



December 14, 2018

Forensic Review and Analysis

LOWELL PUBLIC SCHOOLS DISTRICT



WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

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December 14, 2018

Jeannine M. Durkin
Acting Superintendent of Schools
Lowell Public Schools
155 Merrimack Street
Lowell, MA 01852

Re: Forensic Review and Analysis

Dear Ms. Durkin,

Enclosed is our report that was completed per our agreement with the Lowell Public Schools District (LPSD) regarding our forensic review and analysis of certain financial activities (described herein) for the fiscal year ending June 30, 2018, including a limited review of LPSD's 2019 budget that was approved during said fiscal year. This report describes the procedures performed and the results of those procedures. The sole purpose of our engagement was to assist the LPSD identify if any fraud or noncompliance with laws, regulations, contracts and/or grants occurred.

We have performed our engagement in accordance with the Statement on Standards for Consulting Services, *Consulting Services: Definitions and Standards* (codified as CS Section 100 in *AICPA Professional Standards*) of the American Institute of Certified Public Accountants ("AICPA").

This report should only be used for the sole purpose of assisting the LPSD in determining whether fraud or noncompliance with laws, regulations, contracts and/or grants occurred during the fiscal year ended June 30, 2018. The report shall not be used or distributed for any other purpose, except as directed by LPSD legal counsel. The scope of our engagement was limited to the specific procedures described in this report.

We appreciate the opportunity to have assisted you with this matter.

Sincerely,

CliftonLarsonAllen LLP



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Executive Summary

In August 2018, the Lowell Public Schools District (LPSD) engaged CliftonLarsonAllen (CLA) to perform a forensic review and analysis regarding certain financial activities of the LPSD for the fiscal year ended June 30, 2018. The scope of our analysis focused on certain activities (described below) determined by the LPSD in an effort to identify if any fraud or noncompliance with laws, regulations, contracts and/or grants occurred.

Our forensic review and analysis encompassed the following:

1. Interviewing certain LPSD personnel
2. Reviewing LPSD General Fund budget and expenditures
3. Reviewing certain Revolving and other Special Revenue Funds
4. Reviewing principal contracts, salaries, salary adjustments, extra pay and other payroll matters
5. Reviewing regular and special education transportation contracts and payments
6. Reviewing non-payment of vendor invoices
7. Reviewing other contracts and payments
8. Limited review of the 2019 LPSD budget

The results of our procedures identified numerous instances of noncompliance with laws, regulations, contracts and/or grants. Also, based on our discussions and interviews with various personnel, fraud occurred in the student activity fund during the period November 2017 through July 2018. This matter is currently under investigation by the Lowell Police Department and was not part of our engagement scope.

The results of our procedures also identified a ***significant lack of internal controls surrounding accounts payable, payroll, budgeting, journal entries and transfers, and procurement***, which resulted in the 2018 general fund LPSD appropriation (budget) being over spent by approximately \$1.4 million. We identified, among other things, inappropriate charges to certain revolving funds and payments not recorded in the appropriate period. These conditions, combined with the Massachusetts Department of Elementary and Secondary Education's (DESE) findings that the LPSD overcharged fiscal year 2017 and 2018 indirect costs to the School Lunch Fund, have left the LPSD with a 2018 general fund budget deficit, liabilities related to fiscal year 2017 for which there is currently no funding source, and limited resources (the SPED Circuit Breaker fund was liquidated during 2018) remaining in annual budgeted offset revolving funds to support LPSD's operations. To compound matters, we identified approximately \$3.4 million of budget shortfalls in the LPSD's 2019 ***originally approved*** general fund budget, which does *not* include the \$2.1 million payments owed back to the school lunch fund. The LPSD now finds itself in ***financial crisis*** and a ***structural deficit***.

The schedules that appear on the following pages are provided to support our calculation of the 2018 budget deficit and 2019 budget shortfalls identified above.



The following schedule is provided to support the 2018 budget deficit described above:

	<u>Amount</u>
2018 General Fund Budget Deficit	
2018 final General Fund budget (includes encumbrances)	\$ 162,311,123.82
2018 General Fund expenditures and encumbrances	<u>162,229,376.95</u>
Unadjusted Positive (Negative) Variance	<u>81,746.87</u>
<u>Adjustments:</u>	
2018 bills not paid or recorded in the expenses above (as of November 4, 2018)	165,088.46
Inappropriate reclassification of expenses between the general fund and Use of Facilities Revolving Fund	180,000.00
Inappropriate charges to the Use of Facilities Revolving Fund related to district-wide fire alarm and locker repair expenditures	52,397.00
Overcharge (as calculated by LPSD) of indirect costs to the School Lunch Fund that reduced the general fund expenses identified above	<u>1,122,685.00</u>
Total Adjustments	<u>1,520,170.46</u>
Adjusted 2018 General Fund budget deficit	(1,438,423.59)
2017 overcharge (as calculated by LPSD) of indirect costs to the School Lunch Fund that are required to be repaid to the School Lunch Fund	<u>(985,886.00)</u>
Total amount owed by LPSD General Fund at June 30, 2018	<u><u>\$ (2,424,309.59)</u></u>

It must be noted that the schedule above does not take into consideration the deficit (adjusted) that exists in the Food Services Fund. City records identify a positive fund balance of \$655,633.46 at June 30, 2018. However, this balance does not take into account \$1,431,206 of food service bills for April, May and June 2018 that remained unpaid and accrued at June 30, 2018. Taking these bills into account, the Food Services Fund would be in a deficit totaling (\$775,572.54). Based on our discussions with LPSD personnel, these bills were paid through the Food Services Fund subsequent to year-end. In addition, if we were to take into consideration the over charges of indirect costs described above, the fully accrued fund balance would be back in a positive position.



