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April 6, 2020

Timothy J. Smyth
Executive Officer
Boston Retirement Board
1 City Hall Square, Room 816
Boston, MA 02201-2038

Re: Linda Nathan's Violation of Post-Retirement Earnings Limits

Dear Mr. Smyth:

The Office of the Inspector General ("OIG") has reviewed the current employment of retired Boston Public Schools ("BPS") headmaster Linda Nathan ("Ms. Nathan") to determine whether her post-retirement provision of services to a public school violates the post-retirement employment restrictions established under Section 91(a) of Chapter 32 of the General Laws ("Section 91(a)").

Section 91(a) provides, in part, that "[n]o person[,] while receiving a pension, disability pension or retirement allowance from the commonwealth, or from any county, city, town or district, shall, after the date of [her] retirement[,] be paid for any service rendered to the commonwealth or any county, city, town or district"¹

Section 91(b) of Chapter 32 of the General Laws ("Section 91(b)") however, sets forth an exception to the general rule.² Section 91(b) provides that an individual who has retired and is receiving a pension from a governmental unit under M.G.L. c. 32, "may ... be employed in the service of the commonwealth, county, city, town, district or authority for not more than nine hundred and sixty hours in the aggregate, in any calendar year."³ "This authorization is followed immediately by a limitation, specifically, that the earnings therefrom when added to any pension

¹ M.G.L. c. 32, § 91(a).

² See *Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 447 (2006).

³ M.G.L. c. 32, § 91(b).

or retirement allowance [she] is receiving do not exceed the salary that is being paid for the position from which [she] was retired.”⁴

“The statute reflects a clear policy that an employee of a governmental unit in Massachusetts generally may not retire, receive a pension, accept employment elsewhere in the government, and, by combining her pension and her new compensation, make more money than if she had not retired.”⁵

If a retiree wants to perform services for a public entity beyond the post-retirement earnings limits in Section 91(b), the retiree may do so by suspending her pension payments.

The Boston Retirement Board (“Retirement Board”) is also reviewing Ms. Nathan’s post-retirement employment and plans to hold a Section 91(b) hearing later this year. The OIG provides its findings in an effort to assist the Retirement Board with its review.

In summary, the OIG found that: (1) Ms. Nathan is being paid to provide services to a public entity, namely the Conservatory Lab Charter School (“CLCS”); (2) more than 65 percent of Ms. Nathan’s salary should be attributed to providing service to CLCS; and (3) Ms. Nathan’s pension plus the portion of her salary attributable to public service exceeds what her salary would have been if she had remained a BPS headmaster. As a result, the OIG recommends that the Retirement Board seek recoupment of Ms. Nathan’s excess earnings from her future pension payments.

Background

The OIG’s review involved three related entities: CLCS, which is a Commonwealth charter school authorized by the Department of Elementary and Secondary Education (“DESE”); the Conservatory Lab Charter School Foundation (“Foundation”), which is a non-profit established to support CLCS; and the Center for Artistry and Scholarship in Education (“CASE”), which is also a non-profit established by CLCS’s board of trustees to, in large part, assist CLCS in meeting certain responsibilities under its charter.

As a Commonwealth charter school, CLCS is required to identify and disseminate educational best practices to other public schools in Boston. Under state law, DESE must review CLCS’s charter every five years.⁶ This review includes determining whether CLCS is fulfilling its dissemination requirement.⁷

⁴ *Bristol Cty. Ret. Bd.*, 65 Mass. App. Ct. at 447 (internal quotation marks omitted).

⁵ *Id.*

⁶ See M.G.L. c. 71, § 89(dd).

⁷ See *Id.*

The CLCS board of trustees incorporated CASE in 2013. The trustees planned to someday outsource CLCS's dissemination responsibilities to CASE and spread CLCS's educational model both locally – as required by its charter – and nationally.

CASE remained dormant for three years – CLCS did not activate CASE until Ms. Nathan became its first executive director on July 1, 2016. Prior to Ms. Nathan becoming the executive director of CASE, CLCS's Head of School and its staff members had fulfilled CLCS's dissemination requirement without assistance from an outside vendor. In May 2017, CASE changed its name to the Center for Artistry and Scholarship, Inc. ("CAS").⁸

When DESE reviewed CLCS's charter in February 2019, it only granted CLCS a conditional charter renewal and required the school to clarify its relationship with CAS and the Foundation by June 30, 2019.⁹ CLCS missed the deadline, telling DESE that the school could not clarify its relationship with CAS until the Retirement Board rules on whether Ms. Nathan is violating Section 91(b).

Notably, in 2016, the Foundation began to provide financial support to CAS. The Foundation's support to CAS, however, ceased in 2019 after the relationship came under scrutiny from DESE, the OIG and the Retirement Board.

Ms. Nathan's Retirement

On September 1, 2014, Ms. Nathan, then age 59, retired as "Headmaster" from the BPS. She began receiving a monthly pension payment of \$8,654. In total, she worked in public service for 32 years and 7 months. The Retirement Board calculated her initial annual pension as \$103,842,¹⁰ approximately 78 percent of \$133,288, the average of her final three years of salary.¹¹

When she retired, Ms. Nathan signed a document acknowledging that she understood the post-retirement earnings limits established under Section 91(b).

