

FINAL SUMMARY REPORT

OIG 16-00924

December 5, 2017

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This is the Final Summary Report by the OIG in its investigation into whether (1) General Counsel Ronald Marmer violated the Code of Ethics by improperly exercising “contract management authority” over legal work performed by Jenner & Block for the school funding litigation while Marmer had an existing “business relationship” with that firm; and (2) CEO Forrest Claypool and Marmer acted improperly with regard to the opinions of several in-house and outside attorneys who had concluded that Marmer either was already violating the Code of Ethics because he was exercising “contract management authority,” or could not exercise such authority over work performed by Jenner & Block without violating the Code of Ethics.

The OIG has concluded that Marmer violated the Code of Ethics. The OIG has further concluded that Claypool improperly attempted to paper over the negative opinions of six attorneys with a cherry-picked but materially deficient opinion authored by attorney J. Timothy Eaton. In addition, after the OIG investigation was publicly known, Claypool took improper steps to alter relevant records with the intent of obscuring the work that outside attorney James Franczek had done on the matter. Claypool then greatly increased the severity of his misconduct by lying to the OIG in two separate interviews.

Based on the evidence in this case, the OIG is recommending the termination of Forrest Claypool’s employment. The OIG is also recommending that the Board discipline Ronald Marmer in an appropriate manner, which might include, for example, a “first and final” warning, a lengthy suspension or even termination (if the Board decides that is warranted).

The OIG is further recommending that the role and function of the Ethics Committee needs to be strengthened and defined.

This report includes the OIG’s full findings and recommendations, along with a summary of the evidence and the OIG’s analysis. A table of contents is included on the next page. Copies of key documents are included at the end of the report.

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FINDINGS AND RECOMMENDATIONS

A. FINDINGS

Based on an extensive investigation, the OIG has concluded that:

1. Marmer was improperly exercising “contract management authority” over work performed by Jenner & Block on the school funding litigation because he had an existing “business relationship” with Jenner & Block.
2. Marmer and Claypool failed to take proper corrective or remedial action once they were informed that the three members of the CPS Ethics Committee — CPS Ethics Advisor Andra Gomberg, Deputy General Counsel Ruchi Verma and then-Senior Assistant General Counsel Andrew Slobodien — and a fourth high-level Law Department attorney, Joseph Moriarty, had determined that Marmer was violating the Code of Ethics. In light of the Ethics Advisor’s clear standing in the Code of Ethics to advise on the matter, Claypool and Marmer should have taken her advice more seriously, and they should have worked with her on an acceptable solution.
3. After Marmer and Claypool learned of those four in-house opinions, they sought the opinions of two outside attorneys: former Board of Education General Counsel Patrick Rocks and longtime outside labor law attorney James Franczek. Rocks concluded that Marmer could not exercise any supervisory authority over the work performed by Jenner & Block without violating the Code of Ethics — but he stopped short of concluding that Marmer was violating the Code of Ethics, as he did not know what Marmer’s involvement actually was. Franczek concluded that Marmer was violating the Code of Ethics because he was, in fact, exercising “contract management authority” over Jenner & Block while having a “business relationship” with the firm.
4. Franczek asked Claypool why Marmer could not simply be removed from supervising Jenner & Block. Franczek also stated that Claypool could ask the Board for an exemption for Marmer. Claypool told Franczek he was not going to do that because he did not want the matter to “go public.”
5. Claypool and Marmer finally consulted with a seventh attorney, J. Timothy Eaton, who issued a June 10, 2016, opinion letter, finding that Marmer’s conduct did not violate the Code of Ethics. Significantly, Eaton has known Claypool for decades, since the time Eaton served as a teacher’s assistant for an undergraduate course that Claypool was in when Eaton was a law student. According to campaign records, Eaton has contributed \$5,000 to Claypool’s campaigns for public office.

6. Eaton's June 10, 2016, opinion letter is incorrect and materially deficient. Eaton reached the incorrect conclusion because he failed to address the central problem relating to the definition of a "business relationship."
7. Claypool knew that Eaton's letter did not address the central question of the "business relationship," which the six previous attorneys had identified as dispositive. Claypool and Eaton both told the OIG that Eaton was never specifically asked to provide an opinion that was favorable to Marmer, and that Eaton was never specifically asked to steer clear of the "business relationship" issue. Marmer told the OIG that he could not recall if specific terms of the Code of Ethics were discussed.

Even if what Claypool, Marmer and Eaton claim is true, Eaton's June 10, 2016, letter clearly took a generous approach by ignoring the "business relationship" question altogether. For his part, Eaton says that he decided the "business relationship" question was a non-issue, so he decided it did not need addressing.

Regardless, Claypool should never have accepted the opinion in the first place. Instead, he should have sent it back to squarely address the issue that the six previous attorneys thought was dispositive. In the end, the OIG cannot definitively conclude whether Eaton issued his opinion within narrowly tailored confines outlined by Claypool or Marmer, whether such strictures did not need to be spoken aloud because of the relationship between Claypool and Eaton, or whether Eaton somehow entirely missed the mark on his own.

In any case, Claypool's reliance on Eaton's June 10, 2016, opinion letter was manifestly deceptive and disingenuous.

8. Claypool failed to adequately inform the Board about the six attorney opinions that were in lock-step agreement that Marmer could not have supervisory authority over work performed by Jenner & Block. Also, around the time that the Jenner & Block contract was up for Board approval in July 2016, Claypool apparently misled President Clark into believing that Marmer was not highly or substantively involved in the work performed by Jenner & Block, which had been occurring since at least March 2016. Accordingly, Claypool violated his fiduciary duty under the Code of Ethics to act in good faith with the Board.
9. On July 28, 2016, the day after the Board approved of the retention of Jenner & Block for the school funding litigation, a *Chicago Sun-Times* article raised the question of whether Marmer was violating the CPS Code of Ethics. In the wake of the *Sun-Times* article, the OIG opened an investigation into the matter. On August 8, 2016, the *Sun-Times* reported that the OIG had confirmed an investigation into

the matter. On August 9, 2016, the *Chicago Tribune* quoted Claypool as saying, “Obviously the inspector general looks at a lot of things routinely. We’re happy to walk him through the process.” On August 14, 2016, the *Sun-Times* published a letter from Claypool, in which he defended his and Marmer’s actions in the matter. In that letter, he said, “[W]e welcome the opportunity to answer questions from the inspector general or anyone else.”

10. Claypool attempted to paper over the opinions of the six attorneys with Eaton’s letter, which was released to the press in the wake of public questions about Marmer’s involvement in the contract work.
11. After the OIG investigation was publicly known, Claypool took improper steps to alter relevant records with the intent of obscuring the work that Franczek had done on the matter. Specifically, Marmer had complained to Claypool about the size of Franczek’s \$2,124 bill, including the fact that references to “CPS’s Code of Ethics” and “ethics issues” were listed on it. After Marmer complained about the bill, Claypool personally handed Franczek’s bill back to Franczek and asked him to change the entries that described work on “CPS’s Code of Ethics” and “ethics issues.” Franczek promptly acted on that request, and changed his invoice to reflect work only on a generic “personnel matter.” Franczek then sent the changes via courier back to Claypool’s personal attention under a cover letter marked in bold letters: “Attorney-Client Privileged and Confidential” and “For Forrest Claypool’s Eyes Only.” Franczek’s revised bill was subsequently found on CPS’s billing system. Importantly, no record of the original bill was found on the CPS billing system or at the Law Department.
12. Claypool greatly compounded the severity of his misconduct when he repeatedly lied to the OIG through two separate interviews — and after being advised in writing each time that false statements could result in discipline up to and including termination of employment — by unequivocally, emphatically and repeatedly denying that he had asked Franczek to make changes to his bill. He even stated he would never have been involved in such lowly billing matters. At one point, he said that he runs a \$5.6 billion operation, and “I’m not looking at freaking bills.” The evidence clearly shows otherwise.
13. On November 17, 2017, just three days after his second interview, Claypool issued a written public statement that put a disingenuous spin on the lies he had made during his OIG interviews regarding Franczek’s bill. He changed his categorical and emphatic statements that he never saw the bill and never asked for any changes to an abrupt I don’t recall. He turned 180 degrees from claiming certain memory to no memory at all. His letter was designed to taint the Board’s

reception of the OIG's final report by falsely portraying lies on two separate occasions as a mere lapses of memory.

14. In addition, Claypool's public release of his letter to the IG represented a failure to cooperate with the OIG. At the end of his second interview, the OIG had specifically told Claypool and his attorneys that the OIG might need to speak with other witnesses about the billing records that the OIG had shown to, and discussed with, Claypool. The OIG said that confidentiality was required to ensure witness integrity.

Despite that, Claypool sent Marmer a warning about what the OIG was asking. In an email to Marmer on the same afternoon that he released his letter to the press, Claypool told Marmer that, although he knew that he and Marmer should not be communicating about the OIG's investigation, he still wanted to give Marmer, as Claypool wrote, a "heads up" about the letter. Claypool conveniently concluded in his email that, since the letter was public, there was no problem if Marmer saw it. Thus, Claypool failed to cooperate with the OIG by refusing to honor the OIG's request to keep the OIG interviews confidential while the investigation was pending.

In any event, the OIG had already scheduled a second interview with Marmer when Claypool released his letter, so the actual effect was to improperly give Marmer a "heads up" that the OIG was asking about Franczek's bill — and, more importantly, that the OIG possessed hard-document proof of exactly what had happened — before the OIG was able to re-interview Marmer about it.

15. Claypool also lied to the OIG when he stated that he was not aware that Franczek had written an opinion on the matter when he and Franczek spoke about Franczek's opinion in June 2016. Claypool told the OIG that someone had informed him only much later that Franczek had written an opinion, which he described as "enraging." Claypool even said that the news that Franczek had written an opinion was a complete surprise to him.

The evidence, however, confirms Franczek's account that he had a copy of a written opinion with him on June 6, 2016, when he spoke to Claypool — and that Claypool deliberately refused to accept it. Among other supporting evidence is a statement from Law Department attorney Moriarty who told the OIG that Franczek talked to him right after Franczek's meeting with Claypool. Moriarty told the OIG that Franczek had said that Claypool was angry and refused to accept the memorandum.

In addition, an email shows that a draft of Franczek's memo was sent to Moriarty by Franczek at 8:57 a.m. on June 6, 2016. In that email, Franczek asked Moriarty to let him know if there was anything he "violently disagree[d]" with because he was meeting with Claypool at 11:30. That email, by itself, shows that Franczek was planning to give the opinion letter to Claypool at the meeting. And shortly after the meeting between Claypool and Marmer that day, Franczek sent Moriarty an email that reads, "I think I am off the xmas card list."

When the emails, Franczek's account, Moriarty's account, Franczek's opinion letter, Claypool's anger with Franczek, and Claypool's other proven lies are considered together, it is clear that Claypool deliberately refused to accept Franczek's written opinion — which he was not happy about — and lied about it to the OIG.

16. Claypool also improperly refused to pay the \$7,080 bill that Rocks's firm, Jackson Lewis, had submitted for its work on the Marmer ethics question.

First Deputy General Counsel Douglas Henning told the OIG that he was at a meeting with Claypool and people from the press office, when Claypool learned of Rocks's bill. Claypool took the position at that meeting that he had never ordered the work, so CPS should not pay for it. Henning told the OIG that, based on those statements by Claypool, he made sure that the Jackson Lewis invoice was not paid. Claypool also said that he had a conversation with Jackson Lewis attorney James Daley during which Claypool advised that CPS would not be paying the bill because he had never asked for the work. For his part, Daley denied ever having that conversation with Claypool. In any event, it is clear that the refusal to pay the bill happened on Claypool's prompting and only after there were public questions about Marmer's involvement in the school funding litigation — and that it almost certainly happened once the OIG was looking into the situation.

Based on the totality of the evidence, it is more likely than not that Claypool's refusal to pay the Jackson Lewis bill represented a further attempt by Claypool to minimize the weight and importance of Rocks's opinion by making it seem like the opinion was never ordered and was, therefore, somehow informal — a proposition that is against the manifest weight of the evidence in this case.¹

¹ Ironically, Jackson Lewis considers the bill to have been paid. As discussed more fully in the Final Summary Report, due to a subsequent and apparently mistaken overpayment from CPS in January 2017 for a separate invoice, Jackson Lewis wound up crediting the work as being paid when Claypool and Henning believe it was not paid.

17. The OIG discovered that Chief Internal Auditor Andrell Holloway and Doug Henning — who both followed Claypool to CPS from the CTA — were added to the Ethics Committee and that Senior Assistant General Counsel Andrew Slobodien was removed from it in the middle of this investigation. Marmer told the OIG that he was responsible for the changes.

The timing of those changes is problematic because they were made in the middle of the investigation into an issue that squarely involved Marmer's and Claypool's disagreement with the Ethics Committee.

Gomberg, the *de facto* chair of the committee, told the OIG that she was not involved in the changes, which were more or less presented to her as a *fait accompli*. Even more troubling, the changes apparently came right after the IG briefed the Board in closed session about the previous negative opinion of the Ethics Committee. Claypool and Henning were at that meeting. The IG had asked Claypool to leave that meeting so he could brief the Board in private. Claypool refused. Accordingly, because he heard what the IG told the Board, Claypool clearly knew that the opinion of the Ethics Committee was central to the investigation. Claypool denied having any part in the changes.

Nonetheless, in the face of the timing and overall circumstances, the OIG cannot eliminate the possibility that the real motive for the personnel changes, which Marmer has taken credit for, was to create an Ethics Committee more deferential to Claypool and Marmer. In short, the public perception is horrible. It looks like the changes were retaliatory and designed to lessen the independence of the committee. That alone should have warranted delaying any changes until after the OIG investigation was complete. Accordingly, at a minimum, the changes to the Ethics Committee represent a critical error in judgment. And Marmer has taken credit for them.

B. RECOMMENDATIONS

Based on the extensive evidence in this case, the OIG is recommending the termination of Forrest Claypool's employment.

The OIG stops short of finding that this is necessarily a termination-level case for Marmer. As discussed further below, the OIG is recommending that the Board discipline Marmer in an appropriate manner, which might include, for example, a "first and final" warning, a lengthy suspension or even termination (if the Board decides that is warranted).

Please be aware that the OIG is not making these recommendations lightly.

As the OIG stated in its June 23, 2017, Interim Summary Report, the OIG does not believe that Marmer stood to benefit financially from the contract with Jenner & Block and, of course, the underlying Code of Ethics violation would have been much worse if that had been the case.

Marmer and Claypool told the OIG that they disagreed with what the internal CPS attorneys told them because they believed the internal lawyers were reading the Code of Ethics too literally. They believed that because Marmer was not going to gain financially from the contract, his supervision of Jenner & Block's work simply should not be prohibited. In short, they refused to believe that the Code of Ethics not only prohibited improper financial gain, but even the appearance of a less-than-arms-length arrangement (in other words, the appearance of impropriety). If Claypool and Marmer had simply come forth and told the Board and the public that they disagreed with the Ethics Committee, the Board could have weighed in with a proper remedy (e.g., voting for an exception, amending the Code of Ethics, removing Marmer from his supervisory role, etc.). If that had happened, this matter probably would not have involved discipline.

Instead, Claypool and Marmer searched for an exonerating opinion. Of course, Claypool took a series of actions to minimize the further negative attorney opinions he received along the way. It is that approach that was fundamentally deceptive — the idea that Claypool could present Eaton's opinion as the only one, when it failed to even address the dispositive issue of the "business relationship" in the first place. Although Claypool's actions in this regard were deceptive, the OIG is not certain that this would have been a termination case if the conduct had stopped there and Claypool had come clean about what had happened at that point.

The decision by Claypool to alter billing records while the OIG investigation was ongoing — and after Claypool told the public that he was happy to "walk the OIG through the process" — escalated this to a full-blown cover-up and, thus, a termination case for him. The fact that Claypool took steps designed to hide Franczek's opinion on the CPS billing system, which occurred at the opening stages of the OIG investigation and while under heavy press scrutiny, makes this misconduct very serious indeed. It goes without saying that if any line employee had done that much, he or she would be fired.

Inexplicably, Claypool pushed the matter beyond all bounds when he chose to lie through two separate OIG interviews about his dealings with Franczek. In particular, and as discussed below, Claypool's repeated and unequivocal denials that he had asked Franczek to make changes to the bill — even after being shown documents that put him at the epicenter of the changes — are not remotely credible. The matter

was important enough for him to defend his actions in the open letter to the *Sun-Times* that he penned just 11 days before asking for the changes, but he would have the Board and everyone believe now that he cannot remember handing billing records to Franczek, or having them returned to him and labeled “For Forrest Claypool’s Eyes Only.” When all the evidence is considered together, it is clear that Claypool lied to the OIG, even after being shown documents that proved his actions. On top of that, he failed to cooperate with the OIG when he handed his November 17, 2017, letter to the press, thereby giving Marmer an improper “heads up” to what the OIG was asking.

At every turn in this matter, Claypool kept making matters worse. And it appears that his decisions were driven by a clear desire to keep information harmful to his narrative from the Board, the OIG and the public.

What kind of signal would it send to CPS employees, parents and children if the CEO was allowed to change records as part of a cover up and keep his job? Why should CPS employees tell the truth in other investigations — as required under Board Rules — if repeated lies by the head of the administration are not decisively punished? Elaborate cover-ups are designed to hide improper behavior, not above-board actions, and that was clearly the case here, as evidenced by the pattern of attorney shopping, record changing and lies to investigators. Again, any other employee would be fired for such deliberate and protracted deception. Surely, the CEO must be held to the same — if not an even higher — standard. Of course, Claypool is a highly sophisticated government actor who surely should be expected to know the ethics rules. Even more critically, as the CEO, he sets the bar for how the entire organization acts and owns up to mistakes when they are inevitably made. The example Claypool has set here cannot be the standard of honesty and responsibility that the Board and citizens of Chicago accept. Sadly, the OIG is left with no recourse but to conclude that this is a termination case for Claypool.

The decision to remove Claypool is ultimately the Board’s. Pursuant to Board Rule 4-1(C):

The Board shall exercise all authority over the following employee matters, which authority is non-delegable under the Illinois School Code or which the Board has reserved to itself:

...

(3) To dismiss the Board Secretary, the Assistant Board Secretary, the Chief Executive Officer, the General Counsel, deputies and assistants general counsel, executive officers and officers upon majority vote of the full membership of the Board[.]

Please be advised that the OIG expects that it will put forth a recommendation for Claypool's termination in an Inspector General Board Action Report in the near future.

For his part, Marmer has clearly displayed poor judgment. For starters, it is obvious that Marmer, as the one whose conduct was in question in the first instance, should not have been involved in the business of finding an outside opinion that cleared him. That fact alone suggests a biased search. And the sudden need to find the "gravitas" they found in Eaton appears to be nothing more than a decision to continue to search for an exonerating opinion. In addition, his admitted decision to make changes to the Ethics Committee in the middle of this investigation certainly raises the appearance of impropriety.

Of course, other acts by Marmer give rise to serious questions. For example, the OIG finds problematic his account of why he brought his concerns about Franczek's bill to Claypool's attention. He said that he objected to both the size of the bill and to the references to "CPS's Code of Ethics" and to "ethics issues," and even suggested that the bill was not up to his professional standards. When, however, his statement is compared to the bills of Rocks and Eaton — both of which contain almost identical entries and were for similar amounts — it seems that Franczek was not singularly out of step with the others. So, it is clear that Franczek did not do anything that the other attorneys had not done. Regardless, there is no proof that Marmer saw the bills of the other two attorneys, so the OIG cannot say for sure that Marmer would not have acted the same way if he saw them.