The following schedule is provided to support the 2019 budget shortfalls described above:

FY19 General Fund Budget Analysis

Budget Offset Overages

Food Service Indirect Costs ¹	\$ 225,285.00
Use of Facilities ²	416,112.00
PEG Access ³	434,875.00
Utilities ⁴	<u>125,000.00</u>
Sub-total	<u>1,201,272.00</u>

Under Budgeted Accounts

SPED Transportation ⁵	1,174,090.00
SPED Tuition ⁶	500,000.00
Retirement Sick Leave Buyback ⁷	500,000.00
Sub-total	<u>2,174,090.00</u>

Total	<u><u>\$ 3,375,362.00</u></u>
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¹Despite prior notification from DESE that the school district was not allowed to charge certain indirect costs to the Food Services Fund, the 2019 budget continued to include unallowable indirect costs. This amount only includes amounts that are specifically unallowable. The amount could be larger dependent upon the total indirect cost rate percentage allowed.

²Balance of the Use of Facilities fund was only \$5,648. Revolving funds can't budget future revenues. In addition, the amount identified above is net of the available funds.

³The LPSD does not have the authority to appropriate these funds. City Council subsequently approved \$108,000. The amount above represents the net difference between the budgeted amount and the City Council approval.

⁴Utilities account was budgeted with an assumed revenue offset from the E-RATE fund. E-RATE revenues are general fund revenues, which are not permitted to be "earmarked" to a specific expense.

⁵SPED Transportation was budgeted at below the minimum contractual rate of \$416,138. Also, due to higher student enrollment, the forecasted costs exceed the minimum by \$757,952 for a total budget deficiency of \$1,174,090. In addition, the amount budgeted for 2019 was less than the prior year expenditure by a similar amount.

⁶SPED Tuition was **stated to be budgeted** for only the known students at the time of budget preparation. No allowance for tuition increases or additional placements was made, despite historical increases. Recent estimates by the LPSD identify an additional increase of \$500,000 as identified above.

⁷Budget noted that \$500,000 of current year retirement sick leave buybacks were going to be deferred to the 2020 budget. Collective bargaining agreements call for payments in the year of retirement.



We also identified the following:

- A proposal, addressed to Dr. Salah Khelfaoui, Superintendent of Schools, to provide Special Education transportation services was never presented to the LPSD School Committee for discussion. It is unclear why the proposal wasn't presented since it provided approximately \$1.9 million in savings over the term of the contract (approximately 4 ½ years). See the "Transportation Contracts" section of this document, beginning on page 17, for additional details.
- The LPSD transportation budget was overspent by approximately \$1.1 million, contributing to the LPSD's overall 2018 budget deficit. See the "Transportation Contracts" section of this document, beginning on page 17, for additional details.
- Revolving funds, used to support General Fund operations, were spent down approximately \$2 million from the 2017 ending fund balances. In addition, the Special Education Circuit Breaker fund was fully liquidated during the year. See the "Revolving/Special Revenue Funds" section of this document, beginning on page 10, for additional details.
- The previous Assistant Superintendent of Finance/School Business Administrator, Gary Frisch, inappropriately held himself out as a Certified Public Accountant. This was evidenced by his resume included in his personnel file and certain communications to the School Committee. See the "Introduction and Background" section of this document, beginning on page 8, for additional details.
- There was a lack of documentation supporting certain journal entries and transfers. See the "Revolving/Special Revenue Funds" section of this document, beginning on page 10, for additional details.
- Two (2) Principals moved to administrative positions were still being paid off of Principal contracts. See the "Principal Contracts and Other Payroll Issues" section of this document, beginning on page 13, for additional details.
- One Principal was verbally promised compensation outside of his contract for overseeing a project during the summer that was not approved by the School Committee. The Principal was subsequently compensated via a settlement with the School Committee totaling \$6,590. See the "Principal Contracts and Other Payroll Issues" section of this document, beginning on page 13, for additional details.
- There were salary and merit increase overpayments totaling \$23,096 made. See the "Principal Contracts and Other Payroll Issues" section of this document, beginning on page 13, for additional details.
- An employee on leave under the Family Medical Leave Act received 23 paychecks, totaling \$35,400.45, which the employee was not entitled to. See the "Employee Overpayments of Salary and Benefits" section of this document, beginning on page 16, for additional details.



- Potential noncompliance with the Massachusetts procurement law related to the Day School lease was noted. See the “Day School Lease” section of this document, beginning on page 19, for additional details.
- An attorney for the School Department, pay was increased from \$50,000 to \$90,000 during fiscal year 2018 without sufficient documentation to support the increase. In addition, we noted the following matters:
 - The increase in pay was not included in the fiscal year 2018 budget
 - There is no current employment or contractor agreement between the school department and the attorney.

See the “Principal Contracts and Other Payroll Issues” section of this document, beginning on page 13, for additional details.

Introduction and Background

The LPSD is one of the largest school districts in Massachusetts, currently enrolling more than 14,000 students in grades PreK-12. The LPSD operating budget provides funding for Pre-K through Grade 12 educational programming and the general fund budget also provides minimal funding for the Lowell Adult Education Program. Developing a school budget provides the school district and their leaders and staff the ability to understand the anticipated revenues and expenditures for the upcoming year and prioritize the use of the school district resources throughout the year. The total operating budget approved by the School Committee for fiscal year 2018 was approximately \$163 million.

