



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004

VINCENT C. GRAY
CHAIRMAN

July 8, 2008

Honorable Adrian M. Fenty
Mayor of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 327
Washington, DC 20004

Dear Mayor Fenty:

As you know, I am very troubled by the recent decision-making regarding expenditure of school modernization funds. As a product of the District of Columbia Public Schools, I am a firm believer in public education and was a strong supporter of the change in school governance because of the potential to effect positive change on behalf of our children. I am fully committed to ensuring that our children have the modern and safe public schools they deserve, an important factor in my oversight efforts.

You and I were two of the co-introducers of Bill 16-250, the "School Modernization Financing Act of 2006". This legislation effectively doubled the amount of funding that is provided on annual basis to our school modernization effort and for the first time elevated the issue of school modernization to the top of the City's policy agenda. I have twice supported a waiver from the legal requirement that funds from the Public School Capital Improvement Fund "shall only be spent in accordance with an approved Facilities Master Plan (MFP)". When the Fiscal Year 2009 proposed budget was presented with cuts to school modernization funding, it appeared the City's commitment to school modernization as a top priority might be fading. I restored \$18.1 million in annual local funding for FY09 and restored an additional \$12.6 million beginning in FY10. In total, I restored \$222.8 million in school modernization funds that were proposed to be cut in the proposed six-year capital plan.



As the Councilmember from Ward 4 for six years, you can clearly appreciate the important role the Council plays in providing oversight to Executive agencies. I believe the Council's responsibility in this regard is critically important to ensure good, effective government. In fact, during my recent oversight of OPEFM school modernization contracts, I filed two disapproval

resolutions on contracts for Keystone Plus Construction Corporation (CA 17-493) and BDC Construction, LLC (CA 17-494), because I believed the fees awarded in these contracts were excessive. The disapproval resolution prompted OPEFM to renegotiate these contracts, saving almost \$1 million, which will now be available for other school modernization projects.

In June, OPEFM submitted 13 school modernization contracts to the Council totaling \$81,222,886 and two reprogrammings totaling \$124,631,677. I quickly scheduled a public roundtable on June 25, 2008 to have a public discussion of these contracts and reprogrammings. The stated purpose of the roundtable was to, "examine the status of the forthcoming Facilities Master Plan, the public input process for the MFP, the facility needs related to changing curriculum, and organization of pre-K through 8th grades and school closings". The notice further stated that, "The roundtable will also examine OPEFM procurement practices, the effect of these practices on the schedule and costs of current projects, and specific questions on 13 OPEFM contracts currently pending before the Council." My goal was to have a public discussion of these important issues, and then, based upon information gaps being filled in, withdraw my approval resolutions and put the contract ratifications on the agenda for a vote at the July 1, 2008 legislative meeting.

I requested the attendance of Chancellor Michelle Rhee, Deputy Mayor for Education Victor Reinoso, and Executive Director of the Office of Public Education Facilities Modernization Allen Lew. I was informed that both Chancellor Rhee and Deputy Mayor Reinoso were unavailable because of prior commitments.

Not surprisingly, Mr. Lew who implements, but does not make, certain policy decisions, was unable to answer the Council's questions on the policy rationale behind the Pre-K to 8th grade initiative or decisions to de-fund capital projects at certain schools that the public has had some reason in the last several years to believe would be moving forward this year or next. Schools such as Eastern and Ballou High Schools; McFarland Middle School; Cooke, Randle Highlands, and Thomas Elementary Schools, have had active design programs, been authorized in the Capital Improvement Program, and been the hope of their communities. Councilmember Barry requested that the Executive provide the Council with a list of when each of the schools whose capital budgets were being de-funded could expect to have funding restored. Despite repeated requests, the Executive has not provided the Council with this information, but only a general statement.

On July 2, 2008, I received a letter from Mr. Lew that elevated my concerns that the school modernization process was not under control. The letter listed contract work for 14 schools, and stated that "the work necessary to complete these schools and make them age-appropriate cannot proceed" due to the Council's ongoing review of contracts. This was very strange, because the Council has no request to approve contracts for six of these schools (Brightwood, Noyes,

Cleveland, Shaed, Burroughs, and Langdon) Mr. Lew's letter indicated that contractors were "engaged in preconstruction and early mobilization activities pursuant to validly issued letter contracts," which immediately raised a concern that since the Council has not received contracts for this work, the Council will be asked to approve these contracts through retroactive ratification. Mr. Lew's letter also refers to funding for Sousa Junior High School as part of the purpose of the reprogrammings, but this purpose is not included in either reprogramming now before the Council. I requested additional clarification on both of these issues.

