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## BOARD OF EDUCATION

## RESOLUTION

**ACCEPTANCE OF OFAC REPORT ISSUED IN CASE #INV-018-15  
REGARDING ELIZABETH PUBLIC SCHOOL – CONTRACTS REVIEW  
AND ADOPTION OF DISTRICT CORRECTIVE ACTION PLAN**

**WHEREAS**, on or about October 9, 2015, the State of New Jersey Department of Education Office of Fiscal Accountability and Compliance (“OFAC”) issued a report in Case #INV-018-15 of its findings and recommendations related to its review of the District’s Contracts Review; and,

**WHEREAS**, the District has prepared a Corrective Action Plan for adoption by the Board of Education to enact the recommended practices set forth in the OFAC report; and,

**WHEREAS**, the Board of Educations is required by regulation (N.J.A.C. 6A:23A-5.6) to publicly review and discuss (1) the findings and recommendations contained in the OFAC report at a public meeting of the Board of Education, and (2) the Corrective Action Plan to be adopted by the Board of Education;

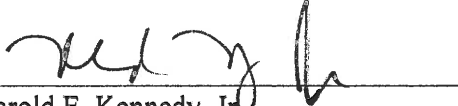
**NOW, THEREFORE, BE IT RESOLVED**, that the Elizabeth Board of Education acknowledges receipt of the OFAC report issued regarding the Elizabeth Public School – Contracts Review (Case #INV-018-15).

**BE IT FURTHER RESOLVED** that the Elizabeth Board of Education adopts the Corrective Action Plan to address the recommendations and findings that were made in the OFAC report for implementation by District personnel, as set forth in the Corrective Action Plan.

**BE IT FURTHER RESOLVED** that a copy of the OFAC report and Corrective Action Plan shall be posted on the District’s website with the agenda and meeting minutes for the September 22, 2016 meeting.

**BE IT FURTHER RESOLVED** that a copy of the Corrective Action Plan and this resolution shall be forwarded to OFAC immediately in accordance with N.J.A.C. 6A:23A-5.6(c).

TRUE COPY APPROVED AND ADOPTED AT  
THE ELIZABETH BOARD OF EDUCATION MEETING  
HELD ON September 22, 2016

  
\_\_\_\_\_  
Harold E. Kennedy, Jr.  
School Business Administrator/Board Secretary

Elizabeth, New Jersey  
September 22, 2016

16-100

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

CASE # INV-018-15

SCHOOL DISTRICT NAME Elizabeth Public Schools COUNTY Union

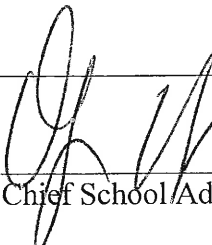
TYPE OF EXAMINATION Contracts Review

DATE OF BOARD MEETING September 22, 2016

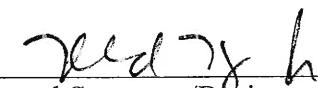
CONTACT PERSON Harold E. Kennedy, Jr., School Business Administrator/Board Secretary

TELEPHONE NUMBER (908) 436-5112 FAX NUMBER (908) 436-5158

RECOMMENDATION NUMBER	CORRECTIVE ACTION	METHOD OF IMPLEMENTATION	INDIVIDUAL RESPONSIBLE FOR IMPLEMENTATION	COMPLETION DATE OF IMPLEMENTATION
The Board is directed to submit a Corrective Action Plan indicating the measures it will take to comply with the applicable provisions of the Public Services Contract Law, specifically, N.J.A.C. 18A:18A-5.	•At the January 7, 2016 Organization meeting of the Board all professional service contracts were awarded by vote with the approval of the full majority of the Board.	•Board resolutions.	School Business Administrator/ Board Secretary	January 7, 2016
	•Board Policy 3327 will be modified to remove the contradicting language enumerated in N.J.S.A. 18A:18A-5.	•Board Bylaws/Policies Committee to review and analyze those Policies previously adopted by the Board and to report to the Board at a later meeting what Policies should be adopted by the Board.	School Business Administrator/ Board Secretary	November 21, 2016

  
\_\_\_\_\_  
Chief School Administrator

9/22/2016  
Date

  
\_\_\_\_\_  
Board Secretary/Business Administrator

9/22/2016  
Date



State of New Jersey

DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

DAVID C. HESPE  
Commissioner

October 9, 2015

Ms. Olga Hugelmeyer, Superintendent  
Elizabeth Public Schools  
500 North Broad Street  
Elizabeth, New Jersey 07027

Dear Ms. Hugelmeyer:

SUBJECT: Elizabeth Public School – Contracts Review – OFAC Case #INV-018-15

The Department of Education, Office of Fiscal Accountability and Compliance (OFAC), has completed a limited scope review of the process utilized by the Elizabeth Public Schools (District) to award contracts for insurance and auditing services. The examination disclosed issues of noncompliance with provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-5. The issues of noncompliance are detailed in the attached report of examination. Please provide a copy of the report to each board member.

Utilizing the process outlined in the attached "Procedures for LEA/Agency Response, Corrective Action Plan and Appeal Process," the Elizabeth Board of Education 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 undisputed findings and/or an appeal of any findings in dispute. A copy of the resolution and the approved corrective action plan and/or appeal must be sent to this office within 10 days of adoption by the board. Please 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 board's corrective action plan on your District's website. Should you have any questions, please contact Mr. Thomas C. Martin, Manager, Investigations Unit, at (609) 633-9615.

