

To the Stoughton Board of Selectmen from the Stoughton School Committee:

It has become necessary for the School Committee to make a formal complaint to the Board of Selectmen and their agent, the Town Manager. This complaint is necessary to address an ongoing pattern of behavior designed to interfere with the role and responsibility of the School Committee to budget for the school system and spend funds legally and properly appropriated for education. The School Committee has chosen to narrow the specific focus of this complaint to matters of the unwarranted and destructive interference by the Town Manager, and his agents, with the efficient procurement process and procedures utilized by the School Department.

The School Committee's goal is to have the purchasing rights and responsibilities that were designated to the Superintendent 22 years ago restored entirely. In no uncertain terms, this was a system that worked. The School Committee and School Department staff have become increasingly dismayed as the School Department's effective and efficient procurement process has been significantly degraded by unwarranted, unnecessary, unprovoked, destructive interference from Town Hall. The town's Acting Chief Procurement Officer, appointed in the Fall, has been attempting to create a new, unproductive and burdensome layer of bureaucracy. The School Department is completely supportive of the Municipal side "cleaning up" any procurement and compliance matters, but refuses to have its processes damaged as a result. If a homeowner had a home with a leaky roof, that repair would not be furthered by smashing out all the windows.

The School Committee is prepared to go to Court to protect its rights to expend the money appropriated for educational purposes, a right they believe is inappropriately and unnecessarily under threat. The Committee will continue to procure all goods and services following the Procurement laws, as it has always done. The Town Charter, written long before the applicable Education Reform Act may need to be reconciled with the State Law and the By-laws which already align. It is unfortunate that an action by the Town Manager precipitated this unnecessary conflict. Even if the Municipal government had the authority to usurp the School Department's purchasing, it has been amply demonstrated that they do not have the staff or effective process in place to absorb an operation of this size. We are asking that the Board of Selectman immediately direct the Town Manager and the Acting Procurement Officer to reverse direction and remove themselves from the School Department Procurement process.

The issues are as follows:

- The Town Manager, without consultation with the Superintendent of Schools or the School Committee unilaterally, and unnecessarily altered the procurement practices of the schools that have been in place since 1990, thereby manufacturing a crisis.
- This action has degraded the procurement processes of the School Department.
- The impact of this action has cost staff time, money, and loss of efficiency for the School Department.

- This action has done nothing to improve procurement by the Town Departments or benefit the Board of Selectmen.
- The Municipal Procurement Officer has erroneously interpreted this action to include all procurement of goods and services, including those outside the scope of Chapter 30B and those under \$25,000, which it does not.
- The Town Auditor and Procurement Officer have issued misleading, confusing and contradictory statements which render the system impotent and cumbersome.
- The Procurement Officer is interfering with all school purchasing under \$25,000, which is outside the scope of the Town Manager's memo.
- The Acting Procurement Officer, who, according to her posted resume, has very little procurement experience, no municipal procurement experience, and an "associate" MCPPO designation has made numerous errors when speaking and writing about the State bid list, and extent of her mandate, and other matters, calling her credibility into question.
- The action has highlighted an inconsistency between the Town Charter on one side and State Statutes assigning the rights of school committees, and the Town By-Laws, on the other, interfering with the Stoughton School Committee's legal right and responsibility to spend appropriated funds for educational purposes.
- The School Committee has always conducted its purchasing within the parameters of the State's Procurement laws, and is proud of its excellent audit record in this regard.

The School Department has a long history of efficient and successful procurement that includes a record of timely purchasing and payment for goods and services. Indeed, in an email to the School Department Financial Coordinator dated August 31st, 2011, the Town Auditor, Mr. William Rowe said, **"I have no knowledge of any issues of non-compliance. Our office is just being required to provide greater oversight."** (Document A) Since there are no audit findings to support a need for the school department to require further oversight, it would seem that this directive must have come from the Town Manager.

Until recently, the Town Departments and Mr. Rowe have worked well with the School Department on matters of procurement, and have taken advantage of the savings and efficiency they could achieve by working with the schools. In November Mr. Harding was invited to a Municipal Department Heads meeting at which he and the Superintendent outlined the opportunities to "piggy back" on School Department bids and contracts that were financially advantageous to everyone. Mr. Rowe's follow up email to the Department Heads says, "Joel has offered to allow any department that wishes to do so to participate in the next bid....**If you are interested in participating in the next bid, please provide a description of your needs and estimated annual expenditure amount to Joel....Many thanks to Joel for his cooperation and assistance.**" (Document B)

The Superintendent of Schools has been the Procurement Officer for the schools for 22 years since April of 1990. Supporting the Superintendent as Procurement Officer, the School Department's Supervisor of Support Services has both a Procurement License and School Business Manager's license. The facts are that all School Department bids are well documented, building projects are frequently completed under budget, and audit results have been exemplary.

