

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

**Edward F. Stancik**  
Special Commissioner

**BACKGROUND INVESTIGATION INTO  
BOARD OF EDUCATION LEASED PROPERTIES**

By:

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## INTRODUCTION

At the request of the New York City Board of Education (BOE), this report contains relevant background information, gathered by the Office of the Special Commissioner of Investigation for the New York City School District (SCI), regarding eight current and prospective lease agreements between the BOE and six private landlords: Public Service Atlantic L.L.C., Q.B. Associates, Bronx Dance Theater, David & Stanley Kaufman, David Gold & Marvin Hellman (doing business as Dav Marv Realty, Inc., Remsen Associates, and Bronx Educational Associates) and Fordham Bedford Housing Corporation. With respect to each property, we have reviewed ownership records, checked for outstanding liens and/or building, fire code and Environmental Control Board violations, conducted criminal background checks of the owners, visited the properties, interviewed the owners or directors, reviewed city litigation records for outstanding legal controversies involving the property or owners and attempted to locate and review any other pertinent background information relating to the property and its owners.

We did not examine the extent of student overcrowding in the districts involved or the availability or appropriateness of alternative sites.<sup>1</sup> Therefore, this report does not offer recommendations as to whether or not the BOE should proceed with these lease agreements. However, we propose a number of recommendations which should help improve the review process for the future selection of leased properties. What follows is a review of all relevant information obtained by SCI with respect to the properties in question as well as those who own them. With this information, the BOE should then be in a position to make an informed decision as to whether these agreements

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<sup>1</sup> We also did not evaluate the financial terms of each lease because it is our understanding that the

serve the best interests of the New York City public school system.

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BOE is seeking independent expert advice on those issues.

## SUMMARY OF FINDINGS

Although our investigation examined only eight lease agreements between the BOE and six private landlords, we discovered certain systemic failings in the BOE's leasing program that should be immediately rectified if the BOE is to conduct this program in a professional, business-like manner. Of most importance, we found that the leasing program, run by the BOE's leasing division of the Department of Real Estate, a unit of the Division of School Facilities, conducted background reviews of landlords and their properties that were superficial at best, non-existent at worst. In fact, it appears that no one was reviewing the background questionnaires submitted by these landlords. Thus, basic issues involving the ownership of the properties, that would have been immediately apparent from even a cursory review of background questionnaires, were completely overlooked.

One lease agreement seems particularly symptomatic of this problem. When investigators reviewed the background questionnaire submitted by the Bronx Dance Theater (the "Theater"), for a property located at 286 East 204th Street in the Bronx, it was immediately apparent that the Theater was not the owner of the property; Neal Goldstein, the Theater's Executive Director, subsequently confirmed that the Theater was, in fact, the lessor of the property and had intended to sublet it to the BOE. A review of Buildings Department records immediately identified the owner of the property who, in turn, informed investigators that no one from the BOE had ever approached him about the property. When investigators asked for and were provided with a copy of the lease between the owner and the Theater, it was clear that the Theater was charging the BOE 25% more in rent than the amount they were paying to the owner; this despite the fact that the BOE's use of the property was restricted to the hours of 6:00 a.m. to 4:00 p.m., Monday to Friday.

In addition, a review of the lease between the landlord and the Theater revealed that it was set to expire on September 30, 1996. While the current lease gives the Theater an option to renew for an additional five years, a new lease had not been signed as of September 1, 1996. Nevertheless, the BOE has already entered into a ten year lease agreement with the Theater and intended to occupy the site as of September 1996. When asked about the property, officials of the leasing division admitted they were unaware of its true ownership until it was brought to their attention by SCI. Thus, no background questionnaire was ever obtained and no background review was ever conducted of the owner of 286 East 204th Street. In addition, because the BOE entered into the agreement without reviewing the lease between the landlord and the Theater, it was unaware of its provisions or the fact that the Theater might well have difficulty fulfilling the terms of its agreement.<sup>2</sup>

This is not to suggest that these facts, standing alone, should warrant the cancellation of the agreement. It is quite possible that the agreement can be modified to address these problems. Only the BOE is in a position to best assess whether or not the agreement is in the best interests of the school system. Nonetheless, in order to make such a decision, the BOE needed to at least be fully aware of all of these issues, which it obviously was not. In addition, the BOE needed to know whether there were any controversies or issues in the owner's background which might have precluded entering into a lease agreement with him. Without this most elementary of information, it was impossible for the BOE to adequately assess whether the agreement was, in fact, in its best interests.

We also found that the leasing division failed to conduct thorough background reviews of the properties or their owners. For example, in the case of a site located at 1122 East 180th Street in the Bronx, a cursory review of its ownership revealed that its current owners, David and Stanley Kaufman,

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<sup>2</sup> In fact, we found that while the BOE had previously sublet a number of properties, leasing division

had acquired the property for \$1 million, using \$660,000 worth of low-interest financing and grants from the New York City Industrial Development Agency (IDA), on the understanding that the site would be used as a manufacturing facility. Less than a year later, however, the Kaufmans abandoned their plans for a manufacturing center and began lease negotiations with the BOE. IDA officials indicate that, at the time the BOE entered into the agreement with the Kaufmans, the IDA was the owner of the property and the Kaufmans were leasing the site from the agency. Thus, at the time the Kaufmans leased the property to the BOE, they were actually subletting the property to them.

According to IDA officials, however, its financing agreements bar tenants from subletting its properties to public agencies; they stated that they could have defaulted the Kaufmans on their financing agreement if they had been informed or learned that they were leasing the property to the BOE. In addition, before leasing the property to the BOE, the Kaufmans were required to obtain the IDA's consent, which, according to IDA officials, they failed to do. Our investigation found that the BOE made no efforts to find out whether the Kaufmans were entitled to lease the property to them or what restrictions were contained in the Kaufmans' financing agreement which could have voided their lease agreement with the BOE.

Since the Kaufmans were not required to disclose the source of their financing or the restrictions attached in their background questionnaire, and the BOE did no independent investigation, it did not learn of the IDA's involvement until, in the words of one BOE official, the "eleventh hour." At that point, aware of the source of the financing but not its restrictions, and having already expended much time and effort, the BOE entered into a \$13.5 million lease/build-out agreement with the Kaufmans anyway.<sup>3</sup>

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officials had never asked the owners of those properties to submit background questionnaires and had never conducted background reviews of those owners.

<sup>3</sup>The BOE did eventually decide to require the Kaufmans to execute a certificate that essentially held the lease in abeyance until the Kaufmans paid off their financing agreement with the IDA.

