

# Board of Education of Baltimore County

6901 N. Charles Street

Julie C. Henn, Chair

Towson, Maryland 21204-3711

January 25, 2022

Mr. Richard P. Henry  
Inspector General  
Maryland Office of the Inspector General for Education  
100 Community Place  
Crownsville, MD 21032

Dear Mr. Henry:

The Baltimore County Public Schools (BCPS) – Board of Education and the Superintendent of BCPS are in receipt of the Maryland Office of the Inspector General for Education’s Investigative Report Summary pertaining to the Violation of Procurement Laws to Obtain Independent Legal Services for the Board of Education (OIGE Case 21-0003-I).

Attached is the Corrective Action Plan prepared by the Board of Education’s Office of Internal Audit in response to the eight (8) recommendations in the report, as well as a Memorandum from Board Counsel providing an opinion regarding which of the legal authorities referenced by the OIGE are applicable to the Board’s procurement of legal services.

The Board appreciates the efforts of the Maryland Office of the Inspector General for Education in conducting this investigation and the recommendations provided. Thank you for this opportunity to address the identified issues of concern.

Please contact Mr. Eric C. Broussides, Board Counsel, at (410) 740-4600 if you have any questions or concerns regarding this response.

Sincere regards,



Julie C. Henn  
Chair

Attachments (2)

Cc: Dr. Darryl L. Williams, Superintendent  
Board of Education Members

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Darryl L. Williams, Ed.D.  
*Secretary-Treasurer*

OIGE Case 21-0003-I  
 Issued: December 28, 2021  
 Report Recommendations and  
 Board of Education of Baltimore County Corrective Action Plan

Recommendation	Corrective Action Planned	Person(s) Responsible	Implementation Date
1. The BCPS-BOE should review and comply with all applicable board policies, state, and county laws and guidance governing contract solicitation and procurement procedure when expenditures are made or projected in excess of \$50,000.	A. Policies and practices will be reviewed and implemented to ensure compliance with all applicable laws and board policies related to procurement.	A. BOE Officers <sup>1</sup>	A. By August 31, 2022 B. After August 31, 2022: Annually in January and July
	B. The BCPS procurement practices that are aligned with laws and policy will be followed.	B. BOE Officers	B. Immediate and ongoing
	C. Board policy series 3000 and Policy 8350 <sup>2</sup> will be reviewed and updated to ensure alignment with the law.	C. BOE Policy Review Committee (PRC)	C. To begin at the February 14, 2022, PRC Meeting
	D. Expectations related to procurement practices will be communicated to BOE members at least twice a year.	D. BOE Officers and BOE Senior Executive Administrative Assistant (BOE SEAA)	D. Annually in January and July
	E. BOE members will acknowledge receipt of procurement practices and expectations by signing a certification statement.	E. BOE Officers, BOE members	E. Annually in January and July
	F. The certification statements will be maintained in accordance with current records retention requirements.	F. BOE SEAA	F. Annually in January and July

<sup>1</sup> In accordance with BOE Handbook.

<sup>2</sup> Refer to recommendation 7 below for details.

Recommendation	Corrective Action Planned	Person(s) Responsible	Implementation Date
<p>2. The BCPS-BOE should establish budgetary controls and safeguards to ensure established budget allocations for legal services are not exceeded.</p>	<p>A. A budget for legal services will be established.</p>	<p>A. BOE</p>	<p>A. Effective July 1, 2022 B. Annually July 1, thereafter</p>
	<p>B. The annual need for BOE legal services will be analyzed and projected.</p>	<p>B. BOE and BOE SEAA</p>	<p>B. Annually (Budget Cycle – September)</p>
	<p>C. An annual budget request will be developed in accordance with BCPS practices.</p>	<p>C. BOE and BOE SEAA</p>	<p>C. Annually (Budget Cycle – September)</p>
	<p>D. An expenditure review and approval process will be formalized and documented.</p>	<p>D. BOE and BOE SEAA</p>	<p>D. By August 31, 2022</p>
	<p>E. Board expenditures will be routinely monitored.</p>	<p>E. BOE and BOE SEAA</p>	<p>E. Monthly effective February 1, 2022</p>
	<p>F. Budget status updates will be provided to BOE members.</p>	<p>F. BOE and BOE SEAA</p>	<p>F. Monthly effective February 1, 2022</p>
<p>3. The BCPS-BOE should review established state education law and improve internal controls which define when the Board may contract for outside legal services separate from the services provided by the BCPS Law Office.</p>	<p>A. Established laws will be reviewed to improve internal controls over the procurement of outside legal services.</p>	<p>A. BOE and BOE SEAA</p>	<p>A. By August 31, 2022 B. Annually in January and July, thereafter</p>
	<p>B. An SOP that defines the responsibilities of the BOE and BOE officers related to the procurement of legal services will be developed and implemented.</p>	<p>B. Budget Committee and CFO</p>	<p>B. By August 31, 2022</p>
	<p>C. The SOP will be reviewed and expectations will be communicated to BOE members at least twice a year.</p>	<p>C. Budget Committee</p>	<p>C. Annually in January and July</p>
	<p>D. BOE members will acknowledge receipt of procurement practices and expectations by signing a certification statement.</p>	<p>D. BOE Officers, BOE members</p>	<p>D. Annually in January and July</p>
	<p>E. The certification statements will be maintained in accordance with current records retention requirements.</p>	<p>E. BOE SEAA</p>	<p>E. Annually in January and July</p>

