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COMMONWEALTH OF PENNSYLVANIA

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A SPECIAL INVESTIGATION OF  
NORTH POCONO SCHOOL DISTRICT  
LACKAWANNA COUNTY, PENNSYLVANIA

May 2008

**JACK WAGNER, AUDITOR GENERAL**  
PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL



May 30, 2008

Mr. Joseph Cummings  
President, Board of Education  
NORTH POCONO SCHOOL DISTRICT  
701 Church Street  
Moscow, Pennsylvania 18444

Dear Mr. Cummings:

In July 2006, the Pennsylvania Department of the Auditor General's ("Department") Office of Special Investigations ("OSI") received allegations of misuse and abuse of state funds at North Pocono School District ("NPSD" or "the district"). This report contains the results of our special investigation.

In the process of conducting this investigation, OSI reviewed the district's financial records and interviewed several current school officials and employees. The period under review generally covered the 2004-05 and 2005-06 school years, unless otherwise specified.

During the course of this investigation, we found the following:

- NPSD's Superintendent, in violation of the district's collective bargaining agreement, improperly granted early retirement incentive waivers to four NPSD teachers, causing the district to incur unnecessary expenses;
- NPSD's Superintendent and Board of Education improperly entered into a health care incentive agreement with the district's health insurance provider in violation of state law; and
- NPSD's Chief Architect for the new high school construction project failed to provide a detailed accounting report of the hours worked by its personnel for the various phases of the project.

The complainant also alleged improprieties regarding transportation expenditures and contracts with transportation vendors, as well as improprieties regarding an exchange of land that would have been the site of the new high school. The transportation

expenditures and contracts issues were covered in a performance audit report released by the Department's Bureau of School Audits dated January 23, 2008. OSI did not conduct any analysis or fieldwork regarding the land exchange because the district subsequently purchased the property outright.

We urge the district to implement the recommendations made in this report and the aforementioned performance audit report. The Department of the Auditor General will follow up at the appropriate time to determine whether all of our recommendations have been implemented.

This report is a public document and its distribution is not limited. Additional copies may be obtained through the Department's website, [www.auditor.gen.state.pa.us](http://www.auditor.gen.state.pa.us).

Sincerely,

/S/

**JACK WAGNER**  
Auditor General

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## EXECUTIVE SUMMARY

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FINDINGS	RECOMMENDATIONS
<p><b><u>FINDING I:</u></b>  NPSD’s Superintendent, in violation of the district’s collective bargaining agreement, improperly granted early retirement incentive waivers to four NPSD teachers, causing the district to incur unnecessary expenses.</p>	<p>We recommend that the NPSD Board of Education:</p> <ul style="list-style-type: none"> <li>▪ Consult with its solicitor to determine whether the additional expenses to the district can be avoided and/or recovered and, if not, whether the district is entitled to indemnification from the Superintendent or any other source;</li> <li>▪ Take official action by recorded vote at a public meeting on the issue of whether to pursue recovery of said additional expense or ratify the Superintendent’s actions; and</li> <li>▪ Adopt a written policy prohibiting a district superintendent or any other administrator from waiving or otherwise deviating from any provision of a collective bargaining agreement without the prior written approval of the Board of Education on advice of the district’s Solicitor.</li> </ul>
<p><b><u>FINDING II:</u></b>  NPSD’s Superintendent and Board of Education improperly entered into a health care incentive agreement with the district’s health insurance provider in violation of the Sunshine Act and the Public School Code.</p>	<p>We recommend that the NPSD Board of Education:</p> <ul style="list-style-type: none"> <li>▪ Immediately put the health care incentive agreement on its agenda for the next scheduled public meeting of the Board and take an official vote on the agreement that is “duly recorded” in the minutes of the meeting and in accordance with the requirements of the Public School Code;</li> <li>▪ Comply with the requirements of both the Sunshine Act and the Public School Code when conducting and voting on official district business; and</li> </ul>

	<ul style="list-style-type: none"> <li>▪ If the NPSD Board wishes to conduct meetings by any other method than as expressly permitted by the Public School Code, such as by conference call, consult with its Solicitor to develop a formal written policy that sets forth the conditions under which such meetings may be held and the procedures for conducting such meetings, so that the actions taken are valid and enforceable.</li> </ul>
<p><b><u>FINDING III:</u></b>  NPSD’s Chief Architect for the new high school construction project failed to provide a detailed accounting report of hours worked by its personnel for the various phases of the project.</p>	<p>We recommend that the NPSD Board of Education:</p> <ul style="list-style-type: none"> <li>▪ Procure services only from vendors that can offer a level of detail sufficient to verify that invoices charge only for goods and services actually rendered, so that the district will have the tools it needs to verify that it is not being overcharged; and</li> <li>▪ Conduct a complete reconciliation of all bills and invoices paid to the Chief Architect for services provided on the new high school construction project. If the district does not receive adequate documentation to support an invoice, it should make a claim for refund of any overpayment.</li> </ul>

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## BACKGROUND AND INTRODUCTION

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The Department of the Auditor General (“Department”) conducts audits and investigations of school districts pursuant to its authority and responsibility under Section 403 of the Fiscal Code.<sup>1</sup> In July 2006, the Department’s Office of Special Investigations (“OSI”) was contacted by a complainant who made the following allegations involving state funds at North Pocono School District (“NPSD” or “the district”), located in the Borough of Moscow, Lackawanna County, Pennsylvania:<sup>2</sup>

- ***Allegation No. 1:*** District Superintendent Dr. Louis V. DeFazio (“Dr. DeFazio” or “the Superintendent”)<sup>3</sup> granted retirement incentive waivers to NPSD teachers in direct violation of the district’s collective bargaining agreement (“CBA”).

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<sup>1</sup> Act of April 9, 1929, P.L. 343, No. 176, § 403, as amended, 72 P.S. § 403 (The Fiscal Code).

