

CITY OF NEW YORK
THE SPECIAL COMMISSIONER OF INVESTIGATION
FOR THE NEW YORK CITY SCHOOL DISTRICT

EDWARD F. STANCIK
SPECIAL COMMISSIONER

PRELIMINARY REPORT:
Corruption in Community
School District 9

By:
Sean Courtney, Special Counsel
Leah Keith, Special Counsel
Tom Comiskey, Senior Investigator
Joseph Piwowarski, Senior Investigator

April 1996

ACKNOWLEDGEMENTS

This investigation was conducted by Special Counsel Sean Courtney, Senior Investigator Tom Comiskey and Senior Investigator Joseph Piwowarski. The preliminary report was written by Special Counsel Leah Keith, Sean Courtney, and Investigative Analyst Josh Greenman under the supervision of Deputy Commissioner Karen Lupuloff and First Deputy Commissioner Robert Brenner.

The Special Commissioner thanks the office of Bronx District Attorney Robert T. Johnson for its cooperation, particularly Assistant District Attorney Stephen Bookin, as well as Burton Sacks, the Board of Education's Chief Executive for Community Affairs, Outreach and Monitoring, and Judith Kay, First Deputy Director of the Board of Education's Office of Legal Services.

I. INTRODUCTION

It is a cruel fact of life for the more than 31,000 children of Community School District 9 in the Bronx that their district ranks at the absolute bottom of citywide reading and math scores. Astoundingly, in 1995 only one in three of these children performed at grade level in math. It is equally disturbing that fewer than one in three scored at grade level on standardized reading tests.

The educational progress of the students of District 9 is ultimately entrusted to the nine-member Community School Board that presides over the 35 elementary and junior high schools that fall within the district. It is these members of the school board who choose the educators, including the district superintendent and school principals, that will lead the schools within the district. Given the educational crisis confronting District 9, one might expect that community school board members would be consumed with a sense of urgent need to achieve school reform. Every available dollar should be directed toward the needs of the classroom, with a single-minded focus on improvement.

To the contrary, our preliminary investigation has revealed that the attention of Community School Board 9 ("CSB 9") members and the resources of Community School District 9 are focused on matters that have little if anything to do with educational improvement. Indeed, in investigating the many allegations that CSB 9 members have misused district resources and personnel, this office has yet to find evidence affirming that any of the resources in question were directed toward legitimate educational goals. Under Board President Carmelo Saez, Jr., district resources are being diverted for the political and personal needs of Saez and his political cronies. A majority of the other members of CSB 9, each with voting power and voice equal to Saez's, have through malfeasance or nonfeasance encouraged Saez's misuse of public power. So clear a pattern of misconduct has emerged during the first four months of this investigation that it is possible to disclose publicly a portion of our findings while the investigation continues.

In the next few pages, we examine the tradition of corruption in District 9 that set the stage for the present misuse of school dollars and personnel. We then describe several different instances of misconduct or waste revealed thus far in the course of our investigation, ranging from coercive political

fundraising practices to the misuse of school board members' expense accounts. We note that the abuse of public office in this district has become so commonplace that some parents and teachers have come to regard it as unstoppable.

Attached to this report is an excerpt from a 1993 investigative report by this office detailing the misuse of District 9 personnel by Carmelo Saez, Jr. in his political fundraising efforts. The wrongdoing described in that report is similar to the present-day fundraising practices described by witnesses in the course of our current investigation. Despite public censure for his conduct exposed in our 1993 report, Saez has continued to misuse his office with the acquiescence of the majority of his fellow board members. The evidence suggests that in the long-time struggle to rid District 9 of corruption, the battle continues to pit politics against pedagogy. And politics is still winning.

II. BACKGROUND

Any examination of possible wrongdoing in Community School District 9 requires, at the outset, brief consideration of the recent history of the district and the past conduct of its leaders. In fact, by examining the tradition of misuse of school personnel and resources in District 9, it becomes clear after reading the facts described in this report that the history of corruption in District 9 is repeating itself -- at the expense of the district's schoolchildren.

Community School Board 9 has been suspended twice in the last eight years. In 1988, then-Schools Chancellor Richard Green, citing charges of corruption and an ongoing probe into District 9 by the Bronx County District Attorney's Office, suspended all nine members of the board, including Carmelo Saez. Saez, who first became a board member in 1975, has remained on the board since that time except when he was removed or suspended by different chancellors.

On the heels of this suspension, in 1989, three of the suspended board members, Jerome Greene, Curtis Johnson and Jose Gonzalez, were indicted in Bronx County on various charges of larceny and official misconduct. Each of the three pleaded guilty and separately admitted that they had improperly used District 9 employees and equipment to produce political materials. In addition, Jose

Gonzalez admitted to charging parents to participate in a latchkey program that should have been free of charge. Curtis Johnson also pleaded guilty to grand larceny and admitted receiving kickbacks from vendors doing business with District 9. And Jerome Greene, one-time president of CSB 9, pleaded guilty to petit larceny and was sentenced to six months probation. Johnson and Gonzalez received stiffer sentences than Greene, and both were sentenced to prison terms. Also in connection with the Bronx investigation, PS 64 Principal Howard Levine and District 9 employee Fred Brown pleaded guilty to petit larceny and admitted to using District 9 equipment and resources to copy political materials.

