs), did not consider the intricacies of the day-to-day operations, and overlooked many of the written policies that the District has in place. During the course of the audit, OSC reviewed all Board policies, employment contracts, CBAs, and other pertinent records provided to us. Our audit report clearly details the deficiencies in the administration of and determination of vacation leave for the non-instructional supervisory/administrative employees. While the District disputes our conclusions and stated that the language in the CBA and Board Policy detail the leave entitlement, the District has not addressed the omission of vacation leave in the CBA or Board policy nor has it provided any other evidence of the vacation leave policies.

In response to our conclusion that the District improperly paid a vacation payout to an employee who was covered by a CBA and who was therefore not eligible for such payout per the District policy, the District provided us with a Memorandum of Understanding (MOU) that purports to alter some of the terms and conditions of the CBA for this particular employee, including their work schedule and entitlement to vacation leave benefits. The District also provided a similar MOU for another employee. Both MOUs were signed by the District's then-Interim Superintendent and the President of the North Bergen Council of Administrators and Supervisors. While OSC appreciates the District providing these documents, we note that neither of them specifically addresses the matter of unused vacation time payouts for these employees.

The District's response noted that some of our recommendations are not warranted or practicably feasible and that some of the concerns or recommendations have already been implemented, without including specific details. OSC reminds the North Bergen School

District of its responsibility to provide its corrective actions to implement the recommendations contained in the report, and if not implemented, the specific, detailed reasons therefore.

The Office of the State Comptroller is required by statute to monitor the implementation of our recommendations. To meet this requirement and in accordance with *N.J.A.C. 17:44-2.8(a)*, following the distribution of the final audit Report, the North Bergen School District shall report to the Office of the State Comptroller within 90 days stating the corrective actions taken or underway to implement the recommendations contained in the Report and, if not implemented, the reason therefore. This Office will review the implementation of the corrective action plan.

On behalf of OSC, I thank the management and staff of the North Bergen School District for the courtesies and cooperation extended to our auditors during this engagement.



# NORTH BERGEN BOARD OF EDUCATION

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Dear Ms. Yvonne Tierney:

The North Bergen School District (the "District") has reviewed the April 2, 2019 preliminary results of the performance audit ("Audit Report") prepared by the State of New Jersey, Office of the State Comptroller ("OSC"). The objective of the OSC audit (the "Audit") was to review the District's controls over selected fiscal and operating practices. (Audit Report, p. 2) The Audit covered the period from July 1, 2014 through June 30, 2016, except for legal services, which were examined through December 31, 2016. (Audit Report, p. 2) The District provides the following response to the Audit Report.

## PRELIMINARY STATEMENT

Although the District determined it necessary to engage in litigation over the validity of the Audit - to ensure that the OSC's conduct did not constitute an abuse of power - the District fully cooperated with the Audit during and after pendency of the lawsuit. (Audit Report, p. 1) It is unfortunate that the OSC feels compelled to reference the District's legal challenge to the Audit - so as to suggest that the District engaged in costly litigation for the purpose of delaying the Audit, or otherwise for the purpose of hiding something. (Audit Report, p.1)

First, the lawsuit did not in any way delay the Audit which took the OSC nearly four years to complete. During the pendency of the lawsuit, the Audit proceeded at the direction and pace of the OSC. The District in fact provided the OSC with exclusive access to an on-site conference room, telephone access, internet access, file cabinets, and parking.

Second, the District maintained a good faith concern over the OSC's authority to undertake the audit of the District without fulfilling certain requirements set forth in its enabling statute - N.J.S.A. 52:15C-1 et seq. The District was deeply troubled over the fact that the OSC selected the District as one of the only two school districts in the State of New Jersey to undergo an audit. As set forth in the District's legal filing before the court, the District believed that the Audit was initiated in violation of the OSC's own enabling statute, N.J.S.A. 52:15C-1. Specifically, the District challenged the OSC's compliance with the statute's audit selection criteria and demanded disclosure of the process by which the OSC determined that, among the over 500 public school districts in New Jersey, the District should be selected for the Audit. As pointed out in the Audit Report, the court ultimately ruled in favor of the OSC. As such, the basis for selecting the District for the Audit remains a secret.

The District's concern over the OSC action was compounded by the fact that the Audit was duplicative of other state mandated audits required for public school districts.

In 2015 (the same year the audit was initiated by the OSC), the New Jersey Department of Education ("NJDOE") conducted the Quality Single Accountability Continuum ("QSAC") audit of the District. The QSAC audit, which is an extensive and exhaustive undertaking, resulted in exceptional results for the District. The QSAC scores were as follows: (a) personnel (100%); (b) fiscal management (100%); (c) operations (95%); and (d) governance (100%). In addition to the QSAC audit, it is noteworthy that the District undergoes an annual comprehensive independent financial audit, also mandated by the State of New Jersey.

After four years auditing, during which time the OSC enjoyed unrestricted access to the District's records and employees, it is clear from the 18 page Audit Report that the District indeed had nothing to hide.

## **DISPUTE AS TO CERTAIN FINDINGS**

### **I. THE NORTH BERGEN SCHOOL DISTRICT HAD NEAR PERFECT EVALUATIONS IN THE NJDOE'S QSAC PERFORMANCE AUDIT.**

The District has consistently placed high in the NJDOE's performance audit. Every three years, the NJDOE evaluates the performance of public school districts by administration of an extensive performance audit – QSAC. It is a comprehensive performance audit that provides for in-depth analysis of each public school district. The QSAC evaluates the thoroughness and efficiency of all the public schools in New Jersey in five different areas of proficiency: (a) instruction and program; (b) personnel; (c) fiscal management; (d) operations; and (e) governance. Each of the five areas of proficiency receives a separate score from 0 percent to 100 percent. Depending upon a given school district's QSAC performance, the NJDOE will make a determination as to whether any type of oversight, technical assistance, or support is needed by that district.

