

July 10, 2007

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: Richard Bourbeau
A-Plus Center for Learning
SCI Case #2006-0275

Dear Chancellor Klein:

An investigation conducted by this office has substantiated that A-Plus Center for Learning (“A-Plus”), a Special Education Teacher Support Services (“SETTS”) provider doing business with the Department of Education (“DOE”) is owned by Richard Bourbeau, a DOE Special Education Teacher.¹ Bourbeau did not ask the DOE to obtain a waiver from the New York City Conflicts of Interest Board to allow him to do business with the DOE. In addition, we found that Bourbeau submitted fraudulent related services claims for payment from the DOE. As a result, through A-Plus, Bourbeau received more than \$14,000 in public funds. Although Bourbeau claimed to have used qualified personnel to provide the SETTS services, we found that the individuals listed on the claims submitted to the DOE for payment were not the individuals who met with the children.

This investigation began in January 2006, when DOE Ethics Officer David Schacher contacted the office of the Special Commissioner of Investigation (“SCI”) and reported that a DOE employee had requested a waiver to handle a SETTS case on behalf of A-Plus. When Schacher telephoned A-Plus to obtain more information, he learned that the company serviced many DOE children using DOE employees. Schacher also was told that the head of A-Plus was Richard Bourbeau. The 2006 SETTS Independent Provider Register listed Angelina Bourbeau as the contact for A-Plus.

¹ Bourbeau was not reassigned during this investigation.

A New York State Department of State search revealed an initial filing date of November 1998 for A-Plus and an incorporation date in March 2004. Richard J. Bourbeau was listed as the contact person for A-Plus.

Pursuant to a subpoena, in March 2006, A-Plus provided the names of 37 individuals employed by the company.² The assigned investigator then determined that 11 of those individuals were current DOE employees, including Richard Bourbeau, and two others were former DOE employees. Schacher informed the assigned investigator that none of the 13 current and former DOE employees had requested a waiver from the COIB.

To the assigned investigator, Benedict S. Gullo Jr., the attorney for Bourbeau and A-Plus, asserted on behalf of his client that the principal of Bourbeau's school, his supervisor, and others were aware that he had a private business. Moreover, a DOE Special Education attorney had advised Bourbeau that the DOE was encouraging waivers because of the difficulty in providing services on a private basis. Gullo also forwarded several letters dated between January 22 and February 12, 2002, which "his client" maintained were "Waivers of the rule prohibiting Board of Education employees to simultaneously provide private services."

A review of these letters revealed that they were form documents with a stamped signature of Ava J. Mopper, Administrator of the Office of Related and Contractual Services ("ORCS"), sent to Richard Bourbeau at A-Plus, approving tutoring services to students who attended non public schools. Payment would be made by the DOE.

For SCI investigators, Mopper reviewed the eight letters that ORCS sent to Richard Bourbeau and said that they were not waivers and that ORCS did not and could not issue waivers. Mopper added that the letters merely confirmed that Bourbeau had the appropriate licenses to provide tutorial services to students and also advised Bourbeau that he had been approved to provide services for a specific period of time. Mopper explained that Bourbeau completed an application – a P-4 letter – for each student, which resulted in the approval letters from Mopper. According to Mopper, if Bourbeau was employed by the DOE when he submitted the P-4 letters, then he was not "forthcoming" in advising ORCS of that fact. Mopper asserted that if ORCS had known that Bourbeau was a DOE employee, then he would have been referred to DOE Ethics Officer David Schacher to request a waiver.

² The attorney for A-Plus reported that A-Plus may have employed additional individuals, however, because they received less than \$600 in compensation, no 1099 tax form was prepared.

A review of the P-4 letter that Bourbeau would have been required to complete in 2002, revealed that it contained the clause:

NOTE: Private service providers may not be current Board of Education employees.

Private service providers should be aware of the fact that all payments and /or records relating to their performance are subject to audit and review by the Board of Education or its designee.

In an interview with SCI investigators in May 2006, conducted in the presence of his attorney, Richard Bourbeau confirmed that he currently worked for the DOE and had been a teacher in the New York City school system since 1985. Bourbeau asserted that, in 2001, the DOE actively sought teachers to provide SETTS or P-3 services and, in that year, he began providing P-3 services to a student at the student's home. Bourbeau added that, as a result, the DOE placed Bourbeau's name on a SETTS Provider list.