<sup>2</sup> The complainant also alleged improprieties regarding an exchange of land that would have been the site of the new high school, as well as improprieties regarding transportation expenditures and contracts with transportation vendors. OSI did not conduct any analysis or fieldwork regarding the land exchange because the district subsequently purchased the property outright. Nor did OSI conduct any analysis regarding transportation expenditures and contracts with transportation vendors because this subject was covered in a performance audit report released by the Department’s Bureau of School Audits dated January 23, 2008. OSI did, however, consult with the Bureau of School Audits prior to the commencement and following the completion of fieldwork testing on this issue in order to ensure that the allegation was properly addressed and that an appropriate corrective action plan was recommended. The audit report discussed the following transportation errors:

- amounts paid to various contractors were underreported for the 2004-05 school year, resulting in a reimbursement net underpayment of \$179,346;
- errors in reporting the number of nonpublic and charter school pupils transported during the 2004-05 and 2003-04 school years, resulting in a reimbursement net underpayment of \$40,425; and
- absence of negotiated and executed contracts or agreements between the Board and the district’s contracted carriers.

Accordingly, the audit report recommended that the district enter into formal written contracts, awarded through an open and competitive process, with respective vendors of buses and van services for field trips, activity runs, and other non-routine transportation. These contracts should include adjustment formulas for contingencies, such as increases (or decreases) in the market price of fuel. The report also recommended that the school board should require the transportation coordinator to review contractor payment data for vehicles providing transportation to and from school to ensure accurate reporting of data that is in compliance with Pennsylvania Department of Education reporting guidelines, review records of the number of children attending nonpublic and charter schools for whom transportation was provided for accuracy; and review transportation reports submitted for years subsequent to the audit years and submit revisions, if necessary.

<sup>3</sup> It is our understanding that the Superintendent has taken paid leave from the district through June 28, 2008, at which point he will resign from his position and retire.

- **Allegation No. 2:** The district entered into a health care incentive Memorandum of Understanding without proper approval of the NPSD Board of Education (“Board”).
- **Allegation No. 3:** There were irregularities and overbilling by the Chief Architect, Crabtree Rohrbaugh & Associates (“CR&A”), regarding the new high school construction project.

OSI’s investigation of these allegations consisted of conducting interviews of current NPSD officials and employees and performing an analysis and review of the district’s financial records, including billing invoices submitted by CR&A and by subcontractor Greenman Pedersen Inc. (“GPI”), retirement payouts to NPSD teachers, personnel records, health care contracts, PlanCon<sup>4</sup> documents, and minutes of meetings of the NPSD Board. The period under review was the 2004-05 and 2005-06 school years, unless otherwise specified. This report contains the results of our special investigation, which was completed in November 2007.

NPSD was provided with a draft copy of this report for its review and comment. The district’s response is included at the end of this report followed by the Department’s comments on NPSD’s response.

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<sup>4</sup> PlanCon, an acronym for Planning and Construction Workbook, is a set of forms and procedures to be used by a school district to apply for Commonwealth reimbursement in connection with a major school construction project. The forms are designed to:

- (1) document a local school district’s planning process;
- (2) provide justification for a project to the public;
- (3) ascertain compliance with state laws, regulations and standards; and
- (4) establish the level of state participation in the cost of the project.

The Division of School Facilities of the Department of Education reviews proposed school building projects, including the plans and specifications, enrollments, building utilization, and building condition. The Division also calculates state reimbursement for qualified school construction projects, and reviews and approves the financing for reimbursable projects. Source: Department of Education website, [http://www.pde.state.pa.us/constr\\_facil/site/default.asp](http://www.pde.state.pa.us/constr_facil/site/default.asp), accessed on September 5, 2007.



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## FINDINGS AND RECOMMENDATIONS

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**FINDING I:     NPSD’s Superintendent, in violation of the district’s collective bargaining agreement, improperly granted early retirement incentive waivers to four NPSD teachers, causing the district to incur unnecessary expenses.**

The complainant alleged that NPSD Superintendent Dr. Louis V. DeFazio was being selective in granting early retirement incentive payouts to teachers who had retired from the district and, furthermore, that he had allowed selected<sup>5</sup> teachers to receive higher early retirement incentive payout percentages than they were entitled to receive under the district’s collective bargaining agreement.

On February 2, 2007, OSI received from the district’s Human Resources Supervisor a list of all teachers and administrators who had retired during the 2004-05 and 2005-06 school years. The list indicated that 22 teachers and administrators had retired during the aforementioned period as follows:

- In the 2004-05 school year, six teachers and two administrators retired from the district.
- In the 2005-06 school year, thirteen teachers and one administrator retired from the district.

The total retirement payout by NPSD during the 2004-05 school year for the eight employees was \$212,107.80, and the total retirement payout by NPSD during the 2005-06 school year for the 14 employees was \$324,718.68. All of these payouts were made to a Florida firm that manages the retired district employees’ Section 403(b)(7) retirement accounts. A Section 403(b)(7) retirement account is a retirement plan established pursuant to Section 403(b)(7) of the United States Internal Revenue Code<sup>6</sup> for employees of public schools and certain other organizations. Individual Section 403(b)(7) accounts are established and maintained by eligible employees in the form of mutual funds and/or annuities that are managed by investment or insurance companies.

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<sup>5</sup> OSI’s investigation determined that the Superintendent, through a “waiver” process, granted select NPSD teachers higher early retirement incentive payouts than they were entitled under the provisions of the CBA. These “waivers” granted by the Superintendent allowed the CBA’s eligibility requirements for credited years of service needed to receive a designated incentive payout percentage to be extended beyond the prescribed timeframe.

<sup>6</sup> 26 U.S.C. § 403(b)(7).

According to Internal Revenue Service (“IRS”) guidelines, the maximum contribution to a Section 403(b)(7) retirement account in 2005 was \$42,000, but only if the employee was at least 50 years of age and had 15 years of service in a Section 415 retirement plan.<sup>7</sup> The maximum contribution increased to \$44,000 in 2006. Payments are made by the district to the Section 403(b)(7) plan during the first pay period in July, which is actually in the next fiscal year.

A retired teacher’s payout in the year of retirement consists of payment for unused sick and personal leave, as well as one-quarter of the entire early retirement incentive payout, if applicable. A retired administrator’s payout in the year of retirement consists of payment for unused sick, personal, and vacation leave, as well as one-quarter of the entire early retirement incentive payout, if applicable.

