

March 31, 1999

Hon. Rudolph F. Crew
Chancellor
New York City Public Schools
110 Livingston Street, Room 1010
Brooklyn, NY 11201

Re: Salwa Ali
Case #96-1480

Dear Chancellor Crew:

An investigation conducted by this office has revealed that Salwa Ali, Deputy Executive Director of the Board of Education Retirement System ("BERS"), altered employment and financial information regarding the pension of then-Secretary of the Board of Education Bruce Gelbard. Had Ali's alterations gone undetected, Gelbard would have received thousands of dollars more in pension benefits than he was entitled to receive.

Bruce Gelbard, who was terminated from his position as Secretary on July 17, 1996 - and filed for retirement that same day -- earned a salary of \$121,000 in 1995.¹ Salwa Ali has worked in the BERS pension office since 1974 and has served as Deputy

¹ Gelbard died June 14, 1997 at age 45.

Executive Director since 1987.² Our investigation began when BERS Executive Director Horatio Sparkes contacted this office on July 23, 1996 to report that Gelbard's pension file was incomplete.

² Ali is a civil servant whose current salary is \$95,779.

In acts committed either directly by Ali or under her direct supervision, she altered information about Gelbard's pension. First, in 1993 she wrote a letter to Gelbard stating that he owed \$994.93 to BERS when in fact he owed \$19,940.45. Gelbard was advised of this corrected, much higher amount shortly thereafter in a subsequent letter to him by then-BERS Executive Director Dwight Kearns. However, in July 1996 when Ali instructed her staff to calculate Gelbard's pension, only her 1993 letter with its erroneous calculations appeared in Gelbard's file and it was this erroneous amount that was used to determine his debt to BERS at the time of his retirement. In fact, Ali's letter was one of only a few documents in Gelbard's pension file upon his retirement. While she was aware that her letter with its incorrect information was used to calculate Gelbard's debt to the pension system, she chose not to bring the inaccuracies to the attention of her subordinates who were processing his file. Second, she altered Gelbard's employment history by inventing an additional year of employment and compelling her subordinates to calculate his benefits using this falsified extra year. Had Ali's acts gone undetected, Gelbard, who was only 44 years old when he retired, would have received from BERS nearly \$3300 more per year in pension benefits than he deserved.

The following chronology is provided to assist the reader in following the lengthy course of events described in the pages ahead:

Bruce Gelbard's BERS History

<u>January 1972:</u>	Gelbard begins Board employment as school aide
<u>September 1974:</u>	Gelbard employed as substitute teacher
<u>September 1975:</u>	Gelbard employed as teacher
<u>September 1978:</u>	Gelbard employed as Education Administrator, Operations Specialist
<u>May 1982:</u>	Gelbard joins Teachers Retirement System
<u>March 1983:</u>	Gelbard employed as Chief Administrator, Impartial Hearing Office
<u>December 1984:</u>	Gelbard resigns from status of teacher in order to join BERS
<u>September 1986:</u>	Gelbard becomes BERS Tier II member pursuant to tier reversion under Chapter 539. Qualifying service purchased covers the period from July 1, 1976 until August 31, 1986.

- December 1990: Gellbard employed as Board Secretary
- October 1, 1992: Gelbard files application with BERS for Tier I membership.³
Gelbard lists January 1972 as his employment start date on his application.
- January 28, 1993: Letter to Gelbard from Ali approving his Tier I Career Pension Plan 'A' status pursuant to Chapter 749 of the Laws of 1992 and stating \$994.93 as buy-back amount. Letter lists Gelbard's membership/employment start date as January 1, 1972.
- March 31, 1993: BERS Executive Director Dwight Kearns sends letter to Gelbard informing him that he actually owes \$19,940.45 as buy-back amount.
- April 19, 1993-
May 7, 1993: Gelbard makes three payments for a total of \$911.85 towards the purchase of the prior service.
- May 3, 1993: Gelbard writes Ali and discontinues his bi-weekly payments for the prior service.
- July 17, 1996: Gelbard is terminated and files for retirement pursuant to Tier I Plan 'A' Career Pension Plan Termination without Fault or Delinquency.

Bruce Gelbard is Terminated as Board Secretary and Applies for Retirement Under Tier I, Career Pension Plan 'A', Termination Without Fault or Delinquency

Bruce Gelbard was terminated from his position as Board Secretary by resolution of the Board on July 17, 1996. On that date, he filed for a Tier I Plan 'A' Career Pension Plan retirement, applying to receive pension payments immediately pursuant to that tier's "no-fault" termination provision under the BERS pension regulations. The July 17 Board resolution is mute on the reason for Gelbard's termination. Nowhere does the resolution state that Gelbard was terminated for no fault of his own. In addition, the Board does not clarify in the resolution whether it was terminating Gelbard solely from his position as

³ The Actuary determined October 1, 1992 to be Gelbard's effective Tier I entry date.

Secretary, perhaps allowing him to revert to an earlier level of employment within the Board, or terminating him from the Board altogether.⁴ Regardless, Gelbard filed for immediate retirement under the no-fault provision, and the employees at BERS, though never before having handled this type of retirement processed his paperwork accordingly, not once questioning his eligibility to receive no-fault benefits. In fact, of the several BERS employees we spoke with, none had ever processed a no-fault pension application before doing so for Bruce Gelbard.

Ordinarily, BERS members must wait until they have completed at least 25 years of service, and reached age 55, to begin receiving benefits. This is known as the "Tier I Plan 'A' Career Pension Plan." Further, Tier I Plan 'A' allows members who retire with between 20 and 25 years of employment to receive retirement benefits after completing 20 years of service. This is known as a "Deferred Retirement" because the benefit is not payable until either the date the member would have completed 25 years of service had they not retired or the member reaches age 55, whichever is later. Finally, a Tier I member may choose to receive retirement benefits under "Plan 'B'." In this plan, known as the "Increased Service Fraction Plan," retirement benefits are paid once the member turns age 55, no matter how many years of employment have been completed.

A member's annual pension benefit under the Tier I Plan 'A' options is calculated by multiplying 2.2% by the number of years of service by the member's final average salary. Tier I Plan 'B' uses a different formula and provides the member with a lower Tier I benefit.⁵

The "Termination Without Fault or Delinquency" ("No-fault") clause, exercised by Gelbard, allows a Tier I member to receive pension disbursements *immediately* at a reduced rate, even if the member retires before reaching age 55, as long as he has completed at least 20 years of service and was terminated by no fault of his own.

⁴ As Board Secretary, Gelbard was a non-competitive civil service employee. As such, upon his termination as Board Secretary, Gelbard could have chosen to retain a lesser position within the Board, reinstating the civil service status he acquired years earlier. Instead, he chose to retire immediately.

⁵ See Board of Education Retirement System of the City of New York "Tier I Summary of Benefits" manual.

As determined months later by Robert C. North, Jr., the Chief Actuary of the City of New York (“Actuary”) Gelbard’s years of employment for pension computation purposes totaled 23.08 years.⁶

Tier I Plans

Tier I Plan ‘A’ Career Pension Plan	Tier I Plan ‘A’ Deferred Retirement	Tier I Plan ‘B’ Increased Service Fraction Plan	Tier I Termination Without Fault or Delinquency
Member must have completed 25 years of service and reached age 55.	Member must have completed 20 to 25 years of service at time of retirement.	Member must have reached age 55, no matter how many years of employment were completed at time of retirement.	Member must have completed 20 years of service at time of retirement, even if member has not reached age 55 <i>and</i> member must have been terminated by no fault of his own.
Generally, Plan ‘A’ provides a member with the largest retirement benefits.	Benefits begin either on date member <i>would have</i> completed 25 years of service or member turns 55, whichever is later.	Benefits reduced.	Member receives reduced benefits <i>immediately</i> upon retirement.

Our investigation revealed that Salwa Ali ordered her subordinates to calculate Gelbard’s pension as if he had completed 25 years of service, and actually invented a year of service for him in order to reach that 25 year plateau. However, had Ali

⁶ The “Tier I Summary of Benefits” manual describes termination without fault: “Other special rules apply if you are not eligible for an immediate Plan A or Plan B retirement allowance and you are terminated “without fault or delinquency” after at least 20 years of service—with at least one-half year completed immediately before your employment ends...”

properly categorized Gelbard's pension status as a Tier I Plan 'A' Deferred Retirement, and had she then correctly applied the no-fault provision, she would not have had to invent a 25th year of service and instruct her subordinates to calculate his pension as a Tier I Plan 'A' with 25 years. This is so because a no-fault termination would have entitled Gelbard to receive the immediate pension disbursements he desired even though he had only completed between 20 and 25 years. Ali, however, had never processed a no-fault termination pension before, and the evidence demonstrates that she was unaware of this fact.

Long after BERS initially certified Gelbard's pension and prepared his first benefit check in the summer of 1996, the New York City Law Department ("Law Department") and the Actuary reviewed his request for no-fault retirement to determine whether Gelbard was even entitled to no-fault benefits. Ultimately, on May 28, 1997, the Law Department, after reviewing Gelbard's pension file as well as the findings of the Kings County District Attorney's Office and the Board's Office of the Auditor General, concluded that Gelbard was entitled to no-fault status.⁷

Gelbard Increases his Years in BERS by "Buying-Back" Time

BERS organizes its members into tiers and plans based on the date the member joined and the pension options the member elected. Tier I provides the most benefits and applies to employees with the most service in the system. If a member started working for the Board and joined BERS before July 1973, he is designated as a Tier I member.

Changes in the law have afforded Board employees who were not members of BERS until later in their employment the opportunity to "buy-back" or revert to a higher tier and retroactively increase the duration of their BERS membership. This means that an employee who did not join BERS until his sixth year in the school system might be able to join BERS and pay for, or buy-back his first five years, as if he had joined BERS

⁷ The Law Department did not make a determination as to whether the Board, on July 17, 1996 intended to terminate Gelbard "without fault or delinquency," and in fact, that issue has never been raised. Rather, the Law Department reviewed the findings of these offices to determine whether there existed any acts of misconduct attributable to Gelbard as Board Secretary that would preclude awarding him the benefits of a no-fault termination.

the day he started working for the Board. Bruce Gelbard was able to take advantage of two such changes in the law and buy-back years of employment.⁸

A Board employee could become a Tier I member in two ways: by joining the pension system on or before June 30, 1973; or by taking advantage of a prior service buy-back offer to buy-back time to an equated employment start date of on or before June 30, 1973. According to the Actuary, Gelbard first joined BERS in September 1986 as a Tier II member.⁹ Gelbard became a Tier I member effective October 1, 1992 through buy-backs and a tier reversion.

Though Gelbard actually began working for the Board in 1972 and did not join the retirement system until 1986, under Ali's direction his start date of employment for pension purposes was improperly recorded as 1971. Since Gelbard actually began work in 1972, his start date should never have pre-dated that year.

Manipulation of Gelbard's Accrued Years of Employment

The BERS retirement process begins when a member of the retirement system meets with the BERS Counseling Unit. According to BERS counselor Magda Hassan, during this session, at which attendance is standard procedure for all BERS prospective-retirees, the counselor reviews the applicant's file to make sure that all necessary paperwork is present and discusses the member's benefits and options with him. The counselor also reviews the member's employment history to determine whether the member has completed enough years of service to receive a pension. Once the retirement paperwork is complete, the counseling unit will provide the pension file to the BERS calculation unit to determine what the amount of the member's benefit will be and whether the member owes any money to the retirement system. It is the normal practice of the counseling unit to review every retirement file before it is forwarded to the calculations unit, whether or not the member attends a counseling session.

⁸ The two statutes that allowed Gelbard to buy-back service time were Chapter 539 of the Laws of 1984 and Chapter 749 of the Laws of 1992. Chapter 539 of the Laws of 1984 amends sections 508, 512b, 516 and 533 of the New York Education Law. Chapter 749 of the Laws of 1992 amends section 2575 of the New York Education Law.

⁹ According to the Actuary, though Gelbard prepared an application for Tier IV membership dated December 20, 1984, the application was never processed and was therefore ignored in calculating his tier reversions.