In the end, however, there is no proof that Marmer asked anyone to change any bills or records. The OIG also cannot conclude that Marmer (or Claypool) deliberately ordered Eaton to give an opinion that steered clear of the "business relationship" question. And there is no proof of any lies by Marmer to the OIG.

Nonetheless, Marmer violated the Code of Ethics by exercising "contract management authority" in the school funding litigation. Plus his involvement in the hunt for his own exonerating opinion was improper, and his changes to the Ethics Committee were misguided. Despite those actions, the evidence does not support a conclusion that Marmer's efforts rose to the same level of cover-up committed by Claypool.

Accordingly, the OIG stops short of finding that this is necessarily a termination-level case for Marmer. The OIG is recommending that the Board discipline Marmer in an appropriate fashion, which might include, for example, a "first and final" warning, a lengthy suspension or even termination (if the Board decides that is warranted).

The OIG is further recommending that the role and function of the Ethics Committee needs to be strengthened and defined. At a minimum, the Ethics Committee should be formed with the consent of the Board. The Board should approve what the membership make-up of the committee should be. And appointments to the Ethics Committee should be publicly approved at Board meetings. Accordingly, the OIG is recommending that the Board appoint a group to research the best practices for operating an Ethics Committee, and the group should recommend new rules based on that research. For instance, the rules should specify what happens when there is a disagreement about the interpretation of the Code of Ethics between the Ethics Committee and a CPS employee, or even a Board member. Once the exploratory work is done, the OIG expects that the Board would be able to incorporate the appropriate changes into the Code of Ethics so as to avoid situations like the one that led to this investigation. The OIG respectfully requests to be included in the process of developing and implementing those changes.

Finally, the OIG is not making any recommendations regarding Eaton. As stated above, the OIG cannot definitively conclude whether Eaton issued his opinion within narrowly tailored confines outlined by Claypool and Marmer, or Eaton somehow missed the mark on his own. And for reasons discussed at length below, the OIG has taken the view that because Eaton's representation ceased and the OIG was eventually allowed all the access it needed to complete the investigation, the question of interference by Eaton has fallen away and is moot.

FULL BOARD COOPERATION SINCE THE JUNE INTERIM REPORT

As is well known, the OIG publicly asserted at the December 7, 2016, Board meeting that this investigation was being obstructed by the improper assertion of the attorney-client and work-product privileges. The OIG followed up those assertions in its Interim Report to the Board on June 23, 2017. In that report, the OIG further asserted that Eaton, who then was representing the Board in the OIG's investigation, had a material self-interest stemming from the June 10, 2016, opinion that he had issued in this case. In June, the OIG recommended that the Board cease asserting the attorney privileges against the OIG and that Eaton's representation of the Board in the OIG investigation cease.

The OIG is pleased to report that the Board promptly acted on both of those recommendations. The Board removed Eaton's firm in July 2017. The Board members then hired McDermott Will & Emery to work out a limited waiver of the attorney-privilege issues. Once the limited waiver was executed on September 5,

2017, the OIG's investigation was able to be finished in a relatively timely and straightforward fashion.

The key information relating to the misconduct of the top executive and his chief legal officer were hidden behind the veil of attorney-client privilege and only saw sunlight once that veil was lifted. The critical information that makes this a separation case for Claypool largely came after the Board ended its privilege assertions. It was only then that the OIG was able to talk to Rocks and Franczek and get their billing records — and then question Claypool and Marmer about them. Accordingly, this case should be understood by everyone as a textbook civics lesson on why OIG access to documents cannot be blocked on the grounds of attorney-privilege assertions.

Thus, the Board's decision to lift its objections to OIG access to attorney-client and work-product material represents a major step forward by the Board for the proposition that the OIG's oversight work is necessary and vital to the proper functioning of the school district. In fact, the OIG considers the successful resolution to the question of access to attorney-client and work-product privileged material in this case to be so significant that it should serve as a model of cooperation on this issue, not only for the Board and its OIG but also for other local governmental bodies and their OIGs. Of course, this OIG is also grateful for the limited waiver because it avoided the great expenditure of time and money that would have resulted if the OIG had to pursue the access-to-information question in court.

The sole points of caution are that the limited waiver worked out between the Board and the OIG is not binding on future investigations and, even if that tool is used again, it might prove to be inadequate in a future case.

There is some danger that such access will not always be granted in future investigations. Indeed, the OIG is somewhat concerned that the Board only entered into the limited waiver in this case because the OIG was able to advance it sufficiently — so as to illustrate the obvious public perception problems posed by the privilege assertions — before the obstruction stopped the case from advancing further. Thus, the OIG fears that similar access might not be granted if the case for OIG access to attorney-client-privileged material is not as straightforward (and convincing) at the start of a future investigation as it was at the opening stages of this one, which the OIG detailed to the Board in its June 2016 Interim Summary Report.

In addition, the OIG can envision a situation in the future in which potentially privileged material must be collected quietly or risk jeopardizing the entire investigation. That was not the case here, but it is something to keep in mind, with

an eye toward hammering out an arrangement between the Board and the OIG that would ensure proper access to information when confidential collection of information is essential to investigations.

The OIG's concerns about future cases notwithstanding, the OIG is pleased with the cooperation it ultimately received from the Board and its current counsel in this case.

SYNOPSIS — BACKGROUND AND INVESTIGATION

A. PEOPLE INTERVIEWED

As part of its investigation, the OIG conducted 22 interviews of the following 13 CPS employees (former and current), CPS officers, Members of the Board of Education, and outside counsel on the following dates:

| Interviewee | Date |
|---|-----------------|
| Andra Gomberg, CPS Ethics Advisor, Ethics Committee (<i>de facto</i> head) | 09/14/16 |
| Cheryl Colston, Former CPS Acting General Counsel | 10/05/16 |
| Ruchi Verma, CPS Deputy General Counsel, Ethics Committee Member | 10/06/16 |
| Joseph Moriarty, CPS Labor Relations Officer (and Gomberg's immediate supervisor) | 10/13/16 |
| Andrew Slobodien, Labor Relations Managing Attorney (current title), Former Ethics Committee Member | 10/13/16 |
| Limited Waiver of Attorney-Client and Work-Product Privileges Executed | 09/05/17 |
| Patrick Rocks, Former CPS General Counsel, Partner at Jackson Lewis PC (outside counsel) | 09/28/17 |
| James Franczek, Partner of Franczek Radelet PC (outside counsel) | 09/29/17 |
| J. Timothy Eaton, Partner of Taft Stettinius & Hollister LLP (outside counsel) | 10/11/17 |
| Douglas Henning, CPS First Deputy Counsel, Current Ethics Committee Member | 10/12/17 |

| Interviewee | Date |
|---|----------|
| Joseph Moriarty, CPS Labor Relations Officer (Second Interview) | 10/16/17 |
| Andra Gomberg, CPS Ethics Advisor, Ethics Committee Chair (Second Interview) | 10/16/17 |
| Ronald Marmer, CPS General Counsel | 10/17/17 |
| Ruchi Verma, CPS Deputy General Counsel, Ethics Committee Member (Second Interview) | 10/23/17 |
| J. Timothy Eaton, Partner of Taft Stettinius & Hollister LLP (outside counsel) (Second Interview) | 10/26/17 |
| Forrest Claypool, CPS Chief Executive Officer | 10/26/17 |
| Andrell Holloway, CPS Chief Internal Auditor, Current Ethics Committee Member | 10/31/17 |
| Frank Clark, Chicago Board of Education President | 11/01/17 |
| Andrew Slobodien, Labor Relations Managing Attorney (current title), Former Ethics Committee Member (Second Interview) | 11/01/17 |
| Douglas Henning, CPS First Deputy Counsel, Current Ethics Committee Member (Second Interview) | 11/07/17 |
| James Franczek, Partner of Franczek Radelet PC (outside counsel) (Second Interview) | 11/09/17 |
| Forrest Claypool, CPS Chief Executive Officer (Second Interview) | 11/14/17 |
| Ronald Marmer, CPS General Counsel (Second Interview) | 11/22/17 |

The interviews are memorialized in over 100 typed pages of reports, which are included in the OIG investigative file.

B. MARMER AND THE SCHOOL FUNDING LITIGATION

Ronald Marmer was appointed as the General Counsel at the October 28, 2015, Board meeting. He is a former partner of Jenner & Block, having left the firm in December 2013. Marmer's appointment was controversial because he had given a total of \$24,000 to Claypool's past campaigns for political office.

Records obtained by the OIG show that, by early March 2016, Jenner & Block had begun working on a lawsuit which was eventually brought in Illinois state court on behalf of the Board challenging the legality of the State of Illinois's funding formula and its discriminatory impact on CPS (the school funding litigation). Jenner & Block, however, was not formally retained by the Board until July 27, 2016, via Board Report 16-0727-AR3.

Over time, there were three different payment arrangements with Jenner & Block in this matter. First, under a March 30, 2016, engagement letter — which was before the Board had officially retained Jenner & Block — that is signed by Jenner & Block partner Randy Mehrberg and Henning, the Board would be billed at CPS's usual government attorney "discounted blended rate" of \$295 per hour for Jenner & Block attorneys' work. However, if the Board won, Jenner & Block's fees would be upped to the firm's normal hourly rate — a far higher amount. The relevant success clause from that first agreement is included here:

If Jenner & Block obtains relief for CPS in the form of a declaratory judgment, injunction, or other final judgment that requires the State to eliminate the disparity in the State's funding of CPS as compared to other school districts in the State, or that otherwise results in meaningful financial assistance to CPS (which will be determined through good faith discussions between you and Jenner & Block), then CPS agrees to pay Jenner & Block the difference between the discounted rate set forth above and Jenner's normal hourly rates at the time the services are performed. Your obligation to pay Jenner & Block's normal hourly rates shall arise after CPS' actual receipt of additional funds as a result of the relief described herein.

A second engagement letter, dated June 20, 2016, reduced the promised payment to a flat \$295 an hour, win or lose.

After the inspector general publicly addressed the obstacles in the way of the OIG investigation in December 2016, the agreement was changed once again. In a third engagement letter dated January 30, 2017, Jenner & Block agreed to continue its work on the lawsuit on a pro bono basis.

C. THE IN-HOUSE OPINIONS

In approximately April 2016, the CPS Ethics Committee concluded that Marmer was violating the Code of Ethics because of his existing “business relationship” with Jenner & Block. Specifically, the three attorneys of the Ethics Advisory Committee (consisting of Ethics Advisor Andra Gomberg, Deputy General Counsel Ruchi Verma and then-Senior Assistant General Counsel Andrew Slobodien) unanimously concluded that Marmer was prevented from exercising “contract management authority” over work performed by Jenner & Block because of the existing “business relationship” created by the annual exit payments.

Labor Relations Officer Joseph Moriarty, Gomberg’s immediate supervisor, was informed of the Ethics Committee’s decision and agreed with it. Together, Gomberg and Moriarty personally informed Marmer what they had decided.

Moriarty told the OIG that Marmer became “concerned” by the decision because he had already been “doing it,” and told the group that he would have to speak with Claypool about it.

D. MARMER AND CLAYPOOL SEEK OUTSIDE OPINIONS

Marmer consulted with Claypool after meeting with Gomberg and Moriarty. Both Marmer and Claypool disagreed with the conclusion of the in-house attorneys. After discussing the matter between them, they decided to consult former General Counsel Patrick Rocks, who was in private practice, for an opinion.

1. Patrick Rocks’s Opinion

After talking to both Claypool and Marmer, Rocks and other attorneys from his firm thoroughly researched and analyzed the Code of Ethics in relationship to Marmer’s exit payments. As part of his work, Rocks spoke to Marmer and reviewed documents related to the exit payments, which Marmer had provided to him. Rocks also had multiple conversations with Gomberg about Marmer’s situation and past interpretations of the Code of Ethics. Attorneys in Rocks’s firm also produced a written memorandum detailing their analysis, but that was never given to anyone at CPS. Finally, on a conference call that included Claypool, Rocks and two other attorneys from Rocks’s firm, Rocks talked to Claypool about the situation and told Claypool that he had concluded that Marmer could not exercise “contract management authority” over the work of Jenner & Block because of the existing “business relationship” between the two. It is also more likely than not that Rocks asked Claypool if he wanted anything in writing and that Claypool declined anything further from Rocks.

2. James Franczek's Opinion

After learning of Rocks's opinion, Claypool and Marmer again met. They decided to ask outside labor attorney James Franczek for his opinion. Marmer told the OIG that Claypool had some concern about asking Franczek for his opinion, as Claypool was afraid that Franczek still might be sore about being fired from the school funding litigation and replaced with Jenner & Block. Despite Claypool's concerns, Marmer told the OIG that they decided to consult Franczek because the matter was "not that complicated."

After talking with Claypool and Marmer, Franczek and other lawyers from his firm researched the issue, including former Illinois State Board of Education General Counsel Nicki Bazer. Marmer provided information about his payouts to Franczek, which were compared against the Code of Ethics. Franczek reached essentially the same conclusion as Rocks and the in-house attorneys. Franczek prepared a memorandum stating that Marmer could not exercise "contract management authority" over work done by Jenner & Block because of an existing "business relationship." Before conveying his opinion to Claypool, Franczek emailed a draft of his memorandum to Labor Attorney James Moriarty, who emailed back that it looked fine to him. Franczek was not asked by Marmer or Claypool to send the draft to Moriarty, but Franczek said that he and Moriarty had a close working relationship, and he wanted to make sure that Moriarty agreed with his analysis before talking to Claypool about it.

Franczek personally met with Claypool. He said he told Claypool, "I have an opinion letter here. You can look at it. I am willing to modify some parts of it. But I am not going to modify its conclusions." Franczek said he then explained his conclusion and reasoning to him. Franczek said he told Claypool that the intent of the Code of Ethics was to prohibit not only improper enrichment but also the appearance of impropriety, which was why the "business relationship" clause was there.

Franczek said he told Claypool, "Let me give you some pearls of wisdom." He said he proceeded to ask why Marmer could not simply be removed from the school funding litigation. Franczek said that Claypool said that he wanted Marmer to supervise the work because he was a good attorney. Franczek said that he then said that Claypool should then ask the Board for an exemption. Franczek then said that Claypool said he could not do that, and added, "I don't want this to go public." Franczek said he then reminded Claypool that he had a written opinion and asked Claypool if he wanted it or not. Claypool said no and Franczek left.

Moriarty also told the OIG that Franczek talked to him right after Franczek's meeting with Claypool, and Moriarty recalled that Franczek said that Claypool was angry and

refused to accept the memorandum. An email from Franczek to Moriarty shortly after the meeting reads: "I think I am off the xmas card list."

Franczek said that at some point in June or July 2016, Moriarty or Emily Bittner, CPS's Communications Director, gave Franczek a physical copy of an ethics opinion letter that had been prepared by Eaton. After reading the letter, Franczek told Bittner it was "just plain wrong" before adding "this guy ought to be embarrassed."

On July 25, 2016, Bittner emailed Franczek to ask him for his input on a draft of a press release about Jenner's engagement. Franczek responded to Bittner by noting that CPS would need to release Eaton's opinion letter because she referred to it in the press release. Franczek explained that he did not mean this as legal advice, but as a practical matter because if you bring a document up in a press release, the press will ask for it. Franczek explained that the email was the only communication on the issue. When asked why Bittner would have asked him for his input, knowing that he disagreed with Eaton's conclusion, Franczek replied that he and Bittner have an excellent professional relationship because they have worked together on the collective bargaining agreements. Franczek noted that Bittner would have been regularly communicating with him about the bargaining agreements around the time she had emailed him, and she was used to running press releases past him for advice. Franczek noted that the bargaining agreement was definitely the focus of his attention at this time.

3. J. Timothy Eaton's Opinion

The day after Claypool's meeting with Franczek, Claypool sent an email from his private gmail account to outside attorney J. Timothy Eaton. The email read: "I have a time sensitive matter if you can call me." Eaton then spoke with Claypool and Marmer. Eaton could not recall whether Claypool identified the attorneys who provided the oral opinions during the phone call. Eaton said it was "possible" that Claypool had identified Pat Rocks, but did not know of Jim Franczek and noted that his name would not have meant anything to him even if Claypool had said it. Eaton also said that Claypool did not mention any technical terms from the Code of Ethics, such as "business relationship," "economic interest" or "contract management authority."

According to Eaton, Claypool sent documents to Eaton via courier. Those documents included a copy of the Code of Ethics, an unsigned copy of Jenner & Block's retention letter, and copies of two letters from Jenner & Block to Marmer about his payments. Eaton and another partner at his firm prepared the June 10, 2016, letter after speaking with Marmer.

Eaton told the OIG that he and his partner felt that the “business relationship” provision was not applicable because the Code defined what a “business relationship” was and what it was not. In defining what it was not, Eaton recalled that that Code specifically listed annuities from insurance carriers. Although Marmer’s payments from Jenner & Block were “certainly not” an insurance annuity, Eaton and his partner thought that the payments were “like” an annuity, and thus were exempt from the definition of a “business relationship,” so they did not address the issue in their written opinion.

Eaton told the OIG that when he was drafting the opinion, Claypool might have called to ask something to the effect of, “where is it,” because he wanted to get the written opinion. Eaton explained to Claypool that they were preparing it. When the OIG asked Eaton if he provided any suggestion to Claypool of his conclusions, he said that he could not recall doing so.

Eaton concluded in his June 10, 2016, letter that “the Board's engagement of Jenner & Block does not violate the Policy.” He provided a one-paragraph explanation for that conclusion:

Mr. Marmer does not “own” any Economic Interest in Jenner within the meaning and purpose of the Policy. Mr. Marmer is no longer a partner in Jenner, has no right to any profits or income from Jenner and has no Jenner partnership voting rights. His right to the amount of his Exit Payment was fixed in 2014, pursuant to a Partnership Agreement formula based on then-existing factors, and did not include any right to future profits of Jenner. While he owns an interest in receiving an Exit Payment, that is an interest personal to him and does not reflect any ownership of an Economic Interest in Jenner and; he will not obtain any personal economic benefit through Jenner’s engagement because the payment obligations to him are fixed and are in no way dependent upon Jenner’s profits in the years that Jenner is performing work for CPS. Therefore, because Mr. Marmer does not own any Economic Interest as defined in the Policy, Sections VIII.A and X of the Policy do not apply to the Board's proposed engagement of Jenner.

Notably, Eaton’s letter did not contain any analysis of the code’s provisions that prohibit the exercise of “contract management authority” in connection with an entity with which a Board employee has a “business relationship”.

Eaton is a contributor to Claypool’s former campaigns for public office. Eaton has known Claypool for decades, since the time Eaton served as a teacher’s assistant for an undergraduate course that Claypool was in when Eaton was a law student.

E. PUBLIC QUESTIONS AND THE OIG INVESTIGATION

On July 28, 2016, the day after the Board approved of the retention of Jenner & Block for the school funding litigation, a *Chicago Sun-Times* article raised the question of whether Marmer was violating the CPS Code of Ethics because he had an existing “business relationship” with Jenner & Block that would prohibit him from exercising “contract management authority.”