Because we were unable to get answers to important questions at the first public roundtable, Councilmember Barry and I filed a disapproval resolution on the two reprogrammings that are currently before the Council. On July 1, 2008, I provided two possible dates, July 8th and July 11th, for a follow-up roundtable to JoAnne Ginsberg of your Office of Policy and Legislative Affairs. Despite a number of inquiries to Ms. Ginsberg and her staff, we did not receive a confirmation of the date for the roundtable until 4pm July 7, 2008. We are now in agreement that there will be a public roundtable on these issues on July 11 at 1pm in the Council Chambers. As requested of Ms. Ginsberg, I am anticipating the attendance of Chancellor Michelle Rhee, Deputy Mayor for Education Victor Reinoso, and Executive Director of the Office of Public Education Facilities Modernization Allen Lew.

After reflecting further on Mr. Lew's July 2, 2008 letter, I have decided to withdraw approval resolutions for CA17-496, CA17-514, CA17-515, and CA17-516. Since each of these four contracts contains certified funding limited to funds on hand, ranging from \$2 million to \$3.3 million without approval of the reprogrammings, work can continue at these sites uninterrupted while the Council holds a public roundtable. I am sure everyone will be relieved to know that there has been no delay in work due to the Council's appropriate oversight of these contracts. For the three contract ratifications that require active approval, I am committing to place these contracts on the agenda for an up or down vote on July 15, 2008. As you know, contract ratifications are retroactive approvals by the Council of work that is already underway or even completed, a practice that should only occur under the most unusual circumstances, such as an unforeseen emergency.

I am withdrawing these contract approval resolutions expressly out of a desire to allow Mr. Lew's work to go forward. Questions remain, however, about the underlying educational policy-making concerning school facilities. I am increasingly concerned about the lack of public input or even adequate notice on facility improvement decisions. As of this date, there is no schedule for public discussion of the Facilities Master Plan (known as the MFP), which is due to the Council on September 10, 2008. The public has demonstrated a high degree of interest in the substantial improvement of school facilities, and it is presently the highest priority for our capital program. However, there is no plan or, even, agreed upon policy framework to guide the expenditure of hundreds of millions of dollars annually. Mr. Lew has testified that the OPEFM will have spent some \$600 million by the end of this fiscal year on physical improvements to schools during his tenure. This work has occurred without a plan and with little public discussion.

At the end of FY08, assuming the reprogramming actions in question are approved, the OPEFM will have spent almost all of the prior authority allocated both for repair and modernization. At that point, authorized funding for facility improvement will average \$262 million each year over the next six years. With new high schools now costing \$100 million or more, this amount will not be enough to meet the high expectations of the public, parents, and students. It is of the utmost urgency that we face these issues now and work with our citizens to identify the best path forward for the schools, consistent with the financial realities of the City. The roundtable I am planning on Friday will be one such opportunity, but a comprehensive outreach effort on the MFP and on related educational policies is essential to the success of the overall reform effort.

The reality of the available funding also brings into focus the need for prudent contracting, which is very difficult to do without a game plan, or in this case an MFP. I am sure that Mr. Lew is doing the best job he can in keeping down costs under the demands for almost instant improvement. In response to questions about high contractor fees for the 13 contracts recently submitted to the Council, Mr. Lew said the following at the June 25 roundtable: "normally we don't see double digit fees in our construction projects . . . but here we are dealing with short time lines." He then stated further: "We're really not operating in a normal, stable situation where we can employ a normal procurement process. The City talks about a standard procurement taking 279 days. We're expected to turn things around in a few days and weeks."

I would agree this work is too urgent to be satisfied with 279 days to get a contract, but our contracting laws are there for a reason, and I urge you to place a higher priority on improving the procurement process and staffing to do the job properly. Relying on costly and, not always legal, fast-tracking methods is not in the best interests of the government or its taxpayers.