Recommendation	Corrective Action Planned	Person(s) Responsible	Implementation Date
4. Consistent with Education Article §4-104, the BCPS-BOE should request legal services from the Baltimore County Attorney’s Office, unless it has a dispute with the county, or obtain consent from the county attorney to obtain outside legal counsel before entering into a contract for legal services.	A. Applicable laws will be followed before the BOE enters into a contract for legal services.	A. Board Counsel and BOE officers	A. Immediate and on-going <sup>3</sup>
	B. Specific SOPs will be developed and communicated to all BOE members.	B. Budget Committee	B. By August 31, 2022
	C. BOE members will acknowledge receipt of SOPs and expectations by signing a certification statement.	C. BOE Officers, BOE members	C. By August 31, 2022
	D. The certification statements will be maintained in accordance with current records retention requirements.	D. BOE SEAA	D. Upon completion of training

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<sup>3</sup> January 11, 2022, Baltimore County Government authorized CKBBS to provide legal services.

Recommendation	Corrective Action Planned	Person(s) Responsible	Implementation Date
5. The BCPS-BOE should review and update the new member(s) training and orientation practices governing state and county procurement procedures.	A. The new BOE member(s) training materials will be reviewed and updated to include current guidance and expectations regarding state and county procurement procedures.	A. BOE Officers and BOE SEAA	A. By July 1, 2022
	B. New BOE members will receive training related to procurement laws.	B. BCPS Legal Counsel	B. Annually in January and July, or as needed
	C. New BOE members will acknowledge receipt of training by signing a certification statement.	C. New BOE members	C. Upon completion of training
	D. The certification statements will be maintained in accordance with current records retention requirements.	D. BOE SEAA	D. Upon completion of training
	E. Expectations will be included in the BOE handbook. <sup>4</sup>	E. BOE Officers and BOE SEAA	E. By August 31, 2022

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<sup>4</sup> The digital addendum and hard copy.

Recommendation	Corrective Action Planned	Person(s) Responsible	Implementation Date
<p>6. The BCPS-BOE should review and update the current annual training procedures governing state and county procurement law.</p>	<p>A. Training materials will be reviewed and updated to include current guidance and expectations regarding state and county procurement procedures.</p>	<p>A. Board Counsel, BOE Officers, and BOE SEAA</p>	<p>A. By August 31, 2022</p>
	<p>B. The current BOE members will receive refresher training related to procurement laws.</p>	<p>B. BCPS Legal Counsel</p>	<p>B. By August 31, 2022, and annually, thereafter in July</p>
	<p>C. Current BOE members will acknowledge receipt of training by signing a certification statement.</p>	<p>C. BOE members</p>	<p>C. By August 31, 2022, and annually, thereafter in July</p>
	<p>D. The certification statements will be maintained in accordance with current records retention requirements.</p>	<p>D. BOE SEAA</p>	<p>D. Beginning August 31, 2022</p>
<p>7. The BCPS-BOE should review and update Internal Board Policy 8350 to include local county code §3-2-1002 and Count Charter, Article V §508 requirements.</p>	<p>A. The BOE Officers will request that its Policy Review Committee prioritize its review of Policy 8350 to determine if any updates are required to ensure compliance with applicable laws.</p>	<p>A. BOE Officers and Policy Review Committee</p>	<p>A. To begin at the February 14, 2022 PRC Meeting</p>
	<p>B. Any required updates will be made as part of the formal BOE policy review process.</p>	<p>B. Policy Review Committee</p>	<p>B. Ongoing at applicable regularly scheduled BOE meetings</p>
	<p>C. Any new requirements and expectations will be communicated to the BOE.</p>	<p>C. Policy Review Committee</p>	<p>C. Ongoing at applicable regularly scheduled BOE meetings</p>

