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January 17, 2013

Dover School Board
C/O Mrs. Jean Briggs Badger, Superintendent
Dover School District
McConnell Center
61 Locust Street, Suite 409
Dover, NH 03820-4181

Re: Report

Dear Board Members:

Introduction: I was asked to investigate and prepare a report answering the following four questions regarding the Dover School District's expenditure of just under \$690,000 for equipment and materials during June 2012.

1. *Did the Administration violate the fiscal policies or procedures of the School Board or the City Council?*
2. *Was any money spent without authorization of the School Board?*
3. *Was a \$1.56 million dollar "surplus" concealed from parents, taxpayers, stakeholders, School Board and City Council?*
4. *Did the conduct of the School Board, City Council or that of any member of either body with respect to the expenditures in issue, violate the substantive rules or rules of decorum adopted by either body?*

A list of the records I relied on to investigate and prepare the report is attached as Appendix 1. Because all the relevant information was included in the records, there was

no need for me to interview those involved in order to conduct the investigation and prepare the report.

Introduction: The fiscal year for the City of Dover, including the School District, is July 1 through June 30. The budget is prepared during the winter and submitted to the City Council for review in April and approval by June 15. Charter, C6 -5. When the budget is prepared, many, if not most, of the expenses and revenues listed are estimates, because the budget covers a fiscal year that does not end until 15 months later, on June 30 of the following year.

Appropriations in the budget are authorizations to spend money for expenses incurred during the fiscal year for which the budget was prepared. Unanticipated or higher than anticipated expenditures must be paid out of existing appropriations, unless the City Council approves a supplemental appropriation. The most common examples of unanticipated or higher than anticipated expenses for school districts are out-of-district tuition for special education students who move into the district during the fiscal year, health insurance premiums, utility costs, and expenses downloaded by other government entities, such as the state mandated increase in payments to the New Hampshire Retirement System. All appropriations, except those for capital expenditures or dedicated funds, lapse at the close of the fiscal year to the extent that they have not either been expended or encumbered. Charter, C6-10. General accounting principles applicable to school districts do not allow the use of money from one fiscal year to prepay expenses incurred during the following fiscal year.

Because the authority to spend money is based on appropriations, not revenues, the School District cannot spend more than has been appropriated by the City Council, even if revenue greatly exceeds the estimate used to prepare the budget. However, the reverse is not true. If revenues are below the estimate, the School District must cut expenditures below the amount appropriated to avoid a cash flow problem because of the revenue shortfall.

Facts: The 2011-2012 operating budget for the School District was \$41,677,206. Because of the need to be sure that money is on hand to meet all expenses, whether anticipated or not, many school administrators delay one time purchases, such as new equipment, computer software and the like, until late in the fiscal year to be sure that there will be enough money in the budget (unexpended appropriations) and cash flow (revenue) to pay for them. During the 2011-12 fiscal year, the Administration postponed many one-time purchases for curriculum, technology and safety items because of an expected increase, the exact amount of which was unknown until mid-way through the

fiscal year, in the District's payment to the New Hampshire Retirement System and because of a revenue shortfall, the exact amount of which was unknown until late in the year.

At the end of the third quarter, March 31, 2012, the FY/12 budget projections were as stated in Business Administrator, Mike Limanni's April 9, 2012 memo to the Superintendent. At that time, he was anticipating \$500,000 less revenue than the amount estimated at the time the FY/12 budget was prepared. As of March 31, \$27,295,555.12 of the school budget had been expended. An additional \$12,993,226.61 had been encumbered, leaving an unencumbered balance of \$1,561,429.17 as of the end of the third quarter. As noted in Mr. Limanni's memo, some wage related items that must be paid had not been encumbered. The \$1,561,429.17 unencumbered balance represented 3.73% of the school district's operating budget with three months left to go in the fiscal year. See Appendix 2.

On May 15, 2012, the School Leadership Team met. One of the items on the agenda was a budget update from Mr. Limanni. At that point, the District was close enough to the end of the fiscal year to know that there would be enough unexpended appropriations and cash flow to meet all expenses including many of the one-time equipment purchases that had been postponed from earlier in the fiscal year. Department heads within the school district were asked to submit priority requests for those purchases. The dates that the lists were prepared and submitted were between May 15, 2012 and June 1, 2012. On June 12th, the priority list was discussed at a Leadership Team meeting. The FY12 deadline for entering purchase orders into the system was June 21st. The purchases totaling approximately \$690,000 were made before the end of the fiscal year. See Appendix 2.