In Gelbard's case, however, his retirement process skipped the counseling unit step and began when he submitted his application on July 17 by messenger directly to Salwa Ali. Although Ali testified to the contrary, the counseling unit had no record that Gelbard's application was provided to them for processing.¹⁰

According to Horatio Sparkes, on Monday, July 22, just a few days after Gelbard's termination and application for retirement, a Board member called to ask why his pension was being delayed. Sparkes instructed his assistant to give Gelbard's pension folder to Salwa Ali to process his application. That day, Ali told Assistant Benefit Examiner Dorothy Christodoulou to calculate Gelbard's pension benefits. Ali ordered her to process it as a Tier I Plan 'A' or "an 'A' case," which to the several BERS employees we interviewed meant that Gelbard needed to have completed 25 years of service to fall under that tier and plan. Christodoulou, however, found that Gelbard did not have the requisite 25 years of service. She then asked fellow Assistant Benefit Examiner Pingulanattie Boodram to assist her in the calculations. Boodram reviewed the file, calculated service data using BERS computer programs, and agreeing with Christodoulou, concluded that Gelbard lacked the 25 years of prior service required for a Tier I Plan 'A' career pension.

At this point Boodram informed Ali that "He doesn't have 25 years, and there is no backup paperwork." In fact, Gelbard's pension case folder contained only four documents, much less paperwork than would be expected in the file of a Tier I member.¹¹ Ali ordered Boodram to calculate Gelbard's pension again, insisting that he did have 25 years of service and telling her "I know it for a fact." Ali made no attempt to substantiate her assertion, nor did she explain herself to Boodram. Instead, Ali merely ordered Boodram to calculate Gelbard's pension in accordance with Ali's own wishes and based solely on her claimed memory. Once again, Boodram reviewed the case and could not find 25 years of service. Finding no data that could credit Gelbard with 25 years, she so informed Ali.

¹⁰ Ali testified that she time stamped his application, gave a copy to Horatio Sparkes' secretary, and gave the original to the counseling unit.

¹¹ According to BERS counselor Magda Hassan, a Tier I pension file should contain at least the following: an application for retirement, an enrollment application prepared by the member upon joining the retirement system, a history card, forms for any employment status changes, a beneficiary form, a variable annuity form, a tax withholding form, and a form for the authorization to terminate pension deductions.

According to Boodram, Ali continued to insist that Gelbard had worked 25 years. Boodram then completed an "Annuity at End of 25th Year" worksheet, listing Gelbard's equated start date as a date that did not credit Gelbard with 25 years of service. After she did so, Ali reviewed the worksheet and ordered Boodram to make the equated start date earlier by adding Gelbard's employment time while a member of the Teacher's Retirement System to her calculation -- time that to Boodram had already been included in her calculations -- resulting in a date which now credited Gelbard with 25 years. Following Ali's orders, Boodram complied by erasing her calculations on the "equated date of membership" line of the worksheet and substituting an earlier date. Boodram stated that although in her view Ali was wrong, she questioned her no further about changing Gelbard's years of employment. According to Boodram, "I didn't think it was my place to do so 'cause she's the assistant deputy director and my title is just like, you know, I'm just a little one, that is that."

According to Ann Polimeni of Prudential Investments, the company responsible for keeping BERS salary data on file, Ali contacted her later on July 22 in order to obtain their records of Gelbard's salary history. In response, Polimeni faxed a handwritten note to Ali stating that Prudential needed additional service history information on Gelbard for the years 1972, 1974, and 1975-1986. At the time, this data was not in Prudential's system because Gelbard was not initially a BERS member prior to 1986. In anticipation of Ali's call back, Polimeni began to write out a list of salary data starting in 1972 because all information she had available indicated that Gelbard's employment began in that year. No documentation indicated that he started before 1972.

Apparently in response to this conversation with Polimeni, Ali and Boodram contacted Marcellus Lewter at the BERS Research and Micrographics Unit and requested from him a complete listing of Gelbard's salaries since his start date with the Board. Lewter faxed back a handwritten table indicating years of service and yearly salaries and listing 1972 as Gelbard's first year of employment.

Later in the day, replying to Polimeni's faxed handwritten note, Ali called her to give her Gelbard's years of service and salary totals so that Polimeni could generate an official Prudential document reflecting this information. In this communication, Ali included

a salary figure for the year 1971 despite the fact that Lewter's fax -- which she had earlier received -- showed only salary data beginning in 1972, and despite the fact that Boodram and Christodoulou had earlier in the day asserted that Gelbard did not have 25 years of service. What Ali in fact provided as Gelbard's 1971 salary -- a year Gelbard did not work for the Board at all -- was actually his 1972 salary, and what she represented as his 1972 salary was not found in any other documentation. Thus, she invented a year of service during which Gelbard did not work and thereby credited him with a year of service to which he was not entitled.

Immediately following her communication with Ali, Polimeni faxed her a computer printout reflecting Gelbard's years of service, salary, contribution, and other data, including the 1971 salary figure, based on Ali's assertion moments before. On this "official" Prudential document, Gelbard was now credited with 25 years of service.

Although Prudential's document appeared to be authoritative, its sole source of information about Gelbard's years of service was Ali herself, who initially called Prudential requesting that they generate the document and later provided much of the information contained therein.

The following day, Tuesday July 23, Ali gave Gelbard's case folder to Calculations Unit Supervisor Pierre Fleuridor to process, choosing not to seek the assistance of Boodram or Christodoulou further. She told him that it was to be calculated immediately and that all the necessary documentation was present.

Fleuridor calculated Gelbard's pension by using the Prudential document containing Ali's falsified 1971 year of service, prior service times indicated on two BERS computer printouts known as "history prints," and Ali's 1993 letter to Gelbard -- the only documents in his pension file.¹² Although on July 22, the previous day,

¹² Although in Ali's 1993 letter to Gelbard, in which she grossly understated his debt to the pension system, she listed his first year of employment as 1972, and, although that letter was included in the pension file handed to Pierre Fleuridor, he chose not to question the 1972 start date stated in the letter, instead relying on Ali's assertion that Gelbard began work in 1971.

Marcellus Lewter at the Research and Micrographics Unit faxed Ali an employment service table listing 1972 as Gelbard's first year of employment, that document was missing from Gelbard's file when Fleuridor received it from Ali. Had Ali included Lewter's fax, it would have conflicted with Ali's assertion that Gelbard's first year of employment was 1971, an assertion that bolstered Gelbard's case for a higher pension. Lewter's employment service table fax, therefore, is conspicuous in its absence.

History prints, which are routinely generated by BERS personnel for use in pension calculations, contain current data on members' pensions; history prints indicate among other things, the amount of prior service time for which each member has credit. To calculate Gelbard's total prior service and an equated start date of employment Fleuridor added together the prior service amounts shown on the two history prints. One history print listed 6 months and 13 days, constituting Gelbard's membership time in the Teacher's Retirement System and one stated 2 years and 14 days -- even though the latter history print should have contained a current, cumulative record of all prior service data. To this sum, he added an amount of 2 years, 8 months and 12 days of prior service time as stated in Ali's 1993 letter even though he had no backup documentation verifying that this amount of time should have in fact been credited to Gelbard.

Although the Actuary would later conclude that Gelbard was entitled to receive immediate pension benefits because he completed 20-25 years of service and because of the no-fault provision, Ali fabricated employment for the year 1971 to ensure that he was credited with 25 years of service. This 25 years of service is what Ali's subordinates, who calculated Gelbard's pension pursuant to her instructions, understood he needed in order to receive immediate pension disbursements. Indeed, based on the testimony of Boodram, Christodoulou, and Fleuridor, it appears that neither they nor Ali were aware at the time that the 20-25 year, "Deferred Retirement" provision would have also given Gelbard the immediate pension benefits he desired under no-fault. Boodram, Christodoulou and Fleuridor all said they calculated Gelbard's pension under the impression, and pursuant to Ali's instructions, that he needed 25 years of service to receive his pension benefits immediately. While Ali, in her December 18, 1996 testimony to this office claimed to have known of the 20-25 year provision, this assertion

is clearly inconsistent with her actions of July 1996. Those actions, coupled with the buy-backs and conversions, resulted in Gelbard being improperly credited with a total of 25 years of service and Tier I Plan 'A' Career Pension Plan status as of July 1996.¹³

HAD GELBARD'S PENSION BEEN CALCULATED UNDER ALI'S DIRECTION, HE WOULD HAVE AVOIDED PAYING \$25,500 HE OWED IN BUY-BACK COSTS TO BERS

At the time of Gelbard's retirement, he owed approximately \$25,500¹⁴ to BERS for buy-back costs. That debt would have gone undetected, however, had Gelbard's pension been processed according to Ali's instructions to calculate it based on the sparse documentation in his file. Her 1993 letter, one such document, calculated not only Gelbard's prior service time but also the cost of buying back that time. In calculating such costs, Ali grossly deflated the cost to Gelbard of the prior service buy-back by indicating that he owed BERS only \$994.93, or \$15.84 per pay period, to purchase 2 years, 8 months, and 12 days of prior service time. When questioned during the course of this investigation, however, Horatio Sparkes, Pierre Fleuridor and Salwa Ali all said that this buy-back should have cost Gelbard at least \$15,000 and possibly more than \$20,000.

In fact, a second letter, sent to Gelbard by then-BERS Executive Director Dwight Kearns a few months after the 1993 Ali correspondence, corrected her flawed calculations and informed him that he actually owed \$19,940.45. Now aware of the correct cost to buy-back the prior service time, Gelbard started paying for the 2 years, 8 months, and 12 days by making three of approximately 70 bi-weekly required payments of \$303.95 each. After three payments at this corrected rate -- a 20 fold increase over the rate stated in Ali's letter -- Gelbard sent Ali a letter requesting an indefinite suspension of his payment schedule. Gelbard never re-initiated payment.¹⁵

¹³ The subsequent and dispositive calculation by the Actuary determined that Gelbard actually had 23.08 years of service, including equated service, as of July 1996. This amount assumed the completed buy-back purchase of 2 years, 9 months and 8 days of prior service.

¹⁴ In May 1997, the Chief Actuary determined that Gelbard owed the retirement system \$25,502.31 as of the date of retirement.

¹⁵ A BERS member who seeks to buy-back prior service time may elect to suspend a payment schedule and complete payment upon retirement in a lump sum without losing the buy-back time. As will be discussed later, Gelbard made such an election.

Despite the fact that Gelbard owed thousands of dollars to the system, Fleuridor processed his papers as if he was fully paid up. This occurred because neither the corrected 1993 letter from Kearns nor the 1993 letter from Gelbard requesting suspension of the payment schedule were present in Gelbard's file when it was turned over to Fleuridor for calculation. Instead, Ali's inaccurate 1993 letter was there and used by Fleuridor to process Gelbard's retirement papers.¹⁶

Had Ali's 1993 letter to Gelbard correctly stated the \$19,940.45 amount he owed at the time, or had any other document stating this price been present in his file, Fleuridor might have scrutinized the file further to seek proof of payment. Instead, according to Fleuridor, because of pressure from Ali to complete the job and because \$994.93 was such a small sum, he completed his calculations according to Ali's instructions, questioning neither whether \$994.93 was the correct buy-back cost nor whether Gelbard had actually paid it. As a result, Fleuridor credited Gelbard with having paid for the prior service time and did so based on obviously erroneous payment calculations, which, if calculated properly, would have required Gelbard to pay BERS thousands of dollars more. In fact, no one questioned the amount Gelbard owed until the entire file was placed under additional scrutiny by this office and the Actuary.

Just the next day, on July 24, 1996 a resolution to the BERS pension board was drafted and a check constituting Gelbard's first disbursement was prepared. To Salwa Ali and Pierre Fleuridor, Bruce Gelbard's retirement application process was completed.

Ali's Testimony

Salwa Ali's December 18, 1996 testimony was contradicted by other evidence. First, although there is no evidence showing that Gelbard's application went through the BERS counseling unit, Ali stated that when Gelbard's application was received it was

¹⁶ Fleuridor told us that he was extremely rushed to finish Gelbard's file and that he had no time to review the accuracy of Ali's 1993 letter. He said that he could have revisited Gelbard's payment calculations after the pension was already processed and certified. He admitted however, that he made no subsequent attempt to review Gelbard's file and that he never saw it again.

