

August 29, 2017

Michelle Miller, Director, Division of Law  
Office of the Attorney General  
Hughes Justice Complex, 1<sup>st</sup> Floor  
P.O. Box 112  
Trenton, NJ 08625-0112

Re: Lakewood BOE Legal Services Contract: Request for Investigation

Dear Director Miller:

We write to bring to your attention the contract engaging Michael I. Inzulbuch to provide legal services to the Lakewood Public Schools (“Contract”), approved by the Lakewood Board of Education (“Lakewood” or “BOE”) on June 14, 2017. A copy of the Contract is attached hereto. As we explain, the Contract raises serious questions regarding compliance by the Lakewood BOE with Department of Education regulations requiring districts to minimize and reduce excessive legal services costs.

The Contract provides for a term of service of August 17, 2017 through June 30, 2018 “at the annualized retainer of \$600,000” payable in “equal monthly payments” on the first day of each month. Contract, page 2. The Contract also provides for an immediate payment of \$29,000 for the Inzulbuch family’s medical and prescription coverage. Contract, page 3. Finally, the Contract provides, in addition to these base payments, compensation of \$350.00 per hour “for any litigation services” rendered to Lakewood, along with reimbursement for “billed expenses,” such as filing fees, travel, parking and photocopying. Contract, pages 2-3. Only compensation for litigation services and billed expenses is payable upon presentation of invoices documenting work actually performed.

Under N.J.A.C. 6A:23A-5.2(a), all boards of education must establish by policy “strategies to minimize the cost” of professional services, including legal services. Further, in districts with legal costs in excess of “130 percent of the Statewide average per pupil amount” the board must establish procedures to reduce those costs, including limiting unnecessary use of legal counsel for management decisions and other matters “readily available” in school district materials. N.J.A.C. 6A:23A-5.2(a)3. Finally, the regulation expressly prohibits boards of education from approving legal services contracts with “advance payments.” Contractual payments for legal services can “only” be “for services actually provided” upon presentation of “invoices” that “itemize the services provided for the billing period.” N.J.A.C. 6A:23A-5.2(a)4.

The Contract approved by the Lakewood BOE appears, on its face, to provide for advance payments, in monthly installments, of the \$600,000 base compensation amount, along with the lump sum payment for medical and prescription coverage. Under the contract, these

payments must be made every month without regard to actual legal services provided, nor upon presentation of an invoice itemizing the services provided for specific billing periods. Thus, the Contract appears to conflict with the prohibition on advance payment contracts for legal services in N.J.A.C. 6A:23A-5.2(a)4.

Further, we note that Lakewood is a district with legal costs far in excess of the statewide average per pupil. In 2015-16, Lakewood spent \$123 per pupil for legal services, ranking the Lakewood the 97th highest spending district of 103 K-12 districts with enrollment over 3500 pupils. These K-12 districts also spent \$47 per pupil on average on legal services. Lakewood's spending is 262% of the statewide per pupil average, among the highest in the state and well in excess of the 130% regulatory threshold for districts to undertake aggressive measures to reduce legal costs. If the Lakewood BOE reduced legal services costs to the K-12 average, the district would spend \$286,089, far below the \$629,000 base compensation payment in the Contract.

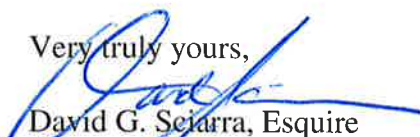
Finally, we note that the Lakewood district is in dire fiscal distress, facing chronic budgetary deficits and an inability to provide a thorough and efficient education to its students. For this reason, the Commissioner has appointed a State monitor to oversee the district's business operations and personnel matters under N.J.S.A. 18A:7A-54 et. seq. While it appears that Lakewood's State Monitor signed off on the Contract, it remains unclear how this contract meets the regulatory mandates, guidelines and prohibitions requiring the Lakewood BOE to minimize and reduce the district's excessive spending on legal services in prior years.

Accordingly, we request your Office promptly conduct a thorough investigation of the Lakewood BOE's approval of the Contract, including, but not limited to, compliance with the requirements in N.J.A.C. 6A:23A-5.2(a). We further ask that your investigation evaluate the impact of the Contract on the regulatory mandate that Lakewood, as a district with excessive legal costs under the regulation, take action to reduce those costs. We also request the investigation determine whether the Lakewood BOE, in awarding the Contract, did so in "a deliberative and efficient manner" that ensures the district "receives the highest quality services at a fair and competitive price." N.J.A.C. 6A:23A-5.2(a)5.