1. *Did the Administration violate the fiscal policies or procedures of the School Board or the City Council?* The answer to this question is no. In making the expenditures, the School Administration did not over expend the School Department's operating budget, nor did the Administration spend money for a purpose for which no appropriation had been made. See School Department Operating Budget for the fiscal year ending June 30, 2012 in Appendix 2. Under the Charter, although the City Council appropriates the money for all departments, including the School District, School officials have the authority to manage the school operating budget and to transfer fund balances within the school budget. Charter C 6-8. See also School Board Policy DBK, which allows transfers of funds between line items if deemed necessary. The City of Dover Administrative Code, by its terms, does not apply to the School District. The

School District is not listed in Section 3-2 of the Code, nor are any school officials listed in the Code.

The School District has adopted budget policies. Policy DBI reads as follows,

“The school budget serves as a control to direct and limit the expenditure of funds. Overall responsibility for this control rests with the Superintendent, who will establish the procedures for budget control and reporting throughout the District.”

“The total amounts which may be expended during the fiscal year for the operation of the school system are set forth in the budget.”

Policy BDD, Board Superintendent Relationship, provides that legislation of policies is a primary function of the School Board, while execution of the policies is a primary function of the Superintendent. In this policy, the Board delegates its executive powers to the Superintendent so that the Superintendent can manage the schools within the Board’s policies. This policy makes the Superintendent responsible for administration of Board policies, execution of Board decisions, operation of school programs and keeping the School Board informed about school operations and issues. The policy provides that the Board will give the Superintendent full administrative authority for properly discharging professional duties.

Policy DJE, Bidding Requirements, reads in pertinent part,

“All contracts for and purchases of supplies, materials, equipment, and contractual services in the amount of \$4,000 or more, shall be based, when feasible, on at least three competitive bids. All purchases of less than \$4,000 but over \$1,000, unless on an emergency basis, shall be based on three written quotations. All written quotations are to be sent to the office of the Superintendent for processing. All purchases made in the open market shall be consummated after careful planning.”

The policy also provides that the School Board can waive the requirements for bidding on purchases involving professional services and in emergency or unusual circumstances.

The School Board makes the decision to award competitive bids and/or to waive the competitive bid policy, in which case the purchase is approved by the Board. A CTC lift recommended by the Primex Safety Study was approved by both the “old” board last Fall and the current board. At the June 11 School Board meeting, a SOPHOS Purchase Agreement was approved by the Board. At the June 18, 2012 School Board meeting, the

Board awarded competitive bids for CISCO 2960 Switches, Acer Aspire Notebooks, 19 inch LCD Monitors, Nexlink 3425 SFF Mini Tower PCs, an Alignment System for the Automotive Technology Lab and an Electronic Security System.

Individual purchases not subject to the competitive bid requirements do not require separate approval by the School Board. For those items not subject to the competitive bid requirement, Policy DJ, Purchasing, assigns to the Superintendent “the responsibility for the quality and quantity of purchases made. The prime guidelines governing this responsibility are that all purchases fall within the framework of budgetary limitations and that they be consistent with the approved educational goals and programs of the District.”

The requirement that purchases fall within the framework of budgetary limitations means that the total appropriations may not be over expended and that there must have been money in the function line of the budget from which the money for that purchase will be taken. For city school districts funded by appropriations from the city council, the function lines are the lines on the Department of Revenue Administration (DRA)MS-26c form. The categories are extremely broad, there being only 38 of them, including the eight lines for fund transfers. A purchase falls within the framework of budgetary limitations, if it can be plugged into one of the function lines on the MS-26c and provided that money was appropriated for that function line.

The other requirement of Policy DJ, Purchasing, is that the purchases be consistent with the approved educational goals and programs of the District. Provided that the purchases are consistent with the approved educational goals and programs of the District and are not subject to the District’s competitive bid requirement, the Superintendent has the authority to make those purchases and does not have to seek school board approval for each purchase either before or after it is made. Policy DJ provides further that contracts and agreements for goods and services must be submitted to the SAU business office and accompanied by a purchase order. “Those contracts and agreements may only be executed by the Superintendent of Schools or Superintendent’s designee...” An additional financial control is the manifest. The manifest must be approved by the school board before checks are issued. Approval of the manifest is part of the agenda for regular school board meetings.