The collective bargaining agreement between the NPSD teachers’ union and the NPSD Board is the master contract that governs the payout that a teacher is eligible to receive upon retirement. The relevant provisions of the CBA for the period of July 1, 2001 through June 30, 2007 can be summarized as follows:

- A teacher may accumulate unlimited sick and personal days; however, at the time of retirement, a teacher is eligible to receive only \$50 in compensation for each unused day.
- A teacher is also eligible to receive an early retirement incentive<sup>8</sup> based on the following criteria:
  - the teacher must be a full-time salaried employee,
  - the teacher must have more than 30 but less than 37 years service with the Public School Employees’ Retirement System (“PSERS”),
  - the teacher must notify the Board in writing 60 days before retiring, and
  - no duplicate health care coverage will be provided by the district if the spouse is still employed.
- If eligibility requirements/criteria are met, a teacher will receive the following payouts upon retirement:
  - 35 years or less credited service: 90% of final year salary, payable in 4 annual installments;
  - 36 years or less credited service: 75% of final year salary, payable in 4 annual installments;
  - 37 years or less credited service: 60% of final year salary, payable in 4 annual installments.

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<sup>7</sup> Section 415 of the Internal Revenue Code, 26 U.S.C. § 415.

<sup>8</sup> An early retirement incentive offered by a school district is designed to provide teachers close to retirement age a monetary incentive to retire early. This practice has become increasingly popular with many districts because it allows a district to refresh its workforce and reduce its salary and administrative costs by hiring new teachers at a lower compensation rate.

- More than 37 years of credited service: the teacher is not eligible to receive any payout under this plan.

Article II of the CBA provides, in relevant part:

This Agreement shall not be modified in whole or in part by the parties [i.e., the Board and the teachers' union] except by an instrument, in writing, duly executed by both parties.

The Act 93<sup>9</sup> Administrative Compensation Plan between NPSD administrators (i.e., principals, vice-principals, etc.) and the NPSD Board is the master contract that governs the payout an administrator is entitled to receive upon retirement. The relevant provisions of the Act 93 Administrative Compensation Plan for the period July 1, 2005 through June 30, 2008 can be summarized as follows:

- An administrator may accumulate unlimited sick and personal leave. However, at the time of retirement, an administrator is eligible to receive only \$80 in compensation for each unused day.
- An administrator may receive three or four weeks vacation time, depending on years of service. An administrator is paid for each unused vacation day at a daily rate that is calculated by taking the total annual salary divided by 240 working days.
- An administrator is also eligible to receive an early retirement incentive payout, provided that the administrator meets the aforementioned criteria in the teachers' CBA.

### **Fieldwork Testing Sources**

OSI analyzed the entire population of 22 teachers and administrators who retired from NPSD during the 2004-05 and 2005-06 school years. OSI attempted to reconcile actual retirement payouts for sick, personal, and vacation days (if applicable) with the early retirement incentive with the payout that each employee was entitled to receive based on the criteria stated in the applicable contract. OSI obtained the following records and performed the following reconciliations:

- OSI obtained an itemization of retirement payments to the 22 NPSD teachers and administrators who retired during the 2004-05 and 2005-06 school years. OSI was able to reconcile, without discrepancy, all 22 payments made to the teachers and administrators with copies of the cancelled checks sent to the Florida firm.

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<sup>9</sup> Act of June 29, 1984, P.L. 438, No. 93, 24 P.S. § 11-1164.

- OSI was able to reconcile credited years of service for participation in PSERS, both at NPSD and in total, for all 22 teachers and administrators. OSI used district personnel records and information from PSERS to construct total credited service. When determining the total years of credited service, OSI took into consideration the fact that a teacher or an administrator may have taken a sabbatical or a maternity leave or may have purchased military service.
- OSI determined the total number of sick, personal, and vacation days (if applicable) accrued by each of the 22 teachers and administrators on the date of retirement. OSI used the “Absence Status Report” that was prepared by NPSD and included in the each employee’s personnel file to determine the number of accrued and unused leave days.
- OSI was provided with salary information for all 22 teachers and administrators to determine their final salaries in the year of retirement.

**Fieldwork Results and Discrepancies**

OSI was able to make the following determinations with respect to the 22 payouts made to the retired teachers and administrators:

- No discrepancies existed regarding credited years of service in the records of PSERS or the NPSD for the 22 employees reviewed. OSI was also able to determine the hiring date and separation or retirement dates of the employee using the information obtained from PSERS and the district.
- No discrepancies existed in the calculations of sick, personal, and vacation leave accrued and reported as unused for each of the 22 employees reviewed.
- Resignation letters were maintained in all 22 personnel files of the employees reviewed.
- One employee was overpaid \$2,633.59 by NPSD due to a mathematical error that occurred when this employee’s early retirement incentive payout was calculated.
- A second employee was overpaid \$2,508.45 by NPSD due to a mathematical error that occurred when this employee’s early retirement incentive payout was calculated.
- A third was overpaid \$751.05 by NPSD due to a mathematical error that occurred when this employee’s leave payout was calculated.

- In total, these three mathematical errors cost the district \$5,893.09. However, supporting documentation dated September 11, 2007 indicated that adjustments had been made to these three employees' Section 403(b)(7) accounts in the subsequent calendar year in order to correct these errors.
- Two additional employees were underpaid \$10,422.15 and \$750.83, respectively, by NPSD, because NPSD noticed that they had reached the maximum contribution allowed by the IRS for their Section 403(b)(7) accounts during the year of retirement. However, the appropriate underpayments were credited to these employees' Section 403(b)(7) accounts in the next calendar year.

### **Early Retirement Incentive Payout Waivers**

OSI's review of the retirement payouts made to the 22 teachers and administrators revealed that Dr. DeFazio granted waivers to two teachers in the 2005-06 school year, and that both of these teachers received an early retirement incentive payout percentage higher than what they were entitled to receive based on actual years of credited service. Both teachers reached 35 years of credited service before the end of the 2005-06 school year. However, the waiver granted by Dr. DeFazio permitted each of these teachers to continue working through the end of the school year and still receive a 90% payout rather than a 75% payout as provided by the terms of the CBA, a total difference of \$20,067.45.