Finally, should your Office conclude the Contract does not comply with the regulation and enabling statutes, we request that you recommend the State monitor take all necessary corrective action, including rescission of the Contract and a directive to the Lakewood BOE to secure cost-effective legal services in a manner consistent with legal requirements.

Thank you for your immediate attention to this matter.

Very truly yours,



David G. Sciarra, Esquire  
Executive Director

cc: Kimberly Harrington, Commissioner of Education  
Michael Azzara, State Monitor  
Laura Winter, Superintendent Lakewood Public Schools

**LAKWOOD BOARD OF EDUCATION  
MICHAEL I. INZELBUCH GENERAL COUNSEL  
Terms and Conditions of Legal Services**

WHEREAS, the Lakewood Board of Education ("the Board") is in need of legal services; and

WHEREAS, Michael I Inzelbuch, Esq. ("Inzelbuch") responded to the RFP on June 12, 2017

WHEREAS, the Board voted on June 14, 2017 to appoint Inzelbuch as General Counsel in accord with the RFP response

WHEREAS, the Board desires to engage Inzelbuch as General Counsel, and

WHEREAS, Inzelbuch maintains a valid State of New Jersey Business Registration Certificate authorizing him to enter into contracts with public entities in New Jersey;

NOW, THEREFORE, BE IT AGREED, that Inzelbuch is hereby engaged in the position of General Counsel on the following terms:

**1. Duties:** In consideration of the compensation set forth below, Inzelbuch shall perform the following duties:

- a. provide legal representation at all regularly scheduled meetings of the Board, and special and emergency meetings upon request;
- b. unlimited legal consultation with the Board, the Superintendent, the Board Secretary/Business Administrator, and other such staff members as the Superintendent shall designate;
- c. unlimited preparation of oral and written legal opinions;
- d. provision of legal representation for the Board, and such individual Board members or staff members as the Board or the Superintendent shall designate, in all litigated matters other than those where: (1) different legal counsel is assigned by an insurance carrier; (2) separate or other legal representation is

- mandated by the Rules of Professional Conduct or is otherwise deemed advisable for strategic reasons; or (3) the need for technical expertise in a narrow and highly specialized subject area requires engagement of special counsel<sup>2</sup>
- e. unlimited conferences, meetings and in-service sessions with the Board, Board committees and other such staff members as the Superintendent shall designate;
  - f. unlimited review of, and legal advice with respect to, existing and proposed contracts between the board and third parties; and
  - g. such other duties as may be set forth and mutually agreed upon by the board president and General Counsel.<sup>3</sup>

## **2. Compensation:**

- a. Inzelbuch shall be engaged by the Board as General Counsel for the period of August 17, 2017 through June 30, 2018, at the annualized retainer of \$600,000.00, and payable in equal monthly payments, plus costs, if applicable, (see below), commencing September 1, 2017 (for the period of August 17<sup>th</sup> - August 31<sup>st</sup> and thereafter monthly thru and including June 2018 on the first day of each month. <sup>4</sup>
- b. *In addition*, Inzelbuch shall be compensated at the hourly rate of \$350.00 for any litigation services, payable monthly, upon presentation of detailed logs documenting litigation services with the following exceptions:
  - i. where the board's insurer assigns counsel or where the board appoints special counsel.<sup>5</sup> In such circumstances, General Counsel may serve as co-counsel at his discretion and shall be compensated at the hourly rate of \$200.00 for

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<sup>1</sup> Should same arise Inzelbuch shall designate conflict counsel who will be paid in accord with the terms and conditions herein.

<sup>2</sup> See footnote 4 below

<sup>3</sup> It is specifically understood that Inzelbuch will continue his private practice including, but not limited, to litigating matters with other school districts and the NJDOE, etc.

<sup>4</sup> It is understood that Inzelbuch will not be required to complete any work during any religious observances.

