



THE SCHOOL DISTRICT OF
PHILADELPHIA

OFFICE OF THE INSPECTOR GENERAL

Report of Investigation

Major Renovation Project

Benjamin Franklin High School & Science Leadership Academy

August 19, 2020

THE SCHOOL DISTRICT OF PHILADELPHIA BOARD OF EDUCATION

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August 19, 2020

Dear Members of the School Community:

In fall of 2019, the Board of Education joined Dr. Hite in requesting that the Inspector General investigate the major renovation project at Benjamin Franklin High School and Science Leadership Academy that led to the closure of their shared campus in October 2019.

The Board agreed that it was crucial to have an independent investigation and to share the Inspector General's report with the public so board members and community members clearly understand what went wrong, what steps the District is taking to rectify the issues cited in the report and, most importantly, to ensure they do not occur in the future.

The Office of the Inspector General (OIG) is an independent office within the School District of Philadelphia that reports directly to the Board of Education. The OIG's mission is to promote integrity within the District and to assist the District and the Board in ensuring oversight of taxpayer funds. The Office is also responsible for conducting independent investigations into referrals and complaints regarding corruption, fraud, criminal activity, waste, abuse and mismanagement.

The Board is committed to conducting its business transparently, which is why it is so important that this report is shared with our school communities which have been impacted by this project and deserve to know that the School District is learning from this to prevent such issues from recurring in the future. Already, over the course of this past year, multiple steps have been taken to improve the functioning of the Operations Department and address many of the issues raised in this report. For the Board, these include actions such as the authorization of a project management firm to oversee and supervise District construction projects, and ongoing monitoring of the implementation of additional contingency planning through the Board's Finance and Facilities Committee Meetings. We know more needs to be done, and the Board will be regularly and publicly monitoring these continued improvements at its committee meetings.

Finally, the Board deeply regrets that students, teachers and staff at Benjamin Franklin High School and Science Leadership Academy experienced the disruption of having to relocate early in the 2020 school year, and that Ben Franklin students were learning in a building under construction with circumstances as described in the report. The Board is committed to learning from the experience and taking steps to avoid similar mistakes in the future.

Board members greatly appreciate the work of everyone in our school communities who endeavors to improve public education in the City of Philadelphia and to help our students achieve their greatest potential.

Respectfully,

A handwritten signature in cursive script, reading "Joyce S. Wilkerson".

Joyce S. Wilkerson, Board President



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Executive Summary

A series of critical missteps across the planning, design, and construction phases of this project culminated in the ultimate closure of the merged Benjamin Franklin/Science Leadership Academy campus in the Fall of 2019 and marred what should have been a stellar achievement for the School District of Philadelphia. The failures most deeply affected the students, teachers, and staff of the Benjamin Franklin High School and Science Leadership Academy (“SLA”) communities. The District failed, at multiple junctures, to appreciate these missteps, heed concerns about the conditions created at the outset and during the construction, and to plan for a contingency in the event that the project could not be completed on time. This project was too ambitious for the allotted time and initial budget of \$10 million. There were several conditions created, some before construction had even begun, that the District found itself ill-equipped to deal with, thus exposing students, staff, and contractors to deplorable conditions while ultimately increasing the cost of the project to over \$50 million.

The series of events that undermined this project began with the decision of the School Reform Commission (“SRC”) to terminate the lease for SLA’s existing Arch Street location. In a response to the fiscal crisis that had recently decimated the District, school administration and the SRC sought to terminate private lease agreements and move several schools into District-owned properties. The SLA lease was annually one of the District’s most expensive amongst all of its buildings. Although the lease did not expire until 2018, the building management company required the District to express its intent to renew the lease in 2017. The building management company presented the District with terms for a two-year extension, but the District ultimately sought and agreed to a one-year lease which terminated on July 31, 2019.

The effect of the lease decision reverberated throughout the project. The single year lease extension obtained for SLA essentially attached a non-negotiable deadline to the schedule. Because SLA’s lease expired so closely to the planned completion date for the work, practically any significant delays – and there would be several on the project – meant that the school would have no place to return to for the 2019-2020 school year.

A common theme throughout this investigation was that this particular project was seemingly the exception to so many rules the District had typically followed in the past for construction work. The design and construction phases were severely compressed from the traditional amount of time District staff would normally allow to complete a project of this size. Conversely, the assembly of the Request for Proposals for design services moved faster than other projects of comparable size and expense. The Construction Unit typically determined the time required to complete a project, but, in this case, the schedule was largely predetermined for them. Significant changes to the original scope of work were approved without extending the time to complete them. When work began on the site, the effects quickly became obvious. Contractors were constantly seeking clarification interpreting design documents, it was necessary to complete additional environmental work, and planned work moved slower than anticipated for reasons, in certain instances, totally beyond the contractors’ control. Because the project was forcibly operating on a schedule with almost zero margin for error, it became virtually impossible to recover from these setbacks.

This investigation made clear that the planned scope of work for the project in a building occupied with students and staff members proved incompatible with the narrow timeline set for the project. The project’s initial scope grew progressively larger as both the design and construction phases progressed. Despite the litany of additional work that got included in the project, no additional time

was added to the overall project length. Instead, the project maintained a singular focus on completing a tremendous amount of work in an incredibly short period of time with no contingency in place. Essentially, the District had no “Plan B.”

Alarm bells were sounded by many witnesses before and during the work on this project. Nevertheless, the warnings went largely unheard or unappreciated. There was no other alternative than getting the job done on time. Several project design decisions were made over the concerns of the District’s design and construction staff with apparently little regard for the staff’s expertise, or the project’s most precious commodity: time. Several of these decisions, even standing alone, risked compromising the timeline even before any substantive work had begun at the site. The decision to relocate the cafeteria from its existing location on the 6th floor to the 1st floor of the building was particularly damaging to the short timeline. In addition to an obvious financial impact, the decision generated a tremendous amount of additional work that would affect the entire building. The move also came with an additional complication because large portions of the work could not begin until the close of the 2018-2019 school year, given the existing cafeteria served the Ben Franklin community every day.

The aggressive schedule, coupled with extraordinarily complex design and construction work, demanded an adequate contingency plan. The lack of any plan beyond finishing all of the work on the project on time left the schools in incomplete and often dangerous spaces, and forced the District into a frenzied effort to relocate to new locations while construction and environmental work was completed. These difficulties were largely self-inflicted by the District. The District undertook a signature, first-of-its-kind project, with no safety net in case anything went wrong.