Furthermore, OSI found that Dr. DeFazio granted waivers to two additional teachers in the 2006-07 school year.<sup>10</sup> The waivers granted by Dr. DeFazio allowed these retiring teachers to not have to follow the prescribed provisions set forth in the CBA regarding the payout percentages they were entitled to under the early retirement incentive payout provision. OSI determined that both of these teachers received an early retirement incentive payout percentage higher than what they were entitled to receive based on actual years of credited service. Both teachers reached 36 years of credited service before the end of the 2006-07 school year. However, the waiver granted by Dr. DeFazio permitted each of these teachers to continue working through the end of the school year and still receive a 75% payout rather than a 60% payout as provided by the terms of the CBA, a total difference of \$21,164.70.

As shown in Table 1, the granting of these four waivers by Dr. DeFazio cost NPSD a total of \$41,232.15:<sup>11</sup>

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<sup>10</sup> These two teachers were not included in OSI's original retirement payout testing because their retirements occurred outside of the initial time frame under investigation.

<sup>11</sup> The district also incurred the additional cost of fringe benefits associated with employing a tenured full-time person at the district, rather than hiring a substitute to finish the school year or a new full-time teacher at a lower salary.

**TABLE 1**  
**Cost to NPSD of Unauthorized Early Retirement Incentive Waivers**

<b>Teacher</b>	<b>Salary</b>	<b>Payout per Waiver Granted</b>	<b>Early Retirement Incentive Payment Made*</b>	<b>Payout Allowed by Contract</b>	<b>Early Retirement Incentive Payment per Contract*</b>	<b>Difference</b>
#1	\$70,229.00	90%	\$63,206.10	75%	\$52,671.75	\$10,534.35
#2	\$63,554.00	90%	\$57,198.60	75%	\$47,665.50	\$ 9,533.10
#3	\$68,832.00	75%	\$51,624.00	60%	\$41,299.20	\$10,324.80
#4	\$72,266.00	75%	\$54,199.50	60%	\$43,359.60	\$10,839.90
<b>TOTAL</b>						<b>\$41,232.15</b>

\* Payable in 4 equal annual installments.

On October 10, 2007, OSI interviewed Dr. DeFazio, who, in response to questions, stated the following:

- His practice of granting early retirement incentive waivers has been suspended.
- The district suspended the practice of granting waivers when the teachers entered into a new CBA on July 1, 2007.
- He thought that the granting of the waivers was in the best interests of the district because it allowed students to keep the teacher for the entire year rather than have the teacher leave midway through the year.
- He believed that once he granted the first waiver, he had created a “past practice” that would require him to grant waivers for all teachers that met certain criteria.
- He granted a waiver to any teacher who requested one. However, one teacher who was eligible to receive a waiver did not request one.
- It was his “sole decision” to grant waivers, but it “may not have been a good idea” in hindsight.
- He did seek union approval to grant the waivers in late 2006. However, he could not provide any written documents to OSI to support this claim.
- He did not seek Board approval to grant the waivers.
- His decision not to seek Board approval for the waivers was an “unintentional oversight” on his part.

- He never “arbitrarily” granted waivers to NPSD teachers, and he believes that the Board would have approved granting the waivers.

### **Conclusion and Recommendations:**

NPSD Superintendent Dr. Louis V. DeFazio, in contravention of the district’s collective bargaining agreement and without authority to do so, granted early retirement incentive payout waivers to two teachers during the 2005-06 school year and to two teachers during the 2006-07 school year. The Superintendent’s actions were outside the scope of his authority and were done without obtaining prior approval of the NPSD Board. His failure to obtain approval denied the Board the opportunity to exercise its collective judgment as to whether any purported benefit to the district justified the additional cost.

We recommend that the NPSD Board of Education:

- Consult with its solicitor to determine whether the additional expenses to the district can be avoided and/or recovered and, if not, whether the district is entitled to indemnification from the Superintendent or any other source;
- Take official action by recorded vote at a public meeting on the issue of whether to pursue recovery of said additional expense or whether to ratify the Superintendent’s actions; and
- Adopt a written policy prohibiting a district superintendent or any other administrator from waiving or otherwise deviating from any provision of a collective bargaining agreement without the prior written approval of the Board of Education on advice of the district’s Solicitor.

**FINDING II: NPSD’s Superintendent and Board of Education improperly entered into a health care incentive agreement with the district’s health insurance provider in violation of the Sunshine Act and the Public School Code.**

The complainant also alleged that Dr. DeFazio illegally and improperly executed a health care incentive<sup>12</sup> Memorandum of Understanding (“MOU”) with Blue Cross of Northeastern Pennsylvania (“Blue Cross”). The basis of the health care incentive was to encourage active members, including teachers, administrators, and support personnel, to switch health care coverage from traditional Blue Cross coverage to the Blue Care Preferred Provider Organization (“PPO”) option. The complainant alleged that the acceptance of this health care incentive was not properly voted on by all members of the Board of Education, in that:

- only the majority members of the Board<sup>13</sup> were given an opportunity to vote;
- each majority member’s vote was separately taken over the telephone by the Superintendent in a telephone call to which no one else was a party; and
- the voting did not occur at a public meeting.

OSI’s review of records indicated that the topic of a health care incentive program was first discussed at an executive session of the Board held on June 14, 2006. OSI received a copy of the agenda for the meeting, which is in the form of a memorandum dated June 14, 2006 from the Superintendent to the Board members, the Business Manager, and the Solicitor, and which included the following item:

Blue Cross/Blue Shield met with union members and retirees yesterday to review the various package options. I will provide a detailed accounting of what happened and where we are heading in teacher contract negotiations. We will discuss the teacher contract negotiation on Wednesday, June 21, 2006, at 6:00 P.M. on the telephone conference.

The matter was discussed at this executive session, but no vote was taken on the implementation and acceptance of the incentive.