"clocked as any retirement application" and brought immediately to the counseling unit. Contrary to Ali's assertion, Bruce Gelbard skipped the normal retirement steps and went directly to his friend Salwa Ali who handled his application personally.

Second, whereas Boodram said that Ali told her she "knew" from memory that Gelbard had 25 years of BERS service; and both Boodram and Christodoulou said Ali ordered them to calculate his pension as a Tier I Plan 'A' with 25 years, Ali flatly denied having any discussion with either employee about Gelbard's file other than to merely instruct them to start the calculations. Ali denied telling Boodram -- or, for that matter, anyone at BERS -- that Gelbard had 25 years of service. She further denied that Boodram had told her that documentation did not support the supposed 25 years. These statements by Ali contradict the separate accounts given by Boodram and Christodoulou, which are consistent with one another and which we credit. We do not credit Ali's statement, made during an August 8, 1996 BERS executive staff meeting called to discuss the discrepancies in Gelbard's retirement calculations, that she relied on her memory to do Gelbard's calculations because she was pressured to do his case quickly. Needless to say, no BERS pension professional should rely on memory to calculate a pension.

Furthermore, whereas Boodram, Polimeni and Lewter's statements show that Ali received Lewter's fax, reflecting Gelbard's salary data and 1972 start date, *before* she provided Polimeni with the false-1971 year of employment and salary, in her testimony Ali denied having the fax in hand at the time. Instead, Ali claimed to have received the information from Lewter over the phone and only subsequently to have received it from him via fax. However, Lewter indicated that he faxed Ali the salary data immediately, in response to her specific, pressing request. We credit Boodram, Polimeni, and Lewter and conclude that Ali had received Lewter's fax by the time she relayed the 1971 employment and salary information to Polimeni over the phone.

Ali described the fabrication of the 1971 salary figure as an error made either by Polimeni or herself: "...and I'm taking full responsibility with, either she heard me wrong or I said to her over the phone, I give her this number [1971 salary figure]."

Ali's testimony was further contradicted by Boodram who told us that Ali asserted to her from personal memory that Gelbard had 25 years of service, well before Ali communicated with Polimeni at Prudential. Boodram said, "She [Ali] kept telling me, 'He does have it [25 years of service].'" Similarly, Christodoulou recalled that Ali instructed her to calculate Gelbard's pension as a Tier I Plan 'A' with 25 years of service. Therefore, prior to the supposed "error" occurring during the exchange of information between Ali and Polimeni, Ali was already disseminating misinformation regarding Gelbard's case. Ali either made the same mistake multiple times on the same day -- or made a concerted effort to assist Gelbard. Neither option inspires confidence in her management of the retirement system.¹⁷

Regarding her 1993 letter, one of four documents in Gelbard's file, Ali admitted that the \$994.93 buy-back amount was incorrect and that Gelbard actually owed thousands of dollars more. She also admitted that she knew he had been sent a second letter with the corrected greater cost and that this letter should have been attached to her letter but was not. We asked Ali whether she told anyone reviewing Gelbard's file that her 1993 letter was wrong. She replied that she did not choose to inform her subordinates of this fact or make any attempt to note the correct amount of the buy-back in the file. According to Ali, since her letter correctly stated the amount of the prior service time to be purchased by Gelbard in the buy-back, she left her letter as is in his pension file and never mentioned to anyone the fact that it undercharged Gelbard by many thousands of dollars.

In a 1993 interview with this office, Ali characterized her relationship with Gelbard as "professional," adding that she considered Gelbard a friend who had on at least one occasion visited her home. In his 1993 interview with this office, Gelbard stated that he and Ali had a "social" relationship. He stated that they had been to each other's homes and had met each other's families. Horatio Sparkes testified that on more than one occasion, Ali told him that her husband was involved in the construction of Gelbard's

¹⁷ When interviewed months later by this office, Ali claimed she never asserted that Gelbard had 25 years of service, alleging instead that she knew at the time of his application that a calculation of 25 years was not needed for him to receive his pension right away under the no-fault provisions.

home, and had either reviewed the plans for Gelbard's home or had actually performed some work. In her 1996 interview with this office, Ali attempted to conceal these facts. She unconvincingly denied ever having visited Gelbard's home and claimed that she related to Gelbard solely as a co-worker. Whether as a friend or an ally, Ali clearly viewed her interests as aligned with Gelbard's. We conclude that Ali's close relationship with Gelbard is the most likely motive for her misconduct.

The Findings of the Actuary of the City of New York

The numerous irregularities and discrepancies regarding Gelbard's pension file necessitated the Actuary, working with Horatio Sparkes and the Law Department, to conduct an in-depth review of Gelbard's file. The calculations originally prepared by Salwa Ali's subordinates, pursuant to her instructions and the information she provided, were disregarded and Gelbard's employment and pension history was recalculated from scratch. Chief Actuary North and his staff recalculated Gelbard's pension utilizing the ordinary and regular procedures used by BERS to calculate the pensions of its members. North stated that because Gelbard's file was missing many of the documents needed to conduct a full review of his employment and pension history his office had to recreate Gelbard's file in order to do so. As a result, Gelbard's pension was extremely labor-intensive and "the single most difficult case we've worked on," according to North.

On May 28, 1997, Chief Actuary North certified Gelbard's pension benefit in the amount of \$26,491.59 annually, using an employment start date of 1972.¹⁸ This amount was contingent on Gelbard's buying-back two years, nine months and eight days of prior service time that was calculated to cost him \$25,502.31. Of this amount, Gelbard was only required to pay BERS \$5775.58 up front. He was then allowed to take a loan for the remaining balance, which reduced his pension benefits accordingly.

¹⁸ This yearly payment amount was \$3280 less per year than had been previously calculated by Pierre Fleuridor in July 1996.

Conclusion and Recommendation

Ali's inappropriate, favorable treatment of then-Secretary Bruce Gelbard's pension case demonstrates disregard for the regulations and customary procedure of the Board of Education Retirement System. She manipulated his pension to benefit him. BERS is a one-and-one-half billion-dollar retirement system that controls the hard-earned money of approximately 29,000 people. The members of BERS must have confidence that their retirement funds are handled properly, invested wisely, and calculated correctly. With Salwa Ali as the system's second-in-command, such public confidence is weakened.

Ali did not follow standard operating procedures in Gelbard's case. Instead, she allowed Gelbard to sidestep the customary counseling unit review, coerced her subordinates to push Gelbard's pension to completion despite a near-total lack of supporting documentation, relied on her purported "memory" about his years of employment, and instructed her staff to accept her claimed memory as fact. It was inappropriate that Gelbard received this favorable treatment.

Ali invented a year of employment for Gelbard, thus falsely crediting him with having completed 25 years of eligible service. That the Prudential document containing the invented 1971 salary figure was one of few documents in his file on July 23 is troubling given that documents demonstrating that Gelbard's employment actually began in 1972 were missing. That the Research and Micrographics Unit document listing 1972 as Gelbard's beginning year of employment was received by Ali the same day as the Prudential document but was missing from Gelbard's file when Fleuridor got the case --- creates an appearance of impropriety difficult to overcome.

Finally, Ali undercharged what Gelbard owed to BERS. Her 1993 letter stating that he owed \$994.93 instead of \$19,940.45 was at best a gross miscalculation and at worst a fraudulent attempt to provide Gelbard with a significant reward. The fact that her inaccurate letter remained in his file while the letter containing the corrections was mysteriously misplaced is further evidence of impropriety.

It is our recommendation that the Board take severe disciplinary action against Salwa Ali that could appropriately include termination of employment. At a minimum Ali should have no further responsibility for pension-related matters. Should you have any inquiries regarding the above, please contact Deputy Commissioner Karen I. Lupuloff, the attorney assigned to this case, at (212) 510-1416. Please notify Ms. Lupuloff within thirty days of receipt of this letter of what, if any, action has been taken, or is contemplated against Ms. Ali. Thank you for your attention to this matter.

Sincerely,

EDWARD F. STANCIK
Special Commissioner
of Investigation for the
New York City School District

By: _____

Karen I. Lupuloff
Deputy Commissioner

EFS:KIL:ai

c: Chad Vignola, Esq.

March 31, 1999

Hon. William C. Thompson, Jr.
President
New York City Board of Education
110 Livingston Street, Room 1118
Brooklyn, NY 11201

Re: Salwa Ali
Case #96-1480

Dear President Thompson:

An investigation conducted by this office has revealed that Salwa Ali, Deputy Executive Director of the Board of Education Retirement System ("BERS"), altered employment and financial information regarding the pension of then-Secretary of the Board of Education Bruce Gelbard. Had Ali's alterations gone undetected, Gelbard would have received thousands of dollars more in pension benefits than he was entitled to receive.

Bruce Gelbard, who was terminated from his position as Secretary on July 17, 1996 - and filed for retirement that same day -- earned a salary of \$121,000 in 1995.¹⁹ Salwa Ali has worked in the BERS pension office since 1974 and has served as Deputy Executive Director since 1987.²⁰ Our investigation began when BERS Executive Director Horatio Sparkes contacted this office on July 23, 1996 to report that Gelbard's pension file was incomplete.

¹⁹ Gelbard died June 14, 1997 at age 45.

²⁰ Ali is a civil servant whose current salary is \$95,779.

In acts committed either directly by Ali or under her direct supervision, she altered information about Gelbard's pension. First, in 1993 she wrote a letter to Gelbard stating that he owed \$994.93 to BERS when in fact he owed \$19,940.45. Gelbard was advised of this corrected, much higher amount shortly thereafter in a subsequent letter to him by then-BERS Executive Director Dwight Kearns. However, in July 1996 when Ali instructed her staff to calculate Gelbard's pension, only her 1993 letter with its erroneous calculations appeared in Gelbard's file and it was this erroneous amount that was used to determine his debt to BERS at the time of his retirement. In fact, Ali's letter was one of only a few documents in Gelbard's pension file upon his retirement. While she was aware that her letter with its incorrect information was used to calculate Gelbard's debt to the pension system, she chose not to bring the inaccuracies to the attention of her subordinates who were processing his file. Second, she altered Gelbard's employment history by inventing an additional year of employment and compelling her subordinates to calculate his benefits using this falsified extra year. Had Ali's acts gone undetected, Gelbard, who was only 44 years old when he retired, would have received from BERS nearly \$3300 more per year in pension benefits than he deserved.

The following chronology is provided to assist the reader in following the lengthy course of events described in the pages ahead:

Bruce Gelbard's BERS History

<u>January 1972:</u>	Gelbard begins Board employment as school aide
<u>September 1974:</u>	Gelbard employed as substitute teacher
<u>September 1975:</u>	Gelbard employed as teacher
<u>September 1978:</u>	Gelbard employed as Education Administrator, Operations Specialist
<u>May 1982:</u>	Gelbard joins Teachers Retirement System
<u>March 1983:</u>	Gelbard employed as Chief Administrator, Impartial Hearing Office
<u>December 1984:</u>	Gelbard resigns from status of teacher in order to join BERS
<u>September 1986:</u>	Gelbard becomes BERS Tier II member pursuant to tier reversion under Chapter 539. Qualifying service purchased covers the period from July 1, 1976 until August 31, 1986.

- December 1990: Gellbard employed as Board Secretary
- October 1, 1992: Gelbard files application with BERS for Tier I membership.²¹
Gelbard lists January 1972 as his employment start date on his application.
- January 28, 1993: Letter to Gelbard from Ali approving his Tier I Career Pension Plan 'A' status pursuant to Chapter 749 of the Laws of 1992 and stating \$994.93 as buy-back amount. Letter lists Gelbard's membership/employment start date as January 1, 1972.
- March 31, 1993: BERS Executive Director Dwight Kearns sends letter to Gelbard informing him that he actually owes \$19,940.45 as buy-back amount.
- April 19, 1993-
May 7, 1993: Gelbard makes three payments for a total of \$911.85 towards the purchase of the prior service.
- May 3, 1993: Gelbard writes Ali and discontinues his bi-weekly payments for the prior service.
- July 17, 1996: Gelbard is terminated and files for retirement pursuant to Tier I Plan 'A' Career Pension Plan Termination without Fault or Delinquency.

