



State of New Jersey

DEPARTMENT OF EDUCATION

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CHRISTOPHER D. CERF

Commissioner

November 8, 2013

Ms. Darlene Bey-Blocker, Board President
Pleasantville Board of Education
801 Mill Road
Pleasantville, NJ 08232

Dear Ms. Bey-Blocker:

SUBJECT: Pleasantville School District – Review of Board Attorney Practices
OFAC Case #INV-121-12

The Department of Education, Office of Fiscal Accountability and Compliance recently investigated a complaint concerning legal bills and attorney practices of the Pleasantville School District. The review disclosed that the district's insurance carrier discontinued Error and Omissions insurance coverage due to interference by the board attorney. Additionally, the district does not adhere to N.J.A.C. 6A:23A-5.2 regarding use of professional services, specifically the board attorney. The review also disclosed personal use of the board attorney by board members.

The details of the report explain that a refund of state aid to the Department of Education is required. The General Fund State Aid that must be refunded by the Pleasantville School District is \$21,710.96.

Utilizing the process outlined in the attached "Procedures for LEA/Agency Response, Corrective Action Plan and Appeal Process," the Pleasantville 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. 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

RJCU:\jmcnerney\Pleasantville\Pleasantville 121-12 Board Report.doc

Attachment

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

PLEASANTVILLE SCHOOL DISTRICT
REVIEW OF BOARD ATTORNEY PRACTICES
OFAC CASE #INV-121-12

REPORT OF EXAMINATION
NOVEMBER 2013

**PLEASANTVILLE SCHOOL DISTRICT
REVIEW OF BOARD ATTORNEY PRACTICES**

EXECUTIVE SUMMARY

The Office of Fiscal Accountability and Compliance (OFAC) received a complaint concerning excessive legal bills and questionable board attorney practices in the Pleasantville School District (district). The complaint stated that the board attorney generated legal fees for cases that were being defended by attorneys representing the district's Errors and Omissions (E & O) insurance company. This practice resulted in the district paying large legal settlements to settle grievances.

The district's insurance company, New Jersey School Boards Association Insurance Group (NJSBAIG), terminated the Errors and Omissions insurance for the district as of June 30, 2011 due to the participation of the board attorney in cases that were being covered by the insurance company, as well as a poor errors and omissions claim history. The district paid the board attorney \$414,927.70 in fees for cases that were managed or could have been managed by NJSBAIG.

The investigation disclosed that the district's legal fees were in excess of 130% of the state average per pupil cost. The district is not following procedures that are mandated when a district generates legal fees in excess of 130% of per pupil cost according to N.J.A.C. 6A:23A-5.2.

The district paid \$1,043,829.08 for legal settlements and \$2,141,113.92 in legal fees from July 2007 through March 2013. Included in the legal fees is \$201,168.35 that represent settlements that were wrongly classified as legal fees. The district also paid \$98,411.30 in questionable costs that are also classified as legal fees.

The board attorneys represented board members for personal, non-board related matters. Board members were sued by unsuccessful candidates for election to the board of education. The board attorney represented the board members who were sued. A board member was also represented by another law firm for a challenge to his election. The finding of non-compliance requires a state aid refund for the fiscal years 2007-2008 through 2012-2013 totaling \$21,748.28.

The remainder of this report contains allegations and findings, conclusions and recommendations.

ALLEGATION AND FINDINGS

1. The Pleasantville School District generated excess legal fees by having the board attorney work on cases in which the district was being represented by their insurance company.

The Pleasantville School District (district) was insured for all types of coverage through the New Jersey School Boards Association Insurance Group (NJSBAIG). In a letter dated December 14, 2010, NJSBAIG notified the district that NJSBAIG would no longer provide Errors and Omissions (E & O) coverage as of June 30, 2011. The letter stated that the E & O coverage was being terminated because the district had violated the insurance contract by appointing defense counsel without consultation and approval of NJSBAIG. NJSBAIG also stated that coverage was being terminated because of the district's poor E & O claim history.

The NJSBAIG E & O policy had \$16,000,000 of coverage with a \$15,000 deductible. After the NJSBAIG policy was discontinued, the district was only able to obtain E & O from one insurance company, Chartis. As a result, the coverage is now \$10,000,000, with a deductible of \$150,000. This represents a \$135,000 increase per settlement that the district must pay.

The board attorneys, Hunt, Hamlin and Ridley (HHR), continually billed the district for representation on cases that were managed by NJSBAIG with knowledge and approval of the board of education.

