



MARYLAND OFFICE OF THE INSPECTOR GENERAL FOR EDUCATION



Investigative Report Summary

OIGE Case 21-0003-I

Issued: December 28, 2021



MARYLAND OFFICE OF THE
INSPECTOR GENERAL FOR EDUCATION
Richard P. Henry, Inspector General



December 28, 2021

To the Citizens of Maryland and Baltimore County,

The Maryland Office of the Inspector General for Education (OIGE) plays an important role in safeguarding State funds provided to local school systems. Our primary mission is to prevent and detect fraud, waste and abuse, and educational mismanagement within the Maryland State Department of Education (MSDE), the Interagency Commission of School Construction (IAC) and the twenty-four (24) local school systems throughout the State of Maryland.

Background

The OIGE initiated an investigation based on a complaint alleging members of the Baltimore County Public School – Board of Education (BCPS-BOE) had violated Maryland Education law and County code pertaining to the expenditure of funds to obtain legal services. The complaint further alleged members of the BCPS – BOE continued this practice knowing they were in violation of State and County law and established BCPS procurement practices. Except under limited exceptions the Inspector General may not disclose the identity of the source of a complaint or information provided.

Investigation

Maryland Code, Education Article sets forth the law governing the use of legal counsel by the boards of education. The law specifically states that all counties, except for Baltimore County, may retain counsel. ¹ An exception to the law is allowed only if the board is involved in a dispute(s) with the Baltimore County government. ²

¹ Maryland Code, Education Article, Section §4-104

² The law was enacted in 1969 at Chapter 405 §1, Laws of Maryland 1969. It was initially published in Public Education Article 77, §48, 56C, 56F.

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Prior to 2018, the Baltimore County Public Schools – Law Office (BCPS-LO) received funding from the Baltimore County government to cover the cost associated with legal services afforded to the Board of Education (BOE). These funds were used by the BCPS-LO to provide an attorney, outside of the law office, and assigned to the Board of Education as a legal advisor.

This practice changed when BOE chair Kathleen Causey (Causey) believed there was a conflict of interest due to concerns associated with the former BCPS superintendent’s administration. The OIGE was advised that the BOE wanted an attorney who was not connected with the prior administration.

The OIGE investigation showed that on January 22, 2019, Causey made a motion to the full BOE to retain the legal services of Carney, Kelehan, Bresler, Bennett & Scheer, LLP (CKBBS) for the sole purpose of assisting in the BCPS search for a new Superintendent. The motion presented by Causey passed (via vote) by the full BOE. (The OIGE confirmed an exception was granted as to the legal contract associated with the new superintended search.)

During this same period, the BOE had been using the Law Firm of Andy Nussbaum, Esq. for legal services pertaining to school board matters. Our investigation found that Nussbaum had been serving as the BOE primary attorney since 2008. (The BCPS-BOE could not provide supporting documentation indicating the board had contacted or obtain permission from the Baltimore County Attorney to obtain outside counsel. Additionally, the BCPS could not provide documentation indicating the BOE or BCPS had announced, posted, or advertised a Request for Proposal (RFP) to obtain legal services.)

In two separate audit findings from BCPS Office of Internal Audit, the auditors found that the BOE exceeded their budget for legal expenditures in both fiscal years (FY) FY19 and FY20. Through interviews, the OIGE learned some members attribute this to the costly Superintendent search and some to the lengthy BOE meetings where an attorney from CKBBS is present and compensated at an hourly rate of \$300. This rate is in contrast to Nussbaum’s \$225 per hour. The OIGE determined only a few instances where both CKBBS and Nussbaum were billed during concurrent periods.

The internal audit also revealed in FY19, the projected expenditures for contracted services was submitted at \$18,000, but the total expenditures for this category was approximately \$92,000. This is attributed in large part to the Superintendent search where both CKBBS and the hiring firm Ray & Associates were engaged by the BOE. CKBBS was paid approximately \$25,000 and Ray & Associates approximately \$52,000. Overall, in FY19, the BOE’s contracted expenditures totaled \$191,286.70 and overspent the projected \$128,235 budget by \$63,051.

