



## City of Lowell - Law Department

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### MEMORANDUM

TO: Eileen Donoghue, City Manager EMD

FROM: Christine P. O'Connor, City Solicitor

DATE: May 7, 2020

SUBJECT: **Motion Response – C. Conway - Req. City Mgr. Meet With Law Department For The Purpose Of Exploring And Resolving The Outstanding Contractual Issues Regarding Van/Mini-Bus Transportation Of Special Education Students For The Lowell Public Schools.**

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I write in response to a request from C. Conway that the “City Mgr. Meet With Law Department For The Purpose Of Exploring And Resolving The Outstanding Contractual Issues Regarding Van/Mini-Bus Transportation Of Special Education Students For The Lowell Public Schools.”

The City’s contracts with its student transportation providers contain clauses that condition payment on a monthly basis and only for services actually provided and documented in detailed bills submitted to Lowell Public Schools: “Payment shall be made on the twentieth day of the month for all services provided during the preceding month, provided bills containing detailed information are filed in the Office of the School Business Administrator on or before the first day of the month in which payment is to be made.”

These provisions are in keeping with the restrictions set out in M.G.L. c. 41, §56, which prohibits cities from issuing payments for goods and services that have not been received or rendered. Pursuant to §56, payment shall be authorized “only after an examination to determine that the charges are correct and that the goods, materials or services charged for .... were delivered and that the services were actually rendered.” The Lowell Code of Ordinances, §28-7 also requires City Auditor approval for any payment to be made for city contracts, and that such payments must be made “in accordance with the terms of the contract.”

Although school committees have general authority to oversee school budgeting and appropriations under M.G.L. c. 71, §34, they are still subject to the same limitations governing municipal finances. Accordingly, the Lowell School Committee does not have the authority to issue payments to the student busing vendors absent services being provided.

The Senate recently passed Bill No. 2680 which allows for payments on existing service contracts for education-related services entered into by school committees. The relevant sections are as follows:

SECTION 5. (a) (1) Notwithstanding sections 52 and 56 of chapter 41 of the General Laws, a city or town may approve a payment for the period beginning on or after March 10, 2020 through the remainder of fiscal year 2020 on an existing service contract for school or education-related services entered into by the school committee or a service contract renegotiated or modified by the school committee in order to maintain the availability of and access to the services secured under the underlying contract between the parties; provided, however, that: (i) the underlying service contract was in effect before March 10, 2020 and the service contractor was unable to perform services under the contract as a result of the governor's March 10, 2020 declaration of a state of emergency or the outbreak of the 2019 novel coronavirus, also known as COVID-19; and (ii) there are sufficient unencumbered available funds remaining for such payment in the appropriation for the purpose.

(2) Before any payment, the service contractor shall present to the approving authorities set forth in subsections (b) and (c), a sworn statement reporting grants, discounted loans or other financial support that the service contractor has received from a state, federal or local government as a result of the COVID-19 outbreak or, if the service contractor has not received any such grants, discounted loans or other financial support, affirming that the service contractor has not received, and shall not receive thereafter, any such grants, discounted loans or other financial support. The sworn statement shall include an attestation of compliance with section 7. The payment to the service contractor shall not exceed the amount to which the service contractor was eligible under the service contract and shall be consistent with said section 7.

The legislation is permissive, and will still need approval of the House and Governor Baker. However, should Senate Bill No. 2680 be enacted into legislation, the School Committee may then, if it deems it appropriate, pay for contractual services for Van/Mini-Bus Transportation of Special Education Students. The law department will update the City Council as to any substantive developments in this matter.