During the construction itself, witnesses reported protracted health difficulties or illnesses that they attributed to conditions inside the space. On one particularly harrowing day in the Spring of 2019, at least four staff members fell ill and two of them were taken to hospitals by ambulance. The academic impact was no less substantial. Construction conditions such as noise, dust, and debris frequently disrupted school days as well as critically important standardized testing events. Teachers were forced to alter lesson plans because of incomplete spaces and overall conditions inside the buildings.

The Benjamin Franklin High School community endured an intolerable experience for the 2018-2019 school year and performed commendably in managing that situation. Teachers, students, and staff were left in an environment inundated with noise, frequently soiled with dust and construction debris, and were then asked to teach or learn in that same environment. So many of the Ben Franklin staff members the Office spoke to embody the very best attributes the District hopes to find in its teachers and staff members. In multiple interviews with the Ben Franklin community a familiar and moving theme developed. The staff felt personally responsible for the care and welfare of their students because so many students experience incredibly difficult home lives and other challenges before they even come to school. The teachers and staff consistently stressed that the academic setting should have, at the very least, been a respite from those environments and an avenue to achieve an education and better life.

The Principal of Benjamin Franklin High School remained a tireless advocate for the Ben Franklin community throughout the project. Over the course of the 2018-2019 school year and beyond, the Principal was forced to manage a school environment that drew large portions of her time away from her primary goals of educating students in a safe and secure environment. She constantly raised serious concerns that she or her staff had about the state of the building, and often met with a delayed or unsatisfactory response from the District. By the start of the 2019-2020 school year, and facing what appeared to be another year of active construction in her school, the frustration she

expressed in written communication to District administrators and staff about the state of the building and the repeated failures to address her concerns, justifiably, was almost palpable.

The District staff interviewed in the course of this investigation cooperated fully with this Office. They spoke candidly about the project and acknowledged deficiencies in certain stages of the project. At some points, recollections were credibly limited given the passage of time, and the inquiries related, at times, to events or decisions that took place several years prior. The staff admitted that the project had not been a success, but also sought to use the project as a learning experience for other construction projects moving forward. To the credit of the District, some changes have, in fact, already been implemented.

Many of the difficulties and problems during the project were symptomatic of larger problems associated with renovating and updating the District's aging physical infrastructure. The challenge to address these issues is significant. It will require regular and substantial streams of financial support, but it will most critically require dedicated and qualified personnel invested in correcting the issues, because it will take so much time to complete. Investigators spoke with many witnesses who could easily depart District employment for the private sector for potentially lucrative pay increases, and a considerably less stressful work environment with adequate resources at their disposal. However, those same witnesses also expressed a commitment to the children of the District, and a desire to make a real difference in their work. Too often though, that commendable dedication was greeted by the District with a lack of financial support, resources, adequate compensation, and fulfillment of past promises to make those jobs easier to do.

Moving forward, a failure by the District to re-orient itself and commit to retaining employees with that type of dedication will have catastrophic long-term consequences. The consultant-based patchwork the District frequently relies on for so many positions has short-term financial savings, but it does not benefit the District's long-term welfare. Many of the District employees in key roles the OIG spoke to had worked for the District for decades and are close to their retirement eligibility. When they choose to leave the District decades of institutional knowledge that cannot be meaningfully replaced will leave with them, and the District lacks an available repository where that information can be preserved. Many times, positions remain vacant because there is no candidate to assume critical key roles. The window to address this issue is shrinking, and the District cannot afford to ignore the importance of resolution of this issue.

The difficulties on this project tarnished what would have otherwise been a flagship achievement for the District. Other school communities and the public will understandably point to this project as a cautionary tale if another co-location is proposed in the future. The District will need to demonstrate that it has learned from the failures on this project with actions instead of words.

I. Overview

A. Office of the Inspector General Investigation

The Office of the Inspector General (“OIG”) opened a formal investigation into the Major Renovation Project at Benjamin Franklin High School and Science Leadership Academy on October 10, 2019 following the closure of the campus due to reported high levels of asbestos found in separate areas of the building after school had started for the 2019-2020 academic year.

The OIG is an operationally independent office within the School District of Philadelphia (“District” or “the District”), which reports directly to the Board of Education. “The mission of the OIG is to promote integrity within the District, and to assist the District and the Board of Education in ensuring oversight of the use of taxpayer funds by establishing and implementing mechanisms for reporting, investigating, making recommendations regarding, and resolving instances or patterns of improper conduct related to the operation of the District.” The Office similarly has oversight authority over “entities receiving funds from the District, and those who transact business with or provide services to the District, or use funds supplied by the District.” The Office “is responsible for conducting independent investigations into referrals and complaints concerning corruption, fraud, criminal activity, waste, abuse, [and] mismanagement. ...”

Given the intense public scrutiny surrounding the eventual closure of the campuses, it was decided that this report would be released publicly. The Board of Education has frequently discussed the eventual release of this report, and believes it is critical for both the Board and the public to have so important issues can be identified and corrected by the District. Following the drafting of this report, parties were given an opportunity to review those portions where they were referenced as part of the Office’s factual review process. Any response or objections they have raised are included with this report as attachments.

The Office conducted a lengthy review of the project to co-locate Ben Franklin High School and SLA into a single building. Investigators spoke to dozens of witnesses from the schools themselves, contractors, and various District personnel involved with or related to the work that went on during the renovation. The OIG requested and reviewed several hundred internal District documents associated with the project, and reviewed thousands of internal electronic communications. The review was limited in some respects by employees who are no longer employed with the District or retired, and those no longer employed by the District that declined to be interviewed.

B. Outline of the Report

The report below has been divided into a total of four primary sections. The first section provides an overview of the District’s Operations Division, specifically the Office of Capital Programs. The second section provides an overview of the major renovation project at Ben Franklin/SLA and covers areas like the timeline for the project, various approvals/awards, and the planned scheduling of different phases of the project. The third section outlines the findings uncovered by the OIG’s investigation. The final section provides a series of policy recommendations and procedural changes the Office feels are necessary for the District to make in order to prevent costly missteps in the future, and strengthen the Operations Division.

II. Operations Division – Office of Capital Programs

The Operations Division covers a wide range of areas within the District, but only the area most directly involved with the renovation project, the Office of Capital Programs, was reviewed in detail for the investigation. Specifically, the OIG focused on the Construction, Environmental Management & Services (“OEMS”), Contracts Management, and Design divisions of Capital Programs.