The assigned investigator informed Bourbeau that the eight letters provided by his attorney were not waivers. Bourbeau claimed that he did not know he was required to apply for a waiver to provide P-3 services. According to Bourbeau, in approximately 2001, Elaine Colthrist, who then worked for ORCS, verbally approved him as a P-3 provider. Bourbeau said that he had submitted an application to ORCS to provide P-3 services. He added that he did not provide P-3 services after 2002.

Bourbeau explained that, prior to January 2006, A-Plus hired several DOE teachers to provide P-3 services, but in January 2006, as a result of this investigation, those teachers stopped doing so. According to Bourbeau, A-Plus recruited teachers by advertising in the "Yellow Pages" and distributing flyers. Bourbeau confirmed that none of the DOE teachers who worked for A-Plus received a waiver to provide P-3 services and reiterated that he was not aware that a waiver was required.

During the May interview, Bourbeau was asked to provide copies of his application to provide P-3 services. On June 30, 2006, Gullo informed the assigned investigator that Bourbeau could not locate any documents relating to tutoring services provided to the DOE.

ORCS Assistant Director Cathy Friscia informed the assigned investigator that Eldorio Colthrist, who was known as Elaine, worked for ORCS as a Principal Administrative Assistant from 1983 until she retired from the DOE in September 2003. Friscia said that Colthrist absolutely had no authority to approve anyone to be a P-3 service provider and, moreover, Colthrist did not have the capability to do so.

Mopper confirmed the information provided by Friscia and added that Colthrist was responsible for processing the confirmation letters which advised an individual that he or she had been approved to provide tutorial services. Mopper suggested that it was possible that Colthrist initially informed Bourbeau over the telephone that he had been approved to provide P-3 services and that he would receive a letter in the mail.

Investigators spoke with some of the DOE employees on the A-Plus employment list provided by the attorney for Bourbeau and the company. A teacher assigned to PS 124 in Manhattan said that she was employed by A-Plus approximately three years earlier when she worked a few weeks during the summer as a Math tutor. She added that she was hired by Richard Bourbeau after responding to an advertisement in one of the local newspapers. According to the teacher, for a couple of hours per week, she instructed two sisters who attended a private school.³ She explained that the students were not learning disabled and she taught them accelerated Math. This teacher was not familiar with a P-3 letter.

A teacher assigned to P4 in Queens said that she occasionally worked for A-Plus as a secretary in 2003 and 2004, and was hired by Richard Bourbeau. She added that she did not provide any tutoring services. In fact, the teacher reported that Bourbeau advised that she was prohibited from providing tutoring services to public school students because she was a DOE employee.

A teacher at Sunset Park Prep School said that she worked for A-Plus on one occasion in August 2005, prior to becoming a teacher for the DOE. She asserted that she taught only one Spanish session and was paid approximately \$60. The teacher added that she began working for the DOE in September 2005.

A teacher assigned to PS 268 in Brooklyn said that she worked for A-Plus in its afterschool program from September 2004 to June 2005. She was hired by Richard Bourbeau after replying to an advertisement for tutors in the Bay News. The teacher explained that she instructed two sisters who attended a private school.⁴ She added that she tutored the students in Science and Social Studies and helped them with their homework. According to the teacher, Bourbeau never informed her that she needed a waiver to provide services to the students. She did not know whether the students received tutoring as a result of a P-3 letter.

³ The teacher could not name the students.

⁴ The teacher could not identify the school, but gave first names and a possible last name for the students.

A teacher assigned to PS 236 in Brooklyn said that she was employed by A-Plus during the summer of 2002, and was paid less than \$600. She added that she was a Math and Literacy tutor for students who lived in the area where A-Plus was located.⁵ The teacher reported that she also performed secretarial work at A-Plus. She was not familiar with a P-3 letter and knew nothing about a requirement to obtain a waiver.

A paraprofessional assigned to PS 368 in Brooklyn said that she was employed by A-Plus from February 2004 to September 2005 in its afterschool program where she tutored two students.⁶ She did not know whether the students received tutoring services as a result of a P-3 letter.

Another teacher who had been assigned at PS 135 in Brooklyn until her resignation in October 2005, said that, for one month in 2005, she worked for A-Plus in its afterschool program, but then took a leave of absence because she was pregnant. She added that she tutored a student who attended a private school.⁷ The teacher was not familiar with a P-3 letter and was not advised to request a waiver to provide tutoring services.

The DOE Bureau of Contract Aid provided the assigned investigator with a “Transaction History Detail” report from fiscal years 2002 through 2006 for A-Plus. During that period, the DOE paid A-Plus more than \$160,000 for claimed services.

