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DEPARTMENT OF
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TO: Mike Spano, Mayor
Paresh Patel, Board of Education President
Bernard Pierorazio, Superintendent of Schools

CC: Chuck Lesnick; Wilson Terrero; Michael Sabatino;
Christopher Johnson; Mike Breen; Dennis Shepherd; John
Larkin

FROM: Kitley S. Covill, Inspector General 

SUBJECT: Amendment to YPS Superintendent's Contract

DATE: July 2, 2012

The Department of Inspector General (IG) has undertaken a review of the contract extension granted on June 20, 2012 to the current Superintendent of Yonkers Public Schools by the Yonkers Board of Education Trustees. This memorandum sets forth the IG's finding.

Background

In the past, the Yonkers Public School District had significant challenges with sitting Superintendents. In June, 2005 a Superintendent was indicted on perjury and tampering charges, and the prior Superintendent abruptly resigned. Additionally there were allegations of misuse of public property belonging to the district by a third Superintendent. In the wake of those challenges, in 2005 the City of Yonkers conducted a national search, and ultimately hired the then Deputy Superintendent.

Thus, on December 21, 2005, at a regularly scheduled Board of Education (BOE) meeting, the Board of Trustees passed a resolution appointing Bernard Pierorazio Superintendent of the Yonkers Public Schools (YPS) and authorized the President of the BOE Trustees to enter into a contract with Mr. Pierorazio. On January 13, 2006, the Board of the Yonkers Public Schools, by its then

President, Bernadette Dunne, signed a contract with Bernard Pierorazio with a term beginning December 22, 2005 and ending June 30, 2009 at the annual salary of \$235,000.¹ Prior to signing the contract, Mr. Pierorazio was the Interim Superintendent for approximately six months.

Since 2005 Mr. Pierorazio's contract has been amended four (4) times, the most recent amendment occurring on June 20, 2012. These amendments included a salary increase, additional vacation days, compensation for unused sick days and extensions of the term of his contract. After reviewing the pertinent agendas and minutes of the BOE meetings that coincided with the contract amendments, it appears that some of the contract amendments were listed on the BOE monthly meeting agendas and others were not.

Relevant Procedures of the BOE

New York State Boards of Education are in large part, like much of public education, required by law to follow certain rules and procedures. The Yonkers BOE has a Board of Education Policy Manual, where processes and procedures are written.² Although the policy manual does not state everything required by NYS Education Law, or other pertinent statutes, it does give a road map for the public regarding much of what the BOE and the YPS must do.

The BOE, as required by New York State Education Law, holds a monthly meeting. Every regularly scheduled BOE meeting is preceded the week before by an Audit, Budget and Finance (ABF) Committee meeting. There are three BOE trustees that sit on the ABF committee, and often other BOE trustees attend ABF committee meetings. The ABF committee has a non public agenda that includes Board Member Reports and other resolutions that will be on the BOE's regularly scheduled monthly meeting agenda. The only time, according to the Board of Education Policy Manual, that an item would not be on the ABF agenda is if it is an emergency. ABF meetings, like the regularly scheduled monthly BOE meetings, or any other BOE meetings, must conform to the Open Meetings Law (OML).³ The ABF meeting is a meeting held in public, but is not a public meeting and the public does not participate. It does function, however, to give the public a preview of the items that will be voted on at the monthly BOE meeting.

Recent Contract Amendment

On June 12, 2012 the ABF met and reviewed various items, including all Board Member Reports and resolutions that were expected to be on the agenda for the

¹ Other compensatory items of the contract include health benefits, life insurance, a vehicle to be replaced every three years at the option of the Superintendent, a home computer and a cell telephone.

² A copy of the BOE Policy Manual is available on the YPS website.

³ Public Officers Law, Article 7.

BOE meeting scheduled for June 20, 2012.⁴ The June 12, 2012 ABF agenda did not reflect a Board Member Report or resolution regarding the Superintendent's contract amendment and extension.

Pursuant to the Board of Education Policy Manual, and in accordance with past practices, the BOE monthly meeting agenda is set and must be published the Friday before the meeting. Thus, the agenda for the June 20, 2012 meeting was set and published by Friday, June 15, 2012. (As it happens, due to the efficiencies of the BOE Secretary, the agenda is published either the Tuesday evening or Wednesday morning after the ABF meeting). The agenda published for the June, 20, 2012 meeting did not reflect a Board Member Report or resolution regarding the Superintendent's contract amendment and extension.

Pursuant to the Board of Education Policy Manual, and in accordance with past practices, the BOE meeting agenda can be changed at the last minute due to an emergency. Typical emergencies might include emergency building repairs or important contracts that might expire before the next board meeting. The language contained in Section 2342 of the policy manual states in part "However, the President may authorize, at the request of the Superintendent of Schools, the presentation of emergency matters without prior submission to members of the Board".