The article cited Claypool as saying that Marmer was not involved in CPS’s hiring of Jenner & Block. Claypool told the *Sun-Times* that it was his decision, along with Board President Frank Clark’s, to hire Jenner & Block. The article further cited Claypool as saying that “Marmer recused himself once Frank and I let it be known we wanted to retain them because of the stakes involved here.” “Jenner & Block is a top litigation firm. We wanted to make sure we had the strongest legal firepower given the existence of the school system was at stake.”

In the wake of the *Sun-Times* article, the OIG opened an investigation into the matter.

On August 8, 2016, the *Sun-Times* reported that the OIG had confirmed an investigation into possible ethics violations by Marmer.

On August 9, 2016, the *Chicago Tribune* quoted Claypool as saying:

Obviously the inspector general looks at a lot of things routinely. **We’re happy to walk him through the process.** (Emphasis added.)

On August 14, 2016, the *Sun-Times* published a letter from Claypool in which he defended his actions and stated the following:

[I]n an abundance of caution, our general counsel recused himself from the decision to hire Jenner & Block and any negotiations on the economic terms of our agreement, despite no ability to influence set payments from the firm based on his prior service as a partner. This arrangement was appropriate, **and we welcome the opportunity to answer questions from the inspector general or anyone else.** (Emphasis added.)

F. MARMER WAS DIRECTING JENNER & BLOCK’S WORK

During his first OIG interview, Marmer told the OIG that there should be no question that he was “directing” Jenner & Block’s work on the school funding litigation. And he further told the OIG that his decision to stay out of the financial side of the contract work did not impact his supervision of the substance and legal strategy. He even stated that if he were still at Jenner & Block, he would have been the most senior partner on the matter.

In addition, the OIG reviewed numerous billing records and emails. That review clearly shows that Marmer was supervising the work of Jenner & Block.

It is also clear from the documents that Marmer played a very hands-on role in supervising Jenner & Block. The firm's billing records from March through July of 2016 contain 40 notations that reflect Marmer's supervisory role, such as his involvement in selecting the attorneys who would comprise the case team, formulating case strategy, actively revising drafts of pleadings that Jenner & Block attorneys had prepared, and regularly communicating with the Jenner & Block attorneys. Emails that CPS publicly released corroborate that Marmer played a significant supervisory role. For instance, on March 4, 2016, Jenner & Block partner Randy Mehrberg emailed Marmer the professional profiles of the three Jenner & Block attorneys that he proposed for assignment to the lawsuit work. Several attorneys on the case team provided Marmer with updates on the status of the team's work throughout April and May. Also during that time, Marmer sent multiple versions of draft complaints to Jenner & Block attorneys and provided guidance as to his revisions. In fact, on May 11, 2016, one Jenner & Block attorney wrote to Marmer regarding his then-latest round of edits:

Ron,

Thank you again for the very helpful discussion last night. Attached is a revised complaint — both a clean copy and a redline. The redline shows changes from the last version that you discussed with Randy (not from last night's version). I thought it would be most helpful for you to go back to the last version you were comfortable with and show you the changes from that version. . . .

Hopefully, you will find this version satisfactory; if you have concerns, please call me to discuss. (Emphasis added.)

G. EATON'S SECOND (SUPPLEMENTAL) WRITTEN OPINION

After the limited attorney-client privilege waiver was in place, the OIG learned that Eaton had written a second (or supplemental) ethics opinion, which was dated October 25, 2016, and sent via email to Henning. The second letter addressed the "business relationship" question, which was conspicuously absent from his June 10, 2016, opinion letter. The following is the relevant portion of the October 25, 2016 letter:

Should the issue of whether Mr. Marmer and Jenner have a business relationship arise, we concluded then and still believe that the severance payments are in the nature of an annuity, which is excluded from the definition of "business relationship" in Section II.E.6 of the Board's Code of Ethics Policy (the "Policy"). We view the reference to annuity in the Policy as a descriptive

rather than a prescriptive category. Thus, even though the Policy refers to an annuity purchased from an insurance company, Jenner's payments to Mr. Marmer are similar to an annuity because they are made annually for a fixed period based on a pre-determined formula that applies to all former Jenner partners similarly situated to Mr. Marmer. If owning an annuity that provides by contract for periodic payment does not create a business relationship, then being a party to a formulaic severance agreement that is not tied to Jenner's economic performance similarly does not, in our opinion, create a business relationship between Jenner and Mr. Marmer.

Eaton told the OIG that, when he wrote his first ethics opinion, he was not aware of any other written opinions on the issue. According to Eaton, in August or September 2016, Henning informed him that Franczek had written a memorandum² that addressed the issue, and forwarded it to him. Henning also related that Franczek had sent the memorandum to Joe Moriarty, who in turn gave it to Henning. Specifically, when Moriarty received a letter from the OIG that requested an interview, he provided the Franczek memorandum to Henning, and asked whether he should produce it. Henning raised the issue with Eaton, and the decision was made to withhold the document based on the attorney-client privilege because it was a communication with an outside attorney. Eaton noted that he recalled hearing from Henning that Claypool was surprised at the existence of the Franczek memo. Eaton, based on what he heard from Henning, did not believe that Claypool had ever seen it previously.

After reading Franczek's opinion, Eaton noticed that Franczek had addressed the "business relationship" question, while Eaton had not. Eaton then decided to write a second letter, dated in October, which addressed the issue.

Eaton reiterated that he did not include this analysis in the first letter because he did not see "business relationship" as being an important issue. However, after seeing that Franczek had specifically addressed "business relationship," Eaton felt that he should provide his analysis on the same topic.

H. CLAYPOOL ORDERED CHANGES TO FRANCKEK'S BILL

Critically, Franczek told the OIG that during a personal meeting with Claypool on August 25, 2016, Claypool handed Franczek a copy of Franczek's July 31, 2016, invoice, which included the time Franczek and another attorney had billed for their

² The memorandum discussed here is actually from two attorneys at Franczek's firm to Franczek. As discussed at other places in this report, Franczek subsequently made minor edits to that memorandum, and changed it to reflect that it was from Franczek to Claypool. That second memorandum is the one Franczek said he tried to give to Claypool.

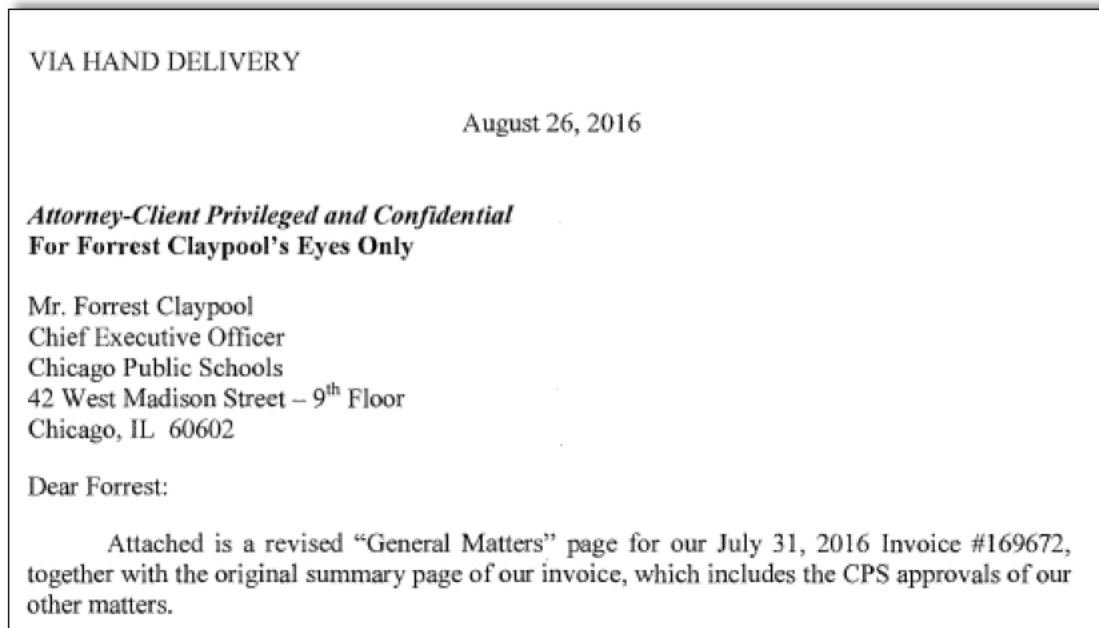
work on the Marmer ethics opinion. Franczek says that during that meeting, Claypool asked him to change the invoice so that it no longer reflected work on the "CPS Code of Ethics" or "ethics issues." Franczek told the OIG that Claypool gave him two documents at that meeting: (1) the cover page of the July 31, 2016, invoice, which was addressed to Ronald Marmer; and (2) a page of the invoice that contained the references to the CPS Code of Ethics and ethics matters.

Franczek further told the OIG that he made handwritten edits to the "CPS's Code of Ethics" and "ethics issues" references. He kept those edits. Franczek said that he sent the finalized changes, which were re-printed on a second version, along with the summary cover page, back to Claypool via courier on August 26, 2016.

The following shows a copy of the original invoice with Franczek's handwritten edits.

| | | | | |
|---|-------------------|--|--------------|---------------|
| Chicago Board of Education Client No. 00401 Matter No. 00438.098001 | | Invoice No. 169672 Invoice Date: July 31, 2016 | | |
| Matter Description: General Matters | | | | |
| Purchase Order No.: 2623315 0 | | | | |
| PROFESSIONAL FEES INCURRED THROUGH 06/30/16: | | | | |
| <u>Date</u> | <u>Timekeeper</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
| 06/02/16 | NB Bazer | Research CPS's Code of Ethics issues. <i>personnel</i> | 2.20 | \$649.00 |
| 06/02/16 | JC Franczek | Review documents re ethics issues <i>personnel</i> | 1.50 | \$442.50 |
| 06/03/16 | JC Franczek | Research re ethics issues <i>personnel</i> | 1.50 | \$442.50 |
| 06/04/16 | NB Bazer | Revise analysis and memorandum regarding Ethics issues. <i>personnel issues</i> | 2.00 | \$590.00 |

Importantly, Franczek's cover letter returning the corrections shows that the documents were addressed "For Forrest Claypool's Eyes Only":



Franczek gave the OIG copies of all the relevant documents: the documents Claypool handed to Franczek; Franczek's handwritten edits; and the documents returned to Claypool (see the appendix for full documents).

I. ADDITIONAL INFORMATION FROM THE CLAYPOOL AND MARMER INTERVIEWS³

1. Claypool's Interviews

Claypool was interviewed by the OIG two times. Both times he was advised in writing that he had a duty to cooperate with the OIG under Board Rule 4-4(m). In relevant part, he specifically was advised:

I understand that any admission or statement made by me in the course of this interview may be used as the basis for disciplinary action, up to and including dismissal from employment.

³ The synopses of Claypool's and Marmer's interviews provided in this section are purposely skeletal in nature, as they are designed only to orient the reader in preparation for the analysis section. Additional relevant information from Claypool's and Marmer's interviews, which is not included here for brevity's sake, is introduced in other parts of this report. Of course, the full summaries of all the OIG interviews in this case are included in the OIG investigative file.

I understand that any false, deliberately inaccurate or deliberately incomplete statements made by me can result in disciplinary action being taken against me up to and including dismissal from employment.

I understand that pursuant to Board Rule 4-4(m), as an employee of the Chicago Board of Education, I am obligated to cooperate with investigations conducted by the Office of the Inspector General and I am directed to answer all questions.

During the first interview, Claypool unequivocally denied that he ever asked Franczek to make any changes to Franczek's invoice. He did so even after the OIG showed him the second version of the invoice — the same version that appears on CPS's Oracle system.

Key statements from his first interview are included here:

- Marmer was not involved in any of the engagement-letter negotiations with Mehrberg because the "right thing to do" was to separate him and eliminate any concerns. Marmer would still handle the day-to-day aspects of the case and lead the case. Claypool stated that his recollection was that this arrangement was made "right away," and was not something that was decided after the fact. Claypool was not aware of any meetings taking place regarding this separation of duties, but noted that he did talk to Henning about it at some point.
- After Marmer informed Claypool of the concerns about Marmer's involvement in the case, Claypool stated he thought they should do some investigating, so he called Pat Rocks. Rocks had previously told Claypool that Claypool could call him anytime to "bounce stuff off" of him, and that he would not charge CPS. When the OIG asked about Rocks's bill to CPS, Claypool replied, "He charged? Really?"
- When asked if Franczek had a written opinion on the issue, Claypool stated no. When asked if Franczek tried to give him a written opinion, Claypool stated no. When asked if Claypool told Franczek to keep a written opinion that Franczek had tried to provide to him, Claypool stated no.
- When asked, Claypool stated that he did not recall having a conversation with Franczek about approaching the Board to request a special exemption for Marmer in this instance. Claypool, however, said that going to the Board is always an option when there is ambiguity that needs resolution.
- Claypool stated that he never received a bill from Franczek, and was not aware for some time that Franczek had billed CPS for his work. Claypool explained that he had asked for Franczek's opinion, but he did not expect to

be billed for it. Claypool also stated, “I was not aware that Franczek had billed for his work until long after our conversation.” When asked, Claypool stated that he did not recall having a conversation with Franczek about changing line item descriptions in his bill. (During the interview, Claypool was shown a copy of Franczek’s revised bill.)

- Claypool recalled that someone subsequently told him that Franczek had written an opinion, which he described as “enraging,” and it came as a complete surprise because he did not ask Franczek to prepare a written opinion and did not instruct him to bill for his advice. Claypool stated that “no one has ever given me a copy of that opinion.”
- When asked if Claypool communicated with Marmer about the opinions of Franczek or Rocks, Claypool stated that he did not remember if he told Marmer in advance that he was seeking them, but was sure that he had informed Marmer at some point.
- Claypool sought an opinion from Rocks because he was “a natural” as the former General Counsel to CPS and someone who had offered free advice. Claypool sought an opinion from Franczek because he was convenient.
- When first asking for Eaton’s opinion, Claypool told Eaton that he had obtained informal opinions on the point, but did not believe he had told Eaton who had given those opinions. Claypool did not tell Eaton what clauses were at issue or what interpretations had been made in the other opinions, explaining that he wanted Eaton’s opinion because Eaton was an expert.
- When asked if he had other conversations with Eaton, Claypool stated that he could not recall. Claypool stated that Eaton may have called to ask for Rocks’s contact information or may have called and said the opinion letter was on its way. When asked if Eaton told Claypool what the letter would say before it was sent, Claypool stated that he does not remember.
- Claypool stated that he sought a written opinion from Eaton, because the Ethics Officer thought this was an issue, and two other attorneys “raised questions,” so he thought this might need a formal written opinion.
- When asked why Eaton did not address the “business-relationship” provision in his June 2016 opinion letter, Claypool stated that he does not have an explanation for that. Claypool stated that he just asked Eaton to produce the opinion. When asked, Claypool stated that he did not tell Eaton that he did not want the letter if the opinion was negative.

- Claypool stated that he went to Rocks first because Rocks had a large contract with CPS, and he thought, as a “courtesy,” Rocks would give Claypool his opinion. Claypool then noted that Franczek is a labor lawyer, and stated that he did not feel that it was appropriate to have a labor lawyer give an opinion on this issue. Claypool stated that Franczek was not “the right person” to produce a formal opinion. Claypool stated that there was an “informality” before eventually getting a written opinion in the matter. Claypool’s conversation with Rocks was ten minutes, he was late for another meeting, and was only going through the highlights. Claypool explained that he was not seeking “actual formal counsel” when he asked for the first two opinions, but he wanted their “thoughts and judgment.” Claypool noted that after hearing what they had to say, he felt the only way forward was to get a formal, well-researched opinion.
- When asked why he did not get the formal opinion from Rocks, Claypool stated that it was the same issue as with Franczek. Claypool stated that Jackson Lewis is a labor firm, and that he was not aware of Rocks having any special experience in the field of ethics. When asked about Rocks’s former position as CPS General Counsel, Claypool stated that he was aware Rocks had been General Counsel at CPS.
- Claypool was aware that Jenner & Block’s contract had been moved to pro bono. Claypool stated that this was done because of the OIG inquiry. Claypool noted that it was a mutual decision that he had made with Mehrberg. Claypool stated that the decision was made because Jenner & Block felt that they were already losing money by accepting CPS’s discounted hourly rate so they probably believed, “Hell, do it pro bono.”

During the second interview Claypool again denied asking Franczek to make changes to his invoice. He also denied ever giving documents to Franczek to change or having received the documents Franczek said he sent back.

Claypool even went so far as to deny ever being involved with such small billing matters and questioned why he would have seen the bills at all.

In his second interview, Claypool stated that the intent of the Code of Ethics was not to preclude the exercise of “contract management authority” by someone like Marmer when there was no possibility of unjust financial enrichment by Marmer.

Key statements from the second interview are included here:

- Claypool stated that he had a conversation with Franczek about the bill, but not about changing it. Claypool stated that, when he learned that Franczek

- had billed for his opinion he became “angry.” Claypool noted that it was a “controlled anger” because Claypool recognized that he would need to continue working with Franczek on the collective bargaining agreements. Claypool noted that he was therefore “not as blunt” as he wanted to be. Claypool stated that he did tell Franczek that he was upset because he was looking for something informal and that was not it.
- Claypool told the OIG that he was not going to break up the legal “all-star team” lightly. Claypool stated that his goal was to “work around” the Board policy, which did not make sense as applied here because the payments to Marmer were fixed.
 - Claypool noted that he did not ask Franczek to make himself the “legal arbiter” and conclude that there was a violation and then bill him for it. Claypool noted that he was not asking Franczek to withdraw the bill and was not threatening to “stiff him,” he was just expressing that he was upset. Claypool stated that this conversation occurred in Claypool’s office and was probably in August, but noted that he was not sure about that.
 - When asked if he recalled any conversations about the Board policy not only prohibiting conflicts of interest, but also prohibiting the appearance of conflicts or improprieties, Claypool stated that he is not sure what that would mean. Claypool then stated that he does not recall any conversations about that.
 - Claypool told the OIG that, “ultimately, at the end of the day, we decided this case was too important and this team was too important to allow any potential violation of a Board policy to interfere.” Claypool explained that this is why he ultimately asked Jenner & Block to take on the case for free, which it accepted. Claypool stated that there was “too much at stake” to break up the legal team, so Jenner & Block agreed to move forward pro bono and did not bill for services rendered after the end of June.⁴
 - Claypool stated that he “never” saw any bills from Franczek and noted that they “never” would have come to him. When asked why Franczek would

⁴ It does not appear that the pro bono arrangement was formalized until February 7, 2017, when Henning signed the third engagement letter (dated January 30, 2017) in this matter with Jenner & Block, which officially made the arrangement pro bono. The January 30, 2017, engagement letter does not state that it is retroactive to July 2016. However, a review of CPS Oracle billing records reflects that Jenner & Block stopped billing for attorney time at or about the end of June 2016. Whether the agreement was treated as retroactive or there simply was no work by Jenner & Block between July 2016 and February 2017 is unclear.

claim that Franczek received the original bill from him, Claypool stated, "He says I gave him this bill?" When the OIG confirmed that Franczek had said that, Claypool added, "First of all, I never received a bill in all of this, Jesus." Claypool then said that he never received a bill, let alone having received a bill and then giving it back to Franczek.

