North Carolina General Assembly
Joint Legislative Commission on Governmental Operations

June 12, 2024

The Honorable Amy S. Galey
300 N. Salisbury Street, Rm. 521
Raleigh, NC 27603

Dear Senator Galey,

At your request, staff from the Joint Legislative Commission on Governmental Operations (GovOps) conducted a review of some of the well-publicized issues involving the Alamance-Burlington School System (ABSS). While the public raised a multitude of concerns, we mainly focused our efforts on how ABSS handled the remediation of mold discovered in more than 30 buildings. We also examined aspects of ABSS's financial management of federal, state, and local funds in the current and previous fiscal years.

The process of conducting our examination included information gathering and review, as well as an analysis of that information against statutory requirements, auditor recommendations, and ABSS Board of Education (BoE) policies. Sources of information included more than 50 shared texts and emails, BoE meeting minutes, BoE meeting videos, ABSS policy, the independent auditor's reports, the North Carolina Department of Public Instruction (DPI), and interviews with both ABSS and DPI staff.

Mold Remediation Contracts – General Questions

Since the August 2023 discovery of mold in the first of more than 30 ABSS buildings, many questions were raised regarding remediation projects and as to whether ABSS followed proper procedures and protocols in their remediation efforts. The following question and answer section addresses some of the issues raised:

1. ***It was reported that ABSS entered into no-bid mold remediation contracts since the mold issue was considered an emergency. Is this allowed?***

In answering this question, we first looked at Article 8 – Public Contracts of Chapter 143 of the General Statutes. Statutory bidding requirements are found under **G.S. 143-129. Procedure for letting of public contracts**. G.S. 143-129(e)(2) does provide for an exception from the requirements of Article 8 in "Cases of special emergency involving the health and safety of the people or their property".

We then reviewed ABSS BoE policies. **Policy 6450 Purchase of Services** states in part, "Services will be purchased in a manner consistent with the board's purchasing goals. The board generally does not require competitive bidding for the purchase of services; however, contracts for services will be made under conditions that foster competition among potential providers when feasible and after careful pricing."

While it appears that the letting of these mold remediation contracts falls under the exception provision in G.S. 143-129(e)(2), ABSS may have violated their purchasing goals which are found in **Policy 6400 Goals of the Purchasing Function.** These goals include:

1. obtaining the maximum benefits from all school system monies and furthering the educational goals of the board;

2. conducting all purchasing activities according to applicable laws, rules, and regulations, good purchasing practices, and ethical principles;

3. providing a climate of fair and open competition for all qualified vendors;

4. requiring satisfactory and proper performance of all contractual obligations of vendors; and

5. providing prompt and courteous service to other school system personnel, other governmental entities, and vendors.

During our review of BoE meeting minutes and videos, it was clear that a sense of urgency existed to get the work done as expeditiously as possible since the discovery of mold necessitated a delay in the start of the school year. Completing the work in a short timeframe was clearly a priority. No rationale was given for selecting those companies that performed the work other than they agreed to complete the work expeditiously. There was no evidence presented that shows services were purchased "in a manner consistent with the board's purchasing goals", nor "after careful pricing". Absent such evidence, it appears that ABSS violated Policy 6450 Purchase of Services.

2. ***How many contracts were there and was all work completed by the same company?***

ABSS had two contracts with Sasser Companies, LLC for mold remediation in two schools and 20 contracts with Builders Services Inc of North Carolina for all other buildings. There were four additional companies involved in third party testing of air quality, HVAC repair, and airflow evaluation.

3. ***What was the total cost of mold remediation in all buildings?***

$22,600,961.10	Total for Sasser and Builder Services Invoices through 10/23/23
$447,950.94	LRC Indoor Testing / Enselum
$61,606.00	Environmental Solutions Group
$16,610.43	Brady Services – Air Quality @ Andrews
$37,550.49	Hoffman Mechanical HVAC Repair @ Andrews
$2,949,056.75	Dehumidifier Rental (Builder Services)
$35,000.00	Dehumidifier Rental (Sasser @ Andrews)
$34,650.00	Dehumidifier Rental (Sasser @ Newlin)
$26,183,385.71	**Total Costs (without dehumidifier purchase)**

Dehumidifier Purchase with Redirected ESSER Funds	$977,719.86

Total Project Costs as of 10/23/23	$27,161,105.57*
Additional Builder Services Invoice (1/22/24)	$ 2,183,000.00
TOTAL PROJECT COST	**$29,344,105.57**

* An additional amount of $18,156.99 for dehumidifier drain cans, lids, and dollies was spent but was not included in the 10/23/23 mold remediation update to the BoE.

Mold Remediation Contracts - Non-Compliance with Laws and Policies

In addition to ABSS **Policy 6450 Purchase of Services** as noted above, the BoE likely failed to abide by appropriation and preaudit requirements found within The School Budget and Fiscal Control Act, **Article 31 of Chapter 115C** of the General Statutes. The result of failures to abide by these requirements not only exposes the BoE to scrutiny by the Local Government Commission and State Board of Education, but may even expose the BoE to personal liability in the valuation of contractual obligations.

