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Phil Kauffman
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Dear Mr. Kauffman:

Attached for your consideration is a Summary Update of Outside Counsel's independent review of Board member and Board of Education office staff use of MCPS-issued credit cards and related expense reimbursements. The summary also sets forth recommendations for clarifications and changes to expense reimbursement guidelines going forward. We look forward to continuing to assist the Ad Hoc Committee and Board's important work.

Respectfully submitted



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Summary Report

I. INTRODUCTION

In April 2014, Phil Kauffman, in his capacity as President of the Montgomery County Board of Education (“Board”), convened an Ad Hoc Committee for Review of Board Processes and Guidelines on Board Expenditures (“the Ad Hoc Committee”), consisting of himself and Patricia O’Neill, the Board’s Vice President, and Michael Durso, Chair of the Board’s Fiscal Management Committee. The Ad Hoc Committee was charged with reviewing the Board’s processes and guidelines regarding use of credit cards issued by Montgomery County Public Schools (“MCPS”) to Board members and staff in the Board of Education office (“BOE staff”), as well as their reimbursable expenditures generally. The Ad Hoc Committee intends to recommend revisions for consideration and ultimate adoption by the full Board. While the Ad Hoc Committee’s work is part of the Board’s periodic review of its business processes and procedures, which are codified in the Board’s Operations Handbook (“Handbook”), its efforts have garnered attention in light of recent public and media scrutiny of the Board’s use of MCPS-issued credit cards and other reimbursable expenditures, as well as a pending inquiry by the Office of the State Prosecutor (“OSP”).

One aspect of the Ad Hoc Committee’s work is a review of the use of MCPS-issued credit cards and other expenditures during the Board’s current term, which began in December 2012, to help inform the Ad Hoc Committee’s forward-looking recommendations, as well as to ensure that reimbursements were appropriate. Outside counsel from Venable LLP (“Venable” or “outside counsel”) were engaged to assist MCPS’ in-house General Counsel to complete the review process in a timely manner. Over the past several weeks, outside counsel reviewed voluminous documents, focusing on the period December 2012 through March 2014. Available records from this time period were reviewed with the dual purpose of identifying potential uses of MCPS-issued credit cards that were inconsistent with the guidelines and procedures that were in place during that time, and recommending changes and clarifications to those guidelines and procedures. Relevant documents for the Ad Hoc Committee’s review are included among the records produced to the public in response to a number of Maryland Public Information Act requests and posted on a publicly-accessible link on the MCPS website. As part of its review, Venable also interviewed individual Board members and BOE staff. In addition, Venable reviewed Board and MCPS procedures and guidelines related to use of MCPS-issued credit cards and expenditures more generally. We also reviewed best practices utilized by other school districts and public agencies.

This document provides a summary of what outside counsel have, to date, gleaned from our review. Consistent with the Ad Hoc Committee’s request, this summary also addresses areas for potential clarification of the Board’s current expense reimbursement guidelines, the most significant of which is outside counsel’s recommendation that the Board should discontinue the use of MCPS-issued credit cards by Board members.

II. RECOMMENDATION THAT USE OF MCPS-ISSUED CREDIT CARDS BE DISCONTINUED FOR BOARD MEMBERS

In the Ad Hoc Committee's review, the question as to the necessity of MCPS-issued credit cards going forward has taken center stage. While the Ad Hoc Committee's review has been pending, the Ad Hoc Committee requested, and all Board members agreed, to suspend usage of their MCPS-issued credit cards. Moreover, the clarifications and revisions that the Ad Hoc Committee has already proposed, if adopted by the full Board, should eliminate the need for Board members to use MCPS-issued credit cards in circumstances other than pre-approved, non-local travel to conferences and meetings for official Board business, including professional development. The Ad Hoc Committee also has discussed a per diem, similar to the approach taken by the Federal Government, as a means to further reduce or eliminate the necessity of issuing credit cards to individual Board members. Moreover, the Montgomery County Inspector General ("IG") recently announced that his office will review best practices and procedures to monitor and control the use of credit cards issued by County agencies, including the Board. The IG has made clear that this review will include an analysis of the necessity of County-issued credit cards.

Consistent with the Ad Hoc Committee's previous suspension of the use of credit cards, as well as its proposed revisions to the expenditure guidelines, and in light of our findings discussed below, outside counsel recommends that the Board cease to issue credit cards to Board members. While boards of education and other local and state agencies throughout the country issue government credit cards to their elected leadership, now is the time for the MCPS to set a clear standard going forward.