It is worth noting that the Section 91(b) limits only apply to Ms. Nathan – or any other retired public employee – while she is collecting her pension. Ms. Nathan is not prohibited from providing service to a public entity – her earnings derived from public service are only limited

⁸Some internal documents refer to the dissemination non-profit as CASE and others refer to it as CAS. The acronyms are synonymous.

⁹ See M.G.L. c. 71, § 89(ee) (DESE may "place conditions on a charter or may place a charter school on a probationary status . . .").

¹⁰ Ms. Nathan's pension has increased slightly every year because of legislatively-approved cost of living increases for pensions governed by Chapter 32 of the General Laws. In calendar year 2019, her pension was \$105,282.

¹¹ At retirement, Ms. Nathan also received a \$98,469 severance payment that compensated her for 40 percent of her 338 days of accrued sick days.

while she is collecting her public pension. She could suspend her pension payments and work full time for CLCS.

Applicable Law

Courts and administrative bodies in the Commonwealth have broadly interpreted the post-retirement limits in Section 91 to include services a retiree provides to a public entity as an independent contractor or through a corporation.¹²

“[T]he statute is not limited to post-retirement employment by []public bodies. It is more broadly phrased to encompass any job in which the pensioner is ‘employed in the service’ of these public bodies. Thus, the focus of inquiry when an excess-earnings question arises is not whether the pensioner is working post-retirement as an employee of the commonwealth, county, city, town, district or authority, but *whether the work he is performing is rendering service to these public bodies.*”¹³ [Emphasis added.]

For example, in *Sarno v. Massachusetts Teachers’ Retirement System*, the Contributory Retirement Appeal Board found that a retiree (Sarno) had violated Section 91 even though his services to a public school were “contracted for through a corporate intermediary.”¹⁴ “Whatever [Sarno’s] relationship may have been with [the corporate intermediary], whether as an employee or an independent contractor, he was paid for services provided to [the school system].”¹⁵

Thus, when faced with a post-retirement earnings question, courts and administrative bodies do not ask whether a retiree is paid with public funds – they ask whether the retiree is “paid for any service rendered to the commonwealth or any county, city, town or district”¹⁶ The “focus of inquiry when an excess-earnings question arises is not whether the pensioner is working post-retirement as an employee of the commonwealth, county, city, town, district or authority, but *whether the work he is performing is rendering service to these public bodies.*”¹⁷ [Emphasis added.]

¹² See *Sarno v. Mass. Teachers’ Ret. Sys.*, CR-07-253 (CRAB Oct. 29, 2010) (Sarno violated post-retirement earnings limits even though he provided services to school through corporate intermediary); *Daley v. Plymouth Ret. Bd. and Pub. Emp. Ret. Comm’n*, CR-11-441 and 13-409 (CRAB August 7, 2014) (Daley violated post-retirement earnings limits by providing services to public entities as an independent contractor).

¹³ *Barranco v. Mass. Teachers’ Ret. Sys.*, CR-10-796 and CR-11-622 (DALA December 18, 2015).

¹⁴ *Sarno*, CR-07-253, at 1.

¹⁵ *Id.* at 2.

¹⁶ See M.G.L. c. 32, § 91(a).

¹⁷ See *Barranco*, CR-10-796 and CR-11-622, at 11.

Finding #1: The Center for Artistry and Scholarship is Paying Ms. Nathan to Provide Services to a Public Entity.

Section 91 generally prohibits a retiree from “be[ing] paid for any service rendered to the commonwealth, or any county, city, town or district”¹⁸ This restriction applies to “any service rendered” not just service as a direct employee of the commonwealth, county, city, town or district. The restriction includes consultants and independent contractors, as well as those acting through other corporate entities.¹⁹

a. The Conservatory Lab Charter School hired Ms. Nathan.

In 2015, CLCS’s then Head of School announced that she planned to retire at the end of the 2015-2016 schoolyear. As a result, CLCS established the Conservatory Lab Charter School Search Committee (“Search Committee”) to find her replacement. The Search Committee consisted entirely of CLCS trustees and CLCS staff.

On September 17, 2015, the Search Committee held the first of three meetings where it discussed whether to hire Ms. Nathan to replace the outgoing Head of School. The Search Committee’s meeting minutes state that the outgoing Head of School and the CLCS Board Chairman “vetted the candidate.”

The Search Committee ultimately chose Ms. Nathan to lead both CLCS and CAS. At the time the Search Committee chose Ms. Nathan, CAS only existed on paper. It had no staff and its board had never formally met.

Nevertheless, on November 11, 2015, the Chairman of the CLCS Board offered Ms. Nathan a full-time job as Executive Director of CAS for an annual salary of \$150,000. He signed her offer letter acting as both Chairman of the CLCS Board and as a Director of CAS.

b. Ms. Nathan’s offer letter described duties at the Conservatory Lab Charter School.