The rest of the June 2012 purchases were curriculum, technology and safety materials and equipment. The curriculum purchases were based on the curriculum plans adopted by the school board. Curriculum revision and material acquisition to implement the revised Health curriculum has been an ongoing process since a new curriculum was

adopted in the 1998-99 school year. That is still the curriculum plan in effect for the elementary school. For the middle and high schools, the scope and sequence of the curriculum was changed in 2005-06. While preparing the FY/12 budget, the School Board also discussed curriculum. The math and social studies curriculum materials were discussed at the School Board's January 24, 2011 budget workshop. Curriculum materials were discussed again at the February 7, 2011 budget workshop and at the School Board's February 13, 2012 meeting. The social studies curriculum was discussed at the April 9, 2012 meeting. The April 9, 2012 minutes include a review of curriculum, health, science and STEM.

The technology purchases were based on a Technology Plan approved by the School Board. Technology needs were discussed at the January 24, 2011 school board budget workshop and again at the February 7, 2011 budget workshop. The technology needs, including the desktop systems for the technology department and the mobile lab were also discussed at the February 7, 2011 budget workshop. At the May 14, 2012 meeting, Chris Roberge discussed with the Board recent and planned additions to hardware and software needed for the schools and the difficulty of meeting teacher/student hardware and software needs within the budget.

The safety items were based on a Primex Safety Study provided to and reviewed by the School Board. The CTC equipment is part of what was recommended by Primex. At the January 24, 2011 budget workshop the Board discussed the Primex safety recommendations for the CTC equipment and the football protective equipment. At the December 12, 2011, School Board meeting, the Board reviewed and again discussed the safety changes recommended by Primex. There is a long list of them in the minutes, with some marked as completed, some as being done, and, for some, no action planned. Individual items being purchased by the Superintendent's office, do not receive a vote from the School Board before being purchased. The School Board chair reviews and signs all manifests (payroll and accounts payable) on a weekly basis.

Based on the foregoing, I find that the Administration complied with the fiscal policies and procedures of the School Board and the Charter. School policies give the Superintendent the authority to make purchases. Individual purchases do not require separate approval by the School Board. Separate approval is required for items subject to the competitive bid policy and items for which the competitive bid requirement is waived, such as the CTC lift. Where required, separate approval was obtained from the Board either in the form of awarding competitive bids at the June 11, 2012 and June 18, 2012 school board meetings or by approval of purchases for which the bid policy had been waived (CTC and SOPHOS).

2. *Was any money spent without authorization of the School Board?* None of the purchases were made without authorization. The big ticket items such as the CTC lift were approved by the Board. The CTC lift was approved by the “old” Board in the fall of 2011, but the purchase was postponed until the Administration was sure there would be enough money left in the budget to fund it. The curriculum adoption plan, the technology plan and the Primex Safety Report, which were the basis for a number of the purchases, were brought before both the old and the new school board for review and approval. Items subject to the District’s competitive bid policy were put out to bid. Bids were awarded by vote of the School Board June 18th (CISCO Catalyst 2960 Switches, Acer Aspire Notebooks, 19” LCD Monitors, Nexlink 3425 SFF Mini Tower PCs, Alignment System, Electronic Security System). The SOPHOS contract was approved by the Board at its June 11, 2012 meeting.

Shortly after the Leadership Meeting in May 2012, at which the priority purchases were decided, the Superintendent and the Business Administrator met with the School Board Chair, discussed the fact that fiscal year 2012 funds in the range of \$500,000 to \$700,000 of unencumbered appropriations were available and the list of priority needs developed by the Administration. The Administration did not spend money in secret or in violation of policies or procedures.

3. *Was a \$1.56 million dollar “surplus” concealed from parents, tax payers, stakeholders, School Board and City Council?* There was no \$1.56 million dollar “surplus” as of March 31, 2012. The \$1.56 million dollars were part of the fiscal year 2012 operating budget. That money was the unexpended balance of appropriations as of March 31, 2012, meaning that as of March 31, 2012, out of a total appropriation of \$41,850,210.90, \$1.56 million dollars had not been expended or encumbered as of the close of the third quarter on March 31, 2012. The Business Administrator’s April 9, 2012 Memo and Condition Of Accounts show in detail, the total appropriations, expenditures, encumbrances, and unencumbered balance, by account as well as the total. See Appendix 2. The Business Administrator’s August 30, 2012 memorandum, District’s Financial Condition – 4th Quarter and the Condition of Accounts attached to it also show what was expended and how. See Appendix 2.