- Claypool then stated that Franczek knew he was "furious" about the bill because it was "damn obvious" that he wanted an informal opinion. So after Claypool learned that CPS had received a bill, he let Franczek know what he thought of it.
- Claypool stated that he would not ask a labor lawyer, with an economic interest in the case in question, to perform research and prepare a formal opinion. Claypool stated that he had let Franczek "have it, in a restrained way."
- Regarding the "For Forrest Claypool's Eyes Only" letter from Franczek, Claypool said the letter would have been "instantly" forwarded to the Law Department. When asked if this would happen even though the letter was addressed as it was, Claypool stated, "Yes," before noting "that is ridiculous." Claypool stated that he never would have received this "in a million years." Claypool stated that if his secretary told him there was a bill here from a law firm, he would say okay, then send it to Law where it belongs. Claypool stated that there is no way a bill would go to him, all bills would go through normal channels. Claypool stated that he is running a \$5.6 billion operation, adding "I'm not looking at freaking bills." Claypool stated that he had never seen the letter before his interview.
- Claypool stated that, as he said before, he does not get involved in billing and has never looked at a bill. Claypool stated that there is a proper place for bills and he "wouldn't waste a second" on one. Claypool stated that he expressed his anger to Franczek, but what Franczek did after that, he has "no clue."
- When asked if he believed Franczek was lying about receiving the signed copy of the bill from him, Claypool stated that he did not get a bill from Franczek and has never seen any bill from Franczek.
- The OIG asked Claypool how Franczek could have come to possess a copy of his invoice with the initials of personnel from the CPS Law Department. Claypool stated, "I have no idea." Claypool noted that he has no idea what the signatures represent. Claypool noted that, as he told Franczek, the bill did not comport with his "objective," because he did not want to break up the legal

team. Claypool stated that, after Franczek went further than Rocks by suggesting that Marmer was violating the Code of Ethics, he decided that he needed a formal written opinion. Claypool noted that within 30 to 40 days of the issue first being raised, the case was made pro bono.

- Claypool was asked if he met with President Clark about potential ethics issues surrounding Jenner & Block's engagement. Claypool stated that he met with President Clark and discussed it. Claypool stated that he cannot say for sure when, but noted that he obviously talked to President Clark about it because President Clark has the authority under state law to approve the contract, and not the CEO. Claypool stated that President Clark ultimately did approve, adding that President Clark knew Jenner & Block and knew Mehrberg and thought this was a good choice.
- When asked if Claypool informed President Clark of the opinions he received from Rocks and Franczek, Claypool stated that he does not recall whether he did or did not. Claypool stated that he does not want to say definitively. Claypool stated that he believes he "may have" but noted that he cannot say with absolute certainty. Claypool stated that, if he did inform Clark, it would have been in the context of the Board's official decision to hire Jenner & Block, and probably in the context of the decision that Jenner & Block would take the case pro bono. Claypool stated that the decision to take on the case pro bono was made in June 2016, and the last bill for services was in June 2016. When asked how he knew that Jenner stopped billing for services after June, Claypool stated that he talked to Mehrberg about that, and the CPS bills would reflect it.⁵
- When asked if he notified the Board about the opinions from Rocks and Franczek, Claypool stated that, if he did, it would have been through President Clark. Claypool did not address the Board about it separately.
- When asked if he talked to Marmer about asking Franczek for his opinion, Claypool stated that it was possible. Claypool noted that Marmer was the person who brought the concerns of the Ethics Committee to Claypool's attention. When asked if he told Marmer that it was "silly" to seek opinions from outside counsel, Claypool stated that, what was "silly, was that believing that the policy should be interpreted without considering the intent behind it." Claypool stated that the policy's "intent was to prohibit self-enrichment," and added that Marmer "wasn't getting money on the deal." Claypool noted

⁵ See footnote 4.

that “strict constructionism” does not take the policy’s intent into account. Claypool stated that he did not intend to break up the “most all-star legal team in CPS history” based upon this interpretation. Claypool added that, there should be no doubt about the “propriety” of Marmer supervising this case.

- Claypool said his conversation with Marmer was about asking Franczek in an informal capacity. Claypool said he asked Franczek out of convenience because he was there. Claypool noted that he never asked for a written opinion. Claypool stated that he was comfortable asking Franczek about it because he thought Franczek would give “objective, off-the-cuff advice,” and that he “naively” thought that Franczek would set aside his personal issues with losing the work.
- When asked if Claypool would have asked for a written opinion from Rocks or Franczek if their advice was that the policy did not apply, Claypool stated that he has been “candid” in discussing his goal to keep the “all-star team” working on the case. Claypool stated he was not “blowing up” the team based upon an ethics opinion from a labor lawyer with a conflict of interest. Claypool noted that he ultimately sought the formal opinion because the informal opinions raised the question. Claypool stated if Rocks said it was okay, then it would not be “necessary” for there to be any further effort. Claypool explained that this required further effort because there was a problem once Rocks gave his informal opinion. Claypool stated that it would have been “premature” to seek a written opinion from the beginning. Claypool added that he “never ever ever” would have asked Franczek for a written opinion on ethics.
- At the end of the interview, the OIG stated that the investigation was ongoing and that there was a need for confidentiality. The OIG asked Claypool to refrain from speaking with anyone about the content of his interview, so that any possible witnesses that the OIG might need to question were not given advanced notice of what the OIG might be asking. Claypool agreed not to speak with anyone, outside of his attorneys, about the content of his interview.

On November 17, 2017, three days after his second OIG interview, Claypool sent the IG a letter about his interviews. He released the letter to the press at the same time. In that letter, he stated that upon further reflection on the documents he had been shown relating to Franczek’s bill, he “does not recall asking for changes” but the documents shown to him “make it clear that [he] did do that.”

2. Marmer's Interviews

Marmer was interviewed by the OIG two times. Both times he was advised in writing that he had a duty to cooperate with the OIG under Board Rule 4-4(m). His advisories contained the same language as Claypool's (referenced above).

As stated above, Marmer told the OIG that there should be no question that he was "directing" Jenner & Block's work on the school funding litigation. And he further told the OIG that his decision to stay out of the financial side of the contract work did not impact his supervision of the substance and legal strategy.

Marmer also told the OIG that he and Claypool jointly decided to reach out to Rocks, Franczek and Eaton, in that order. Marmer said that Claypool raised concerns about asking Franczek for an opinion, fearing that Franczek might be sore about not being selected for the school funding litigation. Marmer said that he did not see that as an issue because this question was "not completely complicated."

Marmer recalled calling both Franczek and Rocks to ask them to provide their opinions, and he said he did not believe that Claypool called them or spoke with them about the issue.

After getting a second outside negative opinion from Franczek, Marmer and Claypool decided that the two outside opinions they received were not given by qualified people, and they needed to find a lawyer with appropriate "gravitas" to weigh in.

Marmer recalled speaking with Eaton about interpretations of the Code of Ethics during a call. Marmer said he and Eaton had a "meta discussion" about the Code of Ethics' presumed purpose and the assumed intent of the authors, specifically, prohibiting individuals from enriching themselves. Marmer noted that this discussion was about the "push and pull" of the arguments. Marmer explained that, in advocacy terms, you either think it is a violation because of the payments or you seek to understand the purpose of the code. Marmer believed that he discussed the history of a particular theory of interpretation and its main proponent, who was a professor at the University of Chicago. Marmer remembered that Eaton had specific questions about the Code but could not recall specifically what those questions were.

Eaton called Marmer and told him that he had concluded his inquiry and he believed it was fine. Eaton explained that when "all this blew over" Marmer should consider clarifying the Code of Ethics. Marmer had two phone calls with Eaton, he did not believe he saw him in person until later. When asked, Marmer stated that he could not recall whether he told Eaton about Rocks or Franczek.

Marmer told the OIG in his second interview that he recalled being unhappy when he saw Franczek's bill. Specifically, he was not pleased at the amount of the \$2,124 bill, and he thought it was unprofessional that Franczek had listed the references to the "CPS Code of Ethics" and the "ethics issues." Marmer said he talked to Claypool about the matter, instead of calling Franczek, because of concerns about damaging the broader working relationship with Franczek. Marmer said he is not sure if he handed documents to Claypool, but he might have. Marmer acknowledged that he approved the version of the invoice bearing the changes to the generic personnel matter.

J. CHANGES TO THE ETHICS COMMITTEE

During an unrelated routine review of press FOIA requests, the OIG became aware that CPS had reported changes to the Ethics Committee that reportedly became effective in January 2017. Specifically, on July 17, 2017, the *Sun-Times* had requested the membership of the Ethics Committee from July 1, 2015, forward. On July 25, 2017, CPS responded to the *Sun-Times* with the following:

The membership on the Ethics Committee from July 1, 2015 to present is follows:

July 1, 2015-December 31, 2016

Andra Gomberg, Senior Policy Advisor
Ruchi Verman [sic], Deputy General Counsel
Andrew Slobodien, Senior Assistant General Counsel

January 1, 2017-present

Andra Gomberg, Senior Policy Advisor
Ruchi Verma, Deputy General Counsel
Douglas Henning, First Deputy General Counsel
Andrell Holloway, Chief Auditor

Given the proximity in time to the IG's explanation of the key issues in this investigation during the closed door session of the December 7, 2016, Board meeting, the OIG explored the reasons behind the change. The OIG interviewed all of the people who were on the Ethics Committee both before and after the January 2017 change.

When the OIG asked Gomberg about the changes, she noted that she "really [did] not have a lot of information" about them. The first relevant conversation she had was with Ruchi Verma, who told Gomberg that Slobodien was being taken off the committee and Henning and Holloway were being added. Verma did not provide additional information. She was only giving Gomberg a heads up about the changes.

Gomberg went to Moriarty who said he had heard the same thing. Then, Slobodien told Gomberg that he was told that he was being taken off the committee.

At that time, Gomberg had not received any official notice of the changes, and had not been consulted about whether they would be appropriate. Gomberg approached Henning and asked if he wanted to talk about the changes. Henning told Gomberg he “meant to get around” to talking to her, but had not had the time. Gomberg told Henning that it made sense for him to be on the committee because, historically, the First Deputy General Counsel had been a member. James Bebley served as First Deputy General Counsel, and in that position was also a member of the Ethics Committee. Gomberg explained to Henning that she felt Holloway would be too busy to be an active participant.

Ruchi Verma told the OIG that she first learned of changes to the membership of the CPS Ethics Committee in early to mid-December, when Doug Henning told her that Andrew Slobodien was going to be moved off of the committee.

In his first OIG interview, Marmer said that he made the changes due to two issues with the committee. First was a “total lack” of diversity. Marmer felt that the “all white” membership was problematic. Marmer also noted that too many lawyers were on the committee, another diversity issue. Marmer wanted representatives from the stakeholder groups, such as talent.

Marmer’s other concern related to some decisions the committee made in the past, including an OIG case on a teacher who supervised students working for his aldermanic campaign for class credit. Marmer noted that the committee found no violation, but the OIG had found a breach of the teacher’s fiduciary duty to the Board. Marmer noted that fiduciary duty is part of the CPS Code of Ethics, so he did not understand the disconnect.

Marmer decided to replace Ruchi Verma with Gabby Brizuela, so that the committee had Hispanic representation. When asked why this change was not made, Marmer stated that he did not know that it had not been made. Marmer asked the OIG whether Brizuela was on the Ethics Committee, and investigators told him that they were not aware of Brizuela having a role on the committee. Marmer then asked if anyone from the Talent Office was on the committee, and was told that the OIG was not aware of a representative from Talent on the committee. Marmer said that was “a mistake.” Marmer was aware that Andrell Holloway had joined the committee, and noted that Holloway was also added to the Discipline Committee.

When asked if he had conversations with Claypool about the changes to the committee, Marmer stated that he might have. Marmer stated that he would not be

in a position to ask Andrell Holloway to join the committee, so he may have asked Claypool to extend the invitation to Holloway. Marmer stated that he “can’t imagine” that Holloway was asked to join the committee without at least talking to Claypool about it. Marmer explained that he wanted Holloway because it is good to have someone with his “standing” on the committee. Marmer believed that he talked to Henning first, because he was not sure who had the authority to appoint people to the Ethics Committee.

Marmer reiterated that he was surprised that no one from Talent, and no Hispanics were on the CPS Ethics Committee.

In his first interview, Claypool said he was aware that the makeup of the CPS Ethics Committee had changed. Claypool did not have conversations with anyone about who should be on the committee. Claypool did not have a conversation with Holloway about his joining the committee. Claypool believed it was “possible” that Marmer had briefed him on the changes, which he noted he was basing on the fact that Marmer is generally good about briefing Claypool on things.

Holloway said that his invitation to join the CPS Ethics Committee came via an email from Gomberg. Holloway explained that this email was a calendar invitation, not an actual email. Holloway told the OIG that he did not ask why he was invited to the committee, and has not had conversations about joining the committee with Claypool, Marmer, or anyone else in Claypool’s cabinet. Holloway stated that he called Gomberg after receiving the invitation and asked what it was for. Gomberg explained that it was a calendar invitation to the CPS Ethics Committee, so he told her he would be there.

Henning told the OIG that Marmer asked him to join the committee. Around the same time, Slobodien was moving to the Labor Department, so Henning transitioned into Slobodien’s role. He also said that Holloway joined the committee at the same time. Henning believed that Marmer’s reason for changing the makeup of the committee was “just to have a more senior presence.”

Slobodien’s statement to the OIG was consistent with what Gomberg and Verma related.

ANALYSIS

A. THE BASELINE VIOLATION: “CONTRACT MANAGEMENT AUTHORITY” NOT ALLOWED

A straightforward reading of the Code of Ethics shows that Ronald Marmer violated it by exercising “contract management authority” over legal work performed by his former employer, Jenner & Block, because he clearly has an ongoing “business relationship”— as defined by the code — as a result of an exit payment to him from the firm of just slightly over \$1,000,000, which is currently being paid through five annual installments of approximately \$200,000 each.

1. Marmer Was Exercising “Contract Management Authority”

The Code of Ethics defines “contract management authority” as:

[P]ersonal involvement in or direct supervisory responsibility for the formulation or execution of a contract. This includes, without limitation, the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms, and supervision of contract performance.

Marmer unabashedly told the OIG that there should be no question that he was “directing” Jenner & Block’s work on the school funding litigation. And he further told the OIG that his decision to stay out of the financial side of the contract work did not impact his supervision of the substance and legal strategy. He even implied that the situation was only natural when he noted that if he were still at Jenner & Block, he would have been the most senior partner on the matter. Thus, it is clear that Marmer was not only controlling the very heart of the work in question here — Jenner & Block’s substantive and strategic legal work under the contract — but he also believed his senior status as an attorney necessitated that result. By his own admission, Marmer clearly was exercising the essence of supervision of the performance of a contract for legal services.

Numerous emails confirm what Marmer said. Those emails show Marmer being involved in the selection of the Jenner & Block attorneys who would be performing the work. Emails also show Marmer making countless edits to drafts of the pleadings, and Jenner & Block attorneys sharing drafts with Marmer that were revised based on his comments.

Moriarty’s account in his OIG interviews is consistent with all of this. According to Moriarty, Marmer said he was acting as the “decision-maker” with regard to legal strategy and pleadings. Marmer also told Moriarty that he was reviewing “a lot” of the “pleadings and was not happy with the work product.” Moriarty took this to mean that Marmer was reviewing motions and pleadings and making sure that they looked the way he wanted.

Moreover, the accounts of the outside attorneys make it clear that Claypool wanted Marmer to be running the legal show, and that having Marmer be anything other than substantively involved was not an option.

2. A “Business Relationship” Exists To This Day

The Code of Ethics defines a “business relationship” as:

Any contract or other transaction between an Official or Employee and any other Person or entity which entitles the Official or Employee to compensation or payment in the amount of \$2,500 or more in a calendar year.

But under the Code of Ethics, a “business relationship” shall not include:

1. Any interest resulting from an Official or Employee’s Spouse, Domestic Partner, or Partner to a Civil Union’s independent occupation, profession, or employment;
2. Any ownership through purchase or inheritance of less than one percent of the shares (regardless of the value of or dividends on the shares) of a Corporation, corporate subsidiary, parent, or affiliate, when the shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, 15 U.S.C. §78 et al. as amended;
3. The authorized compensation paid to an Employee for his or her Board employment;
4. Any economic benefit provided equally to all members of the general public;
5. A time or demand deposit in a financial institution, e.g., certificate of deposit or bank account; or
6. An endowment, insurance policy, or annuity contract purchased from an insurance company.

It is undisputed that Marmer is in the middle of receiving five annual payments of approximately \$200,000 each, and those payments will end in 2018. A plain reading of the Code qualifies these payments as a contract or transaction which entitle Marmer to compensation or payment worth more than \$2,500 in a calendar year.

A word is in order about Eaton’s second (or supplemental) opinion letter of October 25, 2016. In that letter he asserts that the payments to Marmer were like an annuity contract purchased from an insurance company. Based on that comparison, he reasoned that there was no “business relationship” because the fixed annual payments were like an annuity. That reasoning is an obvious attempt to shoehorn Marmer’s payments into an exception. A plain reading of the exception does not allow for anything not purchased from an insurance company. The substantive

difference between an annuity purchased from an insurance company and Marmer's exit payments from his old employer is obvious. An annuity from an insurance company is a financial product available to any consumer in the public market with enough money to buy it. Marmer's severance agreement is directly tied to the unwinding of his ownership and management stake in Jenner & Block. Because his exit agreement with Jenner & Block did not arise from a publicly available purchase of a financial instrument from an insurance company, it cannot come close to fitting within the exception. Eaton's argument for the exception is so strained that it does not pass the straight face test, and almost certainly was not included in his June 10, 2016, letter for that exact reason.

3. Exercise Of "Contract Management Authority" By Marmer Was Prohibited

Under the Code, when an employee exercises "contract management authority" regarding any Board business or transaction, he or she shall not exercise such authority in connection with:

- A. Board business with an entity in which the Employee has an Economic Interest;
- B. Board business with a Person or entity with whom the Employee has an employment relationship; or
- C. Board business with a Person or entity with whom the Employee has a Business Relationship.

Again, a plain reading of the Code of Ethics squarely shows that Marmer's "business relationship" precluded him from exercising "contract management authority."

The OIG notes that Claypool told the OIG that the obvious intent of the Code of Ethics was that someone such as Marmer would not be precluded from exercising "contract management authority" when there was no chance of self-enrichment. The problem with that interpretation is that it does not square with a plain reading of the Code of Ethics. Moreover, Franczek, who has been retained by CPS for decades, says he told Claypool that the intent of the Code of Ethics was to prohibit not only improper enrichment but also the appearance of impropriety, which was why the "business relationship" clause was there. Moriarty told the OIG essentially the same thing, saying that the language was specifically added when Richard M. Daley was mayor to eliminate any "sniff" of self-dealing. Claypool reads an intent exception into the Code of Ethics that is not there — when there is at least some actual evidence that the intent of the Code of Ethics was exactly the opposite of what Claypool claims. Without any contrary evidence about its intent, there is no reason to read an

exception to the plain language of the Code of Ethics. Anything else is simply a reflection of what Claypool wishes the intent to be.