Ms. Nathan’s November 11, 2015 offer letter described specific duties she was required to perform for CLCS, including:

- Promoting CLCS as a model school with the goal of achieving a national impact;
- Providing job training, professional development, education and senior oversight to CLCS’s principal and director of operations “to assist them in fulfilling their missions” at CLCS;

¹⁸ See M.G.L. c. 32, § 91(a).

¹⁹ See *Sarno*, CR-07-253, at 2.

- Evaluating the CLCS’s principal and director of operations;
- Attending CLCS board meetings, including executive committee meetings, as requested; and
- Overseeing the employees of the Foundation, including its director of finance and development director.

Ms. Nathan’s benefits include “20 days of vacation per year in addition to all of the scheduled school vacation days when the school is closed during the regular school year.” The offer letter specifies that all of Ms. Nathan’s “work with the School will be undertaken pursuant to a services agreement between CASE and the School.”

Ms. Nathan accepted the position on November 12, 2015. The then Head of School retired on June 30, 2016 and Ms. Nathan officially assumed her position on July 1, 2016. CAS held its first board meeting after the CLCS hired Ms. Nathan.

c. The Conservatory Lab Charter School announced Ms. Nathan’s hiring.

By December 21, 2015 CLCS had announced the decision to hire Ms. Nathan on its website in all upper case letters, “LINDA NATHAN SELECTED AS EXECUTIVE DIRECTOR!” The announcement linked to a joint statement from “The Board of Trustees of the Conservatory Lab Charter School (CLCS) and its affiliate, the Center for Artistry and Scholarship in Education (CASE).”²⁰

“Linda F. Nathan has agreed to join our organization as Executive Director, effective July 1, 2016. The agreement was reached following an extensive review process by our constituent parent, administrative, teaching and resident artist stakeholders.”

“Dr. Nathan will be the senior executive responsible for executing our mission of empowering a diverse range of children as scholars, artists, and leaders through a unique and rigorous academic and music education, enriching the larger community through performance, service and collaboration.... [S]he will help develop and disseminate innovative educational practices that will positively impact youth and leaders in other schools and programs.”

The announcement quoted Ms. Nathan saying:

“I am truly excited to join an organization where I get to rub elbows every day with young students and teachers. Most of my professional career has been focused on

²⁰ As noted above, prior to 2017, CAS used the name CASE or the Center.

how arts and education can come together and symbiotically produce better education and life outcomes for all. Conservatory Lab has demonstrated the potential of change through its adaptation of the El Sistema youth orchestral program and its creative contributions of music-infused Expeditionary Learning project based curricula. I look forward to building on the Lab school's strengths while taking part in conversations about educational change throughout the world."²¹

In addition, Ms. Nathan announced her new job as executive director of CAS on her own website, lindanathan.com, with a September 7, 2016 blog post entitled, "Back at School Again," that describes Ms. Nathan's work for the public entity:

"After two years in full-time academia, I am back in a school. It feels right. Labor Day and the ritual of children returning to school are, once again, part of my daily world... One of my first assignments is to share and promote two exciting rich academic models being used by Conservatory Lab Charter School, while continually improving the education provided to the school's 450 students. I am back where it matters: at the intersection of arts and academics, where I can see every day how when a young person tries to do something really difficult – like learn to play the violin – their worldview and their sense of self truly changes."²²

d. Ms. Nathan was on the Center for Artistry and Scholarship's payroll.

Ms. Nathan was hired by CLCS, a public charter school, and put on the payroll of CAS, a non-profit organization created as the dissemination arm of CLCS. Her job description required her to provide senior oversight to CLCS's principal and director of operations, including evaluating their performance. CLCS's board meeting minutes repeatedly portrayed her as the public charter school's top decision maker. Simply put, CAS was paying Ms. Nathan to provide services to CLCS.

On April 25, 2016 Ms. Nathan, identified as the incoming executive director, gave her first presentation to the CLCS board. The minutes report that Ms. Nathan "wanted to clarify that she will not be Head of School and that she is the Executive Director for CASE."²³ According to the minutes, Ms. Nathan said her priorities for CLCS were "to continue the work around cultural competence and to have a positive school culture." According to the meeting minutes, Ms. Nathan described "her desire to work closely with the board and to develop a trusting relationship."

²¹ <https://web.archive.org/web/20160308233743/http://conservatorylab.org/about/in-the-press/linda-nathan-selected-as-new-executive-director>.

²² <https://lindanathan.com/back-at-school-again/>.

²³ As noted above, the CAS board did not meet until August 2, 2016.

In response to questions from the CLCS board, the minutes reported that Ms. Nathan “emphasized that she would be communicating with the Board on all aspects of the operation. Nicole Mack, the new principal, will report to the Executive Director and Nicole will focus on Instruction.”

In an interview with the OIG, Ms. Nathan described herself as a mentor to CLCS’s principal and chief operating officer, the co-leaders of the charter school. She was emphatic that she did not replace Diana Lam (“Ms. Lam”), CLCS’s head of school until July 1, 2016. Ms. Nathan made this assertion despite the fact that the search for Ms. Lam’s replacement resulted in CLCS hiring Ms. Nathan and that Ms. Lam’s final day on the job was Ms. Nathan’s official start date.

