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August 3, 1995

Honorable Leo F. Klagholz
Commissioner
Department of Education
225 East State Street
CN 500
Trenton, New Jersey 08625-0500

Dear Commissioner Klagholz:

In 1991, the Department of Education awarded a three-year targeted, discretionary grant to the New Jersey Marine Sciences Consortium, headquartered in Sandy Hook, New Jersey. The grant, which was federally funded under the Dwight D. Eisenhower Mathematics and Science Education Act and commenced on June 15, 1991, was designed for the estuary study of the Raritan River. The Marine Sciences Consortium served merely as the conduit for the delivery of grant monies to the Raritan River Educational Consortium, which conducted the project. The Raritan River Educational Consortium had been determined previously to be ineligible for any grant monies. In 1993, the Department conducted an internal audit of the \$120,000-a-year grant and, on May 6, 1993, ordered termination of the funding as of June 30, 1993, after the second year of operation.

The Commission concludes from its examination of the award of the grant that it was driven by political pressure and influence generated by then-Assemblyman David C. Schwartz and his legislative aide, David Nash, and yielded to by then-Commissioner John Ellis. The Commission's interviews of department officials involved in the process at the time clearly establish that the pressure was vigorous and persistent and that the requirements of the grants procedure were circumvented in order to facilitate Ellis' desire to accommodate Schwartz. Ellis stated to the Commission that "Schwartz was very vociferous about wanting this project to be funded and he or his people met with our department people and he leaned on me several times." Schwartz, however, admitted to no such pressure. He told the Commission that he was not seeking "political consideration and not trying to influence Commissioner

Ellis politically." Nash also denied that he or, to his knowledge, anyone else exerted pressure. The Commission found that Schwartz derived no pecuniary benefit from the grant monies, but that Nash received a total of \$1,660 in connection with his preparation of materials and instruction of a course.

It is noted that under your direction, the Department of Education has implemented measures to strengthen the grants management review process and to accord it a higher priority. These measures include the placement of the Office of Grants Management and Development directly under an Assistant Commissioner; stricter drafting, as well as enhanced review process, of requests for proposal and grant applications; consolidation of grants management procedures, and creation of an independent reader/review panel. Nevertheless, controls over the process, however strict, are only as effective as officials allow them to be. In this regard, as important as it is that the grants management process has been restructured, it is even more significant that the process now receives a high priority within the department with the clear intent to promote and safeguard its integrity.

In addition to scrutinizing the award of the grant, the Commission also reviewed the grant's operation. Specifically, the Commission focused on the concurrent relationship of Robert P. Bonja to the grant and to the East Brunswick School District. On April 1, 1992, after 28 years and four months of service, Bonja retired from his position as the district's Supervisor of Science for kindergarten through 12th grade. From July 12, 1991, until the effective date of his retirement, he was allowed to exhaust 175 days of accumulated, unused sick and vacation days. During this period, Bonja was employed under the grant as director of the Raritan River Educational Consortium. He had been involved with the Consortium since the mid-1980s and had developed curriculum packages in the areas of salt water ecology, fresh water ecology, geology, and historical development of the river basin. While he was paid an annual salary of \$42,000 from the grant, he continued to receive an annual salary of \$75,815 from the school district. Bonja admitted to the Commission that he would not have been able to take the position of consortium director if he had not been on leave from the school district. His dual employment raises serious questions about certain actions undertaken by the school district and their adverse impact on the fiscal operation of the school system.

The Commission concludes that Bonja's retirement arrangement was a sham, designed to serve the convenience of school administrators and in disregard of the public interest. Rather than grapple with the tenure issue, the school district orchestrated Bonja's retirement.

Jon R. Kopko, Ed.D., Superintendent of the East Brunswick Public Schools, termed the arrangement with Bonja "an administrative action" and stated that the school board, although not approving it in advance, was "pleased" to receive Bonja's resignation. Kopko was candid in admitting to the Commission that the arrangement allowed the school district to remove Bonja from his position, while avoiding a two to three-year process of documenting his failings and withholding salary increases to justify his dismissal from a tenured position. Assistant Superintendent for Personnel Brenda A. Witt also acknowledged that the administration sought to hasten Bonja's departure without the necessity of a protracted tenure case.

