



The Commonwealth of Massachusetts
Office of the Inspector General

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September 19, 2011

Dr. Mary Louise Francis
Superintendent of Schools
New Bedford Public Schools
455 County Street
New Bedford, MA 02740

Dear Dr. Francis:

As you know, the Massachusetts Office of the Inspector General (OIG) reviewed the New Bedford Public Schools' (NBPS) Fiscal Year 2009 (FY09) State Fiscal Stabilization Fund (SFSF) Grant of \$11,668,556. NBPS received this grant through the Massachusetts Department of Elementary and Secondary Education (DESE) as a result of the American Recovery and Reinvestment Act (ARRA). By letter of June 8, 2011 (provided previously) the OIG reported its findings regarding the NBPS purchase of 497 *DELL* computers using nearly \$281,000 of this ARRA funding. This letter addresses OIG findings regarding NBPS' use of more than \$2.2 million in FY09 ARRA funding towards a contract for a special education provider, Behavioral Development and Educational Services, LLC (BDES) whose owner and Clinical Director is Dr. Sheldon H. Wagner (Wagner).

The OIG is reviewing ARRA-related grants to identify potential vulnerabilities to fraud, waste, and abuse and other risks that could negatively impact the accountability, transparency, and anti-fraud mandates contained in the statutory language and interpretive guidance of ARRA. The OIG review of the provided documents should not be construed as an audit, investigation, or a comprehensive programmatic review. The OIG intends these reviews to assist ARRA grantees identify and address risks.

For this final portion of the review, the OIG examined the relationship between NBPS and BDES\Wagner and the services that are provided under this relationship. The OIG contracted with two licensed special education professionals to assist with this review. The OIG also reviewed documents, spoke with NBPS staff, staff from other school districts around New England who may have worked with Wagner, staff from a number of state agencies, and other relevant parties.

Based on discussions with NBPS staff, the OIG determined that BDES\Wagner has had a working relationship with NBPS for at least 19 years. NBPS staff is uncertain about exactly when, how, or why the relationship began. Wagner's relationship with NBPS pre-dates the organization of BDES in 2000 as a corporate entity. According to Wagner, his relationship with NBPS began under a different corporate entity (Behavioral Pediatrics) when Wagner was in partnership with a Dr. Michael Weiss. Currently, BDES\Wagner provides "in-house" special education programs (housed within NBPS school buildings) for students with developmental disabilities such as autism spectrum disorder and for students with behavioral problems. BDES\Wagner employees approximately 50 staff district-wide for the operation of 16 programs/classrooms at seven locations servicing about 150 students. Wagner and his staff also provide training to NBPS staff, consult with the NBPS special education staff, make home visits, attend meetings with and/or consult with parents, and perform "behavioral" assessments/evaluations of students. Last year, NBPS paid BDES\Wagner more than \$2.2 million for these combined services.

OIG staff met with NBPS on July 18, 2011 to discuss the issues identified by the OIG concerning BDES\Wagner. The following is a summary of the findings:

1) In violation of state regulations, NBPS does not have a written contract with Wagner/NBPS.

State regulations and sound business practice require that a school district have written contracts with vendors. State regulation 603 CMR 10.05(7) states that: "[A] written contract...shall be executed and retained to support all non-salary personnel expenditures...."

Although NBPS has been doing business with Wagner for close to 20 years, staff could only locate one recent "contract" – a one page document that contains a vague scope of work. The scope only covered a portion of the services that BDES\Wagner provides and failed to reference the services that BDES\Wagner provides directly such as student assessments. The "contract" covered less than 15% of the dollar value of Wagner's services for the 2010-2011 school year; only covering a portion of those behavioral services paid for with ARRA funding.

Contracts with vendors should be written clearly and include all terms and conditions of performance.

Sound business practice generally calls for contracts with vendors to include specific language regarding the scope of services (both for the program and individual job titles) including, but not limited to, the contract term, the cost of these services (salary and expenses) and how these costs will be calculated, invoiced and paid. Contracts should also contain clear performance objectives for the service provider, how performance will be measured, and how these objectives tie into the payment for

services.