The Office of Capital Programs “identif[ies] and support[s] investments in the buildings that the students of Philadelphia learn in. This can include construction of new buildings, renovating existing facilities, erecting additions and converting existing facilities, erecting additions and converting existing facilities to accommodate educational program change, and improving existing facility sites.”

A. Construction Unit

The Construction Unit of the Office of Capital Programs “implements the School District’s capital plan for new construction and renovation of existing properties. The team works closely with the Design Unit and contractors ...”

The unit is led by the Construction Manager who held the position over the entirety of the construction period of the project. A Construction Coordinator, reports directly to the Construction Manager. For the Ben Franklin/SLA Renovation Project, the Construction Coordinator served as the Construction Project Manager. The unit has a total of eight Construction Project Managers that are a combination of District employees and consultants retained from outside companies. The Construction Manager and those Project Managers have three Assistant Project Managers that similarly are a combination of District employees and outside consultants that report to them. Each Project Manager has at least one Construction Inspector that also reports to them.

B. Office of Environmental Management & Services

The Office of Environmental Management and Services “provides environmental regulatory compliance services for all departments of the School District.” While OEMS has a litany of responsibilities, this investigation focused primarily on OEMS’ responsibilities to “[design] and [monitor] environmental abatement and remediation projects, ...[administer] the School District’s asbestos management program in compliance with the US Environmental Protection Agency’s Asbestos Hazard Emergency Response Act [AHERA], ... and [conduct] Indoor Environmental Quality assessments. ...”

Two separate Directors led the OEMS over the life of the project. One currently occupies a different position in the District, and the other recently left District employment. The office has a single AHERA Manager, and two AHERA Program Planners responsible for scheduling and monitoring the 6-month and 3-year AHERA inspections completed by outside environmental firms retained by the District for all its buildings. Any environmental work that develops as a result of the AHERA inspections is similarly logged by the AHERA Manager.

The District has its own asbestos abatement team, the “A-Team,” that handles more minor incidences in District buildings. That team is led by an Asbestos Abatement Supervisor that is supported by two Asbestos Abatement Foremen. The Asbestos Abatement Supervisor position is

currently vacant as of this writing and is being filled on a rotating basis by the two current Asbestos Abatement Foremen. Fully staffed, there are a total of 14 Asbestos Workers, but two positions are currently vacant. The Office did not undertake a full review of the District's asbestos abatement team in the course of this investigation. Because of the scope of the environmental work at the Ben Franklin/SLA project, environmental firms retained by the general contractor for the project handled the work. The investigation largely stayed tailored to the work on the site and not abatement work throughout the District. The monitoring of the abatement work completed by the District abatement team is done by outside environmental companies contracted with the District.

C. Contracts Management

The Contract Management staff are "responsible for professional service requests for proposals, prequalification of prime contractors, estimating, constructability reviews, advertising and distribution of plans and specifications, bid openings and bid evaluations ...," and related work. The Contracts Management personnel also "prepare contract award [Board] resolutions, contract documents, and evaluat[e] and resol[ve] change order requests and construction claims."

The Contracts Manager leads this department, and has an Assistant Contracts Manager supporting him. The division has a total of four consultant Estimators retained from outside companies, an Analyst/Programmer, and a Contracts Clerk.

D. Design Unit

The Design Unit includes "a team comprised [of] architects, electrical, mechanical and structural engineers. [They] provide architectural and engineering design services to all departments of the School District."

The Design Unit is headed by the Design Manager. She has a combination of District and consultant architects and project managers that report to her. As of this writing, there are also multiple vacancies in the current Design structure.

III. Major Renovation Project – Ben Franklin/SLA

A. Co-Location

Discussions to re-locate Science Leadership Academy appear to have begun as early as March 2016 when members of the School Reform Commission ("SRC") met with stakeholders from SLA to discuss relocation. Throughout March and April 2017, the District and the property management company negotiated on a series of proposed terms, before the company set a final offer of a 2-year extension to the lease, an extension that would keep SLA in the space until July 31, 2020. The District sought to renegotiate and eventually obtained a 1-year extension.

During the May 25, 2017 SRC meeting, the Commissioners voted to extend SLA's lease term from July 31, 2018 until July 31, 2019. The resolution submitted to the SRC noted that the "...School District is currently exploring appropriate alternative locations for SLA that will offer the students the benefits they receive at their current location while offering long-term operating cost savings to the School District. ..." It further stated that the "...extension allows the District time to consider permanent options for the physical location of the school and colocation may be considered as one

such option.” The resolution explained that the “...[t]he annual expense for the [lease, \$1.4-\$1.5 million,] is the prime reason why SLA is one of the most expensive schools to operate in the School District[.]” the District explained that extending the lease “will allow the School District administration time to decide on another location and execute this important cost-saving move.”

While the resolution itself gave the impression that a final decision had not yet been made about where to re-locate or co-locate SLA, or what school they might merge with, email communications between District administrators made clear the intention was to co-locate SLA in Ben Franklin High School’s existing building. In a series of emails exchanged between May 2, 2017 and May 3, 2017 District administrators began plans to tell the Principal of SLA about the intention to renew SLA’s lease until July 2019, and to re-locate the SLA campus to co-locate with Ben Franklin. This decision would affect the eventual timeline put in place for the renovation at Ben Franklin.

B. Timeline for the Renovation

Although a project begins in the Design Unit, the Construction Unit traditionally determines the allotted time for construction. On June 18, 2017, the Chief Operations Officer at the time contacted the then Director of Capital Programs (this Director would later fill the Chief Operations Officer position) and the Deputy Chief Operating Officer, and asked them to “provide a high level milestone schedule for Ben Franklin HS and possible co-location of SLA.” On June 21, 2017, the Design Manager, emailed both the Director of Capital Programs and the Construction Manager a tentative schedule for design and construction, the duration of which was 14 months. The Director of Capital Programs forwarded the proposed schedule to the COO, who directed it to the Chief of Staff. The proposed schedule is reproduced below.

