

BOARD OF EDUCATION
CLIFTON, NEW JERSEY 07013
RESOLUTION #3/4/09 - 264

APPROVAL OF CORRECTIVE ACTION PLAN


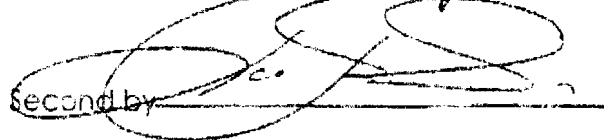
WHEREAS, the Clifton Board of Education received a letter dated June 19, 2008 from the Office of Fiscal Accountability and Compliance of the Department of Education advising that a review of the site acquisition and financing of the project for the high school annex located at 290 Brighton Road would be conducted; and

WHEREAS, the Office of Fiscal Accountability and Compliance conducted an audit of the matter from June 26, 2008 through February 10, 2009 and issued the Report of Examination, as appended; and

WHEREAS, the Report of Examination was discussed by the Clifton Board of Education during its meeting on February 11, 2009; and

WHEREAS, a Corrective Action Plan, as appended, has been prepared in response to the recommendations made in the Report of Examination;

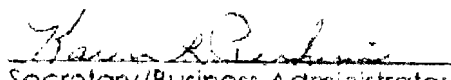
NOW, THEREFORE, BE IT RESOLVED, that the Clifton Board of Education approve the appended Corrective Action Plan to be submitted to the Office of Fiscal Accountability and Compliance in response to the Report of Examination.

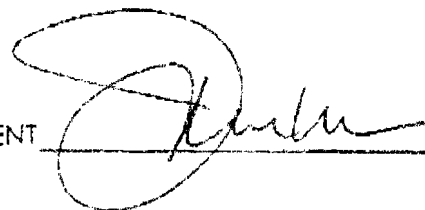
Introduced by 
Second by 

DATE: March 4, 2009

VOTE: YES: Fraulo, Gagnon, Renta, St. Clair, Taban, Traier & Urciuoli
NO: Graupe & Patchell

ATTEST:


Secretary/Business Administrator

FRESIDENT 

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
INVESTIGATIONS UNIT

CLIFTON SCHOOL DISTRICT
CONSTRUCTION AND OTHER IRREGULARITIES
OFAC CASE #1418

REPORT OF EXAMINATION
FEBRUARY 2009

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
INVESTIGATIONS UNIT**

**REPORT OF EXAMINATION – FEBRUARY 2009
CLIFTON SCHOOL DISTRICT - CONSTRUCTION AND OTHER IRREGULARITIES**

EXECUTIVE SUMMARY

Beginning in June 2008, the Office of Fiscal Accountability and Compliance (OFAC) received various allegations from concerned citizens alleging that the Clifton Board of Education (board) had acted inappropriately to gain approval for a 2004 school construction referendum to acquire and renovate a structure known as 290 Brighton Road for use as an annex to the Clifton High School. The complainants also alleged that after the referendum was approved; certain subsequent board actions were contrary to statute, code, or district policy.

The complainants specifically stated that in reference to the proposed 290 Brighton Road project the board: (1) withheld crucial adverse information from the public; (2) failed to exercise due diligence in determining the impact of chemicals previously stored at the site; (3) failed to exercise due diligence when it determined the value of the 290 Brighton Road site; and (4) afforded the seller overly generous terms in the contract of sale. Although not directly related to the school construction project, some of the complainants also expressed the belief that certain board members had engaged in actions that violated provisions of the School Ethics Act or Clifton School District policies. The complainants also submitted information identifying numerous instances that they indicated were irregularities necessitating disclosure and corrective action. The OFAC reviewed those issues presented, but only included in this report those issues that were deemed to be material to the investigation of the subject matter under review and under the purview of OFAC.

Based upon the information received, the OFAC initiated an investigation to determine the validity of the complaints. The investigation included interviews with district staff including the business administrator, director of facilities, school architect, the board attorney and other individuals assigned with oversight or associated with the project. Historical documents memorializing the site selection, referendum, site acquisition and site approval process were examined in detail with particular attention afforded to concerns that chemicals previously stored at the site rendered it unsuitable for utilization as an education facility.