Recommendation	Corrective Action Planned	Person(s) Responsible	Implementation Date
<p>8. The BCPS-BOE should review Maryland Code, Education Article §4-104 and determine if this law, as written, remains applicable to operational requirements. Note: Amendments to this law would require proposed legislation and approval from the Maryland General Assembly.</p>	<p>A. The BOE will review Maryland Code, Education Article §4-104 and determine if this law, as written, remains applicable to operational requirements.<sup>5</sup></p>	<p>A. Legislative and Governmental Relations Committee</p>	<p>A. By August 31, 2022</p>

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<sup>5</sup> The BOE is aware that Senator Charles Sydnor pre-filed a bill in September 2021 with the Maryland General Assembly.

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IN MEMORIAM:

David A. Carney

Laurence B. Raber

MEMORANDUM

TO: Board of Education of Baltimore County

FROM: Eric C. Broussides, Board Counsel

DATE: January 21, 2022

RE: Maryland Office of the Inspector General for Education (OIGE)  
Investigative Report Summary Case No. 21-0003-I

The purpose of this Memorandum is to provide an opinion regarding which of the legal authorities referenced by the OIGE are applicable to the Board. In its December 28, 2021, Investigative Report Summary, the OIGE made the following Findings:

- 1) The OIGE substantiated that former BOE Chairs Kathleen Causey, Makeda Scott, Vice-Chair Julie Henn, and members of the Board of Education failed to use the County Attorney for legal counsel as required by the following laws, code, charter, and policy in their official capacity concerning the use and retention of legal services:

**Maryland Code, Education Article §4-104:** “(1) Except in Baltimore County, each county board may: (i) Retain counsel to represent it in legal matters that affect the board; and (ii) Contract for the payment of a reasonable fee to the counsel. (2) Funds for these fees shall be included in the annual budget. (b) The Baltimore County Board may retain counsel to represent it in legal matters that involve disputes with the Baltimore County government” and,

**Baltimore County Code §3-2-1002:** “The County Attorney is the legal advisor and shall represent and otherwise perform all of the legal work for each officer and unit of the county government including each department, office, bureau, commission, board, and agency of the county” and,

**Baltimore County Charter, Article V, §504(5):** “There shall be the following departments in the administrative services: (5) Department of Education”

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**Baltimore County Charter, Article V, §504(8):** “[e]xcept as provided in section 510 of this article, no office, department, board, commission or other agency or branch of the county government shall have any authority or power to employ or retain legal counsel other than the county attorney.”

- 2) The OIGE substantiated that former Chair Kathleen Causey, Makeda Scott, Vice-Chair Henn, and members of the Board of Education failed to follow its policies, State and County procurement rules by artificially dividing a small purchase order which created a noncompetitive sole-source procurement environment in which only one source for legal services was selected.

**The BCPS - Division of Business Services policy states:** “The threshold for requiring bids is \$50,000 or more – single item or system-wide annual needs. All purchases that meet or exceed \$50,000 (not available under existing BCPS, county or state contracts) are formally bid. The Office of Purchasing issues bids for all goods or services in accordance with Maryland law.”

**Code of Maryland (COMAR) Title 21, Subsection 05, Chapter 21.05.07.05 – Prohibitions:** “A. A procurement may not be artificially divided in order to use the small procurement method instead of the other procurement methods set forth in COMAR 21.05.01 or a lesser category defined under Regulation .04 of this chapter” and,

**Baltimore County Public School FY2019 Adopted Budget booklet, Item II Organization Section – Budget Administration and Management:** “The school system is required to maintain a balanced budget and is not permitted to spend in excess of the amount appropriated by fund, category, and project.”

