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February 25, 2025

Dr. Laura A. Winters, Superintendent
Lakewood Public Schools
200 Ramsey Avenue
Lakewood, New Jersey 08701

**Subject: Investigative Report of Legal Services Contract- Lakewood Public Schools
OFAC Case #INV-67-24**

I. Introduction

The Office of Fiscal Accountability and Compliance (OFAC) conducted a review of the legal services contract between the Lakewood Board of Education (Board) and its general counsel, Michael Inzelbuch, Esq. (Inzelbuch), following concerns raised by the Office of Legislative Services, Office of the State Auditor. The State Auditor's August 2024 report covered the period from July 1, 2018, through September 9, 2023, and highlighted significant issues regarding the district's legal costs and compliance with state regulations.

As part of this comprehensive review, interviews were conducted with Moshe Bender, Board President, and Inzelbuch. OFAC also reviewed Inzelbuch's past and present contracts, a sampling of billing invoices, and letters between the Board and outside agencies. In addition, OFAC reviewed the State Auditor's report concerning the Lakewood School District.

II. Historical Perspective

The District has contracted with Inzelbuch continuously since August 17, 2017, through the current contract period expiring on June 30, 2025¹. The terms of the contract have remained relatively constant from the 2017-2018 school year through the contract approved for the 2024-2025 school year and include services for acting as general counsel, as well as litigation services. The contract provisions most relevant to this review are detailed below:

- Paragraph 1: Duties

¹ Inzelbuch previously served as Board counsel in the district from 2002-2012.

- Provide legal representation at all regularly scheduled meetings of the Board, and special and emergency meetings upon request;
 - Unlimited legal consultation with the Board, the Superintendent, the Board Secretary/Business Administrator, and other such staff members as the Superintendent shall designate;
 - Unlimited preparation of oral and written legal opinions unless there is a need for an independent opinion and/or technical expertise in a narrow and highly specialized subject;
 - Provision of legal representation for the Board, and such individual Board members or staff members as the Board or the Superintendent shall designate;
 - Unlimited conferences, meetings and in-service sessions with the Board, Board committees and other such staff members as the Superintendent shall designate;
 - Unlimited review of, and legal advice with respect to, existing and proposed contracts between the board and third parties; and
 - Such other duties as may be set forth and mutually agreed upon by the board president and General Counsel.
- Paragraph 2: Compensation
 - Annualized retainer of \$600,000, and payable in equal monthly payments of \$50,000 plus costs, paid monthly on the first day of each month starting with August 1. There are no charges for hours worked in excess of the \$50,000 retainer, except as provided herein.
 - Hourly rate of \$475.00 per hour for any litigation services payable monthly, upon presentation of detailed logs documenting litigation services.

The Board approved Inzelbuch’s most recent contract for the 2024-2025 school year via resolution dated January 24, 2024. Prior concerns had been raised by the Department and outside observers, including the Education Law Center (“ELC”), about both the amount of compensation included in this contract, as well as the use of a monthly retainer amount for legal services.

In 2017, ELC raised concerns to the Department that the contract violated the following provisions of N.J.A.C. 6A:23A-5.2:

- 5.2(a): Requires boards to adopt policies minimizing professional service costs.
- 5.2(a)(3): Prohibits advance payments for legal services.
- 5.2(a)(4): Mandates payments only for services actually rendered and supported by itemized invoices.

The concerns noted that the contractual provision for monthly installment payments totaling \$600,000 per year as base compensation contemplated payment without regard to the actual legal services provided, which conflicts with the regulatory prohibition on advance payment contracts.

In response to a request from the State as to the Board’s position on the contract, outside counsel for the Board responded setting forth the Board’s procurement process, (Request for Proposal/RFP

due April 4, 2017), which anticipated two contracts: (1) Board attorney, and (2) Litigation services to a firm with at least five New Jersey licensed attorneys. The Board attorney would be paid on a monthly-basis and litigation services paid on an hourly basis. The Board modified its RFP and removed the five-attorney minimum requirement. Subsequently, eight law firms responded, but Inzelbuch was unanimously accepted by the Board to provide both services set forth in a single legal services contract. In addition, the Board's position is that the monthly retainer amount is not an advance payment for services because his payment is received after submission of an invoice the month following the month when services are rendered.

Similarly, counsel for the State Monitor assigned to the District at the time sent a response letter justifying the practice of flat rate billing to encourage "preventative lawyering," namely, seeking legal advice at an early stage to limit longer term financial exposure.