With respect to procurement, the Town Manager has never attempted to confer with the Superintendent of Schools on matters related to the structure of the procurement system(s) utilized by the Town and the Schools. Such a conversation might have yielded a way forward that could have been advantageous to everyone. Despite the schools' solid record of procurement, the Town Manager has attempted to exert control over the School Department as if it were simply a department of the Town. The Town Manager and his agents have imposed a new, unnecessary, and inefficient level of bureaucracy on the Schools. As part of this effort, Mr. William Rowe, the Town Auditor, and Ms. Lindsay Pope, the Acting Procurement Officer, following the instructions of the Town Manager, have begun to interfere with the School System's procurement. Through their efforts the entire procurement process has become significantly slower and more expensive. There is also an undue amount of paperwork generated when requests for documents or contracts, which include multiple requests for the same documents / contracts, which have never been asked for before, continue to bombard the School Department in a haphazard and disorganized manner. This interference has endangered the School Department's relationships with vendors, has resulted in the School Department losing discounted rates, and has potentially opened up the Schools and Town to litigation.

No School Department process has been questioned or second guessed until this fiscal year. There has never been any question of Mr. Harding's competence in the area of procurement, and indeed, he was asked to apply for the procurement job on the Municipal side when funding was made available this year. On July 22, 2011, Mr. Rowe sent a letter to the Superintendent of Schools demanding documentation never required before due to the fact that "the Selectmen have instituted a purchasing policy for municipal departments." As the School Department is not a municipal department, this policy would not apply to the School Department, which has, as Mr. Rowe states, "an established purchasing system." (Document C page 3).

Recently, absent any conversation on the matter with the School Committee or Superintendent, the Town Manager has attempted to change the parameters of Superintendent's responsibility from what has been in place since 1990. The new rules related to procurement have shown themselves to be confusing, contradictory, and an impediment to the entire procurement process. A specific example of this would be the statement within the Town Manager's memo which states that the Superintendent is the Procurement Officer for all purchases under \$25,000. Despite this written statement, the Acting Procurement Officer has demanded to approve all purchases over \$5,000. As a result of the Acting Procurement Officer contradicting the Town Managers memo, the following bills have been pulled from the warrant, and were not paid on time:

1. AAA Laser, \$544.11
2. Apple Computer, \$8,307.00
3. Kids Sports Trans, \$3,040.00

4. Home Depot, \$21.76
5. Nasco, \$2,324.81
6. Patriot Ledger, \$297.44
7. Solar Tech, \$3,694.50
8. United Elevator, \$1,760.00
9. Verizon, \$1,010.70

The failure of the Town to issue timely payment to the School's vendors, for good and services that have been delivered, significantly affects the School's relationships with these vendors and in turn affects the School's ability to deliver services to the children it is charged to educate. Not only are these bills all under \$25,000, they are all under \$5000 except one. All are vendors that have been used for years without issue from Town Hall. The School Department is supportive of Mr. Rowe cleaning up some problems in his system, such as having a complete set of files of contracts. The non-payment of these vendors does nothing to fix that problem, and indeed, makes his procurement system even worse. Since this unfortunate debacle began, there are fewer vendors submitting bids. We just received none for an HVAC service contract. The favorable pricing we have enjoyed and the choices of service providers are already impacted.

A straight forward example of contradictory statements made by the Acting Procurement Officer, occurring within a single document, is the memo entitled REFRESHERS (Document D) put out by Ms. Pope. The document contains 6 points that address procurement procedures. Point 4 of her document, states that a Purchase Order (PO) will only be issued AFTER the item or service has been delivered. Point 5 states PO numbers must be present on all invoices. Given the fact that most vendors will not provide a product without being provided a PO and that invoices are generated by vendors when they ship a product or provide a service, it is virtually impossible to have a PO # on an invoice without violating Point 4. Additionally, the Town Accountant to this point has required that a PO be generated prior to purchasing a good or service.

Further, the Procurement Officer asserts that the School Department cannot use vendors on the State Bid List, sometimes referred to as Com-PASS, but must bid everything. This has never been asserted before by Town Hall, and according to the School Department's licensed personnel, and its attorney, is entirely untrue (Document E). This misunderstanding of a most significant portion of the law has caused a tremendous amount of the wasted time and effort the School Department has suffered. The fact that the Procurement Officer is mistaken about such an important provision of the law calls into question her credibility.