In general, scores which fall within the range of 80 percent to 100 percent are considered excellent. Scores which fall within 50 percent to 79 percent may require a plan for corrective action by the district. Scores which fall below 50 percent may require or result in state intervention by the NJDOE.

In 2015, NJDOE conducted its performance audit of the District. The District's relevant scores for purposes of the OSC Audit were: (a) personnel (100%); (b) fiscal management (100%); (c) operations (95%); and (d) governance (100%). In addition, the District annually undergoes comprehensive financial audit by an independent auditor.

While the District appreciates the OSC's assessment as an external policymaker, many of its recommendations fail to take into account the District's individualized Collective Bargaining Agreements ("CBA") based on different collective bargaining units to which District employees belong. The Audit Report neglects to consider the intricacies of the day-to-day operations required to run a successful school district. In addition, a review of the Audit Report indicates that the OSC overlooked many of the written policies that the District has in place. 2

## **II. THE AUDIT REPORT**

The District will take into consideration the recommendations by the OSC to improve its fiscal management, but some of the recommendations are not warranted or practicably feasible. Since the time of the audit report, some of the concerns or OSC recommendations have already been implemented. Further, the OSC Audit Report contains numerous inaccurate statements.

### **A. Summary of Audit Results**

The OSC determined that the District “lacked formal policies and procedures and appropriate controls for the administration of employee leave entitlement and payment processing for various employee benefits.” (Audit Report, p. 3)

The District disputes this summary finding. The District provided the OSC with all Collective Bargaining Agreements, which included agreements with the following collective bargaining units: the North Bergen Federation of Teachers, the North Bergen Council of Administrators and Supervisors, and the North Bergen Education Association. These CBAs detail the policies and procedures for employee leave entitlement and payment processing for employee benefits related to each collective bargaining unit.

In addition, the District provided the OSC with all non-instructional/supervisory administrative contracts for employees that do not belong to a collective bargaining unit. These contracts refer directly to the language located in the CBA and the Board of Education Policy relating to employee leave. Both the CBA and Board Policy were provided to the OSC.

The OSC also indicated that the District did not properly monitor and oversee legal services, which resulted in duplicate payments. (Audit Report, p. 3) There was an isolated instance between July 1, 2014 and December 31, 2016, when the District duplicated one payment that was immediately reimbursed by the law firm.

### **B. Audit Findings and Recommendations**

#### **1. Employee Leave Benefits**

The District disputes the OSC's assertion that there was no formal policy in place regarding employee leave entitlement. (Audit Report pp. 5, 6) Each contract provided to the OSC details employee benefits and sets forth the applicable Board Policy or CBA where the underlying language for the employee benefits is contained.

The District and the collective bargaining units undergo negotiations with respect to each of the CBAs and the CBA accounts for the different demands of each unit. (Audit Report, p. 5) District employees belong to different collective bargaining units. Each unit negotiates entitlements for employees that fall under its purview. Therefore, it would be expected that the entitlements would differ depending on the CBA to which the employee belongs. In addition, the OSC's recommendation to use the employee leave

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time benchmark for state employees does not appear to be related to the field of education and would also be subject to negotiations. (Audit Report, p. 5)

## 2. Vacation Payouts and Terminal Payout for Unused Sick Days

The Audit Report states that employees receiving vacation leave payouts were not identified separately on payroll records. (Audit Report, p. 6) The District respectfully disagrees with this statement. The District's payroll service provider, Automatic Data Processing ("ADP"), has several reports that reference forms of extra compensation. For example, the letter "V" refers to vacation leave payouts, which was included on the ADP payroll registers.

The District maintains a standardized form which is used for all vacation leave payouts. This form, which was provided to OSC, includes a certification of the number of the unused vacation days by employee, approval by the Business Administrator, and the respective calculation and attendance calendar supporting the payment.

The District notes that the OSC found that all amounts for vacation leave payouts were calculated correctly, thus rendering the language that no formal process exists with respect to payment computation for vacation and terminal leave payout unnecessary and inaccurate. (Audit Report, pp. 6-7)

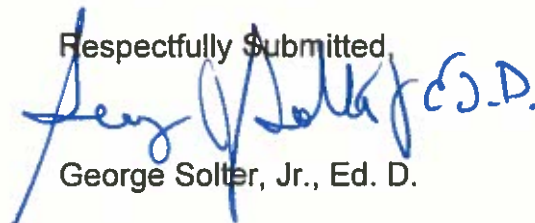
## 3. Recommendations

The OSC recommends that the District provide a policy of consistent leave benefits for all employees. (Audit Report, p. 7) The District has formal policies and all employee benefit payments are reviewed by the Director of Finance and the Business Administrator before final payment is issued to the employee. As set forth above, the District has 3 CBAs negotiated with 3 separate bargaining units. Although, the District tries to have parity between the CBAs, some differences exist due to the nature of their employment.

The OSC also recommends that the CBAs limit terminal leave benefits for retirees. (Audit Report, p. 8) Such terminal leave benefits need to be approved by the collective bargaining units and included in the CBAs and the District cannot unilaterally make these changes.

Additionally, the District recognizes that N.J.S.A. 18A:30-3.6 requires that compensation for unused sick leave be capped at \$15,000 for officers and employees who commence service after May 21, 2010.

Respectfully Submitted,



George Solter, Jr., Ed. D.