



State of New Jersey
DEPARTMENT OF EDUCATION
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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-MCMILLAN, Ed.D.
Acting Commissioner

November 4, 2021

Dr. Melissa Varley, Superintendent
Berkeley Heights School District
345 Plainfield Avenue
Berkeley Heights, NJ 07922

Dear Dr. Varley:

SUBJECT: District Projects Concerning Classroom Alterations
OFAC Case #INV-006-21

The New Jersey Department of Education, Office of Fiscal Accountability and Compliance (OFAC) has completed a review of the process utilized by Berkeley Heights School District (District) concerning classroom alterations. The review disclosed a violation of N.J.A.C. 6A:26-4.8. The finding is detailed in the attached Report of Examination. Please provide a copy of the report to each board member.

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 District Board of Education is required to publicly review and discuss the finding in this report at a public meeting of the District Board of Education no later than 30 days after receipt of the report.

Within 30 days of the public meeting the District Board of Education must adopt a resolution certifying that the finding was discussed at a public meeting and approving a Corrective Action Plan (CAP) to address the finding raised in the report and/or submit an appeal of the finding in dispute. A copy of the resolution and the approved CAP and/or appeal must be sent to the OFAC within 10 days of adoption by the District Board of Education. 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 District Board of Education's CAP on the District's website. Should you have any questions, 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

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Attachment

c: Jordan Schiff Susan Kutner
Paula Bloom Daryl Palmieri
Bernard Piaia Jamar Purnsley
Susan Kutner
Michael Yaple

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

**BERKELEY HEIGHTS SCHOOL DISTRICT
NEW JERSEY ADMINISTRATIVE CODE PROCEDURAL VIOLATION
OFAC CASE #INV-006-21**

**REPORT OF EXAMINATION
OCTOBER 2021**

BACKGROUND

On June 9, 2021, Sai Bhargavi Akiri (stakeholder), a Berkeley Heights resident contacted the Office of the New Jersey Attorney General (OAG) requesting an investigation of alleged violations of New Jersey law. On June 25, 2021, she forwarded a copy of that investigative request to the New Jersey Department of Education (Department), Office of Fiscal Accountability and Compliance (OFAC) and made a request for an investigation by the OFAC. In support of her request to the OFAC she relied on the information she had previously provided to the OAG. In addition to the OAG and the OFAC, she requested an investigation by the Union County Prosecutor's Office (UCPO). The UCPO did not consult with the OFAC concerning any investigation into the matter.

The District Board of Education (Board) adopted a plan referred to as "Reimagining K-5 Education". A copy of this plan is available at the District's website. Set forth on pages four and five of that plan is a "Timeline of Discussions for FDK" [Full Day Kindergarten] (FDK) and history of Hamilton Terrace. Hamilton Terrace was initially solely a kindergarten, later becoming the Early Childhood Center. In 2009 that facility was renamed the Mary Kay McMillian Early Childhood Center (MKM).

The timeline shows that in October 2014, the BOE did an update on FDK feasibility at MKM. The stakeholder raised many issues in her investigative request to the OFAC. Many of those issues are local issues under the purview and/or discretionary authority of the Board and/or the District superintendent, not the OFAC. These issues include, but are not limited to, redistricting, reassignment, Open Public Meetings Act issues, Open Public Records Act issues and criminal violations.

INVESTIGATIVE SUMMARY

The OFAC investigation included the review and analysis of information obtained from the Berkeley Heights School District (District), interviews and/or communications with the District superintendent and school business administrator and stakeholder. Also interviewed were personnel of the Department's Office School Facility Projects (School Facilities).

In the instant case, bids for the classroom alterations concerning the bathrooms were opened on March 26, 2021. Bids were thereafter awarded on April 29, 2021.

On June 30, 2021, the School Facilities sent the superintendent two letters regarding the Mary Kay McMillan Early Childhood Center. These letters were the "OTHER CAPITAL PROJECT DETERMINATION" which concluded that the project "DOES IMPACT EDUCATIONAL ADEQUACY AND IS SUBJECT TO DOE FINAL EDUCATIONAL ADEQUACY REVIEW".

The second letter dated June 30, 2021, was "FINAL APPROVAL OF EDUCATIONAL ADEQUACY (FEA) FOR A ROD SCHOOL FACILITIES PROJECT FOR A DISTRICT NOT REQUIRED TO USE THE

AUTHORITY TO UNDERTAKE THE PROJECT, PURSUANT TO USE N.J.S.A 18A:7-G5” which was also in relation to the Mary Kay McMillan Early Childhood Center.

On June 30th, 2021, the same two letters were sent regarding the William Woodruff Elementary School.

FINDINGS

The contract was awarded on April 29, 2021, but the necessary approval from the Department’s Office of School Facility Projects was not received until June 30, 2021.

N.J.A.C. 6A:26-4.8(a) provides, in relevant part:

“Bids may be advertised but contracts shall not be awarded before the school facilities project or other capital project has received approval from the Division for final educational adequacy...”
[underline added]

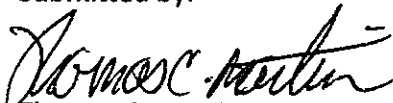
CONCLUSION

Based on the particular facts of the instant case, the District violated N.J.A.C. 6A:26-4.8(a) bidding and awarding of contracts for Regular Operating Districts capital projects, since the contract was awarded on April 29, 2021, but the necessary approval from the School Facilities was not yet received until June 30, 2021.

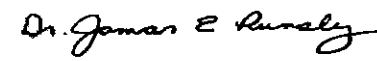
RECOMMENDATION

The District must develop and submit to the OFAC a Corrective Action Plan that will identify the procedures the District will implement to ensure future compliance with N.J.A.C. 6A:26-4.8(a).

Submitted by:


Thomas C. Martin, Manager
Investigations Unit

Approved by:


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

Investigator:

Timothy G. Boney, Esq.

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

SCHOOL DISTRICT NAME: Berkeley Heights Public Schools

COUNTY: Union

TYPE OF EXAMINATION: Office of Fiscal Accountability and Compliance Investigations Unit


DATE OF BOARD MEETING: November 11, 2021

CONTACT PERSON: Dr. Melissa Varley

TELEPHONE NUMBER: 908-464-1601

FAX NUMBER: 908-464-1728

RECOMMENDATION NUMBER	CORRECTIVE ACTION	METHOD OF IMPLEMENTATION	INDIVIDUAL RESPONSIBLE FOR IMPLEMENTATION	COMPLETION DATE OF IMPLEMENTATION
OFAC determined that the District violated N.J.A.C. 6A:26-4.8(a) regarding the bidding and awarding of contracts for Regular Operating Districts capital projects. Specifically, a contract was awarded on April 29, 2021, but the necessary approval from the Office of School Facility Projects was not yet received until June 30, 2021.	Bids may be advertised, but contracts shall not be awarded before the school facilities project or other capital project has received approval from the State for final educational adequacy, pursuant to N.J.A.C. 6A:26-5.4.	Closer monitoring of facilities project applications which require final educational adequacy approval from the State and coordination of bidding and contract award procedures related thereto.	Business Administrator/ Purchasing Agent and Superintendent	November 12, 2021


Chief School Administrator

11/16/21
Date


Board Secretary/Business Administrator

11/21/2021
Date