In another such case, a review of New York City tax records for 2240 Walton Avenue in the Bronx indicated that two tax liens totalling \$465,000 had been placed on the property. The owners of the site, Fordham Bedford Housing Corp., told investigators that the liens were placed in error and that they would be removed shortly. Nevertheless, this information was not disclosed in their questionnaire and the BOE was unaware of the liens at the time it entered into an agreement to lease the site. The fact that a tax liability is being challenged does not relieve a landlord from his disclosure obligations. Therefore, the information should have been disclosed on the background questionnaire. In addition, even though Fordham Bedford's background questionnaire clearly disclosed that its subsidiary, New Walton Avenue H.D.F.C., was the actual owner of the site, only the officers of Fordham Bedford were disclosed on its questionnaire. Without knowing even the names of the officers of the corporation that owned the property, much less reviewing the backgrounds of those individuals, the BOE nevertheless entered into an agreement to lease the site.<sup>4</sup>

Because it appears that no one in the leasing division was reviewing the questionnaires or conducting any such background reviews, prospective landlords concealed other critical facts from their questionnaires without fear that they would be discovered. For example, the owners of 305-15 Remsen Avenue in Brooklyn failed to disclose all of the true ownership interests in the property. In other instances, owners failed to disclose their arrests or convictions, even though the questionnaire specifically asks for disclosure of all arrests or convictions within the past ten years. Stanley Kaufman, the owner of 1122 East 180th Street in the Bronx, failed to disclose his arrest for driving while intoxicated. In addition, neither David Gold, part-owner of three properties leased to the BOE, nor his other partners disclosed that Gold was convicted of federal criminal charges in 1984 relating to an arson

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<sup>4</sup> After SCI brought this issue to the BOE's attention, the BOE asked for and obtained a background

ring that set fire to 37 buildings in the New York City area. Without checking the accuracy of the answers in these questionnaires, the BOE entered into three leasing agreements with Gold and his partners, completely unaware of his serious criminal background. Though a routine background check did not reveal Gold's criminal record because portions of the records were sealed, the perception that no one was scrutinizing the landlord's responses in the questionnaires may have led Gold to believe that he could conceal his past misdeeds.

Lastly, we found that the BOE's background questionnaires failed to ask many important questions that would have helped clarify critical issues relating to the ownership and past uses of a property. For example, no question is asked as to whether or not the prospective property is being leased or sublet to the BOE. No questions are asked regarding the environmental history of the property, such as whether any hazardous materials have been used or disposed within the property. The questionnaire also fails to ask for the identification of all relevant officials involved in the landlord's organization, including any manager or individual who participates in overall policy-making or financial decisions for the firm. To that end, many of the recommendations we offer at the conclusion of this report relate to additional questions that should be included in future background questionnaires and scrutinized carefully by the BOE.

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questionnaire from New Walton on August 21, 1996. However, even that new questionnaire failed to disclose the lien and was only certified as accurate by one of the five individuals required to do so.



**1. PUBLIC SERVICE ATLANTIC, L.L.C.**  
**Site: 120-05 Atlantic Avenue, Queens**

This site, located in Community School District 27 in Richmond Hill, Queens, will be utilized by the BOE as an annex to P.S. 60 and P.S. 62, both of which are severely overcrowded and are currently operating at well over 100% capacity. (See photo on preceding page).

History of the Property:

This 23,000 square foot site, formerly a commercial warehouse, was bought by Public Service Atlantic L.L.C., owned by Anthony Dirusso and Anthony Faglione, at a public auction on March 14, 1995 for \$825,000. According to Department of Buildings records, Dirusso and Faglione obtained a loan of \$525,000 from Greenpoint Savings Bank in order to buy the property.

Description of the Property & Surrounding Neighborhood:

The property is a one-story stucco building in a mixed commercial/industrial/residential neighborhood. It is located at the corner of 121st Street and Atlantic Avenue, a very busy, six-lane boulevard with heavy traffic.<sup>5</sup> Morris Park Yards, an active Long Island Railroad maintenance yard, is located on the next block, on the same side of Atlantic Avenue as the property. Engine Company 270 maintains a firehouse on 121st Street, just around the corner from the school. One block to the west of the property, on Atlantic Avenue, is a busy auto service center, next to which is a bar. Because of the hazardous street crossings on Atlantic Avenue as well as the numerous busy industrial and commercial sites nearby, the BOE should seriously assess the suitability of this site as a school for elementary school students.

It should be noted that about six blocks from the site, on 124th Street between 101st and 103rd Avenues, investigators visited a former school that was sold by the BOE to the American Trans Coil Corporation approximately twelve years ago. The property, which is a three-story brick structure, is currently being used for storage by the American Trans Coil Corporation. An official of the company, interviewed by investigators at the site, stated that no one from the BOE had ever approached him about leasing the property.

Lease Terms:

In March 1994, the BOE adopted a resolution to enter into a 10 year lease for the site. The resolution states that the BOE will be paying Public Service Atlantic rent of \$126,000 per year for each of the first five years and \$149,500 for each of the second five years, totalling \$1.38 million.<sup>6</sup> The cost per square foot is \$5.50 for the first five years and \$6.50 for the final five years. In addition, the BOE agreed to pay Public Service Atlantic a maximum of \$2.3 million to convert the site into a school.

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<sup>5</sup> In fact, when investigators visited the property on August 16, 1996, they observed police officers pull several cars over and ticket them for speeding.

<sup>6</sup> The lease has not been executed and final lease terms have not been confirmed. According to Michael Cona of the leasing division, renovation work has not yet commenced on the property.

Fire & Building Code Violations:

New York City Fire Department records, dated March 14, 1996, describe the building as "vacant but not boarded up," and state that the center of its roof had partially collapsed. When SCI investigators visited the site on August 16, 1996, they observed that the hole in the roof had been covered over with plywood.

Tax liens on the property or other properties owned by Public Service Atlantic:

City records list no current liens on the property. Those records indicate a lien of \$2,395.28 on another property owned by Public Service Atlantic L.L.C. at 91-47 120th St., Queens, which was for taxes due on March 28, 1995.

Lawsuits by or against New York City:

The New York City Law Information System had no record of any past or current lawsuits by or between New York City and Public Service Atlantic, Anthony DiRusso and Anthony Faglione.

Criminal Background Check on Owners:

A criminal background check revealed no criminal history with respect to either Anthony Dirusso or Anthony Faglione.

Background Questionnaire Issues:

None.

Corporate Status:

According to the New York Department of State, Public Service Atlantic, L.L.C. is a registered limited liability corporation in good standing.

**2. 1122 EAST 180 STREET CORP.**  
**Site: 1122 E. 180th Street, Bronx, NY**

This site, a former iron works factory in the Bronx, was recently converted by the BOE into an alternative high school, the Wings Academy High School. (See photo on preceding page).