- 3) The OIGE substantiated the BCPS-BOE had received two report findings from the Maryland Office of Legislative Audits concerning general procurement policies related to competitive procurements and procurements were not always made in accordance with established policies and applicable State law. Furthermore, the BCPS-Office of Internal Audit found the BOE paid legal fees for services outside of the legal services agreement.

Based on these Findings, the OIGE made the following Recommendations:

- 1) The BCPS-BOE should review and comply with all applicable board policies, state and county laws and guidance governing contract solicitation and procurement procedures when expenditures are made or projected in excess of \$50,000.

- 2) The BCPS-BOE should establish budgetary controls and safeguards to ensure established budget allocations for legal services are not exceeded.
- 3) The BCPS-BOE should review established state education law and improve internal controls which define when the board may contract for outside legal services separate from the services provided by the BCPS Law Office.
- 4) Consistent with Education Article §4-104, the BCPS-BOE should request legal services from the Baltimore County Attorney's Office, unless it has a dispute with the county, or obtain consent from the county attorney to obtain outside legal counsel before entering into a contract for legal services.
- 5) The BCPS-BOE should review and update the new member(s) training and orientation practices governing state and county procurement procedures.
- 6) The BCPS-BOE should review and update the current annual training procedures governing state and county procurement law.
- 7) The BCPS-BOE should review and update Internal Board Policy 8350 to include local County Code §3-2-1002 and County Charter, Article V §508 requirements.
- 8) The BCPS-BOE should review Maryland Code, Education Article §4-104 and determine if this law, as written, remains applicable to operational requirements. Note: Amendments to this law would require proposed legislation and approval from the Maryland General Assembly.

### **Applicability of the authorities referenced by the OIGE**

Section 4-104 of the Education Article, regarding limitations on the Board's ability to obtain its own legal counsel, is applicable to the Board. Likewise, the school system's own policies and other governing documents referenced by the OIGE (the BCPS - Division of Business Services policy, and the Baltimore County Public School FY2019 Adopted Budget booklet, Item II Organization Section – Budget Administration and Management) are also applicable.

However, other authorities referenced by the OIGE as limiting the Board's ability to retain its own legal counsel do not appear applicable to the Board. Specifically, the OIGE references Baltimore County Charter, Article V, §504(5); Baltimore County Charter, Article V, §504(8); and Baltimore County Code §3-2-1002, as requiring the Board to utilize the County Attorney for its own legal work. This finding appears to be premised on the provisions of the County Charter which identify the "department of education" as a department within the administrative services of the county government.

Section 501 of Article V of the Baltimore County Charter provides that:

Except as otherwise provided herein or in the public general laws of this state, the administrative services of the county shall be subject to the supervision and control of the county administrative officer, who shall be responsible solely to the county executive for their efficient operation and management.

Emphasis supplied.

Section 504 of Article V of the Baltimore County Charter identifies the “department of education” as one of the departments within the administrative services of the county. Section 537 of Article V of the Baltimore County Charter states that:

The department of education shall consist of the county board of education, the superintendent of schools, and all other officers, agents and employees in the county public school system. The board of education shall be constituted and shall do and perform such duties and functions as may from time to time be provided by state law. All references in this Charter to the head of an office or department shall be construed as including the superintendent of schools as head of the department of education, but nothing in this Charter contained shall be held or construed as affecting or in anywise changing the organization, operation and administration of the county school system by the board of education as provided in state law.

Emphasis supplied.

Notwithstanding the listing of the “department of education” in the County Charter as a department within its administrative services, county boards of education in Maryland are created by State law, not by county governments. *See*, Education Article, § 3-103 (“There is a county board of education for each county school system.”) *See also*, *Chesapeake Charter, Inc. v. Anne Arundel County Board of Education*, 358 Md. 129, 135 (2000) (“County school boards are creatures of the General Assembly.”)

In *Board of Education of Montgomery County v. Montgomery County, Maryland*, 237 Md. 191, 197 (1964), the Court held that:

[t]he board of education is not a part of the executive branch of the county government nor an agency under its control. It is an agency financed wholly or in part by county funds, but, like bi-county commissions such as the Maryland-National Capitol Park and Planning Commission and the Washington Suburban Sanitary Commission, it is not subject to the charter budgetary requirements. *Montgomery County v. Yost*, 223 Md. 150, 162 A.2d 462 (1960).