Beginning July 1, 2015, Dr. Salah Khelifaoui started as the Superintendent for the LPSD. Shortly after his arrival, Gary Frisch was hired to fill the position of Assistant Superintendent of Finance/School Business Administrator in February 2016. Dr. Khelifaoui provided the leadership and direction for the school district including the preparation of the school district budget, managing and prioritizing the school district financial resources and the responsibility for safeguarding the assets and resources of the school district.

Dr. Khelifaoui attended the University of Algiers, Stevens Institute of Technology and the University of Massachusetts attaining a PhD. Dr. Khelifaoui’s employment history includes Gill-Montague Regional School District, Billerica Public Schools, Arlington Public Schools and Winchendon Public Schools prior to his employment with the LPSD.

Mr. Frisch attended Illinois State University and Northern Illinois University and his prior employment includes the Community Consolidated School District 181 as the Assistant Superintendent of Business and Operations in Clarendon Hills, Illinois.

It must be noted that Mr. Frisch previously maintained a Certified Public Accounting (CPA) license in the State of Illinois. However, his CPA license expired in 1997 and, based on our research performed, has never been renewed. Mr. Frisch’s resume (obtained from his personnel file) indicated he was a CPA. We also identified two instances, the 2017 and 2018 budget submissions, where letters addressed to the



Members of the Lowell School Committee, dated May 11, 2016 and May 17, 2017, respectively, where Mr. Frisch held himself out as a CPA (next to his typed name below his signature were the letters CPA). Holding himself out as a CPA without having a current license implies he is an active CPA, which is not the case and misleading. In addition, the fact that the LPSD did not identify this during the hiring process represents a weakness in internal control over hiring.

By vote of the School Committee, Dr. Khelfaoui was placed on Administrative Leave with pay on July 18, 2018 and Mr. Frisch left the employment of the LPSD in July 2018. Ms. Jeannine Durkin was appointed as the Acting Superintendent and Ms. Billie Jo Turner was hired as the Interim Assistant Superintendent of Finance in August 2018.

Interviews Conducted

We conducted numerous interviews for the purpose of gaining an understanding of the environment, identifying the personnel who play important roles in the LPSD operations, and develop any background information concerning the LPSD and any issues or concerns of interest to the employees and organization. Some individuals were interviewed on more than one occasion and some provided valuable assistance locating documentation and helping to explain processes and procedures. The following personnel were interviewed:

Name	Title
Billie Jo Turner	Interim Assistant Superintendent of Finance
Jeannine Durkin	Acting Superintendent of Schools
Minerva Palazzo	Confidential Secretary to Superintendent
Bryan Perry	City Auditor
Miran Fernandez	Director of Information Technology
Sharon Lagasse	Director of Food Services
Jennifer McCrystal	Director of Special Education
John Descoteaux	Interim Business Manager for Transportation
Ann Marie Sousa	VP, Jeanne D'Arc Credit Union
Sue Mulligan	Director of LPS Human Resources
Deborah Jarvis	Executive Secretary for LPS HR
Robin Desmond	Assistant Superintendent of Curriculum, Instruction and Assessment
Nan Murphy	Director of Accountability, School Improvement and Professional Learning
Sharon Smith	Payroll Clerk
Nancy Splaine	Payroll Clerk
Cynthia Higgins	Payroll Clerk
Karen Brekalis	School Clerk - Student Activity Funds
Patty Guziejka	Title 1 Director



The interviews conducted revealed an environment of conflicting opinions, emotions and confusion towards Dr. Khelfaoui and Mr. Frisch. Some individuals with many years of experience felt excluded, isolated and demeaned by Dr. Khelfaoui while others described him as a good leader and felt confident working with him. Dr. Khelfaoui was described as frequently playing favorites to the detriment of others and others enjoyed working with him and felt his management style was fair. Mr. Frisch was viewed as someone who was simply overwhelmed with the new job or had no idea how to manage finances or prepare a budget for such a large entity. Either way an environment existed where the amount of conflict and uncertainty created by Dr. Khelfaoui and Mr. Frisch was not conducive to the successful operation and management of a large school district and budget.

Revolving/Special Revenue Funds

Background

The Massachusetts General Laws (“MGL”) govern the creation and use of special revenue and revolving funds by school districts. The purpose of a revolving fund is to separately account for specific revenue and earmark them for expenditure by a board or officer for a particular purpose to support the activity, program or service that generated the revenues. In most cases, the funds may be spent by the authoritative body without further appropriation. The board or officer with authority to spend from the revolving fund may only incur liabilities and spend from the available, unspent and unencumbered balance of the actual collections. Generally, funds can only be used for the intended purpose of the revolving fund and unspent funds are carried forward to the next year for continued use for the stated purpose. Certain other special revenue funds have more restrictive statutes that require the authoritative body to officially vote an appropriation out of them, prior to expending. In these cases, the vote cannot appropriate more than the current available balance on the date of the vote.

The following chart identifies certain revolving funds used by the LPSD and their applicable statute.