The contract is also silent on what types of reporting must be provided to the district, what type of data needs to be maintained, what legal and regulatory requirements must be complied with, and perhaps most importantly, provisions that link the type of services to be performed to the needs of the students. The contract between BDES\Wagner and NBPS failed to include this information.

A contract should also contain so-called “boiler plate” language that addresses standard terms and conditions and entity specific provisions such as insurance requirements, employee qualifications, grounds for termination, and in the case of NBPS, requirements for vendors to work in school facilities with children such as a background or CORI (Criminal Offender Registry Information)¹ check. The contract contained no such provision. When OIG staff met with NBPS staff, NBPS staff could not confirm whether CORI checks had been done. According to Wagner, “we require all of our staff to secure a CORI certification” and that these certifications are provided to NBPS.

Contracts should identify how, when, why, who (staff) and at what rates a vendor is paid.

BDES\Wagner’s services are invoiced on an hourly basis using service rates chosen by BDES\Wagner and not subject to review, approval, or negotiation by NBPS. The one contract that NBPS could provide does not specify any other expenses or reimbursements for which NBPS may be responsible. The contract also fails to specify the number of staff to be used, the hours or schedule that employees are required to work, what type of hours are considered billable hours,² or how hours will be tracked, monitored and verified. As a result, NBPS may be reimbursing BDES\Wagner for time not worked and for unnecessary employees (from over staffing or the substitution of higher paying titles for lower ones). The current relationship between NBPS and BDES\Wagner is based almost exclusively on trust with little formal verification of staff levels and scheduling. The OIG’s special education consultant noted during a visit to one of the BDES programs that BDES staff both signed-in and signed-out on BDES timesheets at the start of the day. These actions indicate a timekeeping system highly vulnerable to fraud, waste and abuse. Since NBPS is paying the vendor on an hourly basis, timekeeping management and control becomes a crucial component in ensuring that NBPS is getting what it believes it is paying for. At present, there is no way to make this determination.

¹ CORI checks in schools are required by M.G.L. c.71, §38R.

² For example, is NBPS paying for a vendor staff member on vacation, on sick leave, other leave time or for a staff member who needed to come in late or leave early? Does NBPS pay for overtime, temporary title changes (for example, a classroom teacher acting as a supervisor when the supervisor is not in), professional development or training time or work outside of the building other than home visits? According to Wagner, MBPS does not pay for the non-work time of BDES employees.

The NBPS contract with BDES\Wagner has a defined maximum dollar value based on what NBPS has budgeted for the service. Since program inception and prior to the tenure of current NBPS management, NBPS apparently asked BDES\Wagner to provide a special education program and left the scope and details of the program up to BDES\Wagner. BDES\Wagner's only constraint appears to be the amount of funding that NBPS budgets for the services each school year.

Recommendation: To comply with state regulations, NBPS must enter into detailed written contracts with vendors, especially when these vendors charge millions of dollars per year and provide a wide range of services across the district. Arguably, NBPS should define the program it wants rather than allowing the vendor to determine the scope and cost of a program unilaterally.

The OIG also recommends that the various services provided by Wagner be subject to different contracting arrangements. For example, the programs conducted in the schools should be under a separate contract from the assessment and consulting services that Wagner provides. These are distinct services that should be treated so both contractually and financially. The OIG encourages NBPS to compensate BDES/Wagner based on program or contract deliverables rather than on an hourly basis. Paying hourly rates that are not tied to specific deliverables encourages the inflation of work time and provides a disincentive for efficiency.

If NBPS continues to compensate the vendor based on an hourly rate, then NBPS must accept responsibility for enacting an auditable timekeeping system for vendor staff that includes adequate controls and oversight to prevent and detect possible time fraud, waste, and abuse. NBPS should also investigate rates paid for similar services by other districts. NBPS should also consider "capping" the earnings for program elements, for example, student assessments.

2) NBPS has used BDES\Wagner for nearly 20 years without evaluating program costs.

