

June 17, 2010

*Hand Delivery and E-mail*

To: The Newport Public School Committee:

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Hugo J. DeAscentis, Jr., Vice-Chairperson  
Rebecca Bolan  
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Copy: Newport Public School Superintendent Jack Ambrogi  
Newport Public School Business Manager Mike Saunders

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At the request of a majority of the Newport School Committee, I have reviewed the proposed 2010 Food Service Management Company Agreement between the Newport Public Schools and Sodexo and compared it to the contract I reviewed in 2008, taking into consideration questions that were raised by School Committee members during the public meeting on June 8, 2010.

### **Contract Renewal Process**

A Sodexo standard contract template is used, however, it may be amended by each local educational agency (LEA) to meet their specific requirements. The LEA is defined as the “public board of education under Federal Regulations<sup>1</sup> The process for contract renewal is spelled out in Sections 3 and 4 of the Sodexo contract.

The LEA (Newport School Committee) “*retains responsibility for preparing all contract documents*” Section 4.1 Of course, this task can be delegated by the School Committee to school administrators, however, ***the LEA is ultimately responsible*** for ensuring that the contract is in conformance with its policies.

My understanding from discussions with the Rhode Island Department of Education (RIDE) is that the process of preparing the contract documents begins early in the year with the preparation of the operating budget. Once the legal and financial terms are prepared based on an operating budget, ***and the LEA approves these terms***, an unsigned contract renewal form is sent to RIDE for their approval no later than May 1<sup>st</sup>. Section 3.1B

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<sup>1</sup> The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools 20 U.S.C. 7801

Once RIDE approves the document for compliance with state and federal requirements, the LEA is officially authorized to sign the contract and is required to submit a signed copy to the State no later than June 30<sup>th</sup> Section 3.1B

It appears that the process followed in this (and prior) years was that the school administrators prepared the operating budget and renewal terms and sent these to RIDE ***prior to review and approval of the terms by the School Committee.***<sup>2</sup>. As a result, the School Committee and its sub-committees were unable to effectively exercise the authority and oversight that is their prerogative, and their responsibility.

This troubles me as an attorney looking at the legality of the process, as a taxpayer who contributes to school funding, and as a voting resident who elected this School Committee to represent my interests and concerns.

### **Oversight and Enforcement of Contract Terms**

In 2008 I raised the concern that an agreement that grants exclusive rights to a vendor should contain performance metrics, periodic reporting on performance and periodic review meetings in exchange for those exclusive rights as well as financial penalties for nonperformance. At the time, the Newport agreement contained no performance metrics and a zero penalty amount.

The 2009 contract has been updated to include a requirement that “*FSMC shall present no less than bi-annually a verbal and written update to the Superintendent.*” However, in other communities’ contracts with Sodexo, these reports are submitted by the vendor directly to the School Committee. In Newport, School Committee members have requested monthly reports from the Superintendent. To the best of my knowledge, these requests have never been honored.

The 2009 contract has also been updated to include financial penalties, however, there are still ***no measurable criteria for defining default.*** The penalty provisions would be difficult, if not impossible, to enforce without objective and measurable criteria.

LEA responsibilities under the contract include to monitor “*food service operation through periodic on-site visits... maintaining documentation of its monitoring, any corrective action required, and whether corrective action was implemented.*” Section 4.3 My understanding is that up to now, on-site visits have been discouraged.

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<sup>2</sup> In fact the approved renewal terms were not shared with the School Committee until just a few days prior to the June 8<sup>th</sup> meeting, again effectively precluding adequate review.

## Internal Controls

The Superintendent stated during the June 8<sup>th</sup> School Committee meeting that the Sodexo contract simply needs to be enforced. I absolutely agree.

The template, and prior year signed contracts, specify LEA responsibilities for internal controls as follows:

Section 4.8 requires the LEA to create of an Advisory Board composed of *parents, teachers and students*. This implies, of course, that the Board would not only be formed but that it would be given actual authority and oversight responsibilities and would report directly to the School Committee.

Section 4.10 specifies that the LEA is responsible for the “*quality, extent, and general nature of its food service*” If the LEA (or the Advisory Board with LEA oversight) is not paying attention to these issues, and not meeting with Sodexo to ensure that service is up to the required standards, then the contract effectively has no teeth.

Section 4.10B states that the LEA will provide detailed specifications for each food component or menu item, including grade, purchase units, style, condition, weight, ingredients, formulations and delivery time. *Is this being done?*

Section 4.10C states that the LEA will not pay for meals that are unwholesome or spoiled. *Is this being done?*

Along with the above LEA responsibilities, the contract specifically states at Section 5.17 that “*The LEA will maximize the use of RI-grown/ locally grown products, including but not limited to fruits, vegetables and dairy products, whenever possible.*” Is this being done?

It is one thing to say the contract needs to be enforced. It is another to implement the controls needed to ensure enforcement. It behooves us as a small community to make use of the intelligence and expertise of School Committee members and the Advisory Board appointed by them to adequately monitor the performance of a multinational and highly profitable corporation.

## Financial Terms

Sodexo, in effect, has a guaranteed return contract, as it can bill the LEA for both direct (“Operating Expenses”) and allocated indirect (“General Support Services”) costs, as well as a “Management Services Fee”. An exclusive contract and a guaranteed return is a generous arrangement that is rarely seen in a “free market” where vendor efficiency is encouraged through the competitive bidding process.

The “guaranteed return” paid by Sodexo to the Newport Schools is also unusual capitalist, free market perspective. I have been told that the concept behind this payment is to ensure vendor efficiency. But it easily places pressure on food costs (quality and quantity) rather than on vendor efficiency (reduced overhead), as would typically be required in the private sector.

And, when it comes to program costs, I simply cannot reconcile the numbers released by the school business manager. Section 4 of the contract places oversight of the program squarely with the Newport School Committee. From a legal liability point of view, I recommend that the School Committee consider requiring periodic audits by an independent certified accountant to ensure accuracy of the program reports submitted to the State and Federal governments.

This memo does not address specific financial costs or quality issues for which there is sufficient expertise on the School Committee. Significant concerns have been raised by residents and parents regarding the Sodexo program administration and food quality. These concerns point to a need for active oversight of the program.

I would be happy to answer any questions you have regarding my review or to attend a further public meeting, with sufficient notice.

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