YARMUTH WILSDON CALFO

SUPPLEMENTAL REPORT ON INVESTIGATION RELATED TO THE REGIONAL SMALL BUSINESS DEVELOPMENT PROGRAM

TO: SEATTLE PUBLIC SCHOOLS BOARD PRESIDENT STEVE SUNDQUIST, DIRECTOR PETER MAIER, DIRECTOR SHERRY CARR, DIRECTOR HARIUM MARTIN-MORRIS, DIRECTOR MICHAEL DEBELL, DIRECTOR KAY SMITH-BLUM, DIRECTOR BETTY PATU, AND GENERAL COUNSEL NOEL TREAT

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I. SCOPE OF SUPPLEMENTAL INVESTIGATION

On February 25, 2011, we issued our Report on Investigation Related to the Regional Small Business Development Program (the "Report"). As we noted in the Report, we attempted to interview former Seattle Public Schools ("SPS") General Counsel Gary Ikeda as part of our investigation, but Ikeda declined to be interviewed. After the Report was publically released, Ikeda contacted SPS and said that he was willing to participate in the investigation. We have since interviewed Ikeda, and this Supplemental Report summarizes our findings with respect to him.

Also after our Report was publically released, questions arose regarding SPS Deputy General Counsel Ron English's knowledge of the Regional Small Business Development Program ("RSBDP") operations and the questionable spending identified by the State Auditor's Office ("SAO"). Additionally, someone filed an anonymous complaint alleging that English was intimidating employees in the Facilities Department to prevent them from speaking with the SAO investigators. English released a public statement responding to these questions and requested an investigation of his conduct in relation to the RSBDP. Our supplemental investigation included interviews with SPS employees and a review of English's e-mail for relevant information.[1] This Supplemental Report also addresses our findings with respect to English.

II. SUMMARY OF RELEVANT FACTS

A. Gary Ikeda

Ikeda served as SPS's General Counsel for approximately six years. He had four staff attorneys working under him, including Ron English. Ikeda left SPS in August 2010, shortly after the SAO began investigating the RSBDP and possible losses to the district. As General Counsel, Ikeda had a dual reporting relationship with the Superintendent and the SPS Board. In the event of a conflict between the two, Ikeda stated that his ultimate obligation was to the Board. Ikeda had an open relationship with Board members, who routinely contacted him directly about district issues. Ikeda also attended all Board meetings and executive sessions, and he sometimes participated in Board "work sessions."

According to Ikeda, he had little direct involvement with the RSBDP. He believed the Board supported the program and that Fred Stephens, the former Executive Director of Facilities, viewed the program as a district priority. Ikeda reported that he had limited or no knowledge of the RSBDP's daily operations, although he was aware of the program's existence. Ikeda was not consulted about or involved in the decision to hire Silas Potter to manage the RSBDP. Ikeda was unaware that the RSBDP issued personal services contracts, as the legal department was not generally involved in reviewing those contracts. Ikeda acknowledged, however, that the RSBDP came to his attention on several occasions during his time as General Counsel. Each of those occasions is discussed separately below.

1. 2007 Memo from SPS Risk Manager

Ikeda stated that he first became aware of problems in the RSBDP when the SPS Risk Manager brought concerns he had about RSBDP activities to Ikeda's attention. Ikeda's memory of the specific problems identified by the Risk Manager was poor. Ikeda could not recall if he had previously seen or read the memo the Risk Manager drafted outlining his concerns ("2007 Memo").[2] He only recalled that the Risk Manager had concerns about the RSBDP operations that the Risk Manager wanted to bring to Stephens's attention. Although he could not remember the specific issues raised by the Risk Manager, Ikeda said he was sure that the Risk Manager did not express concerns about illegal activity such as "kick backs." Ikeda said that if the Risk Manager had raised those kinds of concerns, he would have a memory of it.

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[1] As in our first Report, we are not naming all of the individuals who participated in the supplemental investigation.

[2] The Risk Manager's Memo is discussed in our Report at pages 4-5.

Ikeda reviewed the 2007 Memo during our interview, but it did not refresh his memory about the RSBDP issues. He would not opine on the severity of the issues addressed in the 2007 Memo but said that the issues were things that Stephens should have been concerned about as the Executive Director of Facilities. The only follow-up Ikeda recalled with respect to the 2007 Memo was that a particular contractor was removed from a project.