Emphasis supplied.

Likewise, in *Chesapeake Charter, Inc. v. Anne Arundel County Board of Education*, 358 Md. 129, 136 (2000), the Court held that:

Although in terms of their composition, jurisdiction, funding, and focus, they clearly have a local flavor, the county school boards have consistently been regarded as State, rather than county, agencies. See *Bd. of Ed. v. Montgomery County*, 237 Md. 191, 197, 205 A.2d 202, 205 (1964); *McCarthy v. Bd. of Education of A.A. Co.*, 280 Md. 634, 374 A.2d 1135 (1977); *Bd. of Educ. v. P.G. Co. Educators' Ass'n*, 309 Md. 85, 95 n. 3, 522 A.2d 931, 936 (1987); *Montgomery Co. Ed. Ass'n v. Bd. of Educ.*, 311 Md. 303, 317, 534 A.2d 980, 987 (1987); *Board v. Secretary of Personnel*, 317 Md. 34, 44 n. 5, 562 A.2d 700, 705 (1989); *Board v. Town of Riverdale*, 320 Md. 384, 387 n.3, 578 A.2d 207, 209 (1990); *State v. Board of Education*, 346 Md. 633, 640, 697 A.2d 1334, 1338 (1997).

Emphasis supplied.

Accordingly, because the Board is not a part of the county government, the references to the County Charter and the County Code as limiting the Board's ability to retain its own counsel appear inapplicable. While in one sense this is somewhat of an academic point given the applicability of §4-104 of the Education Article, it is also an important point to keep in mind when delineating the scope of the County's authority.

Next, as set forth above in its Findings, the OIGE found that the "Code of Maryland (COMAR) Title 21, Subsection 05, Chapter 21.05.07.05 – Prohibitions" is applicable to the Board. This regulation is promulgated pursuant to Maryland's General Procurement Law. However, County boards of education in Maryland are not subject to the State's General Procurement Law. In *Chesapeake Charter, Inc. v. Anne Arundel County Board of Education*, 358 Md. 129, 145-146 (2000), the Court held that:

We find no basis, upon this analysis, to conclude that the Legislature ever intended to subject procurement by a county school board to the General Procurement Law. It is inconceivable that the General Assembly would have made such a dramatic shift in policy without some clearer indication of its intent to do so. We hold, therefore, that a county school board is not a "unit" within the meaning of that law, and, accordingly, that [the Maryland State Board of Contract Appeals] has no jurisdiction over disputes arising from procurement decisions made by those boards.

Emphasis supplied.

The OIGE recognized that pursuant to *Chesapeake Charter, Inc.*, "State procurement laws do not apply to local school systems." See, OIGE Report, p. 4. However, the OIGE also stated that "BCPS follows State procurement". See, OIGE Report, p. 4. I am unaware of whether BCPS has bound itself to the State General Procurement Law, but the appropriate BCPS department can likely answer that question readily.

Interestingly, § 903 of Article IX of the Baltimore County Charter, pertaining to centralized purchasing, states that:

The provisions of this Article [pertaining to centralized purchasing] shall apply to the department of education and other departments and agencies created by or operating under the public general laws of this state **only to the extent requested by them**. In the interests, however, of promoting uniformity and of effecting maximum savings for all purchases out of county funds, the purchasing facilities of the office of central services shall always be available to such departments and agencies, and their use shall be encouraged.

Emphasis supplied.

This provision, by its terms, excludes the Board from the County's purchasing rules, unless the Board elects otherwise.

In sum, §4-104 of the Education Article, regarding limitations on the Board's ability to obtain its own legal counsel, is applicable to the Board. However, the other legal provisions referenced by the OIGE as limiting the Board's ability to retain its own legal counsel (Baltimore County Charter, Article V, §504(5); Baltimore County Charter, Article V, §504(8); and Baltimore County Code §3-2-1002) do not appear applicable to the Board. Further, the school system's own policies and other governing documents referenced by the OIGE (the BCPS - Division of Business Services policy, and the Baltimore County Public School FY2019 Adopted Budget booklet, Item II Organization Section – Budget Administration and Management) are applicable. But, unless otherwise adopted by the school system, Maryland's General Procurement Law, and its implementing regulation noted by the OIGE, are not applicable to the Board.