Regardless of Ms. Nathan’s title, she is providing services to CLCS that were formerly included in Ms. Lam’s responsibilities, according to an October 2019 memo CLCS provided to DESE in connection with its conditional charter renewal.²⁴

CLCS’s October 2019 memo explained that by the time Ms. Lam retired, her role as Head of School had grown “significantly in scope of responsibilities and enlarging numerous roles at the School, including executive director, principal, and dissemination coordinator, while also acting as primary fundraiser (in conjunction with the Board of Trustees development committee), facility planner, community outreach and overseer of Foundation activities.” The document continued:

“In anticipation of the departure of the Head of School, the Board of Trustees initially sought to hire a replacement who would serve the numerous roles of the previous Head of School, and a similar expanded scope of responsibilities. After some consideration, the Board decided, instead, to refocus the School on its core teaching and educational functions and to obtain certain services, including fundraising, marketing and dissemination, from third parties, namely, the Foundation and CAS.”

In other words, CLCS’s board of trustees decided to divide Lam’s responsibilities among CLCS, the Foundation and CAS. They hired multiple individuals to perform Ms. Lam’s newly divided job duties. Ms. Nathan was one of these new hires. Outsourcing some of Ms. Lam’s duties did not change the fact that all of the duties served CLCS, a public entity.

²⁴ As noted above, DESE granted CLCS a conditional renewal in February 2019 requiring CLCS to clarify its relationship with CAS and the Foundation. DESE rejected an August 2019 memo on the subject as insufficient. CLCS submitted a second draft in October 2019.

In addition, CLCS's board meeting minutes provide evidence that the trustees considered Ms. Nathan to be the public charter school's top decision maker. These minutes include the following:

- Ms. Nathan reporting her decision to house the pre-kindergarten through second grade classrooms at a newly acquired school site;
- Ms. Nathan drafting a preliminary school budget for the 2017-2018 school year;
- Gary Gut ("Mr. Gut"), the then-chair of the CLCS board, lauding Ms. Nathan's first year as executive director, "In summary, it is fortuitous that Linda Nathan has come, with her energy and vision. The entire entity – Conservatory Lab Charter School, the Center and the Foundation – is a better place because she is here."²⁵
- Ms. Nathan presenting her evaluation of CLCS's principal and chief operating officer;
- Ms. Nathan presenting a proposal to amend CLCS's charter to shorten the school year from 190 days to the standard 185 days;
- The CLCS board authorizing Mr. Gut and Ms. Nathan to speak to the media about CLCS's application to become a Horace Mann charter school;²⁶ and
- Mr. Gut responding to complaints from parents about a staffing decision by reminding his colleagues on the CLCS board "that the role of the Board is to hire the Executive Director and that the board does not get involved in the personnel decisions."²⁷

In an interview with the OIG, Ms. Nathan said that she made recommendations to the CLCS board and that the board made all the final decisions. In particular, she said she had not made any personnel decisions, despite Mr. Gut's public statements to the contrary.

Whether Ms. Nathan is the ultimate decision maker at CLCS is irrelevant to whether she is providing service to the public entity. Certainly, none of CLCS's classroom teachers are making high level personnel decisions. They are all public employees. If Ms. Nathan had taken a classroom teaching job at CLCS, no one would dispute that she was subject to Section 91(b).

²⁵ CLCS meeting minutes dated June 20, 2017. As noted above, meeting minutes sometimes refer to CAS as the Center.

²⁶ In 2018, CLCS approached BPS about becoming a Horace Mann charter school, which would have allowed it to use a BPS building. BPS rejected the idea.

²⁷ CLCS special board meeting minutes April 4, 2016.

Finding #2: More Than 65 Percent of Ms. Nathan’s Salary Should Be Attributed to Providing Service to the Conservatory Lab Charter School, a Public Entity.

When deciding whether a retiree has violated the post-retirement restrictions in Section 91, courts and administrative bodies do not ask whether a retiree is paid with public funds—they ask whether the retiree is “paid for any service rendered to the commonwealth or any county, city, town or district”²⁸ As noted above, the “focus of inquiry when an excess-earnings question arises is not whether the pensioner is working post-retirement as an employee of the commonwealth, county, city, town, district or authority, but *whether the work he is performing is rendering service to these public bodies.*”²⁹

a. Ms. Nathan has spent most of her time on Conservatory Lab Charter School business.

Ms. Nathan told DESE that she spent 75 percent of her time on CLCS business during the 2016-2017 school year. She told DESE that she spent 60 percent of her time on CLCS in the following school year. Apart from overseeing CLCS and disseminating its practices, the Perrone-Sizer Institute for Creative Leaders (“PSI”), a leadership training program for teachers, has been CAS’s only consistent project throughout Ms. Nathan’s tenure. PSI accounts for less than a quarter of CAS’s revenue. It is reasonable to assume that Ms. Nathan continues to devote 60 percent of her time to CLCS. This means she has spent an average of 65.6 percent of her time providing public service since July 1, 2016.