Carmelo Saez was questioned in 1989 in connection with a Bronx District Attorney's Office investigation and admitted that he too had used school employees to work on matters unrelated to the business of District 9. However, he was not charged with any crime. He ran for reelection to CSB 9 in 1989 along with two other incumbents who also had been suspended from CSB 9, Edwin Cruz and Loise Washington. All three were re-elected, and Saez was voted president of the board.

With his election to the president's position, made possible by the support of his fellow board members, Carmelo Saez was now "in command" of CSB 9. He proved skillful at marshaling a majority of votes on the board when he needed them. And the task of commanding a majority was made somewhat easier by the system of assigning CSB 9 members to act as liaisons to certain schools in the district. Board members wanting to satisfy their desires for their respective schools sought Saez's support. Thus, to board members, it made good sense to support Saez in return for his assistance to them.

In October 1991 there was further turmoil when CSB 9 Vice-President George Palermo was removed from office after pleading guilty to charges that he had menaced a District 9 employee. Palermo was accused of threatening to harm the employee, who was at that time the executive assistant to the Superintendent of District 9.

Less than a year later, in May of 1992, Carmelo Saez was again suspended from CSB 9, this

time by then-Schools Chancellor Joseph A. Fernandez. The suspension was made a permanent removal one month later after it was confirmed that Saez had improperly used district equipment and personnel to make a promotional video for the Lancers Drum and Bugle Corps, for whom Saez was a salaried director. This was in June 1992. Several months later, in November 1992, Saez ran for a City Council seat. He not only lost the race, but also failed to file the financial disclosure form required of all candidates.

Finally, in May 1993, Saez again ran for election to CSB 9 and won. His election was doubtless facilitated by low voter turnout and Saez's utilization of district resources to raise political funds and to perform campaign work. Once again he was elected to the president's post by his fellow board members, including Benjamin Ramos. Ramos was later removed from the board after an investigation conducted by this office established that he lived in New Jersey, thereby rendering him ineligible to run in the district. Thus, Saez managed to maintain leadership of the board in spite of a troubled history of performance.

The years of turmoil in District 9 have taken a tremendous toll on the district: there have been five different superintendents in the last six and a half years alone. The rate of teacher turnover is distressingly high. The district has sunk to the very bottom of the citywide scores measuring performance in math and reading. The continued perception of corruption and misconduct in District 9 has had a chilling effect on the democratic process, evidenced by the fact that in the current 1996 school board election, only ten individuals filed nominating petitions for nine CSB 9 seats, and of the ten, Saez himself successfully challenged the petitions of four.

This history provides the context for the findings of our current investigation. We begin this summary of our preliminary findings with a description of ongoing improper fundraising practices in District 9. Despite this office's December 1993 report, which exposed Saez's corrupt fundraising practices, the board president continues to misuse his office.

III. POLITICAL FUNDRAISING: ATTENDANCE REQUIRED

The political fundraiser, something of a tradition in various local school districts in New York City, appears to be a highly successful formula for generating money that can easily disappear into personal accounts. Our 1993 investigation into wrongdoing in the course of local school board elections found the fundraising formula at work in District 9, among others.¹ Our 1993 report described how Carmelo Saez used numerous school personnel, on school time, using school resources, to organize a fundraiser. He also formed an organization in whose name the funds were raised -- money that seemingly disappeared. The report illustrated that this misuse of school personnel was not only coercive, but was also a violation of the city's conflict of interest laws, which govern all public servants.²

It is easy to see why this method of raising money is so appealing. It is virtually fool-proof: high ranking officials in the district sponsor a party for which there is an admission price, usually between \$25 and \$35 per person. Tickets are distributed to personnel in the schools, usually the school principals, who are expected and often pressured to sell them. Naturally, these principals feel obligated both to sell tickets and purchase tickets themselves in addition to attending the event, on the assumption that loyalty will be rewarded.

Meanwhile, parents are recruited to donate and serve food, while being told that the proceeds of the fundraiser will benefit the local schools or some educational purpose. If liquor and a site for the party can be obtained at relatively low cost, the event is almost certain to make a handsome profit.

The sponsor of the event can easily open or use a bank account registered in the name of a neighborhood organization, or what is put forth as such. Then the proceeds of the fundraiser, money from the ticket sales, can be deposited into the account of the organization. Obviously, the politician who organizes the fundraiser, in this case Carmelo Saez, typically asserts control over the funds in the organization's bank account.

¹See the Special Commissioner of Investigation's 1993 report, *From Chaos To Corruption: An Investigation Into The 1993 Community School Board Election*, an excerpt of which is attached to this report as Appendix A. See also the Special Commissioner of Investigation's April 1993 report entitled, *Power, Politics, and Patronage: Education in Community School District 12*.

Saez appears to have mastered this formula for fundraising. Since our December 1993 report, Saez has held at least three more fundraising events. According to witnesses who participated in the fundraisers, Saez held them on December 16, 1994; June 23, 1995; and December 8, 1995. Saez formed a not-for-profit organization, the Bronx Educational League, also known as the Bronx Educational Council, in whose name the fundraising events were held.

In a deposition taken under oath, a District 9 employee gave us a rarely available insider's view of the mechanics of the fundraising ticket sales. From the employee's account, Saez pressures teachers and principals to sell tickets for the events. For each of the three fundraisers, Saez, sitting in his district office, prepared manila envelopes each containing twenty tickets. These packages were for the district's principals. At \$35 per ticket, each principal was supposed to sell his or her entire allotment of twenty, thus generating a total of \$700 to be returned to Saez. Saez maintained a little black book in which he kept tabs on tickets purchased for cash. The tickets themselves were designed on District 9 computers by District 9 personnel. With district personnel performing these tasks, much of the costs related to organizing and running the events were borne by District 9.

