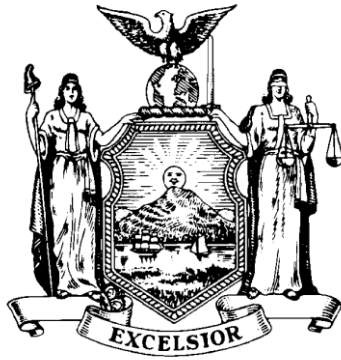


State of New York  
Office of the Inspector General



Investigation of  
The City University of New York  
Interim Report

November 2016

Catherine Leahy Scott  
Inspector General

**STAFF FOR THIS INVESTIGATION AND REPORT**

**SPENCER FREEDMAN**  
Executive Deputy Inspector General

**MICHELE HOST**  
Chief Counsel

**PHILIP FOGLIA**  
Special Deputy Inspector General  
(Downstate Region)

**JESSICA SILVER**  
Deputy Inspector General  
(Downstate Region)

**KENNETH MICHAELS**  
Senior Investigative Counsel  
(Downstate Region)

**VAL DOUGLAS**  
Supervising Investigative Auditor  
(Downstate Region)

**DENNIS GRAVES**  
Supervising Investigative Auditor  
(Upstate Region)

**PETER AMAROSA**  
Investigative Auditor  
(Upstate Region)

**ILENE GATES**  
Investigative Auditor  
(Downstate Region)

**ANGELES OKEKE**  
Investigative Auditor  
(Downstate Region)

**JASMIN JACK**  
Investigative Auditor  
(Downstate Region)

**DONNALYNN GAZZA**  
Investigator  
(Downstate Region)

**JAMES GIBSON**  
Investigator  
(Downstate Region)

**ANNE PETERS**  
Investigator  
(Downstate Region)

**ROBERTO SANTANA**  
Investigator  
(Downstate Region)

## **EXECUTIVE SUMMARY**

On October 9, 2016, William C. Thompson, Jr., Chairperson of the CUNY Board of Trustees, formally requested that the New York State Inspector General commence a comprehensive investigation into a number of matters, including the use of City University of New York (CUNY) foundation funds; the relationship between CUNY's colleges and their affiliated foundations and potential conflicts of interest; CUNY procurement policies; the hiring, expenses, and retention of consultants at CUNY; conflicts of interest at CUNY; and "all of the administrative and financial oversight and controls and best practices . . . with respect to all of the college foundations, alumni associations or other affiliated entities." Chairperson Thompson's request surfaced in the wake of the publication of alleged misconduct and fiscal mismanagement by a past President of City College of New York (CCNY).

The Inspector General's initial review identified a number of systemic concerns largely attributable to CUNY's lack of oversight that have led to financial waste and abuse within the CUNY system. CUNY administration also has failed to institute effective centralized management policies. The impact of this decentralization and deficient oversight has been further exacerbated by the failure to effectively operate the CUNY system for the benefit of taxpayers and students by those who are charged with the daily operations of the CUNY system, including but not limited to the Chancellor and General Counsel, among others.

Specifically, the preliminary investigation revealed that CUNY has expended funds on questionable activities and that its colleges and affiliated not-for-profit foundations lack sufficient controls to ensure the integrity of their use of non-tax levy funds. In light of the fact that the not-for-profit foundations affiliated with CUNY as a whole maintain approximately

\$1 billion in funds, it is imperative that significant steps are immediately taken to strengthen the fiscal integrity and oversight of this system. In addition, CUNY is spending significant resources in a decentralized manner on outside contracts, including for lobbyists engaged in questionable and seemingly redundant tasks, despite also employing its own central and school-based government relations staff. This decentralization creates an environment in which CUNY institutions lack appropriate fiscal management, oversight and transparency. This preliminary investigation also revealed that CUNY has failed to fulfill its legal obligation to report misconduct to the Inspector General as required under New York Executive Law. At times, CUNY has instead hired outside counsel to conduct internal investigations at significant cost to the public. Consistent with New York State Executive Law 4-A, the Inspector General refers these interim findings to CUNY for whatever disciplinary action it deems appropriate.