History of the Property:

In 1993, David and Stanley Kaufman, owners of J. Kaufman Ironworks, bought this 67,000 square foot property from bankruptcy court for \$1 million. According to Stanley Kaufman, they bought the site in order to combine their three separate manufacturing facilities under one roof. The Kaufmans bought the property with the assistance of the New York City Industrial Development Agency (IDA), which authorizes tax-exempt financing for manufacturers and other industrial or not-for-profit corporations. On May 7, 1993, the IDA provided the Kaufmans with \$600,000 in low-interest financing and a \$60,000 relocation grant in order to assist in buying the site and to help spur economic development in the Bronx. However, according to Stanley Kaufman, their company's business declined dramatically and they subsequently decided to rent the property to the BOE.<sup>7</sup>

Lease Terms:

On December 23, 1994, the Kaufmans entered into a 15 year lease/build-out agreement with the BOE, after negotiations that began in March 1994. Under the terms of the agreement, the BOE is paying rent of \$418,750 per year for each of the first five years, \$452,250 for each of the second five years and \$502,500 for each of the final five years, for a total of \$6.8 million.<sup>8</sup> The BOE also agreed to pay the Kaufmans a maximum of \$6.7 million to convert the site into a high school. According to IDA records, on January 27, 1995, about one month after entering into the lease/build-out agreement with the BOE, the Kaufmans terminated their financing agreement with the IDA by fully redeeming the bonds issued by the IDA on their company's behalf.<sup>9</sup>

According to Richard Marshall, assistant general counsel at the New York City Economic Development Corp. (parent of IDA), the IDA generates financing by issuing bonds on behalf of companies seeking to buy properties; the IDA actually owns those properties until the bonds are fully paid off. Thus, when the Kaufmans entered into the financing agreement with the IDA, they were technically leasing 1122 East 180th Street from the IDA, the actual owner of the property. Only when the Kaufmans paid off the bonds did they become the owners of the property. Since the IDA financing agreement with the Kaufmans was still in place when the BOE entered into an agreement to rent the property from the Kaufmans, the BOE was, for a brief period, actually subletting 1122 East 180th Street from the Kaufmans.

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<sup>7</sup> According to Stanley Kaufman, the BOE approached the Kaufmans about leasing the site.

<sup>8</sup> This equals \$6.25 per square foot for the first five years, \$6.75 per square foot for the second five years and \$7.50 per square foot for the last five years.

<sup>9</sup> According to Stanley Kaufman, their company paid a penalty fee to the IDA for terminating their financing agreement at an early date. IDA officials stated that they had no record of the Kaufmans paying a penalty fee.

Marshall stated that the IDA's financing agreements prohibit subletting to government agencies. In addition, Marshall said that before the Kaufmans could sublease the site, they were required by the terms of their financing agreement to obtain the IDA's consent. Marshall stated, however, that the IDA had no records indicating that the Kaufmans ever obtained its consent or informed the IDA that it intended to sublease the property to the BOE.<sup>10</sup> In fact, Marshall said that the IDA could have defaulted the Kaufmans on their financing agreement had they known that they were subletting the property to the BOE. Because the IDA was unaware that the Kaufmans had sublet the site to the BOE, and because the Kaufmans redeemed their financing agreement by fully paying off the bonds in January 1995, Marshall said that the IDA had no recourse against the Kaufmans at this time. In addition, Marshall noted that the financing agreement required the Kaufmans to inform the IDA at the beginning of each year if they were subletting the property, and that each year, the IDA sent out a "subtenant survey" asking its tenants whether they were subleasing their property. After reviewing their records, the IDA stated that the Kaufmans never completed and returned an official IDA subtenant survey for 1994 or 1995 indicating that, during certain months of those years, they were subleasing the property to the BOE.

BOE officials stated that they became aware of the Kaufman's financing agreement with the IDA at the "eleventh hour." They were not aware, however, that the agreement barred the Kaufmans from leasing the property to the BOE or that the Kaufmans were required to obtain the IDA's consent before entering into the lease with the BOE. In fact, the BOE made no independent efforts to find out what restrictions were contained in the Kaufman's agreement with the IDA. BOE officials chose, instead, to enter into the \$13.5 million lease/buildout agreement with the Kaufmans, and required them to sign an "undertaking and estoppel certificate" which technically held the agreement in abeyance until the Kaufmans paid off the IDA bonds.

Since the risk of default never materialized, the BOE suffered no harm from the Kaufman-IDA relationship. However, the leasing division's failure to thoroughly review the ownership of potential lease sites could have disastrous consequences for future lease agreements. Furthermore, the BOE allowed the Kaufmans to subvert the true mission of the IDA. It is obviously not the IDA's purpose to provide government-subsidized financing to private developers so that they can then turn around and lease the property back to government agencies at a substantial profit.

#### Description of the Property & Surrounding Neighborhood:

SCI investigators visited this site in August 1996 and observed that while the building has been completely renovated and appears to be in excellent condition for a school facility, it is located in a bleak industrial/residential neighborhood frequented by prostitutes.

#### Lien Information:

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<sup>10</sup> Stanley Kaufman offered investigators a different account, stating that after they entered into the lease agreement with the BOE, they did inform the IDA that they were leasing the property to the BOE.

City records indicate that a mechanics lien for \$255,360 was placed on 1122 East 180th Street, effective May 19, 1995, by Tamerlain Realty Corp. The lien was placed by Tamerlain as a claim for brokering the lease between Kaufman and the BOE. (The BOE questionnaire does not disclose the lien because it was signed in 1994 and the lien was not issued until 1995). According to Mark Stern, lawyer for Tamerlain, the case is currently being litigated heavily and settlement negotiations have begun.

City records indicate no record of tax liens on the property. On March 30, 1995, a state tax lien was placed on J. Kaufman Iron Works, 1685 Boone Ave., Bronx, where their current office is located, for \$1,663.71.

Lawsuits by or against New York City:

The New York City Law Information System indicates no past or current lawsuits by or between New York City and 1122 East 180th Street or David and Stanley Kaufman.

Fire & Building Code Violations:

Violations were issued in 1990 and 1994 regarding fitness of an air compressor and lack of a use permit for an air conditioner. An inspection conducted by the NYC Fire Department on April 18, 1996 found no violations.

Criminal Background Check on Owners:

A criminal background check on David and Stanley Kaufman revealed that in 1978, David Kaufman was arrested for driving while intoxicated<sup>11</sup> and that, in 1987, Stanley Kaufman was also arrested for driving while intoxicated, was convicted of driving while impaired (VTL sec. 1192[1], a violation) and received a conditional discharge. In their background questionnaire, the Kaufmans failed to disclose Stanley Kaufman's arrest.<sup>12</sup>

Corporate Status Information:

According to the New York Department of State, 1122 E. 180th St. Corp. is a registered corporation and is in good standing.