In reflecting on the various actions that have been taken in recent months, I have become increasingly concerned about the approach to decision-making concerning school issues, facilities and educational policy. It is not how I expected this effort to go when the Council authorized special legislation last year to shift school governance and to reduce both financial and administrative barriers that were identified as impediments to educational improvement. In the last few months, the Council has found itself in a position to approve actions, which it had little or no notice were coming and to override Executive policies inconsistent with local laws. For example, the Council has:

- Maintained the public's right to a hearing on the DCPS budget;
- Restored funding to school modernization that the proposed DCPS FY09 budget shifted from OPEFM modernization funds to unspecified use at DCPS;
- Understood the need to close schools, but has consistently been surprised at the lack of opportunities for community input into school closures, consolidations, or reuse policies;

- Never received an explanation of the cost savings of \$23 million attributed to closing schools, and then learned that the cost of physical improvements to receiving schools will more than consume all savings;
- Learned from contract requests that the introduction of the PreK-8th grade model has gone from a handful of schools to widespread adoption at an unspecified number of schools;
- Been asked to approve reprogramming actions to move \$124.6 million in modernization funding from 22 schools – some of which are currently under construction and will need the money restored – so that major repairs and the costs of the substantial PreK-8th grade conversions can take place;
- Been asked to approve contracts with fees that Allen Lew, a universally respected expert in the construction field, acknowledged in recent testimony are higher than normal because of the need to fast track everything (i.e. there is inadequate planning at DCPS in making changes to programs and schools);
- Been asked to approve retroactively four contracts worth \$57 million for some of the above school repairs and expansions – not modernizations – using modernization money; and
- Found that the elimination of the Weighted Student Formula will introduce inequity between schools and among DCPS students.

Nonetheless, these issues represent only a portion of the issues of concern to the Council as that concern pertains to the tenor and pace of school reform in the District of Columbia. Since June 12, 2007, when the Public Education Reform Amendment Act of 2007 became effective, the educational landscape in the District of Columbia altered substantially, with the Council and Mayor becoming equal partners in raising the achievement of students. It is not our goal to obstruct progress, but to ensure that progress is made in a sustainable way. For example, when we enacted the personnel legislation, we expected personnel evaluations to inform the Chancellor's decisions; the data suggest otherwise. A similar approach seems to have been utilized in the non-reappointment of principals and assistant principals. The Chancellor expressed that some of the principals were terminated because she differed on the direction they were taking the schools. This is while a number of the principals had exemplary evaluations, were supported by parents, and had made great strides with our children. Now, we are seeing the termination of several hundred non-certified, yet often experienced and extraordinary teachers, being replaced by younger teachers with markedly less experience.

Meanwhile, as we close schools and fire personnel, I am concerned that we are losing sight of the accompanying programmatic and instructional leadership necessary to implement radical change. The lack of a plan leaves us with great uncertainty about the overall process that DCPS will use to increase student achievement and ensure that all students have the opportunity to engage in a meaningful school experience.

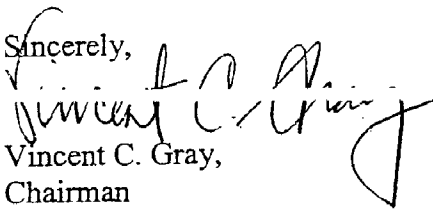
These are not isolated concerns. The Council has been concerned about DCPS' opaque FY09 budget, school restructuring, special education reform, career and technical education, the ongoing teachers' contract negotiations, the management of Federal funds, not to mention the issues regarding the school closure process and the elimination of the Weighted Student Formula in favor of an inequitable alternative.

Some members of the media have speculated that there are problems between the two of us as reasons why the Council has begun to resist these actions. I know that this is not the case, and I assume you feel similarly. Both of us share the view that the education of our children is at the highest priority level and, thus, I feel certain we continue to be committed to doing the best we can for our children, recognizing that, along the way, the Council has a legitimate oversight role it discharges on behalf of District residents.

I also believe that it is incumbent upon you and the Chancellor to present a Master Education Plan and Facility Master Plan to the Council and the public. If this were done, there would be little reason for possible discord. One full year into the reform effort, however, we do not have either of these, and this is leading to growing concern over the direction of the reform effort. The public and the Council deserve more than to learn about DCPS reforms from random announcements and the expenditure of unprecedented levels of funds, funds that are becoming harder and harder to come by.

I have spent many years working with and on behalf of children and youth in this city. Consequently, the prospect of being part of an education reform effort that would improve outcomes for our children was extremely exciting. That is why I heartily embraced efforts to expand and improve the quality of Pre-K programs. And, it is why I have worked hard on K-12 reform along with efforts to energize public higher education. I look forward to continuing to work with you to move District schools to the level of excellence that is necessary for future generations to succeed.

Sincerely,


Vincent C. Gray,
Chairman

cc: Councilmembers of the District of Columbia
Dr. Natwar Gandhi, Chief Financial Officer