CUNY's executive staff including the Chancellor, the General Counsel, and all those employed in the CUNY system must adhere to the highest ethical standards, and conduct themselves as financial stewards, safeguarding this public university and ensuring confidence in the integrity of the CUNY system. Accordingly, the Inspector General has prepared this interim report to highlight certain areas of immediate concern and enable CUNY's Board of Trustees to begin remedial action in consultation with the Inspector General.

As a result of this preliminary investigation, the Inspector General recommends that CUNY immediately implement centralized policies in order to reduce the potential for fiscal mismanagement and abuse. CUNY must also take steps such as instituting more stringent controls for the relationships between all CUNY-based foundations and their affiliate colleges to ensure proper fiscal oversight of funds managed by those institutions and mitigate improper or wasteful expenditures.

## **BACKGROUND**

### **City University of New York (CUNY)**

The City University of New York (CUNY) is America's largest public urban university. The CUNY system includes eleven senior colleges: City College of New York (CCNY), Hunter College, Brooklyn College, Queens College, New York City College of Technology, College of Staten Island, John Jay College of Criminal Justice, York College, Baruch College, Lehman College, and Medgar Evers College. The CUNY system also includes seven community colleges, the Macaulay Honors College, and five graduate and professional schools.

CUNY was not formally established as a Ph.D. granting university and educational corporation until 1961, though individual establishment of several of its most notable senior colleges predated the university's establishment by over 100 years. The first of the institutions of what eventually comprised the university, City College of New York (originally known as the Free Academy), was established in 1847 in Manhattan. In 1870, another Manhattan senior college was established that would become Hunter College. Hunter expanded into the Bronx in the early 20th Century (to what became Herbert H. Lehman College). Baruch College was established in 1919. In 1926, a Board of Higher Education of the City of New York was created by the State legislature. Brooklyn College was established in 1930, and Queens College in 1937. The once-separate schools now have no individual corporate existence.

At CUNY's founding, it served 91,000 students. By fall 2015, university enrollment totaled more than three times that number: 274,357.

CUNY's mission, set forth in the New York Education Law, reflects CUNY's long history as a "vehicle for the upward mobility of the disadvantaged in the City of New York."

Under section 6201 of the Education Law:

The legislature's intent is that the city university be supported as an independent and integrated system of higher education on the assumption that the university will continue to maintain and expand its commitment to academic excellence and to the provision of equal access and opportunity for students, faculty and staff from all ethnic and racial groups and from both sexes.

### **CUNY Governance**

Despite its name and the location of its schools, CUNY is a creature of New York State law. It is governed by a seventeen-member Board of Trustees, ten of whom are appointed by the Governor with the advice and consent of the New York State Senate, and five of whom are appointed by the Mayor of New York City with the advice and consent of the Senate. One ex-officio trustee is the chairperson of the university student senate, and one ex-officio non-voting trustee is the chairperson of the university faculty senate. The chair and vice-chair of the Board are appointed by the Governor.

Under New York Education Law, the CUNY Board of Trustees has broad powers regarding curriculum planning, purchasing, and spending of revenue not derived from public funds. The Board's procedures surrounding meetings, voting, committee composition, and other matters are contained in CUNY's bylaws.

The Board appoints a Chancellor to serve as CUNY's chief executive, educational, and administrative officer. The Chancellor has wide-ranging duties and responsibilities that are set forth in CUNY's bylaws. Those duties include, but are not limited to, recommending to the Board the appointment of college presidents and senior campus staff as well as unifying and

coordinating college educational planning, operating systems, business and financial procedures, and management.

### **CUNY's Financial Structure**

CUNY receives the bulk of its funds from New York State, as well as funding from, among other sources, New York City budget appropriations, gifts, and tuition, which includes New York State's Tuition Assistance Program and federal Pell Grants. The Board of Trustees has the power to administer "gifts of money, endowments, fees, interest and other income not derived from public taxation or the public credit" for collegiate or university purposes. CUNY also derives a significant portion of its financial support from the independent 501(c)(3) foundations affiliated with its colleges.