Ben Franklin - SLA Consolidation and Major Renovation			
Design and Construction Schedule			
Task	Start Date	End Date	Duration
RFP Issued	Thursday, June 22, 2017	Thursday, July 6, 2017	2 Weeks
Walk-Through	Thursday, July 6, 2017	Friday, July 14, 2017	1 Day
Proposal Due	Friday, July 14, 2017	Friday, July 21, 2017	1 Day
Interviews	Friday, July 21, 2017	Thursday, July 27, 2017	1 Day
Firm Selection	Thursday, July 27, 2017	Thursday, August 3, 2017	1 Week
SRC Resolution	Thursday, August 3, 2017	Thursday, August 17, 2017	2 Weeks
Design NTP	Thursday, August 17, 2017	Friday, August 18, 2017	1 Day
Schematic Design	Friday, August 18, 2017	Friday, October 13, 2017	8 weeks
Schematic Review	Friday, October 13, 2017	Friday, October 27, 2017	2 Weeks
Design Development	Friday, October 27, 2017	Friday, January 5, 2018	10 Weeks
DD Review	Friday, January 5, 2018	Friday, January 19, 2018	2 Weeks
Construction Documents	Friday, January 19, 2018	Friday, March 16, 2018	8 Weeks
CD Review	Friday, March 16, 2018	Friday, March 30, 2018	2 Weeks
Bid Documents	Friday, March 30, 2018	Friday, April 27, 2018	4 Weeks

Advertisement	Friday, April 27, 2018	Friday, May 18, 2018	3 Weeks
Bid Date	Friday, May 18, 2018	Tuesday, June 19, 2018	32 Days
SRC Resolution	Tuesday, June 19, 2018	June 2018	6+ Weeks
Construction	Friday, June 1, 2018	Friday, August 16, 2019	14 Months

C. Design Phase

1. Professional Services Contract vs. Construction Contract

The District administers professional services contracts (e.g. architecture and design, environmental services) differently than it handles contracts for construction services. As discussed more fully below, all contractors wishing to bid and perform construction work for the District must complete a prequalification application, and be approved through the Office of Capital Programs Prime Contractor Prequalification Program. Once approved, contractors are then permitted to bid on work consistent with their “Class Rating” (i.e. the value of the project). The same process is not in place for professional services contracts. The process had previously been in place, but was discontinued.

2. Request for Proposals

On July 7, 2017, an initial draft Request for Proposals (“RFP”) for professional architectural and design services was sent to the Design Manager and former Director of Capital Programs/COO. The draft RFP included “all systems/components from the [Facilities Condition Assessment] that were identified as in poor condition and/or requiring replacement within five years” but the architect alerted them that they would need to “further cull items from this list to reflect the budget.” On July 13, 2017, an updated draft RFP was sent to the former Director/COO, Design Manager and others after the architect had received the work order report history for the building and made necessary amendments to the initial draft. That same day, the former Director/COO forwarded a draft copy of the RFP to the Assistant Superintendent for SLA, the Chief of Schools, and Chief of Staff for review and comment. A representative from Ben Franklin or its Assistant Superintendent were not included in the email. The former Director/COO sought their comments “by noon tomorrow[, July 14, 2017]” and acknowledged “it’s quick but to make August we gotta [sic] post tomorrow.” On July 14, 2017, the architect sent the RFP to be posted on the District’s website. Later that same day, the former Director/COO inquired of the responsible parties whether it had been posted. It ultimately did not get posted until Monday, July 17, 2017.

A witness explained to the Office that the RFP was somewhat less detailed than usual because the school communities were going to have more input about the design specifics as two school campuses were being merged. Because that process could have potentially been difficult, the District design staff wanted “buy in” from the school communities by allowing them significant input in how the building would look.

The RFP called for a mandatory walkthrough for interested parties on July 21, 2017. Any questions from interested parties regarding aspects of the RFP needed to be submitted by July 24, 2017. A total of 19 firms/companies walked the space, and a total of 33 questions were answered in an Addendum issued by the District. The proposals were originally due on July 31, 2017, but were pushed back until August 2, 2017 so the former Director of Capital Programs/COO was able to

participate in the review of the presentations. The design presentations for the selected finalists were pushed back until August 10, 2017 and August 11, 2017 in response.

After a RFP was released, and the District received the design proposals, they were subject to technical review. The process generally involves 3-5 people that would complete the review utilizing a technical evaluation rubric. The proposals were assessed for the categories referenced in the RFP (“Tab 1 – Project Experience, Tab 2 – Project Organization and Personnel Qualifications, Tab 3 – Project Approach, Tab 4 – Project Schedule and Plan”). There are usually a base set of criteria that remains the same, and then supplemental categories specific to the project are added according to a witness the Office spoke to during the investigation. The panels that complete the evaluations usually include an Architect, the designated Construction Project Manager, School Facilities Planner, and an Estimator. The former Director of Capital Programs/COO would sign off or approve of the selected panel members.

On August 2, 2017, a total of eight responses to the RFP were received. The proposal itself is usually a stack of printed materials from each of the submitting firms. Typically 1-2 weeks elapses from receipt of the proposals to complete the technical review. The District generally selects three finalists but there are some exceptions (e.g. if 3rd place and 4th were only separated by a single point) where an additional finalist might be added.

Following a review of the technical evaluation rubrics, three finalists, Stantec Architecture & Engineering, LLC (“Stantec”), Kimmel Bogrette, and Kelly/Maiello, were selected to present their designs to the District on August 10, 2017. The District typically provides an agenda and focus areas for the presenters to address during their presentations, and each firm is given approximately 60-90 minutes to present. If one of the initial technical reviewers cannot attend the presentation and has to send someone in their place, the score does not count for the presentation portion. Non-voting participants are also permitted to attend the presentations and ask questions. Following the design presentations, the panel was unanimous in their selection of Stantec.

3. Environmental Scope

Because the Ben Franklin building was originally constructed in 1958, this project involved environmental work. The Design Unit architect first provides the scope of work to the OEMS. At that point, the OEMS sends a consultant project inspector to the site to begin the evaluation/inspection of the site based on what areas will be worked on or renovated. This process takes place throughout the development of the plans (i.e. inspected at 30% plans complete, 60%, 100%). When the full drawings are complete, the consultant produces the Asbestos Inspection Report (“AIR”) that is included with the RFP and other bid materials. The AIR is what the contractors are able to use to know the locations of asbestos containing materials within the building, both those set for removal, and those that need to be avoided during the work. The office also generates the environmental specifications for the work at the site. The specifications include the various requirements that must be complied with for the variety of environmental work that might be completed at the site, as well as the overall condition of the site itself (e.g. dust monitoring, air quality). The office then finalizes the cost of any environmental work that would need to be completed in the project, and provides that estimate to Capital Programs for budgeting purposes.

4. Award

On September 14, 2017, the SRC approved an initial award of \$1,474,000 to Stantec based on what was then an estimated construction budget of \$20 million. After the design phase was ultimately completed, and certain changes were made to the scope of work, the project was publicly advertised and bid for construction contractors the overall budget quickly grew to \$33 million. Pursuant to a clause in Stantec's contract, their design fee was set based on the overall construction value. On November 15, 2018, the Board of Education, in accordance with that contract provision, awarded Stantec an additional \$647,391.44 in compensation. That brought Stantec's total compensation for the project to \$2,121,392. This project constituted Stantec's first major renovation work with the District, but they had completed other school-based projects, and the firm had a school design project group within its Philadelphia office.