Business Administrator Limanni’s April 9, 2012 memo also documents that, as of April, when the school board presented the FY 13 budget to the City Council, the Administration did not know if the District would have an unencumbered fund balance/surplus at the end of the year.

The budget for each fiscal year for the School District is separate. Money appropriated during the 2011-12 fiscal year could not be used to increase appropriations for the fiscal year ending June 30, 2013 because appropriations, except for capital expenditure or dedicated funds, lapse at the close of the fiscal year or to prepay FY/13 expenses. Therefore, to suggest that some of this "surplus" could have been used to restore staff positions or other items cut from the FY/13 budget is incorrect. The appropriations that were spent during June 2012, for the equipment purchases that had been postponed, would have lapsed as of June 30, 2012, the end of FY/12.

On August 30, 2012, Mr. Limanni issued a memorandum describing the District's financial condition as of the close of the fourth quarter indicating that the School District spent \$334,799.81 less than its FY/12 appropriations. This was necessary because revenues during FY/12 were \$331,045.42 less than what was anticipated when the FY/12 budget was prepared and approved. As of August 31, 2012, the District anticipated returning \$3,754.39 to the city of Dover fund balance. The Condition Of Accounts, by object and function, for the fourth quarter, lists, by account, the appropriation, the amount expended, the amount encumbered, and the balance on hand, as well as the totals for each. The fourth quarter report shows an uncommitted budget balance of \$334,779.81. This is the balance before subtraction of the revenue shortfall of \$331,045.42. See Appendix 2.

4. *Did the conduct of the School Board, City Council or that of any member of either body with respect to the expenditures in issue, violate the substantive rules or rules of decorum adopted by either body?* The Superintendent included in the School Board Packet for the Board's September 10, 2012 meeting, Business Administrator Limanni's April 9, 2012 Memorandum and Condition of Accounts Budget Records for the 3rd Quarter of FY/12 and Mr. Limanni's August 30, 2012 Memorandum regarding the District's financial condition, including budget records for the 4th Quarter of FY/12. Also included in the School Board Packet was the list of 2011-12 end of year priority request items that had been bought in June, 2012 totaling \$687,574.00. See Appendix 2. The issue regarding the expenditures was raised by the comments of a School Board member at the September 10, 2012 School Board meeting, at which she said that \$690,000 in purchases did not come before the Board. She also said that the Board was not told of the "overage" (unexpended balance of appropriations) even though the Administration knew of it in April, and that in the past, the Superintendent would take the Administrative priorities to the Board so the Board could determine what to purchase or return to the budget. (See September 10, 2012 School Board minutes, page 7). These assertions were incorrect.

Many of the purchases covered by the \$690,000 expenditure were approved by the Board at its June 11, 2012 and June 18, 2012 meetings when the Board approved the SOPHOS purchase agreement and awarded the six competitive bid contracts. The Board member was at both meetings and voted in favor of the SOPHOS contract on the 11th. At the June 18th meeting, she voted in favor of awarding the CISCO contract, the Alignment System and the Electronic Security System. She voted in the minority against the ACER notebooks, the LCD monitors and the Mini Tower PCs. The rest of the purchases were made in accordance with the School Board's purchasing policy by the Administration, subject to the requirements, as discussed under Question #1, that the purchases fall within the framework of budgetary limitations and are consistent with the approved educational goals and programs of the District.