Fund	Fund Description	Massachusetts State Statute
1102	Athletic Revolving	G.L. c. 71, § 47
1103	Non-Resident Student Tuition	G.L. c. 71, § 71F
1108	Use of School Facilities	G.L. c. 71, § 71E
1119	School Choice	G.L. c. 76, § 12B(o)
1127	Full-Day Pre-School	G.L. c. 71, § 26C
1129	Community Schools	G.L. c. 71, § 26C G.L. c. 44, § 53A
1201	Food Services	c. 548 OF THE ACTS OF 1948, AS AMENDED
1924	Special Education Circuit Breaker	G.L. c. 71B, § 5A



We identified the following from our review of the aforementioned funds:

- Use of School Facilities (Fund 1108) – per MGL, these funds are to be used for “expenses incurred in making school property available for such use”.
 - The school department directed the City Auditor’s office to reclassify \$180,000 of general fund operating expenditures to this fund. The only supporting documentation for this reclassification was a reference to the school budget. There was no direct correlation to the facilities use receipts. As a result, we consider the expenditure noncompliant with the MGL. All expenditure reclasses and direct expenditures should have adequate supporting documentation that supports the allowability of the expense per MGL.
 - The school department charged the annual district-wide alarm system bills (\$46,197) and locker repairs (\$6,200) to the fund. We consider these expenditures noncompliant with the MGL as they are general operating expenditures.

School Choice (Fund 1119) – per MGL, these funds are to be used for “expenses incurred in providing education for school choice students”.

- More than \$50,000 was reclassified to the school choice account from the state hurricane relief grant. The supporting documentation provided (explanation only) was that these costs related to transportation. As noted above, expenditure reclasses should have supporting documentation, otherwise they should not be approved by the City Auditor’s Office.
- Full-Day Kindergarten (Fund 1127) - per MGL, these funds are to be used for “education related expenditures” for the full-day kindergarten program.
 - The school department directed the City Auditor’s office to reclass \$200,000 of general fund teacher expenditures to this fund. The supporting documentation for this reclass was a reference to the school budget. It should be noted that there was no current year revenue for this fund as fees are no longer charged for full-day kindergarten. An appropriate reclassification request should have had specific kindergarten salary information to support the amount requested.

The balances in the LPSD revolving funds have been significantly depleted and are currently unable to support the expenditures for which the revolving fund was intended, causing a serious deficit in available funding going forward. The chart below depicts the depletion of the revolving funds since July 1, 2017.

Fund	Fund Description	Massachusetts State Statute	FY18 Budgeted Offsets	7/1/2017		Transfers Out		6/30/2018	
				Beginning Fund Balance	Revenues	Expenditures	(Budget Offsets)	Encumbrance	Ending Fund Balance
1102	Athletic Revolving Non-Resident	G.L. c. 71, § 47	\$ -	\$ 0.37	\$ 73,042.30	\$ 74,549.15	\$ (3,800.00)		\$ 2,293.52
1103	Student Tuition Use of School	G.L. c. 71, § 71F	-	37,248.57	13.00	-	-		37,261.57
1108	Facilities	G.L. c. 71, § 71E	285,000.00	318,896.78	265,392.10	372,346.49	180,000.00	26,294.16	5,648.23
1119	School Choice	G.L. c. 76, § 12B(o)	192,000.00	-	159,823.00	98,031.60	50,543.26	-	11,248.14
1127	Full-Day Pre-School	G.L. c. 71, § 26C	200,000.00	247,450.97	-	-	200,000.00	-	47,450.97
1129	Community Schools	G.L. c. 71, § 26C G.L. c. 44, § 53A c. 548 OF THE ACTS OF 1948, AS AMENDED	-	65,956.90	49,490.56	43,368.54	-	1,100.67	70,978.25
1201	Food Services Special Education	G.L. c. 71B, § 5A	2,067,640.00	216,916.00	9,347,877.78	6,725,589.98	2,179,954.05	3,616.29	655,633.46
1924	Circuit Breaker		4,691,000.00	1,999,612.89	3,540,506.00	-	5,540,118.00	-	0.89
Totals			\$ 7,435,640.00	\$ 2,886,082.48	\$ 13,436,144.74	\$ 7,313,885.76	\$ 8,146,815.31	\$ 31,011.12	\$ 830,515.03

While the Food Services fund shows an available fund balance of \$655,633.46 at year-end, the school department subsequently identified \$1,431,206 in invoices that were owed to Aramark for April, May and June 2018 services. Taking these invoices into account, the Food Services fund deficit would total (\$775,572.54). These invoices weren't initially paid due to insufficient funds. It should be noted that the school lunch fund was not part of our initial scope. However, this information was brought forward in several interviews and provides perspective to how the overall LPSD operations were being managed by Dr. Khelfaoui and Mr. Frisch.

In addition, and as identified above, the LPSD not only spent all of the 2018 Circuit Breaker funds (received from the Commonwealth of Massachusetts) totaling approximately \$3.5 million, but also liquidated the entire prior year balance of approximately \$2.1 million in an unsuccessful attempt to not overspend the 2018 LPSD budget.

PEG Funding – MGL c. 44 § 53F3/4

Per MGL, the Cable Franchise or PEG Access fund is a receipts reserved for appropriation type of special revenue fund. This funds appropriating authority is the City Council. The funds must be used for the “(i) support of public, educational or governmental access cable television services; (ii) monitor compliance of the cable operator with the franchise agreement; or (iii) prepare for renewal of the franchise license.” Historically, the City has allocated a portion of the receipts to the School District to support Audio Visual related education.

