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By Email and First-Class Mail

Ms. Christine Monaco, Chair  
Burlington School Committee  
123 Cambridge Street  
Burlington, MA 01803

**Re: Misuse of School Department Resources**

Dear Chair Monaco:

Pursuant to its statutory authority under Chapter 12A of the Massachusetts General Laws to prevent and detect fraud, waste and abuse in the expenditure of public funds, the Massachusetts Office of the Inspector General (“OIG”) issues this letter regarding the use of school resources by Burlington Public Schools’ superintendent, Eric Conti.

Through its investigation, the OIG concluded that the superintendent regularly utilized Burlington Public School’s (“BPS”) equipment for personal purposes. While his employment contract allowed Dr. Conti to use BPS equipment under limited circumstances, that provision should be considered void as against public policy because it is in violation of the conflict-of-interest law. Further, Dr. Conti’s use of BPS equipment, such as a trailer, was outside the terms of his contract.

The OIG also found that the school maintained a reimbursement account with a consistently high balance.<sup>1</sup> BPS inappropriately used this account to reimburse employees for purchases that should have been expensed elsewhere.

BPS and Dr. Conti fully cooperated with the investigation. Furthermore, after the OIG began its inquiry, Dr. Conti notified the School Committee that he would stop using all of the maintenance department’s facilities and equipment.

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<sup>1</sup> The account was titled “Petty Cash.”

## **Background**

### **I. Use of BPS Facilities and Resources**

#### ***A. Superintendent's Contract***

Dr. Conti became the superintendent of BPS in 2008. In August 2015, Dr. Conti asked the School Committee to consider adding language to his contract providing him “reasonable use” of school equipment and facilities. He told the School Committee that, for example, he would use the fitness center and shower facilities at the high school. Dr. Conti stated that he often had time between the end of the workday and School Committee meetings; therefore, the use of these facilities would not interfere with his, or the students’, regularly scheduled day. The director of finance and operations, who reported directly to Dr. Conti, was responsible for monitoring Dr. Conti’s facility and equipment use.

The School Committee unanimously approved adding the following to Dr. Conti’s contract:

The superintendent has reasonable use of the district’s facilities and equipment when not in conflict with student programming. Superintendent is responsible for the costs of any materials used and assumes all risk associated with the use of the facilities and equipment. Reasonable use will be determined by the director of operations.<sup>2</sup>

The School Committee added the same language to the contracts for the maintenance supervisor and the director of finance and operations. For their contracts, Dr. Conti was responsible for determining reasonable use.

#### ***B. Automobile Lift***

In late 2015 or early 2016, BPS purchased an automobile lift for the maintenance department for approximately \$3,000. The maintenance department used the lift to repair small equipment, but not BPS vehicles. The department was responsible for maintaining two motor vehicles at the time, and it relied on a local auto body shop for vehicle repairs. BPS does not offer an automotive technical program for its students.

BPS could not provide records documenting the reasons why it purchased an automobile lift. Despite conducting interviews with several BPS employees, the OIG could not determine who made the initial request to purchase the lift.

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<sup>2</sup> Superintendent Contract, between Eric Conti and Burlington School Committee, dated March 2011 (executed June 28, 2018) (referred to here as “Superintendent Contract”).

### ***C. Staff Use of BPS Facilities and Resources***

The OIG found that Dr. Conti's use of BPS facilities and equipment went beyond using the gym and shower. In one instance, Dr. Conti used BPS's trailer to haul materials to his property in Virginia. On several occasions, he used BPS facilities to house and perform maintenance on his Jeep. In the years following the automobile lift's installation, Dr. Conti used the lift for repairs to his personal vehicles; on occasion he left his Jeep on the lift for multiple days in a row. Dr. Conti also stated that BPS employees refurbished wooden barn doors for his Virginia property. Staff reported that they did the work voluntarily, on school property, during their lunch breaks.

Furthermore, BPS employees stated that they performed work on Dr. Conti's Jeep. Dr. Conti stated that he did not direct maintenance department employees to perform any personal work for him, and that they did the work voluntarily. Dr. Conti stated that he could not determine when the above work occurred or if it was performed during work hours.

The OIG found no records or other evidence that the operations manager pre-approved Mr. Conti's use of school equipment and facilities. Similarly, the OIG found no evidence that Dr. Conti reimbursed the school for his use of equipment and facilities. Furthermore, the OIG also found that at least one other maintenance department employee used the school's garage to repair their personal vehicle.

Finally, the OIG found that BPS allowed staff to take school equipment and tools home over the weekends. This was an informal arrangement based on the "honor system;" staff did not need prior permission to bring items home and the school did not keep track of what equipment staff used, either at school or at their homes.