### **CUNY's College-Affiliated Foundations and the CUNY Research Foundation**

Each CUNY senior college, with rare exceptions, has established at least one non-profit foundation to raise and provide funds separate and apart from its other sources of revenue. These entities are legally separate from the colleges they serve, but exist to receive and hold funds for the benefit of the colleges. While each foundation's mission differs, they generally solicit and accept donations, gifts, and bequests for the colleges' use. Some of the foundations administer grants from government entities and private foundations. The City College 21st Century Foundation, which has been spotlighted in connection with the allegations surrounding the former-CCNY President's spending, serves this function for CCNY.

The Research Foundation of the City University of New York ("The Research Foundation") serves a slightly different function than the other CUNY foundations. The Research Foundation was established in 1963 as a private, not-for-profit educational corporation

chartered by the State of New York to be governed by its own Board of directors. It operates out of offices in Manhattan, which it owns, and issues its own independently-audited financial statements.

The Research Foundation provides support for faculty research efforts throughout the CUNY system, not at any one particular CUNY institution, and assists with post-award administration of research grants and awards; management of planned giving; and capital construction and renovation of facilities. When administering grants and awards for the specific colleges, the Research Foundation maintains separate accounts for any overhead funding built into the grant or award. The Inspector General's initial investigation indicates that these overhead funds may be available for discretionary use by certain executives at the relevant college. For example, the Research Foundation maintains such an account for the President of Queens College.

In addition to by-laws established by these foundations and memoranda of understanding between the foundations and correlate schools -- when they exist -- the Research Foundation and all CUNY-affiliated foundations are governed by New York's Not-for-Profit Corporation Law. In 2013, the Non-Profit Revitalization Act was signed into law, and requires the adoption by non-profit corporations of robust financial oversight requirements, conflict-of-interest policies, and whistleblower policies. Although the Non-Profit Revitalization Act improved the accountability of New York's non-profit corporations, including the CUNY college foundations, the New York Not-for-Profit Corporation Law (which the Act amended) does not provide specific guidance regarding how non-profit foundations use their assets.



## **Methodology**

After Chairperson Thompson referred this matter to the Inspector General on October 9, the Inspector General began an initial review of CUNY's policies and procedures, including its manual and by-laws. The Inspector General has also dispatched investigative teams to five of CUNY's senior colleges -- Brooklyn College, Queens College, Hunter College, Lehman College, and the College of Staten Island -- to review the expenditures of each college's affiliated foundations and the sources of those expenditures, with a focus on discretionary spending.

### **INTERIM FINDINGS AND RECOMMENDATIONS**

#### **Presidential Discretionary Funds Lack Detailed Policies**

CUNY has limited policies governing use of the Presidential Discretionary Funds at its colleges, which has led to waste and misappropriation of funds meant to benefit the college.

CUNY permits each college to maintain a fund for the college presidents to use at their discretion. The Inspector General's preliminary investigation has uncovered that while these funds are sometimes used for worthy and appropriate purposes, such as buying new furniture for student group offices or paying scholarship monies, they are frequently used to provide the colleges' executive staff members with personal benefits – a practice that is ripe for abuse due to the lack of sufficient proscriptions, controls, and oversight over the expenditure of these funds.

Section 3.04 of CUNY's manual contains the university's policy on Presidential Discretionary Funds. The policy applies to "the use of funds that are derived from sources other than tax-levy appropriations or student fees, and are used for college or University purposes in accordance with this policy." Specifically, the policy instructs that:

Discretionary funds may be used in support of educational, social, and cultural events and programs of the colleges, for hospitality extended to guests of the colleges, and attendance by members of the University community at receptions, dinners and other events outside of the college that are of significance to the college or University. For such outside events, discretionary funds may be used when the price of admission substantially represents the cost of the meal or reception or, if the price of admission involves a contribution beyond the cost of the occasion, the beneficiary of the event is a not-for-profit community, charitable, cultural, educational, or civic organization – “qualifying organization.”

When authorizing the expenditure of Presidential Discretionary Funds, the President is entrusted with “the responsibility of applying the standard of reasonable, appropriate and commensurate benefit to the college and University community.” The policy’s only additional proscriptions are that the funds may not be used as campaign contributions or payment of dues or fees to clubs that restrict their membership by race, sex or creed, and that the funds must be used “in accordance with restrictions imposed by law, and the Bylaws and governing resolutions of the University.”