Bruce Gelbard is Terminated as Board Secretary and Applies for Retirement Under Tier I, Career Pension Plan 'A', Termination Without Fault or Delinquency

Bruce Gelbard was terminated from his position as Board Secretary by resolution of the Board on July 17, 1996. On that date, he filed for a Tier I Plan 'A' Career Pension Plan retirement, applying to receive pension payments immediately pursuant to that tier's "no-fault" termination provision under the BERS pension regulations. The July 17 Board resolution is mute on the reason for Gelbard's termination. Nowhere does the resolution state that Gelbard was terminated for no fault of his own. In addition, the Board does not clarify in the resolution whether it was terminating Gelbard solely from his position as

²¹ The Actuary determined October 1, 1992 to be Gelbard's effective Tier I entry date.

Secretary, perhaps allowing him to revert to an earlier level of employment within the Board, or terminating him from the Board altogether.²² Regardless, Gelbard filed for immediate retirement under the no-fault provision, and the employees at BERS, though never before having handled this type of retirement processed his paperwork accordingly, not once questioning his eligibility to receive no-fault benefits. In fact, of the several BERS employees we spoke with, none had ever processed a no-fault pension application before doing so for Bruce Gelbard.

Ordinarily, BERS members must wait until they have completed at least 25 years of service, and reached age 55, to begin receiving benefits. This is known as the "Tier I Plan 'A' Career Pension Plan." Further, Tier I Plan 'A' allows members who retire with between 20 and 25 years of employment to receive retirement benefits after completing 20 years of service. This is known as a "Deferred Retirement" because the benefit is not payable until either the date the member would have completed 25 years of service had they not retired or the member reaches age 55, whichever is later. Finally, a Tier I member may choose to receive retirement benefits under "Plan 'B'." In this plan, known as the "Increased Service Fraction Plan," retirement benefits are paid once the member turns age 55, no matter how many years of employment have been completed.

A member's annual pension benefit under the Tier I Plan 'A' options is calculated by multiplying 2.2% by the number of years of service by the member's final average salary. Tier I Plan 'B' uses a different formula and provides the member with a lower Tier I benefit.²³

The "Termination Without Fault or Delinquency" ("No-fault") clause, exercised by Gelbard, allows a Tier I member to receive pension disbursements *immediately* at a reduced rate, even if the member retires before reaching age 55, as long as he has completed at least 20 years of service and was terminated by no fault of his own.

²² As Board Secretary, Gelbard was a non-competitive civil service employee. As such, upon his termination as Board Secretary, Gelbard could have chosen to retain a lesser position within the Board, reinstating the civil service status he acquired years earlier. Instead, he chose to retire immediately.

²³ See Board of Education Retirement System of the City of New York "Tier I Summary of Benefits" manual.

As determined months later by Robert C. North, Jr., the Chief Actuary of the City of New York (“Actuary”) Gelbard’s years of employment for pension computation purposes totaled 23.08 years.²⁴

Tier I Plans

Tier I Plan ‘A’ Career Pension Plan	Tier I Plan ‘A’ Deferred Retirement	Tier I Plan ‘B’ Increased Service Fraction Plan	Tier I Termination Without Fault or Delinquency
Member must have completed 25 years of service and reached age 55.	Member must have completed 20 to 25 years of service at time of retirement.	Member must have reached age 55, no matter how many years of employment were completed at time of retirement.	Member must have completed 20 years of service at time of retirement, even if member has not reached age 55 <i>and</i> member must have been terminated by no fault of his own.
Generally, Plan ‘A’ provides a member with the largest retirement benefits.	Benefits begin either on date member <i>would have</i> completed 25 years of service or member turns 55, whichever is later.	Benefits reduced.	Member receives reduced benefits <i>immediately</i> upon retirement.

Our investigation revealed that Salwa Ali ordered her subordinates to calculate Gelbard’s pension as if he had completed 25 years of service, and actually invented a year of service for him in order to reach that 25 year plateau. However, had Ali

²⁴ The “Tier I Summary of Benefits” manual describes termination without fault: “Other special rules apply if you are not eligible for an immediate Plan A or Plan B retirement allowance and you are terminated “without fault or delinquency” after at least 20 years of service—with at least one-half year completed immediately before your employment ends...”

properly categorized Gelbard's pension status as a Tier I Plan 'A' Deferred Retirement, and had she then correctly applied the no-fault provision, she would not have had to invent a 25th year of service and instruct her subordinates to calculate his pension as a Tier I Plan 'A' with 25 years. This is so because a no-fault termination would have entitled Gelbard to receive the immediate pension disbursements he desired even though he had only completed between 20 and 25 years. Ali, however, had never processed a no-fault termination pension before, and the evidence demonstrates that she was unaware of this fact.

Long after BERS initially certified Gelbard's pension and prepared his first benefit check in the summer of 1996, the New York City Law Department ("Law Department") and the Actuary reviewed his request for no-fault retirement to determine whether Gelbard was even entitled to no-fault benefits. Ultimately, on May 28, 1997, the Law Department, after reviewing Gelbard's pension file as well as the findings of the Kings County District Attorney's Office and the Board's Office of the Auditor General, concluded that Gelbard was entitled to no-fault status.²⁵

Gelbard Increases his Years in BERS by "Buying-Back" Time

BERS organizes its members into tiers and plans based on the date the member joined and the pension options the member elected. Tier I provides the most benefits and applies to employees with the most service in the system. If a member started working for the Board and joined BERS before July 1973, he is designated as a Tier I member.

Changes in the law have afforded Board employees who were not members of BERS until later in their employment the opportunity to "buy-back" or revert to a higher tier and retroactively increase the duration of their BERS membership. This means that an employee who did not join BERS until his sixth year in the school system might be able to join BERS and pay for, or buy-back his first five years, as if he had joined BERS

²⁵ The Law Department did not make a determination as to whether the Board, on July 17, 1996 intended to terminate Gelbard "without fault or delinquency," and in fact, that issue has never been raised. Rather, the Law Department reviewed the findings of these offices to determine whether there existed any acts of misconduct attributable to Gelbard as Board Secretary that would preclude awarding him the benefits of a no-fault termination.

the day he started working for the Board. Bruce Gelbard was able to take advantage of two such changes in the law and buy-back years of employment.²⁶

A Board employee could become a Tier I member in two ways: by joining the pension system on or before June 30, 1973; or by taking advantage of a prior service buy-back offer to buy-back time to an equated employment start date of on or before June 30, 1973. According to the Actuary, Gelbard first joined BERS in September 1986 as a Tier II member.²⁷ Gelbard became a Tier I member effective October 1, 1992 through buy-backs and a tier reversion.

Though Gelbard actually began working for the Board in 1972 and did not join the retirement system until 1986, under Ali's direction his start date of employment for pension purposes was improperly recorded as 1971. Since Gelbard actually began work in 1972, his start date should never have pre-dated that year.

Manipulation of Gelbard's Accrued Years of Employment

The BERS retirement process begins when a member of the retirement system meets with the BERS Counseling Unit. According to BERS counselor Magda Hassan, during this session, at which attendance is standard procedure for all BERS prospective-retirees, the counselor reviews the applicant's file to make sure that all necessary paperwork is present and discusses the member's benefits and options with him. The counselor also reviews the member's employment history to determine whether the member has completed enough years of service to receive a pension. Once the retirement paperwork is complete, the counseling unit will provide the pension file to the BERS calculation unit to determine what the amount of the member's benefit will be and whether the member owes any money to the retirement system. It is the normal practice of the counseling unit to review every retirement file before it is forwarded to the calculations unit, whether or not the member attends a counseling session.

²⁶ The two statutes that allowed Gelbard to buy-back service time were Chapter 539 of the Laws of 1984 and Chapter 749 of the Laws of 1992. Chapter 539 of the Laws of 1984 amends sections 508, 512b, 516 and 533 of the New York Education Law. Chapter 749 of the Laws of 1992 amends section 2575 of the New York Education Law.

²⁷ According to the Actuary, though Gelbard prepared an application for Tier IV membership dated December 20, 1984, the application was never processed and was therefore ignored in calculating his tier reversions.

In Gelbard's case, however, his retirement process skipped the counseling unit step and began when he submitted his application on July 17 by messenger directly to Salwa Ali. Although Ali testified to the contrary, the counseling unit had no record that Gelbard's application was provided to them for processing.²⁸

According to Horatio Sparkes, on Monday, July 22, just a few days after Gelbard's termination and application for retirement, a Board member called to ask why his pension was being delayed. Sparkes instructed his assistant to give Gelbard's pension folder to Salwa Ali to process his application. That day, Ali told Assistant Benefit Examiner Dorothy Christodoulou to calculate Gelbard's pension benefits. Ali ordered her to process it as a Tier I Plan 'A' or "an 'A' case," which to the several BERS employees we interviewed meant that Gelbard needed to have completed 25 years of service to fall under that tier and plan. Christodoulou, however, found that Gelbard did not have the requisite 25 years of service. She then asked fellow Assistant Benefit Examiner Pingulanattie Boodram to assist her in the calculations. Boodram reviewed the file, calculated service data using BERS computer programs, and agreeing with Christodoulou, concluded that Gelbard lacked the 25 years of prior service required for a Tier I Plan 'A' career pension.

At this point Boodram informed Ali that "He doesn't have 25 years, and there is no backup paperwork." In fact, Gelbard's pension case folder contained only four documents, much less paperwork than would be expected in the file of a Tier I member.²⁹ Ali ordered Boodram to calculate Gelbard's pension again, insisting that he did have 25 years of service and telling her "I know it for a fact." Ali made no attempt to substantiate her assertion, nor did she explain herself to Boodram. Instead, Ali merely ordered Boodram to calculate Gelbard's pension in accordance with Ali's own wishes and based solely on her claimed memory. Once again, Boodram reviewed the case and could not find 25 years of service. Finding no data that could credit Gelbard with 25 years, she so informed Ali.

²⁸ Ali testified that she time stamped his application, gave a copy to Horatio Sparkes' secretary, and gave the original to the counseling unit.

²⁹ According to BERS counselor Magda Hassan, a Tier I pension file should contain at least the following: an application for retirement, an enrollment application prepared by the member upon joining the retirement system, a history card, forms for any employment status changes, a beneficiary form, a variable annuity form, a tax withholding form, and a form for the authorization to terminate pension deductions.

According to Boodram, Ali continued to insist that Gelbard had worked 25 years. Boodram then completed an "Annuity at End of 25th Year" worksheet, listing Gelbard's equated start date as a date that did not credit Gelbard with 25 years of service. After she did so, Ali reviewed the worksheet and ordered Boodram to make the equated start date earlier by adding Gelbard's employment time while a member of the Teacher's Retirement System to her calculation -- time that to Boodram had already been included in her calculations -- resulting in a date which now credited Gelbard with 25 years. Following Ali's orders, Boodram complied by erasing her calculations on the "equated date of membership" line of the worksheet and substituting an earlier date. Boodram stated that although in her view Ali was wrong, she questioned her no further about changing Gelbard's years of employment. According to Boodram, "I didn't think it was my place to do so 'cause she's the assistant deputy director and my title is just like, you know, I'm just a little one, that is that."

According to Ann Polimeni of Prudential Investments, the company responsible for keeping BERS salary data on file, Ali contacted her later on July 22 in order to obtain their records of Gelbard's salary history. In response, Polimeni faxed a handwritten note to Ali stating that Prudential needed additional service history information on Gelbard for the years 1972, 1974, and 1975-1986. At the time, this data was not in Prudential's system because Gelbard was not initially a BERS member prior to 1986. In anticipation of Ali's call back, Polimeni began to write out a list of salary data starting in 1972 because all information she had available indicated that Gelbard's employment began in that year. No documentation indicated that he started before 1972.

Apparently in response to this conversation with Polimeni, Ali and Boodram contacted Marcellus Lewter at the BERS Research and Micrographics Unit and requested from him a complete listing of Gelbard's salaries since his start date with the Board. Lewter faxed back a handwritten table indicating years of service and yearly salaries and listing 1972 as Gelbard's first year of employment.