While we do not take the position that contracts previously executed and performed on are valid or not, the requirements and procedures found within Article 31 of Chapter 115C require the BoE to formally adopt budget resolutions with an unencumbered balance remaining and, when reduced to contract, provide a preaudit certificate. (*See* G.S. 115C-423(2) defining a budget resolution as "a resolution adopted by a board" without reference to individual members; *see also* G.S. 115C-441(a) and (c1) requiring a budget resolution to include appropriation and sufficient unencumbered funds, except capital outlay projects greater than one fiscal year but still requiring sufficient funds for current fiscal year spending.)

The purpose of a preaudit certificate is to ensure that no obligation is incurred "unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction". We note that the BoE approved a resolution on November 14, 2023, requesting an additional appropriation of $8,569,241.43 from the Alamance County Board of Commissioners to "...meet contractual obligations incurred during the mold remediation project...". This action occurred more than two months after the obligations were incurred and the bulk of the work had been completed.

ABSS staff confirmed that there is no evidence that preaudit certification occurred on most of the contracts, and therefore it is likely that ABSS violated provisions under **G.S. 115C-441** as well as similar requirements found under ABSS **Policy 6420 Contracts with the Board** and **Policy 6421 Preaudit and Disbursement Certifications**. In addition to the requirement found within Policy 6420 Contracts with the Board that the Budget Resolution "authorizes the expense and there is a sufficient unencumbered balance to pay the amount to be disbursed", there is another requirement that all contracts "involving expenditures in excess of $100,000" be "reviewed by the board attorney". ABSS staff indicated that the board attorney reviewed the format used for most of the contracts, but did not confirm that all terms of each contract over $100,000 had been reviewed.

General ABSS Financial Management Concerns

In assessing ABSS's financial management, we reviewed the independent auditor's report for the fiscal year ended June 30, 2023, which is required annually by G.S. 115C-447. This audit report identified one material weakness which showed **ABSS violated the School Budget and Fiscal Control Act (G.S. 115C-441) by incurring expenditures within the General Fund, Other Special Revenue Fund, and Capital Outlay Fund that exceeded appropriations.** The total amount of expenditures from these three funds that exceeded appropriations was $4,296,649.

During the auditor's presentation of the audit report to the BoE on November 14, 2023, the auditor also warned that the combined fund balance was below recommended levels, recommending that the balance be sufficient to cover one month's worth of operating expenses which he estimated to be approximately $4 million. As of June 30, 2023, the combined fund balance was $2,315,832. He further explained that the use of some of the funds in the combined fund balance was restricted and the unassigned fund balance available for appropriation was actually -$76,290. The auditor also noted that the BoE had appropriated $542,062 of fund balance to help balance the current fiscal year's budget and recommended that the BoE try to balance the budget without using the $542,062 so those funds could be used to replenish the unassigned fund balance.

The auditor's report also states, "Total liabilities and deferred inflows of resources exceeded total assets and deferred outflows of resources by $67.0 million as of June 30, 2023 as compared to $137.8 million as of June 30, 2022." While this resulted in a reduction of $70.8 million, the BoE is still experiencing a pitfall which would not allow for the accumulation of recommended operating expense reserves. The complete audit report can be found at: https://www.abss.k12.nc.us/page/budget-audit-report.

Conclusion

The justification posed to GovOps staff when we raised concerns that state statutes and ABSS board policies may not have been followed was the emergent need of mold remediation. Nothing in Chapter 115C nor Article 8 Chapter 143, however, removes all of the Board's obligations to follow state statutes and board policies in the proper discharge of their duties in times of emergency. G.S. 143-129(e)(2) states that "cases of special emergency" remove the requirements within the Article. Yet, the Article, among a litany of other items, details the procedures for public letting of contracts and competition. It does not exempt requirements found elsewhere, such as G.S. 115C.

Further, it appears the BoE failed to follow their own policies in the letting of public contracts. The BoE policies 6430 and 6450 cover contracting for goods and services, respectively. Policy 6430 explicitly exempts emergency situations, while Policy 6450 does so impliedly. The issue, as with the above emergency exemption, is that the removal of requirements is only for public lettings meant to encourage competition, not an all-encompassing passthrough. As an example, 12 contracts were signed by the BoE chair prior to approval of the contracts by the entire BoE. This contradicts BoE Policy 6420, "Any contract involving expenditures in excess of $100,000 must be reviewed by the board attorney and approved in advance by the board unless provided otherwise in board policy."

As previously mentioned, the FY23 Auditor's Report contained a finding that the BoE violated the School Budget and Fiscal Control Act (G.S. 115C-441) by incurring expenditures within the General Fund, Other Special Revenue Fund, and Capital Outlay Fund that exceeded appropriations in FY23. It is our opinion that such a violation occurred again in FY24 when ABSS entered into contractual obligations for mold remediation without sufficient funding in place. Additionally, we believe that ABSS violated the preaudit requirements also found in G.S. 115C-441 as well as their own purchasing and contracting requirements.

The primary issue here is the exposure to undue liability when, as discussed by the auditor and above, the BoE and ABSS are in a financially precarious situation. With the necessity to build reserves, ending of federal ESSER funding, and a multitude of capital projects, the BoE cannot be negligent in their duty to follow the letter of law procedurally. Doing so may result, not only in State entity scrutiny, but in contractual obligations through rescission of contracts or restitution beyond a contract price due to reliance on an invalidly awarded contract.

We hope the information provided is helpful. Please reach out should you require additional information.

Sincerely,

Clark J. Chapin

Clark J. Chapin
Senate Majority Staff Director
Joint Legislative Commission on Governmental Operations