PGCPS

Office of Integrity and Compliance

INVESTIGATIVE REPORT

ELIGIBILITY FOR PGCPS PAYMENT: LEGAL FEES INCURRED BY A BOARD MEMBER

OIC Case 1011

Prince George's County Public School System

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Frank Turner II
Integrity and Compliance Officer

Office of Integrity and Compliance

Frank Turner II, Integrity & Compliance Officer

PGCPS Sasscer Administration Building, Trailer #450

14201 School Ln., Upper Marlboro, MD 20772

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I. BACKGROUND

The Office of Integrity and Compliance (OIC) investigated a complaint regarding a former Prince George's County Public School (PGCPS) Board of Education member (Board Member-A), who submitted for PGCPS payment legal fees incurred in the amount of $36,111.92, which included:

- *Legal services* in the amount of $35,845.00
- *Legal expenses* in the amount of $91.92
- *Filing fee* paid to the Circuit Court for Prince George's County, in the amount of $175.00

The invoices submitted indicate legal services were provided to Board Member-A by a Maryland law firm (Law Firm) from June 16, 2021 through July 7, 2022. These invoices were later approved and paid by PGCPS to Law Firm, following the passage of House Bill 1079, *Ch. 793 Acts of 2023* (HB 1079), which amended Maryland state law and introduced new requirements applicable to PGCPS related to retaining and paying legal fees to defend a member of the PGCPS Board of Education (Board) involved in litigation as a result of the member's service to the Board and acting in an official capacity on the Board.

The complainant mainly alleged:

- The legal fees incurred by Board Member-A were not for the member's defense during a litigation; and
- The payment of legal fees was not approved in accordance with the law and internal PGCPS policy

II. OBJECTIVES & SCOPE

Key aspects of the OIC investigation and this report include:

- **Purpose:** To assess and investigate the main allegations included in the complaint to determine if PGCPS followed applicable legal provisions, policies, and procedures related to the payment of legal fees incurred by a Board Member-A, as a result of the member's service to the Board and in an official capacity.
- **Methodology:** The OIC collected and reviewed relevant records, documentation, and analyzed applicable legislation and policies. Additionally, the OIC conducted open source queries to obtain additional context of the events pertinent to this case.

- **Scope:** Based on the nature of the complainant's allegations, the investigation focused on determining if the legal fees paid by PGCPS were incurred by and to defend Board Member-A in litigation, as required by the amendments introduced by HB 1079. For this investigation, the OIC took into account the events in which Board Member-A was involved (i.e., due to their official capacity on the Board) during the period a Law Firm was providing legal services to Board Member-A (i.e., from June 16, 2021 through July 7, 2022). *The OIC did not investigate if Board Member-A was acting in an official capacity as a member of the PGCPS Board, since this matter was not raised as an allegation in the complaint.*

II. TIMELINE: EVENTS INVOLVING BOARD MEMBER-A VS. TIMING OF LEGAL FEES INCURRED

The timeline in the next page is a representation of events in chronological order, of which Board Member-A was involved as a result of the member's service to the Board. The timeline begins with the Ethics Panel issuing a tentative report on May 24, 2021, followed by a final report, as a result of an investigation conducted by the Panel related to various complaints of ethics violations against seven (7) members of the PGCPS Board, including Board Member-A. This timeline of events is aligned with the timing of legal fees incurred by Board Member-A between June 16, 2021 and July 7, 2022, which were subsequently submitted, approved and paid by PGCPS.