The Commission's review of Bonja's personnel file revealed critical evaluations beginning in 1987, then intensifying and finally cresting in a January 14, 1991, evaluation. In response to this final evaluation, Bonja sought the advice of an attorney, who filed a formal response. In a March 14, 1991, memorandum to the Deputy Superintendent, Bonja agreed to a meeting that had been offered to him. The meeting never occurred. Both Kopko and Witt attested to the tremendous amount of stress experienced by Bonja because of the continuing negative criticism. According to Bonja, he was unfairly targeted for reasons other than his competence. His personal physician referred him for counseling because of the emotional stress.

On April 9, 1991, Assistant Superintendent Witt held a meeting with Bonja to "negotiate" the terms of his retirement. The terms offered to Bonja had been previously discussed by Witt with her supervisors. Bonja accepted the offer, which he regarded as generous, in order to remove himself from the stressful atmosphere. The meeting was followed by an April 17, 1991, letter-agreement signed by Witt and countersigned by Bonja, with a copy to Kopko. The agreement enumerated "the terms and conditions" of Bonja's 1991-1992 employment:

1. Effective July 12, 1991, you will have accumulated one hundred twenty-five (125) ill and personal days¹ and thirty-six (36) vacation days.
2. You will submit a medical note regarding your illness effective July 12, 1991, through January 17, 1992.
3. Effective January 18, 1992, you will utilize vacation days through March 31, 1992.
4. There will be no recommendation for a salary increase withholding for the 1991-92 school year.

¹Bonja received 126 days.

5. You will submit a letter of retirement sixty (60) days prior to July 12, 1991. (May 12, 1991) Said letter will reflect an April 1, 1992 date.

Bonja submitted a letter of resignation dated April 30, 1991, to take effect on April 1, 1992. The letter was accepted by the East Brunswick Board of Education on May 16, 1991.

In order to fulfill the terms of the April 17, 1991, agreement, it was necessary for Bonja to submit a medical justification. The medical basis provided was weak and the medical note inartfully drawn. Nevertheless, the administration, eager to effect Bonja's retirement, accepted both without question. The basis for Bonja's medical excuse consisted of a therapy session on January 25, 1991, another on January 31, 1991, and a final one six months later on July 5, 1991. All sessions were conducted by a mental health clinician, Terry S. Kulesa, at the New Jersey Medical Group, P.A. Bonja never had a session with a staff psychologist or psychiatrist. The "medical note" offered by Bonja and accepted by the school administration was dated July 8, 1991, and received by Witt the following day on July 9, 1991. It was authored not by a physician or psychologist, but by Kulesa, who was not authorized to write letters of medical excuse. The medical justification, which the school district deemed sufficient, consisted of a handwritten note stating:

Dear Ms. Witt,

Based on my work with Bob Bonja, it is my recommendation that he not continue working in his present position because of the stress it causes him.

Sincerely,

Terry S. Kulesa MS.

Patently, the alleged therapy session on July 5, 1991, was sought by Bonja to obtain the required note. When interviewed by the Commission, Kulesa's supervisor found the time lapse between the first two sessions and the final one to be "suspicious" and the writing to constitute neither a medical nor clinical letter. Kulesa, who no longer resides or works in the State, refused to meet with Commission staff or be interviewed by telephone concerning the circumstances of the note.

The retirement package offered to Bonja was indeed generous:

1. From July 1, 1991, until Bonja's date of retirement on April 1, 1992, Bonja was paid at the rate of his annual salary of

\$75,815, which included a salary increase of eight percent, as stipulated in the April 15, 1991, agreement. Bonja received the pay increase while utilizing 126 sick days and 36 vacation days. Had he retired immediately or if the school district had pursued his dismissal, he would not have received the increase.

2. Bonja's arrangement with the school district relieved him of his responsibilities just in time to become director under the grant project. Therefore, in addition to his prorated salary of \$75,815 for the 1991-1992 school year, Bonja was paid under the grant \$17,500 for July through December 1991, \$42,000 for 1992, and \$24,400 for January through April 1993, when the grant was terminated, for a total of \$83,900. On April 1, 1992, Bonja began receiving his pension at an annual rate of \$33,823.68.