The completed investigation included a review of 11 specific concerns. Only two issues, the failure to obtain prior approval for changes orders that exceed 20 percent of the total contract amount and an issue of noncompliance to district policy concerning facility usage resulted in findings requiring corrective action. The remaining issues were unsubstantiated or not within the purview of the OFAC. Each issue is explained in detail in the remainder of this report.

As a result of these findings, the district is directed to develop a Corrective Action Plan (CAP) identifying the remedial action it will take to address those deficiencies that can be corrected as well as the actions it will implement to ensure future compliance with statute, code, and district policies.

ALLEGATIONS, CONCLUSIONS AND RECOMMENDATIONS

1. The Clifton Board of Education withheld crucial adverse information from the public concerning the 290 Brighton Road School construction site.

Based upon serious overcrowding at Clifton High School during 2004, the board, acting on a recommendation from a board committee established to review potential school sites, recommended the purchase of an industrial building site at 290 Brighton Road for renovation as an annex to the high school. The site was an empty and unoccupied warehouse owned by Mayer Textile Machine Corporation (seller). The seller also owned the property and structures known as 310 Brighton Road. The structures located on those properties were connected by an elevated enclosed walkway. The board sought to purchase only the 290 Brighton Road site.

The complainants allege that the board failed to fully inform the public about several issues associated with the site that they identified as: 290 Brighton Road had been listed as a hazardous waste generator by the New Jersey Department of Environmental Protection (NJDEP), existing zoning ordinances prohibited locating a school on the site, the site lacked an appropriate recreational area for outside activities, commercial traffic in the area posed a hazard to students who would walk to the school and, a stream and railroad right-of-way was located to the immediate rear of the site.

In preparation of placing the matter before the public for a vote, the board proceeded with the actions necessary to determine the cost to acquire and modify the site to serve as a school. It was estimated by the Clifton School District (district) architect that the project would require voter approval of a 15 million dollar referendum. Prior to a December 14, 2004 referendum vote, the district disseminated public information that explained the need for the project and the impact that approval of the referendum would have on students and taxpayers. The then sitting board, after considering the various issues, obtaining an environmental assessment of the property and receiving Department of Education approval as per statute and code, presented the question to the voters by referendum in December 2004. The voters approved the referendum by a vote of 3,109 approving and 1,444 against. Following approval of the referendum the district proceeded with actions necessary to bring the project to fruition.

The complainants allege that had the district presented the voters with a full and balanced disclosure of factors impacting the site as listed in the preceding paragraphs, the voters would not have approved the referendum question.

In reference to the complainant's claims as listed above, documents maintained by the NJDEP and the district confirmed that a previous operator at 290 Brighton Road did use and store limited amounts of hazardous substances and did generate small amounts of hazardous waste; however, a Phase 1 Environmental Assessment conducted at the site did not identify any violations, spills or recognized environmental conditions associated with the property. The complainants are correct in stating that a high school was not a permitted use under the zoning ordinances as they existed in 2004. The district acknowledged that fact and sought the needed variances from the Clifton Board

Report of Examination - February 2009
Clifton School District - Construction and Other Irregularities
Page 3

of Adjunct. The remaining issues were considered by the district and were determined to have little or no impact on the project; a determination that was later supported by approval of the zoning variance after lengthy litigation.

To further examine the allegation, the OFAC investigator reviewed two documents that were distributed by the district prior to the December 2004 referendum. The first document was a letter dated, December 2004, that was addressed to, "Dear Clifton Senior Citizens." A reading of the letter revealed that it contained reasons to approve the referendum and omitted any negative criteria. The second document was undated and is known as, "The Case for Space." Again, this document, consisting of a one page, two-sided document explained the necessity for approving the 2004 referendum to renovate the 290 Brighton Road site. Although the document included one paragraph addressing the cost of purchasing and renovating the property, the document specifically stated that, "Total taxes for debt service will not increase in 2005-06 and future years with the approval of this new construction project."

The complainants argue that the voters should have been advised of the potential environmental issues at the site and that a zoning variance was required to allow for construction of a school in an industrial zone. The complainants also assert that the district should have informed the public that the site lacked an area for recreation, a stream and an active railroad right-of-way was located a short distance from the rear of the school, and students who walked to school would be walking in an industrial area. The complainants also took issue with the fact that the district failed to indicate to Clifton taxpayers that operational costs for the district would increase due to the required staffing and operation of the facility.