Typically, principals arrived at the district office to pick up their tickets, or messengers employed by the district delivered the manila envelopes to the schools. Principals who did not respond promptly received telephone calls at their schools from the district office. Not surprisingly, several witnesses have informed this office that almost all the district's thirty-three principals bought and sold Saez's tickets. Their account is corroborated by bank records we have obtained which show numerous checks from district staff to the Bronx Educational League, an organization run by Saez.

If all thirty-three principals sold their quota in tickets, that is \$700 worth of tickets each, these sales alone could be expected to generate as much as \$20,000 for each individual fundraising event. We have also been told that there were robust ticket sales at the door on the evening of each of the fundraisers yielding a large amount of cash.

²New York City Charter, Chapter 68, section 2604(b)(11)(c). See also New York State Election Law, section 17-156.

Carmelo Saez's sister-in-law, Carmen Hernandez Abarca, who was in charge of admission at the door, was observed collecting substantial amounts of cash in a large bucket at the entrance. We have been told that the fundraisers were well attended, with several hundred people present at each event. In addition, tickets were sold to people who did not attend. Based on a conservative estimate, the three fundraisers together could easily have generated in excess of \$30,000.

This money was allegedly being used to defray the cost of the events, with the remainder going to the Bronx Educational League. However, the cost of the events were usually kept to a minimum by asking parents to donate food, while entertainment, liquor and the use of a site were obtained at low cost.

While our investigation is continuing, we have begun to trace the path of some of the money withdrawn from the checking account of the Bronx Educational League, the "not-for-profit" organization formed by Saez which served as sponsor of the three events. The following withdrawals are among those which are listed on bank records for the account but appear personal to Saez, rather than having anything to do with the supposed charitable purpose of the Bronx Educational League:

Withdrawals:

1. A check dated October 8, 1995 payable to NYT Insurance in the amount of \$320, which states on the face of the check that it is payment for car insurance. It should be noted that Carmelo Saez drives a 1986 Cadillac which, according to records of the New York State Department of Motor Vehicles, is registered to the Bronx Educational League. It seems likely then, that Saez used the League to provide him with a car, and used funds derived at least in part from district fundraisers to pay for auto insurance.
2. A check dated August 16, 1995 payable to the "New York Telephone Co." in the amount of \$264.58, which states on the face of the check telephone number (718) 731-1160, Saez's home telephone number. Presumably, this check was payment for Saez's home telephone bill.

3. Three checks totaling \$3,950 made payable to Dominick Fusco, a Bronx attorney whose relationship with CSB 9 is examined later in this report. Two of the checks made out to Fusco have the words "legal fee" or "lawyer fee" written on the face of the check. A third check to Fusco, in the amount of \$2,000, has no writing on the face of the check indicating what the payment is for. We are still investigating what, if any, legal services Fusco might have performed for the Bronx Educational League.

4. A check in the amount of \$250 which was ultimately used to pay for Saez's parking tickets. The check was payable to Monica McDermott, who is the executive assistant to CSB 9.³ McDermott explained her receipt of this check as follows. In 1993, McDermott gave a used car to Carmelo Saez, which was registered in her name. Saez failed to change the registration, then accumulated a number of parking summonses that were issued in McDermott's name. After several hundred dollars in summonses were sent to McDermott, she complained to Saez. Saez issued the \$250 check to McDermott to compensate her for paying a portion of the parking tickets. Saez eventually registered this car in the name of the Lancers Drum and Bugle Corps, a group whose connection to Saez is examined later in this report.

If Saez is dipping into the funds of the Bronx Educational League to cover personal expenses, as the evidence suggests, this is not surprising in view of his own personal financial situation. According to his financial disclosure forms that he must, by law, file each year as an elected member of CSB 9, Saez has not earned more than \$5,000 a year since 1992. Yet he maintains a mortgaged house with its utilities, a car and car insurance, and has a wife and two school-age children living at home. His wife, according to witnesses, seems to have a part-time job. Several district employees have stated that Saez made no secret of the fact that he needed money, and indeed tried to borrow money from several district employees.

³The use of McDermott to perform personal chores for Carmelo Saez when she should have been tending to district matters instead is examined in a later section of this report.

The bank records from the Bronx Educational League bank account that we have discovered thus far explain where a portion of the proceeds from the fundraisers has gone. However, a great deal of money generated by these events is still unaccounted for.

The bank statements for the Bronx Educational League obtained by this office show about \$11,570 in deposits made to the League's account from December 1994 to the beginning of March 1996. Saez conducted the three fundraisers from December 1994 until December 1995. Based on information provided by several witnesses, it appears that thousands of dollars are unaccounted for. This office has found no evidence that any of the funds generated were spent for educational purposes. In addition, it should be noted that only about \$60 remains in the account today.

Tracing these dollars is made more difficult because the Bronx Educational League has neither officially registered with New York state as a charitable organization nor filed the 1995 annual financial report required of all not-for-profit organizations by New York law.⁴ Our examination of deposits to the account does confirm that many of the deposits are in the form of personal checks written to the Bronx Educational League by employees of District 9. Presumably, these are the employees who complied with Saez's request to buy and sell tickets to the fundraising events.