<sup>5</sup> Regardless, all counsel will report to Inzelbuch so as to keep the Board aware of any and all litigation.

co-counsel services.

ii. For purposes of this provision, special education resolution conferences and due process hearings shall not be considered litigation nor general counsel services and Inzelbuch shall be compensated at the hourly rate of \$350.00 for such services.<sup>6</sup>

- c. In addition, Inzelbuch shall be immediately reimbursed for up to an annualized amount of \$29,000.00 for medical or prescription insurance coverage and co-payments and services not covered by his and immediate family insurance purchased by and for himself and his immediate family for the term of this Agreement, upon presentation of documentation evidencing such coverage.
- d. As an independent contractor, Inzelbuch shall not be enrolled in the Public Employment Retirement System or any other State-run pension system, nor shall he be enrolled in the State Health Benefits Plan or any similar State-run health coverage plan.
- e. Certain expenses and disbursements made by the Inzelbuch on the Board's behalf will be separately itemized and reimbursed by the Board in accordance with customary and usual practices for law firms representing public school districts. Examples of such billed expenses, without limitation, include filing fees, mileage, travel, parking, photocopying a .15 cents per page, faxes, imaging, messenger services, stenographic transcripts and overnight mail.
3. **Compliance with Professional Standards:** Inzelbuch shall conform to the standards of the Rules of Professional Conduct governing New Jersey attorneys representing institutional clients, and shall refrain from any conflicts of interest or other actions that would compromise the interests of the Board.
4. **Termination:** Nothing herein shall affect the Board's prerogative to

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<sup>6</sup> In accordance with the Rules of Professional Conduct, Inzelbuch will not be expected to engage in any activities nor represent the Board nor any parties delineated in this Agreement that he considers running counter to the IDEA. Inzelbuch is permitted to void this Agreement and/or remove himself from any litigation that he considers to violate a child's rights to a FAPE and/or individualized needs. Inzelbuch will also be permitted to take any and all action he deems appropriate should the Board and/ or its employees and/or staff engage and/or anyone associated with the Board in actions that are violatively of the law, IDEA, civil rights, etc. without any negative repercussions to this Agreement.

terminate Inzelbuch' s employment at the end of the contract period which is June 30,2018, and Inzelbuch' s obligation to withdraw as counsel, to the extent provided by the Rules of Professional Conduct. Inzelbuch shall be relieved of any continuing obligations hereunder in the event that he is no longer engaged in the practice of law by reason of judicial appointment, retirement or otherwise.

**5. Insurance:**

Inzelbuch shall maintain professional liability insurance of at least One Million (\$1,000,000.00) Dollars in the aggregate. However, the Board will fully reimburse and indemnify Inzelbuch for all additional expenses as to his malpractice insurance and any and all settlements and/or judgments related to his services provided to the Lakewood Board of Education. In addition, Inzelbuch' s malpractice insurance will be used as insurance of last resort and all attempts will be made to have the District's coverage apply to any and all actions involving Inzelbuch.

**6. Equal Employment Opportunity:**

During the performance of this contract, Inzelbuch agrees as follows:

(a) Inzelbuch will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, Inzelbuch will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

- apprenticeship. Inzelbuch agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.
- (b) Inzelbuch will, in all solicitations or advertisements for employees placed by or on behalf of Inzelbuch, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
  - (c) Inzelbuch will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Inzelbuch's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - (d) Inzelbuch agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.
  - (e) Inzelbuch agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
  - (f) Inzelbuch agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
  - (g) Inzelbuch agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and

applicable Federal court decisions.

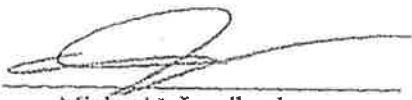
(h) In conforming with the targeted employment goals, Inzelbuch agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

(j) Inzelbuch shall submit to the Board, one (1) of the following three documents:

- a. Letter of Federal Affirmative Action Plan Approval
- b. Certificate of Employee Information Report
- c. Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [www.state.nj.us/treasury/contract/compliance](http://www.state.nj.us/treasury/contract/compliance))

**IN WITNESS, WHEREOF**, the Board has caused this Professional Services Contract to be approved at a duly convened meeting, and has authorized execution of this Employment Contract by the appropriate officers of the Board. Employee, by executing this Employment Contract, indicates approval and consent to be bound by the terms hereof.





Michael I. Inzelbuch  
General Counsel

Witness: \_\_\_\_\_

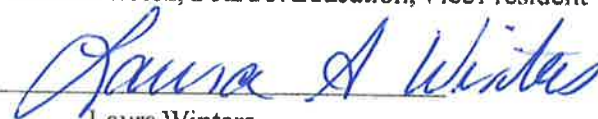
**LAKEWOOD BOARD OF EDUCATION**

BY: 



Moshe Bender, Board of Education President

Aida Gonzalez, Board of Education, Vice President

Witness: 

Laura Winters  
Superintendent of Schools



Michael Azzara, State Monitor

\_\_\_\_\_  
David Shafter, State Monitor

Prepared by David Rubin, Esq.