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<sup>12</sup> The incentive referenced by the complainant was designed to encourage district employees to switch from a traditional health care plan to a less costly Preferred Provider Organization (“PPO”) health care plan. If the district employee selects the less costly PPO health care plan option he/she would be entitled to a one-time payment totaling \$500.

<sup>13</sup> The majority members of the NPSD Board at the time of the complaint were comprised of five individuals, or an approving majority of a nine-member board, who voted in concert with each other and approved the Superintendent’s agenda. The remaining four members of the nine-member board constituted the minority and also voted in concert with each other but could not regularly amass the required votes to approve their own agenda.



Further records reviewed by OSI revealed that, at an executive session of the Board held on June 16, 2006, the members were informed by the Superintendent that the health care incentive had already been accepted by the Board, as well as by both unions, and a formal contract (the MOU) had already been executed. A copy of the agenda for the meeting, in the form of a memorandum dated June 16, 2006 from the Superintendent to the Board members, the Business Manager, and the Solicitor, included the following item:

[The Business Manager] and I are actively involved in teacher contract negotiations. On Tuesday, June 13, 2006, we invited in a representative from Blue Cross/Blue Shield to discuss the various insurance package options with all union members and retirees. Based upon that meeting, and subsequent meeting with union representation, we made an offer for all employees with traditional insurance coverage encouraging a change to Blue Care PPO, formerly Access Care II. Please see attachments.... We will discuss the teacher contract negotiation on Wednesday, June 21, 2006, at 6:00 P.M. on the telephone conference. The conference will be informal in nature. We will discuss this information in executive session on Monday, June 26, 2006 at 6:00 P.M. in the Middle School Library.

The attachments referred to in the memorandum include a memo dated June 16, 2006 from the Superintendent and the Business Manager to the Board, which included the following statement:

An incentive offer has been made to all district employees who have health insurance coverage. The offer is described in the attached memorandum of understanding. Board Members were contacted and, after getting 5 votes, this notice is being provided to all Board members. The bottom line to the district is potential savings on health insurance premiums of approximately \$250,000 if all employees on traditional Blue Cross switch to Blue Care PPO.

Also among the attachments to the memorandum was a copy of the MOU that the district entered into with the labor unions representing NPSD teachers and educational support personnel. Under this MOU, which was signed by both unions and the Business Manager on June 16, 2006, the district agreed to the following terms and conditions:

- “Any bargaining unit member who selects the Blue Care PPO as his/her healthcare plan as of July 1, 2006 will be eligible for a **one-time incentive**. This also includes any member who was on Blue Care PPO prior to July 1, 2006 and continues with the same coverage after June 30, 2006.”

- “The amount of the incentive will be \$500 or 50% of the total savings to the district, whichever is greater.”
- “The incentive will be paid the first payroll in January 2007.”
- “The incentive will be payable only if a minimum of 20% of members currently [enrolled in the Blue Cross] Traditional [plan] switch to Blue Care PPO.” Otherwise, the incentive will not be paid, and those who changed plans will have the option to change back to their original plan of Blue Cross Traditional.

OSI reviewed the minutes of the Board meetings of May 24, 2006 and June 28, 2006, and determined that, in the minutes of the June 28, 2006 meeting, there was discussion regarding the health care incentive, as well as the propriety of voting via telephone. However, these minutes did not reflect any specifics of the MOU, which Board members approved the measure, or the potential cost savings to the district. The minutes of the May 24, 2006 meeting made no reference to either one of these issues, and there were no other public meetings of the Board during this time period.

### **Applicable Law**

The Sunshine Act<sup>14</sup> provides rights for the public to be present at all meetings of agencies and governmental bodies, including school board meetings. The Sunshine Act is an integral part of this allegation because it provides specific provisions for voting and conducting business at public meetings.<sup>15</sup>

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<sup>14</sup> Act of October 15, 1998, P.L. 729, No. 93, 65 Pa.C.S. § 701 *et seq.* (Sunshine Act).

<sup>15</sup> The pertinent provisions of the Sunshine Act are as follows:

**§ 704. Open meetings.**

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), [or] 708 (relating to executive sessions). . . .

**§ 706. Minutes of meetings, public records and recording of meetings.**

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

- (1) The date, time and place of the meeting.
- (2) The names of members present.
- (3) The substance of all official actions and a record by individual member of the roll call votes taken.
- (4) The names of all citizens who appeared officially and the subject of their testimony.

**§ 707. Exceptions to open meetings.**

(a) **Executive session** – An agency may hold an executive session under section 708 (relating to executive sessions).

(b) **Conference** – An agency is authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference....

The Public School Code of 1949, as amended (“Public School Code”)<sup>16</sup> also governs the conduct of school board members during meetings. It provides specific criteria and provisions for conducting meetings, as well as discusses what is expected of a school board during voting at the meeting.<sup>17</sup> The Public School Code requires

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**§ 708. Executive sessions.**

(a) **Purpose.** – An agency may hold an executive sessions for one or more of the following reasons:

(1) To discuss matters involving employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee . . .

\* \* \*

(b) **Procedure.** – The executive session may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying date, time, location and purpose of the executive session.

(c) **Limitation.** – Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 707 (relating to exceptions to open meetings) shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 704 (relating to open meetings).

**§ 709. Public notice.**

(a) **Meetings.** – An agency shall give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of the meeting and shall give public notice of the schedule of its remaining regular meetings. An agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hrs in advance of the time of the convening of the meeting specified in the notice. Public notice is not required in the case of an emergency meeting or a conference. . . .

**§ 713. Business transacted at unauthorized meeting void.**

A legal challenge under this chapter shall be filed within 30 days from the date of the meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting. . . . Should the court determine that the meeting did not meet the requirements of this chapter, it may in its discretion find that any or all official action taken at the meeting shall be invalid. . . .

**§ 714. Penalty.**

Any member of an agency who participates in a meeting with the intent and purpose by that member of violating this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding \$100 plus costs of prosecution.

<sup>16</sup> Act of March 10, 1949, P.L. 30, No. 23, *as amended*, 24 P.S. §1-101 *et seq.* (Public School Code of 1949, as amended).