2. Inaccurate 2007 Board Report on the RSBDP

Ikeda admitted that English alerted him to alleged inaccuracies in a report Potter made to the Board in 2007, although Ikeda could not recall specifically what the inaccuracies were.[3] Ikeda instructed English to bring the discrepancies to the attention of Stephens – which was apparently done. Ikeda did not recall English telling him that Stephens acknowledged that the Board report was inaccurate but that they should not correct it because the program needed to "look good." Ikeda said that if he had heard that Stephens made such a comment, he would have been concerned. He acknowledged, however, that English had told him that Stephens did not intend to correct the inaccurate report. Ikeda admittedly took no further action on the inaccurate report. He did not personally review the report to see if it was in fact inaccurate, and he did not follow up with Stephens on the issue.

Ikeda stated that he and English had no obligation to notify the Board of the inaccurate information in the Board report. Rather, he believes it was appropriate for them to take their concerns to Stephens, who was ultimately responsible for the report. Ikeda said that Stephens was in the best position to determine whether the Board report was accurate and whether any amendments needed to be made, and, therefore, it was ultimately up to Stephens to decide whether to correct the Board report.

3. Sutor Group Investigation

Ikeda stated that he was not involved with the Sutor Group investigation. He was aware that English hired the Sutor Group[4] to do an independent review of the Small Works Roster ("SWR")[5] program because of concerns about bidding irregularities, among other things. Ikeda vaguely recalled that the Sutor Group issued a report documenting the problems in the SWR program and that ultimately Potter's authority to award SWR contracts was removed. He did not recall reviewing a final version of the Sutor Group Report, nor did he recall the article in the Daily Journal of Commerce about it. He had no knowledge of whether the Board was briefed on

[3] This issue is also discussed in our Report at page 12.

[4] Ikeda could not recall the name of the Sutor Group.

[5] As noted above and in our Report, Potter ran both the SWR program and the RSBDP until late 2008, at which time the SWR program was taken away from him. Potter continued to manage the RSBDP after SWR contracting was removed from him, and the personal services contracts that were the subject of the SAO report were procured through the RSBDP, not the SWR program.

the Sutor Group investigation. When asked about who was responsible for deciding what issues would be brought to the Board, Ikeda stated those decisions were left to "senior management." Ikeda was not involved in implementing the changes to the SWR that were recommended by the Sutor Group.

4. Transition to private entity

Ikeda denied knowing that Potter had incorporated a private entity or was planning to transition the SPS RSBDP to his own, already-established entity before the issues surrounding the $35,000 check came to light, and we found no evidence to the contrary regarding Ikeda's knowledge. There were no e-mails to indicate that Ikeda received a copy of Potter's "transition plan," which notably was shared with Stephens. Likewise, Ikeda had little knowledge about Potter's reason for leaving SPS or Potter's future plans.

B. Ron English

English is and has been the district's business lawyer for over ten years, and his main "client" is and has been the Facilities Department. English reported that he is responsible for most legal issues for the district other than those related to education or human resources. English reports to the General Counsel, which was Gary Ikeda at the time relevant to this investigation.

By way of background, and as noted in our Report, Potter initially managed two discrete programs: the SWR program, and the RSBDP. The SWR program is governed by Board policies and procedures and certain state statutes, and its focus is on awarding small SPS construction projects. In contrast, the RSBDP was focused on recruiting, educating, and supporting small business contractors. The RSBDP was not governed by state statutes and was loosely guided by one SPS Policy, but Potter had wide latitude in conducting those activities as he saw fit.

Prior to the Sutor Group investigation and report, Potter was responsible for both the SWR program and the RSBDP. In late 2008, Potter's responsibility for the SWR program was removed entirely. Potter's questionable use of school district funds through personal services contracts, as detailed in the SAO report, related entirely to the RSBDP, the contractor recruitment and development program.

As the SPS business lawyer who routinely handled issues relating to construction contracting, English had numerous contacts with Potter and Stephens relating to the SWR program. However, English was not involved to any significant degree in the RSBDP. For example, English was aware that Potter issued personal services contracts through the RSBDP, but he had seen only a handful of them in the course of his work and only when someone in another department brought a particular question to him regarding that contract. Neither he nor any other lawyer in the legal department reviewed the RSBDP personal services contracts in the routine course of business. English taught a few training classes for the RSBDP, but unlike other instructors, English was not compensated for this work. Once Potter was stripped of responsibility for the SWR program, English's contact with Potter decreased significantly.

1. Risk Manager's 2007 Memo

English does not recall reviewing the 2007 Memo from the Risk Manager prior to the investigation into the RSBDP. He conceded that in 2007, he likely discussed some of the issues in the 2007 Memo with Stephens and the Risk Manager. A follow-up e-mail that he sent to Stephens, Potter, and the Risk Manager appears to indicate that he was aware of the issues the 2007 Memo raised and proposed changes to RSBDP practices that were intended to address those issues. English said he may have discussed the 2007 Memo with Ikeda but has no independent memory of doing so. English otherwise was not substantively involved in the 2007 Memo, and he was unaware of any follow-up to the memo that Stephens initiated.