5. Construction Documents/Plans

From October 2017 to November 2017, Stantec held a series of "Student Design Charrettes" and "Campus Planning Team Meetings" at their Philadelphia offices. Student and staff representatives from each school attended and provided input into their desires for the designs of each of their schools. On March 13, 2018, Stantec made their design presentation to the Ben Franklin faculty at their school, and on March 14, 2018 they gave their design presentation to the SLA faculty at their campus.

Once Stantec generated the plans for the site, the blueprints were reviewed for accuracy in-house at the District. The drawings are typically submitted at 25%, 60%, 90%, and 100% completion. When the documents are received by the District the Design Project Manager for the project gives them to the relevant parties implicated by the planned layout/work (e.g. IT, Facilities, Maintenance) to review. The plans are reviewed to make sure 1) the planned scope is included, and 2) the budget for the project is adhered to in the anticipated design. While individual architects might review the plans in finer detail than one another, investigators were told that "industry standard" was to conduct a more broad level review (e.g. ensure all classrooms have windows and doors on the plans, not a review of the specific hardware planned on the same windows and doors). A witness told the Office that Stantec or the selected architect is responsible for the more detailed review of the plans.

D. Construction Work

1. Prequalification Process

The District "requires firms that wish to be considered for contract work with the [School District be] prequalified ..." before they are able to bid on a District construction project. Firms are able to apply for the prequalification designation at any time. The form advises applicants that the review of the application "will be completed and the applicant notified in writing of the results within seven (7) days of receipt of the complete application" (emphasis in original). The application explains that the District will take into consideration: "[c]ompleteness and accuracy of [the] application, [i]ntegrity, [c]ompany profile, [e]xperience and capabilities, [and] [f]inancial stability and viability ..."

For a successful application, the Contracts Unit assigns a "size classification rating" by utilizing a formula totaling the firms "project experience, bonding capacity, and gross receipts." The firms are assigned a point value, delineated by monetary value, for each of the categories and their combined

total dictates their “Overall Class Rating.” A “Class 1” rating permits a firm to bid on projects valued at over \$5 million, a “Class 2” rating involves projects valued between \$200,000 and \$5 million, and a “Class 3” rating involves projects valued under \$200,000. The firm’s pre-qualification status is valid for a period of two years. In limited circumstances, non-prequalified contractors, “at the sole discretion of the [District], may be permitted to bid on [e]mergency [p]rojects” for the District. Otherwise, “only those firms holding a valid classification issued by the [District]” are eligible to bid on capital project work. In the event a firm is denied the prequalification designation, the applicant is able to appeal the District’s determination, and the parameters are set forth in detail in the application.

2. Separations Act & Separate Prime Contractors

The District is subject to a series of laws that require both the use of separate prime contractors and the acceptance of the low bid submitted for a construction project. The law commonly known as Pennsylvania’s Separations Act (“Separations Act”) dates back more than 100 years. The Separations Act requires that the owner of a public building “prepare separate specifications for the plumbing, heating, ventilating, and electrical work” in advance of any “construction and alteration of any building.” It likewise requires that the owner “receive separate bids [from each of the] branches of work, and to award the contract ... to the lowest responsible bidder...” from each of the trades. “Written or telephonic price quotations from at least three qualified and responsible contractors” are required and the records of the same must be “retained for a period of three years.”

3. School District of Philadelphia – Philadelphia Building Trades Agreement

Beginning June 7, 2006, the School District of Philadelphia and the Philadelphia Building and Construction Trades Council entered into a Partnership Agreement (“Agreement” or “the Agreement”) It stipulated that covered work would be “contracted exclusively to [c]ontractors who agree to execute” the Agreement. The Agreement covers work “where the entire cost, value or amount of such work, including materials, exceed[s] ... \$10,000.” In contrast, the City of Philadelphia has a similar agreement, but the price limit is \$5 million dollars and the City is actively working to lift that ceiling to \$10 million dollars. The District’s Agreement excludes maintenance or renovation work performed by District employees on District buildings totaling less than “\$50,000 in total aggregate value, including materials.”

When the Agreement was initially executed, it became effective for 4 years. Following the initial 4-year commitment, it has renewed for 1-year periods. The Agreement renews in perpetuity “until one party notifies the other at least [90] days prior to [the renewal date] of their desire to modify or terminate...” the pact. Since it was originally signed, the Agreement has continued to be renewed.

4. Background Clearances & Identification

All employees of contractors working on District properties while children are present at the site are required to complete the “Pennsylvania Child Abuse History Clearance” (CY 113 Form) and the “Pennsylvania State Police Request for Criminal Record Check” (SP-4-164). All employees of contractors working on District property while children are present are also required to submit a current report of the “Federal Bureau of Investigation (FBI) Federal Criminal History Records” and an FBI fingerprint-based background check. The contractor has an obligation to inform all of its subcontractors that the same record checks must be submitted for each of the subcontractors who

will be performing work on the site while children are present. These materials must be either copied and returned to the District, or delivered to the District. In the event the District requests these materials from a contractor or subcontractor for any on-site employee, and they are unable to produce the forms and reports, the employee must leave the project site immediately. The employee may return to the site once the appropriate forms and records have been obtained and submitted to the District or its agents.

The construction contracts for the District are covered by the Public Works Employment Verification Act (43 P.S. 167.1-167.11). The Act “requires all Contractors and Subcontractors performing work on School District public works projects... to utilize the Federal Government’s E-Verify system to ensure that all employees performing work on School District public works projects are authorized to work in the United States.” All contractors and subcontractors are thus required to “submit a completed Public Works Employment Verification Form to the School District to ensure compliance with the Public Works Employment Verification Act.” This requirement extends throughout the contractor’s or subcontractor’s time on the project and applies “for new employees hired throughout the duration of the [District project].”

Whenever any construction employee will have access to a District job site they must “wear the identification badge required by the [District] on their outer garment.” Even personnel simply visiting the site “must be escorted by an individual with an identification badge.” It is the responsibility of the contractor to photograph their employees and to laminate the badge.

5. General, Mechanical, Plumbing, and Electrical Construction Bids

Bids were publicly advertised for this project over three days in May 2018 in local newspapers and the project was posted on the Capital Programs website. There were two pre-bid walkthroughs of the spaces scheduled before potential bids were due. Any questions the prospective bidders had about either the drawings or the project were required to be submitted in writing to both Stantec and the School District Design Manager.