<sup>17</sup> The pertinent provisions of the Public School Code of 1949 are as follows:

**§ 422. Quorum; filling vacancies.**

the MOU at issue to be approved by the “affirmative vote of a majority of all the member of the board, duly recorded, showing how each member voted” because the MOU is both a contract involving more than \$100 and also an action fixing compensation of teachers and administrators.<sup>18</sup>

OSI’s review of the agenda memorandum for the June 14, 2006 executive session reveals that the NPSD union members and retirees met with Blue Cross/Blue Shield on June 13, 2006 to discuss various package options, and that these options were to be discussed with the Board of School Directors on Wednesday, June 21, 2006 at 6:00 p.m. “on the telephone conference.” This memorandum was written by the Superintendent and addressed to the Board members, the Business Manager, and the Solicitor.

OSI’s review of the agenda memorandum for the June 16, 2006 executive session reveals that an offer had already been made to all employees with traditional health insurance coverage to change to a PPO. The MOU reviewed by OSI was dated June 16, 2006 and signed by the NPSD Business Manager and representatives of the two unions.

However, according to a minority Board member, he and the three other minority Board members were never contacted regarding a vote on this MOU. He stated that there was only discussion of the incentive but no voting during the executive session held on June 14, 2006. He further stated that only the five majority Board members were contacted by the Superintendent to vote on the MOU.

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The majority of the members of a board of school directors shall be a quorum. If less than a majority is present at any meeting, no business shall be transacted at such meeting, but the members present may adjourn to some stated time. . . .

**§ 423.Special meetings.**

Members shall have reasonable notice of all special meetings, and any board may adopt reasonable rules directing the kind and length of the notice of the meetings of the board that shall be given to its members by the secretary.

No business shall be transacted at any special meeting except that named in the call sent to the members for such special meeting: Provided, That special meetings may be called for general purposes.

**§ 508.Majority Vote Required; recording.**

The affirmative vote of a majority of all members of the board of school directors in every school district, duly recorded, showing how each member voted shall be required in order to take action on the following subjects:

\* \* \*

Entering into contracts of any kind, including contracts for the purchase of fuel or any supplies, where the amount involved exceeds one hundred dollars (\$100).

Fixing salaries or compensation of officers, teachers, or other appointees of the board of school directors.

\* \* \*

Failure to comply with the provisions of this section shall render such acts of the board of school directors void and unenforceable.

<sup>18</sup> 24 P.S. § 5-508.

The signatures and date on the MOU show that this agreement was formally executed on June 16, 2006. According to the minority Board member, the five majority members who voted on this MOU did so via telephone.

In OSI's interview of the Superintendent and Business Manager on October 10, 2007, Dr. DeFazio made the following statements regarding the execution of the MOU:

- He did discuss this MOU and the incentive with the Board at an executive session on June 14, 2006.
- He provided the Board with a copy of this MOU, which never changed in form and language, on this same date, June 14, 2006.
- He needed to act quickly on this incentive in order to avoid a teachers' strike.
- Blue Cross/Blue Shield set a deadline of June 18, 2006 for acceptance of this offer.
- He did not have the time to wait until the next executive session to hold a vote on the matter.
- He polled the Board, and, based on a straw vote that occurred June 16, 2006, he received the necessary five votes to enter into the MOU.

However, Dr. DeFazio was unable to provide OSI with any documentation to show which five members were actually contacted and voted on the MOU, to show that the unions were contacted about the incentive, or to show that the acceptance and approval of the MOU was discussed in public at the next Board meeting.

He further stated:

- The acceptance of the MOU should have been discussed publicly at the next Board meeting.
- The district's Solicitor has discussed the requirements of the Sunshine Act and the Public School Code relative to school board meetings and voting.
- The district's Solicitor also instructed him that voting via telephone and conducting meetings via speakerphone was permissible under the Sunshine Act and the Public School Code.

## **Summary of Fieldwork Results and Discrepancies**

OSI's review of the chain of events that led to the approval and execution of this MOU revealed the following apparent violations of the Public School Code and the Sunshine Act:

- Under the Public School Code's quorum requirement, a majority of the directors must be present at a meeting in order to transact business. Even if a telephone conference call in which a majority of the members are connected is deemed to satisfy the meeting requirement, such a conference call did not occur in this case. The Board members were not on a conference call together, but rather were called individually by the Superintendent. Therefore, there was no opportunity for the Board members to collectively discuss the MOU or share any concerns that they might have had about approving the MOU.
- Under the Public School Code, all School Board members must be afforded the opportunity to attend and participate and vote at a meeting in which official district business is conducted. All of the Board members should have been called and afforded an opportunity to participate in a meeting and vote on the measure. The minority Board member referenced previously stated that he was not contacted to vote on this measure, even though he would have voted to approve the measure.
- Under the Public School Code, the affirmative vote of a majority of all the members of the Board of School Directors, "duly recorded," is required to take action on a contract in excess of \$100 or fix the compensation of teachers and administrators. By the Superintendent's own admission, the NPSD has no record of the votes of any members of the Board, which members were contacted, or the composition of the majority that approved the MOU.
- The Sunshine Act requires that official actions taken during an executive session must be disclosed at the next public meeting. OSI has found no record that indicates the approval and execution of the MOU was disclosed at the next public board meeting.
- The Sunshine Act requires that, in order for an executive session to take place and be permissible, all members must have been notified 24 hours in advance of the date, time, place, and agenda of the meeting. If a "straw vote" was taken by the district's Superintendent via telephone and without notice, it did not satisfy the requirements for a valid executive session.
- Finally, voting via conference telephone call is not expressly permitted by either the Sunshine Act or the Public School Code. A reasonable argument could be made that participation and voting via conference call

is permitted. Regardless, the district lacks a formal written policy regarding participation and voting via conference call.

**Conclusion and Recommendations:**

The NPSD's method of approval of the health care incentive MOU was in violation of both the Sunshine Act and the Public School Code, possibly making the MOU void and unenforceable.