At what price does an employee resist Saez's entreaty to sell tickets to the fundraisers? According to one witness, refusal to sell tickets is risky:

Q. Did Mr. Saez express any displeasure with people who did not buy tickets [for fundraisers]?

A. Yes.

Q. What, if anything, did he say and what, if anything, did he do regarding those people?

A. He'd say something like, "He's history." He uses that term a lot.

Q. Do you know of any instances where Mr. Saez punished a principal or a board

⁴New York State Executive Law, section 172(9). See also New York State Estate, Powers, and Trusts Law, section 8-1.4. The Bronx Educational League did register with New York City as a charitable organization, but failed to do so

employee for failing to purchase tickets?

A. I wouldn't say "punished." I would say that if they needed a favor from him and he was able to help, he would just ignore them.

There can be no doubt that Saez is in a uniquely powerful position to impose his will upon the district and its employees. Applying this type of pressure for personal and political advantage, as Saez has done in District 9, is conduct prohibited by the city's conflict of interest provisions.⁵ Thus his fundraising practices are not only improper, but also illegal.

Perhaps the most troubling issue of all concerning Carmelo Saez's fundraising practices is the perception on the part of some district employees that a contribution to the fundraisers is essential to their advancement in the district. After all, the members of CSB 9, under Saez's leadership, have the power to promote, appoint, and allocate resources in the district. According to some of the people in the district interviewed in connection with this investigation, helping to raise money for Saez's Bronx Educational League is seen as one way of earning Saez's good will. That good will seems essential to advancement in the district. Yet, advancement based on good will has little to do with merit.

Clearly, it is merit that is sorely needed in order to lift the educational performance of District 9. It is no surprise that, according to witnesses, dedicated teachers who are disillusioned by the politics find a way out of District 9. Along with talented educators goes the best chance for educational improvement in the district.

IV. CARMELO SAEZ USING DISTRICT PERSONNEL FOR HIS PERSONAL NEEDS

Given District 9's low educational performance, its employees and board members should be devoting every minute of their working day to the district's children. Instead, Board President Carmelo Saez, Jr. has consistently monopolized the time of district personnel by having them attend to his personal and political affairs. In fact, Saez has gone so far as to order a subordinate to break the law

with New York State, as required by law.

⁵New York City Charter, Chapter 68, section 2604(b)(11)(c).

on two occasions by altering and destroying documents.

A number of employees of District 9 have admitted under questioning by this office that they have performed personal chores for Saez during school office hours when they should have been tending to the business of the school district. Each of these employees has described a similar set of circumstances: Saez approached and asked that they perform some type of work, usually clerical in nature, such as making copies of documents pertaining to his election campaign or his fundraising activities. Only two employees testified that they refused Saez; instead, on most occasions his subordinates did as he asked. In brief, some of their accounts are as follows:

1. Luz Lopez is the executive secretary for Community School Board 9. Questioned under oath by this office, Lopez admitted that she frequently performed personal chores for Carmelo Saez, and on some occasions spent her entire workday tending to his personal matters. Her duties included making doctors appointments for Saez, handling correspondence regarding his parking citations, and making calls to members of his family. Lopez admitted that she frequently performed personal chores, such as driving Saez various places when his car was impounded due to nonpayment of parking citations. In addition, Lopez spent a considerable amount of time working on the fundraising events organized by Saez that are described in the previous section of this report. Further, according to Lopez, Saez attempted to borrow money from her, but she refused. In the conflict-of-interest provisions of the City Charter, a public servant is prohibited from using or attempting to use his position to obtain money from another public servant.⁶ Finally, on two occasions described later in this report, Saez asked Lopez to alter or destroy documents.

2. Monica McDermott is the executive assistant to CSB 9, who is referred to above as the District 9 employee who gave Carmelo Saez a used car. As with Luz Lopez, Saez asked McDermott to perform personal tasks for him on a number of different occasions. According

⁶New York City Charter, Chapter 68, Conflicts of Interest, section 2604(b)(3). See also Chancellor's Memorandum No. 47(9), which states that loans between supervisors and subordinates are prohibited.

to McDermott, at Saez's direction she composed applications for the Lancers Drum and Bugle Corps, an organization with which Saez is involved that is described in a later section of this report, and typed tickets for various fundraisers organized by Saez. She recalls that the first fundraiser ticket she created was in June 1994 and was entitled "Community School District 9 End of Term Party, sponsored by the Bronx Educational Council." Also, according to McDermott, Saez asked her to loan him money a number of times, just as he asked Luz Lopez. McDermott recalls that she gave Saez money on approximately 15 different occasions, usually in amounts ranging from \$20 to \$50. Again, such loans violate the City Charter.

3. Marie Wiggins is a District 9 employee whose duties include photocopying documents. Wiggins admitted under questioning that she has performed a number of copying tasks at the request of Carmelo Saez. She made copies of documents pertaining to Saez's school board election campaign when he ran for office in 1990 and then again when he ran in 1993, according to Wiggins. On another occasion, Wiggins admits, she made a hundred copies of a 75-page music book for Saez, who told her that the book was for use by the Lancers, the drum and bugle corps that is described in a later section of this report. According to Wiggins, that one job took her approximately one and a half to two hours. Before Saez and the other members of CSB 9 were suspended in February 1996, Wiggins says that Saez approached her and asked her to run off copies of some "confidential items." According to Wiggins, Saez told her that it was "illegal" for her to copy the items for him, but that he would like her to do it nevertheless. Wiggins says that she told Saez that she would have to think about his request, and get back to him. She says she did not get back to him and did not comply with this latest request.