In addition, in reviewing the School Board minutes for the July 1, 2011 through June 30, 2012 meetings, I did not find any reference to bringing purchases not subject to the bid policy to the School Board for individual approval. At the September 24, 2012 Joint Fiscal Committee meeting, Mr. Limanni explained that during the year, the School Board spent approximately \$10 million dollars purchasing goods and that most purchases did not go before the School Board. At the same meeting, Superintendent Briggs Badger explained that she had reviewed nine years of School Board agendas for May and June and that not one of those agendas had a list of items to be bought with end of year money. Therefore, it is clear that in the past, the Board members were not given a list of items to be purchased with end of year money before the purchasing was done. The Board member has not produced a copy of a list of end of year purchases given to her in previous years. I found no indication of a past practice or unwritten policy of getting board approval before making end of year purchases or of providing a list of end of year purchases either before or after they were made. It is ironic that Superintendent Briggs Badger is being criticized when, in fact, she provided the Board with more information about end of year purchases than did previous superintendents. In addition, that information, which comprises Appendix 2, is posted on the City website under the title "Agenda Materials" along with the agenda and minutes of the September 10, 2012 School Board meeting and, thus, available to members of the public.

As discussed above, under Question 3, the Superintendent and Administration did not know in April that there would be money left over at the end of the fiscal year. After learning that there would be an unexpended balance of appropriations, the Superintendent and Business Administrator notified the Board chair that between \$600,000 and \$700,000 was available for priority end of the year purchases. The Board member's comments ignore the fact that the existence of the unspent funds was discussed, by the Superintendent, with the Board chair on or about May 17, 2012, shortly after the

Administration learned that there would be money left over and of the approximate amount.

Councilor Mike Crago, without checking with the Administration or other Board members, repeated the Board member's incorrect statements, drew incorrect conclusions from them, and reported his conclusions to the press. Mr. Crago wrote a letter to Foster's Daily Democrat which was published in the Community Commentary section on September 20, 2012. In the letter, he accused the Superintendent and the Board chair of unethical behavior and of misleading city officials, parents and taxpayers by making unilateral budget decisions for the School District without the School Board's informed consent or authorization. The newspapers also published articles repeating Mr. Crago's claims, in the Manchester Union Leader on September 18th and 24th and in Foster's, on September 20th, 24th and 25th. Mr. Crago also published a number of accusatory comments on Facebook.

Based on the foregoing, I find nothing to support either Mr. Crago's or the Board member's assertions against the Superintendent or the Administration. The rules concerning expenditures were not violated.

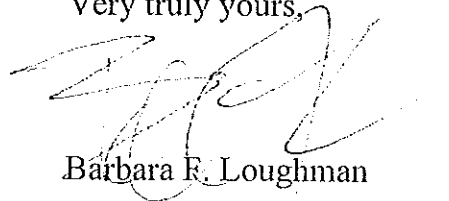
Under a broader interpretation of what is meant by "involved in making the expenditures" to incorporate discussion of the expenditures, I do not believe that any members of the City Council violated the procedural rules and decorum guidelines of the City Council, for the reason that those guidelines appear to regulate the conduct of members of the City Council when acting in their official capacity as members of the City Council. I do not interpret them as restricting the rights of City Council members to comment as private citizens on matters of interest to them. Similarly, the School Board Bylaws and Code of Ethics are directed at actions taken by School Board members in their official capacity as Board members and not actions taken by them in their private capacity as citizens.

While one would hope that public officials would be careful not to make or repeat incorrect statements of fact, there is nothing in the Rules of Decorum for City Councilors or the School Board Bylaws or Member Code of Ethics that applies to members of either body who make incorrect statements of fact, repeat incorrect statements of fact, draw the wrong conclusions from incorrect statements of fact, or express those opinions in public meetings or to members of the public or press. However, the School Board Member Code of Ethics requires board members to "respect the confidentiality of information that is privileged under applicable law or is received in confidence or non public session." Councilor Michael Crago's September 22 Facebook posting includes the following:

“I have heard that a compensation increase is being considered for Superintendent Briggs Badger, in spite of her ignoring Dover’s Citizen demand for transparency and sustainable management excellence.”

The question arises, where did Mr. Crago get this information? The Right To Know Law allows a public body to go into non public session to discuss compensation of a public employee. RSA 91-A:3, II (a). When a school board considers or discusses changing a superintendent’s compensation it normally does so in non public session I found nothing in the school board agendas or minutes about considering or discussing an increase in the superintendent’s compensation. Furthermore, Mr. Crago did not say he read that the Board was considering a compensation increase; he said he “heard” it. Information about such discussions is not public information and should not have been disclosed to Mr. Crago or anyone else. I recommend that the Board Members review the requirements of confidentiality in the School Board Member Code of Ethics.

Very truly yours,



Barbara R. Loughman

BFL/rc
Enclosures