HHR billed the district for work on several cases that were being handled by NJSBAIG or should have been handled by NJSBAIG in the amount of \$414,927.70. Settlement costs paid by NJSBAIG and the district, as well as attorney fees for those suing the district are detailed below. The costs, excluding the insurance premium, are as follows:

PLEASANTVILLE SCHOOL DISTRICT
CASES HANDLED BY NJSBAIG AND HHR

LOSS DATE	CASE	AMT. PAID BY NJSBAIG	PAID BY DISTRICT			TOTAL
			HHR FEES	SETTLEMENT PAID	ATTORNEY FEES PAID	
10/05/07	Abdullah v. PBOE	167,741.04	16,062.70	100,000.00	10,374.93	294,178.67
06/11/09	Addis v. PBOE	363,075.00	70,506.00	250,000.00		683,581.00
06/19/09	Allen v. PBOE		5,674.50	126,712.01	6,407.99	138,794.50
08/04/08	Alston v. PBOE	37,000.00	7,767.50			44,767.50
03/20/08	Corporate Employee Benefits v. PBOE		22,366.50	130,000.00		152,366.50
09/10/10	Grantham, Gloria v. PBOE		61,359.00		15,697.50	77,056.50
08/17/10	Holcomb v. PBOE	117,559.95	10,687.50			128,247.45

LOSS DATE	CASE	AMT. PAID BY NJSBAIG	PAID BY DISTRICT			TOTAL
			HHR FEES	SETTLEMENT PAID	ATTORNEY FEES PAID	
09/22/10	Lesser v. PBOE	50,997.02	29,559.50	180,000.00		260,556.52
03/18/08	London v. PBOE	11,444.04	41,157.00			52,601.04
11/17/10	Morgan, Kelly v. PBOE	49,698.51				49,698.51
09/12/07	Overton v. PBOE	39,842.33	10,894.00	65,666.67		116,403.00
01/03/11	Palmer v. PBOE	104,916.50	9,780.00			114,696.50
10/05/09	Rankins v. PBOE		52,398.50			52,398.50
10/28/09	Ruffin v. PBOE		76,715.00			76,715.00
06/30/11	Sofin, Patricia v. PBOE	105,000.00				105,000.00
09/29/09	Sykes, Lonniyell v. PBOE	108,676.95				108,676.95
04/14/08	York, Pamela	262.50				262.50
	Total	1,156,213.84	414,927.70	852,378.68	32,480.42	2,456,000.64

Conclusions

The district incurred legal fees generated by the board attorney for work on cases being represented by NJSBAIG. NJSBAIG terminated coverage for E & O insurance for the district. The district's insurance coverage decreased and the deductible for E & O increased from \$15,000 to \$150,000 due to a change in insurance carrier.

Recommendations

The board attorney must not work on cases which are represented by insurance coverage.

The district must develop and implement a corrective action plan indicating the measures that will be taken to ensure non-duplication of legal work.

2. The Pleasantville School District generated excessive legal fees and did not follow procedures mandated by N.J.A.C. 6A:23A-5.2.

N.J.A.C. 6A:23A-5.2(a) 3 states that, "Districts with legal costs that exceed 130 percent of the statewide average per pupil amount should establish the following procedures and, if not established, provide evidence that such procedures would not result in a reduction of costs." These procedures include the following: 1) A limitation on the contact persons with authority to request services and advice from legal counsel; 2) Criteria to prevent unnecessary use of legal counsel for management decisions; 3) A provision that requests for legal advice shall be made in writing and shall be maintained on file in the district offices and a process to determine whether the request warrants legal advice or if legal advice is necessary in writing for those other than contact persons wishing to contact the attorney; and 4) A log of all legal counsel

and specifics that are listed in the regulation. Additionally, the district shall establish a policy provision that requires the contracts for legal services comply with the payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq.

During the period reviewed, July 1, 2009 through March 31, 2013, the district generated legal fees in excess of 130% of the statewide average per pupil amount. Tracking of per pupil costs for legal fees was initiated in the 2009-2010 school year. The Statewide average per pupil costs and district per pupil costs were as follows:

	<u>Audited legal costs per pupil</u>	
	<u>130% of Statewide</u>	<u>District Cost</u>
2009-2010	49	107
2010-2011	48	164
2011-2012	44	96

The district paid \$1,043,829.08 for legal settlements and \$2,141,113.92 in legal fees from July 2007 through March 2013. Included in the legal fees is \$201,168.35 that represent settlements and payments to attorneys for those receiving settlements that were wrongly classified as legal fees. This may have contributed to the district exceeding the 130% limit. Also, \$98,411.30 of questionable legal fees (listed below) were classified as legal fees and paid by the board:

<u>Vendor</u>	<u>Description</u>	<u>Questionable Charges</u>
Bailey, Dr. Garnell	Reimbursement for legal fees	\$ 3,520.73
Leonard Law Group	Jerome Page legal fees prior to board membership	2,775.00
McClellan, Johnnie	Board member	500.00
McManimon, Scotland	Bond attorney	22,731.46
Methfessel, Werbel	NJ School Board Insurance Group attorney	<u>68,884.11</u>
Total		\$ 98,411.30

The district had a policy for contact with legal counsel that complied with N.J.A.C. 6A:23A-5.2(a) 3. However, no evidence was provided showing that the district adhered to the policy. The policy designated the superintendent and school business administrator or their designees as contact persons for attorney contact. From the billings reviewed, it is apparent that there was direct board contact with the attorneys. The district did not maintain a log and written requests for legal advice.

Conclusions

The district's legal fees were in excess of 130% of the state average per pupil cost. The district did not adhere to the provisions of N.J.A.C. 6A:23A-5.2(a) 3 concerning contact with legal firms.

