

Public Comments by
Inspector General Nicholas Schuler to
the Chicago Board of Education

December 7, 2016

Good morning. I am inspector general Nicholas Schuler.

I have come here this morning to discuss a subject — that in my view — is a serious negative development in the relationship between the Board and my office. I also propose — what I believe is — a fair and workable solution.

The negative development that concerns me is that the attorney-client privilege has been asserted on behalf of the Board in the OIG's ongoing investigation of possible ethics violations by General Counsel Ronald Marmer. That investigation centers on questions surrounding his involvement in work performed for the Board by his former law firm. As you know, the OIG initiated its investigation this summer after the questions at issue were raised in the press.

The assertion of the attorney-client privilege by the Board against the OIG is not only contrary to the OIG's express right under the Illinois School Code to have "access to all information and personnel necessary to perform the duties of the office", but it is also contrary to past Board practice.

The Board's assertion of the privilege is preventing my office from accessing relevant documents and interviewing attorneys who likely have information pertinent to the investigation. Unless the OIG is granted the access it needs, a critical undermining of the public trust will result. Without access, the Board will be effectively saying that the OIG cannot fully investigate possible violations of the Board's own ethics policy by the General Counsel — and

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worse yet, that it can stop the OIG's independent investigations by simply choosing to assert the privilege.

As you know, I have been informed by the Board that the discussion of the full details of this matter are eligible for a closed Board session. Because the investigation is ongoing and the Board is — as of now — asserting the privilege, I believe that a closed session is appropriate. I am, however, making these remarks in public because this is an area of significant public concern, and I believe the public should know why this investigation has been stalled.

Before the closed session later today, please understand that I appreciate that this area of the law can be nuanced — if not downright complicated. For instance, I imagine that you will have legitimate questions about the legal implications of disclosures of privileged information to the OIG. I further recognize that today's session probably will not provide enough time for us to fully arrive at a mutually agreed upon understanding of why the attorney-client privilege may not properly be asserted by the Board against the OIG.

So, I propose tackling the problem in two phases — the first is long-term and the second is immediate. I am first asking the Board to establish a formal dialogue (possibly through an appropriate committee or working group) between the Board and my office, the purpose of which will be to discuss each other's concerns and hash out any differences of opinion about the Board's attorney-client privilege and its exact contours in relationship to the OIG. Of course,

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a requisite part of any such dialogue must be the presence of OIG personnel on any such committee or group. It is my sincere belief that through such dialogue the Board will understand why, for reasons of law and sound public policy, the Board may not properly assert the attorney-client privilege against the OIG when the OIG is acting within its lawful authority.

That process, however, won't solve the immediate and pressing problem of the OIG's stalled ethics investigation. Thus, in the interests of efficiency and transparency, the second thing I am asking today is that the Board formally waive the attorney-client privilege as to certain information that is necessary for the OIG to complete its investigation.

For the record, it is my position that the privilege is not applicable here, so a waiver is *not* strictly required, but given the need to quickly complete the investigation — and eliminate a possible perception that anyone is attempting to stall the OIG — a formal waiver will decisively remove the impasse. Accordingly, I believe that a waiver best serves the combined interests of the Board, the OIG, and the public.

If you have any questions before the closed session, I am happy to answer them.