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Board of Education – General Fund FY19 Budget to Actual – Non-Salary Expense					
<i>Object</i>	<i>Object Name</i>	<i>Budget</i>	<i>Expended</i>	<i>Balance</i>	<i>% Spent</i>
2834	Misc. Contracted Services	18,000.00	92,345.56	(74,345.56)	513.03%
2851	Software License	7,800.00	7,300	500.00	93.59%
3733	Office Supplies	750.00	1,397.39	(647.39)	186.32%
3931	Other Supplies & Materials	0.00	165.56	(165.56)	165.56%
4005	Conference Fees	12,000	7,960.00	4,040.00	66.33%
4025	Mileage Reimbursement	4,500	4,696.76	(196.76)	104.37%
4029	Overnight Travel	13,185.00	5,611.48	7,573.52	43.56%
4672	Food – Board Members	0.00	4,328.98	(4,328.98)	4,328.98%
4687	Misc – Board Members	5,000.00	867.97	4,132.03	17.36%
4840	Professional Fees	67,000.00	66,613.00	387.00	99.42%
	Totals	128,235.00	191,286.70	(63,051.70)	149.17%

The OIGE further found that a review conducted by the BCPS Internal Audit unit determined that the BCPS-BOE overspent their FY20 budget by \$9,344.76 or 7% above their approved budget.

Board of Education – General Fund FY 20 Budget to Actual – Non-Salary Expense					
<i>Object</i>	<i>Object Name</i>	<i>Budget</i>	<i>Expended</i>	<i>Balance</i>	<i>% Spent</i>
2831	Legal Services	0.00	26,091.80	(26,091.90)	26.092%
2834	Misc. Contracted Services	18,000.00	15,963.39	2,036.61	88.69%
2851	Software License	7,800.00	7,800	0.00	100.00
3733	Office Supplies	750.00	1,391.18	(641.18)	185.49%
3931	Other Supplies & Materials	0.00	0.00	0.00	0.00
4005	Conference Fees	12,000	4,650.00	7,350.00	38.75%
4025	Mileage Reimbursement	4,500	6,111.17	(1,611.17)	135.80%
4029	Overnight Travel	12,685.00	4,250.40	8,434.60	33.51%
4672	Food – Board Members	500.00	31.14	468.86	6.23%
4687	Misc – Board Members	5,000.00	372.68	4,627.32	7.45%
4840	Professional Fees	67,000.00	70,918.00	(3,918.00)	105.85%
	Totals	128,235.00	137,579.76	(9,344.76)	107.29%

A review of the to-date FY21 budget indicated the BCPS-BOE had overspent their budget by \$64,145.70 or 68% above their approved budget.

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Board of Education – General Fund FY 21 Budget to Actual – Non-Salary Expense					
Object	Object Name	Budget	Expended	Balance	% Spent
2831	Legal Services	2,721.00	74,438.00	(71,717.00)	2,735.69%
2834	Misc. Contracted Services	16,324.00	1,207.86	15,116.14	7.40%
2851	Software License	7,074.00	7,900.00	(726.00)	110.26%
3733	Office Supplies	1,088.00	578.45	509.55	53.17%
3931	Other Supplies & Materials	0.00	0.00	0.00	0.00
4005	Conference Fees	0.00	3,150.00	(3,150.00)	3,150.00%
4025	Mileage Reimbursement	4,534.00	126.39	4,407.61	2.79%
4029	Overnight Travel	0.00	0.00	0.00	0.00%
4672	Food – Board Members	0.00	0.00	0.00	0.00%
4687	Misc – Board Members	4,534.00	81.00	4,453.00	1.79%
4840	Professional Fees	58,041.00	71,080.00	(13,039.00)	122.47%
	Totals	93,316.00	158,461.70	(64,145.70)	168.01%

The OIGE was able to determine that during the time period of the legal services agreement with CKBBS (January 2020 to July 2020), an increase of \$49,999 was made to the legal services purchase order to replenish those funds already expended. This proposed increase would structure the funding source as a small procurement and avoid the need for the BOE from publishing a RFP for legal services. 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.*”³

Under Maryland law, procurement units may award small procurement contract up to \$50,000 without the approval from a procurement control agency. Code of Maryland (COMAR) 21.05.07.05A, (a procurement may not be artificially divided in order to use the small procurement method instead of the other procurement methods). Although BCPS policy follows State procurement, the Maryland Court of Appeals ruled that State procurement laws do not apply to local school systems.⁴

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

³ <http://bcpsbusinessservices.ss3.sharpschool.com/cms/One.aspx?portalId=9047733&pageId=10316326>, Baltimore County Public Schools website/Division of Business Services/Fiscal Services/Purchasing/Information/Formal Bids

⁴ *Chesapeake Charter, Inc. v. Anne Arundel County Board of Education*, 358 Md. 129, 747 A.2d 625 (Md. 2000)

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procurements⁵ and procurements were not always made in accordance with established policies and applicable State law⁶.