B. THE OPINIONS OF ROCKS AND FRANZCEK WERE NOT INFORMAL

As the OIG reported in June 2017, CPS released Eaton's June 10, 2016, opinion, but it did not mention the previous opinions of the Ethics Committee, Rocks or Franczek. In addition to merely not disclosing the other opinions to the public, the evidence shows that Claypool actively sought ways to downplay the depth and formality of the opinions of Rocks and Franczek. In his OIG interviews, Claypool contended that the opinions of Rocks and Franczek were somehow only informal and therefore should not be considered substantive expressions of researched opinions by experts. Claypool's claims in this regard are simply not true.

1. The Jackson Lewis Opinion

Regarding Rocks's opinion, Claypool told the OIG that he recalled only having a ten minute conversation with Rocks but recalled that Rocks thought the provision in the Code "probably" applied and prohibited Marmer's involvement. Claypool recalled that they discussed only one clause in the Code of Ethics, but he could not recall which one. At bottom, he told the OIG that he could not remember exactly what Rocks said to him.

Claypool's brief account is in stark contrast to Rocks's account, who says that he and his firm conducted and billed for \$7,080 for their 24 hours of work in this matter. In summary, Rocks told the OIG that he received an initial call from Claypool asking him to look into the issue; subsequently reviewed the Code of Ethics; called Claypool back, explaining that he needed to talk to Marmer; received permission to call Marmer; reviewed payment documents from Marmer; consulted with Marmer; had a long conversation or conversations with Gomberg; asked another attorney at the firm to draft a memo; and finally had a conference call with Claypool and two other attorneys from Rocks's firm.

On the critical conference call with three Jackson Lewis attorneys, Rocks says he walked Claypool through his analysis and conclusion that Marmer had a "business relationship" with Jenner & Block that alone would prohibit Marmer from exercising "contract management authority" over Jenner & Block. Rocks discussed whether the Board could assign a member of the Board to oversee Jenner & Block's work, including reviewing the pleadings and the invoices, or hire an outside attorney to do the same. Rocks says he told Claypool that under that scenario, Marmer might be able to have some input, but never control. Rocks explained to Claypool that Marmer could never be allowed to control Jenner & Block's behavior.

Rocks said that Claypool was “not interested” in any of the options Rocks presented. Rocks asked Claypool if he wanted any further work from Rocks and Claypool said no. Claypool also confirmed to the OIG that Rocks had probably offered to summarize his opinion in writing, but Claypool declined.

Claypool also suggests that Rocks’s opinion was “informal” because Rocks offered his opinion free of charge, pursuant to a previous agreement under which Claypool could generally “bounce stuff off” Rocks.

Rocks categorically denies that his firm’s work on the Marmer opinion was pro bono. Rocks told the OIG that he never understood that the work was a pro bono basis, and always understood it to be paid work. Of course, Rocks’s account is backed up by detailed billing records.

2. Franczek Radelet’s Opinion

Similarly, Franczek’s work was every bit as substantive and deliberate as Rocks’s. Franczek billed the Board for \$2,124 of work. Franczek, too, received a call from Claypool asking Franczek to review whether Ron Marmer was violating the Code of Ethics. At Claypool’s direction, Marmer sent documents to Franczek that outlined his exit payments from Jenner & Block. Franczek assigned two attorneys to draft a response to Claypool’s question. Franczek even told the OIG that his firm handled the issue with “great importance and urgency.” He and his team wrote a letter that concluded that Marmer had a “business relationship” with Jenner & Block and, therefore, could not exercise “contract management authority” over Jenner & Block’s work.

Franczek then says that he told Claypool in a face-to-face meeting, “I have an opinion letter here. You can look at it. I am willing to modify some parts of it. But I am not going to modify its conclusions.”

Franczek then told Claypool that he and two other attorneys at his firm were “one-hundred percent” in agreement that Marmer was violating the “contract management” authority provision in the CPS Code of Ethics by managing Jenner & Block’s work. Claypool responded by saying, “Ron did nothing wrong.” Claypool added that Marmer’s exit-payment agreement began before Marmer came to CPS, and was not an interest in the work that Jenner & Block was performing for CPS.

Franczek told Claypool that the Code of Ethics goes further than just asking if the person has an interest in the contract by also considering whether it merely appears that someone has an interest in a contract that he is managing. Franczek says that he told Claypool that Marmer could not manage the contract.

Franczek says that he suggested that if Claypool felt he needed Marmer to manage the contract, he could go to the Board and ask it to pass an exemption to the Code of Ethics to permit Marmer to manage Jenner & Block's work. Claypool told Franczek he could not do that, explaining, "I don't want this to go public." Franczek also says he reminded Claypool that he had a written opinion and asked Claypool if he wanted it or not. Claypool said no, and Franczek left the meeting.

Franczek's detailed account of his work is backed up by his billing record and the memo he and his team wrote. Of course, between June 2 and 4, 2016, Franczek and his partner Nicki Bazer billed \$2,124 for 7.2 hours of review, research, analysis and revisions to his opinion memorandum.

In contrast, Claypool says that he "ran it by" Franczek. Claypool also says he asked Franczek to take a look and let him know what Franczek thought the next time that they were together. Claypool told the OIG that when he had asked for Franczek's opinion, he did not expect to be billed for it. Claypool recalled only that Franczek told him that he had looked at the issue and thought that the Code of Ethics probably applied. Claypool described the conversation as short and less than ten minutes in duration.

3. Claypool's And Marmer's Characterizations Are Self-Serving

Based on the accounts and billing records provided by Rocks and Franczek, it is simply impossible to believe that Claypool and Marmer were just bouncing ideas off of Rocks and Franczek. Claypool would have the Board believe that both Rocks and Franczek misunderstood what Claypool had asked for when requesting services and mistakenly performed research and analysis —and billed for it. It is also impossible to believe that if Rocks or Franczek had told Claypool and Marmer what they wanted to hear, they would not have wanted that imprimatur in writing. Based on the amount of research that Rocks and Franczek performed — both regarding the nature of Marmer's annual payments and in comparing those against the Code of Ethics — it is clear that the opinions were not informal in any way. They each were studied and carefully crafted opinions based on the input of multiple attorneys. The fact that Claypool refused to accept written work product from them does not change that. In fact, by themselves, Claypool's refusals to get the negative opinions in writing is evidence that Claypool was deliberately trying to keep the negative opinions from taking on any significance or weight.

Even more problematic is Marmer's own account, which contradicts Claypool's in key regards. Marmer says that after they learned of the Ethics Committee's opinion, it was his own idea to seek an outside opinion over Claypool's objection that that idea was "silly." Marmer, however, told Claypool that he thought an outside opinion

would be best. Marmer said that he and Claypool decided to seek an opinion from Rocks, but he is not sure why they decided to do that. According to Marmer, Rocks thought the issue was “troubling” and he would not be “comfortable reaching a different conclusion” than Gomberg and Moriarty.

Marmer said that he then related Rocks’s opinion to Claypool. Claypool again asked why they were “bothering” with this. Marmer noted that they had received opinions from Franczek in the past, which he believed were not A+ work, but Marmer did not see that as an issue because this question was “not completely complicated.” According to Marmer, Claypool was concerned that Franczek would still be upset that Jenner & Block was selected over his firm. Marmer, however, dismissed Claypool’s concern and told Claypool that he did not think the issue was complicated.

Marmer called Franczek and asked him to look into it, as he had with Rocks. Marmer says he told Franczek that he could call Gomberg if he wanted, but reminded him that “this is not that complicated” of an issue. Marmer said that Franczek told Marmer that he did not think he would be in a position to give an opinion “like that.”

Strangely, Marmer recalled calling both Franczek and Rocks to ask them to provide their opinions, and he did not believe that Claypool called them or spoke with them about the issue. Thus, if Marmer’s account is to be believed, it was Marmer who thought he was in charge of finding an opinion as to his own culpability in the matter.

After getting a second outside negative opinion from Franczek on an issue that supposedly was “not completely complicated” when Marmer asked Franczek to look at it, Marmer suddenly decided that the two outside opinions they received were not given by qualified people. And they needed to find a lawyer with appropriate “gravitas” to weigh in. In fact, Marmer said that most of the attorneys who would be next on Marmer’s list after Franczek were either at Jenner & Block or experts who would be too expensive. (Perhaps recognizing the ridiculousness of that proposition, Marmer told the OIG that using Jenner & Block was not going to work.) In any event, Marmer’s quest for “gravitas” apparently only arose after the two attorneys he and Claypool decided to call were unable to give opinions approving Marmer’s actions.

In addition, the need for a significantly more qualified attorney came after Claypool became angry with Franczek for his opinion. Franczek told the OIG that Claypool appeared very upset with him when he delivered the news. And shortly after the meeting in which he delivered his opinion, Franczek emailed Moriarty that he was apparently off of Claypool’s “xmas card list.” That is consistent with Moriarty’s account of his conversation with Franczek in which Franczek said that Claypool was

not happy with Franczek and his opinion. Based on all of this, it appears that Claypool was expecting a positive opinion from Franczek.

The OIG notes that Rocks was formerly the CPS General Counsel. Franczek is a long-serving outside counsel, and former ISBE General Counsel Nicki Bazer contributed to Franczek's opinion. In addition to his labor work for CPS, Franczek told the OIG that he also played a key part in writing the part of the School Code that gave mayoral authority over the public schools. Thus, Rocks and Franczek are certainly credible lawyers who are well suited to opine on CPS's Code of Ethics. Accordingly, Claypool's attempts to sweep away their opinions as somehow unqualified fails on its face.

At any rate, it is clear that once the pile of negative opinions was growing quickly, Claypool and Marmer decided that a subject matter expert was necessary.

C. CLAYPOOL'S ALLEGATIONS OF PERSONAL ANIMUS BY FRANZCEK

The OIG notes that Claypool claims that he would never have relied on Franczek's opinion regarding Marmer because Franczek was personally angry over his firm not being selected to handle the school funding litigation. Claypool appears to be contending that Franczek could not be trusted to give an impartial opinion because of his personal animosity over not being selected.

In furtherance of this contention, Claypool told the OIG that shortly after he decided to retain Jenner & Block rather than Franczek Radelet, he saw a written communication from Franczek to Michael Rendina, the City of Chicago's then-Chief of Intergovernmental Affairs (or possibly to another senior city official), which was shared with Claypool. Claypool believes the communication was an e-mail to Rendina, but it could have been a text message.

Claypool could not recall the communication verbatim, but it was a protest and personal appeal from Franczek to the City official seeking to reverse Claypool's decision to cease using Franczek's firm. Claypool recalled that Franczek argued in the email that the only reason the case had been removed from him and given to Jenner & Block was that Claypool was a "buddy" (personal friend) of Mehrberg's.

The OIG contacted Franczek about the communication referenced by Claypool. Franczek produced the following email from him to City Corporation Counsel Stephen Patton:

From: Franczek, James C., Jr. [mailto:jcf@franczek.com]
Sent: Monday, March 14, 2016 1:20 PM
To: stephen.patton@cityofchicago.org
Subject: FW: Prior Lawsuits re Funding

Steve—

Appreciating that you are grappling with problems much more serious than CPS lawsuits, I was more than a little trepidatious about reaching out to you. However, upon reflection, I thought I should at least update you on recent developments regarding the CPS funding lawsuits.

On Friday, Forrest called me and advised that Jenner would be handling the CPS funding lawsuits. During the conversation, he mentioned that he had had conversations with you regarding the litigation. He didn't go into detail nor did he say he had discussed with you using Jenner. This morning I received the email below from Ron.

Obviously, I am disappointed that Forrest is not using my Firm for this litigation. I have an extraordinary team that is very knowledgeable about school funding, pensions and CPS. And although we may not be J&B, I also have some very good litigators. Also, as you know, we did a considerable amount of work on a draft complaint last year. In sum, there is no question in my mind that we have the expertise to handle this lawsuit.

However, I am also deeply appreciative that we do a considerable amount of work for CPS and I am grateful to Forrest for keeping us on for the negotiations with CTU and for the courtesy of letting me know about Jenner. I am also well aware that Jenner is one of the preeminent firms in the country and more than qualified to handle this litigation—apparently Jenner's point person is David DeBruin a former clerk to Justice Stevens and head of their complex litigation division in D.C., not exactly Christmas help. I also know that Ron and Forrest are personally very well acquainted with Jenner and its capabilities. We will, of course, cooperate fully and enthusiastically with Jenner on supplying the considerable background materials that we have.

I am not asking that you do or say anything, in fact I would prefer that you not. Given that Forrest mentioned you I wanted to make sure you were up to date on these important matters.

Thanks so very much Steve.

Jim

The OIG followed up with Franczek who stated that he was confident that the above email was his only communication to City Hall on the funding lawsuit. He noted to

the OIG that he asked Patton to not do or say anything, but he did express his confidence in his team and his disappointment in not getting the case.

The OIG showed the above email to Claypool at his second OIG interview. Claypool stated that it was not the email that previously had been shown to him because it did not contain the “buddy” reference.

Through Claypool’s attorney, the OIG asked Claypool to see if he could obtain a copy of the communication he thinks he saw. However, at the second OIG interview, Claypool told the OIG that he had made no efforts to contact Rendina or anyone else to locate the email.

The OIG has not contacted Rendina or anyone else at City Hall about searching for the communication referenced. Franczek has told the OIG that he has searched for any such communications and that search yielded only the single email above. And Franczek said he is confident that he sent no other communication to anyone at City Hall. Perhaps most important, Claypool has not contacted anyone about finding the email that he claims is so important.

Even presuming the communication exists, it would not materially impact the investigation. It is clear from what is known that Franczek would have preferred to have been chosen for the school funding litigation. Even more important, Marmer told the OIG that he decided to ask Franczek to look into the question of an ethics violation by him despite Claypool’s concerns that Franczek might be biased because he was not selected. Of course, Marmer told the OIG he reasoned that the question was ultimately not that complicated, so he was fine with asking Franczek. Thus, it is clear that Marmer and Claypool considered the risk and went ahead anyway. It is simply disingenuous to now claim that Franczek’s opinion should not be given any weight when a highly sophisticated lawyer like Marmer specifically and knowingly dismissed the risk in the first place.

D. THE BEGINNING OF THE COVER-UP — EATON’S OPINION

From the outset, the decision to seek a third opinion from Eaton was fraught with problems. Not the least of which was that — as the OIG uncovered — Eaton and Claypool have ties extending back to Claypool’s time as an undergrad, when Eaton was in law school and worked as a teacher’s assistant for a class that Claypool was in as an undergraduate. This, combined with the fact that Eaton was a past contributor to Claypool campaigns certainly raises the specter that Claypool was seeking an opinion from a sympathetic long-time friend, rather than a wholly independent third-party expert. For these reasons alone, they should have never reached out to Eaton.

The substance of the opinion that Eaton gave on June 10, 2016, is even more troubling because it failed to address or even raise the central critical issue of whether Marmer had a “business relationship” with Jenner & Block. The interviews of Claypool, Marmer and Eaton have failed to shed light on exactly what Eaton was told about the prior opinions. Eaton says that Claypool referenced two “oral opinions” that reflected there might be a problem, but he said that Claypool had not discussed any technical terms, such as “business relationship,” “economic interest” or “contract management authority.”

Additionally, Claypool and Eaton both told the OIG that Eaton was never asked to provide a letter only if it was favorable to Marmer, and that he was never asked to steer clear of the “business relationship” issue. The OIG believes that is implausible, but even if true, Eaton’s letter clearly took a generous approach by side stepping the issue altogether. For his part, Eaton says that he decided the “business relationship” issue was a non-issue, so he decided it did not need addressing. Even if that is true, Claypool should never have accepted the opinion in the first place. Instead, he should have sent it back to squarely address the issue that the six previous attorneys thought was dispositive.

When everything is considered together — Moriarty’s recollection that Marmer was concerned upon being told he was in violation, the rapid shopping for attorneys, the account of Franczek that Claypool refused to accept a written opinion, Claypool’s statement via his attorney that Rocks offered to summarize his opinion in writing but Claypool declined, Claypool’s use of private email to initially contact Eaton about a time sensitive matter, and the eventual acceptance of a written opinion that was silent on the key area of controversy — it is clear that Claypool was seeking exoneration and exoneration only. He was not interested in any opinion that did not clear Marmer. Whether Eaton issued his opinion within narrowly tailored confines outlined by Claypool and Marmer or Eaton somehow missed the mark on his own hardly matters. Claypool had no business accepting the letter, relying on it and distributing it to the press when it failed to address the central issue. That act alone constitutes a cover-up of the previous opinions.

Claypool, of course, told the OIG that he could not recall the exact issue that was key, saying only that “business relationship” might have come up in his discussions with Rocks and Franczek. To say the least, that strains belief. In any event, if what he says is true, it amounts to intentionally burying his head in the sand. Claypool would expect one to believe that he ultimately sought an opinion from Eaton only on the question of whether Marmer broadly was violating the Code of Ethics, when the combined advice of six attorneys was that it boiled down to the central question of whether there was a “business relationship.”

As the CEO much more is expected of Claypool. As the leader of an enterprise with a \$5.5 billion annual budget, Claypool cannot claim ignorance of details of the very legal opinions he was seeking on the topic of his own chief legal officer's ethical performance.

Overall, it is clear that Claypool and Marmer were interested in clearing Marmer. One can't help but wonder how many more attorneys they would have contacted if Eaton had not given them what they wanted.

E. CLAYPOOL'S AND MARMER'S ATTEMPTS TO BURY THE BILLS

A key part of Claypool's contention that the opinions of Rocks and Franczek were "informal" was that he had not expected to be billed for either of their opinions — that he was merely bouncing ideas off of them. He seems to be saying that the opinions were just quick and unreasoned shots from the hip that were formed with so little effort that they would be considered as pro bono or as a professional favor, because so little time was spent on them that a bill was not warranted. His statements on this point, however, do not match what Rocks and Franczek both told the OIG. They do not match the billing records. And they also do not match what Marmer told the OIG.

1. The Refusal To Pay The Jackson Lewis Bill

Rocks told the OIG that he assumed from the outset that this work would be billed time, and that he entered it that way into his billing system. Rocks told the OIG that his firm has done pro bono work for CPS in the past, and the firm is willing to donate work in the future, but he never treated this work as pro bono. As stated above, Claypool only remembers a couple of quick calls with Rocks about the Marmer opinion. Rocks recalls much more. Rocks told the OIG that his firm spent hours on the issue, doing research on the Code of Ethics, talking to Marmer, reviewing documents pertaining to Marmer's exit payments, drafting an internal memo (which was never given to CPS), and speaking with Gomberg.

Marmer told the OIG that he had asked Rocks to look into the matter but not to spend a lot of time on it. Marmer told the OIG that he is not sure whether he gave much thought to whether that meant billable time or pro bono time. In any event, Marmer said that he would not have been surprised by a small bill, as he thought the matter was straightforward.

Given the amount of work that Rocks's firm performed, Rocks's statements that he never understood the work to be for free, and Marmer's statements that he would not have been surprised by a bill, it is all but impossible to believe Claypool's statements that he understood the work to be pro bono and that he was just

bouncing an idea off of Rocks. In any event, it is clear that Rocks's opinion was formal and thought out — and Claypool knew that. The fact that Claypool somehow expected or hoped the work would be for free does not change that.