Thereafter, on April 24, 2018, the Department sent a letter to the Board expressing concerns regarding noncompliant invoices submitted by Inzelbuch, citing discrepancies between billed amounts and itemized services. The Department had determined that "the invoices and requests for payment submitted by Board Counsel do not meet the regulatory requirements." Further, this letter stated that any invoices that did not meet the requirements to itemize lists of legal services on the invoice would not be approved for payment by the State Monitors.

At the time of the Department's April 2018 letter, the invoices submitted to the Board by Inzelbuch contained a single paragraph listing generally the legal services Inzelbuch provided during the invoice period. Although the invoices submitted after receipt of the April 2018 letter did result in the more detailed bullet lists of services provided, there was still no inclusion of the hours spent on each service that would enable the District to determine whether the time spent accurately reflected the service provided. The same format is currently in use by Inzelbuch.

III. State Auditor's August 6, 2024 Report

On August 6, 2024, the Department received a report from the Office of Legislative Services, Office of the State Auditor (the "Auditor's Report"), with respect to an audit conducted of the Lakewood Public School District (District) for the period of July 1, 2018, through September 9, 2023. The Auditor's Report outlined the following conclusions regarding the District's professional services agreement for general counsel:

1. For the annualized retainer, the invoices did not include the number of hours worked. As a result, the district could have paid for more hours than actually worked.
2. Regarding litigation services, there were 22 instances billed for more than 12 hours per day, with one instance billed for 21 hours in one day and the contract does not limit the number of hours charged for litigation services.
3. The school district's average per-pupil legal costs from 2019 through 2022 exceeded the statewide average by 456%. Specifically, during this time frame, the audit identified a total

variance of \$4.5 million dollars between the District's total legal expenditures and the Statewide average, an average variance of \$1.1 million dollars per year.

4. The District lacked information about policies or procedures adopted to minimize legal costs or provide evidence that such measures would not reduce costs.

Following receipt of these findings, OFAC instituted its own review of whether the District's legal services contract complied with Department regulation.

IV. Relevant Statutory and Regulatory Framework

The Department adopted amended regulations in 2008 to ensure the effective and efficient expenditure of school district funds and to promote greater oversight and transparency in school district budgets. Included in these new rules was the requirement for districts to establish a policy to minimize the cost of public relations and professional services.

The relevant regulations regarding the use and procurement of legal services is set forth below.

- **N.J.A.C. 6A:23A-5.2(a)2:** District policy shall contain procedures to ensure the prudent use of legal services by employees and district boards of education members and the use of those services are tracked.
- **N.J.A.C. 6A:23A-5.2(a)3:** School 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 the procedures would not result in a reduction of costs:
 - i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;
 - ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in school district materials such as policies, administrative regulations, or guidance available through professional source materials;
 - iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the school district offices and a process to determine whether the request warrants legal advice or if legal advice is necessary; and
 - iv. A provision to maintain a log of all legal counsel contact, including name of legal counsel contacted, date of contact, issue discussed, and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved.
- **N.J.A.C. 6A:23A-5.2(a)4:** A provision that requires contracts for legal services to comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:
 - i. Advance payments shall be prohibited;
 - ii. Services to be provided shall be described in detail in the contract;

- iii. Invoices for payment shall itemize the services provided for the billing period; and
 - iv. Payment shall be only for services actually provided.
- **N.J.A.C. 6A:23A-5.2(a)5:** Professional Services contracts are issued in a deliberative and efficient manner that ensures the school district receives the highest quality services at a fair and competitive price or through a shared services arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process.

V. Findings:

A. Advance Payments Prohibited

Pursuant to N.J.A.C. 6A:23A-5.2(a)(4)(i), advance payments for legal services are prohibited. Although Inzelbuch submits invoices after services are rendered, the guaranteed \$50,000 monthly retainer functions as an advance payment since it is not based on the actual hours worked or itemized services performed, but is approved by the Board well in advance of the submission of an invoice. The \$50,000 is listed as a “flat fee” in the contract and is not predicated on an hourly rate, number of hours worked, or number of days worked.

Inzelbuch’s submission of an invoice for the \$50,000 portion of his compensation does list the dates in a month he provided services and lists the services provided. Typically, the description of the services are listed as “communications” with a particular named person or someone identified by initials. A comparison of the invoices submitted for litigation services (\$475 hourly) and invoices submitted for General Counsel services (\$50,000 monthly) reveal there is, at times, an overlap of services on the same dates, but it cannot be determined by Inzelbuch’s method of billing if the hours for the services between the Litigation and General Counsel services overlap.

