

Investigation Memorandum

To: Mike Morath, Commissioner of Education

From: Bill Wilson, Director of Internal Audit

Date: November 17, 2017

cc: Penny Schwinn, Deputy Commissioner of Academics
Kara Belew, Deputy Commissioner of Finance
Justin Porter, Executive Director of Special Populations

Subject: Investigation of Accusations made by Laurie Kash, Director of Special Education,
Regarding Improper Awarding of a Sole Source Contract

This memorandum documents the investigation of accusations made by Laurie Kash, Ph.D., State Director of Special Education, that Penny Schwinn, Deputy Commissioner of Academics, improperly awarded a sole source contract in May 2017 to AvenirEducation Inc. DBA SPEDx (Referred to as SPEDx). The accusations made were that (1) Ms. Schwinn awarded the SPEDx contract to a friend as a sole source; (2) arranged for another friend to be a sub-contractor on the contract; and (3) no attempts were made to determine if other vendors could provide the same services to justify that the SPEDx contract be issued as sole source.

The SPEDx contract consists of a standard contract (contract no. 3723) issued May 1, 2017 and ending September 30, 2017 for \$2,100,000. The contract was renewed for the period October 1, 2017 through August 31, 2018 for an additional \$2,320,418. The purpose of the contract is to provide the Agency immediate capacity to advance its special education priorities by data mining of students' mandated individualized education plans (IEP) with analytics that reveal trends, insights, and correlations that are unique. The contractor will leverage these insights using a system-level design thinking approach to identify ways to improve the IEP process and pilot solutions based upon the SPEDx analytics, trends, and insights.

Background

Dr. Kash call me on October 9, 2017 saying she was going into a meeting with Ms. Schwinn and thought she was in trouble for criticizing the decision for sole sourcing a contract. She then outlined the above accusations to me. Dr. Kash was emotional in the discussion and said that maybe things could get worked out in the meeting and everything would be okay. I asked her to get back to me after the meeting, but she did not contact me again until November 6th. She called and said that she was thrown "under the bus" by Ms. Schwinn and might lose her job. She also said that she reported her concerns about the sole source contract to the SAO, the AG Office, and OIG. Dr. Kash said that SAO told her to contact OIG since federal funds were involved. She also said that she had retained an attorney to defend her under the Whistle Blowers Act, but did not mention that she had received a Letter of Reprimand on November 3rd.

A Letter of Reprimand was issued to Dr. Kash on November 3, 2017 by her immediate supervisor, Justin Porter, Executive Director of Special Populations. The reprimand was for inappropriate conduct in accusing Ms. Schwinn of improperly awarding the SPEDx contract; publicly criticizing TEA's decision to engage in an analysis of IEP program to both internal and external stakeholders; and inappropriate disclosure to an out-of-state conference audience of information obtained from a Louisiana data analysis report that was shared with TEA in confidence.

On November 6, 2017, I met with Ms. Schwinn and Mr. Porter to discuss the accusations made by Dr. Kash. Mr. Porter had sent me an e-mail earlier on November 6th, asking if Dr. Kash had reported concerns to me about the SPEDx contract procurement. After this meeting, Ms. Schwinn requested in an e-mail on November 7th that Internal Audit perform an investigation on the accusations made concerning the program's actions related to issuing the SPEDx contract.

In summary, Internal Audit's investigation showed that the accusations could not be substantiated, and the complainant's charges were made without basis and were not supportable. Details concerning each of the accusations in the order made follows:

Accusation: Ms. Schwinn arranged the issuance of the SPEDx contract to a friend.