Since the beginning of FY12, the Town Auditor has been requesting a new and larger volume of information / documentation than has ever been requested previously. This has generated new work for the School Department's staff that is extremely time consuming and in many cases represents a duplication of effort. The Schools have found, and can document, which requests for the same documentation have been made multiple times to multiple School Department employees. Items that have been requested multiple times include but are not limited to:

- Special education transportation contract
- Window study RFP and contract

- Electricity contract
- Natural gas contract
- Track resurfacing bid and contract
- Striping of parking lots
- Annual boiler cleaning and inspections (state bid list)
- OMS chimney repair (state bid list)
- Grass cutting bid
- Transportation
- Wood floor refinishing
- Copy paper bid
- Chain link fence repair

The School Department is cognizant of the fact the Town Auditor has the right to request contracts, but sending a contract over once should suffice. It is important to note that it has always been an accepted practice, recognized by both the Town Auditor and the outside auditors, to have contracts available in Mr. Harding's office for review at any time, as an alternative to having all contracts on file in the Town Auditor's office. The Department of Revenue has ruled that scanned contracts are acceptable as originals, and yet the Town Auditor will not accept this.

The procurement experience of the IT Department is an excellent vehicle with which to compare and contrast the procurement process and procedures of both the Town and the Schools, as the Information Technology (IT) Department provides services to both the Municipal Government and School Department. To provide a qualified perspective, Dr. Lawrence Gray, the Administrator of Educational Technology, was asked to explain his experiences. Dr. Gray stated that when the IT Department places an order on behalf of the Schools, a PO is generally approved within 24 hours and it never takes longer than 3 days to have a PO approved. This results in the order generally arriving within a week of submitting the PO. On the Municipal side, much smaller orders can take up to 6 weeks to arrive. As demonstrated by Document F, it can take up to 3 weeks for a small PO to get approved on the Municipal side of Government. In Ms. Pope's REFRESHERS document, discussed earlier, the Procurement Officer states that "eventually, we can move to breaking out the steps into a schedule...." She proposes Monday as PO day when POs get approved. Within the School System POs are approved every day. It would be irresponsible of the School Department to accept a system so much less efficient than its own. One could argue that it defies common sense and good management practice to propose such a thing.

An excellent example of how the Town Manager's interference can cost the Stoughton Public Schools a substantial amount of money is in the matter of the School's contract with YCN for Special Education transportation. The School Department negotiated an arrangement with its special education transportation company, YCN, which would yield a 2% discount for quarterly prepayment. Legal opinions (Leicester Decision, Document G) and regulations from the Inspector General's office clearly sanction this practice. The Town has continued to refuse to allow this. The cost of the discount is approximately \$18,000.00. And while the cost is significant, the bigger issue is the fact that the Leicester Decision clearly prohibits a municipal government from interfering with the prepayment of Special Education Services.

Over the past few months there have been several instances in which the Town Hall has purposely attempted to disrupt the purchasing operations of the School Department. Rather than trying to recount them all, the School Department will focus on the several recent examples illustrating the issue, primarily drawn from an email from Bill Rowe dated January 12, 2012. (Document H) Mr. Rowe's email represents a demand for current contracts and identifies contracts that he will be requiring in the future. Mr. Rowe's demands are unreasonable, contradict his own statements with regard to procurement requirements, and demonstrate either a lack of knowledge of procurement practice or a purposeful attempt to disrupt the School Department's procurement operations. It is important to note that both Mr. Rowe and the Inspector General have explicitly stated that a signed PO is in fact a contract (Document I). Examples of Mr. Rowe's unreasonable requests for contracts from the following vendors illustrate this fact:

1. Cambium

Cambium is the developer of Kurzweil Software used for Special Education students. It is the sole source of the software. The charge is for software support. As such, a service contract of this nature would be exempt from this provision in 30B. It is important to note that the Kurzweil Software is specifically required in the Individual Education Plans (IEPs) of several Special Education students. Failure to provide the software would be a violation of both State and Federal laws, as it would prevent the Schools from meeting the student's IEP requirements.

2. Kids Sports Transportation

Kids Sports Transportation provides transportation to student athletic events. The Schools have been paying this vendor since the beginning of the school year for this service. The Athletic Director (AD) is not under any obligation to use this service, but when necessary the AD calls for quotes and uses the vendor who is available and has the lowest price. The Town has been paying the invoices from Kids Sports Transportation since the beginning of the year with no mention of the need for a contract. In this case an open PO is in place, which meets the contractual requirements. Quotes have been provided to Mr. Rowe.