On January 9, 2020, the BOE held a closed session meeting to discuss legal support concerns. During this meeting, the BOE discussed supplementing Nussbaum's current legal services contract with those of CKBBS. At this time, CKBBS had already concluded their legal contract associated with the superintendent's search. At this meeting, a motion was made by then Chair Causey to enter into a second legal contract with CKBBS which would supplement the current legal services performed by Nussbaum.

The OIGE investigation further determined that on July 14, 2020, the BOE voted not to renew Nussbaum's contract. The Nussbaum contract for legal services was set to expire on August 31, 2020. As a result of this vote, the BOE would be without the services of primary legal representation. Due to the concurrent legal services already in place, CKBBS would default to the position of primary legal counsel. Since the date of Nussbaum's departure, CKBBS has served as BOE's primary counsel.

The OIGE discovered during another closed session meeting on August 25, 2020, BOE member Rodney McMillion (McMillion) attempted to make a motion for a formal request for proposal (RFP) seeking public bid for BOE legal counsel. The motion failed initially, due to its format, then eventually passed by the full BOE. A subcommittee was formed to explore the RFP process which McMillion was a part of; however, McMillion stated in an interview that nothing has been done to date with the process.

Maryland Education Article §4-104(b) specifically precludes BCPS BOE from obtaining outside legal counsel instead of using the County Attorney's Office, except when there is a dispute with the county. This was confirmed in a letter written to the BOE from Baltimore County Attorney Mr. James R. Benjamin, Esq. (Benjamin)

Unlike other boards of education throughout the State, the Education Article §4-104 specifically excludes the BCPS - BOE from retaining counsel to represent them in matters affecting the board. The OIGE reviewed BCPS-BOE's orientation resources, onboarding materials, and policy manuals to determine attorney hiring practices. No items reviewed contained any reference to Education Article §4-104. The OIGE did review Internal Board Policies and found the BOE does have an established policy governing the use of legal counsel. The policy states: "*It shall be the policy of the Board of Education of Baltimore County (Board) to use legal counsel, as provided*

⁵ Office of Legislative Audits, Financial Management Practices Audit Report, Baltimore County Public Schools, July 2015.

⁶ Office of Legislative Audits, Financial Management Practices Audit Report, Baltimore County Public Schools, July 2020.

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by law, whenever such counsel is deemed necessary or appropriate.”⁷ The BOE contacted the Baltimore County Attorney and request advice of counsel.

In a letter dated December 3, 2020, BCPS General Counsel Margaret-Ann F. Howie, Esq, (Howie) raised concerns and mentions an earlier discussion (November 26, 2020) with Baltimore County Attorney, Benjamin regarding Education Article §4-104 and the use of legal counsel. On December 30, 2020, Howie sent a follow-up letter to Benjamin requesting guidance from the county concerning the BOE’s need to issue a Request for Proposal (RFP) for legal services.

On January 15, 2021, and in response to Howie’s letter, Benjamin references the procedures set forth in state and county law regarding the BOE’s use of private legal counsel. Benjamin stated: *“A contract for outside legal counsel presented to the School Board without authorization from the County Attorney is contrary to the plain language of state law. This is because state law allows the School Board to retain counsel to represent it only in legal matters that involve disputes with the Baltimore County government. See Md. Code Ann., Educ. § 4-104(b).”*⁸

Benjamin further expressed his concerns regarding the BOE’s authority to obtain outside legal counsel and its disregard for Section 508 of the County Charter: *“As such, because the Department is a “County department” under the Charter and includes the County Board of Education, it follows that the County Attorney would be the legal advisor for the School Board.”*⁹

The OIGE learned that not until Benjamin’s letter was sent, there was no mention of the Education Article or County Charter during any of the BOE orientations. Additionally, the OIGE reviewed the BOE handbook and new member’s orientation guide. Both publications did not cite state law or county charter. Several members expressed frustration and confusion about the Education Article and their lack of knowledge regarding legal services.

The OIGE did interview a member of the Office of Purchasing and was advised that they were in favor of opening the contract for public bid through the formal RFP process rather than continuing to add funds needed.