Any new guidelines must ensure that existing and potential new Board members are not disadvantaged by their potential inability to procure personal credit cards and, otherwise, advance expenses subject to reimbursement thereafter. Accordingly, the Ad Hoc Committee and Board should, where appropriate, consider advance payments and similar means on a case-by-case basis to ensure that all Board members are able to fulfill their important responsibilities to the public.

In addition, outside counsel recommends that the Board also discontinue use of MCPS-issued credit cards by BOE staff for their own travel, meals, and travel-related expenses going forward. To the extent that BOE staff continue to utilize credit cards, they should only be authorized to use those cards for procurement purchases and other expenses related to the regular operation of the Board, including but not limited to, facilitating efficiencies in making airline or hotel reservations for their own or Board members' travel related to their official duties.

III. THE BOARD'S COOPERATION WITH INQUIRIES REGARDING ITS USE OF MCPS-ISSUED CREDIT CARDS

The Board has previously received criticism for its purported lack of transparency regarding this matter. Outside counsel respectfully disagrees with this perception. The Board

has fully complied with all requests for documents, and through the Ad Hoc Committee, made clear its serious concern about public reports regarding the use of MCPS-issued credit cards. The Board has also posted relevant records related to expenditures by Board members and BOE staff on the MCPS website. In this regard, it is important to convey the Ad Hoc Committee's determination to propose revised expense guidelines that will have the effect of clarifying procedures and imposing clear standards of conduct. The Ad Hoc Committee's proposals seek to minimize good faith mistakes that were caused by ambiguities in existing procedures, as discussed below.

With respect to the OSP's inquiry, which the Board itself publicly disclosed, the Board is actively cooperating with that office's review as to whether violations of law occurred. MCPS has produced documents that OSP requested, and outside counsel are regularly in communication with that office. The Board looks forward to the completion of the OSP's review.

IV. INCONSISTENCIES AND AMBIGUITIES WITH EXISTING GUIDELINES

Heretofore, the Board's use of MCPS-issued cards and other reimbursable expenditures principally has been guided by the 2009-2013 Purchasing Card User's Guide ("the Guide") and the November 2008 edition of the Board's Operations Handbook ("Handbook"). The guidance set forth in these documents is comparable to the procedures utilized by other boards of education in Maryland and elsewhere, but outside counsel's review reveals that these documents, along with practices developed over the years, led to certain inconsistencies and ambiguity. Confusion regarding the appropriate rules of the road substantially contributed to variances in the manner in which Board members sought reimbursement for official MCPS business. The Guide and Handbook, and the practices developed over the years, too often left the judgment of what was or was not reasonable to individual Board members and BOE staff.

The weaknesses in the current guidelines and practices include the following:

- Ambiguity in applicable guidelines, procedures, and practices contributed to the lack of shared norms and expectations concerning use of Board-issued credit cards and other related expenses.
- In the absence of shared norms and expectations, Board members took different approaches in exercising their own judgment in determining whether an expense was related to their official duties. The subjective nature of such judgments, combined with the variances in the manner that Board members perform their work, contributed to the issues at hand.
- There was insufficient ongoing training regarding best practices, and over-reliance upon anecdotal norms respecting expense practices. In addition, the range of consequences for failure to follow procedures and guidelines was not clearly communicated to Board members and BOE staff.

- In many cases, full documentation of expenses was lacking. For instance, there are a number of charges for meals where the attendees and/or the purpose of the meals were not sufficiently identified. In a number of instances, itemized receipts were not submitted. Subsequent follow-up with individual Board members and BOE staff confirmed that in the overwhelming majority of cases Board members' expenses appear to have been permissible under existing guidelines and reasonably related to official Board duties.
- Approval and reconciliation of credit card charges and other expenses were often inadequate.
- Segregation of lines of authority and review were lacking. Segregation of duties for making purchases, authorizing purchases and payments, and reviewing/auditing is important. Multiple layers of approval make it more difficult for improper card usage to occur and go unnoticed. In addition, a multi-faceted auditing program should be implemented to frequently monitor card usage and assess indicators of potential misuse or failures to adhere to existing procedures.