Sincerely,

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

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Attachments

c: Robert Bumpus      Roger Jinks  
Patricia Morgan      Thomas C. Martin  
Michael Yaple      Karl Feltes  
David Saenz      Stephen Eells

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

ELIZABETH PUBLIC SCHOOLS  
CONTRACT COMPLIANCE REVIEW  
OFAC CASE #INV-018-15

REPORT OF EXAMINATION  
OCTOBER 2015

**REPORT OF EXAMINATION – OCTOBER 2015  
ELIZABETH PUBLIC SCHOOLS – CONTRACT COMPLIANCE REVIEW**

The Department of Education, Office of Fiscal Accountability and Compliance (OFAC) conducted a limited scope examination of the procedures utilized by the Elizabeth Public Schools (District) Board of Education (Board) to award a contract for auditing services, and a contract for insurance and health benefit consulting. The examination was initiated following receipt of a letter expressing concern that the awards were issued contrary to the requirements of the Public School Contracts Law (PSCL), specifically N.J.S.A. 18A:18A-5. A provision of N.J.S.A. 18A:18A-5 states in part, “Any contract, the amount of which exceeds the bid threshold, shall be negotiated and awarded by the board of education at a public meeting...”

**A. The Failed Vote**

The information provided to the OFAC, and subsequently confirmed during the procedural review, indicates the Board failed to comply with the specific requirements of the PSCL when it renewed its contract with Mendonca & Partners (providers of auditing services) and with ICA Risk Management Consultants (an insurance and health benefit consultant).

Although the dollar value of each contract exceeded the District’s established bid threshold of \$36,000.00, both contracts qualified as exceptions to the requirements for advertising.<sup>1</sup> However, use of the exceptions still requires the Board to negotiate and award a contract by resolution at a public meeting.

During the January 14, 2015, Board meeting, the motions to approve the award of the contracts to Mendonca & Partners and ICA Risk Management Consultants resulted in a “tie”.<sup>2</sup> More specifically, four board members voted in the affirmative, four members voted in the negative, and one member abstained due to a conflict of interest. As a result, and because the motion could not carry without a majority vote, i.e., with five of the nine present Board members voting in the affirmative, the motion to approve the contracts failed.

Despite the failure of the motion to approve the award of the contracts to Mendonca & Partners and ICA Risk Management Consultants, contracts were still awarded to both entities based on the language of Board Policy 3327. Board Policy 3327, which was revised/modified on December 11, 2014, by the previous Board, states, in pertinent part:

“Recognizing the necessity for the Board of Education to receive continuing professional services, in the event the Board is unable to agree upon the appointment of a successor, any existing contract for professional services shall be automatically renewed for one year, as long as it complies with the payment requirements and restrictions set forth in N.J.S.A. 18A:19-1.”

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<sup>1</sup>N.J.S.A. 18A:18A-5a.(1) and N.J.S.A. 18A:18A-5a.(10)

<sup>2</sup>Board Bylaw file code 9325.3 recognizes Roberts Rules of Order, newly revised. Board Bylaw File Code 9325.4 deems an abstention as neither an affirmative nor a negative vote.

Board Policy 3327 is contrary to the requirements of N.J.S.A. 18A:18A-5.

**B. The Revision/Modification to Board Policy 3327**

On November 4, 2014, new members were elected to serve on the Board, with reorganization to occur in January, 2015. The revision/modification to Board Policy 3327 had a first reading on November 20, 2014 (post election), and was formally revised after a second reading on December 11, 2014 (also post election, but prior to reorganization). In light of the fact that the revision to Board Policy 3327 was initiated *after* a new Board had been elected, *but prior* to reorganization of the new Board, the OFAC finds this revision, and the Board's reliance thereon, problematic.

Although it is outside the purview of the OFAC to render a determination on the legality of the revision to Policy 3327, the OFAC finds the timing of this substantive revision to be questionable. In addition to contradicting the language enumerated in N.J.S.A. 18A:18A-5, the outgoing Board's actions had the force and effect of binding future Boards.

**CONCLUSION**

The awarding of the contracts to Mendonca & Partners and to ICA Risk Management Consultants, without negotiation and award by resolution at a public meeting, violates N.J.S.A. 18A:18A-5.

**RECOMMENDATION**

The Board is directed to submit a Corrective Action Plan indicating the measures it will take to comply with the applicable provisions of the PSCL, specifically N.J.S.A. 18A:18A-5. In the event that the Board fails to remedy the issue of noncompliance, the District will be subject to the provisions of N.J.A.C. 6A:23A-5.4, i.e., the withholding of State funds. The amount of funds withheld shall equal the amount of the contract awarded in violation of the PSCL.

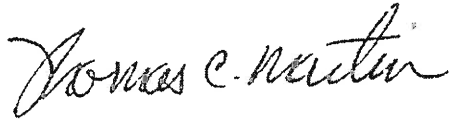
Additionally, the Board Member Code of Ethics<sup>3</sup> requires Board members to “uphold and enforce all laws, State Board rules and regulations . . . Desired changes should be brought about only through legal and ethical procedures.”

The complainant in this matter, or any aggrieved party, possessing sufficient evidence to support a claim that the Board's aforementioned revision to Policy 3327 was implemented to circumvent the requirements of the PSCL and/or to bind future Boards, may file a complaint with the School Ethics Commission.

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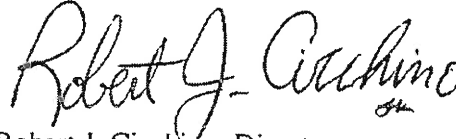
<sup>3</sup>Bylaw File Code 9271

Submitted by:



Thomas C. Martin, Manager  
Investigations Unit

Approved by:



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

Investigator:

Karl T. Feltes