

APPENDIX

BOARD OF EDUCATION of Montgomery County · Maryland

Eight Hundred Fifty Hungerford Drive · Rockville, Maryland · 20850 · Phone 279-3617 ·

February 7, 2006

Mr. Thomas J. Dagley, Inspector General
Office of Inspector General
51 Monroe Street, Suite 802
Rockville, Maryland 20850

Dear Mr. Dagley:

As the chair of the Board of Education's Audit Committee, I am responding to your January 31, 2006, memorandum to Dr. Jerry Weast, superintendent of schools, regarding your draft audit report relating to the Seven Locks Elementary School replacement facility project. As the chair of this committee, I requested a legal opinion as to the authority of the Montgomery County Inspector General to conduct audits of the Montgomery County Public Schools (MCPS) or the Board of Education. I have enclosed legal opinions from the MCPS general counsel, Ms. Judith Bresler, of Reese and Carney and from Mr. Andrew Nussbaum of Knight, Manzi, Nussbaum & LaPlaca. Each of these legal opinions concludes that State law does not provide such authority to the Inspector General.

Although the subject line in your memorandum to Dr. Weast suggests that this is a financial audit, the content of the report and your findings differ greatly from a financial audit as intended in the Education Article of the Annotated Code of Maryland. A previous opinion of the Maryland Attorney General, referred to in Mr. Nussbaum's letter, noted that:

A "financial audit" generally refers to a "review of an entity's financial statements, or segments of them for two purposes: to determine whether the statements fairly present the audited entity's financial position in accordance with generally accepted accounting principles; and to determine whether the entity has complied with legal requirements governing those transactions and events that may have a material effect on the financial statements....The resulting auditor's report expresses an opinion on the entity's financial presentation but not on its underlying managerial success."

Section 5-109 of the Education Article requires each county board of education to provide for an annual independent audit of its financial transactions and accounts and requires that the results be reported to the county's fiscal authority. State law governing boards of education does not provide the county governing authority any additional authority to audit the school system unless the Board of Education and the county governing authority jointly agree to conduct such an audit or the county governing authority requests the State Department of Education to contract with a private entity to conduct such a study.

As indicated in Mr. Nussbaum's reference to the Attorney General's opinion, the "County boards of education, on the other hand, are granted broad authority to control all educational matters that affect the counties....A county may not impose any requirement on a board that would interfere or conflict with the board's express statutory powers..." This is the underlying issue that greatly concerns me and other members of the Board of Education about your audit of the Board of Education's and County Council's decision about the Seven Locks Elementary School replacement facility, as well as your plan to audit the Board of Education's compliance with public meeting laws regarding certain financial and policy decisions.

The individuals who came to you with their concerns regarding the Seven Locks Elementary School project also have met with and discussed these same concerns with MCPS staff, members of the Board of Education, and members of the County Council on numerous occasions. They have presented their concerns at public hearings and during meetings with staff and Board members, and have corresponded with elected officials on numerous occasions. They have indicated in writing that they would continue their efforts until they successfully stopped the Kendale project and have filed appeals to the State Board of Education, which is the legal process that has been provided in the Education Article for individuals to pursue when they are not satisfied with a decision of the Board of Education. All of the appeals filed were dismissed by the State Board of Education.

Despite all of this, you chose to pursue this in order to resolve what you describe as "credible complaints" from several county residents concerning costs and other information about the Seven Locks project, even though these complaints were addressed by MCPS staff and Board members on a number of occasions and denied on appeal by the State Board of Education or the State Interagency Committee on School Construction. I do not believe it was appropriate for you to decide unilaterally to resolve these complaints. If these kinds of complaints are the criteria that you will use to determine whether to pursue concerns raised by anyone who is not satisfied with a decision of the Board of Education, the number of complaints you will receive will overwhelm you.

The Board of Education makes many difficult decisions, from school boundaries to curriculum and textbook decisions to contract awards. In most cases, not everyone agrees with the decisions we make and believe they have credible reasons why the Board made the wrong decision. Ultimately, we, the elected Board of Education, are accountable to the public, not one individual or several citizens who do not support the decision.

The Montgomery County Council has fiscal authority over the Board of Education, and in the case of the Seven Locks Elementary School project, the Council has the authority to approve or not approve the project or suggest to the Board of Education to approach the project in a manner that is different than presented to the Council by the Board. That is in fact what happened in the case of this project. The Seven Locks Elementary School project to add classroom space to the existing building originated from a County Council approved initiative to increase the capacity of the facility and provide relief for overcrowding at Potomac Elementary School rather than add

to the Potomac Elementary School facility. Indeed, the addition project for Seven Locks Elementary School was approved by the Council with the full understanding that the classroom space and minor core work would be completed before a planned modernization of Seven Locks Elementary School because the additional capacity was needed before the building was scheduled to be modernized. This same approach was approved for several other facilities where additions are currently under construction, such as Farmland and Garrett Park elementary schools.