For nearly 20 years, NBPS has been using BDES\Wagner's services without formally evaluating program costs even though the programs have grown in size and costs have increased. For the programs and services BDES\Wagner provides, it charges NPBS various hourly rates for its employees based on their titles. These rates appear to be for labor; Wagner does not invoice for anything other than these hourly rates. NBPS staff did not know whether these hourly rates included salary alone or whether these rates included administrative, overhead, or other indirect costs. For example, NBPS staff did not know whether the hourly rate included a profit mark-up, payments for employee benefits such as health and pensions, or overhead costs for BDES\Wagner's "home" office, travel expenses, etc. Vendor contracts would normally identify the types of costs included in a rate or would identify a specific rate for costs other than labor.

A closer look at these rates reveals that NBPS is reimbursing BDES\Wagner at a rate that might have other imbedded costs. For example, Wagner charges \$160/hour for his services; a significantly discounted rate according to BDES documents. Based on a 1,170 hour (36 week)³ school year, his full time equivalent school year salary would be approximately \$187,000. The average labor rate for a BDES classroom “therapist” for the school year is \$42,000. NBPS did not know if these total rates are for salary alone. According to Wagner, these rates do include costs for employee benefits such as health insurance and “401(K)” retirement plans.

An NBPS review of the program’s cost structure must recognize that NBPS provides BDES\Wagner with classroom space, supplies, and support services at no cost for the approximately 150 students that attend the BDES\Wagner programs. This subsidizes program costs and should be taken into account by NBPS when hourly rates are negotiated with BDES\Wagner. Based on hourly salary costs only, the “tuition” rate per student for the BDES programs is approximately \$14,000 per year. However, NBPS’ FY2010 expenditures (less salaries and benefits) show more than \$5,500 per student in expenditures for items that may have had a direct or indirect benefit for the students in the BDES programs. Adding these costs to what BDES charges create a tuition rate closer to \$20,000 per student; a cost not fully recognized by NBPS staff. According to NBPS, this is much lower than the approximately \$30,000 tuition for a regional educational collaborative or the much higher rates at a private special education school. However, NBPS has never evaluated these costs or questioned the rates charged. NBPS staff has pointed out that BDES\Wagner charges NBPS a discounted rate. BDES\Wagner invoices indicate a 34% discount for NBPS. As a result, the non-discounted tuition rate including the NBPS costs would be nearly \$25,000 per student.

BDES\Wagner’s invoices do not provide sufficiently detailed information to justify payment for contract administration purposes.

To perform a meaningful evaluation of program costs, NBPS would need detailed invoices and other information from BDES. Current monthly invoices from BDES\Wagner only contain lump-sum charges. Back-up documentation for these invoices only identifies the hourly rates for each job title and the cumulative number of hours being invoiced for each title. The number of hours is multiplied by the hourly rate for each title and these are totaled for the invoice.

There is no description of the type of services provided (whether for classroom work, student assessments, consulting, etc.), breakdown of the cost per program or classroom or an identification of the number of hours worked by individual staff members (except for managers). Since NBPS is paying on an hourly basis, NBPS should know who is getting paid and for what. Without these details, NBPS is totally

³ Note: salaries based on a 40 hour/52 week work year would be significantly higher.

reliant upon the vendor for the number of hours worked by which employee and where. Based on the invoice information currently provided, NBPS does not really know nor can it verify what it is paying for. Unfortunately, BDES may not have better information. According to the OIG consultant, a program review identified: "A seeming lack of accountability for who was doing what where and why for most of the programs." NBPS should know this information to evaluate vendor performance, the impact of these absences on the learning environment, the impact on learning hours required by state regulation, for compliance with student individual education plans (IEPs) and the safety and security of students.

NBPS staff informed the OIG that Wagner provides *pro-bono* hours of service and that this is considered a contract benefit. However, BDES invoices do not detail for what services these "free" hours have been provided. OIG staff informed NBPS staff that they should know what the *pro-bono* hours are for. For example, Wagner is the owner, principal, clinical director and chief administrator of BDES. Arguably, Wagner has a contractual and professional responsibility to ensure that the program he provides functions efficiently and effectively. This management responsibility could include making site visits, meeting with staff, conferring with NBPS staff, etc. NBPS does not know if Wagner invoices for this time or considers this *pro-bono* time. In either case, NBPS should not be paying Wagner for time spent managing his own staff and program or considering any *pro-bono* hours spent doing the same as a benefit. NBPS already pays BDES for two on-site program managers. According to Wagner, the hours he invoices for involve multiple services and these services are not specified in current invoices.

