

Board clarifies audit process/status; details timeliness and transparency

TOWSON, MD -- The Board of Education of Baltimore County will release the final, signed external audit report of Baltimore County Public Schools to the public as soon as it is available in upcoming weeks – not months.

“It is a priority for the Board of Education to be accountable and transparent in our governance of Baltimore County Public Schools. At times, however, there are legal constraints to transparency,” stated Board Chairwoman Kathleen Causey.

“Currently, there is great interest in the External Audit underway by the Board-contracted professional auditing firm. There is also misinformation about the draft audit report, recently received by the Board, causing undue concern in our communities. Our Board counsel has clarified the situation in the attached letter. After the external audit company presents a Final Report to the full Board, it will be made available to the public,” Causey continued.

“The Board understands the significance of the audit findings to both the county government’s budgeting process as well as to the Board’s search for the next superintendent of Baltimore County Public Schools. Both necessitate the release of the phase one audit findings as soon as possible once finalized, and this Board is committed to doing just that,” Causey emphasized.

Board leadership consulted with Board counsel and with the auditing firm responsible for the external audit of BCPS regarding the disclosure of the draft audit report.

In a letter to Chairwoman Causey, Board attorney Andrew Nussbaum wrote, “Therefore, as a matter of Maryland law, as well as best practices from a professional auditor’s perspective, the Draft Audit Report should not be released or disclosed to the public. The only document that should be released and disclosed is the final, signed Audit Report.”

Mr. Nussbaum elaborated on his understanding of the auditor’s rationale, writing, “I would also note that the representative from the external audit company advised the Board that he was adamant that the Draft document not be released to the public and that the document is not ‘final’ until he signs it. He was very concerned that from his professional perspective, as an auditor, releasing an unsigned and non-final draft would be inappropriate and could adversely affect his ability to maintain the independence and objectivity he is required to have as the auditor.”

Chairwoman Causey said she understands the auditor’s rationale behind not releasing the draft and stated, “Generally speaking, releasing information before it is confirmed and finalized can hurt the reputations of both the organization being audited, as well as the auditor and firm performing the audit. There is too much at stake.”

Work on the external audit of BCPS by UHY began in June, 2018 under the direction of the Board’s former ad hoc audit committee appointed by former Board Chair Edward Gilliss. Members of that ad hoc committee were David Uhlfelder, Steve Verch, and Roger Hayden. No documents regarding the audit were shared with any other Board members prior to the new Board being seated in December 2018.

Board members Russell Kuehn and Kathleen Causey were assigned to the ad hoc audit committee in January 2019. The newly assigned ad hoc committee met with the audit firm, UHY, for the first time in mid-January and received the first draft of the audit report. Shortly after receiving the draft report, the Board’s ad hoc committee made the report available to the full Board. All Board members were invited to submit questions on the initial draft audit report, to be addressed by UHY. Additionally, UHY presented the draft report to the full Board in administrative session and confirmed that the draft is confidential. The full Board disbanded the ad hoc committee and the second version of the audit report will be presented to BCPS leadership for response, followed by a

presentation to the full Board. All actions related to the external audit moving forward will be taken by the full Board. When the final audit report is ready, it will be released to the public.

The Board of Education of Baltimore County holds ourselves accountable to the citizens we serve and remains committed to ensuring that taxpayer dollars are used in the best interests of our 114,000 students. We remain firm in our commitment, and in our actions, to adhere to the highest ethical standards in our governance of Baltimore County Public Schools. We further strive for the greatest level of transparency possible, working within constraints that are outside of our responsibility and control, and protecting information deemed strictly confidential and/or otherwise inappropriate to share outside the Board. We look forward to the completed audit with recommendations that will allow us to move forward with increased confidence.

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SENT VIA EMAIL ONLY

Ms. Kathleen S. Causey,
Chair
Board of Education of Baltimore County

Re: Maryland Public Information Act - Draft Audit Report

Dear Ms. Causey:

This letter will confirm the discussion we had regarding the public release of the Draft Audit Report that had been produced by the external audit company retained by the Board. The Maryland Public Information Act (PIA) does not require that all governmental records be made available to the public. As stated in the Maryland Public Information Act Manual (14th ed., October 2015), published by the Attorney General's Office: "The PIA attempts to balance the public's right to access governmental records with other policies that respect the privacy or confidentiality of certain information." (at Apx. I-2). Section 4-344 of the PIA allows a custodian of public records to deny inspection of "any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation" with that entity. The above-referenced Manual notes that this exemption "to some extent reflects that part of the executive privilege doctrine encompassing letters, memoranda, or similar internal government documents containing confidential opinions, deliberations, advice or recommendations from one governmental employee or official to another for the purpose of assisting the latter official in the decision-making function." (at 3-28)(citation omitted). These documents are sometimes referred to as "pre-decisional" or "deliberative." To be an "interagency" or "intra-agency" document, it must have been "created by governmental agencies or agents, or by outside consultants called upon by a government agency 'to assist it in internal decisionmaking.'" (at 3-29)(citation omitted)(emphasis added). This exemption is "intended to preserve the process of agency decision-making from the natural muting of free and frank discussion which would occur if each voice of opinion and recommendation could be heard and questioned by the world outside the agency." (at 3-29)(citation omitted).

One example noted by the Manual is that a State agency's annual report on waste, fraud, and abuse submitted to the Governor was protected as a pre-decisional document, because it presented the Governor with recommendations for correcting problems that the Governor may approve or disapprove; it did not reflect agency policy or an agency's final opinion. The

Manual further noted that even after a final decision is made, pre-decisional, deliberative materials remain protected.

I would also note that the representative from the external audit company advised the Board that he was adamant that the Draft document not be released to the public and that the document is not "final" until he signs it. He was very concerned that from his professional perspective, as an auditor, releasing an unsigned and non-final draft would be inappropriate and could adversely affect his ability to maintain the independence and objectivity he is required to have as the auditor.

Therefore, as a matter of Maryland law, as well as best practices from a professional auditor's perspective, the Draft Audit Report should not be released or disclosed to the public. The only document that should be released and disclosed is the final, signed Audit Report.

Please feel free to share this letter as you deem appropriate.

Very truly yours,

NUSSBAUM LAW, LLC



Andrew W. Nussbaum

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