The Board of Education and County Council agreed that the additional space for these facilities could not wait until the modernizations and the modernizations could not be accelerated because of previous commitments on the priority of modernizations and holding school availability. Therefore, the option for a one-step project for the Seven Locks Elementary School facility was eliminated from consideration as a result of these decisions. Subsequently, when the Board of Education requested funding for a replacement facility on Kendale Road for a variety of reasons, the Council had the authority to ask the Board to consider other options. However, no such request was made. The Council members were aware of the Seven Locks Elementary School issues and made no request at any time during the review of the Seven Locks Elementary School project to provide information on doing the addition and modernization at the same time or to build a replacement school on the Seven Locks site. It also should be noted that the community had asked the Council repeatedly to consider other options for the Seven Locks Elementary School project during the review and approval of the Board of Education's FY 2005–2010 Capital Improvements Program (CIP) request before taking action on the Board of Education request for the replacement facility on Kendale Road. The community also asked the Council again during the review of the FY 2006 Capital Budget to consider other options. If the Council had wanted to consider other options, there was ample opportunity for it to request that MCPS provide that information.

MCPS had presented several options as part of the cost comparison for the replacement school project. These options were appropriately based on the circumstances associated with the Seven Locks Elementary School project, and staff made it clear to the community and others why alternative options, such as a one-step project for the Seven Locks site, were not being considered. The rationale for not evaluating other alternatives was included in written correspondence to community leadership and others, including Council members, and discussed during public sessions regarding the Seven Locks Elementary School project on several occasions. Again, had the Council members wished to evaluate other options, they had the authority to ask the Board to provide cost comparisons for those options.

The information provided you by MCPS staff makes it clear why options other than the replacement facility on Kendale were not considered as part of the Seven Locks Elementary School project approval process. I am concerned that you indicated in meetings with staff that you did not believe the appropriate options had been presented and that you believe other options that may have been less costly should have been considered because they were in the best interest of the taxpayers. First, while I applaud your interest in saving tax dollars, I do not

believe it is appropriate for the Inspector General to state what appears to have been a conclusion without completing the research. It appears you used the evaluation process to prove that your position was correct. Second, the two-stage construction approach for Seven Locks is the same approach being used for other projects in our capital budget. The County Council and Board of Education understood this when making these decisions and believed that there were other reasons that were more important and overriding when making these decisions. For the Inspector General to now question those reasons and suggest that financial factors should have been the top priority is not appropriate. If, in fact, your position that financial factors should be the basis for decisions on school construction projects, then you could argue that the best option for the community would be to keep the students in the relocatable classrooms at Potomac Elementary Schools and complete necessary maintenance projects and minor renovations to the Seven Locks facility. I am certain that there are those in the community who believe this is the most appropriate way to proceed, and you might determine that they have a "credible complaint." You may suggest that this is a ridiculous example and would never happen, but I would ask you to put yourself in my position and try to understand why this is, in fact, not at all hard to imagine.

Even if it were appropriate for you to make judgments about matters committed by law to the Board of Education, there are concerns that the MCPS staff and Audit Committee have about your report. The audit evaluation conducted by your office did not encompass the entire process used by the Board of Education and County Council to reach decisions on the Seven Locks project. Without reviewing the entire process and considering all related information, the audit does not take into account key facts needed to properly evaluate the actions taken relevant to this project. I question how conclusions and recommendations can be developed without understanding or evaluating an entire process. I would hope you would agree this is not a proper evaluation methodology.

Your audit evaluation uses information limited from a small segment of a very complex process that evolved over four years to draw conclusions that are, at least, incomplete. This limitation ignores or fails to consider related information that is relevant to reaching factual conclusions about the process. Was there a reason why the evaluation failed to examine or include information during the period between May 2004 and the spring of 2005 when the County Council reviewed the rationale and basis for building a replacement facility, held public hearings on this issue, considered new cost information from a Life-cycle Cost Analysis used to obtain state funding eligibility for the new school, and reaffirmed its decision before appropriating construction funds?

By excluding key steps and information, your audit does not provide a comprehensive and accurate overview of the basis for decisions or the roles of MCPS staff, the Board of Education, and the County Council in the decision making process for the Seven Locks Elementary School project. The rationale for building a new school included programmatic issues, safety, timing of construction, mandates from the Council on funding issues, impact of construction on student performance, and cost considerations, issues that are ignored in a strictly "dollars and cents analysis."

Your draft report will be forwarded to the full Board of Education with a copy of this letter. We will refer the recommendation regarding the architectural contract award to the superintendent of schools, and he will be asked to review the current practices to determine if revisions to the procedures should be recommended to ensure they are consistent. After consulting with the Board president and vice president, the Audit Committee has informed the superintendent and staff not to respond to your report or your specific findings. In addition, the Audit Committee does not plan to make a recommendation to the Board of Education on the other findings in your evaluation.

If you have questions or would like to discuss the legislative authority of your office as it relates to the Board of Education, I can be reached at 301-279-3617.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Abrams", written in a cursive style.

Stephen Abrams
Chair, Audit Committee

SA:sz

Enclosure

Copy to:

Members of the Board of Education

Dr. Weast

Mr. Bowers

Mr. Hawes

Ms. Bresler

Mr. Nussbaum