Later in the day, replying to Polimeni's faxed handwritten note, Ali called her to give her Gelbard's years of service and salary totals so that Polimeni could generate an official Prudential document reflecting this information. In this communication, Ali included a

salary figure for the year 1971 despite the fact that Lewter's fax -- which she had earlier received -- showed only salary data beginning in 1972, and despite the fact that Boodram and Christodoulou had earlier in the day asserted that Gelbard did not have 25 years of service. What Ali in fact provided as Gelbard's 1971 salary -- a year Gelbard did not work for the Board at all -- was actually his 1972 salary, and what she represented as his 1972 salary was not found in any other documentation. Thus, she invented a year of service during which Gelbard did not work and thereby credited him with a year of service to which he was not entitled.

Immediately following her communication with Ali, Polimeni faxed her a computer printout reflecting Gelbard's years of service, salary, contribution, and other data, including the 1971 salary figure, based on Ali's assertion moments before. On this "official" Prudential document, Gelbard was now credited with 25 years of service.

Although Prudential's document appeared to be authoritative, its sole source of information about Gelbard's years of service was Ali herself, who initially called Prudential requesting that they generate the document and later provided much of the information contained therein.

The following day, Tuesday July 23, Ali gave Gelbard's case folder to Calculations Unit Supervisor Pierre Fleuridor to process, choosing not to seek the assistance of Boodram or Christodoulou further. She told him that it was to be calculated immediately and that all the necessary documentation was present.

Fleuridor calculated Gelbard's pension by using the Prudential document containing Ali's falsified 1971 year of service, prior service times indicated on two BERS computer printouts known as "history prints," and Ali's 1993 letter to Gelbard -- the only documents in his pension file.³⁰ Although on July 22, the previous day,

³⁰ Although in Ali's 1993 letter to Gelbard, in which she grossly understated his debt to the pension system, she listed his first year of employment as 1972, and, although that letter was included in the pension file handed to Pierre Fleuridor, he chose not to question the 1972 start date stated in the letter, instead relying on Ali's assertion that Gelbard began work in 1971.

Marcellus Lewter at the Research and Micrographics Unit faxed Ali an employment service table listing 1972 as Gelbard's first year of employment, that document was missing from Gelbard's file when Fleuridor received it from Ali. Had Ali included Lewter's fax, it would have conflicted with Ali's assertion that Gelbard's first year of employment was 1971, an assertion that bolstered Gelbard's case for a higher pension. Lewter's employment service table fax, therefore, is conspicuous in its absence.

History prints, which are routinely generated by BERS personnel for use in pension calculations, contain current data on members' pensions; history prints indicate among other things, the amount of prior service time for which each member has credit. To calculate Gelbard's total prior service and an equated start date of employment Fleuridor added together the prior service amounts shown on the two history prints. One history print listed 6 months and 13 days, constituting Gelbard's membership time in the Teacher's Retirement System and one stated 2 years and 14 days -- even though the latter history print should have contained a current, cumulative record of all prior service data. To this sum, he added an amount of 2 years, 8 months and 12 days of prior service time as stated in Ali's 1993 letter even though he had no backup documentation verifying that this amount of time should have in fact been credited to Gelbard.

Although the Actuary would later conclude that Gelbard was entitled to receive immediate pension benefits because he completed 20-25 years of service and because of the no-fault provision, Ali fabricated employment for the year 1971 to ensure that he was credited with 25 years of service. This 25 years of service is what Ali's subordinates, who calculated Gelbard's pension pursuant to her instructions, understood he needed in order to receive immediate pension disbursements. Indeed, based on the testimony of Boodram, Christodoulou, and Fleuridor, it appears that neither they nor Ali were aware at the time that the 20-25 year, "Deferred Retirement" provision would have also given Gelbard the immediate pension benefits he desired under no-fault. Boodram, Christodoulou and Fleuridor all said they calculated Gelbard's pension under the impression, and pursuant to Ali's instructions, that he needed 25 years of service to receive his pension benefits immediately. While Ali, in her December 18, 1996 testimony to this office claimed to have known of the 20-25 year provision, this assertion

is clearly inconsistent with her actions of July 1996. Those actions, coupled with the buy-backs and conversions, resulted in Gelbard being improperly credited with a total of 25 years of service and Tier I Plan 'A' Career Pension Plan status as of July 1996.³¹

HAD GELBARD'S PENSION BEEN CALCULATED UNDER ALI'S DIRECTION, HE WOULD HAVE AVOIDED PAYING \$25,500 HE OWED IN BUY-BACK COSTS TO BERS

At the time of Gelbard's retirement, he owed approximately \$25,500³² to BERS for buy-back costs. That debt would have gone undetected, however, had Gelbard's pension been processed according to Ali's instructions to calculate it based on the sparse documentation in his file. Her 1993 letter, one such document, calculated not only Gelbard's prior service time but also the cost of buying back that time. In calculating such costs, Ali grossly deflated the cost to Gelbard of the prior service buy-back by indicating that he owed BERS only \$994.93, or \$15.84 per pay period, to purchase 2 years, 8 months, and 12 days of prior service time. When questioned during the course of this investigation, however, Horatio Sparkes, Pierre Fleuridor and Salwa Ali all said that this buy-back should have cost Gelbard at least \$15,000 and possibly more than \$20,000.

In fact, a second letter, sent to Gelbard by then-BERS Executive Director Dwight Kearns a few months after the 1993 Ali correspondence, corrected her flawed calculations and informed him that he actually owed \$19,940.45. Now aware of the correct cost to buy-back the prior service time, Gelbard started paying for the 2 years, 8 months, and 12 days by making three of approximately 70 bi-weekly required payments of \$303.95 each. After three payments at this corrected rate -- a 20 fold increase over the rate stated in Ali's letter -- Gelbard sent Ali a letter requesting an indefinite suspension of his payment schedule. Gelbard never re-initiated payment.³³

³¹ The subsequent and dispositive calculation by the Actuary determined that Gelbard actually had 23.08 years of service, including equated service, as of July 1996. This amount assumed the completed buy-back purchase of 2 years, 9 months and 8 days of prior service.

³² In May 1997, the Chief Actuary determined that Gelbard owed the retirement system \$25,502.31 as of the date of retirement.

³³ A BERS member who seeks to buy-back prior service time may elect to suspend a payment schedule and complete payment upon retirement in a lump sum without losing the buy-back time. As will be discussed later, Gelbard made such an election.

Despite the fact that Gelbard owed thousands of dollars to the system, Fleuridor processed his papers as if he was fully paid up. This occurred because neither the corrected 1993 letter from Kearns nor the 1993 letter from Gelbard requesting suspension of the payment schedule were present in Gelbard's file when it was turned over to Fleuridor for calculation. Instead, Ali's inaccurate 1993 letter was there and used by Fleuridor to process Gelbard's retirement papers.³⁴

Had Ali's 1993 letter to Gelbard correctly stated the \$19,940.45 amount he owed at the time, or had any other document stating this price been present in his file, Fleuridor might have scrutinized the file further to seek proof of payment. Instead, according to Fleuridor, because of pressure from Ali to complete the job and because \$994.93 was such a small sum, he completed his calculations according to Ali's instructions, questioning neither whether \$994.93 was the correct buy-back cost nor whether Gelbard had actually paid it. As a result, Fleuridor credited Gelbard with having paid for the prior service time and did so based on obviously erroneous payment calculations, which, if calculated properly, would have required Gelbard to pay BERS thousands of dollars more. In fact, no one questioned the amount Gelbard owed until the entire file was placed under additional scrutiny by this office and the Actuary.

Just the next day, on July 24, 1996 a resolution to the BERS pension board was drafted and a check constituting Gelbard's first disbursement was prepared. To Salwa Ali and Pierre Fleuridor, Bruce Gelbard's retirement application process was completed.

Ali's Testimony

Salwa Ali's December 18, 1996 testimony was contradicted by other evidence. First, although there is no evidence showing that Gelbard's application went through the BERS counseling unit, Ali stated that when Gelbard's application was received it was

³⁴ Fleuridor told us that he was extremely rushed to finish Gelbard's file and that he had no time to review the accuracy of Ali's 1993 letter. He said that he could have revisited Gelbard's payment calculations after the pension was already processed and certified. He admitted however, that he made no subsequent attempt to review Gelbard's file and that he never saw it again.

"clocked as any retirement application" and brought immediately to the counseling unit. Contrary to Ali's assertion, Bruce Gelbard skipped the normal retirement steps and went directly to his friend Salwa Ali who handled his application personally.

Second, whereas Boodram said that Ali told her she "knew" from memory that Gelbard had 25 years of BERS service; and both Boodram and Christodoulou said Ali ordered them to calculate his pension as a Tier I Plan 'A' with 25 years, Ali flatly denied having any discussion with either employee about Gelbard's file other than to merely instruct them to start the calculations. Ali denied telling Boodram -- or, for that matter, anyone at BERS -- that Gelbard had 25 years of service. She further denied that Boodram had told her that documentation did not support the supposed 25 years. These statements by Ali contradict the separate accounts given by Boodram and Christodoulou, which are consistent with one another and which we credit. We do not credit Ali's statement, made during an August 8, 1996 BERS executive staff meeting called to discuss the discrepancies in Gelbard's retirement calculations, that she relied on her memory to do Gelbard's calculations because she was pressured to do his case quickly. Needless to say, no BERS pension professional should rely on memory to calculate a pension.

Furthermore, whereas Boodram, Polimeni and Lewter's statements show that Ali received Lewter's fax, reflecting Gelbard's salary data and 1972 start date, *before* she provided Polimeni with the false-1971 year of employment and salary, in her testimony Ali denied having the fax in hand at the time. Instead, Ali claimed to have received the information from Lewter over the phone and only subsequently to have received it from him via fax. However, Lewter indicated that he faxed Ali the salary data immediately, in response to her specific, pressing request. We credit Boodram, Polimeni, and Lewter and conclude that Ali had received Lewter's fax by the time she relayed the 1971 employment and salary information to Polimeni over the phone.

Ali described the fabrication of the 1971 salary figure as an error made either by Polimeni or herself: "...and I'm taking full responsibility with, either she heard me wrong or I said to her over the phone, I give her this number [1971 salary figure]."

Ali's testimony was further contradicted by Boodram who told us that Ali asserted to her from personal memory that Gelbard had 25 years of service, well before Ali communicated with Polimeni at Prudential. Boodram said, "She [Ali] kept telling me, 'He does have it [25 years of service].'" Similarly, Christodoulou recalled that Ali instructed her to calculate Gelbard's pension as a Tier I Plan 'A' with 25 years of service. Therefore, prior to the supposed "error" occurring during the exchange of information between Ali and Polimeni, Ali was already disseminating misinformation regarding Gelbard's case. Ali either made the same mistake multiple times on the same day -- or made a concerted effort to assist Gelbard. Neither option inspires confidence in her management of the retirement system.³⁵

Regarding her 1993 letter, one of four documents in Gelbard's file, Ali admitted that the \$994.93 buy-back amount was incorrect and that Gelbard actually owed thousands of dollars more. She also admitted that she knew he had been sent a second letter with the corrected greater cost and that this letter should have been attached to her letter but was not. We asked Ali whether she told anyone reviewing Gelbard's file that her 1993 letter was wrong. She replied that she did not choose to inform her subordinates of this fact or make any attempt to note the correct amount of the buy-back in the file. According to Ali, since her letter correctly stated the amount of the prior service time to be purchased by Gelbard in the buy-back, she left her letter as is in his pension file and never mentioned to anyone the fact that it undercharged Gelbard by many thousands of dollars.

In a 1993 interview with this office, Ali characterized her relationship with Gelbard as "professional," adding that she considered Gelbard a friend who had on at least one occasion visited her home. In his 1993 interview with this office, Gelbard stated that he and Ali had a "social" relationship. He stated that they had been to each other's homes and had met each other's families. Horatio Sparkes testified that on more than one occasion, Ali told him that her husband was involved in the construction of Gelbard's

³⁵ When interviewed months later by this office, Ali claimed she never asserted that Gelbard had 25 years of service, alleging instead that she knew at the time of his application that a calculation of 25 years was not needed for him to receive his pension right away under the no-fault provisions.

home, and had either reviewed the plans for Gelbard's home or had actually performed some work. In her 1996 interview with this office, Ali attempted to conceal these facts. She unconvincingly denied ever having visited Gelbard's home and claimed that she related to Gelbard solely as a co-worker. Whether as a friend or an ally, Ali clearly viewed her interests as aligned with Gelbard's. We conclude that Ali's close relationship with Gelbard is the most likely motive for her misconduct.