In response, the district stated that the information presented to the public was accurate. As to the issue regarding a variance, the district was aware that a variance would be required; however, it was not anticipated that a school, identified as an inherently beneficial use in land use case law, would result in such extensive and costly litigation. In addressing environmental issues, the district stated that it was the protracted litigation and the resultant construction delays that required site remediation when new environmental regulations became effective two years later in January 2007. Additionally, there was no need to present information concerning environmental issues since the seller had provided the buyer with a letter from the NJDEP indicating that the site was not subject to the Industrial Site Recovery Act. As such, the district had no reason to believe that there were any known environmental issues that would preclude locating a school on the site. The district further states that it conducted a Phase I Environmental Site Assessment that "revealed no evidence of recognized environmental conditions." The district also notified the NJDEP, Clifton Planning Board and the New Jersey Department of Education (NJDOE) that it was seeking to locate a school at the site. The NJDOE authorized the district to proceed after reviewing the application and none of the other reviewing agencies disapproved. In reference to the stream and railroad tracks that are located to the rear of the school, the district stated that a tall fence, topped with barbed wire, separates the school property from the stream and railroad.

A determination as to what information must be included in publicly funded materials, may only be determined through litigation. Several cases have been litigated including Citizens to Protect Public Funds v. Parsippany-Troy Hills 13 N.J.172,98A.2d 673 (1993), where the New Jersey Supreme

Report of Examination -- February 2009
Clifton School District - Construction and Other Irregularities
Page 4

Court held that where public funds are being used to promote a referendum, a fair presentation of the facts is required to include all consequences, both good and bad of the proposal, not only the anticipated improvement in educational opportunities, but also the increased tax rate and such other less desirable consequences as may be foreseen.

In Schettino v. Ridgefield BOE, 93 N.J.A.R.2d (EDU) 224 the Administrative Law Judge concluded that the board exceeded its lawful authority in disseminating supportive informational flyers and that the proper remedy was injunctive relief to insure that other viewpoints were equally represented.

In Enterline v. Hillsborough Township BOE 95 N.J.A.R.2d (EDU)114 the Commissioner of Education affirmed the initial decision of the Administrative Law Judge who found that a school board's newsletter promoting a new high school bond issue was improper advocacy.

The OFAC investigator also noted that in 1975, the New Jersey Attorney General issued Formal Opinion No. 21-1975, and stated that, "in order to allow the voters to intelligently consider the merits of a public question, they must have access to all of government's information bearing on the issue."

CONCLUSION

Based upon the documents reviewed and the decisions listed above, school districts are obligated to present the facts, both good and bad, that impact on the referendum. The determination of the amount of information that must be disclosed based on the materiality of the information is a matter for litigation. In this case, the time to present the matter for litigation has passed and a finding in favor of the complainants might be moot considering it has been four years since the referendum.

In conclusion, absent any verifiable violation of educational statute, code or a judicial determination in favor of the complainants, the OFAC is unable to substantiate the allegation that the board withheld crucial adverse information from the public concerning the 290 Brighton Road construction site.

2. The board failed to exercise due diligence in determining the impact of chemicals previously stored at the 290 Brighton Road site.

The complainants assert that the district failed to take the steps necessary to ensure that the 290 Brighton Road site was an appropriate location for an educational facility. They questioned the placement of such a facility in an industrial zone at a site that previously stored an assortment of chemicals that, if improperly handled, could pose health hazards to students and staff.

In response, the district states that the seller had obtained a letter from the NJDEP, dated May 7, 2003, indicating that the 290 Brighton Road site is not subject to the Industrial Site Recovery Act. The district also engaged the services of a geotechnical engineering and environmental consultant

Report of Examination - February 2009
Clifton School District - Construction and Other Irregularities
Page 5

firm that conducted a Phase I Environmental Assessment (ESA) of the site that revealed no evidence of recognized environmental hazards in connection with the subject property.

The American Society of Testing and Materials has established standards and practices for environmental site assessments (ESA) in commercial real estate transactions to standardize "Environmental Due Diligence." The standards were established to define the extent and limit of appropriate inquiry as indicated in the phrase "good commercial or customary practice in the marketplace." The standards include three levels of inquiry: A transaction screen process, a Phase I ESA and a Phase II ESA.