After CLCS hired Ms. Nathan, they named her executive director of CAS and put her on the CAS payroll. If CLCS paid CAS as a vendor, this arrangement would clearly make Ms. Nathan subject to the Section 91(b) earnings limits. However, CLCS inserted the Foundation between CLCS and CAS. In a multi-part transaction defined by two different service agreements and annual grant applications, CLCS paid the Foundation, the Foundation paid CAS and CAS paid Ms. Nathan. These pass-through payments more than covered Ms. Nathan’s \$150,000 annual salary.

b. Ms. Nathan’s salary is funded by the Conservatory Lab Charter School Foundation.

In 2016, CLCS, CAS and the Foundation entered their first Tri-Party Agreement,³⁰ which required CAS to “perform the services listed below for the School and the Foundation in order to develop the School as a national model of the CASE³¹ educational philosophy of learning[.]”

²⁸ M.G.L. c. 32, § 91(a).

²⁹ *Barranco v. Mass. Teachers’ Ret. Sys.*, CR-10-796 and CR-11-622 (DALA December 18, 2015) (emphasis added).

³⁰ The three entities entered a substantively identical services agreement effective May 21, 2018. On November 12, 2019, CLCS’s board voted to notify CAS and the Foundation of its intention to terminate the Tri-Party Agreement.

³¹ As noted above, in 2016, CAS was called the Center for Artistry and Scholarship in Education, Inc. or CASE.

The services to be provided by CAS included all the tasks assigned to Ms. Nathan in her offer letter except the PSI-related responsibility to train professional educators. The Tri-Party Agreement also required CAS to assist the Foundation in soliciting grants and contributions on behalf of the Foundation, CAS and CLCS. It also required CAS to attend Foundation board meetings, as requested.

The CLCS's only responsibility under the agreement is to "provide School space"³² and "School resources" to enable CAS personnel to perform the services in this Agreement." However, the agreement also designates CAS employees as "authorized school personnel" entitled, under state and federal law, to access CLCS's student records.

A board member said that by providing "School resources," CLCS was enabling CAS to fulfill its mission of creating a national model of arts-infused education. The same board member described interconnected missions, saying that if CLCS was going to become a national model, it needed to be "a damn good school."

The Foundation, which has been raising funds to support CLCS since 1999, is a named party and signatory to the agreement; however, it has no obligations under the agreement. In fact, the agreement specifies that the Foundation should not fund the arrangement: "CASE shall provide the services described in this Agreement at no cost to the Foundation or the School."

On its face, the Tri-Party Agreement is a contract for CAS to provide services to CLCS and its supporting foundation. More than 20 years of caselaw has determined that a contract with a private company to provide services to a public entity does not shield a retired public employee from the earnings limitations in Section 91(b).³³

The assertion that these services are being provided at "no cost" is a fiction that can only be seen as an attempt at obfuscation. From its founding in 1999 through June 30, 2015, the Foundation's IRS 990s forms show that it contributed \$4,339,303 to CLCS. The Foundation did not report making a single grant³⁴ to any other organization until fiscal 2016, the year CLCS hired Ms. Nathan and the Foundation began providing funding to CAS. From June 30, 2015 to July 1, 2019, the Foundation provided more in grant funding to CAS than it did to CLCS,³⁵ providing \$824,475 in grants to CAS and \$797,133 to CLCS. Regardless of the Tri-Party Agreement's

³² In the FY2017 and FY2018 budgets CAS submitted to the Foundation in conjunction with its grant requests, CAS carried the value of its space at CLCS as \$80,000 of in-kind revenue. The FY2019 budget CAS provided to the Foundation did not include a line item for classroom space. In exchange for classroom space, CAS provides CLCS with two scholarships to PSI.

³³ See e.g., *Daley v. Plymouth Ret. Bd. and Pub. Emp. Ret. Comm'n*, CR-11-441 and 13-409 (CRAB August 7, 2014).

³⁴ In interviews, board members said they thought the Foundation might have provided small grants to organizations other than CLCS prior to 2016. The IRS 990 forms refute that claim.

³⁵ In Fiscal 2019 the Foundation also provided \$125,713 to the CLCS Realty Corporation, a non-profit organized to assist CLCS in building a school.

language, it is logical to consider \$824,475 the cost of CAS providing services to CLCS and the Foundation.

Fiscal Year	Foundation Grants to CLCS	Foundation Grants to CAS
2016	\$14,480	\$ 49,093
2017	\$4,769	\$289,000
2018	\$194,145	\$244,647
2019	\$583,739	\$241,735
Total	\$797,133	\$824,475

Board meeting minutes for all three entities repeatedly describe the Foundation’s grants to CAS as intended to cover Ms. Nathan’s salary and fund the services she and CAS provide to CLCS.