We recommend that the NPSD Board of Education:

- Immediately put the health care incentive MOU on its agenda for the next scheduled public meeting of the Board and take an official vote on the MOU that is "duly recorded" in the minutes of the meeting and in accordance with the requirements of the Public School Code;
- Comply with the requirements of both the Sunshine Act and the Public School Code when conducting and voting on official district business; and
- If the NPSD Board wishes to conduct meetings by any other method than as expressly permitted by the Public School Code, such as by conference call, consult with its Solicitor to develop a formal written policy that sets forth the conditions under which such meetings may be held and the procedures for conducting such meetings, so that the actions taken are valid and enforceable.

**FINDING III: NPSD’s Chief Architect for the new high school construction project failed to provide a detailed accounting report of hours worked by its personnel for the various phases of the project.**

OSI investigated the allegation of overbilling and irregularities with invoices submitted by the Chief Architect for the new high school construction contract, as well as overbillings by subcontractors on the project. The Chief Architect for the project was Crabtree Rohrbaugh & Associates (“CR&A”) of Mechanicsburg, Cumberland County, Pennsylvania.

OSI reviewed all invoices submitted by CR&A relative to the new high school construction project for the period June 30, 2005 through March 31, 2007. OSI also reviewed all invoices submitted by CR&A’s main subcontractor on the project, the engineering firm Greenman Pedersen Inc. (“GPI”), during the period October 2005 through April 2007. NPSD paid a total of \$1,994,221 to CR&A and GPI for services rendered on the construction of the new high school during the period reviewed.

OSI’s review of the invoices submitted by CR&A and GPI found no material overcharges or discrepancies. OSI found that the total amount billed by CR&A was in line with the fees prescribed in the written contract, which provided for CR&A to receive compensation equivalent to a percentage of the overall construction cost of the new high school, plus reimbursement of expenses and additional fees paid to subcontractors.

OSI did discover some minor overstatements of expenditures submitted by GPI. OSI discussed these overstatements with the Superintendent and the Business Manager in a meeting held on October 10, 2007, and the Business Manager stated that he would address these overstatements with the vendor at the conclusion of the project and request they remit payment back to the district.<sup>19</sup>

Furthermore, neither CR&A nor the district was able to provide a detailed accounting report of daily, weekly, and monthly hours worked by CR&A personnel on the various phases of the project. The district did provide OSI with a “Project Detail Report” submitted by CR&A, and OSI was able to reconcile the overall dollar value of services provided by CR&A listed on the report to the total dollar amount invoiced to the district by CR&A. However, this report could not be tied specifically to any individual invoices submitted by CR&A. Therefore, the district and OSI have no discernable method for determining and evaluating what work was performed by CR&A personnel on the project in a given month.

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<sup>19</sup> During a review of invoices submitted by CR&A, OSI was unable to obtain from the district, despite repeated requests, any supporting documentation for \$53,613 worth of expenses billed by CR&A. GPI’s invoices contained adequate detail supporting expenses incurred, but CR&A invoices included little or no detail supporting expenses incurred. Because the district was unable to provide any expense detail for CR&A, OSI was unable to determine whether the expenses incurred by CR&A were justified and reasonable. The district has provided the supporting documentation with its response to the draft report, and the finding has been modified to delete reference to this deficiency.



In the interview of October 10, 2007, the Business Manager stated that GPI was a multinational company, but that CR&A was much smaller by comparison, implying that CR&A did not have the necessary accounting and time reporting systems in place to provide the level of detail needed by OSI to conduct this review. He also stated that, upon completion of the new high school construction project, the district will conduct a complete reconciliation of all invoices and bills submitted relative to the project.

### **Conclusion and Recommendations:**

The Chief Architect failed to provide a detailed accounting report of daily, weekly, and monthly hours worked by its personnel for the various phases of the new high school construction project, making it difficult to determine and evaluate what work was performed by said personnel on the project in any given month.

We recommend that the NPSD Board of Education:

- Procure services only from vendors that can offer a level of detail sufficient to verify that invoices charge only for goods and services actually rendered, so that the district will have the tools it needs to verify that it is not being overcharged; and
- Conduct a complete reconciliation of all bills and invoices paid to CR&A for services provided on the new high school construction project. If the district does not receive adequate documentation to support an invoice, it should make a claim for refund of any overpayment.

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# NORTH POCONO SCHOOL DISTRICT'S RESPONSE TO DRAFT REPORT

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## North Pocono School District

701 Church Street, Moscow, Pennsylvania 18444-9392



Mr. Jeffery Hatala, *High School Principal*  
570-842-7606

Mr. Edward Bugno, *Middle School Principal*  
570-842-4588

Mr. Robert T. Barrett, *Moscow Elementary Center Principal*  
570-842-8464

Web Site: [www.npsd.net](http://www.npsd.net)

Mr. Dennis J. Cawley  
*Business Manager*

570-842-7659

TO: Jeffrey H. Gribb  
Director - Office of Special Investigations  
Pennsylvania Department of the Auditor General

FROM: Joseph Castrogiovanni, Acting Superintendent  
North Pocono School District

SUBJECT: District Response to Draft Report

DATE: April 25, 2008

Dear Mr. Gribb:

Below is the North Pocono School District response to your "Draft" report regarding allegations your office received from the public.

**Finding I:** North Pocono School District Superintendent, in violation of the district's collective bargaining agreement, improperly granted early retirement incentive waivers to four North Pocono School District teachers, causing the district to incur more than \$41,200 in unnecessary expenses.

**District Response:** The incentive waivers were granted by the Superintendent so the educational process for the students would not be disrupted. In addition, the district did not incur any additional retirement incentive expense. The reason is this: if the superintendent did not grant the waiver, the employees would have retired and left the school district during the school year and still receive their retirement incentives, including the \$41,200. The Superintendent chose to keep the teachers (at their request) until the end of the school year so the students would not have to deal with new substitute teacher's in the middle of the school year. If the superintendent did not grant the wavier the educational process would have been disrupted. Therefore, the process followed by the district was good for the students.

**Finding II:** North Pocono School District's Superintendent and Board of Education improperly entered into a health care incentive agreement with the district's health insurance provider in violation of state law.