As the allegations surrounding the former president of CCNY suggest, the Inspector General’s preliminary investigation has found that such Presidential Discretionary Funds have already led to reported abuse and are ripe for further abuse, resulting in money that could be spent on library books or failing infrastructure being used to pay portions of executive salaries and for personal benefits.

Brooklyn College, for example, uses Presidential Discretionary Funds to pay for a part-time housekeeper for the college president, who resides in a home owned by the college.

According to the terms of a June 2015 agreement, approximately \$36,000 per year is spent by the fund on this benefit.<sup>1</sup>

The nearly \$35,000 retirement party for Brooklyn College's former president was also paid out of the Presidential Discretionary Fund. In an instance of questionable accounting, Brooklyn College appears to have steered funds generated from a licensing agreement between the college and certain professors into the Brooklyn College Foundation so that they would be deemed discretionary funds, and could be used for, among other things, the retirement party.

In addition, the President of Queens College received a substantial supplemental annual salary through the Queens College Foundation that was not specifically referenced in his offer letter nor approved by the CUNY Board. In fact, CUNY By-Laws grant the authority to award such supplementary income to, among others, college Presidents solely to the Chancellor, without advising the Board or obtaining its approval.<sup>2</sup> In this instance, lacking any transparency and justification, it appears that Chancellor Milliken simply contacted the Queens College Foundation to implement and fund this supplemental salary and that the Chair of the foundation informed Milliken that trustees in attendance at the foundation Board's Executive Committee meeting unanimously agreed to provide a \$40,000 annual supplement to the President's salary for the duration of his existing employment contract. This construct raises several obvious concerns, not only regarding a lack of transparency, but also making the distribution of income susceptible to favoritism and outside influence without any oversight.

---

<sup>1</sup> As a comparison, the average annual tuition for a student to the college is \$6,330. These funds could instead be utilized to provide full scholarships for up to six students annually, or provide other benefits to the academic programs of the college.

<sup>2</sup> CUNY Bylaws, Article XII, Section 12.2

The Inspector General's preliminary review suggests that section 3.04 of the CUNY manual failed as a policy to control waste in the use of Presidential Discretionary Funds and that the individual CUNY colleges and CUNY-affiliated foundations do not have their own detailed policies for the use of Presidential Discretionary Funds.

CUNY's policy regarding Presidential Discretionary Funds must include more stringent direction, detailed policies regarding allowable expenditures and the purposes for those expenditures, and detailed proscriptions regarding prohibited expenditures. Additionally, CUNY's institutions and affiliated foundations need to clarify how they will ensure adherence to the central policy.

Notably, on October 18, 2016, CUNY's General Counsel and Chief Financial Officer circulated a memorandum to CUNY college presidents and deans of graduate and professional schools regarding their use of non-tax levy funds. In addition to reminding the memorandum's recipients of CUNY's Presidential Discretionary Funds policy, the memorandum states:

In sum, non-tax levy funds are to be used solely for college-related purposes, including supplemental compensation of staff where approved by the Chancellor, support of the activities of presidents in the performance of their duties, and funding of events and programs that benefit the College or University (these funds may not be used to purchase or reimburse the purchase of goods or services of a personal nature).

The October 2016 memorandum provides little in the way of additional, clarifying guidance. Even this recent memorandum, however, leaves a vague and discretionary standard for expenditures of these funds with no meaningful accountability of the campus Presidents. Much more extensive policies, procedures, and oversight are clearly necessary to ensure the integrity of these funds.

## **CUNY-Affiliated Foundations Lack Appropriate Controls**

There is no effective oversight of foundation funds at CUNY. This has created the potential for widespread waste and abuse in the utilization of these funds.