For instance:

- On November 17, 2015, less than a week after Ms. Nathan accepted the job as executive director, the Foundation board met “by phone” with Mr. Gut to discuss the fact “that CASE may require financial support from the Foundation in order to fulfill its obligations under this employment agreement.” The board voted unanimously to acknowledge that the Foundation would likely provide funding to CAS to cover Ms. Nathan’s salary.
- The Foundation board and Mr. Gut met again in April 2016 to discuss the Foundation’s role in funding Ms. Nathan’s salary: “CASE is our new dissemination arm, which will also be where our new leader, Linda Nathan, and our development team³⁶ will be paid. When we reviewed the hiring of Linda Nathan last fall, we said we would be willing to take steps to fund her salary. Linda and her team are putting together a proposal for us.” As noted above, by June 30, 2016 the Foundation had donated \$49,093 to CAS.
- On November 28, 2017, the Foundation’s trustees describe the purpose of its \$244,647 fiscal 2018 grant to CAS as “supporting the dissemination of the school.”
- At a May 11, 2018 CAS board meeting, a consultant hired to assist the three related entities in developing joint and individual strategic plans offered a concise explanation of the relationship among the three entities: “Since CLCS is a district, CLCS will need to purchase leadership services to run the district – Linda and CAS staff essentially function in this capacity at this point in time... CLCS Foundation is purchasing CAS services for the school.”

³⁶ The development team is a group of employees responsible for fundraising. As discussed below, historically, those staffers were on CLCS’s payroll. In 2016, the development team moved to the Foundation’s payroll. Although some documents show the development team reporting to Nathan, they were never moved to the CAS payroll.

The Foundation's grants completely covered Ms. Nathan's salary as well as providing more than half of CAS's revenues from fiscal 2016 to fiscal 2019. For instance, in November 2016, the Foundation granted CAS \$289,000 to cover its anticipated deficit for fiscal year 2017.³⁷ The budget CAS provided to the Foundation in support of its grant request showed that during its first year of operation, CAS only had one other revenue source: \$54,000 in PSI tuition.³⁸ CAS would not have been able to pay Ms. Nathan's salary – or cover its operating costs – without its grant from the Foundation.

The Foundation also covered CAS's operating deficit in fiscal 2018 – when CAS requested and received \$244,647 – and fiscal 2019 – when CAS received \$225,000.

In the face of public scrutiny of Ms. Nathan's earnings, the Foundation³⁹ declined to fund CAS's fiscal 2020 grant request. This decision left CAS without sufficient funds to support its operations. In December 2019, the CAS board cut Ms. Nathan's salary for 2020 to \$60,000 a year, 40 percent of her original salary. In March 2020, the CAS board cut Ms. Nathan's salary again to an annualized rate of \$50,000.

CAS has applied to other entities, including the National Endowment for the Arts, for new grant funding to replace the Foundation's annual payment. Thus far, CAS has not received any new grant funding.

c. The Conservatory Lab Charter School started paying the Conservatory Lab Charter School Foundation.

At the same time CLCS hired Ms. Nathan, the school began paying the Foundation more than \$200,000 a year to provide development, marketing and communications services. The payments from CLCS to the Foundation closely track the Foundation's grants to CAS.⁴⁰ In other words, CLCS appears to be using the Foundation as a pass-through.

³⁷ The Foundation initially rejected CAS's grant proposal because it was insufficiently tied to the Foundation's mission. The Foundation approved the grant after CAS added the following language to its proposal: "In alignment with CLCS Foundation's mission, CAS will disseminate practices tied to learning through music as an educational model. In addition, CAS will consult with Conservatory Lab Charter School to develop a national school model of music infused learning."

³⁸ The budget valued classroom space at CLCS as an \$80,000 in-kind revenue source.

³⁹ The Foundation identified the capital campaign to fund a new building for the upper school as its fiscal 2020 financial priority.

⁴⁰ Since fiscal 2003, the Foundation has served as CLCS's landlord. Board members said rent payments covered costs and did not include any profit for the Foundation. The Foundation's IRS 990 forms confirm this description.

Fiscal year	CLCS to Foundation	Foundation to CAS
2017	\$240,000	\$289,000
2018	\$244,000	\$244,647
2019	\$275,592	\$241,735
Total	\$759,592	\$775,382

Board members told the OIG that the payments from CLCS to the Foundation were unrelated to the grants from the Foundation to CAS. However, minutes from the September 21, 2016 CAS board meeting, discussing CAS's budget deficit, tell a different story: "The total expense line is over the income line by \$290,600. A request needs to be made to the Foundation to cover that amount. It was noted that this amount has been approved in the school's June 2016 budget."

CLCS initially made these payments to the Foundation without any written agreement. Starting July 1, 2017, the Foundation and CLCS formalized the consulting arrangement with a service agreement that required the Foundation to perform "[a]ll development activities" for CLCS.

Board members justified the new consulting fees by explaining that on July 1, 2016 the development staff positions moved from CLCS's payroll to the Foundation's. They said the consulting fees simply enabled CLCS to continue covering development costs. Documents confirm that prior to July 1, 2016 the Foundation did not employ any staff.

Ms. Nathan's job description, the Tri-Party Agreement and the Foundation's Strategic Priorities document offer further evidence that these payments are meant to fund Ms. Nathan and CAS. As noted above, Ms. Nathan's job description requires her to oversee the employees of the Foundation, including the director of finance and the development director; the Tri-Party Agreement requires CAS to assist the Foundation in soliciting grants and contributions on behalf of the Foundation, CAS and CLCS. Finally, the Foundation's Strategic Priorities document notes that Ms. Nathan will be the staff-level director for CLCS's capital campaign. It strains credulity that such oversight and assistance are separate from the Foundation's development activities.