The Findings of the Actuary of the City of New York

The numerous irregularities and discrepancies regarding Gelbard's pension file necessitated the Actuary, working with Horatio Sparkes and the Law Department, to conduct an in-depth review of Gelbard's file. The calculations originally prepared by Salwa Ali's subordinates, pursuant to her instructions and the information she provided, were disregarded and Gelbard's employment and pension history was recalculated from scratch. Chief Actuary North and his staff recalculated Gelbard's pension utilizing the ordinary and regular procedures used by BERS to calculate the pensions of its members. North stated that because Gelbard's file was missing many of the documents needed to conduct a full review of his employment and pension history his office had to recreate Gelbard's file in order to do so. As a result, Gelbard's pension was extremely labor-intensive and "the single most difficult case we've worked on," according to North.

On May 28, 1997, Chief Actuary North certified Gelbard's pension benefit in the amount of \$26,491.59 annually, using an employment start date of 1972.³⁶ This amount was contingent on Gelbard's buying-back two years, nine months and eight days of prior service time that was calculated to cost him \$25,502.31. Of this amount, Gelbard was only required to pay BERS \$5775.58 up front. He was then allowed to take a loan for the remaining balance, which reduced his pension benefits accordingly.

³⁶ This yearly payment amount was \$3280 less per year than had been previously calculated by Pierre Fleuridor in July 1996.

Conclusion and Recommendation

Ali's inappropriate, favorable treatment of then-Secretary Bruce Gelbard's pension case demonstrates disregard for the regulations and customary procedure of the Board of Education Retirement System. She manipulated his pension to benefit him. BERS is a one-and-one-half billion-dollar retirement system that controls the hard-earned money of approximately 29,000 people. The members of BERS must have confidence that their retirement funds are handled properly, invested wisely, and calculated correctly. With Salwa Ali as the system's second-in-command, such public confidence is weakened.

Ali did not follow standard operating procedures in Gelbard's case. Instead, she allowed Gelbard to sidestep the customary counseling unit review, coerced her subordinates to push Gelbard's pension to completion despite a near-total lack of supporting documentation, relied on her purported "memory" about his years of employment, and instructed her staff to accept her claimed memory as fact. It was inappropriate that Gelbard received this favorable treatment.

Ali invented a year of employment for Gelbard, thus falsely crediting him with having completed 25 years of eligible service. That the Prudential document containing the invented 1971 salary figure was one of few documents in his file on July 23 is troubling given that documents demonstrating that Gelbard's employment actually began in 1972 were missing. That the Research and Micrographics Unit document listing 1972 as Gelbard's beginning year of employment was received by Ali the same day as the Prudential document but was missing from Gelbard's file when Fleuridor got the case --- creates an appearance of impropriety difficult to overcome.

Finally, Ali undercharged what Gelbard owed to BERS. Her 1993 letter stating that he owed \$994.93 instead of \$19,940.45 was at best a gross miscalculation and at worst a fraudulent attempt to provide Gelbard with a significant reward. The fact that her inaccurate letter remained in his file while the letter containing the corrections was mysteriously misplaced is further evidence of impropriety.

It is our recommendation that the Board take severe disciplinary action against Salwa Ali that could appropriately include termination of employment. At a minimum Ali should have no further responsibility for pension-related matters. Should you have any inquiries regarding the above, please contact me or Deputy Commissioner Karen I. Lupuloff. She can be reached at (212) 510-1416.

Sincerely,

EDWARD F. STANCIK
Special Commissioner
of Investigation for the
New York City School District

By:

Karen I. Lupuloff
Deputy Commissioner

EFS:KIL:ai

c: Members of the Board

March 31, 1999

Hon. Edward J. Kuriansky
Commissioner
New York City Department of Investigation
80 Maiden Lane, 17th Floor
New York, NY 10038

Re: Salwa Ali
Case #96-1480

Dear Commissioner Kuriansky:

An investigation conducted by this office has revealed that Salwa Ali, Deputy Executive Director of the Board of Education Retirement System ("BERS"), altered employment and financial information regarding the pension of then-Secretary of the Board of Education Bruce Gelbard. Had Ali's alterations gone undetected, Gelbard would have received thousands of dollars more in pension benefits than he was entitled to receive.

Bruce Gelbard, who was terminated from his position as Secretary on July 17, 1996 - and filed for retirement that same day -- earned a salary of \$121,000 in 1995.³⁷ Salwa Ali has worked in the BERS pension office since 1974 and has served as Deputy Executive Director since 1987.³⁸ Our investigation began when BERS Executive Director Horatio Sparkes contacted this office on July 23, 1996 to report that Gelbard's pension file was incomplete.

³⁷ Gelbard died June 14, 1997 at age 45.

³⁸ Ali is a civil servant whose current salary is \$95,779.

In acts committed either directly by Ali or under her direct supervision, she altered information about Gelbard's pension. First, in 1993 she wrote a letter to Gelbard stating that he owed \$994.93 to BERS when in fact he owed \$19,940.45. Gelbard was advised of this corrected, much higher amount shortly thereafter in a subsequent letter to him by then-BERS Executive Director Dwight Kearns. However, in July 1996 when Ali instructed her staff to calculate Gelbard's pension, only her 1993 letter with its erroneous calculations appeared in Gelbard's file and it was this erroneous amount that was used to determine his debt to BERS at the time of his retirement. In fact, Ali's letter was one of only a few documents in Gelbard's pension file upon his retirement. While she was aware that her letter with its incorrect information was used to calculate Gelbard's debt to the pension system, she chose not to bring the inaccuracies to the attention of her subordinates who were processing his file. Second, she altered Gelbard's employment history by inventing an additional year of employment and compelling her subordinates to calculate his benefits using this falsified extra year. Had Ali's acts gone undetected, Gelbard, who was only 44 years old when he retired, would have received from BERS nearly \$3300 more per year in pension benefits than he deserved.

The following chronology is provided to assist the reader in following the lengthy course of events described in the pages ahead:

Bruce Gelbard's BERS History

<u>January 1972:</u>	Gelbard begins Board employment as school aide
<u>September 1974:</u>	Gelbard employed as substitute teacher
<u>September 1975:</u>	Gelbard employed as teacher
<u>September 1978:</u>	Gelbard employed as Education Administrator, Operations Specialist
<u>May 1982:</u>	Gelbard joins Teachers Retirement System
<u>March 1983:</u>	Gelbard employed as Chief Administrator, Impartial Hearing Office
<u>December 1984:</u>	Gelbard resigns from status of teacher in order to join BERS
<u>September 1986:</u>	Gelbard becomes BERS Tier II member pursuant to tier reversion under Chapter 539. Qualifying service purchased covers the period from July 1, 1976 until August 31, 1986.

- December 1990: Gelbard employed as Board Secretary
- October 1, 1992: Gelbard files application with BERS for Tier I membership.³⁹
Gelbard lists January 1972 as his employment start date on his application.
- January 28, 1993: Letter to Gelbard from Ali approving his Tier I Career Pension Plan 'A' status pursuant to Chapter 749 of the Laws of 1992 and stating \$994.93 as buy-back amount. Letter lists Gelbard's membership/employment start date as January 1, 1972.
- March 31, 1993: BERS Executive Director Dwight Kearns sends letter to Gelbard informing him that he actually owes \$19,940.45 as buy-back amount.
- April 19, 1993-
May 7, 1993: Gelbard makes three payments for a total of \$911.85 towards the purchase of the prior service.
- May 3, 1993: Gelbard writes Ali and discontinues his bi-weekly payments for the prior service.
- July 17, 1996: Gelbard is terminated and files for retirement pursuant to Tier I Plan 'A' Career Pension Plan Termination without Fault or Delinquency.

Bruce Gelbard is Terminated as Board Secretary and Applies for Retirement Under Tier I, Career Pension Plan 'A', Termination Without Fault or Delinquency

Bruce Gelbard was terminated from his position as Board Secretary by resolution of the Board on July 17, 1996. On that date, he filed for a Tier I Plan 'A' Career Pension Plan retirement, applying to receive pension payments immediately pursuant to that tier's "no-fault" termination provision under the BERS pension regulations. The July 17 Board resolution is mute on the reason for Gelbard's termination. Nowhere does the resolution state that Gelbard was terminated for no fault of his own. In addition, the Board does not clarify in the resolution whether it was terminating Gelbard solely from his position as

³⁹ The Actuary determined October 1, 1992 to be Gelbard's effective Tier I entry date.

Secretary, perhaps allowing him to revert to an earlier level of employment within the Board, or terminating him from the Board altogether.⁴⁰ Regardless, Gelbard filed for immediate retirement under the no-fault provision, and the employees at BERS, though never before having handled this type of retirement processed his paperwork accordingly, not once questioning his eligibility to receive no-fault benefits. In fact, of the several BERS employees we spoke with, none had ever processed a no-fault pension application before doing so for Bruce Gelbard.

Ordinarily, BERS members must wait until they have completed at least 25 years of service, and reached age 55, to begin receiving benefits. This is known as the "Tier I Plan 'A' Career Pension Plan." Further, Tier I Plan 'A' allows members who retire with between 20 and 25 years of employment to receive retirement benefits after completing 20 years of service. This is known as a "Deferred Retirement" because the benefit is not payable until either the date the member would have completed 25 years of service had they not retired or the member reaches age 55, whichever is later. Finally, a Tier I member may choose to receive retirement benefits under "Plan 'B'." In this plan, known as the "Increased Service Fraction Plan," retirement benefits are paid once the member turns age 55, no matter how many years of employment have been completed.

A member's annual pension benefit under the Tier I Plan 'A' options is calculated by multiplying 2.2% by the number of years of service by the member's final average salary. Tier I Plan 'B' uses a different formula and provides the member with a lower Tier I benefit.⁴¹

The "Termination Without Fault or Delinquency" ("No-fault") clause, exercised by Gelbard, allows a Tier I member to receive pension disbursements *immediately* at a reduced rate, even if the member retires before reaching age 55, as long as he has completed at least 20 years of service and was terminated by no fault of his own.

⁴⁰ As Board Secretary, Gelbard was a non-competitive civil service employee. As such, upon his termination as Board Secretary, Gelbard could have chosen to retain a lesser position within the Board, reinstating the civil service status he acquired years earlier. Instead, he chose to retire immediately.

⁴¹ See Board of Education Retirement System of the City of New York "Tier I Summary of Benefits" manual.

As determined months later by Robert C. North, Jr., the Chief Actuary of the City of New York (“Actuary”) Gelbard’s years of employment for pension computation purposes totaled 23.08 years.⁴²

Tier I Plans

Tier I Plan ‘A’ Career Pension Plan	Tier I Plan ‘A’ Deferred Retirement	Tier I Plan ‘B’ Increased Service Fraction Plan	Tier I Termination Without Fault or Delinquency
Member must have completed 25 years of service and reached age 55.	Member must have completed 20 to 25 years of service at time of retirement.	Member must have reached age 55, no matter how many years of employment were completed at time of retirement.	Member must have completed 20 years of service at time of retirement, even if member has not reached age 55 <i>and</i> member must have been terminated by no fault of his own.
Generally, Plan ‘A’ provides a member with the largest retirement benefits.	Benefits begin either on date member <i>would have</i> completed 25 years of service or member turns 55, whichever is later.	Benefits reduced.	Member receives reduced benefits <i>immediately</i> upon retirement.