On June 20, 2012, at a regularly scheduled BOE meeting, the Board passed a resolution to amend Mr. Pierorazio's contract by extending the term of the contract three (3) years to expire June 30, 2018.⁵

Discussion and Findings

After the June 20, 2012 BOE meeting the Inspector General contacted the Superintendent to review what transpired at the BOE meeting on June 20, 2012. The Superintendent and the BOE Trustee President Paresh Patel met with members of the IG's office shortly after the June BOE meeting and discussed at length the BOE's failure to give adequate notice pursuant to the BOE Policy Manual and past practices. In particular the discussion included the fact the contract amendment resolution was not on the ABF agenda, nor on the BOE meeting agenda posted afterward. Thus, the Yonkers taxpayers were deprived of open transparent governance at the BOE, although that is a goal acknowledged by various BOE trustees at prior public meetings.

The Board President stated that the issue of extending the current Superintendent's contract had been discussed by a number of the trustees in several non public informal conversations over the last four or five months. In

⁴ That review is in accordance with previous ABFs, which have agendas set for review by Committee members and includes all non emergency resolutions.

⁵ Notably, the contract extension did not change any other terms, including Mr. Pierorazio's salary, although pursuant to his contract his salary may be increased by written amendment.

those discussions, and in the meeting with the IG, the President, and subsequently the Vice President, indicated that the trustees felt that the current Superintendent had and continues to have tremendous vision, has moved the district forward and that the district needs continued stability.⁶

During the course of the discussion with the President of the BOE and the Superintendent, it was noted that New York State Education Law prohibits Superintendent contracts from being longer than 5 years. Mr. Pierorazio, prior to the June 20, 2012 meeting, had an existing contract expiring June 30, 2015. On June 20, 2012 the Board voted to extend his contract for another three (3) years, to expire June 30, 2018. As his contract, pursuant to that vote, is now six (6) years long, the contract violates the spirit, if not the letter, of New York State Education Law.⁷

Reviewing the processes used to amend the Superintendent's contract in the past, and at the June 20, 2012 BOE meeting and preceding ABF meeting reveals significant failures to uphold the transparency and open communication with the public that should typify all BOE actions. The IG believes that all terms of any contract for the YPS Superintendent position should be discussed openly and in public. In this case, since there was no emergency or any other reason not to discuss the contract terms, there is no justification for placing this contract extension amendment on the agenda at the last minute. The contract extension issue should have been on the ABF agenda, and also on the scheduled meeting agenda published the week before the regular monthly BOE meeting. The proposed contract extension resolution would then have been available for public comment before the start of the meeting on June 20, 2012.

The BOE does an excellent job of posting on line agenda information and other pertinent items and in general operates in accord with the dictates of the OML. While informal non public conversations are part of a working Board of Trustees' typical operations, and generally make a board more functional, non public conversations about personnel matters, where there is a general consensus on what is going to result in a board resolution, should be discussed in public. To do otherwise may subvert the objectives of the OML and gives the appearance of behind closed doors decision making.

During the course of the IG's meetings on this issue the BOE Trustees expressed a genuine interest in best practices and openness in all trustee business. To the extent the Board needs to move into Executive Session, the OML specifically identifies what may be discussed in an Executive Session. The

⁶ The Board of Education Policy Manual delineates Committees of the Board (Section 2230). Paragraph (f) establishes the Superintendent's Evaluation Committee. The BOE President noted that the Trustees did not receive an annual evaluation summary from that committee before the June 20, 2012 meeting but had an evaluation summary in prior years. He further noted that the chairperson of that committee recently resigned from the Board.

⁷ See Education Law Section 2565 (1).

OML also notes exactly how Executive Sessions should then be reported in the public portion of the meeting.

Recommendations

The IG recommends that the BOE continue to strive for open communications with the public and place all contract matters on the ABF and regularly scheduled monthly meeting agendas. To the extent that informal conversations with individual BOE trustees may result in a proposed resolution, it behooves the Trustees to discuss those types of contract matters in public, at a public meeting. Moreover, given the fact that there is a Superintendent's Evaluation Committee, it makes sense to convene a meeting, update the evaluation of the Superintendent and consider the findings of that evaluation in any contract amendments.

In the case of the June 20, 2012 Superintendent's contract extension amendment, the IG recommends that the contract amendment resolution approved at the June 20, 2012 BOE meeting be rescinded. If the BOE intends to revisit the issue, the contract extension amendment should be discussed in an open forum and the issue should be properly placed on both the ABF and BOE meeting agendas. In addition, any term of a contract extension should conform to New York State Education Law. As the contract in place prior to the June 20, 2012 meeting does not expire until June 30, 2015, there is no emergency nor is there any other justification for accelerating this issue.