It is also worth noting that although CLCS began paying the Foundation to perform all development activities in July 2016, CLCS's board of trustees continue to oversee those fundraising efforts.

In June 2019, the Foundation's board voted unanimously to "take over all fundraising activity for the school" as soon as "the CLCS Board votes to transfer its Development efforts to

the Foundation.”⁴¹ As of January 2020,⁴² 22 months after these discussions began, the CLCS board still had not voted to transfer its development efforts to the Foundation.

d. Documents allocate Ms. Nathan’s time to the Conservatory Lab Charter School.

Documents created in 2017 and 2018 – before Ms. Nathan’s Section 91(b) compliance came under scrutiny – clearly state that during her first two years at CAS, Ms. Nathan devoted the majority of her time to CLCS. These contemporaneous documents are supported by testimony from board members who said that Ms. Nathan needed to turn CLCS into a national model before she could focus on replicating the school. Testimony that described Ms. Nathan’s activities as essential to CAS’s success but incidental to the CLCS’s operations does not impact the time analysis.

All sources support the idea that Ms. Nathan initially spent the vast majority of her time on CLCS’s operations. Over time, her focus shifted to developing CAS’s financial and operational independence from CLCS and the Foundation.

From July 1, 2016 to June 30, 2017, Ms. Nathan spent 75 percent of her time on CLCS.

- Anne Snyder, a member of both the CLCS and CAS boards, reported the 75 percent figure at a CLCS board meeting on April 25, 2017.
- Ms. Nathan offered the same 75 percent estimate in December 2017 when a team from DESE interviewed her in connection with CLCS’s charter renewal.

From July 1, 2017 to June 30, 2018, Ms. Nathan spent between 55 and 60 percent of her time on CLCS.

- During a May 11, 2018 CAS board meeting a consultant working with CLCS, CAS and the Foundation to develop joint and individual strategic plans estimated that Ms. Nathan was spending 55 percent of her time on CLCS.
- In her December 2017 interview with DESE, Ms. Nathan said that during the 2017-2018 school year she was spending 60 percent of her time on CLCS.

e. The Center for Artistry and Scholarship had few other funding sources.

Apart from the Foundation, PSI has been CAS’s largest source of revenue. From July 1, 2016 to June 30, 2019, PSI tuition accounted for an average of 22 percent of CAS revenue:

⁴¹ See Foundation meeting minutes dated June 12, 2019.

⁴² The OIG reached out to CLCS’s attorney for updated information. His response was delayed by the COVID-19 pandemic.

\$114,213 in fiscal 2017; \$110,710 in fiscal 2018 and \$102,112 in fiscal 2019 (a total of \$327,035), according to CAS's IRS 990 forms.

From July 1, 2015 to June 30, 2019 CAS reported \$1,508,158 in total revenue to the IRS. During that four year period just \$356,648 (24 percent of its revenue) was unrelated to PSI or the Foundation.

In an effort to develop a clearer picture of CAS's activities, the OIG requested information about grants and consulting agreements for projects unrelated to CLCS, the Foundation or PSI. CAS provided documents showing that between July 1, 2016 and June 30, 2019, CAS received a total of \$173,600 in funding for projects unrelated to CLCS, the Foundation or PSI. The details show that:

In fiscal year 2017, CAS received:

- A \$33,500 consulting contract from the Boston Latin School Association to provide diversity training at the Boston Latin School during the 2016-2017 school year.

In fiscal year 2018, CAS received:

- A two-year \$100,000 grant from The Boston Foundation to work with four groups that planned to develop new charter schools. None of the four groups received charters.
- A \$1,500 consulting contract to provide training at a Queens, NY, charter school.
- A \$600 honorarium to provide consulting to a Rhode Island-based charter school network.
- A \$3,000 consulting contract for Ms. Nathan to attend a leadership retreat at Hunter College in New York.

In fiscal year 2019, CAS received:

- A \$10,000 consulting contract to provide diversity training at a charter school in Rhode Island.

Apart from the \$33,500 contract to provide training at the Boston Latin School, none of the above projects would be considered providing service to a public entity for Section 91(b) purposes. Therefore, \$140,100 of CAS's revenue (9 percent of total revenue) was clearly unrelated to public service in Massachusetts. CAS's records show that during this three year period, CAS paid Ms. Nathan a total of \$453,000 (approximately \$150,000 a year).

After DESE, the Retirement Board and the OIG began raising questions about Ms. Nathan's pension and the relationship among CAS, CLCS and the Foundation, Ms. Nathan turned much of her attention to developing new, independent revenue sources. Given CAS's dearth of independent projects in 2019, it seems fair to assume that Ms. Nathan continued to spend her self-reported 60 percent of her time providing services to CLCS through the end of 2019.

Finding #3: Ms. Nathan Exceeded Her Post-retirement Earnings Limits.