In 2006, then-Chancellor Goldstein created a CUNY-wide task force to study CUNY's affiliated college foundations. As set forth in "CUNY College Foundations: Management Guidelines and Best Practices Resource Book," which was circulated to CUNY College Presidents and CUNY College Foundation Chairpersons and Presidents on January 1, 2007, the goal of the task force was to "make recommendations on how to best strengthen and further professionalize these critical entities." Among the task force's significant findings were the requirement for each foundation to be guided by a memorandum of understanding between each college and correlate foundation that creates "the appropriate clarity as to interaction, responsibilities and duties of each party." The task force also advised the foundations to clarify ownership, access, and privacy of alumni information "immediately"; review their gift restrictions; and complete items on an attached checklist within twelve months.

Although the Presidents and Vice Presidents for Institutional Advancement meet annually to discuss key topics of the task force's recommendations, the task force did not publish any subsequent reports or recommendations, and it appears that the foundations may not have implemented the recommended steps. To the extent this handbook remains in place, the preliminary investigation indicates that its terms are not enforced.

For example, the Memorandum of Understanding between the Brooklyn College Foundation and Brooklyn College states: "[t]he College President shall submit a plan to the Foundation in advance of the Spring Board Meeting of each year for utilization of unrestricted

funds generated by the Foundation in the following fiscal year, as well as other unrestricted income such as investment gains. The Foundation shall take into account the College's plan when developing its operating budget and ensure that all unrestricted funds are spent accordingly." When the Inspector General inquired about the plan for utilization of unrestricted funds discussed in the memorandum of understanding, Brooklyn College inexplicably stated that the President was not, in fact, required to submit a written plan.

The foundations, however, are not the only places where controls are lacking. Another example of fiscal mismanagement and lack of internal controls occurred over a six-year period at CUNY's School of Professional Studies (SPS). This matter was highlighted in a 2015 report issued by the Office of the State Comptroller. While SPS is not one of the five CUNY institutions examined in this interim report, its failure to prevent, identify, and report to the Inspector General long-term fiscal malfeasance highlights the issues the Inspector General is addressing now and in its ongoing investigation.

On June 2, 2015, the Office of the State Comptroller released an audit report discussing an examination of controls over bank accounts at the City University of New York School of Professional Studies (SPS) for the period between January 1, 2008, and July 21, 2014. During the audit, SPS informed the Comptroller's Office that a former Director of Business and Fiscal Operations had opened an unauthorized bank account in the college's name in December 2011. The Business Director, who was reassigned to a different position in 2013, had control over all SPS bank accounts and was the sole signatory on the unauthorized account. The Business Director opened the account with a \$50,000 check drawn on SPS's Tuition and Fees Account and ultimately depleted it. In a breach of CUNY's internal controls, the Business Director opened the account under his own signature even though CUNY policy required dual signatures

on checks for \$5,000 or more. When SPS questioned the Business Director about the account, his answers were disingenuous. He paid back the \$50,000, and SPS terminated his employment.

During the course of its review, the Comptroller's Office discovered another unauthorized account in the school's name. The second unauthorized account was opened in July 2008 using \$5,000 from SPS's Tuition and Fees Account. The Business Director ultimately moved \$31,000 from the Tuition and Fees Account to the second unauthorized funds account and withdrew the entire \$31,000. The Business Director ultimately returned \$12,500 of the money that he removed from the account, but \$18,500 was never repaid to SPS. Moreover, SPS found a \$5,000 check written from the Tuition and Fees account that was cashed and unaccounted for, with no evidence suggesting the money was ever returned.

The Inspector General will continue to investigate possible fiscal mismanagement of the CUNY foundations, but preliminarily, lack of required controls at the foundation level and lack of oversight policies at CUNY makes the foundations' funds susceptible to abuse.

### **Lobbying Expenditures are Duplicative and Significant**

The Inspector General has also found evidence of significant spending by CUNY, its Research Foundation, individual college foundations, and its colleges on lobbying activities. These expenses include employing government relations staff while also contracting with outside lobbying firms for the same purpose.

CUNY as a university maintains an Office of State Relations in Albany and an Office of City Relations in New York City. Each office consists of three management-level staff and an administrator. Additionally, many senior and community colleges maintain offices of external relations, media relations, and governmental relations. Community colleges also have

governmental relations staff. For example, Bronx Community College has a Director of Government Relations as part of its Office of the Vice President of Strategic Initiatives. Finally, in New York City, CUNY maintains a Legislative Action Committee with representation by most of its colleges.