Background Questionnaire Issues:

None.

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<sup>11</sup> New York State computer records do not indicate a disposition of David Kaufman's arrest. The Tarrytown Police Department, which handled the arrest, also could not locate a record of the disposition of his case.

<sup>12</sup> David Kaufman's arrest was not required to be disclosed because it occurred more than ten years prior to the completion and submission of the questionnaire to the BOE.

**3. DAV MARV REALTY LTD., REMSEN ASSOCIATES AND BRONX EDUCATIONAL ASSOCIATES**

**Sites: 1769 E. 172nd St., Bronx (Bronx Educational Associates); 63-25 69th St., Queens (Dav Marv Realty); 305-15 Remsen Ave., Brooklyn (Remsen Associates Co., L.L.C.)**

We examined three sites leased to the BOE by three organizations owned, wholly or in part, by David Gold and Marvin Hellman: Bronx Educational Associates, Dav Marv Realty and Remsen Associates Co. L.L.C.

**A. 1769 E. 172nd Street, Bronx, NY**

Until recently, this one-story building was being used for a Division of High Schools' "Youth Options Unlimited" program, serving juvenile delinquents remanded to group homes while awaiting court adjudication. (See photo on preceding page).

History of the Property:

In March 1988, the BOE leased 1769 E. 172nd Street and an adjacent property, 1779 E. 172nd Street, from Yeshiva Torah V'Emunah. Bronx Educational Associates, owned by David Gold and Marvin Hellman, bought both sites from the Yeshiva in May 1989. Records from Bronx County Clerk's Office indicate that Bronx Educational Associates paid \$300,000 for the two properties.

1779 E. 172nd St. was in such poor condition that it was never converted into classroom space and the BOE cancelled its lease for the site in 1990. In the late 80's, 1769 E. 172nd St. was the subject of many complaints from users and staff that the building was unsafe. In 1990, the BOE's Office of the Inspector General (OIG) investigated these complaints and cited reports that the building had locked fire exits, poor heating, collapsing ceilings and fire and building code violations. The OIG report states that a school secretary had complained to the Bronx District Attorney's Office that the building was a "dangerous dump." For several years after the BOE entered into the lease agreement, 1769 E. 172nd St. was not fit to be occupied; even with many existing hazards, however, a pre-k program for 84 children began at the site in March 1989.<sup>13</sup> The OIG report recommended that the lease for the property not be renewed unless the landlord made the necessary repairs. According to leasing division officials, after repairs were made, the BOE entered into a new five year lease for the site in 1993.

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<sup>13</sup> This was later found to be in violation of BOE regs prohibiting pre-k children from being housed in leased sites and the program was later removed from the site.

Lease Terms:

1769 E. 172nd St. is approximately 8,200 square feet. The current lease is from August 1, 1993 to July 31, 1998; the initial lease was from August 1, 1988 to July 31, 1993. The BOE is currently paying approximately \$36,000 per year in rent.

Description of Property & Surrounding Neighborhood:

The property is in a mixed residential/commercial area. A bar is located about 1 1/2 blocks from the site. On August 20, 1996, investigators visited the property and found it in poor condition, appearing dirty and unkempt. Nothing on the outside of the property indicated that it was a school. On the outside of the building, graffiti, peeling paint, broken windows and rusted-out window gates were viewed. Investigators could not gain entrance to the property because there was no one inside to let them in.<sup>14</sup>

Lien Information:

No record of liens on this property.

Lawsuits By or Against New York City:

The New York City Law Information System indicates no current or previous litigation by or between New York City and Bronx Educational Associates, Marvin Hellman or David Gold.

Fire & Building Code Violation Information:

No record of violations.<sup>15</sup>

Criminal Background Check on Owners:

See page 21 for issues involving the criminal record of David Gold.

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<sup>14</sup> This in itself seemed unusual given that, at the time of the visit, the opening of the school year was just over two weeks away and investigators observed custodians and staff preparing schools for opening during visits to other sites during this time period. The BOE has since informed SCI that it has decided to cancel its lease for this facility and will not be utilizing it during the 1996-1997 school year.

<sup>15</sup> Records regarding fire code violations for this site were obtained from the central headquarters of the New York City Bureau of Fire Prevention. These records contain a disclaimer which states that they reflect only violations recorded in the Bureau of Fire Prevention and "may not include violations issued by local units."

Background Questionnaire Issues:

Only Marvin Hellman submitted a signed certification for Bronx Educational Associates; David Gold, the other 50% owner, failed to do so.<sup>16</sup> Issues regarding the failure of Hellman and Gold to disclose Gold's criminal record, as well as their failure to disclose the actual ownership interests of another leased property, are discussed on pages 21-23.

Corporate Status Information:

According to the New York Department of State, Bronx Educational Associates is a registered corporation and is in good standing.

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<sup>16</sup> In fact, leasing division officials admitted that they were unaware that Gold had not submitted a certification for the property until it was brought to their attention by SCI.



**B. 63-25 69th St., Queens (Juniper Valley Annex to P.S. 128)**

This site, a former warehouse, is owned by Dav Marv Realty, which is owned and operated by David Gold and Marvin Hellman. It is currently being used as the Juniper Valley Annex to P.S. 128, located in Queens Community School District 24. (See photo on preceding page).

History of the Property:

The BOE leased this site from Dav Marv Realty on July 5, 1994. According to Queens County Clerk's Office property records, Dav Marv Realty bought the property on January 31, 1994 and paid \$650,000 for it.

Lease Terms:

The lease term is for 15 years, for a total of \$1.7 million in rent (average of \$113,900 per year). The BOE also agreed to pay Dav Marv up to \$1.489 million for the build-out.

Description of Property & Surrounding Neighborhood:

The property is located in a primarily residential area. There is a cemetery across the street and a steep drop to railroad tracks next to the school. The building appears new-looking and in good condition. According to the school's custodian, the property has been used by the BOE for about one year. He stated that there are seven or eight classrooms in the building.

Lien Information:

No record of liens on this property. However, city records indicate current liens on two other properties owned by Dav Marv Realty: 386 Ocean Parkway, for \$24,723, for taxes due on January 1, 1995, and on 4412 18th Ave, for \$454, for taxes due on October 1, 1995.

Lawsuits By or Against New York City:

The New York City Law Department Information System has no record of any current or prior litigation by or between New York City and Dav Marv Realty.

Fire & Building Code Information:

No record of violations.

Criminal Background Check on Owners:

In 1984, David Gold was convicted of two counts of obstruction of U.S. mails, a violation of 18 U.S.C. sec. 1701. Issues regarding this conviction are discussed on page 21.