Recommendation: NBPS should evaluate program costs and determine what it is paying for and why. As the OIG special education consultant noted: "There is a great deal of faith placed in the integrity of BDES' own system for supervising and monitoring their staff." Future rate setting should be the subject of negotiations, based on the needs of the district rather than vendor expectations, and be established in writing. Moreover, NBPS should require more detailed invoicing information that can be tied back to timekeeping information and the vendor's contractual obligations.

3) NBPS should employ sound business practices even when services may be exempted from M.G.L. c.30B – the uniform procurement.

M.G.L. c.30B contains an exemption for special education services. NBPS considers the services provided by BDES\Wagner to be exempt. However, the OIG believes that even exempt services such as the student assessments that Wagner performs, could benefit from a competitive process.

For example, Wagner invoices at \$160 per hour for these assessments. The reimbursement rates for these services that have been issued by the state's Division of

Health Care Finance and Policy (DHCFP) are lower - about \$75 per hour.⁴ DHCFP also supports a rate of \$262.91 for an “educational assessment.” To ensure that NBPS does not overpay for these services, it should “test the market.” NBPS staff stated they believe Wagner conducts these assessments well and at a fair price. However, NBPS has not “tested the market” in 20 years. Even if NBPS continues to use Wagner for these assessments, these costs should be revisited. The OIG’s special education consultants have informed that OIG that proper assessments may take at least four hours – often longer. Therefore, Wagner could charge a minimum of \$640 per assessment. It is unclear how long these assessments take because, as stated in a previous finding, Wagner’s invoices lack sufficient detail to make this determination. Based on a four hour assessment, for the 34 assessments we know Wagner conducted in late FY2009, the savings from using the \$75 DHCFP rates instead of Wagner’s \$160 per hour rate would have been nearly \$12,000.

Recommendation: A best practice recommendation is for the NBPS to conduct a competitive procurement for assessments using M.G.L. c.30B.

4) BDES staff lacks Massachusetts licensure.

As stated earlier, Wagner and two of his key staff perform student evaluations/assessments to determine if a student qualifies for special education, certain special education programs, or if a specific student’s special education or behavioral needs have been appropriately identified. Wagner and his staff perform these evaluations separately from the programs they operate for NBPS. NBPS staff has identified Wagner as an expert in autism spectrum disorder and with behavioral issues and therefore refer a number of students for evaluation annually. According to Wagner, he performs about 60 per year for NBPS.

One of the OIG special education consultants, an individual with a Massachusetts school psychologist license with many years of experience as a special education teacher and administrator, reviewed a sample of 34 evaluations performed by or “co-signed” by Wagner in 2009. The OIG consultant has opined that these evaluations contain “diagnostic opinions” and that Wagner and his staff do not have the appropriate Massachusetts licensure to offer these diagnostic opinions. The OIG consultant also stated that: “The reports appear to be designed to give the impression of a conclusive and diagnostic evaluation.” Massachusetts law requires that only licensed individuals can offer diagnoses. Moreover, according to the OIG expert, 603 CMR 28.04 (2) requires that these types of evaluations be performed by “appropriately

⁴ The current DHCFP rate for assessment by a licensed psychologist is \$74.94/hour and the rate for a behavioral assessment is \$76.36/hour. DHCFP publishes rates for a variety of psychological, neurological and behavioral assessments but few come close to Wagner’s hourly rates. The U.S. Bureau of Labor and Statistics also reported that the mean hourly rate in 2010 for a licensed “psychiatrist” in the Boston metropolitan area was \$85.96 (more than twice the mean hourly rate for “psychologists”). Note: Late OIG findings show that Wagner is not a licensed psychologist in Massachusetts.

credentialed and trained specialists.”

BDES marketing material states that it performs “diagnostic evaluations” and included under the heading of “Who We Are” in the marketing material, which appears to generally identify staff qualifications, is “licensed mental health clinicians” indicating that BDES has licenses clinicians on staff. The OIG could not confirm that any of BDES staff, including Wagner, have current Massachusetts licensure as mental health or other type of clinicians.