Despite the LPSD having no authority to appropriate from the PEG Access fund, the superintendent's budget request for these years included offsets in the amount of \$188,271 and \$542,875, respectively. The City requested the LPSD to provide documentation supporting both the 17/18 and 18/19 school years' budget requests. They did not receive the requested support. For school year 17/18, the City did appropriate PEG Access moneys of \$108,145 to the LPSD. This appropriation was funded by a transfer from the PEG Access fund. For the school year 18/19, the City initially did not appropriate PEG Access funds as they still had not received the requested support. This caused a structural deficit

in the budget by \$80,126 in the 17/18 school year and \$542,875 in 18/19. Subsequently, the City did appropriate approximately \$108,000 to the school for the 18/19 school year, which helped to offset a portion of the structural deficit. In addition, as a result of the funding deficit, a 20+ year employee at the Lowell High School was let go since the PEG funding was no longer available to support his salary.

Principal Contracts and Other Payroll issues

As part of our review, we noted many instances of a lack of internal controls surrounding payroll in regards to pay increases and additional payments. Several Principals and Administrative personnel were identified as receiving multiple salary increases, merit pay increases, stipends and other additional payments. A review and analysis of the contracts and the payments to these employees was conducted.

Two Principals were transferred to positions within the Central Office. These positions are administrative positions and not principal positions. Both individuals remained on their previous principal contracts and have not been presented with a new administrative contract. The details are as follows:

- One principal was transferred to the position of Director of Accountability on September 1, 2017. Despite this change in position, the employee remained working under a principal contract and received a salary increase of \$2,397 upon assuming the new role.
- Another principal was transferred to the position of Acting Director of Human Resources in February 2018. This employee continued to work under the principal contract.

Dr. Khelfaoui also reinstated a new program which was approved by the School Committee whereupon several experienced Principals were selected to provide mentoring and guidance to newer Principals. As a result of this program several Principals were awarded two stipends of \$1,800 each during the 17/18 school year. One employee received a stipend even though she was no longer assigned to a Principal role. In addition, each of the Principals received a lump-sum merit pay and one Principal, received an additional payment for extra work performed during a summer construction project which was promised to him by Dr. Khelfaoui. Specific findings related to the principal payroll are as follows:

- The principal was verbally promised (by Dr. Khelfaoui) additional pay outside of his contract for overseeing construction work that was being done during the summer of 2017. However, the employee was not paid and there is no supporting documentation showing that this was pre-approved by the School Committee. A year later the non-payment was brought to the School Committee's attention. The School Committee subsequently settled with Mr. McCraven in the amount of \$6,590.

The principal contracts allow for an annual merit bonus of up to 1% of the base salary. In fiscal year 2018, the principals received two merit pays, one on 9/14/17 and one on 06/23/18. Together these increases exceed the 1% allowed in the contract. Some of the payments were made for fiscal year 2017 and should have been encumbered against the budget for that year. The total amount by which payments exceeded the 1% merit bonus was \$23,096, as shown in the following chart:



Salary and Merit pay increases paid to Principals during 2017/2018 school year									
Principal	Merit Pay - Lump Sum Payment			Merit Pay - Increase to Salary 16/17	Merit Pay - Increase to Salary 17/18	Salary Increases 17/18	Total	Estimated Allowable increases	2017/2018 Overpayment
	9/14/2007 - 16/17	9/14/2017 - 17/18	6/23/2018						
Principal 1		\$ 1,143	\$ 952		\$ 1,178		\$ 3,273	\$ 3,534	
Principal 2		\$ 1,112	\$ 694		\$ 859		\$ 2,665	\$ 3,436	
Principal 3	\$ 1,180		\$ 736		\$ 912	\$ 2,383	\$ 5,211	\$ 3,539	\$ 1,672
Principal 4	\$ 1,183		\$ 984		\$ 1,218	\$ 2,389	\$ 5,774	\$ 3,548	\$ 2,226
Principal 5	\$ 1,190		\$ 990		\$ 1,226	\$ 2,404	\$ 5,810	\$ 3,571	\$ 2,239
Principal 6		\$ 893	\$ 988		\$ 1,223		\$ 3,104	\$ 3,671	
Principal 7			\$ 664	\$ 822		\$ 2,148	\$ 3,634	\$ 3,222	\$ 412
Principal 8		\$ 1,180	\$ 736		\$ 911		\$ 2,827	\$ 3,646	
Principal 9	\$ 1,176		\$ 734		\$ 909	\$ 2,376	\$ 5,195	\$ 3,529	\$ 1,666
Principal 10	\$ 572		\$ 488		\$ 604	\$ 5,759	\$ 7,423	\$ 3,432	\$ 3,991
Principal 11	\$ 1,230		\$ 777		\$ 962	\$ 4,099	\$ 7,068	\$ 3,690	\$ 3,378
Principal 12		\$ 1,160	\$ 965		\$ 1,195		\$ 3,320	\$ 3,584	
Principal 13	\$ 1,185		\$ 986		\$ 1,221	\$ 2,394	\$ 5,786	\$ 3,556	\$ 2,230
Principal 14				\$ 1,187	\$ 917	\$ 2,397	\$ 4,501	\$ 3,560	\$ 941
Principal 15	\$ 1,272		\$ 1,059		\$ 1,311	\$ 2,570	\$ 6,212	\$ 3,817	\$ 2,395
Principal 16		\$ 1,137	\$ 709		\$ 878		\$ 2,724	\$ 3,514	
Principal 17	\$ 983		\$ 1,088		\$ 1,347	\$ 2,461	\$ 5,879	\$ 3,932	\$ 1,947
Principal 18				\$ 892			\$ 892	\$ 3,569	
Total	\$ 9,971	\$ 6,625	\$ 13,548	\$ 2,901	\$ 16,871	\$ 31,380	\$ 81,296	\$ 64,350	\$ 23,096