Our investigation revealed that Salwa Ali ordered her subordinates to calculate Gelbard’s pension as if he had completed 25 years of service, and actually invented a year of service for him in order to reach that 25 year plateau. However, had Ali

⁴² The “Tier I Summary of Benefits” manual describes termination without fault: “Other special rules apply if you are not eligible for an immediate Plan A or Plan B retirement allowance and you are terminated “without fault or delinquency” after at least 20 years of service—with at least one-half year completed immediately before your employment ends...”

properly categorized Gelbard's pension status as a Tier I Plan 'A' Deferred Retirement, and had she then correctly applied the no-fault provision, she would not have had to invent a 25th year of service and instruct her subordinates to calculate his pension as a Tier I Plan 'A' with 25 years. This is so because a no-fault termination would have entitled Gelbard to receive the immediate pension disbursements he desired even though he had only completed between 20 and 25 years. Ali, however, had never processed a no-fault termination pension before, and the evidence demonstrates that she was unaware of this fact.

Long after BERS initially certified Gelbard's pension and prepared his first benefit check in the summer of 1996, the New York City Law Department ("Law Department") and the Actuary reviewed his request for no-fault retirement to determine whether Gelbard was even entitled to no-fault benefits. Ultimately, on May 28, 1997, the Law Department, after reviewing Gelbard's pension file as well as the findings of the Kings County District Attorney's Office and the Board's Office of the Auditor General, concluded that Gelbard was entitled to no-fault status.⁴³

Gelbard Increases his Years in BERS by "Buying-Back" Time

BERS organizes its members into tiers and plans based on the date the member joined and the pension options the member elected. Tier I provides the most benefits and applies to employees with the most service in the system. If a member started working for the Board and joined BERS before July 1973, he is designated as a Tier I member.

Changes in the law have afforded Board employees who were not members of BERS until later in their employment the opportunity to "buy-back" or revert to a higher tier and retroactively increase the duration of their BERS membership. This means that an employee who did not join BERS until his sixth year in the school system might be able to join BERS and pay for, or buy-back his first five years, as if he had joined BERS

⁴³ The Law Department did not make a determination as to whether the Board, on July 17, 1996 intended to terminate Gelbard "without fault or delinquency," and in fact, that issue has never been raised. Rather, the Law Department reviewed the findings of these offices to determine whether there existed any acts of misconduct attributable to Gelbard as Board Secretary that would preclude awarding him the benefits of a no-fault termination.

the day he started working for the Board. Bruce Gelbard was able to take advantage of two such changes in the law and buy-back years of employment.⁴⁴

A Board employee could become a Tier I member in two ways: by joining the pension system on or before June 30, 1973; or by taking advantage of a prior service buy-back offer to buy-back time to an equated employment start date of on or before June 30, 1973. According to the Actuary, Gelbard first joined BERS in September 1986 as a Tier II member.⁴⁵ Gelbard became a Tier I member effective October 1, 1992 through buy-backs and a tier reversion.

Though Gelbard actually began working for the Board in 1972 and did not join the retirement system until 1986, under Ali's direction his start date of employment for pension purposes was improperly recorded as 1971. Since Gelbard actually began work in 1972, his start date should never have pre-dated that year.

Manipulation of Gelbard's Accrued Years of Employment

The BERS retirement process begins when a member of the retirement system meets with the BERS Counseling Unit. According to BERS counselor Magda Hassan, during this session, at which attendance is standard procedure for all BERS prospective-retirees, the counselor reviews the applicant's file to make sure that all necessary paperwork is present and discusses the member's benefits and options with him. The counselor also reviews the member's employment history to determine whether the member has completed enough years of service to receive a pension. Once the retirement paperwork is complete, the counseling unit will provide the pension file to the BERS calculation unit to determine what the amount of the member's benefit will be and whether the member owes any money to the retirement system. It is the normal practice of the counseling unit to review every retirement file before it is forwarded to the calculations unit, whether or not the member attends a counseling session.

⁴⁴ The two statutes that allowed Gelbard to buy-back service time were Chapter 539 of the Laws of 1984 and Chapter 749 of the Laws of 1992. Chapter 539 of the Laws of 1984 amends sections 508, 512b, 516 and 533 of the New York Education Law. Chapter 749 of the Laws of 1992 amends section 2575 of the New York Education Law.

⁴⁵ According to the Actuary, though Gelbard prepared an application for Tier IV membership dated December 20, 1984, the application was never processed and was therefore ignored in calculating his tier reversions.

In Gelbard's case, however, his retirement process skipped the counseling unit step and began when he submitted his application on July 17 by messenger directly to Salwa Ali. Although Ali testified to the contrary, the counseling unit had no record that Gelbard's application was provided to them for processing.⁴⁶

According to Horatio Sparkes, on Monday, July 22, just a few days after Gelbard's termination and application for retirement, a Board member called to ask why his pension was being delayed. Sparkes instructed his assistant to give Gelbard's pension folder to Salwa Ali to process his application. That day, Ali told Assistant Benefit Examiner Dorothy Christodoulou to calculate Gelbard's pension benefits. Ali ordered her to process it as a Tier I Plan 'A' or "an 'A' case," which to the several BERS employees we interviewed meant that Gelbard needed to have completed 25 years of service to fall under that tier and plan. Christodoulou, however, found that Gelbard did not have the requisite 25 years of service. She then asked fellow Assistant Benefit Examiner Pingulanattie Boodram to assist her in the calculations. Boodram reviewed the file, calculated service data using BERS computer programs, and agreeing with Christodoulou, concluded that Gelbard lacked the 25 years of prior service required for a Tier I Plan 'A' career pension.

At this point Boodram informed Ali that "He doesn't have 25 years, and there is no backup paperwork." In fact, Gelbard's pension case folder contained only four documents, much less paperwork than would be expected in the file of a Tier I member.⁴⁷ Ali ordered Boodram to calculate Gelbard's pension again, insisting that he did have 25 years of service and telling her "I know it for a fact." Ali made no attempt to substantiate her assertion, nor did she explain herself to Boodram. Instead, Ali merely ordered Boodram to calculate Gelbard's pension in accordance with Ali's own wishes and based solely on her claimed memory. Once again, Boodram reviewed the case and could not find 25 years of service. Finding no data that could credit Gelbard with 25 years, she so informed Ali.

⁴⁶ Ali testified that she time stamped his application, gave a copy to Horatio Sparkes' secretary, and gave the original to the counseling unit.

⁴⁷ According to BERS counselor Magda Hassan, a Tier I pension file should contain at least the following: an application for retirement, an enrollment application prepared by the member upon joining the retirement system, a history card, forms for any employment status changes, a beneficiary form, a variable annuity form, a tax withholding form, and a form for the authorization to terminate pension deductions.

According to Boodram, Ali continued to insist that Gelbard had worked 25 years. Boodram then completed an "Annuity at End of 25th Year" worksheet, listing Gelbard's equated start date as a date that did not credit Gelbard with 25 years of service. After she did so, Ali reviewed the worksheet and ordered Boodram to make the equated start date earlier by adding Gelbard's employment time while a member of the Teacher's Retirement System to her calculation -- time that to Boodram had already been included in her calculations -- resulting in a date which now credited Gelbard with 25 years. Following Ali's orders, Boodram complied by erasing her calculations on the "equated date of membership" line of the worksheet and substituting an earlier date. Boodram stated that although in her view Ali was wrong, she questioned her no further about changing Gelbard's years of employment. According to Boodram, "I didn't think it was my place to do so 'cause she's the assistant deputy director and my title is just like, you know, I'm just a little one, that is that."

According to Ann Polimeni of Prudential Investments, the company responsible for keeping BERS salary data on file, Ali contacted her later on July 22 in order to obtain their records of Gelbard's salary history. In response, Polimeni faxed a handwritten note to Ali stating that Prudential needed additional service history information on Gelbard for the years 1972, 1974, and 1975-1986. At the time, this data was not in Prudential's system because Gelbard was not initially a BERS member prior to 1986. In anticipation of Ali's call back, Polimeni began to write out a list of salary data starting in 1972 because all information she had available indicated that Gelbard's employment began in that year. No documentation indicated that he started before 1972.

Apparently in response to this conversation with Polimeni, Ali and Boodram contacted Marcellus Lewter at the BERS Research and Micrographics Unit and requested from him a complete listing of Gelbard's salaries since his start date with the Board. Lewter faxed back a handwritten table indicating years of service and yearly salaries and listing 1972 as Gelbard's first year of employment.

Later in the day, replying to Polimeni's faxed handwritten note, Ali called her to give her Gelbard's years of service and salary totals so that Polimeni could generate an official Prudential document reflecting this information. In this communication, Ali included a

salary figure for the year 1971 despite the fact that Lewter's fax -- which she had earlier received -- showed only salary data beginning in 1972, and despite the fact that Boodram and Christodoulou had earlier in the day asserted that Gelbard did not have 25 years of service. What Ali in fact provided as Gelbard's 1971 salary -- a year Gelbard did not work for the Board at all -- was actually his 1972 salary, and what she represented as his 1972 salary was not found in any other documentation. Thus, she invented a year of service during which Gelbard did not work and thereby credited him with a year of service to which he was not entitled.

Immediately following her communication with Ali, Polimeni faxed her a computer printout reflecting Gelbard's years of service, salary, contribution, and other data, including the 1971 salary figure, based on Ali's assertion moments before. On this "official" Prudential document, Gelbard was now credited with 25 years of service.

Although Prudential's document appeared to be authoritative, its sole source of information about Gelbard's years of service was Ali herself, who initially called Prudential requesting that they generate the document and later provided much of the information contained therein.

The following day, Tuesday July 23, Ali gave Gelbard's case folder to Calculations Unit Supervisor Pierre Fleuridor to process, choosing not to seek the assistance of Boodram or Christodoulou further. She told him that it was to be calculated immediately and that all the necessary documentation was present.

Fleuridor calculated Gelbard's pension by using the Prudential document containing Ali's falsified 1971 year of service, prior service times indicated on two BERS computer printouts known as "history prints," and Ali's 1993 letter to Gelbard -- the only documents in his pension file.⁴⁸ Although on July 22, the previous day,

⁴⁸ Although in Ali's 1993 letter to Gelbard, in which she grossly understated his debt to the pension system, she listed his first year of employment as 1972, and, although that letter was included in the pension file handed to Pierre Fleuridor, he chose not to question the 1972 start date stated in the letter, instead relying on Ali's assertion that Gelbard began work in 1971.

Marcellus Lewter at the Research and Micrographics Unit faxed Ali an employment service table listing 1972 as Gelbard's first year of employment, that document was missing from Gelbard's file when Fleuridor received it from Ali. Had Ali included Lewter's fax, it would have conflicted with Ali's assertion that Gelbard's first year of employment was 1971, an assertion that bolstered Gelbard's case for a higher pension. Lewter's employment service table fax, therefore, is conspicuous in its absence.

History prints, which are routinely generated by BERS personnel for use in pension calculations, contain current data on members' pensions; history prints indicate among other things, the amount of prior service time for which each member has credit. To calculate Gelbard's total prior service and an equated start date of employment Fleuridor added together the prior service amounts shown on the two history prints. One history print listed 6 months and 13 days, constituting Gelbard's membership time in the Teacher's Retirement System and one stated 2 years and 14 days -- even though the latter history print should have contained a current, cumulative record of all prior service data. To this sum, he added an amount of 2 years, 8 months and 12 days of prior service time as stated in Ali's 1993 letter even though he had no backup documentation verifying that this amount of time should have in fact been credited to Gelbard.