3. Solar Tech

The Town Auditor has paid this company over \$26,000.00 to date before arbitrarily deciding not to pay the most recent invoice of \$3,200.00. Mr. Rowe stated that he did this due to the fact he didn't have all the documentation related to the contract and bidding process, in hand. However, Solar Tech is on the State Bid list. As such, it is not subject to the criteria applied by Mr. Rowe in order to suspend payment. Solar Tech is a joint contract entered into by the Town and the Schools, and was engaged through a formal bid. This contract has previously been provided to Mr. Rowe on more than one occasion. After consulting with Solar Tech, they stated that the Town has only stopped

payment on invoices submitted to the School and has continued to pay those submitted by the Town. Once the original issues were proved specious, the Acting Procurement Officer then refused to pay this bill because she stated that it had not been advertised correctly, that it should have been in the publication of Goods and Services, not the Central Register. In fact, the Office of the Secretary of State had advised publication in Goods and Services and had very nicely *moved the ad to that publication for us*. The APO decided that she was right and they were wrong, and still refused to pay.

4. AAA Laser

AAA Laser provides the Town with a large variety of remanufactured toner cartridges. Based on recent quotes, their pricing is significantly lower than the competition. The Technology Director recently surveyed all the Tech Directors in our local group and compared pricing. AAA Laser was the least expensive source for remanufactured cartridges. They also deliver the same or next day, which is significant as the IT Department has very limited storage space. In addition, they provide a free printer service with every 10 toner cartridges purchased. The Tech Director has requested the year to date total of each type of cartridge purchased, and does not believe any totals would be over the \$5,000 threshold. As each toner cartridge is different, a contract would not be the appropriate vehicle to conduct business with this company. Since there is the possibility that the IT Department may be able to get better pricing in the future from another company, the department does not wish to obligate itself to this company by signing a contract. It should be mentioned that the Municipal side benefits enormously, as Dr. Gray supplies them with toner at essentially no cost. Further, the Schools find this another example of the Auditor asking for a contract when he has stated "in lieu of a contract, having the vendor sign the PO is enough." Additionally, the purchase of multiple items from the same vendor is not subject to the contract requirement if they fail to meet the \$5,000 threshold.

5. CDWG

CDWG is an approved catalog vendor on PEPPM National Contract, which is considered to be the same as a State Contract. The PEPPM Contract Listing has been provided. This is an example of public information, available on line, which the Municipal side has repeatedly asked for. The Town should have this information available for reference. The Schools should not be required to repeatedly provide the Town with information which is freely available to the public, and which has previously been provided.

6. Cerdant

Cerdant is an authorized SonicWall reseller that has historically had the lowest prices. The invoice in question is a support renewal costing less than \$5,000. The Technology Director routinely checks the prices offered by the three SonicWall resellers. The Schools also purchase support renewals for different products, firewall monitoring, and backup services from Cerdant, each product or service being different and not exceeding the \$5,000 threshold. As such, a contract for this service is not appropriate or necessary.

7. FM Generator

FM Generator is a long-term vendor that is utilized by the School Department and various Town Departments. They are on a State Contract with Comm-PASS. The Procurement Officer, who stated that State Contracts cannot be used, is mistaken on the very important point that we must go out to bid for things that we can buy from vendors on the state bid list. Our attorney and licensed personnel know this to be untrue and following the flawed dictate of Ms. Pope would represent a redundant and unnecessarily allocation of time (Document J).

8. Follett Software

Follett Software is a vendor that provides the library software to the Schools. The invoice in question is a support contract renewal and not subject to bidding rules. This is an area with which the Town Auditor has had no issue until the recent barrage of requests. The Schools maintain a variety of software packages, as do the Municipal departments that are sole-source and must be renewed for the product to be useable. Again, this particular item is exempt under 30B.

9. Inspired Technology

Inspired Technology is a long-term vendor for the School Department and various Town Departments. When the request was received from Mr. Rowe, the School's Finance Coordinator again forwarded a sole source letter from Comdial, which was previously forwarded to him by our Technology Director when the town purchased its new phone system in the amount of \$100,000. This is an excellent example of the Schools receiving repeated requests for materials that are in the possession of staff at Town Hall. It also begs the question: Why would the Town ask the Schools to get three quotes for a sole source provider that both school and town sides have used for years? It is interesting to note that in a phone conversation with a representative from Inspired Technology, they stated that they were not having any trouble getting invoices directed to the Municipal side of Stoughton paid on time. This leads to the question of whether the Municipal government is purposely attempting to discredit the School Department.