2. Inaccurate 2007 Board Report on the RSBDP

English became aware of inaccuracies in a report Potter prepared for the Board in 2007 relating to the contracting awards attributable to the SWR program. Specifically, English noted that the number of contracts awarded as a result of the program was grossly inflated. English stated that he took his concerns to Ikeda, who advised him to bring the issue to Stephens. When English spoke to Stephens about the inaccuracies, Stephens acknowledged that he was aware that the Board report was inaccurate but stated that it was necessary for the program to "look good," and therefore Stephens was not going to correct the inaccurate information. Concerned about Stephens's response, English reported this information to Ikeda and asked for guidance. Ikeda advised English that he had discharged his duties as legal counsel by notifying his client (i.e., Stephens) of the discrepancy and had no further obligation to take additional action.

English thought the inaccuracies in the Board report were very serious (although he did not see indications of fraud or illegal activity), but after taking his concerns to Ikeda, and at Ikeda's direction, to Stephens, he felt that he had nowhere else to report them. Ikeda was the district's Ethics Officer at the time, as well as English's boss. Further, while Ikeda claims that his attorneys were free to go to the Board regarding issues as long as they notified him first, English recalled that Ikeda exercised a significant degree of control over information that went to the Superintendent or the Board. English also reported that he did not feel free to go to the Board, the CFOO, or the Superintendent without first getting Ikeda's approval. English believes that if he had "gone around" Ikeda and taken his concerns about the inaccurate Board report to CFOO Kennedy, the Superintendent, or the Board, Ikeda would have fired him.

3. Sutor Group Report

In 2008, Stephens approached English with concerns about the SWR program. Several issues had come up with contractors' performance, payment, and qualifications. English looked into the identified problems and quickly discovered that they were significant and raised serious issues that could expose SPS to liability. As a result, and in consultation with Stephens, English hired the Sutor Group to review the SWR program. English's concerns at the time the district retained the Sutor Group were about the SWR contract letting process. There were indications that the procedures and practices in place were sloppy and likely violated applicable policies, but there was no evidence of illegal activity within the SWR program. Thus, Stephens and English decided that bringing in a company like the Sutor Group would be an effective way to determine the scope of the problems in the SWR program and to help identify ways to address those problems.

English and Stephens worked together to develop the scope of review for the Sutor Group investigation. However, it was ultimately Stephens's decision to limit the Sutor Group's review solely to the activities of the SWR program, rather than including the RSBDP personal services contracting activities in the review. Because English was not involved in the RSBDP personal services contracts procured by Potter, he had no reason to believe that the Sutor Group review should include that program.

After the Sutor Group issued its Report, English took on the role of developing new procedures to try to prevent similar contracting problems from happening in the future in the SWR program. English did not know whether the Board was formally briefed on the Sutor Group Report. English said that the decision of whether to give something like the Sutor Group Report to the Board was the responsibility of Stephens, CFOO Kennedy, or the Superintendent, not his. Once SWR contracting was taken away from Potter, English had little regular interaction with Potter.

4. Transition to private entity

We found no evidence that English was aware that Potter had incorporated a private entity or was planning to transition the SPS RSBDP to his own, already-established entity until after the issues surrounding the $35,000 check came to light. English was aware that Potter was leaving SPS because Potter wanted to do the same type of work but for his own company. However, English did not know that Potter had hired contractors though SPS to help establish such an entity, nor did English know that Potter had already created a private entity while he was still working for SPS. English never received Potter's "transition plan" memo that was given to Stephens.

Notably, English was the person who first discovered Potter's misconduct. English determined that the $35,000 check was made payable to the private entity that Potter had created that had the same name as the district program. He brought this information to the attention of SPS management, who in turn asked the SAO to perform the audit that resulted in the determination that Potter misused district funds. Following the discovery of the $35,000 check issue, English was approached by the RSBDP administrative assistant, who asked for his advice about an architect who was seeking payment for work he had performed on the Bellevue office space that Potter had misleadingly leased under the RSBDP name. Again, English quickly looked into this issue, and upon learning that Potter was using school district resources for work on his private entity, immediately brought the issue to the attention of Stephens and CFOO Kennedy.