V. REVIEW OF AVAILABLE DOCUMENTS — FINDINGS

Notwithstanding the aforementioned weaknesses in the applicable guidelines, outside counsel's review of available documents and follow-up interviews determined that, with relatively few exceptions, MCPS-issued credit card charges and other reimbursements for Board members and BOE staff were reasonably related to performance of their official duties. As reported in the press, instances where charges were unrelated to official business have been acknowledged and previously reimbursed. In our review, outside counsel did not uncover evidence of intentional action taken to improperly use the credit cards for personal expenses.

In addition, outside counsel's review uncovered relatively few instances of what, in hindsight, could be viewed as questionable judgment. Indeed, the available documents did not uncover additional types of questionable expense practices beyond those categories that have already been publically disclosed. If additional expense concerns are identified in other reviews, Board members and staff should be required to promptly reimburse the MCPS.

Outside counsel further notes that the passage of time and incomplete nature of the documents regarding reimbursement of expenses has contributed to negative press reports about Board member and BOE staff practices. To be fair, many of the reports lacked context, and otherwise created the specter of violations, where none occurred under existing guidelines. In the opinion of outside counsel, the members of the Board and BOE staff are committed to their important jobs, and have not intentionally sought to enrich themselves beyond their statutorily-based authorization for compensation and reimbursement.

The use of MCPS-issued credit cards by Board members and BOE staff undeniably has had an adverse impact on the public's perception of the Board. While the Board would be well

within its rights and authority to take additional corrective action, Venable recommends that any such action be limited to the reimbursement of charges that Board members and BOE have already acknowledged were unrelated to official business. This approach is particularly appropriate if the Board adopts the recommendation of outside counsel to discontinue use of MCPS-issued credit cards by Board members. Whether any Board members or BOE staff violated the law will be determined by a pending inquiry by the OSP, which is responsible for investigating possible ethics and misconduct of public officials and employees.

VI. RECOMMENDATIONS REGARDING CLARIFICATION AND REVISIONS OF BOARD EXPENDITURE GUIDELINES GOING FORWARD

The ambiguity, conflicts, gaps, and deficiencies in the existing guidelines, as well as the practices developed over the years, should be discussed in tandem with the Ad Hoc Committee's most recent draft of proposed revisions to its expenditure guidelines, as well as the Ad Hoc Committee's proposed templates for forms that Board members and BOE staff will complete when seeking reimbursement for expenditures. The Ad Hoc Committee intends to complete its review and forward recommendations for consideration by the full Board. Any revisions ultimately will be incorporated in the Board's Operations Handbook.

The deficiencies associated with the existing credit card and expense reimbursement guidelines, as well as the practices that developed over the years, covered the full range of potential expenses, including: meals, local and non-local travel and lodging, attendance at local ticketed events, costs associated with technology (computers, internet and supporting hardware and software). Accordingly, the proposed revisions are similarly wide-ranging. For instance, reimbursed expenditures for meals involved payments for meals of elected officials, MCPS staff, external stakeholders, and constituents with whom the Board and BOE staff met to conduct official business. Such meals, in and of themselves, were consistent with the current applicable guidelines and procedures. Errors in processing such expenses were the result of insufficient documentation regarding the identity of those individuals with whom Board and BOE staff met and the purpose of the meetings. The Ad Hoc Committee's proposed clarifications and revisions should limit these expenses substantially and also facilitate better documentation. Similarly, existing guidelines respecting lodging permitted Board members to incur expenses for overnight stays that were not in Montgomery County, but could be perceived as local and, thus, require additional clarification. The Ad Hoc Committee's proposal would provide clarity by restricting reimbursements for lodging within 50 miles of the MCPS central offices.

As the Ad Hoc Committee and Board continue their work, outside counsel emphasizes that the very nature of the Board and BOE staff responsibilities require that they constantly engage with parents, students, educators, County residents, and community constituent groups interested in the County's mission of providing its students with the highest level of education. For this reason, Board members and BOE staff regularly travel by car or other means of transportation to fulfill their official duties. Meetings with individuals and constituent groups often take place in restaurants, coffee shops, and other informal locations. Similarly, it is important for Board members and BOE staff to actively participate in conferences, as well as

educational and other related events that require local and non-local travel. Moreover, reimbursement mitigates ethical issues that could arise during meetings with vendors or others who seek to conduct business with the MCPS. For these reasons, revisions to the guidelines must be balanced against the potential harm of over regulation.