The district requested and received a Phase I ESA which is a more comprehensive assessment than the transaction screen but does not include sampling and analysis. The Phase I ESA report indicated that there were no violations of hazardous waste regulations reported for the site. The report did indicate that 230 and 310 Brighton Road are listed in the leaking underground Storage Tank Database; however, those sites have received No Further Action determinations from the NJDEP. The report concluded that the assessment has revealed no evidence of Recognized Environmental Conditions at the site, but includes qualifying statements that the scope of work did not address compliance with any federal, state, or local laws, rules, regulations, ordinances or codes and further directed that an environmental site investigation would be required to characterize ground water and soil quality.

Based on the Phase I ESA, prior to purchasing the property, the district obtained a Phase II ESA to determine the presence of contaminants in the soil and ground water. Although some ground water contaminants were identified to the rear of the site, remediation was not required until implementation of the Madden Law on January 11, 2007. Since construction was not completed by that date, the site was and is subject to additional regulatory actions under the jurisdiction of the NJDEP. It should also be noted that the district has received a conditional No Further Action letter from the NJDEP dated December 11, 2008.

CONCLUSION

Since the OFAC has not identified any educational statute or code that requires actions in excess of those implemented by the district, the OFAC is unable to substantiate the allegation that the board failed to exercise due diligence in assessing the impact of chemicals previously stored at the 290 Brighton Road site

3. The board failed to exercise due diligence when it determined the value of the 290 Brighton Road site.

The complainants have stated that the board overpaid for the property, especially when one considers potential contaminants and other mitigating site factors such as the absence of a sufficient area for on-site recreation.

The OFAC investigator reviewed an assortment of documents pertinent to this matter, including property appraisals, environmental site assessments, similar property sales and the contract of sale for 290 Brighton Road. The investigator noted that the buyer retained the services of Appraisal Consultant's Corporation and on January 27, 2004, received an appraisal of \$4,225,000.00 for the property. As negotiations progressed, on October 21, 2004, based upon the board attorney's request, the appraiser updated the report and expressed the opinion that based, upon changing market conditions, the value of the property at the time of sale would be \$4,668,000.00. This represented an increase of \$443,000.00 or 10.49 percent in value for a period of nine months. The investigator noted that the appraisals included wording that "It is further understood that our estimated value assumes that the site and improvements have NO forms of any contamination."

The board eventually purchased the site on May 10, 2005, for the contracted price of \$5 million. The sale price included \$4.7 million for the site plus \$300,000.00 to cover the cost of various improvements to the adjoining building. The improvements were necessary following the demolition of the enclosed elevated walkway connecting the two properties. The sale was consummated by the board, based upon an independent appraisal conducted by a company licensed to perform such appraisals and based upon the approval to acquire the site issued by the NJDOE.

CONCLUSION

The value of real property is often a variable amount determined by negotiation between the seller and buyer. It appears that the board acted upon the best information available. As such, there is insufficient evidence to sustain the allegation that the board failed to exercise due diligence when it determined the value of the 290 Brighton Road site.

4. The board afforded the seller overly generous terms in the contract for sale.

In addition to the complainant's claims that the board overpaid for the site, they have alleged that the board approved a contract that included overly generous terms. Those terms include funded improvements to an adjacent property, an access easement and the assumption of all liability for environmental hazards that may be present on or at the site.

As noted in allegation number three, the appraisal firm hired by the district estimated the value of the property at \$4,668,000.00 prior to the sale. The OFAC investigator's review of the contract of sale confirmed that the board also agreed to certain site improvements and a reciprocal easement. The district assumed the cost of the site improvements. The amount, \$300,000.00, was included in the contract of sale as part of the purchase price. The OFAC review revealed that the additional cost assumed by the district was negotiated to reimburse the seller for anticipated costs associated with the removal of the enclosed elevated walkway that connected 290 and 310 Brighton Road as well as costs associated with restoration of the 310 Brighton Road structure necessitated by the corridor removal.

The easements, as filed with the Passaic County Clerk, allow access to maintain an existing storm water drainage pipe and reciprocal access to portions of the adjoining properties of 290 and 310

Report of Examination -- February 2009
Clifton School District - Construction and Other Irregularities
Page 7

Brighton Road to allow for the delivery of goods by tractor trailer trucks. The access is provided via a remotely controlled gate between the properties.