During a November 14, 2024, interview, Mr. Bender, in response to questions about the amount of services provided by Inzelbuch, expressed that Inzelbuch is a highly regarded professional and Inzelbuch’s proactive involvement within the Lakewood community has quelled some of the chaos that previously existed between the Board and community. As a result, he asserted that the District has a better education program and saves money. Mr. Bender said that not only did he rely upon the advice of legal experts in the field regarding Inzelbuch’s qualifications, but he also relied upon the opinions of the State Monitors who have the authority to override the Board.

Concerning the \$50,000 retainer, Mr. Bender stated that Inzelbuch receives numerous calls from himself and others in the community and if he had to document all the calls, he would spend more time doing that than providing services and, overall, it could be detrimental to selectively take calls.

N.J.A.C. 6A:23A-5.2(a)(4) clearly prohibits the use of any advance payments. The Board’s position that Inzelbuch is paid his monthly retainer on the first day of the following month does not cure this issue, since he is guaranteed that payment under the contract without being required

to demonstrate the work he did to earn the compensation. It is important to note that this review does not seek to explore Inzelbuch's qualifications or the quality of Inzelbuch's legal services to the District, but rather to determine whether the regulatory requirements designed to minimize the costs of the professional services have been followed. The retainer amount is decided for the year, in advance of the service, regardless of when payment is actually issued and irrespective of the actual work performed. Accordingly, this type of payment arrangement is contrary to the regulatory prohibition against advance payments and the Board shall ensure that payment for all professional service agreements, including legal services, are made based on itemized and detailed invoice submissions.

B. Payments for Services Rendered

In accordance with N.J.A.C. 6A:23A-5.2(a)(4)(iii) and (iv), invoices for payment must itemize services provided for the billing period and payment shall only be made for services rendered. The flat-fee arrangement does not provide sufficient documentation to verify that services rendered align with the monthly retainer amount. Without a breakdown of hours worked for specific tasks completed, it is impossible to assess the fairness of the compensation. The lack of adequate documentation evidencing the actual hours spent makes it impossible to determine whether the services rendered equaled the amount billed.

In contrast, Inzelbuch's invoices for Litigation Services are submitted monthly and do reflect a level of detail consistent with typical legal billing practice. The invoices make clear the rate of pay, the number of hours worked, and a detailed description of services performed on each date. The Board must ensure that all invoices received for legal services comply with the regulatory requirements and are fully itemized.

C. Inadequate Cost-Control Measures:

The school district's legal costs significantly exceed the Statewide average. The discrepancy may be due in part to its unique demographic profile, which includes a large nonpublic student population excluded from per-pupil cost calculations and may skew comparisons to public school districts of similar sizes. The demographic profile, however, does not account for the entire percentage difference in the District's legal costs; neither the District nor Inzelbuch have explained why his services as General Counsel to the District would be so disproportionately impacted by the size of the nonpublic student population. Moreover, regardless of possible causes, the school district remains responsible for addressing excessive costs and demonstrating cost-effectiveness. The District has not implemented the cost-control measures required under N.J.A.C. 6A:23A-5.2(a)(3). As set forth above under section IV, districts with legal costs that exceed 130 percent of the Statewide average per pupil amount should establish procedures to curtail those costs or provide evidence why those procedures would not result in cost reductions.

In summary, the procedures are:

- Limiting the number of authorized contacts for legal counsel.
- Establishing criteria to avoid unnecessary legal counsel use.

- Requiring written requests for legal advice.
- Maintaining a contact log to ensure billing accuracy.

The District failed to provide evidence that it complied with these cost-control measures, instead claiming that if the per pupil costs were based on the total student enrollment, including nonpublic students, it would not exceed the Statewide average. However, due to the significant discrepancy between the statewide average per pupil amounts as compared to the District's amounts for legal services, as identified in the Auditor's Report, that is an insufficient basis for failing to comply with the cost-control measures required by regulation.

D. Compliance with Procurement Procedures.

The Board has not issued a public Request for Proposals (RFP) for legal services since 2018, which limits opportunities to assess competitive options. The Board's last public posting of a Legal Services Request for Proposal (RFP-1819) had a due date of July 31, 2018.

On April 21, 2021, outside counsel for the board provided an opinion that there was no obligation to engage in an RFP process for the reappointment of Inzelbuch due to the sensitivity and credentials needed for this service. As such, the Board's position is that discussion between Board members regarding contracted legal services fulfills the obligation of a deliberative process.