4. Loretta Polomeno is the District 9 employee who was formerly in charge of the district's copying center. She too was asked by Carmelo Saez to handle personal matters for him. Polomeno admits that over the years she has made tickets and pamphlets for the Lancers Drum and Bugle Corps, and made posters in connection with Saez's campaign for a seat on the New York City Council. Polomeno also recalls copying campaign materials for George Palermo, a former vice president of Community School Board 9 and close associate of Carmelo Saez.

The pattern discernible from these witnesses' accounts is quite clear: in District 9, the personal and political needs of Carmelo Saez were tended to on district time, by district staff, with district resources.

It is also important to note that this same pattern of misconduct led to the indictment and criminal convictions of several of Saez's former associates in District 9 in the late 1980's. Thus, it appears that the four employees described above are only the latest in a long line of District 9 employees who have been misused by Carmelo Saez.

V. SQUANDERING PUBLIC FUNDS ON UNNECESSARY LEGAL FEES

Reward for loyalty to Carmelo Saez and certain members of CSB 9 is not a prize reserved for educators only. During the past three years, the members of CSB 9 have voted to spend up to \$27,000 on the services of a Bronx attorney, Dominick Fusco, at a rate of \$75 per hour. The hiring of Fusco has the appearance of payback in return for Fusco's political endorsement of the very school board candidates who, once elected, have consistently voted to hire him. The amount authorized for Fusco's fees seems somewhat extravagant given that the legal services of the New York City Corporation Counsel, as well as the Board of Education's own Office of Legal Services, are available to CSB 9 free of charge for appropriate purposes.

Fusco is a leader of an organization in the Bronx that was formerly called the Committee of 100 Democrats. Under Fusco's stewardship, the group has since been folded into an alternative political organization named the Independent Fusion Party, Inc. By Fusco's own account, his group's endorsement of school board candidates has considerable value. In testimony that he gave before the Borough of the Bronx Commission on the Integrity of School Officials on November 28, 1995, Fusco described the work his committee has done for certain school board candidates, including Carmelo Saez: "We went out, we endorsed him [Saez], we sent out literature, mail, and if there was any election management." In other words, according to Fusco, his group helped manage the campaign of Saez, in addition to lending its endorsement to certain other candidates who won seats on Community School

Board 9, including Gary Coleman, Claude K. Aska, Benjamin Ramos, Edwin Cruz and Ana Diaz-Brewster.

In his testimony, Fusco further explained that the Committee of 100 Democrats endorsed an "anti-corruption slate" in the 1993 school board elections. Ironically, this "anti-corruption slate" included Saez -- who had already been removed from School Board 9 as a result of corruption charges. 1993 campaign materials obtained by this office show that the five board members mentioned above ran for election on the same slate as Saez as part of the "unity team," confirming that these fellow "team" members actively participated with Saez in campaigning and winning seats on the board.

If Dominick Fusco is to be believed, the Committee of 100 Democrats was effective in the 1993 elections. According to Fusco's testimony before the Bronx Commission on the Integrity of School Officials, 50 of 54 candidates endorsed by the Committee of 100 won seats on various community school boards in the Bronx.

Since the 1993 election, Carmelo Saez has been willing to go out of his way to accommodate Fusco -- willing even to break the law by directing alteration of the wording of a CSB 9 resolution voted by the board that authorized payment of Fusco's fees.

Board of Education ("BOE") policy⁷ requires that whenever a community school board seeks to hire an attorney and anticipates spending more than \$5,000 in one fiscal year on the attorney's fees, it is necessary for the community board to pass a resolution authorizing the hiring arrangement, and also to obtain passage of a similar resolution by the central Board. Presumably, requiring the approval of the central Board is supposed to serve as protection against open-ended employment contracts between community school boards and legal counsel.

In theory, the rule acts as a safeguard by prohibiting the community board from simply opening

⁷Standard Operating Procedures Manual, "Engaging Legal Services By Community School Boards."

its purse to an attorney. Indeed, it should not need to, given that the city's Office of Corporation Counsel and the BOE's own Office of Legal Services are available to assist in handling the legal affairs of local school districts. Thus, the rules⁸ require that the central Board of Education review the matter whenever a community board seeks to spend more than \$5,000 in one fiscal year on the services of an attorney. The rules also require the community school board to specify in its resolution the nature of the legal services to be provided by outside counsel.

CSB 9 has passed several resolutions authorizing the retainer of Dominick Fusco at an hourly rate of \$75. In fiscal year '93-'94, CSB 9 approved payment of up to \$7,000; then for fiscal year '94-'95, the board approved payment of up to \$10,000; and for the present fiscal year, '95-'96, the board approved another \$10,000. Thus, during the last few years, CSB 9 has authorized spending up to \$27,000 for the services of Dominick Fusco.

On July 26, 1995, CSB 9 passed the latest such resolution, authorizing payment to Fusco for legal services during fiscal year '95-'96 at an hourly rate of \$75. Only this time, the resolution lacked any cap on the expenditure, meaning that no limit was set on the dollar amount that Fusco could bill the BOE during the '95-'96 fiscal year. Without any such cap, the resolution was defective. These facts raise two questions: Was the omission of the protective cap on Fusco's fees intentional? And would the central Board of Education detect the omission?

In answer to the second question, the central board caught the omission sometime during October 1995, according to Judith Kay, the deputy general counsel of the central board's Office of Legal Services. Kay recalls that either she or a colleague noticed that the most recent resolution submitted by CSB 9 for approval of Fusco's fees omitted the cap on the amount to be paid to Fusco. According to Kay, she telephoned the District 9 office and spoke to executive secretary Luz Lopez, informing Lopez of the omission. Kay assumed that the resolution would have to be corrected and voted on again by CSB 9. But Carmelo Saez had a quicker fix in mind.