The bids for the project were originally due and set to be opened on Thursday, June 14, 2018. The low bidder for each prime contract is required to attend a “Post-Bid Conference” or “De-Scope Meeting” to review and confirm its bid. That meeting is typically held at 9:00am on the day after the bids are opened, but the exact time is confirmed at the bid opening. In an addendum dated June 7, 2018, the District issued a 115-page supplement to the original bid documents. That addendum was not posted to the Capital Programs website and distributed to parties that picked up bid packets until June 11, 2018. The addendum also indicated that the bid opening had been postponed until June 15, 2018 at 2:00pm.

On June 15, 2018, the bids for the prime contractors were opened. After a review of the bids the “lowest responsible bidder” for the general construction contract was Smith Construction, Inc. (\$15,378,000).” The “lowest responsible bidder” for the mechanical contract was PT Mechanical Group, LLC (\$3,468,256.00).” The “lowest responsible bidder” for the plumbing contract was Dolan Mechanical, Inc. (\$1,214,000).” The bids for the electrical work were more than double the advertised budget so those bids were discarded and the work had to be re-bid.

On June 24, 2018 and again on June 26, 2018 the District re-advertised bids for the electrical contract in local newspapers and the project was again posted on the Capital Programs website. Two

walkthroughs were held on June 26, 2018 and June 27, 2018 for prospective bidders. The bids were opened on July 11, 2018 and the “lowest responsible bidder” for the electrical contract was McGoldrick Electric, Inc. (\$9,858,000).

6. De-Scope Meetings

The post-bid/de-scope conferences for Smith Construction, PT Mechanical, and Dolan Mechanical were held on June 15, 2018 and June 18, 2018 and attended by representatives from each of the firms. Each of the firm representatives that attended the meeting signed the “Post-Bid Scope Review Conference” worksheet and interrogatories.

The post-bid/de-scope conference for McGoldrick Electric was held on July 12, 2018. A representative from the company attended the meeting and signed the “Post-Bid Scope Review Conference” worksheet and interrogatories.

7. Awards

On June 21, 2018, the SRC formally awarded the general, mechanical, and plumbing contracts to Smith Construction, PT Mechanical, and Dolan Mechanical. On August 16, 2018, the Board awarded the electrical contract to McGoldrick Electric.

8. Notices to Proceed & Kick-Off Meetings

On July 19, 2018, the District sent formal “Notice to Proceed” letters to all of the prime contractors on the project. The letter sent to McGoldrick Electric did note that “[p]reparation [work] should begin immediately[,]” but that “[n]o work can be performed at the site until [they] have the signed contract” and the Board’s approval. On August 1, 2018, the Construction Coordinator/Project Manager held a construction “kick-off meeting” at Ben Franklin High School with the various prime contractors, District staff and the Ben Franklin Principal. At the meeting the intention was to discuss, amongst other topics, “[s]cope of [w]ork, [h]ours of [o]peration, [s]cheduling, ... [e]mployee ID/[s]ecurity, [s]afety, and [t]ime [c]ompletion.”

9. Construction Work

The project consisted of renovations and improvements of approximately 215,000 square feet of space at Ben Franklin High School. The work would “facilitate the colocation of two unique but equal programs each with their own identities, including building entries, cafeterias, administration, and educational spaces, into one location.” The design of the space called for both schools to share the gymnasium, auditorium, and kitchen. The planning called for the building to be occupied while construction was ongoing during the 2018-2019 academic year, and certain Ben Franklin staff members who were 12-month employees would be present for the entirety of construction.

Work at the site was scheduled to be completed in a total of 8 phases. The phasing schedule was originally set out in some detail in the “General Specifications” portion of the project documents. That schedule was subsequently modified when “Addendum No. 004” was issued on June 29, 2018. The Addendum ultimately made changes to three phases of the project: Phase 2 (Ben Franklin Office and Culinary Classroom), Phase 4 (First Floor Cafeteria), and Phase 6 (6th Floor East). The remaining phases of the project were not altered.

In their submissions to the SRC and Board, the District explained that the “goals of the major renovations [were] as follows:

[C]o-locate two high school programs in an equitable manner, provide a distinct point of entry and identity for each of the two programs while optimizing opportunities for collaboration, provide interior upgrades that fosters [sic] a collaborative student-centered learning environment and replace or improve building system [sic] that have exceeded their life expectancy.”

The exterior renovations included new roofing, and a new entrance on the Green Street side of the building for the SLA community to access the building. The heating and ventilation systems along with elevator refurbishment were part of infrastructure upgrades of the project.

The interior improvements included “relocating the cafeteria and kitchen from the sixth to the first floor to help create open and inviting entry points for each school.” The existing Ben Franklin administrative suite was relocated from the first to second floor where it would join administrative spaces for SLA. The classrooms and science laboratories on the third through fifth floors were set to be upgraded and re-designed. The sixth floor was designed to house the CTE spaces for SLA, and the JROTC of Ben Franklin.

10. Environmental Work & Monitoring

The project called for a substantial amount of environmental work and monitoring to be completed. The bulk of that work involved asbestos abatement throughout the phases of the project. The general contractor was “responsible for all areas of the project utilizing the services of a licensed and qualified asbestos abatement subcontractor.” The project was also governed more broadly by the District environmental compliance requirements for contractors. Prior to work beginning at the site “a mandatory pre-commencement meeting” must be held and “attended by all prime contractors to discuss the Asbestos Inspection Report, Asbestos Abatement Technical Specification, and the [District’s] environmental compliance policies...”

The work associated with asbestos abatement for the project was set out in an “Abatement Technical Specification” that was compiled in April 2018. The scope of work included the removal, transportation, and disposal of “all asbestos-containing materials included in the City of Philadelphia Asbestos Inspection Report [AIR] to facilitate building improvement project activities.” The specification for the project re-incorporated the items flagged as containing asbestos and designated for removal and included things like “[t]hermal system insulation ([p]ipe [i]nsulation & [p]ipe-[f]itting [i]nsulation, [v]ibration [d]amper cloth, [u]ni-[v]entilator [i]nsulation), [and] [m]iscellaneous material ([f]loor [t]ile, [t]ransite)[.]”