3. Bonja's employment with the school district was governed by the contract between the East Brunswick School District and the East Brunswick Principals and Supervisors Association for the period July 1, 1989, through June 30, 1992. The contract stipulated the payment of any unused sick leave at the time of retirement at the per diem rate of \$76 for each unused sick day in excess of 45 days. If Bonja had been held to his contract, he would have received \$6,156 for 81 days. Instead, Bonja was paid at full salary for 126 days and received in excess of \$37,907.52.

4. Bonja was eligible for early retirement after 25 years of service in September 1988, but at reduced benefits because he was under the age of 55 years. It was not until March 5, 1992, that he became eligible for an early retirement with full benefits. By allowing Bonja to utilize the 126 accumulated sick days, the arrangement allowed him to retire on April 1, 1992, with full benefits.

5. By permitting Bonja to retire after attaining the age of 55 years, the arrangement had the added benefit of permitting Bonja to exercise his veteran status, thereby allowing him to retire with 50% of his salary for the prior 12 months. Otherwise, he would have received a retirement allowance based upon an average of his salary for the prior 36 months. Retiring as a veteran also accorded Bonja greater life insurance coverage.

6. While Bonja was exhausting his unused sick and vacation days, he was granted an additional 18 days of vacation.

Based on Bonja's critical evaluations beginning in 1987 and the apparent consensus among his supervisors regarding his poor performance, it appears that the foundation to seek his dismissal from tenured employment was, at the very least, being established. Since 1988, the East Brunswick Board of Education has filed charges against three tenured teachers, two of whom agreed to resign and the third of whom was dismissed. Such action, then, is not foreign to the district.

It is always incumbent upon school administrators to pursue available remedies to dismiss or demote an individual deemed incapable of performing satisfactorily in a position. The integrity of the system and the interests of an overburdened tax-paying public demand no less. Instead, the East Brunswick school administrators sacrificed the interests of taxpayers rather than launch a challenge to Bonja's tenured status. They crafted a retirement package that circumvented contract provisions and sound administrative policy and, in the process, created a deleterious precedent. The type of package provided to Bonja is not unique to the East Brunswick School District and is commonly employed by other districts to facilitate retirements.

The Commission takes no position on whether the criticisms of Bonja were valid or whether they were designed for the purpose of circumventing tenure and prompting his retirement. If the rules on tenure are inadequate to handle a case such as Bonja's, assuming its legitimacy, then the rules must be re-examined and, perhaps, the system of tenure re-evaluated as it pertains, at the very least, to supervisors. However, if Bonja's treatment was unjust, then the school administration should have been compelled to seek dismissal in order to insure a fair hearing for Bonja. The Commission recommends that the department consider instituting a requirement that it review retirement packages to preclude not only the circumvention of tenure requirements, but also the award of unreasonable and fiscally irresponsible packages.

In addition, no statute, departmental regulation or school board policy addresses the parameters of a supervisor's or teacher's outside employment while on sick leave. The absence of such a provision or policy allowed the administrators for the East Brunswick School District to act indiscriminately in their handling of Bonja's case. Recognizing that decisions as to outside employment while on sick leave must be decided on a case-by-case basis and that hard-and-fast rules would be inappropriate, the Commission nevertheless sees the need for the establishment of some guidelines not only to provide uniformity of treatment, but also to prevent the manipulation of sick leave policy to facilitate a particular result.

Further, the East Brunswick School District allowed Bonja to be employed at full salary while on extended sick leave that was not supported by medical justification. The Commission urges the department to evaluate the district's action and determine whether it may recover from the district any portion of the funding provided by the State.

Finally, this case highlights the potential for abuse of the pension fund when pensions are artificially inflated because of improper, contrived arrangements that allow public employees to reach the age of retirement. The Commission will bring this matter

to the attention of the Division of Pensions and Benefits, Department of the Treasury, with the recommendation that it implement measures to identify and prevent any attempts to drain the state's pension monies.

Very truly yours,

/s/ Leslie Z. Celentano
Leslie Z. Celentano
Chair

/s/ Dante J. Sarubbi
Dante J. Sarubbi
Commissioner

/s/ Louis H. Miller
Louis H. Miller
Commissioner

/s/ Justin J. Dintino
Justin J. Dintino
Commissioner

cc: Patrick Sirr, President
East Brunswick Board of Education

Jon R. Kopko, Ed.D., Superintendent
East Brunswick Public Schools