Although Wagner has a doctoral degree in psychology, his Massachusetts license as a psychologist lapsed in 1996. According to Wagner, letting his license lapse was “one of the stupidest things I ever did on my life.” Wagner also offered that when his career shifted into educational consulting he did not believe that he would need to maintain his licensure. Wagner maintains that he does not refer to a diagnosis in his evaluations because he is not licensed and because “diagnostic conclusions” have no “value” to the educational assessment of a student. The other individuals who co-signed or performed the evaluations also do not have Massachusetts licensure. These individuals have BCBA (Board Certified Behavior Analyst) credentials but, according to state licensure staff, Massachusetts does not recognize the BCBA as a substitute for any type of licensure requirement. The OIG could not identify any licensed clinicians performing assessments for BDES at NBPS. NBPS staff stated that they were not aware that Wagner’s license had lapsed and were unaware that the BCBA credential might not be appropriate for this work under state regulations.

As a result of the opinion of the OIG special education consultant, the OIG has forwarded the matter to the Division of Professional Licensure for further review.

Potential conflict of interest.

The OIG also raised to NBPS the inherently problematic arrangement by which Wagner evaluates students for whom BDES, his own company, may later be providing services. Wagner evaluates a student and recommends that student for a service provided by his programs or determines that a student has certain behavioral issue or special education need that would trigger NBPS to place the student in the BDES program.

According to NBPS staff they had not considered the potential problems inherent in this arrangement. Both of the OIG special education consultants as well as others in the special education field consulted by the OIG stated that having the same staff that evaluates a student provide services for that student appeared to be a potential conflict of interest and, at the very least, was an uncommon practice; in most cases providers that assess students do not provide services to those students. One OIG consultant wrote: “What is unusual, however, is the fact that in creating these reports BDES is referring students to itself and yet this doesn’t seem to be a problem to anyone. So BDES is paid to evaluate the student, paid to service the student and, in a number of

cases, apparently paid to update the assessments at least annually if the recommendations in some of the reports are followed. New Bedford seems to have developed a comfortable system in which they can have a student evaluated or an issue addressed very quickly which speaks to the commitment of BDES to the district. In return, the district trusts BDES to make appropriate findings and intervention recommendations for the IEP [Individual Education Plan] team and bill them appropriately for these services.”

The OIG consultant that reviewed the student evaluations (that assess student eligibility for special education services) also offered the following: “In approximately twenty-three out of thirty-four cases, the findings result in and support a conclusion of no autism (ASD) symptomatology. But, in thirty-two of the thirty-four cases, the recommendations are for [special education] placement and/or ABA services.” BDES\Wagner provides ABA services for NBPS. This statistic raises a question concerning why so many students without ASD symptoms are referred to the BDES programs. Although these referrals may be appropriate, the potential conflict of interest raises questions about them. NBPS must determine the appropriateness of the service recommendations made in the evaluations.

Loss of Medicaid funding to the City and NBPS.

NBPS (and City of New Bedford) may be eligible for Medicaid reimbursement for some of the services provided by BDES\Wagner. However, Medicaid requires service providers to maintain proper licensure and credentialing. Wagner’s lack of licensure and the lack of licensure for his key staff could prevent NBPS from receiving Medicaid reimbursement. NBPS staff was unaware if any reimbursement had been claimed for or received by NBPS based on services provided by BDES\Wagner.

Recommendation: Since an OIG consultant has advised that Wagner may be in violation of state licensure requirements, the OIG has forwarded this matter to the Division of Professional Licensure for further review. The OIG has also advised NBPS to review the potential conflict of interest matter and consider the appropriateness of Wagner continuing to perform these evaluations and whether his recommendations for students to receive services from his firm have been appropriate and supported by the student assessments. NBPS should also review whether any potential Medicaid reimbursement has been unclaimed or if BDES\Wagner services are ineligible for reimbursement.

5) “Red Flags” identified during the review that required further review.