There are a total of four categories for the removal of asbestos containing materials – Major, Minor, Small, and Incidental – and different requirements that govern each. The work across the length of the project involved each classification of removal work. The City of Philadelphia, via the Department of Public Health - Air Management Services, sets out detailed requirements for each category of removal work in its “Asbestos Control Regulation.” The contractor is required to “have a certified [Asbestos] [A]batement [S]upervisor present at all times while asbestos abatement work is in progress.” “For all major asbestos projects, an independent, certified [A]sbestos [P]roject [I]nspector

[must] be employed or retained by the building owner to monitor [the various stages of] the asbestos project ...”

Smith Construction utilized both Pepper Environmental Services, Inc. and Delta/BJDS, Inc. for the environmental work at the site over the life of the project. Those companies provided their own Asbestos Abatement Supervisor as the removal work was ongoing. The District utilized the services of Synertech, Inc. to serve as the Asbestos Project Inspector. Synertech was retained by the District to “provide asbestos abatement oversight and air monitoring during the removal of [a]sbestos [c]ontaining [m]aterials in locations throughout the [building].”

The Department of Public Health – Air Management Services (“Air Management Services”) issued the required permit for a Major Asbestos project to Pepper Environmental when work began at the site. The abatement took place over four main periods, all usually in advance of major construction occurring in a particular section of the building. Abatement work occurred between May-August 2018, October-November 2018, February-March 2019, and finally October 2019-present. The abatement work did not occur exclusively during those times as there were instances when contractors uncovered unforeseen asbestos materials once demolition began and walls were opened. As those incidental findings were made, the same environmental firms were dispatched to remove the materials, and the same monitoring/testing protocols were followed. The site was inspected a total of 27 different times between 2018 – 2019 by Air Management Services, and no violations were ever issued during any of the inspections. During each of the inspections all of the asbestos workers, managers, and inspectors had the required and up-to-date licenses/certifications.

IV. Findings

A. Co-Location

The decision to co-locate SLA with another school centered on the District’s desire to avoid the school’s expensive lease, which cost between \$1.4-\$1.5 million annually, but it meant that the District needed to find a location, develop a design, and renovate or build that new space in a short time.

The resolution submitted to the SRC in advance of the final extension of SLA’s lease in May 2017 noted that the “...School District is currently exploring appropriate alternative locations for SLA that will offer the students the benefits they receive at their current location while offering long-term operating cost savings to the School District. ...” It further stated that the “... extension allows the District time to consider permanent options for the physical location of the school and colocation may be considered as one such option.” The resolution explained that the “...[t]he annual expense for the [lease] is the prime reason why SLA is one of the most expensive schools to operate in the School District[.]” the District explained that extending the lease “will allow the School District administration time to decide on another location and execute this important cost-saving move.”

Ben Franklin was chosen to merge with another school largely because it had a significant amount of vacant space, its location, and lower enrollment levels. A number of witnesses that the OIG spoke to during the investigation either agreed that it was a worthwhile plan to use the significant amount of vacant space in Ben Franklin’s building, or acknowledged the amount of space made it a likely candidate to be selected. Although there were concerns from both school communities about merging the two schools, those fears were ultimately unwarranted.

B. Timeline

1. Reason for Timeline

Concerns were raised by the SRC, by the staff from each of the schools, District design and construction staff, and from contractors about the time available to complete all of the work. Nevertheless, the project repeatedly forged ahead, and a series of concerns were not heeded throughout the project on multiple levels. The District found itself under a compressed timeline as a result of the SRC's decision to extend the lease only one year, but it failed to appropriately narrow the scope of work to the timeframe they had available to complete the project. The District likewise failed to make any contingency plan for the schools if the work could not be completed as planned.

In March 2017, the property manager for SLA's Arch Street location contacted the District and advised that they needed to notify the firm of whether they expected to make a request to extend the lease set to expire July 31, 2018. Throughout March and April 2017, the District and the property management company negotiated on a series of proposed terms, before the company set a final offer of a 2-year extension to the lease, an extension that would keep SLA in the space until July 31, 2020. The lease extension was originally set for decision by the SRC at a May 18, 2017 meeting, but the item was tabled. Shortly thereafter, in a May 23, 2017 email, the representative for the company contacted the District to inquire about the SRC vote on the extension. The District COO at the time advised that the SRC "did not want to vote hoping that [the Superintendent] could speak directly to [the head of the property management group, and persuade him to consider] a one year extension for SLA rather than [a two] year [extension]." On May 24, 2017, the District COO contacted the representative that had been handling the lease negotiations and explained that, following a phone call between the Superintendent and the head of the property management group, the request for a one-year extension was "now reopened." On the morning of May 25, 2017, the day the SRC would vote on the extension of SLA's lease, the District COO at the time alerted SRC staff and Chief of Staff that she "heard from [the property management company]" and they "agreed to a one-year lease extension." The COO noted it was "the agreement we had asked for," and directed that the resolution language be amended "from [a] 2-year extension to a 1-year extension."

2. School Reform Commission/Board of Education Concerns

After some initial confusion about the actual length of the extension, SLA's lease was renewed from August 1, 2018 until July 31, 2019 at an annual rate of \$1,524,645. In advance of the SRC's vote on the award for architecture services, the de facto "start" of the project, the SRC commissioners had concerns about the timing of the project. In response to a letter from the SLA Home and School Association, discussed more fully below, the SRC reviewed a number of concerns that were raised in their letter. Importantly, the SRC sought to verify whether "we have contingency plans if the construction is not complete by July 31[,] 2019?"

3. School Community Concerns

Witnesses from the Ben Franklin community expressed concern about the short timeline for the project. The concerns largely centered on the scale of the scope of work compared to the window of time the District set for the work to be completed. A witness from Ben Franklin told investigators that when they learned the timing of the schedule "it felt ambitious." The witness noted that some of

the Ben Franklin staffers joked that they “spent longer than that remodeling their bathrooms at home.” Another witness told investigators “you can’t do a home kitchen renovation if people are eating in it every day.”

Some of the Ben Franklin staff who had field experience in engineering and construction prior to beginning teaching careers expressed concerns about demolition, environmental, and particular aspects of the work. The witnesses expressed concerns that varied from the planned “controlled demolition” to the amount of environmental work the project would likely involve. Another pointed to specific aspects of the work like elevator renovations as an area of concern. Collectively, those witnesses all had concerns about the overall project schedule as a whole not having enough time allotted for the work involved in the project.”

Witnesses connected with SLA also expressed similar concerns about the project timeline to investigators. A witness familiar with school construction said they “never believed” the work could be accomplished in the proposed project window. The witness explained that the project had “too many moving parts” and called for juggling too many tasks at once in order for it to be completed on time. Separate witnesses said the schedule for the work was “obviously seen as too short” amongst the SLA staff and the lease decision substantially impacted the project timeline.

