



PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | Mark Johnson, *Superintendent of Public Instruction*

WWW.DPI.NC.GOV

June 11, 2020

The Honorable Beth A. Wood, State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0601

Dear State Auditor Wood:

I write you today to express concern that Eric Davis, Chairman of the North Carolina State Board of Education ("State Board"), negotiated and executed a state contract in violation of North Carolina law and State Board contracting requirements. Davis refused to answer basic questions to resolve the matter, forcing an investigation by the Department of Public Instruction ("DPI"). During DPI's efforts to resolve this issue, two State Board members were not truthful in their public responses and the then-State Board Attorney Eric Snider actively worked to block DPI staff's efforts. Snider recently resigned his position with the State Board.

Results of the investigation indicate that:

- Davis and State Board Member John Bruce "JB" Buxton violated state law by evading vendor-competition for state funds;
- Davis and Buxton were not truthful in their public statements when questioned on this matter; and
- Davis allowed Buxton to oversee the contract despite the fact that Buxton had a recent financial relationship with the vendor and a conflict of interest.

As the Office of the State Auditor has oversight on confronting practices that favor vendors at the expense of taxpayers, DPI is submitting these findings to you for your review. In the interest of transparency and given the potential legal issues, DPI is also notifying the NC Department of Justice, the Governor's office, and the Joint Legislative Education Oversight Committee of what has been uncovered in this matter.

Executive Summary

In November of 2019, Davis violated multiple procurement laws, rules, and policies meant to ensure competitive bidding and to prevent State Board members from using state funds to potentially benefit themselves financially. Davis illegally executed a contract to pay a third-party vendor for consulting work that could have easily been done by DPI staff. At Davis' direction, Buxton apparently led the effort and selected a vendor that has been a client of Buxton's for-profit education consulting company. There was never a public discussion of the matter nor were other members of the State Board made aware of the illegal contract. DPI only learned of these

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AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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unethical efforts in February of 2020 when the State Board attempted to direct DPI to pay the Buxton-selected vendor.

Davis refused to answer basic questions about the contract via email and then, at the State Board meeting in March, falsely claimed that he was fully responsible for the contract. When asked to explain the apparent errors, Davis said, *“I take full responsibility for not following the process...”* and *“I’ll just say it’s my responsibility...”*

Buxton was similarly disingenuous at the same meeting when asked about his involvement. Buxton falsely claimed *“I don’t know the details of the contract. I was not involved in the contract.”*

DPI’s investigation indicates that these statements are not true.

Based on the attached public records, it appears Buxton initiated and led the contract negotiations via phone calls and his private Gmail email account rather than his public State Board email account. Based on those same emails, it is evident that Davis did not work alone and instead proactively sought to involve Buxton in the negotiations and closely followed Buxton’s guidance to award the contract to the vendor.

Please find the following list of some, but not all, of the violations in the Davis/Buxton process:

- No competitive bidding process occurred to ensure taxpayers secure the best value for tax dollars.
- There was no process to safeguard against conflicts of interest.
- The contract was executed in secret without informing the full State Board, DPI, or the public.
- The contract was executed without the required-by-law approval of the full State Board, DPI, and the NC Department of Administration.

Further, at the March meeting of the State Board, Davis was directly asked, *“Are you able to say there are no conflicts of interest between the State Board and [the vendor]?”* Davis responded, *“Absolutely,”* despite Buxton’s Statements of Economic Interest filed with the NC State Ethics Commission indicating that the vendor has at least previously paid Buxton’s for-profit education consulting company. This relationship presents an apparent, if not actual, conflict of interest, magnified by the facts that Buxton seems to have initiated this work and was less than truthful when asked in a public meeting about his involvement.

While Snider, the State Board’s then-attorney, promised to provide an appropriate path to resolve this matter, the investigation demonstrated that he was actively seeking to mislead DPI staff as to the origins of the contract by assigning blame to a State Board administrative assistant who was not responsible for the contract.

Background & Timeline

In February 2020, the State Board instructed DPI to pay for work performed by the Southern Regional Education Board (“SREB”). SREB is an organization that helps state education agencies with education policy research and strategies. SREB charges fees for some projects and helps on some projects without charge, such as the current schools reopening efforts during the

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COVID-19 crisis. Contracts with SREB, like any other vendor, are subject to state procurement laws and State Board policies.

When the State Board directed DPI to pay SREB, the State Board had provided no record of a contract with SREB related to the work done. When DPI's procurement office asked for a contract, DPI discovered that Davis, in the name of the entire State Board, had executed a contract with SREB on November 4, 2019, for consulting work related to the accountability metrics for schools used in North Carolina. While DPI was aware of the accountability study mandated by S.L. 2019-154, the agency was not aware that Davis had secretly agreed to pay a third-party vendor.