During the interview with Inzelbuch on December 3, 2024, when asked to explain the special credentials referred to by outside counsel, Inzelbuch stated that he has "special education knowledge and experience with parents who sue districts. I also believe it was my credentials in dealing with Covid." Inzelbuch went on to state that, "[s]pecifically, I am one of the only attorneys in the State whose private practice focuses on special education matters and who represents parents "against" districts (other than Lakewood). This has allowed many Lakewood parents, for example, who are suing Lakewood to believe me as to the quality of Lakewood district programs." Inzelbuch further explained that "many nonpublic issues and Title issues have been proactively resolved due to my unique knowledge of the Lakewood nonpublic community. In addition, my significant knowledge of the district's unique finances for the last 20 plus years has allowed me to successfully represent the district in the legal arena."

While Inzelbuch's long history with the District and the Lakewood community has provided him with unique insight into its legal needs, the District failed to demonstrate through the course of this review how it complies with the regulatory requirement to issue a legal services contract in a deliberative and efficient manner to ensure a fair and competitive price. Although there is no requirement to utilize a specific procurement process, the regulations do require a deliberate process, which may be satisfied through a request for proposals (RFP) *or other comparable process*.

In addition to the requirements set forth at N.J.A.C. 6A:23A-5.3, in determining whether a school district has implemented all potential administrative efficiencies and/or eliminated all excessive non-instructional costs, the executive county superintendent shall review the efficiency standards set forth at N.J.A.C. 6A:23A-9.3(c). Specifically, subsection N.J.A.C. 6A:23A-9.3(c)11 states that

“[e]fficient administrative and non-instructional costs shall include the school district solicits competitive proposals with fee quotes or uses a comparable process to ensure the school district receives the highest quality services at a fair and competitive price prior to the award of contracts for professional services.”

Reviewing the rates for other legal services approved by the Board at the January 24, 2024, board meeting reveals the following rates of the District’s other contracted legal service providers:

- Special Counsel Agreement with Methfessel & Werbel, P.C: \$180 for partners and \$175 for associates.
- Special Counsel Agreement with David B. Rubin, P.C., Attorney at Law: \$180 per hour
- Special Counsel Agreement with Greenberg, Dauber, Epstein & Tucker: \$350 per hour

The hourly rates noted above for the first two firms reflect rates comparable to other law firms providing services to school boards similar to the services Inzelbuch provides. Inzelbuch’s \$475 hourly rate is not only not comparable to other firms who represent public school districts, it significantly exceeds the rates charged by these firms. When this fact is coupled with a lack of evidence of an RFP, the solicitation of competitive quotes, or other comparable processes at any point since 2018, it is clear the District failed to comply with the requirements of N.J.A.C. 6A:23A-5.2(a)(5) and N.J.A.C. 6A:23A-9.3(c)11.

V. Conclusion and Required Actions

Based on the information set forth above, OFAC finds the following:

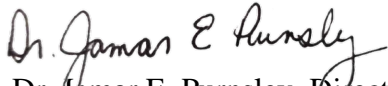
- The District violated **N.J.A.C. 6A:23A-5.2(a)(4)** by failing to ensure that payments are based on services rendered and supported by detailed documentation.
- The District violated **N.J.A.C. 6A:23A-5.2(a)3** by failing to establish cost-control measures.
- The Board violated **N.J.A.C. 6A:23A-5.2(a)5** and **N.J.A.C. 6A:23A-9.3(c)11** by failing to provide evidence that it used a deliberative and efficient manner for procuring legal services, either using an RFP or other comparable process.

Corrective Actions Required:

Utilizing the process outlined in the attached “Procedures for LEA/Agency Response, Corrective Action Plan and Appeal Process,” pursuant to N.J.A.C. 6A:23A-5.6, the Lakewood Board of Education is required 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 at a public meeting and the board approved a corrective action plan which addresses the findings raised in the report and/or submits an appeal of any findings in dispute. A copy of the resolution and the approved corrective action plan and/or notice of intent to 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 school district's website. Should you have any questions, please contact Thomas C. Martin, Manager, Investigations Unit, at (609) 376-3606, Thomas.martin@doe.nj.gov.

Sincerely,



Dr. Jamar E. Purnsley, Director
Office of Fiscal Accountability and Compliance

Attachment

c: Kevin Dehmer
Laura Console
Ambrose Duckett
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Susan Naples