Corporate Status Information:

According to the N.Y. Dept. of State, Dav Marv Realty is a registered corporation in good standing.

Background Questionnaire Issues:

See pages 21-23 for issues regarding failure of Hellman and Gold to disclose Gold's criminal record, as well as their failure to disclose the actual ownership interests of 305-15 Remsen Ave., another property they leased to the BOE.

### **C. 305-15 Remsen Ave., Brooklyn:**

This one-story building is currently being used as an annex to P.S. 219, in Brooklyn Community School District 18, where overcrowding has been a serious problem. (See photo on preceding page).

#### History of the Property:

In 1970, the BOE began leasing this site from Dollar Savings Bank of New York. In 1981, the property was sold to Remsen Associates Co. Our investigation revealed that the owners of Remsen Associates Co. are Marvin & Rozi Hellman (30%), David & Bertha Gold (30%), Lew Bodak (10%), Francis Bodak (10%), Mark Fein (10%) and Joan Lombardi (10%). According to Kings County property transfer records, in June 1995, Remsen Associates Co. sold the property to Remsen Associates Co. L.L.C, a limited liability corporation that appears to be owned by the same individuals.<sup>17</sup> This ownership information conflicts with the information in the BOE questionnaire for this site, which lists Marvin Hellman, David Gold and Joseph Bodak as 1/3 owners. Issues regarding Hellman and Gold's failure to disclose the actual ownership interests in this property in their questionnaire are discussed on page 23.

#### Lease Terms:

The current lease term is from July 1, 1992 to June 30, 1997. The BOE is paying rent of \$96,000 per year for the first three years and \$105,600 per year for the final two years. Cost per square foot is \$5.00 for the first three years, \$5.50 for the final two years.

#### Description of Property & Surrounding Neighborhood:

The property contains 19,200 square feet of interior space and 9,600 square feet of exterior space. It is located in a predominantly residential neighborhood. It appears to be in good condition and in good repair.

#### Lien Information:

According to New York City records, there are no current liens against 305-315 Remsen Avenue.

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<sup>17</sup> Interviews with the owners of the property as well as certain business records suggest that Remsen Associates Co. L.L.C. is owned by the same individuals.

Lawsuits By or Against New York City:

The New York City Law Information System has no record of any prior or current lawsuits by or between New York City and Remsen Associates Co. L.L.C.

Fire & Building Code Violations:

The most recent fire department inspection, conducted on February 16, 1995, found no fire or building code violations at 305-15 Remsen Avenue.

Criminal Background Check on Owners:

In April 1983, David Gold and seven others (lawyers, real estate brokers and landlords) were indicted on federal mail fraud and racketeering charges, alleging that they were responsible for a string of arson fires in 37 buildings in Manhattan, Brooklyn and the Bronx. On September 17, 1984, Gold pled guilty to lesser federal charges and on November 7, 1994, he was sentenced to two concurrent six month suspended sentences, three years probation and 300 hours community service. The docket from Gold's case indicates that the records of his plea and the information upon which he pled guilty were sealed. The U.S. Attorney's Office for the Eastern District, which prosecuted the case, has been unable to locate the case files for our review. In addition, the Assistant U.S. Attorneys who prosecuted the case and officials from the Bureau of Alcohol, Tobacco & Firearms, who investigated the case, have been unable to provide any specific information as to Gold's role in the case. Thus, we have not been able to definitively determine the extent of Gold's participation in the above-mentioned arson ring or the circumstances leading to his guilty plea.<sup>18</sup>

Corporate Status Information:

According to the New York Dept. of State, on December 24, 1991, Remsen Associates Co. L.L.C. was registered on June 1, 1995 as a limited liability corporation and is currently in good standing. Remsen Associates Co. L.L.C. is the current owner of 305-15 Remsen Ave.

Background Questionnaire Issues:

A. Failure to Disclose David Gold's Criminal Conviction

In the background questionnaires submitted by Remsen Associates Co., dated December 16, 1992 and Dav Marv Realty, dated July 11, 1994, Gold's criminal record was not disclosed. This occurred despite the fact that the accuracy of the questionnaires was certified by both Gold and Hellman. The questionnaire specifically asks whether a principal of the company has been investigated, arrested or convicted of a crime in the last ten years. The questionnaires of Remsen Associates and Dav Marv Realty were signed and certified by Gold and Hellman less than ten years from

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<sup>18</sup> Officials of the Character & Fitness Committee for the First Department stated that Gold's conviction was properly reported to them and that no disciplinary action was taken against him.

November 7, 1984, the date of Gold's conviction.<sup>19</sup>

Thus it is clear that the questionnaires submitted by Remsen Associates and Dav Marv Realty contained material omissions. It is certainly possible that Gold and Hellman failed to disclose Gold's conviction in a deliberate effort to conceal it from the BOE and thereby obtain the leases. At this juncture, we have not conclusively established who completed and submitted these questionnaires. While conceding that Gold failed to disclose his conviction in the questionnaires, Jeffrey Hoffman, Gold's attorney, stated that Gold signed the certifications for Bronx Educational Associates and Dav Marv Realty without reading the questionnaire or even having it in front of him. (Hoffman stated that he believed, but was not sure, that Gold reviewed the Remsen Associates questionnaire before signing it). According to Hoffman, someone else (either Hellman or an unidentified employee) completed the questionnaires for Gold and sent him the certification page for his signature; that person assumed that the question asked about convictions in the last three years, as that is what is asked in the City's VENDEX questionnaires. Hoffman stated that Gold's signature was not notarized until after it was returned to Hellman's office. Thus, if Hoffman's story is true, then the notaries who signed them did so without actually witnessing Gold's signature.<sup>20</sup> This explanation is not a valid defense for the material omissions contained in the questionnaires of Dav Marv Realty and Remsen Associates. In addition to certifying the accuracy and truthfulness of the questionnaires, the certifications signed by Hellman and Gold stated that they had read each question. Thus, even if it is true that Gold never saw the questionnaires, and someone else completed them for him, this is no excuse for the failure of Dav Marv Realty and Remsen Associates to disclose Gold's criminal record. Furthermore, Gold's criminal conviction raises serious concerns regarding whether it is appropriate for the BOE to lease properties from him and his partners.<sup>21</sup>

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<sup>19</sup> Bronx Educational Associates questionnaire was not signed until March 1995, more than ten years after the date of Gold's conviction.

<sup>20</sup> We have tried to locate the notaries who notarized Gold's questionnaires but have as yet been unable to do so.

<sup>21</sup> Also, see p. 17 regarding Gold's failure to submit a signed certification with the questionnaire for the Bronx Educational Associates.