As noted above, Section 91(b) limits the annual salary of a retired public employee who is providing service to a public entity to the difference between his pension and "the salary that is being paid for the position from which he was retired." Once, the public employee has been retired for a full calendar year, Section 91(b) increases his annual post-retirement earnings limit by \$15,000.

For Ms. Nathan, the analysis is complicated slightly by the fact that immediately prior to retirement she worked as a special advisor in the Office of the Superintendent, a job that was created for her. In this position, which no longer exists, her job title for payroll purposes remained "Headmaster."⁴³

It would be nonsensical to assume that this one-year special assignment either removes Ms. Nathan's post-retirement earnings limits or sets her limit at zero. Case law, clearly describes the intent of this restriction, providing guidance on how to determine Ms. Nathan's annual post-retirement earnings limit:

"The statute reflects a clear policy that an employee of a governmental unit in Massachusetts generally may not retire, receive a pension, accept employment elsewhere in the government, and, by combining her pension and her new compensation, make more money than if she had not retired."⁴⁴

In order to calculate Ms. Nathan's post-retirement earnings limits, the OIG asked the BPS to determine what her salary would have been if she had remained a headmaster – rather than retiring on September 1, 2014. The BPS⁴⁵ calculated Ms. Nathan's salary, including her career award and education differential, for calendar years 2015 to 2019.⁴⁶

⁴³ Ms. Nathan was headmaster of the Boston Arts Academy ("BAA") from 1998 to 2012.

⁴⁴ *Bristol County Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 447 (2006).

⁴⁵ BPS informed the Retirement Board that the salary of the current BAA headmaster is \$144,741. This figure is lower than Ms. Nathan's final pre-retirement salary of \$145,663 a year.

⁴⁶ At her current \$50,000 salary, Ms. Nathan's 2020 earnings would fall within her post-retirement earnings limit.

Calendar Year	Headmaster Salary
2015	\$148,169
2016	\$152,403
2017	\$156,764
2018	\$161,255
2019	\$165,613

Since Ms. Nathan had been retired for a full calendar year as of January 1, 2016, she is allowed to earn \$15,000 more annually than the headmaster's salary shown above; therefore, her post-retirement earnings limits for the years she worked at CAS were:

Calendar Year	Post-Retirement Earnings Limit
2016	\$167,403
2017	\$171,764
2018	\$176,255
2019	\$180,613

As you know, during each of these years Ms. Nathan's pension exceeded \$100,000. In addition, her annualized compensation from CAS started as \$150,000. Therefore, her total compensation exceeded her post-retirement earnings limit in all four years:

Calendar Year	Pension	Salary	Total Compensation	Earnings Limit	Total Excess Earnings
2016	\$104,037	\$75,000	\$179,037	\$167,403	\$11,634
2017	\$104,442	\$150,000	\$254,442	\$171,764	\$82,678
2018	\$104,862	\$151,500	\$256,362	\$176,255	\$80,107
2019	\$105,282	\$149,792	\$255,074	\$180,613	\$74,461
Total					\$248,880

As noted above, Ms. Nathan did not spend all her time on CLCS business. According to Nathan's self-reporting to DESE, she spent 75 percent of her time on CLCS business during the 2016-2017 school year and 60 percent of her time on CLCS business during the 2017-2018 schoolyear. The below calculations are based on Nathan's continuing to spend 60 percent of her time on CLCS. Since Section 91(b) is based on calendar year – rather than schoolyear – calculations, the OIG recalculated Nathan's time allocations by calendar year:

Calendar Year	Public Service %	Total Salary	Public Service Salary
2016	75	\$75,000	\$56,250
2017	67.5	\$150,000	\$101,250
2018	60	\$151,500	\$90,900
2019	60	\$149,792	\$89,875

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Based on these calendar year percentages, the OIG calculated Nathan's overearnings as follows:

Calendar Year	Pension	Public Service Salary	Public Service Compensation	Earnings Limit	Excess Earnings
2016	\$104,037	\$56,250	\$160,287	\$167,403	\$0
2017	\$104,442	\$101,250	\$205,692	\$171,764	\$33,928
2018	\$104,862	\$90,900	\$195,762	\$176,255	\$19,507
2019	\$105,282	\$89,875	\$195,157	\$180,613	\$14,544
Total					\$67,979

Based on the above analysis, Ms. Nathan currently owes the Retirement Board \$67,979. The OIG's overearnings analysis is based on a conservative estimate of how much time Ms. Nathan spent on CLCS's operation. The OIG recommends that the Retirement Board conduct its own time analysis and reduce Ms. Nathan's pension until she has repaid all excess earnings.

Sincerely,



Glenn A. Cunha
Inspector General

cc: Courtney Aladro, Chief, Non-Profit Organizations/Public Charities Division
Alison Bagg, Director, Charter Schools and School Redesign
Danna Mauch, Chair, Center for Artistry and Scholarship Board of Directors
Linda Nathan
Bradley Richardson, President, Conservatory Lab Foundation
Katherine H. Sloan, Chair, Conservatory Lab Charter School Board of Trustees