Despite the existence of many CUNY staff members in both New York City and Albany, the University and its schools and foundations spend hundreds of thousands of dollars on outside lobbying firms every year. The Inspector General's review of filings to the New York State Joint Commission of Public Ethics (JCOPE) reflects lobbying campaigns worth over \$1.6 million dollars since January 2013 alone. A review of some of the publicly available lobbying data submitted to JCOPE by CUNY and its affiliated colleges and foundations is revealing.

In 2013, the Research Foundation spent \$280,500 on lobbying. This included \$24,000 to retain a firm in the first six months of the year to lobby the New York City Council to provide funds to Bronx Community College, and \$30,500 over the course of the year to lobby the City Council and Queens Borough President on behalf of Queens College. The Research Foundation also spent \$54,000 seeking funding for CUNY's Creative Arts Team (a separately incorporated educational outreach program at CUNY), and \$84,000 to lobby City, State and Federal officials on behalf of LaGuardia Community College (in addition to more than \$500 spent on travel to Washington, D.C. to lobby New York's senators). The Research Foundation also spent a total of \$88,000 on two firms to lobby members of New York State legislative and executive branches on CUNY's behalf.

Other CUNY representative bodies also spent money lobbying in 2013. Hunter College spent \$90,000 on two lobbying firms that year, and Brooklyn College spent \$39,000. JCOPE



data reflects that one of the firms retained by Hunter did not engage in any lobbying activity, and the other firm only conducted lobbying activities in the first half of the year, and even that activity appears to have been scant, meriting only this description: “ATTEMPTED TO SCHEDULE MEETING WITH DEPUTY MAYOR, GET STATUS OF MEETING WITH DEPUTY MAYOR.”

The Research Foundation’s lobbying expenditures increased to \$296,000 in 2014. Again, some of the monies spent on lobbying activities were on CUNY’s behalf. The remainder of the Research Foundation’s 2014 spending was on behalf of only two CUNY colleges, LaGuardia Community College and Queens College, and CUNY’s Creative Arts Team. In addition, Brooklyn College spent \$46,500 on lobbying, and Hunter College spent \$85,000.

In 2015, the Research Foundation expended \$266,225 for lobbying activities in 2015, approximately half of which was on behalf of CUNY and the rest on behalf of LaGuardia Community College and Queens College, and CUNY’s Creative Arts Team

JCOPE records include spending only for the first half of 2016, but spending patterns seem largely consistent with previous years. The Research Foundation has spent over \$130,000 on lobbying on behalf of the same few colleges and the university itself. Hunter College spent over \$100,000 on lobbyists in the January to June period. The CUNY Graduate Center Foundation spent \$27,500 during the same period.

These costs are significant to CUNY, and while they may be warranted in certain situations, appear to be duplicative in several cases. Even at this early stage of the Inspector General’s investigation, it seems clear that these activities warrant scrutiny and that centralization of these services should be explored.

## **Failure to Report to the Inspector General as Required by New York State Law**

CUNY executive, senior and administrative staff has failed to report knowledge of fraud and abuse in their system on several occasions to the Inspector General as required by New York State Executive Law and have instead commenced internal investigations, including utilizing outside counsel. This practice is not only an unnecessary expenditure to CUNY, it is also in violation of state law.

CUNY employees are required under Executive Law Article 4-A to “report promptly to the state inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment . . . .” Those who fail to report promptly are subject to the penalties outlined in Executive Law Article 4-A: “The knowing failure of any officer or employee to so report shall be cause for removal from office or employment or other appropriate penalty.”

During this preliminary review, the Inspector General found two instances where CUNY failed to report matters to the Inspector General as required by law. The first matter pertains to the spending of the former CCNY President. The second matter, previously discussed, pertains to an employee at CUNY’s School of Professional Studies (SPS) who engaged in theft of funds from an unauthorized account that the employee opened, in breach of CUNY policies regarding bank accounts.