## **II. BPS's Use of a Bank Account for Staff Reimbursements**

### ***A. BPS's Reimbursement Policy***

According to the reimbursement policy that was in effect between 2016 and 2018, BPS staff was supposed to receive expense reimbursements from the town. The policy provided that when staff traveled or incurred an expense:

- 1) The staff member was supposed to fill out a purchase order that included each expense for reimbursement and the related receipts. In cases of requests for mileage reimbursement, the staff member was also required to submit a purchase order and a copy of a map that identified the start and end points, and the number of miles travelled;
- 2) The staff member's supervisor then submitted the documentation to BPS's business office;
- 3) The business office reviewed the documentation, assigned an account number to charge the expenses to, entered the purchase order information into the MUNIS system (the

- town's financial software system) and forwarded the documentation to the town accounting office;
- 4) The town accounting office reviewed the documentation and forwarded the reimbursement request to the town treasurer's office;
  - 5) The treasurer's office cut a check and mailed it to the employee; and
  - 6) A warrant (a request for payment) was submitted to the School Committee for approval.

The policy did not outline any circumstance in which BPS employees could or should be paid from a BPS bank account.

#### ***B. BPS's Reimbursement Account***

As discussed in the previous section, BPS should have been submitting employees' expenses directly to the town for reimbursement. As early as 2003, however, BPS maintained a bank account to reimburse BPS employees for travel, training and other miscellaneous expenses. The account carried an average daily balance of nearly \$9,000 from 2016 to 2018. Dr. Conti's secretary was the most recent signatory on the account.

Very generally, the account worked as follows. Employees would submit a request for reimbursement to the superintendent's secretary, who would then write the employee a check from the reimbursement account. BPS would then submit a warrant to the town of Burlington for all expenses it had reimbursed during the previous month. If the town approved the warrant request, it would send a check to BPS, which would then deposit that money into the reimbursement account.

BPS used the reimbursement account to reimburse Dr. Conti for travel and training expenses. BPS also used the reimbursement account to reimburse other school employees. BPS reimbursed individuals as much as \$1,900 at one time. BPS also used the account to reimburse various employees, including Dr. Conti, for purchases from a local coffee shop. These purchases were permissible and appeared to be for staff meetings and official BPS business. Between 2016 and 2018, BPS used the account to reimburse more than \$15,000 to employees.

As described above, account deposits primarily consisted of reimbursements from the town of Burlington; however, multiple nominal deposits were made from a variety of other sources. Most of the other deposits were from the United States Treasury and from parents' payments for student files.

## **Findings**

### **Finding 1: The School Committee likely provided, and BPS employees likely obtained, unwarranted privileges by using the “district’s facilities and equipment.”<sup>3</sup>**

“In 1962, the Massachusetts Legislature enacted G. L. c. 268A, the conflict-of-interest law, which seeks to combat secret dealings, influence peddling, inequality of treatment of citizens, and other activities where a public official or employee is confronted with a conflict-of-interest.”<sup>4</sup>

Section 23(b)(2)(ii) of Chapter 268A prohibits municipal employees from knowingly, or with reason to know, “us[ing] or attempt[ing] to use [their] official position to secure for [themselves] or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.”<sup>5</sup>

According to published guidance from the State Ethics Commission, “using public equipment and resources for personal business is using an official position to obtain an unwarranted privilege of substantial value not properly available to others.”<sup>6</sup> “Thus, the use of public resources valued at \$50 or more for personal, private or political purposes violates the conflict-of-interest law.”<sup>7</sup>

Accordingly, by approving contract clauses for BPS employees that permit the use of public equipment and resources, the School Committee likely secured unwarranted privileges for those employees.<sup>8</sup> Likewise, by using public resources, the BPS employees likely violated the conflict-of-interest law by securing unwarranted privileges for themselves.<sup>9</sup> Lastly, the OIG found no evidence that Dr. Conti reimbursed BPS for his equipment and facility use.

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<sup>3</sup> Superintendent Contract, between Eric Conti and Burlington School Committee, dated March 2011 (executed June 28, 2018), at p. 4.

<sup>4</sup> *McGovern v. State Ethics Comm’n*, 96 Mass. App. Ct. 221, 228 (2019) (citing *Leder v. Superintendent of Sch. of Concord & Concord-Carlyle Regional Sch. Dist.*, 465 Mass. 305, 308 (2013)).

<sup>5</sup> M.G.L. c. 268A, § 23(b)(2)(ii).

<sup>6</sup> State Ethics Comm’n Advisory, No. 05-01 (2005), *available at* <https://www.mass.gov/advisory/05-01-standards-of-conduct#i-unwarranted-privileges-g-l-c-268a-23-b-2-> (last viewed December 9, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> *See* M.G.L. c. 268A, § 23(b)(2)(ii).