As stated previously, the OIGE reviewed BCPS-BOE’s orientation resources, onboarding materials, and policy manuals. None of the items reviewed referred to Education Article §4-104. Unlike other boards of education throughout the State, this law specifically excludes the BCPS - BOE from retaining counsel to represent them in matters affecting the board.

The OIGE further found the expenditures on the legal services agreement in FY 2021 exceeded the budget by more than \$50,000, since CKBBS was retained. The cost of legal services, for the BOE, has doubled due to various factors to include the built-in travel cost of CKBBS and the

⁷ [https://go.boarddocs.com/mabe/bcps/Board.nsf/files/BXAH6346E60F/\\$file/POL8350_090115_finalized.pdf](https://go.boarddocs.com/mabe/bcps/Board.nsf/files/BXAH6346E60F/$file/POL8350_090115_finalized.pdf), Baltimore County Public Schools, Policy 8350, Internal Board Policies: Operations, Topic-Counsel, Revised 09/01/2015

⁸ James R. Benjamin, Jr. letter, dated January 15, 2021, to Margaret-Ann F. Howie, Esq., Baltimore County Public Schools

⁹ Ibid, 3 (County Charter Sections 504 and 537 identifies the Board of Education as a Department of the County).

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higher hourly rate charged. The OIGE found, due to the lengthy nature of BOE meetings where an attorney is present, the cost of the legal services contract has escalated.

The OIGE determined in excess of \$100,000 was paid on outside legal services alone, for the BOE in the past three years. This expenditure caused the overall BOE budget to exceed the estimated yearly submission. An exact estimate is still unclear, as the money disbursed on legal services is not clearly delineated within the BOE budget.

The OIGE calculated the invoices for legal fees, obtained from CKBBS for the life of the contract, to be \$105,757.25 for the BOE.

During the interview process, BOE members expressed frustration in their lack of knowledge of the State and county laws governing the procurement process. Members stated they were not even aware of the process until there was a proposal to open the process and request an RFP.

Members advised the OIGE they were not aware of any clear policy of how legal services were to be contacted and utilized. A number of members believe other members were, and continue to, contact CKBBS directly, without notifying the Chair. This process creates an environment in which legal fees are incurred by the BCPS and are not unauthorized or relevant to the board as a whole.

Findings

1) The OIGE substantiated that former BOE Chair's 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 the 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”

Baltimore County Charter, Article V, §508: “[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 any legal counsel other than the county attorney.”

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2) The OIGE substantiated that former Chair Kathleen Cause, 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 procurements¹⁰ and procurements were not always made in accordance with established policies and applicable State law¹¹. Furthermore, the BCPS-Office of Internal Audit found the BOE paid legal fees for services outside of the legal services agreement.¹²

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.

¹⁰ Office of Legislative Audits, Financial Management Practices Audit Report, Baltimore County Public Schools, July 2015

¹¹ Office of Legislative Audits, Financial Management Practices Audit Report, Baltimore County Public Schools, July 2020

¹² Board of Education of Baltimore County, Office of Internal Audit, Report Project 4-202.004, October 5, 2020

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- 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.

The OIGE understands information may be changed or updated after an investigation has been completed. The OIGE appreciates the cooperation provided by the members of the Baltimore County Public School – Board of Education, Baltimore County Public School – Office of Business Services, Baltimore County Public School - Law Office and the Office of the Baltimore County Attorney in this investigation.

Consistent with Education Article §9.10-104, because the Inspector General has identified issues of concern that would not constitute a criminal violation of State law, the Inspector General will report the issues of concern to the State Superintendent, the State Board of Education, the Governor, and the General Assembly.

Respectfully,



Richard P. Henry
Inspector General

Cc: Hon. Lawrence J. Hogan, Jr, Governor – State of Maryland
Hon. William C. Ferguson IV, President – Maryland State Senate

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Hon. Adrienne A. Jones, Speaker – Maryland House of Delegates
Hon. Clarence C. Crawford, President – Maryland State Board of Education
Hon. Mohammed Choudhury, State Superintendent of Schools
Hon. Julie Henn, Chair - Baltimore County Board of Education
Dr. Darryl L. Williams, Ed.D., Baltimore County Superintendent of Schools
Ms. Margaret-Ann Howie, Esq., Baltimore County Public Schools General Counsel
Mr. James R. Benjamin, Jr., Esq., Attorney for Baltimore County
Ms. Kelly Madigan, Esq., Inspector General, Baltimore County

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