Events involving Board Member-A
Timing of Legal Fees Incurred
May 24, 2021
Ethics Panel issued "Tentative Findings and Hearing Directive", after it was tasked by the PGCPS Board with investigating various ethics complaints against Board Member-A
July 23, 2021
The Ethics Panel issued a final report titled "Findings of Fact, Conclusions of Law, and Recommendations for Actions"
July 26, 2021
In representation of Board Member-A, Law Firm filed a complaint for declaratory judgment at the Circuit Court for Prince George's County listing as Defendants the PGCPS Board, the Ethics Panel, and each of the Panel members
July 28, 2021
Temporary Restraining Order (TRO) motion filed by Law Firm enjoining the Board from taking any actions that same day related to the ethics complaint; Also Law Firm filed a motion to disqualify the Ethics Panel's attorney
September, 2021
The Maryland Office of Inspector General for Education (OIGE) initiated an investigation after receiving complaints from the PGCPS community that the Panel conducted an improper investigation into members of the PGCPS Board
November 24, 2021
Defendants filed motion to dismiss complaint, with prejudice, for lack of jurisdiction due to plaintiff's failure to timely serve defendants
January 27, 2022
Case was dismissed by the Prince George's County Circuit Court
June 9, 2022
PGCPS Board voted to accept the recommendations of the Ethics Panel's final report and request to the Maryland State Board of Education (State Board) to issue charges for the removal of Board Member-A
June 16, 2021
Law firm started billing and providing legal services to Board Member-A
Continuous legal services provided by Law Firm to Board Member-A from June 16, 2021 through July 7, 2022
July 7, 2022
Last day Law firm billed and provided legal services to Board Member-A
Events Post-Legal Fees' Invoices:
July 22, 2022
PGCPS Board filed with the State Board a request to issue charges for the removal of Board Member-A
August 26, 2022
OIGE issued an investigative report revealing that EAP's report was not fact based
September 15, 2022
PGCPS Board voted to accept the OIGE's investigative report and rescind the vote previously taken on June 9, 2022 to remove Board Member-A based on the recommendations of the Ethics Panel
February 28, 2023
State Board dismissed PGCPS Board's request for Board Member-A's removal
April 1, 2024
A second request to issue charges for the removal of Board Member-A was filed with the State Board by Prince George's County residents
July 24, 2024
State Board dismissed the second request for removal of Board Member-A as the allegations in petition were not factually or legally sufficient
Per PGCPS records, Board Member-A did not submit for PGPS payment any additional legal fees incurred related to these events.

III. INVESTIGATIVE ANALYSIS

A. Eligibility and payment approval of legal fees incurred by Board Member-A

Criteria for PGCPS payment of legal fees incurred by a member of the Board

Effective July 1, 2023, HB 1079 incorporated and amended specific sections of the Maryland Code, Education Article (Code), including Section 4-104, *Counsel,* to require the PGCPS Board to retain counsel and pay legal fees to ***defend*** a member of the PGCPS Board who is involved in ***litigation***. This amendment further requires that in order for the PGCPS Board members to retain counsel and the Board to pay legal fees it should be determined during the course of litigation that the member was acting in an official capacity on the Board. Per the annotations to the Code, the amendments to Section 4-104 applies retroactively to any litigation that was initiated on or after January 1, 2020, involving the defense of a member of the PGCPS Board. In addition, an individual seeking reimbursement by the PGCPS Board must provide to the Board on or before August 1, 2023 documentation of the litigation costs incurred.

> *Note: On April 25, 2024, PGCPS revised Bylaw 9250 (Legal Counsel) to expand and provide specific guidelines pursuant to the amendments to Section 4-104 of the Code, including the requirement for decisions to retain an attorney and pay the attorney's fees to be subject to the Board's vote. Note, this requirement for the Board's approval was not in place at the time Board Member-A submitted invoices for legal fees incurred for PGCPS payment.*

Black's Law Dictionary defines the following terms relevant to Section 4-104, as follows: "***Litigation***" is the process of carrying on a lawsuit. A "***lawsuit***" refers to a proceeding by a party or parties against another in a court of law. The term "***defend***" is to deny, contest, or oppose (an allegation or claim). A "***court of law***" is a judicial tribunal that administers the laws of a state or nation. Understanding the meaning of these four (4) terms is critical to properly assess the applicability of Section 4-104 of the Code to the specific events leading to the allegations of the complaint filed with the OIC.

Board Member-A filed complaint for declaratory judgement at the county circuit court level

As shown in the *Timeline* (see *Timeline* in Section IIof this report), the legal fees incurred by Board Member-A between June 16, 2021 through July 7, 2022 covered legal services received at the time the following major events involving Board Member-A were occurring:

- July 23, 2021: **The Ethics Panel issued a report** titled "Findings of Fact, Conclusions of Law, and Recommendations for Actions" (Final Report) on the ethics complaints against

Board Member-A, following the release of a Tentative Findings and Hearing Directive" report on May 24, 2021;

- July 26, 2021: Board Member-A **filed a complaint for declaratory judgment** at the Circuit Court for Prince George's County against the PGCPS Board, the Ethics Panel and each of the Panel's members;
- September 2021: OIGE initiated an investigation on the Ethics Panel's investigation related to the ethics violations against seven (7) board members, including Board Member-A;
- January 27, 2022: Board Member-A's **complaint was dismissed** by the Circuit Court for lack of jurisdiction, due to failure to timely serve defendants; and
- June 9, 2022: The **PGCPS Board voted to accept the recommendations of the Ethics Panel** to request the Maryland State Board of Education (State Board) to remove Board Member-A.