The complaints expressed the belief that the value of the property was reduced since the site was in an industrial area, and since there had been prior releases of chemical vapors in the area that required remediation. The complainants questioned why the district would assume liability for any subsequent environmental issues identified at the site.

The OFAC investigator examined the contract of sale and post closing agreements and confirmed that the board released the seller from any claims that may arise regarding environmental issues both on and off premises. The release effectively transferred responsibility for any required remediation to the board.

The district indicated that based upon the environmental site survey and since it received DOE educational facility plan approval, it presumed that any additional review was not necessary. It was also anticipated that unless the site was accepted in "as is," "where is" condition, the sale price would escalate and/or the negotiation to acquire the site would fail.

The district also represents that at the time of sale, both the buyer and seller had documentation indicating that, under existing law, there was no reason to believe that any remediation would have been required for the site. The remediation that was subsequently required in 2007 was the result of the delay in completing construction that resulted from protracted litigation of the zoning variance. Due to the delay in construction, the site was required to comply with the provisions of the Madden Law that were not enacted until January 2007. The Madden Law was enacted to provide strict remediation procedures and oversight when educational facilities are constructed in industrial areas. Although this remediation resulted in additional costs to the district, the implementation of the law and associated costs were unforeseeable prior to 2006.

CONCLUSION

The sale price of the property was based on a value established by an independent appraisal firm. Additional compensation afforded the seller was approved to compensate for removal of the elevated walkway, an associated room and restoration costs to 310 Brighton Avenue. The easement agreed upon provides necessary access for deliveries to both facilities. Lastly, there was no requirement that additional environmental testing was required and the district had received approval from the DOE to establish a school on the site. Based upon the foregoing, the allegation that the board afforded the seller overly generous terms in the contract for sale is unsubstantiated.

OTHER ISSUES RELATED TO 290 BRIGHTON ROAD

5. The district failed to obtain department approval for change orders that exceeded 20 percent of the total contract amount contrary to N.J.S.A. 6A:26-4.9.

The OFAC investigator's review of district change orders issued as part of the 290 Brighton Road construction project revealed that the board approved a change order submitted by an electrical

Report of Examination – February 2009
Clifton School District - Construction and Other Irregularities
Page 8

contractor for additions and deletions to the original project specifications. The change order increased their charges from the original contract amount of \$946,418.00 to \$1,380,200.31. The amount of the increase, \$433,782.31, equals 45.83 percent of the original contract amount.

Various provisions of N.J.S.A. 6A:26-4.9 prohibits a board of education from approving change orders that exceed 20 percent of the contract award amount unless special conditions exist. If change orders exceed 20 percent of the contract award amount, approval must be received from the Division of Finance in the Department of Education.

At the time of the initial review, the district did not provide any proof that it had obtained approval from the Department of Education, Division of Finance or, that special conditions existed exempting the board from this requirement. During a January 23, 2009 conference, board counsel indicated that the district has initiated compiling documentation for submission to the Division of Finance identifying the basis for the changes that exceed the cap and has requested approval to exceed the limitation on change orders as specified in the administrative code.

CONCLUSION

The district's initial action was contrary to the provisions of N.J.S.A. 6A:26-4.9 that require Division of Finance approval and require the school district to submit a summary of each change order approved, the justification for each change order, and the change in the contract amount, on a form approved by the Commissioner and certified by the board secretary.

RECOMMENDATION

The board shall prepare a corrective action plan (CAP) indicating the measures it will implement to ensure future compliance with the provisions N.J.S.A. 6A:26-4.9 et. seq. Absent approval from the Division of Finance, this violation may require a recovery of the state funded portion of the change order over-expenditure. The district is also forewarned that additional recoveries may occur if the district approves any other change orders that are contrary to the provisions of the applicable statute.

The district is further directed to submit an itemized list of all change orders to the Office of School Facilities. The Office of School Facilities will identify the dollar amount of change orders that are contrary to the provisions of the statute and notify the district and the Division of Finance which will determine the timing of any potential recovery.

6. Water monitoring wells at 290 Brighton Road may have been decommissioned without New Jersey Department of Environmental Protection written authorization.

The OFAC investigator was supplied with a copy of a January 23, 2008 letter from the NJDEP issued to the board identifying actions that are required pursuant to the technical requirements for site remediation for the 290 Brighton Road site. Included in the letter was a requirement that the district install four monitoring wells at the site.