The even more troubling part of this is that once Claypool learned that Jackson Lewis had billed for the work, Claypool actually ensured that the Jackson Lewis bill was not paid. Henning told the OIG that he was at a meeting with Claypool and people from the press office, when Claypool learned of Rocks's bill. Claypool took the position at that meeting that he had never ordered the work, so CPS should not have paid for it. Henning told the OIG that, based on those statements by Claypool, he made sure that the Jackson Lewis invoice was not paid. Henning stated that he accomplished that by simply not approving the bill. Henning said that he thinks he probably would have called Rocks to tell him about that decision, but he is not sure about that. And Henning confirmed to the OIG that CPS records reflect that the bill was never paid.

During his second interview — and then only in response to direct questioning from the OIG — Claypool said that he had a conversation with Jackson Lewis attorney James Daley in which Claypool advised that CPS would not be paying the bill because he had never asked for the work. Claypool described his conversation with Daley as a “heads up.”

The OIG followed up with Jackson Lewis about its invoice. Strangely, despite the statements of Claypool and Henning about talking to Jackson Lewis about the bill, both Rocks and Daley told the OIG that no one ever told them that CPS was not paying the invoice.⁶

Although the exact date of Claypool's meeting with Henning and the press office is unknown, the inclusion of the press office's involvement almost certainly places the meeting sometime after the press reports started running in late July 2016. And

⁶ Ironically, Jackson Lewis considers the bill to have been paid. Rocks informed the OIG that it had received a \$16,402 payment from CPS on January 27, 2017, for another outstanding invoice of \$6,814.50. After satisfying that invoice, the outstanding surplus of \$9,587.50 in unapplied funds was credited to other outstanding invoices, which happened to include the work on the Marmer ethics question. The OIG then followed up with Henning about the apparent overpayment in January. Henning informed the OIG that for some unknown reason, CPS paid the “matter life to date” amount (\$16,402) for the invoice in question, when it apparently should have only paid the then-outstanding amount of (\$6,814.50). The end result of all of this is that, on cue from Claypool, CPS deliberately withheld payment for the Jackson Lewis bill, but due to a subsequent apparently mistaken overpayment from CPS, Jackson Lewis wound up crediting the work as being paid anyway.

Henning stated the meeting probably occurred after the OIG had started its investigation and was making document requests.

All of this suggests that Claypool's claim that the work was pro bono is nothing more than an after-the-fact rationalization. Claypool seems to be suggesting that since CPS refused to pay the bill it somehow became pro bono and — more important for purposes of this investigation — that the opinion somehow did not count. The major problem with this is that Claypool actively took steps to change the billing history in an apparent effort to minimize the importance of Rocks's opinion. Since the effort sprang out of conversations between Claypool and the communications office, it appears that the refusal to pay the bill was likely an attempt to cloud the true value of Jackson Lewis's work with a claim that it was somehow non-substantive and so brief in duration that it was expected to be written off by the attorneys.

Regardless, the main point is that none of this should have happened, especially once the press and the OIG were looking into the matter. Given that the timing of the refusal to pay must have come after there were questions about the situation in the press — and almost certainly after Claypool knew the OIG was investigating — the refusal to pay the bill amounts to an improper manipulation of the record during the course of the investigation, which was designed to hide or, at least, confuse the true picture of what happened.

2. Claypool Asked Franczek To Change His Billing Entries

Franczek unequivocally told the OIG that on August 25, 2016, Claypool returned Franczek's bill for the Marmer opinion and asked him to change the line entries that reflected work on the Code of Ethics. Franczek told the OIG that he changed his invoice to reflect work on a vague and unspecified "personnel matter." Franczek further told the OIG that once he made the changes, he sent a revised invoice back to Claypool via a messenger. Critically, Franczek said the cover letter was marked "For Forrest Claypool's Eyes Only." As outlined above, Franczek gave the OIG documents that support his account.

Franczek provided the OIG with copies of the documents that he says Claypool gave him. The summary page of the invoice bears the approval initials of CPS attorneys on every line except for the general matters line, under which Franczek's firm billed for its Marmer work. Franczek produced a marked-up copy of the original bill, which he says bears his own hand-written edits. He produced a copy of the "For Forrest Claypool's Eyes Only" cover letter and the revised copy of the invoice he submitted.

Of course, the revised version of the invoice that Franczek says he submitted is the one that was found on CPS's system by Henning in response to OIG inquiries. In

addition, the revised version of the invoice and the summary page (page 1 of the invoice) that Henning found on the system bears the approval initials of Ron Marmer.

Thus, it plainly appears that Franczek was given materials that had been in CPS's possession (the approval page and the original invoice). It also plainly appears that the changes that Franczek says he submitted made their way to the CPS system.

Marmer told the OIG in his second interview that he recalled being unhappy when he saw Franczek's bill. Specifically, he was not pleased at the amount of the \$2,124, and he thought it was essentially unprofessional that Franczek had listed the references to "CPS's Code of Ethics" and "ethics issues." Marmer said he talked to Claypool about the matter, instead of calling Franczek, because of concerns about damaging the business relationship with Franczek, as he still worked on CPS matters. Marmer said he is not sure if he handed documents to Claypool, but he might have. Marmer acknowledged that he signed the version of the invoice bearing the changes to the generic personnel matter.

Based on the documents provided by Franczek, Marmer's statements, and the documents available on the CPS system, Franczek is telling the truth.

The OIG further notes that Marmer's claim that he objected to Franczek's gross unprofessionalism in writing "CPS's Code of Ethics" and "ethics issues" on Franczek's bill appears to be nothing more than just another rosy, after-the-fact rationalization in this case. Critically, the bills from both Rocks's and Eaton's firms for their work on the same question have virtually identical entries to the ones Marmer found so objectionable. The invoices from Eaton's firm contain references to the "Board of Education's Code of Ethics" and "ethics analysis." And the invoice from Rocks's firm contains numerous references to "Board's Code of Ethics" and "Code of Ethics." Although the OIG acknowledges that Marmer might never have seen the bills from Eaton's and Rocks's firms, it is proof that Franczek's approach was not singular or somehow wildly unprofessional. Viewed within this context, Marmer's explanation is hollow.

F. CLAYPOOL'S REPEATED LIES TO THE OIG

1. Lies About Franczek's Billing Records

Despite Franczek's statements and the clear chain of documentary evidence in this matter, Claypool steadfastly denied in two separate OIG interviews that he ever asked Franczek to change line entries on the bill. He denied that he ever handed an invoice to Franczek. And he denied ever seeing the invoice that Franczek says he had hand-delivered "For Forrest Claypool's Eyes Only."

Prior to each of his interviews, Claypool was advised in writing that he had to cooperate with the OIG and tell the OIG the whole truth. He obviously did not.

At his first interview, Claypool told the OIG that he never received a bill from Franczek. He did not change that answer even after the OIG showed him a copy of the revised bill.

Claypool was interviewed a second time about his interactions with Franczek on November 14, 2017. By then, he had been on notice about this specific issue since October 26, 2017, when the OIG first asked him about the bill and showed him the final version of it. That means that Claypool had plenty of time to think about what he asked Franczek to do by the time of the second interview. Yet, when the OIG showed him the documents that were exchanged between him and Franczek, he emphatically denied it all. In fact, he suggested that such lowly billing matters were beneath him as the CEO, and said that he would never have seen such documents or been involved in such a discussion. Based on Franczek's statements and the clear document trail, Claypool was lying. When the timing of the changes he asked for is also considered, Claypool's denials to the OIG are obvious lies tied to a long scheme to hide and then minimize the previous negative opinions.

Other elements here strongly suggest that Claypool's statements to the OIG about Franczek's bills were lies. For example, the OIG asked Claypool to produce all relevant documents. He, however, never produced any of the Franczek billing documents, including the letter that Franczek sent to him. The OIG also asked Henning to search for all documents related to Franczek's bill. Henning reported to the OIG that he could not find the version of the documents that Claypool gave to Franczek, and that Oracle reflects only the changed version of the bill, which bears Marmer's approving initials. Thus, the first version of the bill — the one without Marmer's approval — is conspicuously absent from CPS's production. That strongly suggests that the first bill was destroyed after being replaced as part of an attempted cover up. If this had been a routine above-board edit, one would expect to find documentary evidence of the change process on the CPS side.

Of course, Claypool's own statements at his second OIG interview are inconsistent. He claimed that he would never have been involved in such a billing matter, but when questioned about whether he ever spoke to anyone at Jackson Lewis about its bill in the matter, he stated that he spoke to James Daley about the bill to give him a heads up that he would not be paying it because the work was not ordered by him. Thus, he admittedly took a similar effort to minimize the Jackson Lewis bill, so his claim that he would never have done something like that with Franczek's bill has no basis.

Based on the totality of the evidence, Claypool lied to the OIG at two separate interviews.

In his November 17, 2017, public letter just three days after his second interview, Claypool stated that, based on the documents he was shown, he must have asked for the changes, *but has no actual memory of asking for them*. That is beyond all belief. After Marmer raised concerns about the bill with him, Claypool requested the changes from Franczek on August 25, 2016, which was only 11 days after he published his letter defending his and Marmer's actions. And it was only a couple of weeks after the OIG had publicly confirmed its investigation — and Claypool responded by publicly saying he was “happy to walk [the OIG] through the process.” Thus, the public questions about Marmer clearly had his full professional attention. On top of all of this rests Claypool's previous categorical denials to the OIG about his involvement in the changes. Measured against this body of evidence, it is impossible to believe Claypool's sudden lack of memory about ordering the changes.

His letter amounts to nothing more than a ham-fisted spin attempt. With a few days to think about his lies to the OIG, Claypool must have realized that he was likely facing a termination recommendation, and he simply decided to try and “get ahead” of the OIG's final report.

In addition, Claypool's public release of his letter to the IG represented a failure to cooperate with the OIG. At the end of his second interview, the OIG had specifically told Claypool and his attorneys that the OIG might need to speak with other witnesses about the billing records that the OIG had shown to, and discussed with, Claypool. The OIG said that confidentiality was required to ensure witness integrity.

Despite that, Claypool sent Marmer a warning about what the OIG was asking. In an email to Marmer on the same afternoon that he released his letter to the press, Claypool told Marmer that, although he knew that he and Marmer should not be communicating about the OIG's investigation, he still wanted to give Marmer, as Claypool wrote, a “heads up” about the letter. Claypool conveniently concluded in his email that, since the letter was public, there was no problem if Marmer saw it. Thus, Claypool failed to cooperate with the OIG by refusing to honor the OIG's request to keep the OIG interviews confidential while the investigation was pending.

In any event, the OIG had already scheduled a second interview with Marmer when Claypool released his letter, so the actual effect was to improperly give Marmer a “heads up” that the OIG was asking about Franczek's bill — and, more importantly, that the OIG possessed hard-document proof of exactly what had happened — before the OIG was able to re-interview Marmer about it.

2. Lies About What Franczek Said About Franczek's Written Opinion

Claypool also lied to the OIG when he stated that he was not aware that Franczek had written an opinion on the matter when he and Franczek spoke about Franczek's opinion. As stated above, Claypool told the OIG that someone told him much later that Franczek had written an opinion, which he described as "enraging." Claypool told him that the news that Franczek had written an opinion was a complete surprise to him.

Of course, Franczek says that when he and Claypool spoke at 11:30 a.m. on June 6, 2016, he had a copy of the memorandum he prepared with him — and that he tried to hand the memorandum to Claypool, but Claypool refused to accept it. Moriarty's statement to the OIG that Franczek talked to him right after Franczek's meeting with Claypool backs that up. Specifically, Moriarty recalls that Franczek said that Claypool was angry and refused to accept the memorandum. Consistent with that account is an email from Franczek to Moriarty sent shortly after the meeting between Claypool and Franczek which reads, "I think I am off the xmas card list."

In addition, an email shows that a draft of Franczek's memo was sent to Moriarty by Franczek at 8:57 a.m. on June 6, 2016. In that email, Franczek asked Moriarty to let him know if there was anything he "violently disagree[d]" with because he was meeting with Claypool at 11:30. That email, by itself, strongly suggests that Franczek was planning to give the opinion memo to Claypool at the meeting.

When the emails, Franczek's account, Moriarty's account, Franczek's opinion letter, Claypool's anger with Franczek, and Claypool's other proven lies are considered together, it is clear that Claypool deliberately refused to accept Franczek's opinion — which he was not happy about — and lied about it to the OIG.

G. MORE DEFERENCE SHOULD HAVE BEEN GIVEN TO THE ETHICS OFFICER

Under the Code of Ethics, the Ethics Advisor "shall provide guidance to the Officials and Employees of the Board concerning the interpretation of and compliance with the provisions of th[e] Code of Ethics and State ethics laws." Although the Code of Ethics does not state that the opinion of the Ethics Advisor is binding, the fact that Gomberg is charged with advising employees of the Board on ethics matters, clearly means that her opinion cannot simply be disregarded. All the more so in this case, when the other two members of the longstanding Ethics Committee and Gomberg's supervisor, Joe Moriarty, all unanimously agreed with her.

In light of the Ethics Advisor's clear standing to advise on the matter, Claypool and Marmer should have taken her advice more seriously, and they should have worked with her on an acceptable solution. According to Marmer, however, Claypool

dismissed the Ethics Officer's opinion — Claypool told the OIG that he did not even know who she was at the time — and questioned why they were addressing her concerns. Of course, they essentially wound up ignoring her by hunting for a favorable opinion that put them in the clear.

H. CLAYPOOL'S LACK OF CANDOR WITH THE BOARD

Throughout all of the events at issue here, Claypool has had a fiduciary duty to the Board to act in the "best interests of the Board and the public by avoiding conflicts of interests and acting in good faith." (*See* Code of Ethics §§ II(R) and IV.)

When Gomberg and Moriarty first told Marmer that the Ethics Committee had concluded that Marmer could not exercise "contract management authority" over Jenner & Block's work, they should have honestly owned up to the situation and raised the matter with the Board. However, instead of acknowledging the earnest and studied opinion of the Ethics Committee, Claypool decided to look for an outside opinion. If Claypool disagreed with the committee, the far better course of action would have been to inform the Board in an open and honest fashion about the problem.

Franczek says that he told Claypool that very thing by explaining that if Marmer was to be involved, then Claypool should seek a waiver from the Board. Franczek's statements are consistent with the advice given in his June 6, 2016, memo. Franczek says that Claypool rejected that option because he did not want the matter going public.

It also appears that Claypool and Eaton held back key information from Frank Clark, including the extent of Marmer's involvement. President Clark told the OIG that he was "certainly aware" that there was "an issue" with Marmer's potential interactions with Jenner & Block. According to President Clark, however, Claypool told Clark that he had received a legal opinion that stated that it was appropriate for the Board to retain the firm. There was apparently no mention of the problem opinions at the early stage. President Clark also said that Claypool told him that Marmer would not have any "involvement" with Jenner & Block. President Clark told the OIG he understood from Claypool that Marmer would not be involved in managing the case, and that one of his deputies would take over. President Clark added that his understanding was that Marmer was "hands off" as to the case. Of course, that is not accurate. As discussed above, Marmer was supervising everything from the big strategy down to the minor details.

It also appears that, when Eaton was retained to represent the Board in the OIG investigation, he did not tell Clark about the previous opinions — although he had by

then learned of the Ethics Committee's opinion and that two outside attorneys had also weighed in with negative opinions. President Clark stated that Eaton "vigorously defended" his written opinion. When Clark asked Eaton if there were vulnerabilities that Clark was not aware of, Eaton replied that he believed CPS was "fine." President Clark also said that Eaton "confirmed" Clark's understanding that Marmer was "off" of the case, and that a deputy was "managing" the case. At that meeting, Clark decided to retain Eaton to represent the Board in the OIG investigation.

Critically, President Clark told the OIG that he believes he did not learn about the previous negative opinions by outside counsel and the Ethics Committee until a later meeting that probably occurred weeks after Eaton was hired to represent the Board in the OIG investigation.

Eaton told the OIG that he explained to President Clark both his June 10, 2016, opinion and the facts as he understood them. He never expressly stated that he told President Clark about the string of negative previous opinions, which appears to be consistent with President Clark's recollection.

After considering this long pattern of behavior, the OIG has concluded that Claypool has not acted in good faith toward the Board.

I. CHANGES TO THE ETHICS COMMITTEE APPEAR RETALIATORY AND CONTROLLING

There are also obvious problems with the changes to the Ethics Committee made in December 2016. As discussed above, Marmer ordered changes to the Ethics Committee. This is problematic because, while Marmer was under investigation by the OIG for an issue that squarely involved Marmer's disagreement with the Ethics Committee, he added Holloway and Henning to the Ethics Committee, and he removed Andrew Slobodien from the committee. Based on interviews with Andra Gomberg and the rest of the current and former members of the committee, Marmer took that action without consulting with Gomberg, who is the Ethics Advisor. Essentially, the members of the committee all reported that they received word of the changes, but were not involved in discussion about those changes. They were just presented with a *fait accompli*.

Marmer told the OIG that he made the changes because he felt the committee was not racially diverse enough, and it did not have as a member anyone who was not a lawyer.

The resounding problem with this is that (1) there was a complete lack of substantive discussion with Gomberg or anyone else on the committee; and (2) two high-level people who had worked for Claypool at CTA and who now work at CPS

and report directly to either Claypool (Holloway) or Marmer (Henning) were the ones added to the committee.

The disparities with Marmer's statement only add to the perception problems. For example, at his interview Marmer thought that Hispanic attorney Gabby Brizuela had been added to the committee, as well as someone from the Talent Department. Of course, Brizuela is not on the committee, and nobody from the Talent Department is either. It is unclear why those changes did not happen if Marmer wanted them. Significantly, none of the Ethics Committee members were able to shed any light on the matter. Additionally, Marmer told the OIG that he would not have added someone at Holloway's level to the committee without discussing it with Claypool. However, when the OIG asked Claypool about that, he said that he did not recall that happening, but said that Marmer probably kept him informed. Claypool denied being involved in the decision to change the makeup of the Ethics Committee.

In the end, it is the timing of the changes that is most problematic. Committee member Ruchi Verma credibly says the changes happened in either early or mid-December 2016. That means that changes almost certainly happened in the immediate wake of the IG's public statements at the Board meeting on December 7, 2016, about how the investigation was being obstructed. In addition to his public statements, the IG spoke to the Board in closed session that same day, and briefed the Board about the previous negative opinion of the Ethics Committee. Of course, the IG asked Claypool to leave the closed session meeting with the Board so the IG could brief the Board members in private, but Claypool refused. Thus, Claypool clearly knew that the opinion of the Ethics Committee was a central issue in the investigation. The OIG cannot eliminate the strong possibility that the real motive for the changes was to create an Ethics Committee more deferential to Claypool and Marmer. Even assuming that the negative opinion of the Ethics Committee played no role in the changes to the committee's makeup, the appearance is horrible. The timing of the changes and the lack of previous discussion with Gombert look like the changes were retaliatory and designed to lessen the independence of the committee. That alone should have warranted delaying any changes until after the OIG investigation was complete.

J. THE ETHICS COMMITTEE NEEDS TO BE STRENGTHENED AND DEFINED

Based on what the OIG learned in this investigation, the role and function of the Ethics Committee needs to be strengthened and defined. At a minimum, the Ethics Committee should be formed with the consent of the Board. The Board should approve what the membership make-up of the committee should be. Appointments to the committee should be publicly approved at Board meetings. In addition, the

Board should appoint a group to research the best practices for operating an Ethics Committee, and the group should recommend new rules based on that research. For instance, the rules should specify what happens when there is a disagreement about the interpretation of the Code of Ethics between the Ethics Committee and a CPS employee, or even a Board member. Once the exploratory work is done, the OIG expects that the Board would be able to incorporate the appropriate changes into the Code of Ethics so as to avoid situations like the one that led to this investigation. The OIG respectfully requests to be included in the process of developing and implementing those changes.