In addition to the concerns over principal pay, in our review of payroll change records, we found that Dr. Khelifaoui recommended and received approval from the School Committee to increase the pay and responsibilities of an attorney. The attorney had been providing legal services to the school district for many years related to Collective Bargaining with employee organizations for school employees. Prior to this increase, the only contract in the attorney's school personnel file was an unsigned copy that expired on June 30, 2006. This expired contract called for a payment \$150.00 per hour and a maximum amount not to exceed \$24,000 per year. The contract was also subject to annual appropriation. Prior to the school committee increasing the attorney's duties, he was being paid on the school payroll for a flat 20 hours per week with an annual salary of \$50,000. The current school staff was unable to locate a contract that supported this salary. On October 18, 2017, the School Committee voted to authorize the expansion of the attorney's scope of work with the LPSD to include general counsel. The new Scope of Legal Services was to be as follow:

Current legal services will be expanded beyond collective bargaining to include legal advice and counsel to the School Committee on a variety of matters pertaining to the administration of schools and litigation services when appropriate.

Services will now include reviewing and drafting contracts for senior administrators and principals, providing counsel to the Superintendent in negotiations with non-union personnel and/or principals or consultants, reviewing contracts for goods and services, attending senior staff meetings when appropriate, and providing counsel on issues related to the employment of unaffiliated personnel.

Counsel will represent the District in grievance procedures for all employees, not just those covered by collective bargaining agreements. Counsel will represent the District in labor arbitrations, unfair labor hearings, and civil service hearings. Counsel will provide interpretation of state and federal statutes and regulation as related to the administration of schools.

Counsel will serve as the School Committee's liaison to the City Solicitor's office for legal matters and process, monitor, and track requests for legal opinions that the Superintendent and/or School Committee asks of the Solicitor's office and/or report on litigation concerning the school district in which the Solicitor's office is the counsel in litigation.

Counsel is authorized to represent the District without further authorization to recover monies owed to the District in matters related to the recoupment of overpayments pursuant to contracts or employees.

Counsel drafts contracts and settlement agreements as necessary, and/or reviews contracts and agreements prepared by the school department administration. Counsel approves all contracts and agreements as to form.

Counsel will maintain a log of all cases and make a semi-annual written or oral report to the School Committee regarding significant matters which have been addressed, resolved, or which are ongoing during that year.



During a conversation with Christine O'Connor, City Solicitor, she confirmed that at no time was she put on notice that the attorney would be assuming these extra duties. In fact, many of the duties included in the Scope of Legal Services above are still being performed by her office. As a result of the efforts by Dr. Khelfaoui, the attorney was given a substantial pay increase from \$50,000 per year to \$90,000 per year beginning in fiscal year 2018, which was not contemplated (included) in the 2018 budget. Although the pay increase was determined to be for additional duties, the attorney's stated hours in the City's payroll system remained at 20 hours per week. In the Commonwealth of Massachusetts, employees working 24 hours a week or more are eligible to receive benefits. It is unclear if the attorney is actually working more than 20 hours per week as no timesheet is turned in with his payroll. The contract that expired in 2006 appears to treat the attorney as a contractor, but the school district has been paying him as a 20 hour per week employee. We find that the lack of contractual documentation and accountability surrounding the time-keeping for this employee is an internal control weakness and could create issues with both state and federal employment requirements.

Employee Overpayments of Salary and Benefits

Beginning in August 2016, a LPSD employee voluntarily requested time off under the Family Medical Leave Act (FMLA) to care for her elderly parents in Florida. She was an employee with the LPSD from 1994-2003 and again from September 2014 to June 2016. The request was approved and beginning on August 26, 2016, she went on leave from the LPSD. At the time her FMLA leave started, she was entitled to 25.5 days of Sick Leave and 2 days of personal leave. Based on her existing accumulated time off, she would continue to be paid her regular salary until October 11, 2016. The FMLA time off continued through November 30, 2016, which was the end of the twelve week period allotted for the FMLA time off. The FMLA time off is considered unpaid leave however an employee is allowed to use any of their accumulated benefits including Paid Time Off, Sick Leave, Vacation Time Off and personal days until those benefits are exhausted. Instead of discontinuing her regular salary on October 11, 2016, she was paid through the entire 12 week FMLA period even though her Sick Leave and Personal days totaled only 27.5 days which is just over 5 weeks. To make matters worse, she continued to receive her regular paycheck through March 3, 2017 and although she did indicate she would be returning to the LPSD, her payroll checks should have stopped on October 11, 2016. In total, she received 23 paychecks of \$1,539.15 per pay period for a total of \$35,400.45. Efforts to collect the overpayment from her were unsuccessful and a suit was filed in New Hampshire where she resided. The Judge in New Hampshire dismissed the suit resulting in the LPSD losing \$35,400.45 in salary overpayments.

It should also be noted that a Change in Status Form was filed on September 27, 2016, signed by the Interim HR Director listing the effective dates of the FMLA as 08/26/2016 to 11/30/2016 followed by Leave Without Pay, Off Payroll from 12/01/2016 to 06/30/2017, although the employee should have been off payroll after October 11, 2016. Even though this form was completed, the existing internal controls failed to prevent her from collecting unentitled payroll checks for approximately 23 weeks.

Based on our interviews performed, there were other allegations of other instances of employee overpayments reported. However, we were not provided documentation surrounding those instances. The current condition reflects a significant weakness in internal control over payroll disbursements.