After reviewing the legal definitions of terms in Section 4-104 of the Code, the only instance of legal action in a court was when the Law Firm filed a complaint for Board Member-A at the Prince George's County Circuit Court. The court records show the complaint named the PGCPS Board, the Ethics Panel, and its members as defendants. By filing this complaint in court, Board Member-A started legal proceedings and made claims against the defendants. Therefore, Board Member-A was the one initiating the lawsuit, not defending against one.

Complaint was dismissed; Legal fees were continued to be incurred sporadically post-dismissal

The complaint filed by Board Member-A (i.e., the plaintiff) against the Board, the Ethics Panel and its members was dismissed on January 27, 2022 due to plaintiff's failure to timely serve the defendants. A $15 dismissal fee paid by the Law Firm on December 29, 2021 and was also invoiced to Board Member-A as an expense. However, legal services were still provided by the Law Firm in two (2) other instances through July 7, 2022, more than five (5) months after the complaint was dismissed by the court. Per the invoices, legal services provided by Law Firm post-dismissal (for a total amount of $327) were invoiced by Law Firm for services related to reading an "email and memorandum", responding to client's emails (re: memorandum sent by Board's Attorney), and "preparing all court filing for client". PGCPS also approved and paid these legal fees incurred after the complaint was dismissed, despite no evidence of Board Member-A being involved in subsequent litigation as a defendant at that time.

PGCPS Board Chair approved payment of legal fees incurred by Board Member-A based on the legal opinion of Board's Attorney: Board's vote was not required at the time

Due to the passage of HB 1079, the Board Chair at the time sought legal advice from the Board's external counsel (Board's Attorney) to understand if the amendments introduced to Section 4-104 of the Code were applicable to legal fees incurred by several Board members in their official capacity, including Board Member-A. The Board's Attorney issued consecutive legal opinions (dated July 21,

2023 and August 2, 2023) to address two different scenarios related to the payment of such legal fees. The second legal opinion addressed Board Member-A's legal fees. Specifically, the opinion of the Board's Attorney in this second memorandum focused on whether HB 1079 was applicable to Board Member-A and two (2) other Board members' "*defense against charges brought by the Board and the Ethics's Panel's recommendations.*" On this matter, the Board's Attorney concluded the following in the legal opinion issued to the Board Chair:

- Board Member-A's actions in ***defending themselves against charges from the Ethics Panel and this Board*** before the State Board of Education ***constitutes litigation***.
- ***To the extent that the three (3) Board members hired attorneys*** to represent themselves during the Ethics Panel, the OIGE or the State Board matter, the Board members ***were involved in litigation***.
- All the actions taken by the Ethics Panel, OIGE and State Board are ***indicative of a litigative process***.

On the same day this legal opinion was issued, the Board Chair instructed via email to the responsible PGCPS personnel to process PGCPS payment for the legal fees submitted by the Board Member-A and three (3) other members. Following this directive, the invoices submitted by Board Member-A in the amount of $36,111.92 were approved for payment on August 23, 2023 by the Board Chair, the PGCPS Chief Financial Officer (CFO), and the Board's Administrative Office Director. Per PGCPS supporting documentation, the justification for paying Board Member-A's legal expenses was captured as "Payment to law firm providing legal counsel to Board Member-A [Name Redacted]". Subsequently, on August 30, 2023, PGCPS issued payment in the amount of $36,111.92 to the Law Firm.

Key Findings & OIC Recommendations

- **Finding 1** - As a result of the release of the Ethics Panel's Final Report, Board Member-A became a plaintiff by filing a complaint at the Prince George's County Circuit Court against the PGCPS Board, the Ethics Panel, and each of the Panel members.

- **Finding 2** - Board Member-A started incurring legal fees (subsequently submitted for PGCPS approval and payment) prior to the Ethics Panel issuing the Final Report related to the ethics complaint filed against Board Member-A. There is no indication of any legal proceedings at the time against Board Member-A.

- **Finding 3** - PGCPS paid legal fees for legal services provided by Law Firm with regards to the referenced complaint filed by Board Member-A as a plaintiff, with the Prince George's County Circuit Court. This complaint was dismissed by the court, as a result of the Board Member-A and Law Firm not timely serving the defendants (i.e., PGCPS Board, the Ethics Panel and each of the Panel members).

- **Finding 4** - Fees invoiced by Law Firm for legal services provided to Board Member-A following the dismissal of the complaint were approved and paid by PGCPS, although there was no indication of a subsequent legal proceeding in which Board Member-A was in a defending position due to their capacity as a member of the PGCPS Board.