The district employed the services of an environmental inspections firm to conduct environmental testing that included installing and submitting reports on test samples taken from monitoring wells in accordance with the applicable code. The environmental inspections firm notified the NJDEP via a July 15, 2008 letter that four monitoring wells were installed and reported on the results of sampling conducted. The letter indicates that, "based upon previous SRFI investigations, and our conversations with the NJDEP case team, no further investigation or remedial actions are required." The letter concludes with the statement that, "The wells will be decommissioned by a New Jersey licensed well driller, and documentation related to well decommissioning will be submitted to your office upon receipt."

The complainants assert that the wells were decommissioned without receipt of approval from the NJDEP. On October 1, 2008, the OFAC investigator contacted Ms. Diane Puppa, Child Care Educational Facilities, for the NJDEP and was informed that the district should have obtained written permission prior to decommissioning the wells.

In response, the district supplied a copy of Conditional No Further Action Letter and Covenant Not to Sue for the 290 Brighton Road site. The document, dated December 10, 2008, bears the signature of Mr. Ronald T. Corcoran, Assistant Director, New Jersey Department of Environmental Protection.

CONCLUSION

The issuance of the Conditional No Further Action Letter and Covenant Not to Sue letter for the 290 Brighton Road site and communications between the environmental consulting firm and the NJDEP supports the district's claim that it has and is complying with the requirements imposed by the NJDEP.

7. The board authorized the solicitation of construction bids and award of contracts prior to receiving zoning board approval.

After acquiring title to 290 Brighton Road on May 10, 2005, the board made application to the Clifton Zoning Board on May 13, 2005, for a variance to construct a school on the site. While the application was under review by the Clifton Zoning Board, but prior to approval, the board approved contracts for construction work at 290 Brighton Road. On July 29, 2005, the district issued a notice to proceed with construction. The awarding of contracts and issuing an order to proceed with construction by the then sitting board placed the district in the untenable position of engaging the services of various contractors to construct a facility that was not yet permitted by city ordinance.

The board attorney, in a letter addressed to the OFAC dated September 15, 2008, stated that the board issued the contracts without having Zoning Board approval since any further delay in starting the construction would have resulted in a \$90,000.00 per month increase in project costs. The increase in projected costs was based upon anticipated cost increases for construction materials.

The anticipated increase in costs could have precluded the district from completing the project within the referendum funding limits.

CONCLUSION

Despite the fact that the board approved the award of construction contracts prior to obtaining necessary zoning board approvals, such action is within the discretion of the board. Absent a violation of educational statute or code, the OFAC can not substitute its judgment for that of the board.

8. The board paid for construction materials that were either ordered in error or damaged while in storage.

The complainants assert that the project specifications, as drafted by the school district's architect, identified the requirement that the district purchase 2000 amp switchgears. The cost to the district for the switchgears was \$23,785. After taking possession of the 2000 amp switchgears, it was realized that the purchase was based upon calculations that failed to include required compressor loads. A recalculation was completed by the architect and the properly rated switchgears were obtained. The new switchgears cost the district an additional \$57,500. The district has no need for the 2000 amp switchgears and is uncertain if the switchgears may be returned for credit. The OFAC investigator questioned the architect and he confirmed the information as stated above.

The complainants also informed the investigator that sheetrock sustained water damage while stored on site. Portions of the sheetrock were unusable since it became contaminated with mold and mildew. As a result, new sheetrock was purchased at a cost of \$73,000. The OFAC investigator was unable to determine if the district or contractor was responsible for determining where to store the sheetrock.

The complainants expressed concern that the district will absorb the cost of the unnecessary and improperly stored goods, diverting funds from the students. In response, the district indicated that the contractor and architect absorbed the cost for these items.

CONCLUSION

Based upon the information available, it appears reasonable to conclude that this allegation is no longer valid.

9. Based upon current projections, once completed, the board will have over-expanded the capital project for the 290 Brighton Road site.

The OFAC investigator's review of the capital projects fund revealed that based upon information current as of November 2008, total expenses for this project will exceed the original amount of the referendum as approved by the voters in December 2004. The school business administrator

Report of Examination – February 2009
Clifton School District - Construction and Other Irregularities
Page 11

anticipated that the costs associated with the project would exceed the amount approved and received both board and voter approval to transfer \$1.2 million from the district's excess surplus to the capital project fund in the 2008-2009 budget.