10. Integrated Electric Systems

Integrated Electric Systems is a vendor used by the School Department that is on a Comm-PASS contract. As such, a service contract of this nature would be exempt from this provision in 30B. It is important to note that companies on the State Bid list have been vetted to ensure they provide the lowest price. It has been done specifically to prevent the unnecessary and time consuming work proposed by Mr. Rowe.

11. JAMF Software

JAMF Software is the developer and sole source for education pricing for the Casper Software Suite. In addition, the invoice in question is for annual support and maintenance. JAMF provides a 100% discount on the software licenses to K12 public schools, so there is no license fee. As such, a contract of this nature would be exempt from this provision in 30B.

12. Northeast Playground Builders

North East Playground Builders is a vendor used by the School Department that provides the service of playground inspections. They are a state certified playground inspector and are on a Comm-Pass contract. As such, a PO is generated for any work done, which meets the statutory contract requirements.

13. Garelick Farms

Garelick Farms provides milk to the students of the Stoughton Public Schools and is an example of purchasing through a co-op. Food Service belongs to a co-op with other school districts and has led the way in this example of regional buying to the benefit of many communities. The co-op's contract with Garelick Farms, along with the materials documenting the bid process have been provided to Mr. Rowe. This has been the practice of Food Service for a number of years and has never represented an issue before now. The Garelick Farms contract is subject to procurement auditing in every organization that participates in the co-op, every year, and has never been identified as an issue.

14. Riso

Riso is a long-term vendor who provides our digital duplicators. They are nationwide and on a Comm-Pass contract. As such, a PO is sufficient to meet statutory contract requirements.

15. Union Office Supply

Union Office Supply is a small local vendor that the Schools use to purchase miscellaneous office supplies. It would be impossible to purchase more than \$5,000 of any one item from this vendor as the individual school budgets would not permit it. The School's financial office staff was required by the Auditor to printout the page from Comm-PASS before this bill would be paid, despite the fact that this is information publicly available.

16. United Elevator

United Elevator is a contractor under a 3 Year bid for both the School Department and various Town Departments. This is a contract requested that Town Hall already has, since the contract is already in its 3rd year.

17. W.B. Mason

W.B. Mason is a long-term vendor, on a Comm-Pass contract, used by both the School Department and various Town Departments. As such, a PO is sufficient to meet statutory contract requirements.

The Town Auditor has stopped a payment of \$22,000 to a vendor who relined the OMS chimney because he deemed it a construction project that was not properly bid rather than a service as Mr. Harding believed it was. Mr. Harding solicited opinions from the Attorney General's office and the Inspector General's office. One opinion concurred with Mr. Harding's, one determined that it was a "gray" area, and therefore could go either way. Mr. Rowe has inserted his opinion in place of all three of these opinions and refuses to pay the vendor leaving only several bad choices. As things stand, the Town is only offering to pay the \$9,999 payable for an un-bid construction project, which will result in the vendor suing the Town for the full amount. This will also significantly affect the Schools credibility in the eyes of local contractors. As the designee of the Superintendent, the Procurement Officer for the School Department, Mr. Harding's decision should prevail, especially since the regulating office sanctioned his approach. Who would blame a vendor from avoiding the Town of Stoughton in the future?

When Town Hall refuses to pay one of the School Department's bills it is not a simple process to remediate. The bill has to be pulled from the warrant, the warrant needs to be recalculated, and the vendor has to wait at least an additional two weeks. Some vendors have to wait for months after they have delivered their product or service, damaging the Schools relationships with some of our long term suppliers, including some local businesses. The School Department deeply resents the destruction of our credibility with the people who work with us.

The School Committee would like to make it clear that the School Department does want to work in partnership with the Municipal government. We have many demonstrated and documented examples of this. The School Department has always wanted, and continues to pursue a cooperative relationship to purchase together for better pricing. Many overtures have been made over the years, and are still being made. As an example, Mr. Harding, the Supervisor of Support Services, has again asked any interested municipal department to participate in our copier bid. Mr. Harding has sought bids for better electricity and gas pricing, which have enabled us to reduce the budget for these things in the FY 13 budget proposal. There is an attached list of suggestions for cost savings and consolidation that have been sent to the Town Manager and never been addressed (Document I). Mr. Rowe has been happy in the past to work cooperatively with the Schools. In an email to the Municipal Department Heads he writes, "We are welcome to use the School Dept.'s tradespeople for building repair projects less than \$10,000." (Document K) The School Department truly misses the days when we could work in

this way with Mr. Rowe and others on the Municipal side. We would love to see those days back, along with our effective, efficient system.