- **Finding 5** - The legal fees submitted by Board Member-A for PGCPS payment were approved by the Board Chair and without the Board's vote. At the time, the former version of PGCPS Bylaw 9250 did not delineate an approval process to be followed by the Board or required the Board's vote to approve the payment of legal fees pursuant to Section 4-104 of the Code.

Recommendation #1 - To ensure proper understanding and application of the amended Section 4-104 of the Code, the PGCPS Board must be provided with updated guidance and training on the process for retaining legal counsel and paying related fees. This comprehensive understanding is essential for the Board to accurately assess whether the legal requirements are satisfied before voting on such matters.

Recommendation #2 - To ensure compliance with Section 4-104 of the Code, PGCPS needs to review and update its procedures for approving and issuing payments for legal fees. This update should strengthen the due diligence process conducted by PGCPS staff. The improved process must guarantee that all submitted legal fee invoices meet the legal criteria. This includes verifying that the fees were incurred to defend a Board member involved in litigation due to their official service to the Board and that all other necessary legal conditions are met.

B. Legal opinion issued by the PGCPS Board's Attorney deemed investigative actions of the Ethics Panel and OIGE as indicative of a litigative process

As mentioned previously, the legal opinion issued on August 2, 2023 by the Board's Attorney ***stated that the Ethics Panel and the PGCPS Board issued charges*** against three (3) members of the Board, including Board Member-A. In addition, it concludes that ***as long as Board members hired an attorney*** to represent them during the ***Ethics Panel***, the ***OIGE*** or the ***State Board*** matter, the ***Board Members were involved in litigation***, and that all the actions taken by these three (3) oversight bodies were indicative of a ***litigative process***.

Roles of the PGCPS Board and the Ethics Panel pursuant to PGCPS ethics policy

The **Ethics Panel** is an advisory body to the Board responsible for interpreting PGCPS Board Policy (BP) 0107, *Ethics Regulations,* and advising persons subject to this policy regarding its application. The Ethics Panel's role includes reviewing and investigating ethics complaints, and conducting hearings when there is reasonable basis for believing that an ethics violation has occurred under BP 0107. The Panel also reports findings, with conclusions of law and recommendations to the Board for action, by forwarding its report to the Board Chair. If the **Board** concurs with the findings of a violation and recommendations of the Ethics Panel, the Board may take actions to address the

violation of BP 0107, to include sanctions, discipline, personnel action, or removal from office, as provided by law and consistent with procedures as provided by law and/or PGCPS Board policy.

In the Ethics Panel's Final Report, it is specifically stated that the Panel was tasked with investigating various complaints related to ethics violations by several Board members, including Board Member-A. This report also states that the Panel's investigation included interrogatories, requests for document production, and interviews with various witnesses. According to the OIGE's investigative report, none of the Board members attended their scheduled hearings with the Ethics Panel, as "they felt they would not get a fair hearing". Based on BP 0107 and the actions taken by the Ethics Panel per the Final Report, the Panel's role in investigating ethics complaints against Board Member-A was mostly advisory and investigative in nature. According to BP 0107, the Ethics Panel is not authorized to hold court proceedings or make legal judgments. Its role is limited to investigating, making findings, conclusions of law, and recommending actions to the PGCPS Board.

PGCPS Board and the Ethics Panel lack authority to issue charges

Pursuant to the authority granted by BP 0107, the Ethics Panel conducted an investigation on various complaints against Board Member-A for ethics violations. On July 23, 2021, the Ethics Panel issued a report to the Board with findings of fact, conclusions of law, and recommendations for actions. The Board voted on June 9, 2022 to accept the recommendations of the Ethics Panel to request the Maryland State Board of Education (State Board) to remove Board Member-A. A month later, on July 21, 2022, the *PGCPS Board formally filed with the State Board a request to issue charges* for the removal of Board Member-A. Ultimately, the State Board dismissed the removal request on February 28, 2023, following the favorable voting of the PGCPS Board to accept the OIGE report and to rescind the removal request.

As indicated in the filing itself, the PGCPS Board filed a request with the State Board to issue charges. This request is not equivalent to the issuance of charges to remove a member from the Board. The Code of Maryland Regulations (COMAR) specifically grants authority to the State Board to issue charges against a local Board Member-A (*see* COMAR 13A.01.05.12). Furthermore, it specifically provides that the request to issue charges for removal may be filed by the local board or a resident of the county. The PGCPS Board filed a request for removal of Board Member-A pursuant to this regulation. Evidently, the Ethics Panel, nor the Board issued charges at any time against Board Member-A, as it was stated in the legal opinion issued by the Board's Attorney.