K. OTHER LINGERING QUESTIONS AND ISSUES

1. A Note On The Obstruction Referenced In The Interim Summary Report

In its June 23, 2017, Interim Summary Report, the OIG reported that the investigation was being obstructed by the Board and Eaton. Specifically, the OIG stated that the Board, via Eaton, was unnecessarily and improperly asserting the attorney-client and work-product privileges over, among other things, Eaton's own communications, the consultations with Rocks and Franczek, and Moriarty's opinion. In addition, the OIG stated that it considered Eaton to be at least a material witness in this investigation — with a possibility that he could turn into a subject. The OIG further stated that Eaton had an existing conflict of interest based on an obvious self-interest in defending his own actions, which precluded him from representing the Board in this investigation.

The OIG recommended that the Board cease asserting privileges against the OIG and grant it full access to all necessary information and personnel. The OIG also recommended that the Board immediately terminate Eaton's representation in this investigation.

Based on the OIG's Interim Summary Report, Eaton's representation was terminated, and a limited waiver of the attorney-client and work-product privileges was worked out. Thus, the obstruction stopped and the investigation resumed. Since the assertion of the privileges stopped, the OIG has chosen to treat the obstruction matter as resolved. Although the privileges were first asserted by Eaton, the Board subsequently approved of those assertions. President Clark told the IG at one point that he thought there were serious and legitimate concerns about Board liability if the privileges were waived. Thus, because the Board eventually approved of the privilege assertions based on its own legal concerns, the OIG has not expended the effort to determine the exact extent to which Eaton's involvement in the attorney-privilege assertions was improper, if any. The OIG has taken the view that because Eaton's representation ceased and the OIG was eventually allowed all the access it

needed to complete the investigation, the obstruction issue has fallen away and is moot.

2. The Extent Of Marmer's Involvement In Hiring Jenner & Block

Claypool and Marmer have stated that it was Claypool's decision to hire Jenner & Block. The OIG is aware of no evidence that ultimately refutes their claim. Nonetheless, some evidence shows that Marmer was involved in the decision-making process. For example, Marmer told the OIG that he decided that Franczek's firm was not the right one to handle the school funding litigation. Of course, that decision gave rise to the question of who would replace Franczek Radelet. Marmer says that was discussed at a City Hall meeting that he and Claypool attended with City of Chicago Corporation Counsel Steve Patton and another City attorney. Marmer told the OIG that Jenner & Block was on a relatively short list of big firms that were discussed. Marmer even joked that Patton should call his old firm, Kirkland & Ellis. Marmer also said that Patton returned the jab by suggesting that Marmer call Jenner & Block. Marmer told the OIG that he responded by saying that Jenner & Block would not be interested in what would be essentially pro bono work. Marmer told the OIG that he did not know what happened after the meeting until Claypool told him that he was retaining Jenner & Block.

Although Marmer says that other firms were discussed at the City Hall meeting, Claypool told the OIG that he was not aware of anyone reaching out to other firms. Thus, based on what is known, it does not appear that Claypool or anyone else ever contacted other firms to see who might be willing to do the work. At a minimum, Marmer was at a high-level meeting where Jenner & Block was discussed, and there appears to have been no real effort to find another firm.

On top of that, Claypool and Marmer told the OIG that Henning was handling the financial side of the arrangement with Jenner & Block and that Marmer had been screened off. However, in response to the OIG's document requests in this case, Marmer produced a marked-up draft of the initial agreement between Jenner & Block and the Board — the version that included the full-fees-if-successful clause. The OIG determined that Henning had made hand edits to the document and sent them to Randy Mehrberg at Jenner & Block and cc'd Marmer.

When the OIG asked Marmer about the draft, he said that he could not explain why he had it and knew nothing about it. When the OIG asked Henning about the draft, he said that he was simply keeping Marmer in the loop about the agreement. He said that he was aware that Marmer had been screened off, but he did not believe that meant that Marmer could not know that he was sending revisions and exactly what they were.

Based on what is known, it is clear that Marmer attended at least one high-level meeting when the topic of which firm was going to be hired for the school funding litigation was discussed, and he was kept in the loop by Henning on the drafting of the engagement letter. However, even if there was more substantial involvement by Marmer on the financial or hiring side of the arrangement with Jenner & Block, it would not change the outcome here. As Marmer fully admitted, he was in charge of the work of Jenner & Block, which fully amounts to exercising “contract management authority.” Thus, he was already fully prevented under the Code of Ethics from doing even what he was doing. Ultimately, Marmer did not have a financial interest in the work, so the question of his exact involvement on the financial side is not as important as it otherwise might be. However, the discrepancies between Claypool’s statements that the decision was his (and the Board’s) and Marmer’s admitted input further cast doubt over Claypool’s and Marmer’s accounts, and suggest that they be taken with more than a grain of salt.

3. The Changing Payment Arrangement With Jenner & Block

The OIG also considered the changing terms by which Jenner & Block was to be paid for its work on the school funding litigation. As discussed above, Jenner & Block was originally going to be paid the standard government rate of \$295 an hour, but if the firm was successful, it would be paid its far higher usual rates. That was changed in June 2016 to just the standard government rate. After the OIG initiated its investigation, Jenner & Block agreed to work on a pro bono basis.

The first arrangement, of course, is highly unusual because it included the full-rates-if-successful clause, which raises the question of whether there could have been some scheme in play by which someone was going to receive an unjust enrichment if the suit was successful. The OIG asked Claypool, President Clark and Doug Henning about the clause. The statements of those three were generally that Jenner & Block would basically be losing money when billing at the government rate. The success clause was seen as a way to incentivize the work. The OIG also asked Marmer about the clause. He denied being involved in a discussion about the clause. He, however, said that the clause amounted to a careless mistake on the part of Jenner & Block, in that it was basically unnecessary. According to Marmer, Jenner & Block would have been entitled to its full attorney’s fees under the civil rights statute if they were successful. He even suggested that such a mistake would not have happened if he were at Jenner & Block.

In the end, the OIG determined that the possibility of unjust enrichment based on the success-fee clause does not warrant further investigation, based on the evidence available. Importantly, there is no hint or suggestion of any sort of kickback scheme

by which anyone at CPS or the Board would have received any portion of the success fees. The OIG also considered that Jenner & Block, of course, would have benefited enormously if it had been successful, but that was always a large if. Although the OIG cannot put an exact percentage on the odds for success when the lawsuit was initiated, the OIG generally believes that the odds of success were generally low. Of course, time has borne that out, as the suit was dismissed with leave to refile by the circuit court, and it has since been withdrawn altogether by the Board. Thus, from what is known now, the OIG has judged that the success-fee clause was generally an attempt to incentivize what would otherwise be a costly undertaking for Jenner & Block, and the chances of success were too low overall for the contingent fee award to be considered an improper gift to Jenner & Block.

4. Randall Mehrberg

The OIG also considered whether Randall Mehrberg's involvement in the case warrants further investigation. The OIG's investigation shows that Mehrberg apparently returned to Jenner & Block (after previous stints there years ago) at the same time that Jenner & Block began working on the school funding litigation. The timing of his return to Jenner & Block raises eyebrows because of his ties to Claypool. As is publicly known, Mehrberg formerly worked as the Park District General Counsel under Claypool's tenure as Park District Superintendent. And as Claypool told the OIG in his first interview, Mehrberg had recently returned to Chicago, and was working on a pro bono basis at City Hall. Public records further show that Mehrberg has contributed \$30,500 to Claypool's past political campaigns.

Thus, Mehrberg's return to Jenner & Block arguably raises questions of exactly why he returned there and the extent to which this was all coordinated beforehand with Claypool. However, as stated above, the OIG does not have any indication that there was a kickback scheme or a quid pro quo arrangement between Claypool and Mehrberg, or anyone else.

Given that the issue of Mehrberg's return to Jenner & Block was not a central issue in the OIG investigation, coupled with the pressing need to complete the publicly known investigation into the critical issues surrounding the ethical violation by Marmer, the OIG is making this report now without having probed deeply into every aspect of the Claypool/Mehrberg connection. And the OIG considers the Claypool/Mehrberg connection to be a separate matter. Because the OIG is recommending termination against Claypool based on serious and concrete violations that are known, the OIG has determined that further investigation of the Claypool/Mehrberg connection is not warranted at this time — especially given the limited resources of this office.

APPENDIX OF KEY DOCUMENTS

For reference, key documents have been included at the end of this report as the **Appendix**.

Table of Key Documents

| Group 1 | Written Ethics Opinions And Related |
|----------------|--|
| 1-A | June 6, 2016, Franczek Opinion Letter |
| 1-B | June 6, 2016, Emails Between Franczek and Moriarty |
| 1-C | June 10, 2016, Eaton Opinion Letter |
| 1-D | October 25, 2016, Eaton Opinion Letter |
| Group 2 | Franczek's Invoice and Related |
| 2-A | Original Invoice Returned to Franczek by Claypool |
| 2-B | Copy of Original Invoice with Franczek's Hand Edits |
| 2-C | Revised Invoice Returned by Franczek with the "For Forrest Claypool's Eyes Only" Letter |
| 2-D | Invoice Found on CPS's Oracle System and Approved by Marmer |
| Group 3 | Claypool's Letter To The IG And Related |
| 3-A | Claypool's Email to Marmer Regarding His Public Letter to the IG |
| 3-B | Claypool's Public Letter to the IG |

GROUP 1

FRANCZEK RADELET

ATTORNEYS & COUNSELORS

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DRAFT

STRICTLY CONFIDENTIAL AND NOT FOR DISTRIBUTION

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

TO: Forrest Claypool

FROM: James C. Franczek, Jr.

DATE: June 6, 2016

RE: Ronald Marmer and Jenner & Block Oversight

Background

CPS currently has a contract with the law firm of Jenner & Block to represent CPS in litigation regarding school funding. The law firm was retained through CEO Forrest Claypool and all of the invoicing and payments for Jenner & Block's work goes through Mr. Claypool's office. The substantive legal work performed by Jenner & Block is overseen by CPS General Counsel Ronald Marmer. Mr. Marmer was formerly a partner at Jenner & Block and, as part of his departure package from the firm, Jenner & Block pays him \$1 million in 5 annual installments of \$200,000. Those payments began last year and are ongoing pursuant to the terms of the agreement.

Questions presented: Is Mr. Marmer's oversight of the substantive legal work of Jenner & Block prohibited by CPS's Code of Ethics? If so, what steps can CPS take to remedy this situation?

Answer: Because Mr. Marmer has a "business relationship" as defined by the Code of Ethics, Mr. Marmer's oversight of the substantive legal work of Jenner & Block is prohibited by Article X (C) of the Code of Ethics. Suggestions for remediation are provided at the conclusion of this memorandum. He is not in violation of any other provision of the Code of Ethics.

It is important to note at the outset that the CPS Code of Ethics prohibits activities that would violate state law and, as is the Board's right, the policy goes beyond state law to prohibit certain conduct that could raise the appearance of impropriety. The Board's Code of Ethics is very strictly written without any consideration for unique facts and circumstances which may warrant a more nuanced approach and analysis.

June 6, 2016

- In this case, no improper behavior has occurred. Mr. Marmer had no involvement in retaining Jenner & Block nor does he have any oversight of payment to them. More importantly, Mr. Marmer's departure package was provided as part of his partnership separation from the firm and was not provided in exchange for promising or providing CPS work to Jenner & Block. Further, Mr. Marmer's payments will continue regardless of whether or not CPS retains Jenner & Block.
- Moreover, Mr. Marmer's oversight of the CPS work is in the best interest of CPS given Mr. Marmer's particular areas of expertise, as well as his understanding of the substantive issues being handled by Jenner & Block.

Code of Ethics: Provisions at Issue

There are four (4) provisions of the Code of Ethics that are arguably applicable. Each are set out below with analysis of whether or not the provision is prohibitive of the conduct at issue here.

1. Article VII: Economic Interest in Contracts and Board Work – Employees**Provision:**

A. No Employee shall have an Economic Interest in any of the following regardless of expense, price, or consideration:

1. Contracts with the Board;
2. Work or business of the Board; or
3. Sale of any article to the Board either paid with funds belonging to or administered by the Board, or authorized by action of the Board.

"Economic Interest" is defined by the Code as follows:

"Economic Interest" means that an Official or Employee or his or her Spouse, Domestic Partner, Partner to a Civil Union, Relative, or a Member of his or her Household:

1. Is the proprietor of a sole proprietorship;
2. Owns a five percent or greater interest in any class of stock of a Corporation by vote or value; partnership; form; enterprise; franchise; organization; holding company; joint stock company; receivership; trust (or beneficial interest in a trust); or any Legal Entity organized for profit;
3. Is an officer or director of a For-Profit Corporation, general or managing partner of a partnership, or the trustee of a trust;

June 6, 2016

4. Owns any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; or

5. Owns any interest with a cost or present value of \$5,000 or more.

Analysis:

“Economic Interest” is defined broadly by the Code of Ethics, however, it is clear from this provision that an employee must have an interest in a contract, work or sale to the Board and Mr. Marmer does not currently possess any such interest. Mr. Marmer has no interest in the contract that Jenner & Block has with the Board and his payments are not impacted in any way by the Board’s retention of Jenner & Block for legal work. Therefore, this provision does not prohibit Mr. Marmer’s current oversight of Jenner & Block’s work.

2. Article X (A): Contract Management Authority**Provision:**

An Employee who exercises Contract Management Authority regarding any Board business or transaction shall not exercise such authority in connection with:

A. Board business with an entity in which the Employee has an Economic Interest.

“Contract Management Authority” is defined as personal involvement in or direct supervisory responsibility for the formulation or execution of a contract. This includes, without limitation, the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms, and supervision of contract performance.

Analysis:

Mr. Marmer’s supervision of the Jenner & Block work does constitute “Contract Management Authority” as defined by the Code of Ethics. While Mr. Marmer does not have any oversight over the negotiations of the hourly rate or the payments to Jenner & Block, he does supervise the contract performance.

The question is, whether for the purposes of this provision, Mr. Marmer has an Economic Interest in Jenner & Block such that his oversight would be prohibited. While Mr. Marmer does receive more than \$2,500 from Jenner & Block per year, he does not “own” an interest in Jenner & Block. Rather, his payments came upon his relinquishment of his partnership or ownership interest in the firm. Therefore, his mere receipt of payments does not meet the definition of “Economic Interest” as defined by the Code. Therefore, this provision does not prohibit Mr. Marmer’s current oversight of Jenner & Block’s work.

3. XII (I): Gifts, Loans, and Favors**Provision:**

No Official or Employee shall accept a payment, gratuity, or offer of employment from a contractor seeking to secure an award from the Board, or a subcontractor seeking to secure an award or order from a Board prime contractor or another subcontractor.

Analysis:

This provision was clearly intended to prevent a quid pro quo – an employee accepts a gift or payment from a company actively seeking a contract with the Board in exchange for helping the contractor secure the work. There are no such facts present here. However, the language of this provision may technically apply because Jenner & Block did secure a contract with the Board to handle the funding litigation while Mr. Marmer was accepting payments from them. The stronger argument, against the application of this provision, is that Jenner & Block never “sought” a contract with the Board; rather CEO Forrest Claypool approached the firm and engaged its services. Given the language and clear intent of this provision, this should not prohibit Mr. Marmer’s current oversight of Jenner & Block’s work.

4. X (C): Contract Management Authority**Provision:**

An Employee who exercises Contract Management Authority regarding any Board business or transaction shall not exercise such authority in connection with:

C. Board business with a Person or entity with whom the Employee has a Business Relationship.

“Business Relationship” is defined as any contract or other transaction between an Official or Employee and any other Person or entity which entitles the Official or Employee to compensation or payment in the amount of \$2,500 or more in a calendar year.

Analysis:

As discussed above, Mr. Marmer’s supervision of the substantive work of Jenner & Block constitutes “Contract Management Authority” as defined by the Code. Mr. Marmer has a “Business Relationship” with Jenner & Block as defined by the Code, because he is entitled, through his departure agreement, to a payment of more than \$2,500 in a year. Therefore, Mr. Marmer’s management of the Jenner & Block work is very clearly prohibited by this provision.

June 6, 2016

Resolution

There are five (5) possible resolutions to Mr. Marmer's current work being prohibited by the Code of Ethics:

1. **Remove Contract Management Authority from Mr. Marmer.** If CPS removes the oversight of the substantive work of Jenner & Block from Mr. Marmer and gives it to another member of the CPS legal staff or another senior administrator, the issue would be fully resolved.
2. **The Board No Longer Retains Jenner & Block.** If the Board removes Jenner & Block as counsel on the school funding litigation (and for any other legal engagements by CPS overseen by Mr. Marmer), then the issue would be fully resolved.
3. **The Board Makes An Exception to the Prohibition.** Because the Code of Ethics goes beyond state law in prohibiting the type of conduct that Mr. Marmer has been engaged in, the Board can vote to make an exception the prohibition under an express resolution with supporting analysis and documentation. In this way, Mr. Marmer could continue providing Contract Management over the substantive work by Jenner & Block.
4. **Jenner & Block Accelerates the Payments.** If Mr. Marmer receives the remainder of the moneys owed to him under his departure agreement, he would no longer possess a Business Relationship with Jenner & Block and his oversight of the work would not be prohibited by the Code of Ethics.
5. **Maintain the Status Quo.** CPS can decide to continue with Mr. Marmer's oversight of the Jenner & Block work without taking any of the steps outlined in 1-4 above. Exercising this option presents serious legal risks, exacerbated by the fact that the CPS Ethics Officer has already issued a verbal opinion that the Code prohibits the continuation of this work.

Subject: RE: RM/FC
Date: 6/6/2016 1:50 PM
From: "Franczek, James C., Jr." <jcf@franczek.com>
To: "Moriarty, Joseph" <jtmoriarty@cps.edu>

I think I am off the xmas card list.

From: Moriarty, Joseph [mailto:jtmoriarty@cps.edu]
Sent: Monday, June 06, 2016 10:11 AM
To: Franczek, James C., Jr.
Subject: Re: RM/FC

this is good. no disagreements here

Joseph T. Moriarty
Labor Relations Officer

CHICAGO PUBLIC SCHOOLS
773-553-1641 (direct) - 773-553-1700 (reception)
www.cps.edu

On Mon, Jun 6, 2016 at 8:57 AM, Franczek, James C., Jr. <jcf@franczek.com> wrote:

Joe—strictly between us and off the record. Would you be kind enough to take a quick look at the attach and let me know if there is anything in it that you violently disagree with. I am meeting with FC at 11:30.. Thanks much.

James C. Franczek Jr.

312.786.6110
jcf@franczek.com

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IN REFERENCE TO: F30567-00007

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June 10, 2016

Attorney Client Privilege

VIA ELECTRONIC MAIL

Douglas A. Henning (Dhenning@cps.edu)
First Deputy General Counsel
Board of the Education of the City of Chicago Law Department
One North Dearborn, Suite 900
Chicago, IL 60602

Re: Code of Ethics Policy Opinion

Dear Mr. Henning:

A. Background.

We were advised that the Board of Education of the City of Chicago (the "Board") engaged the law firm of Jenner and Block LLP ("Jenner") to analyze whether the Board may have claims against the State of Illinois (the "State") related to funding issues and potentially to prosecute such claims as well. We reviewed the engagement letter that was signed by CPS on April 5, 2016.