The assigned investigator found two letters in the file relating to a student (“Student B”) who purportedly received services from an A-Plus provider named Michael Schnall. One letter confirmed that Schnall had been approved to provide tutoring services to Student B from September 5, 2002, through June 26, 2003. The other letter confirmed that Schnall had been approved to provide tutoring services to Student B from September 13, 2004 through June 28, 2005.

Michael Schnall informed the assigned investigator that he retired from his teaching position with the DOE in 2001. According to Schnall, that same year, he completed an application to work for A-Plus as a tutor, but then changed his mind. Schnall reported that he never worked for A-Plus and never received a salary from A-Plus. Schnall said that he did not provide tutoring services to Student B.

⁵ The teacher could not recall the names of any of the students whom she tutored.

⁶ The paraprofessional provided the names of the students.

⁷ The teacher named the student.

The parent of Student B informed the assigned investigator that Student B had received services from A-Plus a few years earlier. The parent asserted that Michael Schnall tutored Student B at their home for approximately one year.

Additional documents obtained by the assigned investigator revealed that Schnall had been approved to provide tutoring services to another student ("Student E") from September 5, 2002 through June 23, 2003, and that all payments were to be made from the DOE to A-Plus.

The parent of Student E informed the assigned investigator that Student E had received services from A-Plus a few years earlier, five days a week, at their home. The parent reported that Student E's service provider, who was not identified by name, was female. In fact, the parent specifically confirmed that Student E did not have a male service provider.

The assigned investigator obtained additional invoices from A-Plus to the DOE and confirmation letters for three more students ("Student C," "Student D," and "Student I") who are siblings and attended private schools. The documents named Michael Schnall as providing tutoring services to Student C, Student D, and Student I from November 1 through November 30, 2004.

In November 2006, SCI investigators met with Michael Schnall in an attempt to resolve the conflict between his prior statement and the documentary evidence. Schnall described Richard Bourbeau as a teacher with whom he remained in contact after Schnall retired in 2001. Schnall added that he had dinner with Bourbeau about four times a year since 2001.

Schnall reiterated that he never worked for A-Plus. However, several years ago, Schnall "substituted" for Bourbeau at A-Plus and tutored several students on the Saturday when Bourbeau was married. Schnall added that Bourbeau paid him between \$75 and \$100 in cash for his services that day.

Schnall continued that Bourbeau had informed him that he was being investigated by SCI. Schnall said that Bourbeau then told him that he had used Schnall's name as a service provider for A-Plus, but did not say how long he had been using his name. Schnall maintained that he never gave Bourbeau permission to use his name in a false manner. According to Schnall, Bourbeau asked him to falsely say that Schnall had tutored students for A-Plus if Schnall should be contacted by SCI. Schnall said that

Bourbeau explained that parents of the students were going to falsely state that Schnall had provided services to their children. Schnall asserted that, instead, he told Bourbeau to tell SCI that he had made a mistake by using Schnall's name and that Schnall never worked for A-Plus.

For investigators, Michael Schnall reviewed three invoices that listed Schnall as the A-Plus service provider for Student C, Student D, and Student I and which Schnall purportedly signed. Schnall said that he did not provide services to those students and he did not sign the invoices.

Schnall also reviewed a copy of his Board of Education license which was attached to a letter confirming that Michael Schnall, from A-Plus, would be the service provider for Student B. Schnall responded that he never tutored Student B and did not know Student B. Schnall explained how Bourbeau obtained his license. After Schnall retired in 2001, Bourbeau asked him to work for A-Plus, but he declined. However, Bourbeau asked Schnall for a copy of his license which he would keep on file in case Schnall changed his mind. According to Schnall, he reluctantly gave Bourbeau a copy of his license.

Two more invoices from A-Plus to the DOE indicated that Michael Schnall provided services to Student B and Student C in December 2004. Five additional invoices claimed that Michael Schnall provided services to Student C, Student D, Student I, Student B, and his sibling ("Student J") in January 2005. Schnall purportedly signed the invoices. The students attended private schools.

SCI investigators obtained more SETTS invoices from A-Plus to the DOE and confirmation letters for Student B and Student J. The invoices indicated that Michael Schnall provided services to Student B and Student J in February and March 2005. Schnall purportedly signed the invoices.

Two SETTS invoices from A-Plus to the DOE and a confirmation letter relating to another student ("Student K") indicated that Michael Schnall provided services to Student K in May and June 2005. Schnall purportedly signed the invoices. Student K attended a private school.