Ethics Panels and OIGE actions (investigative in nature)

The Ethics Panel serves as an advisory body to the Board, with a primary focus of investigating and overseeing compliance with the ethical standards outlined in BP 0107 (Ethics Regulations). Although the Panel may issue findings, conclusions of law, and recommendations, BP 0107 does not grant the power to the Panel to serve as a court and issue legally binding rulings. The Panel issued findings, conclusions of law and recommendations for actions to the Board based on its investigation related to

the various ethics complaints filed against Board Member-A. Therefore, such actions by the Ethics Panel should not be viewed as a litigative process, as they were investigative in nature to ensure compliance with the ethical regulations prescribed in BP 0107.

Similarly, the investigative actions taken by OIGE related to the allegations that the Panel conducted an improper investigation into members of the Board should not be deemed as a litigative process. As any other Inspector General, OIGE's authority focuses on conducting audits, evaluations and investigations to prevent and detect fraud, waste, and abuse of public funds and property. The OIGE mainly reports findings of wrongdoing and issues recommendations for corrective actions to governmental entities under its jurisdiction, including PGCPS. As such, OIGE's role is primarily investigative and not judicial.

> **Note**: The OIC's findings are based on the major events involving Board Member-A and related to the legal fees incurred, which included the release of the Ethics Panel's Final Report and the initiation of OIGE's investigation. The legal fees in controversy were incurred by Board Member-A prior to the Board's request to the State Board to issue charges for the removal of Board Member-A (see *Timeline* in Section II of this report).

Key Findings & OIC Recommendations

- **Finding 6** - The legal opinion issued by the Board's Attorney stated that the Ethics Panel and the Board issued charges against members of the Board, although COMAR specifically grants this power to the State Board to issue charges for the removal of a county Board Member-A.
- **Finding 7** - The legal opinion issued by the Board's Attorney concluded that the Board was required to pay the legal fees for three (3) members of the Board, including Board Member-A, stating all actions taken by the Ethics Panel and the OIGE were indicative of a litigative process, although the actions taken were related to their respective investigations.
- **Finding 8** - The Board Chair relied on the legal opinion issued on the matter by the Board's Attorney to instruct the PGCPS payment of the legal fees incurred by Board Member-A, absent internal guidance for an approval process, including the Board's vote. The version, at the time, of Bylaw 9250 did not establish an internal rule to require the Board's vote to approve the payment of legal fees incurred pursuant to Section 4-104 of the Code (i.e., Bylaw 9250 was revised effective April 25, 2024 to include such requirement).

Recommendation #3 - The Board shall revisit and review the applicability of Section 4-104 of the Code, the timeline of events related to Board Member-A's legal services, and the actions of the Ethics Panel and OIGE. This review is imperative to ensure accountability and verify whether PGCPS payment of the legal fees met the criteria set forth in Section 4-104.

Recommendation #4 - To ensure strict adherence to legal requirements and proper interpretation of Section 4-104 of the Code, the Board must obtain a formal legal review from the Board's Attorney regarding OIC Recommendation #3. This review should specifically re-examine the investigative actions of the Ethics Panel and the OIGE, in light of their respective authorities and the findings detailed in this report, to guarantee compliance with applicable statutes and policies.

CONCLUSION

The OIC investigation revealed that PGCPS inappropriately disbursed $36,111.92 in legal fees to Law Firm, Board Member-A's legal counsel. The Board Chair approved this payment based on the Board Attorney's legal opinion, which interpreted the investigative activities of the Ethics Panel and the OIGE as a litigative process. This opinion indicated that these entities had issued charges against Board Member-A, an authority held exclusively by the State Board. Furthermore, Board Member-A initiated a lawsuit against PGCPS Board, the Ethics Panel, and its members, placing Board Member-A as the plaintiff. This lawsuit was ultimately dismissed due to a critical procedural failure by Board Member-A's legal counsel, namely the failure to properly serve defendants. This unjustified payment highlights a significant deficiency in understanding and implementing the legal requirements for retaining counsel and approving legal fees, raising concerns about potential waste or misuse of public funds. To address these serious failings, the OIC has issued four (4) recommendations to rectify internal controls, processes, and compliance procedures related to legal fee payments for Board members. The OIC appreciates PGCPS's cooperation during the investigation and awaits a response from the Board regarding implementation of these recommendations by June 30, 2025.

Frank S. Turner II

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Integrity and Compliance Officer

Prince George's County Public Schools

PGCPS Administration Responses