CONCLUSION

Based upon the information detailed in the preceding paragraph, the district took appropriate action to ensure that sufficient funds were available to meet expenses that exceeded the original amount of the voter approved referendum.

OTHER ALLEGATIONS, CONCLUSIONS AND RECOMMENDATIONS

10. The school district staff permitted the distribution of public question materials to students for off-premises distribution.

The complainants allege that the district distributed to school children literature that either promoted or favored the adoption of a bond issue, proposal or public question, with the purpose that the children take the material home or distribute the literature outside of the school building, contrary to the provisions of N.J.S.A. 18A:42-4. To support the allegation, the complainants supplied four documents that they allege were given to their school children who were directed to deliver the documents to their parents.

The first document was an April 2007 letter addressed to parent/guardian and includes information indicating the date and time of the school board election. The letter continues to indicate the various improvements that will be made to the district's educational environment if the budget passes and a short paragraph to indicate that approval would result in an average tax increase of \$139.49. The letter also includes the sentence, "In addition to voting for candidates to fill three seats on the board, voters will be asked to approve the 2007-2008 school budget. The complainants assert that the phrase, "asked to approve" is synonymous to requesting a yes vote and as such is contrary to the provisions of the statute.

The second document is a letter dated April 7, 2008, that invites parents and guardians to attend a community forum on the school district's 2008-2009 school year budget. In this document the complainants assert that the statement, "If the voters approve the 2008-2009 school budget," is contrary to the provisions of the statute.

Document number three is headed with the wording, "Bond Referendum." The document is three-pages long, undated and explains the need for a new middle school. The document includes the statement, "Clifton voters will be asked in the Dec. 12 referendum to approve financing for a new 1,200 student 6th - 9th grade middle school." Again the complainants question the wording, "asked to approve."

The fourth document is also undated and bears the heading, "Clifton Board of Education Election and Budget Vote." This three page document explains to readers how the school district has improved, lists the district's primary goals and explains the impact of new budget regulations and a

freeze on state aid. The document also includes a short paragraph indicating that if the budget is approved, the tax increase for the next year will average \$202.00 on a home assessed at the city average.

The complainants stated that all of the above documents were given to school children for the purposes of having them deliver them to their parents. As previously indicated, the complainants claim the wording of the documents promotes passage of the referendum and/or budget.

In response the district asserts that the language, asked to approve, is standard terminology used by school districts throughout the state.

CONCLUSION

The OFAC is unable to make a determination as to whether the inclusion of the language, asked to approve, is sufficient to support a claim that the district's action violated the provisions of the applicable statute as this requires a judicial determination.

RECOMMENDATION

The district and complainants will be advised that if they so desire, either party may seek a determination by filing a petition of appeal to the Commissioner of Education through the Office of Controversies and Disputes.

11. District staff allowed an employee to use a district facility in violation of district policy.

The complainants allege that a school employee was permitted to use the lower gymnasium as the site of a family social event at Christopher Columbus Middle School on January 26, 2008. The OFAC has determined that the event took place as planned; however, the board did not approve a resolution authorizing the event prior to it being held and custodial fees, incurred as a result of the event, remain unpaid.

When questioned, the business administrator stated that she informed members of the board and received verbal approval to allow the use of the facility for the event. The investigator also confirmed that rental fees were not charged and although custodial fees in the amount of \$970.00 were billed, the amount has not been paid.

The investigator reviewed the Clifton Board of Education Notice for Approval of School Facilities, Permit #2257, and noted that the business administrator approved the event, waived the facility fee and indicated that custodian charges were to be determined. The OFAC also reviewed a copy of the application for use that was signed by the requesting party. The application included restrictions and requirements for facility use. As part of the requirements for use of school facilities, the applicant was required to submit a \$25.00 application fee, provide a certificate of insurance with a hold harmless agreement, obtain a permit issued by the Clifton Fire Department and provide documentation that a special officer will be present during the event.

Report of Examination - February 2009
Clifton School District - Construction and Other Irregularities
Page 13

On January 29, 2009, the OFAC received a copy of resolution #1/28/09 - 234 memorializing the agreement authorizing the use of the facility subject to certain restrictions. The resolution indicates that the board acted De Novo and retroactively approved the use of Christopher Columbus lower gym and indicated that the outstanding custodial fee would be paid.