Vendors Not Paid

MGL c. 44 §31 states that no liabilities may be incurred by any department in excess of appropriations. Bills not paid by the end of the fiscal year should be accrued or encumbered against the budget. Any late bills that were not accrued or encumbered must be approved for payment by a 2/3rds vote the City Council, per MGL c. 44 §64.

During our interviews with the Interim Assistant Superintendent of Finance & Operations, she informed us that after the close of fiscal year 2018 she found many unpaid bills due to vendors that were not accrued or encumbered. The list of unpaid bills related to the LPSD's General Fund totaled \$165,088 at the time of our review. In addition, \$1,431,206 was due and payable from the Food Services Fund to Aramark, the LPSD's food service provider, that were not accrued or encumbered. The total amount due represents the April, May and June 2018 invoices. The balance in the Food Services fund at June 30, 2018 totaled \$655,633. Taking these bills into account, the Food Services Fund would be in a deficit totaling (\$775,572.54) at June 30, 2018. Based on our discussions with LPSD personnel, these bills were paid through the Food Services Fund subsequent to year-end using fiscal 2019 revenues.

Transportation Contracts

The City of Lowell currently has three transportation contracts to provide student transportation to and from school, transportation for extra-curricular activities, athletic events and field trips and for the Special Education students both In-City and Out-of-District. These contracts are currently held by NRT Bus Inc. (NRT) and Pridestar Student Transportation Inc. (Pridestar). A recent change in transportation vendors in February 2018 resulted in the previous vendor, SP&R Transportation of NH, Inc. (SP&R), being replaced by Pridestar. A summary of the current contracts are listed in the chart below:

Vendor Name	Years in Business	Contract Type	Contract Term	Original Amount
NRT Bus Inc. dba North Reading Transportation	28+	Regular Student Transportation, Summer School Buses and extra-curricular, athletic and field trips	07/01/2017-06/30/2020 with two one year option years	Year 1 - \$4,110,920 Year 2 - \$4,597,800 Year 3 - \$4,664,800
NRT Bus Inc. dba North Reading Transportation	28+	Special Education Students Out of District	07/01/2016-06/30/2019 with two one year option years	Year 1 - \$1,572,680 Year 2 - \$2,400,538 Year 3 - \$1,572,680
SP&R Transportation of N.H. Inc	30+	Special Education Students In-City	07/01/2016 - 06/30/2019 with two one year option years	Year 1 - \$3,097,480 Year 2 - \$3,175,600 Year 3 - \$3,241,160
SP&R Contract terminated as of February 19, 2018				
Pridestar Student Transportation Inc.	Formed 11/01/17	Special Education Students In-City	02/26/2018-02/25/2021 with two one year option years	Year 1 - \$3,380,323 Year 2 - \$3,175,560 Year 3 - \$3,266,460

In May of 2017, the City's Law department received a request for a contract for general student bus services with NRT Bus Inc. After drafting the contract, the Law Department learned that NRT was the



sole bidder and language had been added to the bid documents that may have discouraged other bidders. The City Solicitor determined that the language should be revised and the contract re-bid. She contacted the Massachusetts Inspector General's Office. Soon after, the City Solicitor was also informed that the employee, whose duties it was to write the LPSD bids, was leaving the school district to become the president of NRT Bus Inc. After re-bidding the contract, NRT Bus Inc. was still the only bidder and the new bid came in \$83,920 higher than the original. In late August/ early September 2017, NRT contacted the Superintendent regarding the possibility of consolidating the general and special education bus services for LPSD, which would result in an overall savings.

On September 25, 2017, an incident occurred where a Special Education child was accidentally left on an SP&R special education bus. The bus driver was terminated from his employment with SP&R and a letter of apology was sent to Dr. Khelifaoui and Mr. Frisch on September 29, 2017 from Billy Covalucci, President, SP&R. On October 4th, Dr. Khelifaoui by letter dated September 28th presented the School Committee with a Permission to Enter contract for special ed busing services with NRT. Committee Member Jacky Doherty requested an opinion from the law department as to whether we could cancel the contract with SP&R. Gary Frisch emailed the Solicitor on Friday October 6th requesting an opinion on breaking the contract. That day, the Solicitor responded and advised that the SP&R contract could be cancelled. On October 9th, Gary emailed Dr. Khelifaoui stating that School Committee Member Gignac requested that Pride Star be allowed to compete for the transportation contract.

On October 12, 2017, Bryan Shanley, Pridestar, followed up a conversation with school officials with an email to the previous Executive Secretary for Mr. Frisch, and requested a copy of the existing SP&R special education contract. This was followed by another email to Dr. Khelifaoui with a Letter of Interest concerning the Special Education transportation contract. On November 1, 2017, the company Pridestar Student Transportation Inc., a domestic for-profit corporation, was formed with David T. Daly identified as the President, Secretary, Treasurer and Director. The special education transportation contracts are exempt from bidding requirements and Pridestar submitted a bid proposal which was nearly identical to the existing contract with SP&R. The Pridestar proposal was approved by the School Committee on November 15, 2017 and on December 20, 2017 the Pridestar proposed contract was submitted to the City of Lowell legal department for review. On January 10, 2018, the Pridestar contract was signed by David T. Daly and City officials.