B. Failure to Disclose Actual Ownership Interests in 305-15 Remsen Ave.

The questionnaire for 305-15 Remsen Avenue lists Hellman, Gold and Joseph Bodak as each owning a 1/3 interest in the property. The only certifications submitted with this questionnaire were those signed by Hellman, Gold and Bodak. However, Bodak told investigators that he has never had any ownership interest in the site. Bodak stated that he buys and rehabilitates foreclosed properties in the Bronx, and that Gold was his attorney whom he has known for 35 years. He said that he learned that the property was for sale some time in 1979/80 through contacts at Dollar Savings Bank. According to Bodak, after he informed Gold of the property's availability, Gold and Hellman each bought a 30% share, and four others each bought a 10% share - Lew Bodak (Bodak's son), Francis Bodak (Bodak's wife), Mark Fein (Bodak's former son-in-law) and Joan Lombardi (Bodak's neighbor). When shown the certification page with his signature, Bodak said that he had never seen it before and that he did not recall signing it. Francis Bodak, who was interviewed with her husband, said that she had also never seen the BOE questionnaire. Bodak stated that Mark Fein, who notarized the certification page which contains Bodak's signature, was a part-owner of the property who was employed in Bodak's office for about 17 years. According to Bodak, during that time, Fein managed many of Bodak's properties and often placed documents on Bodak's desk for his signature. Mark Fein confirmed to investigators that he was in fact a 10% owner of the Remsen Ave. property and that he did notarize many documents for Bodak. Lew Bodak and Joan Lombardi also confirmed that they each owned a 10% share of the Remsen Ave. property. In addition, records from the registrar's office of the Kings County Clerk's office indicate that the wives of Hellman and Gold are also part-owners of the property. Thus, the actual ownership interests in 305-15 Remsen Ave. were not accurately disclosed by Hellman and Gold in their questionnaires.

Evidence concerning the material omissions in the background questionnaires have been referred to the Brooklyn and Queens District Attorney's Offices for possible prosecution.

#### 4. Q.B. ASSOCIATES

**Site: 35-11 43rd Ave., Queens**

This site is to be used for indoor and outdoor parking for the BOE's Office of School Food and Nutrition (OSFNS). According to the BOE, the property is needed because OSFNS lost its current space, at 46-26 Crane Street in Queens, as of September 1, 1996. (See photo on preceding page).

##### History of the Property:

This property is a two-story parking garage with approximately 50,000 square feet of interior and exterior parking. It is owned by Q.B. Associates, owned by Sureesh Sani, Sunil Sani, Lal Sani and Ashok Sani. The property is managed by First Pioneer Properties, Inc.

##### Lease Terms:

BOE is leasing this property for ten years and is paying a total of \$70,000 in rent for the interior space for the first five years, a total of \$77,000 in rent for the interior space for the second five years and a total of \$100,000 for the exterior space for the entire ten year term.<sup>22</sup> No lease has yet been executed; a business agreement was signed on July 20, 1995.

##### Description of Property & Surrounding Neighborhood:

This property is located on a commercial street and appears to be in good condition.

##### Lien Information:

While there is no record of any liens on this property, city records indicate a tax lien for \$3,491.29 was placed on another property listed in city records as owned by Q.B. Associates, 41-17 to 41-37 35th Street, Queens, for taxes due on June 1, 1992.

##### Lawsuits By or Against New York City:

The New York City Law Information System indicates no current or past lawsuits by or between Q.B. Associates and New York City.

##### Fire & Building Code Violations:

No record of any such violations on this property.

##### Criminal Background Check on Owners:

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<sup>22</sup> Thus, the BOE is paying \$24,700 per year to lease the property.

A criminal background check on the owners of Q.B. Associates, Sureesh Sani, Sunil Sani, Lal Sani and Ashok Sani revealed no criminal records on any of these individuals.

Background Questionnaire Issues:

None.

Corporate Status Information:

According to the New York Department of State, Q.B. Associates is not a registered New York State corporation. However, First Pioneer Properties, Inc., its management company for the site, is a registered corporation and is in good standing.



## 5. BRONX DANCE THEATER

**Site: 286 East 204 Street, Bronx**

This site is to be used as an annex to P.S. 8, 56, 94, 280 and J.H.S. 80, all located in Bronx Community School District 10. These schools are all severely overcrowded and are operating at over 100% capacity. The BOE plans to conduct performing arts programs at this location. (See photo on preceding page).

### History of Property:

Records from the New York City Department of Business list Giovanni Reda as the owner of the property, a one-story, 8,000 square foot former movie theater (built in 1927) on a retail shopping street. The Bronx Dance Theater (the Theater), whose Executive Director is Neal Goldstein, has a ten year lease with Reda, from October 1, 1986 to September 30, 1996, with an option to renew for an additional five years. No lease has been executed for the period beginning October 1, 1996; however, negotiations are currently under way. The Theater is currently paying Reda \$60,000 rent for the year ending September 30, 1996. According to the lease between Reda and the Theater, a sublet of the property is permitted, but the prior consent of the owner is required.<sup>23</sup>

### Lease Terms:

In June 1995, the BOE entered into a "license" agreement<sup>24</sup> to sublet the site from the Theater for ten years; no formal sublet agreement has been executed. Under the terms of the agreement, the BOE will have use of the premises from Monday to Friday, 6:00 a.m. to 4:00 p.m. The rent will be \$79,800 per year for first five years and \$87,700 per year for final five years. Cost per square foot: \$10.00 for first five years, \$11.00 for final five years. Under the terms of the license agreement, the Theater is responsible for all maintenance, upkeep, interior and exterior repairs, custodial services, etc.

### Description of Property & Surrounding Neighborhood:

The property appears to be a well maintained former movie theater on a commercial street with many retail stores. The site contains a theater with a stage and several classrooms.

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<sup>23</sup> After this issue was brought to the BOE's attention by SCI in August 1996, Reda provided the BOE with written consent to the sublease.

<sup>24</sup> The agreement is referred to a "license" agreement in the BOE's records; the Theater is referred to as the "licensor." According to officials of the leasing division, this terminology was used because the BOE has exclusive use of the premises only during specified hours of the day and certain days of the week.

Lien Information:

There is no record of any liens against this property.

Lawsuits by or against New York City:

The New York City Law Information System indicates no prior or current lawsuits by or between New York City and the Theater or Giovanni Reda.

Fire & Building Code Violations:

In April 1996, the property was cited for four fire code violations: Failure to provide occupancy signs, failure to provide non-combustible curtains, failure to provide for public assembly plans from the Buildings Dept., and failure to maintain emergency and exit lighting devices throughout building. In 1990, the property was cited for failure to provide a use permit for air conditioner installation on roof of building.