⁸*Id.*

According to Lopez, she was ordered by Carmelo Saez to instruct her fellow employee, Monica McDermott, to alter the resolution so that it would conform to Board of Education policy. However, Saez did not want to wait for the next CSB 9 meeting when he could seek approval of the revised language. Instead, he instructed Lopez to fax the altered resolution to Kay, and tell Kay that this newer version was in fact the version that had actually been passed by CSB 9. Saez told Lopez to say that she had omitted the requisite limit on legal fees by mistake when she originally transmitted the resolution to Kay.

In doing so, Lopez would be representing to Kay that the newer corrected version was the resolution that had actually been approved by CSB 9. Thus, Saez ordered that the language of the resolution be altered without convening the board, an action that is illegal. According to Lopez, she followed Saez's orders, but later she and Monica McDermott explained to Kay how the two different versions of the resolution actually had come about.

Whether the omission of the cap on Fusco's fees was an intentional effort by Saez to bypass the protections against excessive fees paid to outside legal counsel is a more difficult question to answer. It is clear, however, that Saez tampered with the language of the resolution without convening CSB 9 for a vote on the matter, in order to expedite payment to Fusco.

It is also clear that in the past few months Fusco has been spending considerable time on legal matters involving the members of CSB 9. A recent flurry of lawsuits handled by Fusco that involve Saez and various other board members could fairly be characterized as political matters, rather than matters pertaining to the direct educational needs of the students in District 9. For example:

1. Fusco assisted Saez in the preparation of a lawsuit filed by Saez against Bronx Borough President Fernando Ferrer and his Commission on the Integrity of School Officials. The suit accuses Ferrer and his Commission of slandering Saez by holding public hearings on allegations of wrongdoing by Saez in District 9. Saez also names in this slander action his fellow board

member, Robert Corbett, claiming that Corbett too slandered Saez when Corbett testified before the Commission that Saez was present when a bribe was offered to Corbett in exchange for Corbett's vote on a District 9 issue. A District 9 employee has informed this office that Fusco prepared the legal papers for this lawsuit and gave them to her for typing. This witness's account is corroborated by one of the bills submitted to the district by Fusco that appears to contain a charge for services in connection with this litigation. Thus, it appears that District 9 was being asked to pay Fusco's legal fees in connection with his role in the filing of a lawsuit by one board member suing another for slander.

2. Fusco is representing Saez and most of the other members of CSB 9 who have sued Schools Chancellor Rudolph Crew in an effort to set aside Crew's recent suspension of the members of CSB 9.

3. CSB 9 recently authorized Fusco to commence an internal investigation into the leaks of certain information involving District 9 which has been disseminated "to the newspaper people and politicians," according to the minutes of a January 22, 1996 working session of CSB 9.

4. Fusco attempted to represent Saez in a court challenge of the qualifying petitions for election submitted by fellow board member Corbett. During an April 3, 1996 hearing on this matter, Bronx County Supreme Court Justice John P. Collins disqualified Fusco as counsel for Saez, finding it improper for Fusco to represent one member of CSB 9 in a challenge to the petitions of another member of CSB 9.⁹ It should be noted that Saez has also challenged the candidacies of three other contenders for CSB 9, and was assisted by Fusco in at least two of those challenges.

⁹Additionally, Chancellor's Special Circular No. 5, 1995-96, section E.1.5 states: "No attorney who represents a community school board and is paid by Board of Education funds, may appear on behalf of individual candidates for

Thus, it is clear from the evidence developed thus far that Dominick Fusco has served both as counsel to CSB 9 and also as an attorney to Carmelo Saez in connection with legal affairs that appear personal to Saez. What is not so clear, however, is how much this personal service to Saez has cost the district.

Adding to the appearance of payback in the hiring of Fusco by CSB 9 is the extent to which Fusco has become involved in other personal matters affecting Carmelo Saez. For example, according to several witnesses, Saez is known to allow unpaid parking citations to accumulate, resulting in the impoundment of his car. In fact, he has twice been declared a "scofflaw" by Department of Motor Vehicle records. According to one witness, on at least one occasion Fusco gave Saez the \$500 necessary to bail out Saez's car. The \$500 was passed in the form of a personal check written by Fusco to Saez. We have not yet been able to determine whether or how Saez returned the money to Fusco.

From the above it is clear that CSB 9 has seen fit to authorize the expenditure of thousands of dollars on the services of Dominick Fusco, an attorney to whom a number of board members appear to be politically indebted. With legal advice potentially available to community school boards free of charge, the question arises: was the retainer of Fusco a prudent move on the part of CSB 9? Or was it political payback? Here Fusco's retainer has the appearance of political payback, at significant cost to District 9.

VI. UNSALARIED PUBLIC SERVANTS COLLECT SALARIES

Members of community school boards in various parts of New York City have managed to turn their unsalaried board posts into positions that pay -- albeit a modest payment of \$125 a month. In District 9, eight of the nine school board members are taking the \$125 a month and referring to it as a "stipend." Board President Carmelo Saez is taking \$200 a month as a "stipend" for his service as board president. In reality, board members are not entitled to stipends but to reimbursement for expenses actually incurred. With the acquiescence of the Board of Education, the payments are now considered

election to that community school board."

not reimbursements but automatic monthly compensation.