During the same time period that the communications between Pridestar and LPSD were taking place, Mr. Frisch was also engaging in conversations with John McCarthy of NRT regarding the Special Education transportation contract currently held by SP&R. Mr. Frisch advised NRT that the decision had already been made to terminate the SP&R contract and contract with a new transportation vendor. Additionally, Mr. McCarthy also met with School Department officials regarding the special education transportation contract and as a result began preparations to take over the special education transportation contract including the alleged purchase of 34 buses at a cost of \$1.8 million. This matter was placed on the School Committee meeting agenda for the October 4, 2017 and was then delayed for several weeks until November 9, 2017 when the matter was discussed by the School Committee. At the meeting on November 9, 2017, it was announced that Pridestar was to be awarded the contract. On April 20, 2018, NRT Bus Inc. informed the City, by letter of their intent to file a formal



complaint with the Massachusetts Ethics Commission, regarding the award of the special education transportation contract to Pridestar.

Previous to the November 9, 2017, meeting, on October 24, 2017, an NRT proposal was sent to Lowell Public Schools, attention, Dr. Salah Khelfaoui, Superintendent of Schools. The NRT proposal provided for an immediate discount of \$600,000 deducted from the January 2018 to June 2018 invoices at \$100,000 per month and an additional savings of \$800 per day for the remaining term of the contract for a total additional savings of \$576,000. The proposed additional savings and discounts for over the 4.5 years of the contract totaled \$1.9 million. This proposal was not presented to the School Committee for discussion nor was there any notification of a second proposal and the reasons why the second proposal was not beneficial to the school district. Therefore, the School Committee was unable to evaluate the two contracts and determine which contract was more favorable for LPSD.

On January 19, 2018, the City of Lowell sent a termination letter to SP&R notifying SP&R of the termination effective February 19, 2019. On February 26, 2018, Pridestar began providing special education transportation services to the LPSD.

Furthermore, fiscal year 2018 transportation expenditures exceeded budgeted amounts by \$1,073,438 and is summarized as follows:

Transportation Service Type	Budget	Actual Expenditures	Difference
Regular	\$ 4,294,700	\$ 4,120,714	\$ 173,986
SPED Totals	5,083,500	6,330,924	(1,247,424)
Totals	\$ 9,378,200	\$ 10,451,638	\$ (1,073,438)

Based on documentation reviewed, it appears the over-expenditure was somewhat anticipated due to enrollment increases and out-of-district placements. However, this was a contributing factor to the 2018 budget shortfall.

In addition, it is our understanding that the 2019 budget did not reflect contractual increases included in the transportation contracts. This condition has created a structural deficit.

Day School Lease

In December 2017, Frank McCabe of Pridestar reached out to an employee of Lowell Public Schools regarding a prior conversation with employees regarding the LPSD’s need for additional Special Education classrooms for Pre-K students. Mr. McCabe informed her that their parent company, The Daly Holding Company, had many real estate entities and would be happy to assist in finding a suitable location. The employee replied to him what the specific needs for the special education space would be.



Pridestar is the same company that was awarded the Special Education Transportation contract previously held by SP&R. In early February 2018, Jonathan Miller of Daly Holding Company (David T. Daly is the owner of Pridestar and Daly Holding Company), emailed Dr. Khelfaoui that a property located at 60 Carlisle Street, Chelmsford, MA was available and could possibly meet the needs of the LPSD. His email indicated that he had already discussed this with “your team” and they were supportive of this space. Further email conversation and a walk through of the facility also occurred in early February. On February 28, 2018 (subsequent to these communications and the walk-through of the facility), the City advertised a Bid Request for an Education Space Lease for the LPSD. Two bids were received: one from The Daly Group, LLC and the other from the Bertos Nominee Realty Trust.

The Daly Group, LLC submitted a proposal to lease the space at 60 Carlisle Street, Chelmsford, MA at a monthly rate of \$23,556 for a three year total of \$848,025. The Bertos Nominee Realty Trust proposal was submitted for space located at 144 Merrimack, Lowell, MA at a monthly rate of \$12,000 for a three year total of \$432,000. In April 2018 a team of 5 LPSD employees with experience in Special Education and Special Education needs conducted a walk through of the both locations. A list of 31 programmatic requirements were used to evaluate both locations. The 60 Carlisle Street address met 30 out of the 31 requirements and the 144 Merrimack Street location met 26 out of 31 requirements. The LPSD procurement team unanimously agreed the 60 Carlisle Street location was the better option for the LPSD. On April 26, 2018, the School Committee approved the selection of the 60 Carlisle Street location for the Special Education facility. During May 2018, contract negotiations regarding the 60 Carlisle Street location continued and a contract was signed on July 17, 2018.

On June 25, 2018, a Quit Claim Deed was executed by the Merrimack Education Center, Inc. for consideration paid of \$710,000 deeding the property located at 60 Carlisle Street to the 60 Carlisle Street, LLC owned by David Daly, the owner of Pridestar and the Daly Holding Company. The Lowell City Council voted unanimously to approve this lease on July 10, 2018.

The oral and email communications suggest The Daly Group, LLC was materially involved in identifying the space and having an understanding of what the LPSD was looking for prior to the solicitation. In the spirit of the law, this would appear to give The Daly Group a competitive advantage over any other entity submitting a bid. Whether it actually resulted in an unfair advantage is unknown

Closing

We wish to extend our appreciation to management and staff for their timely cooperation and assistance during the project. Our report shall be used only for the purpose of assisting LPSD with an evaluation of the financial activities for the fiscal year ending June 30, 2018. The report shall not be used or distributed for any other purpose, except as directed by LPSD legal counsel. The scope of our engagement was limited to the specific procedures described in the report. We did not conduct an investigation or internal control review or assessment. Any internal controls discussed in the report were included to describe the processes and procedures in place related to the areas we reviewed.