The Board's current General Counsel is Ronald L. Marmer, appointed to this post by a Board vote on October 27, 2015. Mr. Marmer formerly was a partner at Jenner. He resigned from Jenner in 2013, and from January 1, 2014 through October 2015, he practiced at the law firm of Ronald L. Marmer and Associates.

We understand that pursuant to the Jenner Partnership Agreement in effect in 2013, when Mr. Marmer departed, all then exiting partners were entitled to a formulaic payment upon their departure from the firm ("Exit Payment"). We further understand that Jenner determines and fixes the Exit Payment pursuant to its formula by the end of the year following a partner's departure. Jenner fixed the amount of Mr. Marmer's Exit Payment in 2014. The Exit Payment is made over five years.

Mr. Marmer received his first payment of this fixed amount at the end of 2014. The December 31, 2014 payment was an estimated payment, which was later determined to be an

over estimate of the amount due. The December 31, 2015 payment reflects an offset to recapture the overpayment amount, and the remaining three scheduled payments reflect a fixed amount pursuant to the revised formula calculation. Mr. Marmer will receive these payments through 2018. These payments are fixed obligations of Jenner and are not contingent on Jenner making its budget in the years the obligations are due.

B. Assignment.

CPS has asked us whether the Board's engagement of Jenner, where it will be subject to the oversight of Mr. Marmer, violates Board Policy Manual Section 503.1, "Code of Ethics," adopted by the Board on May 25, 2011, pursuant to Board Report 11-0525-102 (the "Policy") (copy attached) specifically Sections VIII.A and X of the Policy. For the reasons set forth below, it is our opinion that the Board's engagement of Jenner does not violate the Policy.

C. The Board's Code of Ethics Policy.

The purpose of the Policy is as follows:

The Chicago Board of Education is committed to ensuring that Board members, Local School Council Members, and Officials and Employees act in the highest ethical manner in order to preserve the public trust of residents and taxpayers. Further, it is essential to set a good example for and act in the best interest of Chicago Public School Students. In order to meet these imperatives, the following ethical standards have been established.

Section VIII.A. of the Policy provides:

Economic Interest in Contracts and Board Work – Employees.

- A. No employee shall have an Economic Interest in any of the following regardless of expense, price or consideration:
 - 1. Contracts with the Board;
 - 2. Work or Business of the Board; or
 - 3. Sale of any article to the Board either paid with funds belonging to or administered by the Board, or authorized by action of the Board.

Section X. of the Policy provides:

X. Contract Management Authority

An Employee who exercises Contract Management Authority regarding any Board business or transaction shall not exercise such authority in connection with:

- A. Board business with an entity in which the Employee has an Economic Interest;
- B. Board business with a Person or entity with whom the Employee has an employment relationship; or
- C. Board business with a Person or entity with whom the Employee has a Business Relationship.

Section II.P. of the Policy defines Economic Interest:

- P. "Economic Interest" means that an Official or Employee or his or her Spouse, Domestic Partner, Partner to a Civil Union, Relative, or a Member of his or her Household:
 - 1. Is the proprietor of a sole proprietorship;
 - 2. Owns a five percent or greater interest in any class of stock of a Corporation by vote or value; partnership; form; enterprise; franchise; organization; holding company; joint stock company; receivership; trust (or beneficial interest in a trust); or any Legal Entity organized for profit;
 - 3. Is an officer or director of a For-Profit Corporation, general or managing partner of a partnership, or the trustee of a trust;
 - 4. Owns any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500 per year; or
 - 5. Owns any interest with a cost or present value of \$5,000 or more.

C. Opinion.

In our opinion, a fundamental rationale of the Policy is to ensure that Board Officials, Members and Employees do not gain any economic advantage by leveraging their positions with the Board. Therefore, the question here is whether Mr. Marmer could be viewed as gaining some personal economic advantage through the Board's engagement and Marmer's oversight of a law firm where he was formerly a partner. The answer is no.

In our opinion, Mr. Marmer does not “own” any Economic Interest in Jenner within the meaning and purpose of the Policy. Mr. Marmer is no longer a partner in Jenner, has no right to any profits or income from Jenner and has no Jenner partnership voting rights. His right to the amount of his Exit Payment was fixed in 2014, pursuant to a Partnership Agreement formula based on then-existing factors, and did not include any right to future profits of Jenner. While he owns an interest in receiving an Exit Payment, that is an interest personal to him and does not reflect any ownership of an Economic Interest in Jenner and; he will not obtain any personal economic benefit through Jenner’s engagement because the payment obligations to him are fixed and are in no way dependent upon Jenner’s profits in the years that Jenner is performing work for CPS. Therefore, because Mr. Marmer does not own any Economic Interest as defined in the Policy, Sections VIII.A and X of the Policy do not apply to the Board’s proposed engagement of Jenner.¹

Very truly yours,

TAFT STETTINIUS & HOLLISTER LLP



J. Timothy Eaton

JTE:pb/16350464.1

¹ We also note that Jenner was previously engaged by the Board in 2015 for a different matter before Mr. Marmer became General Counsel.

J. TIMOTHY EATON

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F30567-GN005

October 25, 2016

Via Email: dhenning@cps.edu

Mr. Doug Henning

First Deputy General Counsel

Board of Education of the City of Chicago

1 North Dearborn St | 9th Floor

Chicago, IL 60602

Re: Supplemental Code of Ethics Policy Opinion

Dear Doug:

We are writing to supplement our letter of June 10, 2016, concerning the engagement by the Chicago Board of Education (the "Board") of Jenner & Block ("Jenner") to draft a complaint challenging the State of Illinois' underfunding of the Board.

In our prior letter, we focused on the issue of whether Board general counsel Ron Marmer had an "economic interest" with Jenner based on his receipt of payments from Jenner from Jenner's severance plan for retiring partners. As we concluded in our letter, Mr. Marmer's receipt of severance payments does not create an "economic interest" as that term is defined in the Board's Code of Ethics.

However, we also discussed at the time our view that Mr. Marmer's severance payments from Jenner do not create a business relationship with Jenner, which we considered to be a secondary issue. For that reason, we did not address it in our original letter.

Should the issue of whether Mr. Marmer and Jenner have a business relationship arise, we concluded then and still believe that the severance payments are in the nature of an annuity, which is excluded from the definition of "business relationship" in Section II.E.6 of the Board's Code of Ethics Policy (the "Policy"). We view the reference to annuity in the Policy as a descriptive rather than a prescriptive category. Thus, even though the Policy refers to an annuity purchased from an insurance company, Jenner's payments to Mr. Marmer are similar to an annuity because they are made annually for a fixed period based on a pre-determined formula that applies to all former Jenner partners similarly situated to Mr. Marmer. If owning an annuity that provides by contract for periodic payment does not create a business relationship, then being

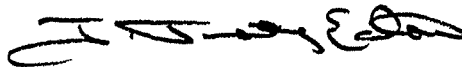
Mr. Doug Henning
October 25, 2016
Page 2

a party to a formulaic severance agreement that is not tied to Jenner's economic performance similarly does not, in our opinion, create a business relationship between Jenner and Mr. Marmer.

If you have any questions, please feel free to contact us.

Very truly yours,

Taft Stettinius & Hollister LLP

A handwritten signature in black ink, appearing to read "J. Timothy Eaton", written in a cursive style.

J. Timothy Eaton

TJE:pb/17493556.1

GROUP 2

FRANCZEKRADELET

ATTORNEYS & COUNSELORS

300 SOUTH WACKER DRIVE, SUITE 3400 | CHICAGO, IL 60606

FEIN 36-3924177

T: 312.986.0300 | F: 312.986.9192 | WWW.FRANCZEK.COM

PERSONAL AND CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED

Invoice Date: July 31, 2016

Invoice No. 169672

Client No. 00401

Chicago Board of Education
Attn: Ronald L. Marmer, Esq.
General Counsel
One North Dearborn Street, Suite 900
Chicago, IL 60602

Purchase Order No.: 2623315 0

FOR PROFESSIONAL FEES AND EXPENSES INCURRED THROUGH 06/30/16:

| <u>Matter No.</u> | <u>Description</u> | <u>Fees</u> | <u>Expenses</u> | <u>Total</u> |
|-------------------|-----------------------------------|-------------|-----------------|--------------|
| 00401.094001 | General Financial Matters | \$649.00 | \$0.00 | \$649.00 |
| 00401.094007 | Real Estate Tax Rate Objections | \$295.00 | \$0.00 | \$295.00 |
| 00438.098001 | General Matters | \$3,333.50 | \$406.42 | \$3,739.92 |
| 00438.108004 | LMCC | \$3,254.50 | \$0.00 | \$3,254.50 |
| 00438.114002 | 2015 CTU Negotiations | \$13,050.50 | \$0.00 | \$13,050.50 |
| 00438.116006 | Jeronna Hopkins Teacher Dismissal | \$1,350.50 | \$0.00 | \$1,350.50 |
| 00438.116007 | Suman Goyal Teacher Dismissal | \$3,751.00 | \$0.00 | \$3,751.00 |
| 00438.116008 | Charter School Appeals | \$26,287.00 | \$2,577.36 | \$28,864.36 |
| 00438.116010 | CBE ULP re April 1, 2016 Strike | \$2,675.00 | \$0.00 | \$2,675.00 |
| 00438.116011 | 2016 Local 143 Negotiations | \$7,670.00 | \$0.00 | \$7,670.00 |
| 00438.116012 | 2016 SEIU Local 73 Negotiations | \$1,032.50 | \$0.00 | \$1,032.50 |
| 00438.116013 | 2016 Legislation | \$9,950.00 | \$0.00 | \$9,950.00 |

Matter Description: General Matters

Purchase Order No.: 2623315 0

PROFESSIONAL FEES INCURRED THROUGH 06/30/16:

| <u>Date</u> | <u>Timekeeper</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
|--|-------------------|---|--------------|-------------------|
| 06/02/16 | NB Bazer | Research CPS's Code of Ethics issues. | 2.20 | \$649.00 |
| 06/02/16 | JC Franczek | Review documents re ethics issues | 1.50 | \$442.50 |
| 06/03/16 | JC Franczek | Research re ethics issues | 1.50 | \$442.50 |
| 06/04/16 | NB Bazer | Revise analysis and memorandum regarding Ethics issues. | 2.00 | \$590.00 |
| 06/07/16 | NB Bazer | | | |
| 06/08/16 | NB Bazer | | | |
| 06/09/16 | NB Bazer | | | |
| 06/13/16 | NB Bazer | | | |
| REDACTED BY FRANCZEK RADELET AS PERTAINING TO A SEPARATE MATTER | | | | |
| Total Professional Fees For This Matter | | | 11.30 | \$3,333.50 |

FEE SUMMARY:

| <u>Timekeeper</u> | <u>Hours</u> | <u>Rate</u> | <u>Total</u> |
|--|--------------|-------------|-------------------|
| JC Franczek | 3.00 | \$295.00 | \$885.00 |
| NB Bazer | 8.30 | \$295.00 | \$2,448.50 |
| Total Professional Fees For This Matter | 11.30 | | \$3,333.50 |

COSTS ADVANCED AND EXPENSES INCURRED THROUGH 06/30/16:

| <u>Description</u> | |
|---|-----------------|
| Computer Research | \$406.42 |
| Costs Advanced and Expenses Incurred For This Matter | \$406.42 |

Chicago Board of Education
Client No. 00401
Matter No. 00438.098001

Invoice No. 169672
Invoice Date: July 31, 2016

Matter Description: General Matters

Purchase Order No.: 2623315 0

PROFESSIONAL FEES INCURRED THROUGH 06/30/16:

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| 06/02/16 | NB Bazer | Research CPS's ^{personnel} Code of Ethics issues. | 2.20 | \$649.00 |
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| 06/08/16 | NB Bazer | | | |
| 06/09/16 | NB Bazer | | | |
| 06/13/16 | NB Bazer | | | |

**REDACTED BY FRANCZEK RADELET
AS PERTAINING TO A SEPARATE MATTER**

| | | |
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FRANCZEK RADELET

ATTORNEYS & COUNSELORS

300 SOUTH WACKER DRIVE, SUITE 3400 | CHICAGO, IL 60606

T: 312.986.0300 | F: 312.986.9192 | WWW.FRANCZEK.COM

JAMES C. FRANCZEK, JR.

312.786.6110

jcf@franczek.com

VIA HAND DELIVERY

August 26, 2016

Attorney-Client Privileged and Confidential
For Forrest Claypool's Eyes Only

Mr. Forrest Claypool
Chief Executive Officer
Chicago Public Schools
42 West Madison Street – 9th Floor
Chicago, IL 60602

Dear Forrest:

Attached is a revised “General Matters” page for our July 31, 2016 Invoice #169672, together with the original summary page of our invoice, which includes the CPS approvals of our other matters.

Also attached is a brief summary of our outstanding invoices. Your Law Department and Finance have been exemplary in processing our invoices. But, as year-end approaches, it is critical for my Firm to maximize the timely payment of our invoices. Any assistance you can provide in this respect – as well as for our invoices to come in September, October and November – would be greatly appreciated.

Rest assured we are deeply aware of CPS’ fiscal challenges and our invoices reflect substantial discounts.

Thank you so very much for the opportunity to serve CPS.

Very truly yours,


James C. Franczek, Jr.

JCF:mp
Attachments

FRANCZEKRADELET

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Invoice Date: July 31, 2016

Invoice No. 169672

Client No. 00401

Chicago Board of Education
Attn: Ronald L. Marmer, Esq.
General Counsel
One North Dearborn Street, Suite 900
Chicago, IL 60602

Purchase Order No.: 2623315 0

FOR PROFESSIONAL FEES AND EXPENSES INCURRED THROUGH 06/30/16:

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| 00438.098001 | General Matters | \$3,333.50 | \$406.42 | \$3,739.92 |
| 00438.108004 | LMCC | \$3,254.50 | \$0.00 | \$3,254.50 |
| 00438.114002 | 2015 CTU Negotiations | \$13,050.50 | \$0.00 | \$13,050.50 |
| 00438.116006 | Jeronna Hopkins Teacher Dismissal | \$1,350.50 | \$0.00 | \$1,350.50 |
| 00438.116007 | Suman Goyal Teacher Dismissal | \$3,751.00 | \$0.00 | \$3,751.00 |
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Chicago Board of Education
Client No. 00401
Matter No. 00438.098001

Invoice No. 169672
Invoice Date: July 31, 2016

Matter Description: General Matters

Purchase Order No.: 2623315 0

PROFESSIONAL FEES INCURRED THROUGH 06/30/16:

| <u>Date</u> | <u>Timekeeper</u> | <u>Description</u> | <u>Hours</u> | <u>Amount</u> |
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| 06/09/16 | NB Bazer | | | |
| 06/13/16 | NB Bazer | | | |

**REDACTED BY FRANCZEK RADELET
AS PERTAINING TO A SEPARATE MATTER**

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| Total Professional Fees For This Matter | 11.30 | \$3,333.50 |
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| <u>Description</u> | |
|---|-----------------|
| Computer Research | \$406.42 |
| Costs Advanced and Expenses Incurred For This Matter | \$406.42 |

PO# 3212172

FRANCZEK RADELET

ATTORNEYS & COUNSELORS

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Receipt # 2845663

Chicago Board of Education
Client No. 00401
Matter No. 00438.098001

Invoice No. 169672
Invoice Date: July 31, 2016

Matter Description: General Matters

Purchase Order No.: 2623315 0

PROFESSIONAL FEES INCURRED THROUGH 06/30/16:

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Chicago Board of Education
Client No. 00401
Matter No. 00438.098001

Invoice No. 169672
Invoice Date: July 31, 2016

Fees
Costs Advanced and Expenses Incurred

\$3,333.50
\$406.42

CURRENT INVOICE DUE FOR THIS MATTER

\$3,739.92



GROUP 3

Ron Marmer

From: Forrest Claypool <feclaypool@gmail.com>
Sent: Friday, November 17, 2017 3:27 PM
To: Ron Marmer
Subject: letter
Attachments: 11.17.17 FC letter (1)-2.docx

Ron:

Tried to get you earlier.

I know I can't talk to you about IG, but wanted to give you heads up.

The attached letter is public, so isn't a problem for me to share.

Thanks.

Forrest

Nov. 17, 2017

Mr. Nick Schuler
Office of the Inspector General
Chicago Public Schools
VIA EMAIL

Mr. Schuler:

Throughout my career in public service, I have championed and promoted honest, ethical government. That is the minimum we owe the community we serve. I also believe strongly that those of us in public office must hold ourselves to the same ethical standards we expect of others. In reviewing our discussions, and my own recollections, it is clear to me that in one respect I have fallen short.

From the start of our pursuit of justice for Chicago students, my goal has been to assemble the best possible legal team to pursue a civil rights suit against the state for its shameful funding discrimination that threatened the very existence of a system that overwhelmingly serves minority students.

I was convinced then and now that Jenner and Block offered the best legal team. And, the firm undertook the case for a vastly reduced fee and, ultimately, on a pro bono basis. The firm donated more than \$1million in free services to this effort.

At some point, however, the issue was raised as to whether our chief counsel, Ronald Marmer, could supervise this work because he had retired from Jenner several years ago and was entitled under the terms of his departure to fixed severance payments from the firm based on his thirty years there. A rule from the Board of Education prohibits employees from supervising contracts between CPS and entities with which they have an ongoing business relationship. The rule is designed to protect CPS from a situation where a supervisor can trade favors with a contractor to the detriment of the system and taxpayers. But Jenner was not profiting and Mr. Marmer's settlement with the firm did not depend on its performance, so I was convinced the rule did not apply. Indeed, an independent outside counsel subsequently offered such an opinion.

But I had already informally asked two lawyers on contract with CPS about this issue. I was disturbed when they then billed for their advice, because I had not asked for a formal opinion and did not expect to be charged for one. And, to be candid, I didn't agree with their advice and didn't want it to undercut public confidence in our lawsuit, or create a distraction to the civil rights violations of Chicago's students.

As I have told you, I did not recall asking for changes to make the description of services on one of those bills less specific. However differently I recalled my past conversation, the documents you shared with me this week make it clear I did do that. I apologize for that mistake. Cutting corners, even in pursuit of the rescue of this institution, simply is not excusable. I was wrong, plain and simple.

I pursued the civil rights case with a sharp focus on doing what was best for CPS and our students. I would not, and did not, take a single step to help anyone involved in this case reap a profit. And, indeed, no one did.

Fundamentally, here's what I believed then and still do:

I strongly believe there was no ethics violation.

I believe the board policy lacks clarity and that the intent of the policy should matter.

I believe Jenner & Block was the best possible law firm for the job.

I believed winning the lawsuit was the key to saving our classrooms.

I believe the right step was asking Jenner & Block to continue the litigation for free, removing even the perception of an ethics policy conflict.

For me, the bottom line is to be here in service to the kids. That's what motivated me, and what has motivated me in my decades of public service to the people of Chicago.

Sincerely,

A handwritten signature in black ink, appearing to read "Forrest Claypool".

Forrest Claypool
Chief Executive Officer
Chicago Public Schools