III. CONCLUSIONS

Based on our interviews and review of e-mails, we did not find any evidence to suggest that Ikeda was aware of the problems in the RSBDP until the issues surrounding the $35,000 arose. Ikeda seemingly had no knowledge of or involvement in the RSBDP, and based on the evidence we reviewed, it does not appear he could have done anything differently with respect to the RSBDP to prevent the fraud that ultimately occurred. Likewise, Ikeda did not have the responsibility of managing or otherwise overseeing Potter in the manner that Stephens (and by extension, CFOO Kennedy and Superintendent Goodloe-Johnson) did.

However, it appears that because Ikeda exercised a significant degree of control over what information went to the Board, he essentially prevented English from alerting the Board to important information about the program and its claimed successes. Moreover, Ikeda admits that he did not investigate whether the 2007 Board report was actually inaccurate or investigate the precise nature of the inaccuracies. Rather, he simply relied on Stephens to determine whether the Board should be aware of the alleged inaccuracies. Ikeda admitted that he never even discussed the issue personally with Stephens. Given that Ikeda's ultimate responsibility was to the Board, we found it concerning that Ikeda chose to take no action to ensure that the Board received accurate information about Potter's program. Despite our concern, we are aware of no legal authority that required Ikeda to bring the inaccuracies to the Board's attention, based on the little information he had at that time.

Additionally, we found it concerning that Ikeda was perceived to have a "closed door" policy.[6] A number of employees reported that they felt that Ikeda did not want to know about problems, and that perception likely contributed to the general atmosphere of intimidation and fear in the Facilities Department that we discussed in our Report. Some employees in the Facilities Department did not feel they could report their concerns about the RSBDP to Stephens

[6] This perception is discussed more fully in our Report.

or anyone else without suffering retaliation, and employees did not view Ikeda, as Ethics Officer, to be an alternate person to whom they could openly bring their concerns.

Likewise, we found no evidence to suggest that English was aware of Potter's misuse of district funds prior to the issues surrounding the $35,000 check arising. Although English taught a class as part of the RSBDP training program (for which he received no compensation), the evidence we reviewed showed that he otherwise was not substantively involved in the RSBDP. He did not review the RSBDP personal services contracts in the normal course of business and was not aware of the details of those contracts or the nature of the services contracted.

Further, when English became aware of an inaccurate report Potter gave to the Board, he not only notified his supervisor and the district's Ethics Officer, Ikeda, he also notified Stephens, who was ultimately in charge of the Board report. Based on the evidence we reviewed, it appears that English understandably was concerned that Ikeda would have terminated him if he went "above" Ikeda and reported his concerns directly to CFOO Kennedy, the Superintendent, or the Board. Further, because the inaccuracies identified by English were not evidence of fraudulent or illegal activity, we do not believe that English had an ethical obligation to take further action. If English had been aware of fraud or other illegal acts in the RSBDP, for example, or that an employee had misrepresented facts in a legal proceeding, his reporting obligations as an attorney and public employee would have been different. However, the inaccuracies in the Board report that English identified did not rise to that level, and English took the reasonable steps of notifying his supervisor, the Ethics Officer, and the Executive Director of Facilities of his concerns.

We also conclude that English acted appropriately when he learned of problems in the SWR program. He took prompt action to notify others in the district of the concerns and ensured that the Sutor Group was engaged to review and audit the SWR program. Based on the audit findings, English assisted in developing and implementing policies and procedures recommended by the Sutor Group. It is our conclusion that English, in his role of a legal advisor,[7] took steps consistent with his obligations to the school district.

Finally, we located no evidence to substantiate the allegation that English was intimidating employees in the Facilities Department to prevent them from speaking with SAO investigators or with us. None of the employees with whom we spoke reported that English was attempting to intimidate them (or anyone else) to prevent or inhibit our or the SAO investigations. Importantly, several of the RSBDP employees specifically sought out English for advice and counsel as the investigations unfolded. Additionally, the person who made the original complaint about English did so anonymously (and thus we could not interview him or

[7] As discussed in our Report, Potter's supervisor was Stephens. English had no supervisory authority over Potter or anyone else in the RSBDP.

her). The employees we did interview reported that they felt free to participate in our investigation, and none expressed any fear of retaliation for doing so. Moreover, English actively assisted in both the SAO and our investigations. English was interviewed multiple times by the SAO and our office. He directed both investigators to relevant witnesses and documents that furthered the investigations. English's participation and assistance in the investigations suggests that he supported the investigations and would not have taken any actions to intimidate potential witnesses. We therefore conclude that, based on the evidence we have reviewed, English has not attempted to intimidate employees or otherwise interfere with our investigation or the SAO investigation.

We are available to conduct further investigation as the Board deems necessary.