<sup>9</sup> *See id.*

**Finding 2: The contract clause permitting BPS employees to use the district’s facilities and equipment is likely not enforceable because it violates public policy.**

“It is well established that a contract violating public policy will not be enforced.”<sup>10</sup> “Public policy’ in this context refers to a court’s conviction, grounded in legislation and precedent, that denying enforcement of a contractual term is necessary to protect some aspect of the public welfare.”<sup>11</sup> “To determine public policy, [the Supreme Judicial Court] look[s] to the expressions of the Legislature. . . .”<sup>12</sup> Where a “statute ... rests upon grounds of public policy, it is not in the power of one who may be directly affected by it to contract in advance that it may be disregarded.”<sup>13</sup>

As noted above, the Legislature enacted the conflict-of-interest law to combat public officials’ and employees’ misuse of their public positions.<sup>14</sup> If public officials and employees could contract around the conflict-of-interest law, it would “destroy the very purpose of the statute.”<sup>15</sup>

Inserting the clause permitting use of the district’s facilities and equipment had the effect of “waiving” the provision in the conflict-of-interest law that prohibits unwarranted privileges. The OIG did not find that the School Committee and Dr. Conti *intended* to circumvent the conflict-of-interest law. Nevertheless, the School Committee and Dr. Conti did not have the authority to “contract around” the provisions of the conflict-of-interest law to prevent its application to Dr. Conti and other BPS employees.<sup>16</sup>

**Finding 3: The School Committee failed to proactively oversee the superintendent’s contract and the use of school resources.**

As discussed in Findings 1 and 2, BPS should not have included contract provisions permitting Dr. Conti or other employees to use school resources and equipment. The contract provision was also inappropriate because it required Dr. Conti’s subordinate to supervise him. It is the School Committee’s role to oversee the superintendent. Moving forward, the School Committee should be proactive in overseeing the superintendent’s contract.

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<sup>10</sup> *A.Z. v. B.Z.*, 431 Mass. 150, 160 (2000) (citing *Beacon Hill Civic Ass’n v. Ristorante Toscano, Inc.*, 422 Mass. 318, 320-321 (1996)).

<sup>11</sup> *Beacon Hill Civic Ass’n v. Ristorante Toscano, Inc.*, 422 Mass. 318, 321 (1996).

<sup>12</sup> *A.Z. v. B.Z.*, 431 Mass. at 160-61.

<sup>13</sup> *Beacon Hill Civic Ass’n*, 422 Mass. at 324 (citing *Desseau v. Holmes*, 187 Mass. 486, 488 (1905)).

<sup>14</sup> *See McGovern v. State Ethics Comm’n*, 96 Mass. App. Ct. 221, 228 (2019).

<sup>15</sup> *See Spence v. Reeder*, 382 Mass. 398, 413 (1981) (permitting parties to waive pre-termination hearing in residential lease would destroy the purpose of the statute).

<sup>16</sup> *Beacon Hill Civic Ass’n*, 422 Mass. at 324.

For instance, Dr. Conti's contract stated that the director of operations would determine whether Dr. Conti's use of BPS facilities and equipment was reasonable. The director of operations reported to Dr. Conti. This meant that a subordinate of Dr. Conti's was responsible for determining when, and in what manner, Dr. Conti could use school facilities and equipment. This put the director in the untenable role of supervising his boss. The director of operations' continued employment relied on Dr. Conti's good will and his recommendation to the School Committee. It was unreasonable for the School Committee to place the responsibility on the director to police his superior.

This was exacerbated by Dr. Conti's actual use of school resources, which exceeded the terms of his contract. As discussed above, for instance, staff refurbished barn doors for Dr. Conti on school property during school hours. Dr. Conti used a school trailer to transport materials to Virginia. Dr. Conti also used the automobile lift for car repairs, frequently leaving his Jeep on the lift for days in a row, which would have prevented the school from using the lift.<sup>17</sup>

The School Committee is responsible for supervising and overseeing the superintendent. Going forward, the School Committee must carry out that role, and it should not place it on the superintendent's subordinates.

Similarly, the School Committee is responsible for safeguarding the school's resources and ensuring that they are used appropriately. When the School Committee approved contract language that allowed facility and equipment use, it failed to adequately limit or specify the terms of use. The language was overbroad and not in the best interest of BPS. For instance, using BPS equipment for non-BPS purposes accelerated equipment wear and tear. Because equipment use was unmonitored, the valuation of such wear and tear could not be calculated. Further, allowing staff to "borrow" BPS equipment and other resources for personal use created liability for the school. For example, the school risked liability if someone were to be injured, or property was damaged, while staff used equipment outside of BPS hours of operation. The informality of BPS equipment use by employees also posed the risk of lost or unaccounted-for equipment.