**District Response:** The health insurance incentive was fully discussed with the Board of Education and our Solicitor on several occasions at public workshops and board meetings. All Board Members were informed of the incentive. Since the incentive payment resulted in a net savings to the district we did not know the incentive had to go to a formal vote. The savings to the district to date are over \$230,000. These savings will continue to be realized by the district for many years into the future. In addition, in the fieldwork results section of your draft report, it is indicated that there were overpayments and underpayments made to some of the retirees 403 (b) plans. All overpayment errors were discovered and corrected before the Auditor General's Office started their investigation. The underpayments were made due to IRS limitations on how much money can be contributed to a 403 (b) plan on an annual basis. We complied with IRS regulations as required by federal law and made up the underpayments to retirees in subsequent years.

**Finding III:** North Pocono School District chief architect for the new high school construction project did not keep adequate records regarding expenses incurred during the various phases of the project.

**District Response:** Supporting documentation has been provided to the Office of Special Investigations for all expenses incurred. As was stated during the investigation, the district planned to perform a review of all expenses prior to the completion of the new high school construction project. Since the Office of Special Investigations requested this documentation during their review, the district office had the architect submit all expense documentation for review by this office. Our review revealed all expense items were properly documented by the project architect.

We hope the above responses provide sufficient evidence and clarification on the issues discussed in the draft report. If you have any questions or need additional information, please contact me.

Respectfully yours,



Joseph Castrogiovanni,  
Acting Superintendent  
North Pocono School District

PC: North Pocono Board of Education  
Dennis Cawley, Board Secretary/Business Manager  
Attorney Joseph O'Brien, Solicitor

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**DEPARTMENT OF THE AUDITOR GENERAL'S  
COMMENTS ON NORTH POCONO SCHOOL DISTRICT'S  
RESPONSE TO DRAFT REPORT**

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**Finding I (Early retirement incentive waivers)**

The district contends that the process followed by the Superintendent in selectively granting waivers of the early retirement incentive provisions of the district's collective bargaining agreement was "good for the students" and is therefore justifiable. Regardless of the justifications proffered by the district, the CBA is a legally binding contract that, by its own terms, may not be modified without the approval in writing of both the teachers' union and the Board. The Superintendent took it upon himself to modify the contract by granting the waivers without the knowledge or approval of the Board or the union. The teachers, who are also bound by the terms of the contract, should have known that the former Superintendent had no authority to grant the waivers.

The district also contends that it "did not incur any additional retirement incentive expense," because the district would have been required to pay the \$41,200 to the teachers in question if they had retired from their positions before the end of the school year. Even if we were to concede this point, it does not follow that the district did not incur any additional expenses as a result of the Superintendent's actions. By continuing to employ retirement-age teachers with full salary and benefits for the remainder of the school year, rather than substitute teachers or less tenured teachers, the district incurred additional expense.<sup>20</sup> Furthermore, the waivers permitted the teachers to receive retirement payouts in amounts in excess of those provided by the contract. By its failure to respond to our recommendation to pursue recovery of any additional costs resulting from the unauthorized action of the Superintendent, the district is implying that it is willing to absorb these costs. We would urge the district to dispel any ambiguity as to this issue by complying with our recommendation that the matter be put to a vote at a public meeting of the Board.

We would also note that the district may face additional expenses in the future if the unauthorized action by the Superintendent is construed as establishing a past practice, or precedent, that would give other teachers approaching retirement an enforceable right to the waiver. Indeed, a claim might be made by one now-retired teacher who, according to the Superintendent, was not granted a waiver merely because he or she did not ask for one.

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<sup>20</sup> The precise amount of additional expense cannot be determined without knowing the salary and fringe benefit costs for each of the teachers who would have replaced the retiring teachers for the remainder of the school year.

Finally, the district has not indicated whether it will comply with the recommendation to adopt a written policy prohibiting the Superintendent or any other administrator from waiving or otherwise deviating from any provision of a collective bargaining agreement without the prior written approval of the Board of Education on advice of the district's Solicitor.

With minor revisions based on the district's response, the finding will remain as written in the draft report. The Department will follow up at the appropriate time to determine whether all of our recommendations have been implemented.

### **Finding II (Health care incentive agreement)**

We are not criticizing the district for implementing a health care incentive agreement that has resulted in a substantial cost savings for the taxpayers of the North Pocono School District. In fact, we commend the district for its efforts to economize. However, the point of the finding was that the process and procedure by which the agreement was adopted was defective, in that the district did not comply with the Sunshine Act and the Public School Code.<sup>21</sup>

As with Finding I, the district has not indicated whether it will comply with our recommendations with regard to Finding II. The Department will follow up at the appropriate time to determine whether all of our recommendations have been implemented.

### **Finding III (Chief Architect's construction project invoices)**

We acknowledge that the district has enclosed with its response to this report additional supporting documentation regarding the Chief Architect's invoices for reimbursement of expenses. However, this information was not made available to OSI during the field work phase of the investigation despite OSI's initial request on January 19, 2007, and subsequent requests on April 17, 2007, and October 10, 2007.

In light of the new information submitted by the district, Finding III has been revised to delete reference to the Chief Architect's invoices for expenses. However, the other deficiency identified in the draft report remains uncorrected, and the finding has been revised accordingly. The Department will follow-up at the appropriate time to determine whether all of our recommendations have been implemented.

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<sup>21</sup> We must disagree with the district's assertion that all Section 403(b) account underpayments and overpayments were identified and corrected before we conducted this investigation. OSI discovered those underpayments and overpayments through the testing of the early retirement incentive payouts. To the best of our knowledge, only one underpayment to a NPSD teacher's account was identified by the district prior to the commencement of OSI's investigation. As was stated in the finding, the remaining overpayments and underpayment were not corrected by the district until it supplied documentation on September 11, 2007.

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## DISTRIBUTION LIST

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This report was initially distributed to the following:

Joseph Castrogiovanni  
Interim Superintendent  
North Pocono School District

The Honorable Joseph Cummings  
School Board President  
North Pocono School District

The Honorable Bill Burke  
School Board Vice President  
North Pocono School District

The Honorable Gary Sowinski  
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Mr. Dennis Cawley  
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