Although the Actuary would later conclude that Gelbard was entitled to receive immediate pension benefits because he completed 20-25 years of service and because of the no-fault provision, Ali fabricated employment for the year 1971 to ensure that he was credited with 25 years of service. This 25 years of service is what Ali's subordinates, who calculated Gelbard's pension pursuant to her instructions, understood he needed in order to receive immediate pension disbursements. Indeed, based on the testimony of Boodram, Christodoulou, and Fleuridor, it appears that neither they nor Ali were aware at the time that the 20-25 year, "Deferred Retirement" provision would have also given Gelbard the immediate pension benefits he desired under no-fault. Boodram, Christodoulou and Fleuridor all said they calculated Gelbard's pension under the impression, and pursuant to Ali's instructions, that he needed 25 years of service to receive his pension benefits immediately. While Ali, in her December 18, 1996 testimony to this office claimed to have known of the 20-25 year provision, this assertion

is clearly inconsistent with her actions of July 1996. Those actions, coupled with the buy-backs and conversions, resulted in Gelbard being improperly credited with a total of 25 years of service and Tier I Plan 'A' Career Pension Plan status as of July 1996.⁴⁹

HAD GELBARD'S PENSION BEEN CALCULATED UNDER ALI'S DIRECTION, HE WOULD HAVE AVOIDED PAYING \$25,500 HE OWED IN BUY-BACK COSTS TO BERS

At the time of Gelbard's retirement, he owed approximately \$25,500⁵⁰ to BERS for buy-back costs. That debt would have gone undetected, however, had Gelbard's pension been processed according to Ali's instructions to calculate it based on the sparse documentation in his file. Her 1993 letter, one such document, calculated not only Gelbard's prior service time but also the cost of buying back that time. In calculating such costs, Ali grossly deflated the cost to Gelbard of the prior service buy-back by indicating that he owed BERS only \$994.93, or \$15.84 per pay period, to purchase 2 years, 8 months, and 12 days of prior service time. When questioned during the course of this investigation, however, Horatio Sparkes, Pierre Fleuridor and Salwa Ali all said that this buy-back should have cost Gelbard at least \$15,000 and possibly more than \$20,000.

In fact, a second letter, sent to Gelbard by then-BERS Executive Director Dwight Kearns a few months after the 1993 Ali correspondence, corrected her flawed calculations and informed him that he actually owed \$19,940.45. Now aware of the correct cost to buy-back the prior service time, Gelbard started paying for the 2 years, 8 months, and 12 days by making three of approximately 70 bi-weekly required payments of \$303.95 each. After three payments at this corrected rate -- a 20 fold increase over the rate stated in Ali's letter -- Gelbard sent Ali a letter requesting an indefinite suspension of his payment schedule. Gelbard never re-initiated payment.⁵¹

⁴⁹ The subsequent and dispositive calculation by the Actuary determined that Gelbard actually had 23.08 years of service, including equated service, as of July 1996. This amount assumed the completed buy-back purchase of 2 years, 9 months and 8 days of prior service.

⁵⁰ In May 1997, the Chief Actuary determined that Gelbard owed the retirement system \$25,502.31 as of the date of retirement.

⁵¹ A BERS member who seeks to buy-back prior service time may elect to suspend a payment schedule and complete payment upon retirement in a lump sum without losing the buy-back time. As will be discussed later, Gelbard made such an election.

Despite the fact that Gelbard owed thousands of dollars to the system, Fleuridor processed his papers as if he was fully paid up. This occurred because neither the corrected 1993 letter from Kearns nor the 1993 letter from Gelbard requesting suspension of the payment schedule were present in Gelbard's file when it was turned over to Fleuridor for calculation. Instead, Ali's inaccurate 1993 letter was there and used by Fleuridor to process Gelbard's retirement papers.⁵²

Had Ali's 1993 letter to Gelbard correctly stated the \$19,940.45 amount he owed at the time, or had any other document stating this price been present in his file, Fleuridor might have scrutinized the file further to seek proof of payment. Instead, according to Fleuridor, because of pressure from Ali to complete the job and because \$994.93 was such a small sum, he completed his calculations according to Ali's instructions, questioning neither whether \$994.93 was the correct buy-back cost nor whether Gelbard had actually paid it. As a result, Fleuridor credited Gelbard with having paid for the prior service time and did so based on obviously erroneous payment calculations, which, if calculated properly, would have required Gelbard to pay BERS thousands of dollars more. In fact, no one questioned the amount Gelbard owed until the entire file was placed under additional scrutiny by this office and the Actuary.

Just the next day, on July 24, 1996 a resolution to the BERS pension board was drafted and a check constituting Gelbard's first disbursement was prepared. To Salwa Ali and Pierre Fleuridor, Bruce Gelbard's retirement application process was completed.

Ali's Testimony

Salwa Ali's December 18, 1996 testimony was contradicted by other evidence. First, although there is no evidence showing that Gelbard's application went through the BERS counseling unit, Ali stated that when Gelbard's application was received it was

⁵² Fleuridor told us that he was extremely rushed to finish Gelbard's file and that he had no time to review the accuracy of Ali's 1993 letter. He said that he could have revisited Gelbard's payment calculations after the pension was already processed and certified. He admitted however, that he made no subsequent attempt to review Gelbard's file and that he never saw it again.

"clocked as any retirement application" and brought immediately to the counseling unit. Contrary to Ali's assertion, Bruce Gelbard skipped the normal retirement steps and went directly to his friend Salwa Ali who handled his application personally.

Second, whereas Boodram said that Ali told her she "knew" from memory that Gelbard had 25 years of BERS service; and both Boodram and Christodoulou said Ali ordered them to calculate his pension as a Tier I Plan 'A' with 25 years, Ali flatly denied having any discussion with either employee about Gelbard's file other than to merely instruct them to start the calculations. Ali denied telling Boodram -- or, for that matter, anyone at BERS -- that Gelbard had 25 years of service. She further denied that Boodram had told her that documentation did not support the supposed 25 years. These statements by Ali contradict the separate accounts given by Boodram and Christodoulou, which are consistent with one another and which we credit. We do not credit Ali's statement, made during an August 8, 1996 BERS executive staff meeting called to discuss the discrepancies in Gelbard's retirement calculations, that she relied on her memory to do Gelbard's calculations because she was pressured to do his case quickly. Needless to say, no BERS pension professional should rely on memory to calculate a pension.

Furthermore, whereas Boodram, Polimeni and Lewter's statements show that Ali received Lewter's fax, reflecting Gelbard's salary data and 1972 start date, *before* she provided Polimeni with the false-1971 year of employment and salary, in her testimony Ali denied having the fax in hand at the time. Instead, Ali claimed to have received the information from Lewter over the phone and only subsequently to have received it from him via fax. However, Lewter indicated that he faxed Ali the salary data immediately, in response to her specific, pressing request. We credit Boodram, Polimeni, and Lewter and conclude that Ali had received Lewter's fax by the time she relayed the 1971 employment and salary information to Polimeni over the phone.

Ali described the fabrication of the 1971 salary figure as an error made either by Polimeni or herself: "...and I'm taking full responsibility with, either she heard me wrong or I said to her over the phone, I give her this number [1971 salary figure]."

Ali's testimony was further contradicted by Boodram who told us that Ali asserted to her from personal memory that Gelbard had 25 years of service, well before Ali communicated with Polimeni at Prudential. Boodram said, "She [Ali] kept telling me, 'He does have it [25 years of service].'" Similarly, Christodoulou recalled that Ali instructed her to calculate Gelbard's pension as a Tier I Plan 'A' with 25 years of service. Therefore, prior to the supposed "error" occurring during the exchange of information between Ali and Polimeni, Ali was already disseminating misinformation regarding Gelbard's case. Ali either made the same mistake multiple times on the same day -- or made a concerted effort to assist Gelbard. Neither option inspires confidence in her management of the retirement system.⁵³

Regarding her 1993 letter, one of four documents in Gelbard's file, Ali admitted that the \$994.93 buy-back amount was incorrect and that Gelbard actually owed thousands of dollars more. She also admitted that she knew he had been sent a second letter with the corrected greater cost and that this letter should have been attached to her letter but was not. We asked Ali whether she told anyone reviewing Gelbard's file that her 1993 letter was wrong. She replied that she did not choose to inform her subordinates of this fact or make any attempt to note the correct amount of the buy-back in the file. According to Ali, since her letter correctly stated the amount of the prior service time to be purchased by Gelbard in the buy-back, she left her letter as is in his pension file and never mentioned to anyone the fact that it undercharged Gelbard by many thousands of dollars.

In a 1993 interview with this office, Ali characterized her relationship with Gelbard as "professional," adding that she considered Gelbard a friend who had on at least one occasion visited her home. In his 1993 interview with this office, Gelbard stated that he and Ali had a "social" relationship. He stated that they had been to each other's homes and had met each other's families. Horatio Sparkes testified that on more than one occasion, Ali told him that her husband was involved in the construction of Gelbard's

⁵³ When interviewed months later by this office, Ali claimed she never asserted that Gelbard had 25 years of service, alleging instead that she knew at the time of his application that a calculation of 25 years was not needed for him to receive his pension right away under the no-fault provisions.

home, and had either reviewed the plans for Gelbard's home or had actually performed some work. In her 1996 interview with this office, Ali attempted to conceal these facts. She unconvincingly denied ever having visited Gelbard's home and claimed that she related to Gelbard solely as a co-worker. Whether as a friend or an ally, Ali clearly viewed her interests as aligned with Gelbard's. We conclude that Ali's close relationship with Gelbard is the most likely motive for her misconduct.

The Findings of the Actuary of the City of New York

The numerous irregularities and discrepancies regarding Gelbard's pension file necessitated the Actuary, working with Horatio Sparkes and the Law Department, to conduct an in-depth review of Gelbard's file. The calculations originally prepared by Salwa Ali's subordinates, pursuant to her instructions and the information she provided, were disregarded and Gelbard's employment and pension history was recalculated from scratch. Chief Actuary North and his staff recalculated Gelbard's pension utilizing the ordinary and regular procedures used by BERS to calculate the pensions of its members. North stated that because Gelbard's file was missing many of the documents needed to conduct a full review of his employment and pension history his office had to recreate Gelbard's file in order to do so. As a result, Gelbard's pension was extremely labor-intensive and "the single most difficult case we've worked on," according to North.

On May 28, 1997, Chief Actuary North certified Gelbard's pension benefit in the amount of \$26,491.59 annually, using an employment start date of 1972.⁵⁴ This amount was contingent on Gelbard's buying-back two years, nine months and eight days of prior service time that was calculated to cost him \$25,502.31. Of this amount, Gelbard was only required to pay BERS \$5775.58 up front. He was then allowed to take a loan for the remaining balance, which reduced his pension benefits accordingly.

⁵⁴ This yearly payment amount was \$3280 less per year than had been previously calculated by Pierre Fleuridor in July 1996.

Conclusion and Recommendation

Ali's inappropriate, favorable treatment of then-Secretary Bruce Gelbard's pension case demonstrates disregard for the regulations and customary procedure of the Board of Education Retirement System. She manipulated his pension to benefit him. BERS is a one-and-one-half billion-dollar retirement system that controls the hard-earned money of approximately 29,000 people. The members of BERS must have confidence that their retirement funds are handled properly, invested wisely, and calculated correctly. With Salwa Ali as the system's second-in-command, such public confidence is weakened.

Ali did not follow standard operating procedures in Gelbard's case. Instead, she allowed Gelbard to sidestep the customary counseling unit review, coerced her subordinates to push Gelbard's pension to completion despite a near-total lack of supporting documentation, relied on her purported "memory" about his years of employment, and instructed her staff to accept her claimed memory as fact. It was inappropriate that Gelbard received this favorable treatment.

Ali invented a year of employment for Gelbard, thus falsely crediting him with having completed 25 years of eligible service. That the Prudential document containing the invented 1971 salary figure was one of few documents in his file on July 23 is troubling given that documents demonstrating that Gelbard's employment actually began in 1972 were missing. That the Research and Micrographics Unit document listing 1972 as Gelbard's beginning year of employment was received by Ali the same day as the Prudential document but was missing from Gelbard's file when Fleuridor got the case --- creates an appearance of impropriety difficult to overcome.

Finally, Ali undercharged what Gelbard owed to BERS. Her 1993 letter stating that he owed \$994.93 instead of \$19,940.45 was at best a gross miscalculation and at worst a fraudulent attempt to provide Gelbard with a significant reward. The fact that her inaccurate letter remained in his file while the letter containing the corrections was mysteriously misplaced is further evidence of impropriety.

We have recommended to the Board of Education that severe disciplinary action be taken against Salwa Ali that could appropriately include termination of employment. At a minimum Ali should have no further responsibility for pension-related matters. Should you have any inquiries regarding the above, please contact me or Deputy Commissioner Karen I. Lupuloff. She can be reached at (212) 510-1416.

Sincerely,

EDWARD F. STANCIK
Special Commissioner
of Investigation for the
New York City School District

By:

Karen I. Lupuloff
Deputy Commissioner

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