During the review, the OIG identified a number of “red flags” (indicators of potential risk or problems that require mitigation or further examination) that had to be explored further. Although the OIG review of these “red flags” did not find any evidence of fraud, waste, or abuse, the review raised questions that the OIG addressed with the

NBPS. For example:

- a. BDES\Wagner uses a number of mailing addresses. These addresses have included a residential apartment building in New Bedford and more recently the Wamsutta Club – a social/athletic, members only club in New Bedford. NBPS staff informed the OIG that they had believed Wagner had an office with a “secretary” in New Bedford.

According to the Wamsutta Club, Wagner is the only Club member with an office at the Club. The office is a converted meeting room. According to the Club, they do provide meeting rooms to members on a request basis and will hold mail that the Club receives for members.

There is nothing inappropriate about a vendor using a residential address or the address of a social club as a business address. However, a vendor with a \$2 million contract receiving mail at a local social club raised a “red flag” prompting a due diligence review.

- b. BDES\Wagner also uses the Ladders Clinic⁵ (Ladders) that is affiliated with Massachusetts General Hospital (MGH) as a mailing address. Ladders is a pediatric clinic that specializes in ASD (autism spectrum disorder). NBPS staff as well as staff from other public school clients of BDES\Wagner has assumed that Wagner is a Ladders Clinic staff member. Some cited as evidence for this assumption, Wagner’s use of the title of “Clinical Director” and the use of Ladders as a mailing address. NBPS staff has also stated that Wagner has stated in the past that he will be seeing clients at Ladders and that he does “rounds” at Ladders.

The OIG review could not confirm that Wagner is an employee of or affiliated with MGH or the Ladders Clinic. MGH records only indicate a brief employment for Wagner a number of years ago. According to current Ladders staff, Wagner is a member of Ladder’s fundraising committee and Wagner maintains personal and professional relationships with the clinic director and some of the staff. Because of these relationships, as a courtesy, Ladders will hold mail for Wagner and when he requests it, they will provide a consultation room so that he can see clients at the clinic. Clinic staff did not know if Ladders charges Wagner for the use of the facility or for collecting and holding his mail. Clinic staff stated that he “comes by” “once or twice a week.” Staff also offered that clinic staff may have informal consultations with Wagner and that Wagner may participate in clinic “rounds” which staff described as a form of professional development. According to staff, this professional development includes holding discussions in the clinic’s conference room involving matters pertinent to the profession and/or difficult cases that staff has encountered. Wagner sometimes participates in these

⁵ The Ladders Clinic is part of the Lurie Center for Autism at MGH.

discussions. According to Wagner, he has been asked to be affiliated with the Clinic and he has been waiting more than a year for MGH to approve his appointment to the Clinic.

There is nothing inherently inappropriate about the use of this mailing address. However, the lack of a formal affiliation between Ladders and BDES\Wagner and the mistaken impression of some individuals questioned by the OIG that Wagner was a Ladders staff member raised “red flags” that prompted a due diligence review.

- c. NBPS staff stated that BDES\Wagner offers large discounts to NBPS, a benefit that BDES\Wagner provides to NBPS over other clients. The OIG has determined that NBPS is by far BDES\Wagner’s largest school district client. The OIG is only aware of BDES maintaining one other small in-house program in another school district (outside of Massachusetts). Wagner is also affiliated with the Meliora Academy, a special education school in Connecticut

6) Special Education Program Evaluation: program serving students well.

One of the special education program consultants hired by the OIG reviewed the in-house programs operated by BDES\Wagner. Despite the issues raised earlier in this letter, the OIG expert stated that, from a special education standpoint, the program appears to be serving the students well.

The OIG expert identified many positive program attributes including, but not limited to, the following as excerpted from their report (previously provided to NBPS):

- “Each classroom visited was fully staffed with an extremely low pupil - adult staff ratio.”
- “The ASD classrooms in particular could be textbook replicas of best practice research-based settings.”
- “There was observable, detailed record keeping.”
- “There was constant prompting, with immediate and secondary rewards systems in place.”
- “BDES staff provides quality and flexibility that NBPS staff cannot provide...[because of union contract issues.]”
- “[Observed] activity was very creative and engaged some very challenged students.”
- “One remarkable aspect of every one of the nine classrooms was the level of engagement and activity for each student. There was no ‘down’ time.”
- “It is rare to have the number of one to one staff or the number of floating trained staff accessible to these programs.”
- “After observing the programs at Carney and Pulaski it seemed clear that these were very high quality and at almost clinical level of practice compared to the

usual level of service found in most public school ASD programs.”