While Chairperson Thompson did ultimately report his concerns regarding the former CCNY President’s spending and related issues to the Inspector General on October 9, 2016, and requested that the Inspector General conduct an investigation, CUNY had previously retained a law firm in July 2016 to essentially investigate those matters. Moreover, publicly available accounts of the events surrounding the former City College President’s spending suggest that

questions arose surrounding her spending as early as 2011. At no time prior to October 9, 2016 did any employee of CUNY with knowledge of this matter inform the Inspector General as required by law. Specifically, it has been publically reported that the former CCNY President obtained over \$150,000 in foundation funds for highly questionable personal use, including \$20,000 for a security deposit on a rental home and \$50,000 to furnish that home, as well as housecleaning services and other personal expenses. Public reports indicate that this former President reimbursed at least some of the expenses after they were called into question.

The United States Attorney's Office for the Eastern District of New York is currently conducting an investigation into the former CCNY President's spending and her use of foundation funds. Accordingly, and in consultation with the United States Attorney for the Eastern District of New York, the Inspector General is not investigating the events surrounding the former City College President's improper spending at this time. That said, when CUNY's General Counsel and Senior Vice Chancellor for Legal Affairs, who is also CUNY's Ethics Officer, learned of the former president's questionable spending, he should have immediately reported the matter to the Inspector General. Instead, in 2016, CUNY chose to retain a law firm to conduct an internal investigation. That firm's top hourly rates of over \$1,000 per hour, if calculated on a daily basis, add up to more than a CUNY student's annual tuition of \$6,330. From mid-July 2016 through the end of September 2016, the law firm billed CUNY for more than \$180,000.

As to the second matter regarding the embezzlement by an employee of SPS funds, at no time did any employee of CUNY with knowledge of the events report the suspected criminal activity to the Inspector General as required by law.

Further, CUNY's retention of outside counsel in the CCNY matter may have run afoul of at least the spirit, if not the letter, of the law. At best, it highlights a deficiency in accountability and oversight of CUNY resources. CUNY is subject to the New York State Finance Law in matters of procurement. CUNY acknowledges in its internal documents that it "is considered to be an instrumentality of the State, and although it is not a State agency, it may be treated like a State agency under certain circumstances." New York State Finance Law section 139-k defines an "article of procurement" to include contracts for services. Accordingly, the solicitation of legal services in this instance may have required adherence to the same procurement procedures that CUNY has developed for other purchases of goods and services. CUNY asserts that because it used foundation funds to retain and pay outside counsel, as described above, the transaction was not subject to the State Finance Law. Based on the Inspector General's preliminary review, CUNY's position regarding foundation funds is problematic. CUNY's reliance on the source of the funds to avoid compliance with State Finance Law at the very least contradicts the spirit of the law, which seeks to ensure fair bidding processes.

CUNY has since terminated the services of the law firm. Questions still remain, however, regarding CUNY's broader use of outside counsel, and its failure to take action sooner on the issues relevant to this investigation.

While this investigation is ongoing, it appears there was a failure by certain CUNY employees to report information to the Inspector General as required by state law. Consistent with New York State Executive Law 4-A, the Inspector General refers this matter to CUNY for whatever disciplinary action it deems appropriate.

## **Executive Compensation at CUNY may be Excessive and Wasteful**

Actions by CUNY in increasing compensation and benefits to executives may have resulted in excessive and wasteful spending, which could more appropriately be utilized for the benefit of the colleges.

As required by the Executive Law, CUNY's Executive Compensation Plan applies to all CUNY institutions and contains descriptions of the salary plans. However, the plan does not contain specific descriptions of additional non-base compensation components that are allegedly "customary and appropriate for senior executives in higher education." It contains only very general references to these benefits.

The Inspector General found numerous instances of generous personal benefits for CUNY senior college presidents, including housing allowances of between \$60,000 and \$90,000 per year, in addition to a car and driver. Some other CUNY executives may also gain the use of a car, at the Chancellor's discretion. Executives may also receive compensation in the form of bonus opportunities, deferred compensation, business expenses, study leave, and memberships in clubs or associations. Indeed, the lack of specificity as to the parameters of those memberships resulted in a number of college presidents joining athletic clubs at the university's expense.