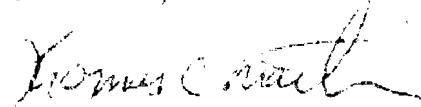
CONCLUSION

There is sufficient evidence that the use of the lower gymnasium was contrary to the provisions of the district's policy and procedures on Community Use of School Facilities. The failure to ensure that the applicant possessed sufficient insurance placed the district at risk should there have been an accident or injury. The previous failure to recover the cost incurred for custodial services resulted in taxpayers funding a private event.

RECOMMENDATION

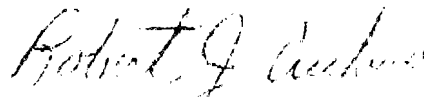
The district should ensure future compliance with the facility use policy.

Submitted by:



Thomas C. Martin, Manager
Investigations Unit

Approved by:



Robert J. Cicchini, Director
Office of Fiscal Accountability and Compliance

Auditor

Kishor Ranade
Karl T. Feltes

NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
CORRECTIVE ACTION PLAN

SCHOOL DISTRICT NAME Clifton Board of Education COUNTY Passaic

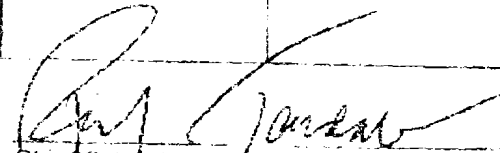
TYPE OF EXAMINATION: Report of Examination OFAC Case #1418

DATE OF BOARD MEETING: March 4, 2009


CONTACT PERSON Karen L. Perkins

TELEPHONE NUMBER (973) 470-2288 FAX NUMBER (973) 773-8357

RECOMMENDATION NUMBER	CORRECTIVE ACTION	METHOD OF IMPLEMENTATION	INDIVIDUAL RESPONSIBLE FOR IMPLEMENTATION	COMPLETION DATE OF IMPLEMENTATION
1	To ensure future compliance with the provisions of N.J.S.A. 6A:26-4.9 seq.	*All change orders shall be submitted to Architect for review and recommendation to the Superintendent of Schools/Business Administrator.	Architect Business Admin. Superintendent.	On-going
	To ensure that all change orders in excess of 20% of the contract award be approved by the Division of Finance in the Department of Education	*All change orders in excess of 20% shall be submitted to the Division of Finance in NJDOE for approval. *An itemized list of all change orders for this project shall be submitted to the Div. of Fin. to ensure compliance.	Architect Business Admin. Superintendent. Business Admin.	Immediately


Chief School Administrator

2/27/09
Date

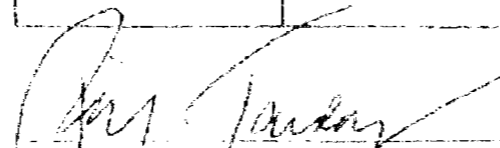

Board Secretary/Business Administrator

2/27/09
Date

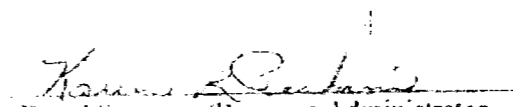
100-11-6009 10-14 10:00 AM 100-11-6009 10-14 10:00 AM 100-11-6009 10-14 10:00 AM 100-11-6009 10-14 10:00 AM 100-11-6009 10-14 10:00 AM

NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
CORRECTIVE ACTION PLAN

RECOMMENDATION NUMBER	CORRECTIVE ACTION	METHOD OF IMPLEMENTATION	INDIVIDUAL RESPONSIBLE FOR IMPLEMENTATION	COMPLETION DATE OF IMPLEMENTATION
2	To ensure future compliance with the Board of Education's facility use policy of the district (att.)	<p>*All requests for usage of District's facilities shall be submitted to the Business Office for review.</p> <p>*According to Board Policy #3515, all outside group user requests shall be submitted to the Board of Education for approval.</p> <p>*The Policy Committee shall review the existing facility use policy to determine if any changes are warranted.</p>	Business Administrator School Accountant	On-going


Chief School Administrator

2/27/09
Date


Board Secretary/Business Administrator

2/27/09
Date