Four more SETTS invoices from A-Plus to the DOE for Student B and another sibling ("Student L") indicated that Schnall provided services to Student B and Student L in September and October 2005. Schnall purportedly signed the invoices. Student L also attended a private school.

In a third interview with SCI investigators, Michael Schnall reviewed the additional invoices to the DOE and confirmation letters which listed him as the A-Plus service provider for various students and which he purportedly signed. Schnall reiterated that he never worked for A-Plus and never provided services to any of the students. Schnall also said that he did not sign any of the invoices and did not authorize anyone to sign his name to the invoices.

The assigned investigator also obtained progress reports relating to Student C and Student I, ostensibly filed by Schnall. In a fourth interview with SCI investigators, Schnall reviewed the reports and responded that he did not write them. Schnall reiterated that he was never a service provider. Schnall also confirmed that he never gave anyone permission to sign his name on any service reports.

In March 2007, SCI investigators interviewed the mother of Student C, Student D, and Student I. The mother said that all three of her children were tutored by several female A-Plus service providers who worked for Richard Bourbeau. The mother added that her children had received the tutoring for approximately three years and had stopped receiving services from A-Plus over a year ago.

The mother reported that she did not know Michael Schnall and her children never received tutoring from a male service provider. The mother reviewed invoices relating to her children and reported that she had signed all of the documents. She explained that, every month, Bourbeau came to her home with the invoices and she would sign off on them. The mother maintained that the invoices indicated the accurate number of service hours received by her children.

In March 2007, SCI investigators interviewed the mother of Student K. The mother said that Student K received tutoring services from A-Plus, on site at the company in Brooklyn, for a few months in 2005. The mother reviewed the invoices relating to Student K and reported that she signed the documents.

Student K's mother continued that Richard Bourbeau was the person in charge at A-Plus. She said that Student K had a male service provider, but could not recall his name. The mother viewed five photographs, including one of Schnall, but did not recognize any of the individuals depicted. The mother confirmed that none of the individuals in the photographs tutored Student K. The mother said that she did not know Michael Schnall.

The investigators then spoke with Student K who explained that, about a year earlier, he was tutored at A-Plus by an individual name "Richard," whose last name he did not know. Student K added that, when his service provider was not available, he was

tutored by the secretary who answered the telephone at A-Plus. Student K viewed five photographs, including one of Michael Schnall, and responded that his service provider was not one of the individuals in the photographs. Student K said that he did not know Michael Schnall.

In March 2007, investigators again interviewed the mother of Student B, Student J, and Student L who received tutoring from A-Plus at their home. This time the mother reported that she never heard of Michael Schnall and that no service provider named Michael ever tutored her children. The mother said that the tutor was almost always a woman who had a first name similar to "Lisa." She added that, when "Lisa" did not tutor her children, the replacement tutor was another female. The mother explained that the A-Plus invoices she signed, which contained the hours and dates of service, were brought to her home by "Richard" from A-Plus.

The New York City Comptroller's office provided the assigned investigator with copies of canceled checks payable to A-Plus. An analysis of the invoices from and checks to A-Plus relating to Student B, Student C, Student D, Student I, Student J, Student K, and Student L revealed that the DOE paid A-Plus more than \$14,000 between December 3, 2004 and December 14, 2005.

Through his attorney, Richard Bourbeau declined the opportunity to speak further with investigators from this office.

It is the recommendation of this office that Richard Bourbeau's employment be terminated, that he be made ineligible for employment with the DOE and that this matter be considered should he apply for any position with the New York City school system or one of its vendors in the future.

It is the further recommendation of this office that the DOE not do business with A-Plus which has proven to be an unqualified vendor.

We also recommend that a full audit of payments made to A-Plus be conducted.

We note that the conduct reported here may violate the conflicts of interest provisions of the New York City Charter which is administered by the New York City Conflicts of Interest Board.

We are referring our findings to Kings County District Attorney Charles J. Hynes for whatever action he deems appropriate.

We are forwarding a copy of this letter and of our report concerning this investigation to the Office of Legal Services. We also are sending our findings to the State Education Department for whatever action it deems appropriate. Should you have any inquiries regarding the above, please contact First Deputy Commissioner Regina Loughran, the attorney assigned to the case. She can be reached at (212) 510-1426. Please notify First Deputy Commissioner Loughran within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated regarding Richard Bourbeau and A-Plus. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By:

Regina A. Loughran
First Deputy Commissioner

RJC:RAL:gm

c: Michael Best, Esq.
Theresa Europe, Esq.