The Inspector General's preliminary review of CUNY's non-base executive compensation provisions suggests that many of them lack appropriate controls or are excessive in light of CUNY's tenuous financial situation, particularly as a public institution. For example, the Executive Compensation Plan authorizes non-tax-levy funds for business expenses for CUNY's Chancellor, Presidents, and, in the Chancellor's discretion, the Dean of a CUNY-wide or professional school. The plan states that "appropriate documentation is required," but neither

defines “business expenses” nor discusses the process for providing or approving “appropriate documentation.”

Similarly, the plan provides that CUNY’s Chancellor, Presidents, and, in the Chancellor’s discretion, a Dean of a CUNY-wide or professional School “may hold University-paid memberships in a limited number of clubs, professional associations and/or organizations” in their official capacities. The plan does not contain any guidelines regarding what clubs may be appropriate for these CUNY employees, nor is there any process for membership approval.

An area requiring further review and meriting current comment is the appointment in 2013 of then-Chancellor Matthew Goldstein to the position of Chancellor Emeritus, and his compensation for that position. The current Executive Compensation Plan was submitted to the New York State Division of Budget and other required state entities in July 2012 and, for the first time, proposed compensation for the position of Chancellor Emeritus. The plan entrusts the CUNY Board of Trustees with the discretion to appoint an individual as Chancellor Emeritus so long as the person has served as CUNY’s Chancellor for eight years immediately preceding his or her appointment. The plan states that the Chancellor Emeritus’s salary “will be determined by the Board of Trustees,” and that the Chancellor Emeritus will have a five-year term of appointment, with the option of one five-year reappointment upon recommendation of the Chairperson.

During Goldstein’s tenure as Chancellor, the CUNY Board of Trustees carefully compared his compensation to that of his peers and sought expert advice on an appropriate compensation package. By contrast, when the Board of Trustees appointed Goldstein as its first-ever Chancellor Emeritus in April 2013, no comparative analysis appears to have been

performed. Moreover, while Chancellor Goldstein's Emeritus appointment letter generally outlines his duties in areas such as fundraising that could inure to CUNY's benefit, the nature and extent of these duties are not clearly defined.

The April 29, 2013, Board of Trustees resolution appointing Goldstein as Chancellor Emeritus for the period December 1, 2014 through November 30, 2019, provides Goldstein with an annual salary of \$300,000, with \$200,000 of his compensation coming from government appropriated funds and \$100,000 from foundation funds.<sup>3</sup> As referenced above, the description of his duties is vague, at best, stating that Goldstein "shall perform such teaching and other non-policy-making duties as shall be determined by the Board of Trustees, including but not limited to working with the College Presidents and others on the completion of the CUNY Capital Campaign." While it was within the discretion of the Board to provide Goldstein with this compensation package under the Executive Compensation Plan, the circumstances regarding conferring such status and the terms of such a position require more scrutiny and specific parameters.

Essentially, the Board of Trustees approved a compensation package worth approximately \$3 million. The Board of Trustees should review and reassess the April 2013 resolution and current employment arrangement considering the lack of scrutiny at the time in creating and defining a Chancellor Emeritus position, the lack of comparative financial analysis of said position, the services currently being rendered, and the value of those services; and the Board should be mindful of these issues should it consider making similar appointments in the future.

---

<sup>3</sup> Goldstein left his Chancellor position in July 2013 and was permitted to take a study year at his then-Chancellor salary of \$490,000 before assuming the Chancellor Emeritus position in 2014.

## **CONCLUSION**

These preliminary findings highlight the need for significant strengthened uniform controls and oversight to ensure the fiscal and ethical integrity of CUNY's operations and mitigate the misuse, waste, and abuse of resources in the CUNY system. As set forth above, the Inspector General recommends that CUNY implement centralized spending policies to increase organization and uniformity of action and reduce the potential for fiscal mismanagement immediately. CUNY must also take steps such as the institution of more stringent controls over the relationships between all CUNY-based foundations and their affiliate colleges to ensure proper fiscal oversight of the foundation funds managed by those institutions. The Inspector General's investigation is ongoing, and the Inspector General will continue to make recommendations to improve these systems, centralize CUNY's policies and procedures, and improve foundation oversight.