DPI promptly asked Davis and Snider basic questions about how the contract was created and executed. As displayed in Attachment A, Davis ignored multiple requests to answer these basic questions.

Following Davis' refusal to provide answers, DPI staff attempted to work with Snider to resolve the issue. Snider agreed to research the origin of the contract and provide an explanation for the improprieties. Instead, Snider falsely claimed that the contract had been mistakenly created and executed by a State Board administrative assistant and that he and State Board leadership had no previous knowledge of the contract.

Davis and Snider continued to refuse to answer basic questions about the contract at the March meeting of the State Board, and it became clear that the State Board was not going to resolve the legal concerns raised by the contract. State Board leadership even appeared to be trying to thwart efforts to resolve the matter. At this point, DPI notified the State Board that the agency was ethically bound to continue the investigation even if the State Board would not help.

Public Records Contradict the Answers Provided by the State Board and Eric Snider

Attachment B contains a series of public records of Davis and Buxton detailing how they proactively solicited the third-party vendor and negotiated the contract with the vendor. Buxton utilized his personal Gmail email account to conduct this state government business, so DPI cannot be sure that all public records related to this public transaction have been reviewed.

8/28/2019

Buxton emails the State Board's Director of Government and Community Relations with an update of a plan to bring "a partner in to support this work."

9/6/2019

Davis emails the vendor to inquire how it could work for the State Board. Davis acknowledges that Buxton already "had some conversations" with the vendor on this matter. Davis copies Buxton's personal Gmail email address.

9/10/2019

Buxton, using his personal Gmail account, emails Davis with the details for the vendor to use to draft a contract. Davis then emails Buxton's details to the vendor.

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9/12/2019

Buxton, using his personal Gmail account, emails Davis with revised details for the vendor to use to draft a contract. Davis then emails Buxton's revised details to the vendor.

9/18/2019

Davis sends an email to Buxton's personal Gmail email address noting that they should receive a draft contract from the vendor soon.

9/25/2019

The vendor requests a call with Davis in order to ensure clarity on the details of the contract. Davis agrees to a call but asks "to include JB." Buxton responds from his personal Gmail email account that he will join the call.

10/10/2019

The vendor emails Davis and Buxton's personal Gmail email address with the proposed contract. Davis forwards the proposal to the State Board's Director of Board Operations and Policy, and copies Buxton's personal Gmail account, stating: "This is our plan for independent expertise for the school performance grade work."

10/15/2019

Apparently, Davis spoke too soon because Buxton had observations and questions on the proposed contract. Buxton, using his personal Gmail account, responds to the vendor with questions on the contract, "...on behalf of Eric Davis and myself."

10/16/2019

The vendor responds with answers addressing Buxton's questions.

10/22/2019

Davis responds to the vendor that the responses "address our questions."

11/3/2019

The State Board's Director of Board Operations and Policy sends a copy of the contract executed by Davis, and dated November 4, 2019, to Davis and to Buxton's personal Gmail email address. The contract is attached hereto as Attachment C.

The process detailed above violated numerous procurement laws, policies, and procedures. At multiple points in the contract negotiations, Davis and Buxton could have easily prevented the list of their violations below by simply informing DPI's procurement office of their desire to contract with a third-party vendor.

Davis-Buxton Contract Violations

- Competitive bidding did not occur, and no justification for not having competition was provided.
- A service contract award recommendation was not prepared nor submitted.
- An Intent to Contract was not prepared nor submitted.
- The contract was not reported to DPI's procurement or finance offices.
- The source of funds for the payment of the contract was never identified.
- The contract was missing legal terms required by the State Board's own policies.

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- The contract was not publicly reported as required by the State Board's own policies.
- DPI did not approve the contract.
- The State Board did not approve the contract.
- The contract was personally executed by Davis in violation of the State Board's own policies.
- A conflicts of interest check was not conducted to ensure Davis and Buxton were not in, or even appear to be in, positions to potentially receive any benefits from a relationship with the vendor.
- There was no effort to seek input from DPI as to whether internal staff could have conducted the same work on this project without paying a third-party vendor.

Conclusion

DPI has concerns regarding the actions of Davis and Buxton to negotiate and execute this contract in violation of multiple laws, rules, and polices; to attempt to direct taxpayer dollars to a third-party vendor having a preexisting relationship with Buxton's for-profit consulting company; and to contradict the public records in this matter through their public statements.

Thank you for your time and consideration of this matter. Please let us know if you have any questions.

Sincerely,



Mark Johnson
NC Superintendent of Public Instruction

c: Governor Roy Cooper
Attorney General Josh Stein
Secretary Machel Sanders
NC General Assembly Joint Legislative Education Oversight Committee
NC State Board of Education