Although the observation by the OIG consultant concluded that the programs appear to be serving students well, some program items need improvement.

The OIG consultant identified a number of questionable items including, a lack of BDES staff supervision by NBPS, inaccuracies in the IEP (Individual Education Plan) documentation maintained by BDES, and “a lack of synchronization” between the services required in the IEP and the BDES documentation that evidences the implementation of these services. The OIG expert referred to these inaccuracies as “unsettling.”

The OIG consultant also noted that Fridays are half-days for the BDES classrooms and stated that “it is very difficult to determine how five full days of services can be condensed into less than five full days, no matter how creative the staff and program teachers are in scheduling unless the overlapping of the Behavioral Therapists and Special Education teacher services are taken into consideration.” In other words, the OIG consultant could not identify documentation that indicates the amount total amount of quality classroom time required by Massachusetts regulations for each student given that half a day is lost on Fridays. The expert noted: “It is hard to see how that amount of consultation could be provided...in a week through the time provided by the early dismissal on Friday.” This raised concerns about the adequacy of services as well as the veracity of billable hours (given that BDES staff is paid by the hour).

The BDES\Wagner student assessments raised questions for the OIG consultant.

The OIG consultant identified a number of questionable items or “red flags” concerning the student assessments performed by Wagner and his staff and referenced earlier in this letter. For example, even though each assessment is supposed to be unique, the OIG consultant noted that: “There was a great deal of similarity of content in each [of the 34] report, despite the differences in titles.” “There were boiler plate statements in almost every one of the reports, no matter what the report was titled.”

The OIG consultant also questioned the value of these assessments. The consultant noted that: “The instruments used and the components referenced in the reports are those that could be used by staff found in almost every school district in the Commonwealth.” Yet, NBPS paid what appear to be high cost rates for these assessments and a lack of “back-up” documentation for these assessments. The consultant wrote: “What is difficult to assess in the costs related to Dr. Wagner’s work with BDES in New Bedford is the lack of ready documentation behind what is being done and what is charged.” The OIG consultant concluded that: “it appears that BDES and Dr. Wagner provide the appearance of an independent, highly credible agency assessing categorical eligibility.”

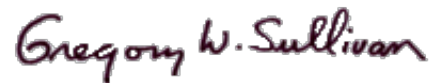
The consultant further questioned the BDES assessments by noting that: “The

focus...was whether or not the child met a BDES standard for eligibility for special education...BDES checks child assessment outcomes against an unknown threshold established by BDES to see if a child is eligible....for special education services.” As mentioned earlier in this letter, there is a potential conflict of interest for the same vendor to assess a student and then provide a student with services. In this case, it appears that students are being assessed based on BDES standards and that: “The assumption of each report seems to be that indeed the child is disabled and eligible for special education services. He or she is just not eligible under the federal autism category.” The student may then be referred to BDES programs for services. The OIG expert also noted that BDES assessments recommended placements in summer BDES programs – a recommendation usually left to NBPS staff.

Although the OIG consultant believes the BDES program to be serving students well, there are a number of questionable items that reflect upon NBPS’ oversight and management of the program including whether NBPS is getting appropriate services and whether the cost and elements of these services are documented sufficiently.

The OIG notes that the NBPS has been cooperative during this review and is receptive to the OIG recommendations. According to NBPS, they have already initiated discussions with Wagner to implement certain OIG recommendations and to clarify some program elements. For example, MBPS is developing a new contract for BDES and has requested that BDES provide more detailed invoicing and to maintain adequate documentation to support the invoices. The OIG appreciates NBPS cooperation in this matter. If you have any questions or concerns, or if we may be of further assistance, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General

cc: Mayor Scott Lang, City of New Bedford
Dr. Sheldon Wagner, BDES
Mark Kmetz, Director, Division of Professional Licensure
Dr. Karen Schwartz, Division of Professional Licensure
David LeBlanc, Audit Director, Department of Elementary and Secondary Education