Criminal Background Check on Owners:

Criminal background checks on Neal Goldstein and Giovanni Reda revealed no criminal records on either individual.

Background Questionnaire Issues:

Neal Goldstein, the Executive Director of the Theater, completed and submitted the BOE landlord questionnaire. Goldstein confirmed to investigators that the Theater is leasing the property from Reda and that the Theater is, in fact, subletting the property to the BOE.

The obvious problem with this arrangement is that only Goldstein submitted a questionnaire to the BOE and he provided no information about the actual ownership of the property. (On the BOE questionnaire, Goldstein did not purport to be the owner of the property, just the executive director of the Theater). Thus, the BOE obtained no information about the actual owner of the property and did not conduct a background check on that person before entering into the "license" agreement with the Theater.

When SCI investigators initially asked leasing division officials about this agreement, they stated that they knew that this was a sublet at the time they entered into the agreement. Upon further questioning, they acknowledged that, at the time the BOE entered into the agreement with the Theater, it was "assumed" that Goldstein was the owner and they were not aware that he was merely a lessor until it was brought to their attention by SCI. They stated that BOE regulations do not bar sublet agreements and that the BOE has sublet several properties in the past. However, they admitted that they have never asked the actual owner of a subletted property to complete a background questionnaire and that they have never conducted a background check on those owners.

In addition, the leasing division never reviewed the lease between the Theater and Reda. A copy obtained by investigators revealed that Goldstein is charging the BOE approximately 25% above the rent that the Theater is paying Reda, that the current lease between Reda and the Theater is set to expire on September 30, 1996, and that the Theater only has a five year renewal option under the current lease. Thus, the possibility is raised that the Theater may be unable to sublet the property to the BOE for the entire ten year rental term.

Mrs. Giovanni Reda advised SCI investigators that she and her husband were the owners of the property. She stated that they have been renting it to Goldstein for ten years and that she was aware that Goldstein was subletting the property to the BOE. She said that no one from the BOE had previously contacted her regarding the agreement between the BOE and the Theater. Mrs. Reda said that while she did not know how much the Theater was charging the BOE, the Theater was entitled to make a profit. Nonetheless, the issue remains as to whether the BOE could have gotten a better deal if leasing division officials had obtained the original lease before entering into an agreement with the Theater. In addition, it is questionable whether the BOE obtained a fair price, considering that the Theater is charging the BOE 25% more than it is paying to lease the entire property and the BOE will only have limited access to the site. Now that the BOE possesses this information regarding the Theater's lease with Reda, it should be in a better position to renegotiate the terms of the original agreement.

#### Corporate Status Information:

According to the New York Dept. of State, on June 1, 1995, the Bronx Dance Theater was registered as a non-profit corporation and is currently in good standing.

## **6. FORDHAM BEDFORD HOUSING CORP.**

**Site: 2240 Walton Ave., Bronx**

This newly built, eight story apartment building, located in Bronx District 10, was built to provide housing for formerly homeless families. The first two floors were specifically constructed as classroom space and the BOE will be leasing them for early childhood programs to be attended by children living in the building as well as other children in District 10. (See photo on preceding page).

### History of Property:

Built on a vacant lot owned by New York State, construction of the site was financed by New York State and New York City and awarded to New Walton Ave. Housing Development Fund Corp. (New Walton), a not-for-profit corporation and a subsidiary of Fordham Bedford Housing Corp. (FBHC), also a not-for-profit corporation. The facility is run by FBHC. The property is about 16,000 square feet.

### Lease Terms:

No lease has yet been executed; only a business agreement between BOE and FBHC/New Walton which was entered into on August 5, 1996. The agreement states that the lease is for ten years. Rental is \$90,000 per year for the interior space for the first five years, \$100,000 per year for final five years, \$6,976.50 for exterior space for the entire ten year period.

### Description of Property & Surrounding Neighborhood:

The property is newly constructed and in excellent condition. It appears to be a very good site for an early childhood program, particularly for children who also live in the building.

### Lien Information:

In its BOE questionnaire, FBHC disclosed two mechanics liens, totalling \$76,602, on the property for construction work performed by companies for the general contractor. No tax liens were disclosed. City records, however, list two tax liens on the property totalling \$465,949.69, which were placed on July 1, 1995. The New York City Division of Real Property records confirm that the liens are for property taxes. Carlos Toledo, Deputy Director of FBHC, told investigators that the liens were for property taxes and that, as non-profit corporations, both FBHC and New Walton had tax-exempt status. Toledo stated that FBHC and their expediter have been working with the City's Department of Finance regarding this matter for over a year and had submitted papers regarding their tax exempt status to the Finance Department in an effort to get the liens removed.

FBHC's records from the New York City Housing Preservation & Development agency indicate that FBHC applied for and was awarded preliminary certification of eligibility for partial tax-exempt status (as per N.Y. Real Property Tax Law sec. 421(a)) for 2240 Walton Ave. on November 28, 1994 and

was given final certification of eligibility on April 12, 1996.<sup>25</sup>

Fran Schloss of the Finance Department confirmed that 2240 Walton Ave. was authorized as partially tax-exempt under the 421(a) program and that it was entered into their computer system in 1996. She explained that the site was assessed for taxes and the liens were placed for the 1995-1996 year, before its tax-exempt status was approved and in place, which did not occur until the 1996-1997 year. She said that, due to a lack of staffing and other bureaucratic procedures, there was often a lengthy lag time between when a property filed for and obtained preliminary 421(a) tax exempt status and when the property's final certification of eligibility is actually placed in their computer system. In the meantime, taxes were assessed on the site without any exemptions in place. Schloss said that her department will soon be executing a remission, recalculating the assessed value of the property based on its 421(a) status, and wiping out nearly all of the previous taxes assessed on the property.<sup>26</sup> Greg Kourakos, FBHC's expediter on this matter, confirmed this account, stating that primarily due to bureaucratic delay, the liens were placed on the site before its tax-exempt 421(a) status was entered into the Department of Finance's computer and that the liens will eventually be removed, which he said may not occur until as late as January 1997.

Nonetheless, FBHC was aware of the liens but failed to disclose them when they filed their questionnaire with the BOE on July 1, 1996.

#### Lawsuits By or Against New York City:

The New York City Law Information System records indicate no current or past lawsuits by or between New York City and FBHC.

#### Fire & Building Code Information:

No record of violations.

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<sup>25</sup> RPTL sec. 421(a) provides for full tax exemption for new multiple dwellings during construction and for at least two years following completion of construction (followed by sliding scale percentage increases in taxable amounts). FBHC's 421(a) records indicate that the property was awarded a 25 year tax exemption.