Richard Nyankori is CEO of SPEDx that is based in Jonesboro, GA. Ms. Schwinn was introduced to Mr. Nyankori by Christina Heitz, CEO of Cambiar Education. Ms. Schwinn knew Ms. Heitz by participating in a coaching education program conducted through the Broad Center. Ms. Heitz was managing Director of Broad at that time. Ms. Schwinn in networking her professional contacts in the Fall of 2016 looking for special education strategies and best practices, she was put in contact with an official in a similar role in Louisiana who was doing a special education project with SPEDx. Ms. Heitz was one of the contacts that suggested she contact Louisiana to discuss the SPEDx work being done there. After hearing about SPEDx from Louisiana personnel, Ms. Schwinn asked Ms. Heitz if she could introduce her to Richard Nyankori at SPEDx. This was done on January 9, 2017 in an e-mail to Ms. Schwinn and Mr. Nyankori that read:

"Penny, I'm thrilled to be able to connect you with Richard Nyankori to talk about Special Education in Texas. He is the country's expert on the topic: he was able to transform DCPS and achieve dramatic increases in positive outcome for special education students, and has a personal passion and vision that is truly inspiring. Look forward to talking more this week, but wanted to connect you together via email so you can hop on the phone directly."

It is clear from this e-mail and others that this was the first contact that Ms. Schwinn had with Mr. Nyankori and that they were not personal friends beforehand.

Mr. Nyankori also confirmed in an interview with Internal Audit that that he did not know Ms. Schwinn prior to the introduction through Ms. Heitz.

Accusation: TEA arranged for Ms. Heitz to be hired as a sub-contractor on the SPEDx contract.

Mr. Nyankori confirmed in an interview with Internal Audit on November 15th that he knew of Ms. Heitz through professional organizations they both belong to such as The Aspen Institute and LinkedIn and their paths have crossed through professional coaching and networking. Mr. Nyankori indicated he hired Ms. Heitz because of her experience in the education field and expertise in special education, strategic

planning and coaching. According to Mr. Nyankori, she will be responsible for two deliverables in the contract: (1) conduct training on innovative solutions with TEA staff and other critical leaders throughout the state and (2) interview key stakeholders in special education to inform change efforts. Mr. Nyankori did not suggest that TEA persuaded him to hire this subcontractor, and it was a decision he made early in the processing of the contract.

Internal Audit found no documentation in the files that might indicate any suggestions or preferences were made about sub-contracting. In fact, the Agency is not permitted to direct a vendor on what sub-contractor to use.

Accusation: No attempt was made to determine if other vendors could provide the same services to justify that the SPEDx contract be issued as sole source.

The software recently developed by SPEDx is highly complex in data mining IEP information and applying proprietary analytics to uncover patterns, correlations, interventions and insights to accelerate the learning and achievement of students with disabilities. The database uses proprietary algorithms that associates local aggregated IEP data to nationally normed datasets and other normative benchmarks related to the academic and social emotional success of students with learning, attention and behavior issues. The file showed that TEA staff searched numerous web-sites and net-worked with professional associates in the special education field to determine if any other vendors had software to perform similar type of data mining and analysis of IED data or if any other vendors can perform similar type of analysis. TEA staff could not identify any other vendors that could provide comparable services and the same detail analysis of IEP data that SPEDx is able to perform.

The Academics Department prepared a memorandum justifying the proprietary contract with SPEDx to Kara Belew, Deputy Commissioner of Finance. The memo outlined the work to be performed and that TEA is not aware of any other vendor with the specific expertise in special education to provide similar services. The memo was signed by Ms. Belew on April 21, 2017.

Based on the research and efforts made above, Internal Audit believes the Academics Department made a due diligence effort to determine if other vendors could provide similar services that SPEDx was able to offer.

Personnel Interviewed During the Investigation:

Normal Barrera, Director of Purchasing and Contracts
Penny Schwinn, Deputy Commissioner of Academics
Justin Porter, Executive Director of Special Populations
Richard Nyankori, CEO of SPEDx
Christina Heitz, CEO of Cambiar Education and Sub-Contractor to SPEDx

NOTE: Laurie Kash, upon advice from her attorney, said she was unable to interview at this time.