Individuals who are elected to a community school board are not supposed to be paid for their service to the district. Instead, they are "unpaid officials responsible to the public electorate."¹⁰ They do, however, have a means of recovering out-of-pocket expenses: regulations allow each member to seek reimbursement for up to \$125 in expenses each month without having to submit receipts to prove the expenditures. If the board member seeks to recover more than \$125, he or she must submit receipts supporting the entire amount.¹¹ A similar set of rules applies to community board presidents: they can recover up to \$200 each month, but must submit itemized receipts if they seek to recover a greater amount.

As in other districts, the school board members in District 9 treat the \$125 expense account as a stipend to which they deem themselves entitled every month, regardless of whether they have incurred any out-of-pocket expenses. This office reviewed records covering approximately two years in District 9 and discovered that the district administration apparently has created its own form for board members to submit each month entitled, "Petty Cash Expenditure Report Form." It is interesting to note that the form created by District 9 for use by the members of CSB 9 omits language contained on the form provided for use by the central Board of Education. Thus CSB 9 members no longer have to certify the following: "I am requesting reimbursement for the above listed expenses in accordance with SOPM regulations. I certify that these out of pocket costs have been incurred by me in the performance of my official duties as a Community School Board Member." Not having to certify their out-of-pocket expenses each month frees the members of CSB 9 to claim the maximum amount allowed every month.

We reviewed approximately 216 such forms, and found that each member's submission was always the same: \$125 a month, with Saez claiming \$200. In every case, expenses were listed in the

¹⁰Standard Operating Procedures Manual, "Cash Funds," section 9.17.2.

¹¹*Id.*

postage, carfare and special services categories. All of the forms appear to have been prepared by the same person, though the forms appear to be signed by the individual school board members themselves.

While the forms list categories of expenses, thus carrying the pretext of an expense report, the word "stipend" is listed in the purpose block. And the central Board of Education records covering these transactions also describe the payments as stipends. Central board officials acknowledge that they are fully aware that in many community school districts local board members are reimbursed for \$125 in expenses each month, even though these members might not be entitled to that amount. In District 9, these payments to the members of CSB 9 add up to a combined total of \$14,400 a year.

The members of CSB 9 typically treat their expense accounts as a small salary, raising the question of whether they are in turn charging their out of pocket expenses, such as meals and carfare, to other accounts. Because our review of this extra spending by CSB 9 members is still underway, this question cannot yet be answered. What is clear at this juncture, however, is that the board members have converted their expense accounts into automatic stipends and are taking money to which they might not be entitled. In other words, they are taking money that is desperately needed in the classrooms of District 9 and, in so doing, have converted positions of public service into ones of private profit.

VII. ORDERING SEXUALLY EXPLICIT MOVIES AT THE DISTRICT OFFICE

A further example of improper use of District 9 resources is use of Carmelo Saez's District 9 office cable television service for the viewing of sexually explicit pay-per-view movies. Saez's office was wired for cable TV, and according to a district employee Saez allowed his family to use the television in his office, where they could enjoy the cable service provided to the district by Cablevision.

In the fall of 1994, a bill for the cable television service to Saez's office was processed for payment by District 9. However, unlike previous bills, this one was not simply paid without comment. Instead, the bill was routed to Saez by the Director of Operations for District 9, Marlene Siegel, with a

memo curtly suggesting that Saez pay some of the charges himself.

Siegel explained in her memorandum that the programs listed on Saez's bill were not included in the Board of Education's contract for educational channels. This is because Saez's bill included charges for several pay-per-view movies, ranging from sexually explicit films, such as *Sexual Outlaws*, *Caged Heat 2*, *Stripped of Freedom*, *Criminal Passion*, and *The Pamela Principle* to better known feature films such as *Four Weddings and A Funeral*. These films were ordered after office hours, each on a different night between the hours of 6:30 and 8:30 p.m.

Cablevision confirmed with the District 9 office that the movies were ordered by someone using the equipment assigned to Carmelo Saez's district office. However, when alerted to the fact that pay-per-view service should not have been available to a school office, Cablevision subsequently agreed to waive the cost of the films.

VIII. THE LANCERS REVISITED: FURTHER MISUSE OF EDUCATIONAL FUNDS AND RESOURCES

Carmelo Saez's original association with the Lancers Drum and Bugle Corps, an organization geared primarily to elementary and junior high school students, led to his suspension and eventual removal from CSB 9 in June 1992 by then-Schools Chancellor Joseph A. Fernandez. Fernandez removed Saez after it was established that Saez had used District 9 personnel and equipment to make, according to the Chancellor, "a videotape designed to solicit funds for an organization that employs you [Saez] directly. It is now also clear that this tape was shown in the District as part of a fundraising effort."¹²

In a June 16, 1992 letter removing Saez, Fernandez wrote, "After careful consideration, I have come to the conclusion that your actions warrant removal from Community School Board 9... *It is highly improper for an official, such as yourself, to ask any employee to perform non-Board of*

¹²Joseph A. Fernandez, letter to Carmelo Saez, May 4, 1992. For the complete text of this letter, which suspended Saez from his board post, as well as the text of Fernandez's June 16, 1992 letter removing Saez from CSB 9, please see

Education work, even on a volunteer basis... There is no dispute the tape solicits funds for a private organization. In the middle of the tape, your name and address appear -- in fact you are listed as Director of the organization. You state you resigned from the Lancers in May 1991. Nevertheless, your name appears on the fundraising tape as Director. It is grossly improper for you, as President of Community School Board 9 and a public officer, to appear (be listed) in a videotape soliciting funds for an outside organization which was paying your salary" (emphasis added).