<sup>26</sup> Schloss estimated that the new tax bill for the property will only be about \$1,000 for each quarter of the calendar year, because the 421(a) exemption will drastically reduce the assessed value of the property.

### Criminal Background Check on Owners:

A criminal background check was conducted on the board of directors and officers of both New Walton and FBHC. No criminal records were obtained for Rev. John Jenik, Luis Ortega, Michael Breslin, Angela Harper, Cheryl Harper, John Reilly, Carlos Toledo, Viola Mitchell, Zoraida Rosado, Raquel Colon or Hattie DeCrescenzo.

### Background Questionnaire Issues:

In its questionnaire, FBHC disclosed that Raquel Colon and Viola Mitchell, two members of its board of directors, work for the BOE. Colon is a special education teacher in the Bronx working out of District 85 and is currently assigned to I.S. 193 in District 12. Mitchell was a special education teacher in the Bronx and was previously assigned to P.S. 63 in District 9. During the summer of 1996, Mitchell retired from the BOE and is now living in Georgia. Colon told investigators that she had no involvement whatsoever in bringing the property to the BOE's attention, and that she recused herself from board decisions whenever they involved the BOE. Investigators have been unable to locate Mitchell at her residence in Georgia.<sup>27</sup> In its questionnaire, FBHC stated that neither Colon nor Mitchell is employed by FBHC or receives any financial remuneration for their work for FBHC and that they are not on the board of directors of New Walton, which owns the property. These facts do not appear to present a conflict of interest because neither Colon nor Mitchell have an ownership interest in the site.

A background questionnaire for New Walton was received by the leasing division on August 21, 1996. For both New Walton and FBHC, only Executive Director Reilly signed and submitted a certification to the BOE. None of the other officials or directors of New Walton or FBHC submitted a certification to the BOE.

### Corporate Status Information:

New Walton and FBHC are registered non-profit corporations in good standing in New York State.

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<sup>27</sup> FBHC Executive Director John Reilly told investigators that Rev. John Jenik, president of FBHC, initially brought the property to the BOE's attention and dealt with the BOE during lease negotiations.

## RECOMMENDATIONS:

It is clear from our investigation that the BOE's leasing program is in need of drastic reform if it is to be conducted in a professional and business-like manner. Many of the recommendations we offer pertain to changes that should be made to the BOE's background questionnaire that must be submitted by all prospective landlords. Some of the questions that we recommend are currently asked by the School Construction Authority in its background questionnaire of prospective vendors and contractors. Nonetheless, asking relevant questions alone is insufficient if the answers are not scrutinized. Therefore, sufficient attention and resources must be devoted to the BOE's leasing program if the BOE is to be assured that it is getting the maximum value for its dollars.

1. In its background questionnaire, the BOE should specifically ask whether the applicant firm owns, rents or subleases the prospective lease site. If the firm rents or subleases the site, it should provide the names, addresses and phone numbers of the owner and/or sublessor of the property as well as a copy of the master lease and/or the sublease.
2. In its background questionnaire, the BOE should ask how the BOE's leasing program and/or its interest in leasing the property initially came to the firm's attention. The firm should identify any real estate broker utilized in connection with the transaction.
3. In its background questionnaire, the BOE should ask the firm to identify all subsidiaries, affiliated partnerships (defined as any entity owned by two or more people identified in question #9a), or any entity that has owned 5% or more of the firm during the past five years.
4. In its background questionnaire, the BOE should ask whether the firm, including its affiliates or subsidiaries, has been a party to a bankruptcy or reorganization proceeding during the last five years. If the answer is affirmative, such proceedings should be described in detail.
5. In the BOE background questionnaire, the landlord should be required to disclose any and all use restrictions placed on the property pursuant to any current financing and/or mortgage obligations.
6. Question # 17 of the background questionnaire, which asks whether the applicant firm or any of its principals "is presently engaged in any litigation with or against a governmental agency," should be modified to ask whether at present or during the past five years, the firm or any of its officials has been engaged in litigation with or against a governmental agency. If the answer is affirmative, the litigation should be described in detail.
7. In its background questionnaire, the BOE should ask the firm when it bought the prospective leased property, from whom it was purchased and the purchase price.
8. In its background questionnaire, the BOE should ask the firm whether there are any current liens on any other properties owned by the firm, and, if so, to specify the circumstances for those liens.

9. Question #9b of the BOE background questionnaire, which asks the firm to list the names of all other real estate firms in which its owners or officials have or have had an equity interest of 5% or more within the past five year, should be expanded to also ask the firm to list all of the properties in which its owners or officials have or have had an equity interest of 5% of more within the past five years.
10. Question #9a of the BOE background questionnaire, which asks the firm to identify "each person who is or has been within the past five years an owner of 5% or more of the firm's shares," or has been a "director, officer, partner or proprietor of the firm," should be expanded to include all relevant employees of the firm, defined to also include any manager or individual who participates in overall policy making or financial decisions for the firm and any person in a position to control or direct the firm's overall operations. Where applicable, each relevant employee should also be required to disclose how and when they acquired ownership of their shares of the firm.
11. Question #14 of the BOE background questionnaire, which asks if the firm or any of its owners or officials "is in default on any Notices of Violation administered by the New York City Environmental Control Board," should be expanded to also ask whether the Environmental Control Board has cited the prospective lease property or any other properties owned by the firm for any violations within the past ten years.
12. The BOE background questionnaire should ask the firm if any hazardous materials or chemicals have been used, disposed or located within the prospective lease property. If the firm answers affirmatively, it should disclose the current state of those materials and how they have been dealt with.
13. The certification to be signed by the owners and the officials of the applicant firm, which warns that "a material false statement willfully or fraudulently made in connection with this certification may result in rendering the applicant firm not responsible and therefore not qualified to enter into a contract with the BOE and the SCA" should be expanded to state that the failure to disclose material information may also result in rendering the applicant firm not responsible. Moreover, if such a false statement is not discovered until after the lease is executed, such failure should constitute grounds for terminating the lease with damages.
14. Prior to the execution of a subleasing agreement, the BOE should require the owner of the property to submit a background questionnaire and the BOE should conduct a background investigation of that owner.
15. Prior to the execution of a subleasing agreement, the BOE should obtain the written approval of the owner of the property, stating that he or she has reviewed the sublease agreement and consents to its terms.
16. The BOE should conduct a complete and thorough review of the environmental history of each prospective lease site. If environmental testing is required, based on that review or an



affirmative answer to the question regarding Environmental Control violations or hazardous materials used or disposed of at the site, the BOE the landlord to pay for the costs of that testing.

Board  
should require

17. Each prospective landlord should be required to pay the fair and reasonable costs of a background investigation conducted by or on behalf of the BOE.