Recommendations

The district must adhere to regulations according to N.J.A.C. 6A:23A-5.2(a) 3.

The district must develop and implement a corrective action plan indicating the measures that will be taken to ensure compliance with applicable regulations.

- 3. The board attorney represented board members for personal, non-board related cases. The district paid the charges for this representation. The district also paid legal fees to another attorney for a personal, non-board related issue that occurred prior to the board member's swearing-in to the board.**

At the school board election of April 28, 2009, Doris Graves, Melanie Griffin, Johnny McClellan and Paul Moore, Jr. were elected. Melanie Griffin, Doris Graves and Johnnie McClellan were sued by Olivia Caldwell, Ethel Seymore and Jerome Page on the grounds that the election was fraudulent due to questionable absentee ballots. The board attorney, Hunt, Hamlin and Ridley (HHR) represented the defendants in the case (Caldwell v. Griffin). Billings for this case generated \$22,176.10 from the 2009-2010 school year through the 2011-2012 school years.

On June 18, 2009, the State Monitor, John Deserable informed HHR that the board attorney may not represent individual board members in the case as it is a conflict of interest. According to the memo, HHR had offered to represent the board members free of charge. The State Monitor informed HHR that any representation would not be allowed. HHR continued to represent the individual members anyway and billed the board for the services.

The State Monitor deducted the fees (\$4,589.00) from the billings for the board attorney representation for Caldwell v. Griffin. On August 19, 2009, Doris Graves, the board president at the time, directed the superintendent, Gloria Grantham that the HHR bill must be paid unless a court order directed otherwise. Ms. Grantham then wrote to the business administrator, Dennis Mulvihill, and directed Mr. Mulvihill to immediately pay HHR \$780.00 for these charges and the district paid the balance later.

As mentioned in finding number 1, Jerome Page was elected to the board in November 2012. His election to the board was contested and Mr. Page was represented by the Leonard Law Group. Subsequently, a Superior Court Judge ruled that Mr. Page should be sworn in as a board member. The district paid the Leonard Law Group for representation of Mr. Page,

although this representation occurred prior to Mr. Page actually becoming a board member. The cost of the representation was \$2,775.00.

The costs for representation of the board members for non-board related issues totals \$24,951.10. The general fund state aid to be recovered for these non-allowed costs is \$21,710.96.

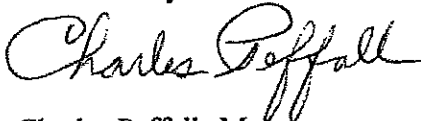
Conclusion

The district paid for legal fees for board members which were not board related.

Recommendation

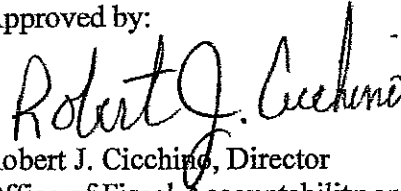
As a result of the district's payment of non-allowed legal fees, the Department of Education requires a recovery of general fund state aid. The general fund state aid that must be refunded by the district is \$21,710.96 for the 2009-2010, 2010-2011, 2011-2012 and 2012-2013 school years.

Submitted by:



Charles Peffall, Manager
Internal Audit Unit

Approved by:



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

Investigator

Janet McNerney

PLEASANTVILLE SCHOOL DISTRICT
LEGAL FEES STATE AID RECOVERY

	ACTUAL				BUDGET		
	07/08	08/09	09/10	10/11	11/12	12/13	Total
Total General Fund Revenue	74,587,679.00	76,323,350.00	65,573,281.00	73,283,479.00	78,103,497.00	71,755,517.00	
Less:							
TPAF Pension	(3,384,585.00)	(1,914,935.00)	(2,145,252.00)	(1,994,761.00)	(2,845,196.00)		
TPAF Social Security	(2,019,089.00)	(2,140,117.00)	(2,221,748.00)	(2,240,966.00)	(2,347,287.00)		
Net General Fund Revenue	69,184,005.00	72,268,298.00	61,206,281.00	69,047,752.00	72,911,014.00	71,755,517.00	-
General Fund State Aid	67,521,435.00	68,841,492.00	56,890,720.00	65,488,094.00	70,292,933.00	63,970,810.00	
Less:							
TPAF Pension	(3,384,585.00)	(1,914,935.00)	(2,145,252.00)	(1,994,761.00)	(2,845,196.00)		
TPAF Social Security	(2,019,089.00)	(2,140,117.00)	(2,221,748.00)	(2,240,966.00)	(2,347,287.00)		
Net General Fund State Aid	62,117,761.00	64,786,440.00	52,523,720.00	61,252,367.00	65,100,450.00	63,970,810.00	-
Percent	89.78630%	89.64711%	85.81426%	88.71015%	89.28754%	89.15107%	
Absentee ballot legal fees:							
Hunt, Hamlin, Ridley			15,073.60	6,915.00	187.50		22,176.10
Leonard Law for Jerome Page						2,775.00	2,775.00
Absentee ballot legal fees	-	-	15,073.60	6,915.00	187.50	2,775.00	24,951.10
State Aid recovery	-	-	12,935.30	6,134.31	167.41	2,473.94	21,710.96