Despite this clear and unequivocal admonishment, Saez has continued to abuse his position and to violate both the law and Board of Education regulations. It becomes ever clearer that what happened before is happening again. Saez continues to profit from the Lancers, and continues to use district personnel to do so. Further, thousands of city dollars seem to have disappeared through the Lancers while Saez has sought to cover up his role by ordering a district employee to destroy critical documents.

In October 1994 the Lancers sought and won a contract with the New York City Department of Youth Services ("DYS") to operate a "music fusion project" at three junior high schools in District 9. The contract price was stated as an amount not to exceed \$10,000, with the programs operating from November 1, 1994 until the end of the school year, June 30, 1995.

The 1994 contract fails to mention Saez's connection to the corps, which is not surprising in light of Saez's previous removal from CSB 9 for his involvement with the Lancers. On the contract, he is listed neither as an officer nor as a board member. Instead it names Carmen M. Rivera as the executive director of the Lancers and Frank Abarca as the program director. As it turns out, Saez is closely related to both Rivera and Abarca. Carmen Rivera has been identified as his sister and Frank Abarca as his nephew. Furthermore, the address of record for the Lancers is listed as Saez's home address, 1806 Undercliff Avenue in the Bronx.

The 1995 Lancers expenditure report accounted for only \$1,930 of the \$5,625 DYS had paid

Appendix B.

the Lancers for the DYS contract. Thus, \$3,695 was unaccounted for, with no explanation from Saez or the Lancers as to what happened to the money. On October 16, 1995, DYS sent a letter to the Lancers at 1806 Undercliff Ave., Saez's home address, demanding a refund of the \$3,695 that the Lancers had failed to document as an approved program expenditure. To date, DYS has neither received a refund nor a response. It appears that, as in 1992, Saez has misused the Lancers for personal gain.

We have uncovered further irregularities in the Lancer's dealing with DYS. With two of Carmelo Saez's relatives listed on the DYS contract as managers of the Lancers program, Saez was prohibited by the terms of the contract from taking any payment for work on the music fusion project. Section 6B of the DYS contract, entitled "Prohibition Against Nepotism," forbids the contractor from hiring or making payment to any "immediate family member," a category that includes sister and brother. This means that Carmen Rivera was expressly forbidden by the terms of the contract from making payment to her brother Carmelo Saez in connection with this project.

However, Rivera did make payment to Saez out of the DYS monies the Lancers received for the project. This was revealed in July 1995, after the end of the program. At this time the Lancers submitted to DYS the expenditure report, discussed above, to which were attached two cancelled checks, each payable for \$100 to consultant "Carl Saez" (Saez goes by both "Carmelo" and "Carl"). The authorized signatories on the checks are Carmen Rivera and Frank Abarca, and the checks appear to have been endorsed and cashed by Carmelo Saez.

On that expenditure report, it is Saez, rather than Carmen Rivera, who signs as executive director. This strongly implies that his financial interest in the Lancers extends well beyond the consultant checks listed above. Even standing alone, however, the "change" in the executive director position violates the contract terms, which specify that any changes in the position of executive director must be made known to DYS within five days of the change. The Lancers never notified DYS that Saez was running the program.

IX. THE COVERUP: DIRECTING A DISTRICT EMPLOYEE TO BREAK THE LAW AND DESTROY EVIDENCE

The Board of Education, in suspending CSB 9 in February 1996, sealed its offices and prohibited board members, including Saez, from entering the building without an escort or tampering with materials inside. On February 15, 1996 -- in the midst of the suspension and with investigations into CSB 9 misconduct ongoing -- Saez asked his executive secretary, Luz Lopez, to locate a document regarding the New York City Mission Society, a group which had its own drum and bugle corps called the Mission Cadet Corps. Previously, Saez had approached the Mission Society with hopes of merging that organization with the Lancers. The connection between Saez, the Lancers and the City Mission Society is part of an ongoing investigation. What is clear now is that in addition to Saez's attempt to merge the organizations, two of his fundraisers were held at the City Mission Society.

Saez told Lopez to remove the Mission Society document from his office and to smuggle it out of the building. Lopez responded that she could not do so because the office was being guarded to prevent the removal of any documents. Saez then instructed Lopez to carry the document to the bathroom and flush it down the toilet.

Later that day, Lopez and Saez spoke again and Saez asked whether Lopez had complied with his request to destroy the document. He also sought her help in removing documents regarding the Lancers that he had in his office. Given Saez's past censure for his involvement with the Lancers, it is not surprising that he wanted to hide from authorities any documentation that might establish his continued association with that organization.

It should be noted that the City Mission Society was the site for two of the political fundraisers that are described earlier in this report. Despite his apparent ties to the Society, his plan to merge the Lancers Corps with the Mission Society's corps was ultimately rejected.

It is clear from the facts presented here that Carmelo Saez has gone to considerable lengths to

cover up his continued involvement with the Lancers -- and has gone so far as to direct a district employee to remove or destroy documents regarding the Lancers, the City Mission Society, and other matters that were kept in Saez's office in order to prevent this office and others from finding them.

CONCLUSION

We release our preliminary findings at this point so that Chancellor Crew can use them in addressing the serious educational failures in Community School District 9. The children of the district are poorly served by educational leaders who appear more interested in politics and personal gain than they are in the needs of the students. Obviously, these children deserve to be the priority of those entrusted with their educational progress.