The School Committee should adopt a clear, written policy regarding the use of school resources, including equipment. The policy must comply with the state's conflict-of-interest law. It should also include internal controls and take into account liability risks.

**Finding 4: BPS improperly utilized a bank account for employee reimbursements.**

As discussed above, BPS has maintained a bank account at Citizens Bank since at least 2003. The account has primarily been used to reimburse employees for training, travel and other miscellaneous expenses. This circumvented BPS's policies and the town warrant process. By failing to follow its own reimbursement policy, BPS bypassed important internal controls and

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<sup>17</sup> As discussed above, the school's need for an automobile lift was questionable and BPS could not provide records documenting the reasons it bought the lift.

increased the risk of reimbursing unauthorized expenditures. The BPS's reimbursement policy required multiple levels of approval. As a result, both the school and the town of Burlington had multiple opportunities to reject or question reimbursement requests, and to ensure payments were well documented and authorized. By contrast, the process BPS actually used required only one individual's approval. Further, the superintendent's secretary was put into a position of approving her supervisor's expenses. As discussed in Finding 3, a subordinate cannot oversee her boss.

**Finding 5: Deposits into the BPS reimbursement account should have been properly accounted for and deposited into more appropriate accounts.**

The reimbursement account contained deposits from various sources; it appeared to be a catch-all for small-dollar payments that BPS received. For example, BPS deposited payments it received from parents for copies of student files, as well as deposits from the United States Treasury. In one instance, BPS deposited \$803 in cash. The origins of the cash were unknown. Because there was no clear purpose of the reimbursement account and because it was unclear what types of funds should have been deposited into the account, it was impossible to determine what the account balance should have been.

Municipal finance law and good accounting principles require specific types of receipts to be deposited in specific accounts. It is unclear whether BPS had the authority to deposit the payments it received into a general "reimbursement" account. BPS should work with the town and the Department of Revenue's ("DOR") Division of Local Services to ensure that it is properly depositing and accounting for all payments that it receives.

**Recommendations**

1. The School Committee should eliminate the clause regarding the use of facilities and equipment from all BPS employee contracts.
2. The School Committee should actively oversee the superintendent's performance, including compliance with the terms of his contract. In this regard, the OIG has developed a free training for members of public boards and commissions. The class covers topics essential to good governance, including fiduciary responsibilities and effective oversight.
3. The Chair of the School Committee should ensure that every committee member completes the annual state ethics training, and the School Committee should adopt policies that ensure employees comply with conflict-of-interest laws. This includes:
  - a. Strictly prohibiting school employees from performing work for the superintendent or other supervisors – even on a "voluntary" basis.
  - b. Adopting a clear, written policy regarding the use of school resources, including equipment. In addition to complying with the state's conflict-of-interest laws, the policy should include internal controls and take into account liability risks. For



instance, it should prohibit BPS employees from removing BPS equipment from the premises for personal purposes.

4. BPS must follow its reimbursement policy.
5. The School Committee should work with the superintendent and the town accountant to develop internal controls, approval processes and use guidelines for the separate reimbursement account.
  - a. As part of this, the School Committee should set a limit, such as \$100, for the expenses that can be reimbursed from the account.
  - b. The School Committee should periodically audit the reimbursement account's balance and activity.
6. BPS should work with the town and DOR's Division of Local Services to ensure that it is properly depositing and accounting for all payments that it receives.

### **Conclusion**

The OIG found that Dr. Conti took advantage of the reasonable use clause within his contract and that his use may be considered an unwarranted privilege. Dr. Conti utilized school equipment and facilities for personal purposes on multiple occasions. BPS employees performed personal work for Dr. Conti while on BPS property and during school hours. Also, by allowing staff to use school resources for personal purposes, BPS created liability risks, as well as risks related to the loss of resources and wear-and-tear to equipment. Additionally, the OIG found that the BPS did not follow its reimbursement policy and instead improperly used a bank account for employee reimbursements.

The OIG recognizes and appreciates that BPS has already instituted several changes to its policies and procedures as a result of this investigation. Further, Dr. Conti has been cooperative and candid throughout the investigation.

The OIG requests that, within 60 days, the School Committee submits a written response and action plan based upon the recommendations contained in this letter. Please do not hesitate to contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,



George A. Xenakis, Director  
Audit, Oversight and Investigations

cc: Eric Conti, Superintendent, Burlington Public Schools (by email)  
Thomas Murphy Jr., Vice Chair, Burlington School Committee (by email)  
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