The members of the SLA Home & School Association also expressed their concerns in a September 6, 2017 letter to the Superintendent and members of the School Reform Commission. Examined in hindsight, their concerns appear remarkably prescient. The letter asked several questions of the District and read, in part:

“... [W]hy is the District rushing to have the work completed by Summer 2019? Our board has members who are in the construction, engineering and architecture-related trades who are highly skeptical of any firms’ commitment to undertake this scope of work in this short a time with the Ben Franklin students still in the building. The RFP essentially calls for reworking both electrical and plumbing systems. The building was constructed in 1958 with periodic renovations, but is known to contain, at a minimum, asbestos and lead paint. Generally, abatement issues take far longer than any contractor ever believes. The RFP calls for the roof to be ripped down and replaced. While the building is certainly big enough to move the students from one area to another, what environment will that create for the Ben Franklin students to live in a demolition and construction zone for 18 months?
...

This appears to be a risk without any potential reward for the District. Why not allow the contractor an additional year to complete all necessary abatement and construction, allowing for a thoughtful discernment of the needs of the two student bodies rather than cramming everything into the next three months for design and development?

As of May 2017, prior to the SRC meeting, SLA had been told its lease would be extended to 2020. If that arrangement were revisited, that

would give ample time for construction to be completed and for the groups to move forward toward your stated goal of two high schools with one culture safely.”

In a September 10, 2017 letter, the Superintendent replied to the SLA Home & School Association, copied the Commissioners of the SRC, and responded to the questions the SLA Home & School raised. His letter read in part:

“... When SLA’s lease was extended in May 2017, the Resolution specifically committed the District to identifying a permanent location for SLA by SY2019-20. The Office of Capital Programs conducted a feasibility study for the renovation of the Ben Franklin High School building, including the co-location of another school in the building, and determined that an 18 month project schedule would be needed to complete the work given the ample swing space in the building. The firms that responded to the project design RFP all demonstrated how they would meet or improve upon the proposed project schedule. Confirmation of the project schedule will occur immediately after a design firm is engaged and the schedule will be revisited throughout the design and construction project. This is normal protocol for all capital projects.

The Office of Capital Programs (OCP) has successfully completed 27 major renovations/additions at occupied buildings with a combined construction value of \$273,349,196. As an example of a current project with similar scale/scope to a co-location project at Ben Franklin, OCP is managing the \$39 million Dobbins Major Renovation Project with three major and seven minor phases of construction. All phases are on schedule and the school is continuing to operate through construction. ...”

In fact, the District would fail to follow the “normal protocol[s]” the Superintendent referenced in the letter in several key respects. He was correct at the time of his letter that the District did have the 2019-2020 school year as the deadline for when SLA would need to be relocated, and that the District had conducted a feasibility study for the renovation of the Ben Franklin building. The feasibility study became largely meaningless after an architect was selected and finalized a design. Stantec was awarded the contract four days after the Superintendent’s letter. In addition, given the limited criteria the study examined, it is debatable whether it should have been used as a meaningful reference at all. The feasibility study simply addressed whether SLA could “fit” (e.g. taking 25 classrooms of SLA into the Ben Franklin space) into the Ben Franklin building. An email exchange between the Chief of Staff and former Director of Capital Programs/COO at the time the SRC was set to award contracts to the prime contractors on the project in June 2018, though focused on SRC members’ questions about the budget, plainly revealed the limitations:

“... The Spring 2017 estimate provided by Kimmel Borgrette [sic] [KB] **assumed that the renovations would be in place and that no movement of programs or spaces would occur.** The KB estimate **did not reflect Principal input given that a decision on approving**

a co-location was still pending. When a design firm was formally selected for this project, District staff worked with both school administrations on a layout for the building that would maintain the identities of each program while creating opportunities for shared interaction. **As a result, the approved final design includes major changes to the building layout. ...”** (emphasis added)

The email from the former Director of Capital Programs/COO makes clear that the feasibility study was done with a largely static renovation layout anticipated, and should not have been used as a meaningful base point even that early on. In that same June 2018 email between the Chief of Staff and former Director/COO, the former Director/COO made clear how much additional scope was added to the project by the time the contractors were set to be selected:

“... Staff informed the SRC of these changes- including the increase to the budget- at the Finance and Audit Committee meeting on February 26, 2018. We communicated that the estimated construction budget was \$25M. What took the project from \$10M to \$20M was the addition of the following scope:

Window Replacement (\$3M),
Mechanical Pipes replacement (\$3.5M),
Roof Replacement (\$1M),
Elevator Replacement (\$600K),
Electrical Wiring System Replacement (\$3M)

[F]or a total of \$11M.

The additional scope included the following:

Relocation of Cafeteria and Kitchen to the First Floor: \$1,400,000;
Accessible Entrance on Green Street: \$50,000;
Repair Gymnasium/Auditorium Roof: \$750,000;
Replace additional classroom doors and hardware in six-story building: \$193,000;
Electrical for new hydration stations: \$50,000;
Air Conditioning (Window AC units and infrastructure): \$760,000;
Refinish Gymnasium Floor and limited replacement of bleachers: \$170,000;
Replace all Toilet Room partitions and accessories: \$402,000;
Hallway Dividing walls: \$120,000;
Refinish Culinary Suite: \$100,000;
BFHS cafe and student exhibit space: \$200,000;
Security System: \$130,000;
Fire Alarm Replacement: \$180,000;
Outdoor plaza on Broad Street: \$250,000.

Total: \$4.5 M.” (emphasis added)

Despite the litany of additional work, several aspects will be discussed in more detail below as key drivers of delay, no additional time was added to the overall project length. Although the expiration of SLA's lease was a hard deadline by this point, no attempts were made to anticipate that the SLA campus might not be completed in time. Despite the volume of additional scope, no discussions were had to house the Ben Franklin community in a temporary location.

The Superintendent cited the renovation at The Murrell Dobbins Career and Technical High School as a similar project. He pointed to the renovation at Dobbins as an "example of a current project with similar scale/scope to a co-location project at Ben Franklin." In fact, the renovation project at Dobbins allotted nearly double the time for completion – almost exactly 24 months – as the renovation at Ben Franklin. The Superintendent similarly explained to the SLA Home & School members that the Dobbins project consisted of "three major, and seven minor phases of construction." Work at the Ben Franklin/SLA project was scheduled to be completed in a total of 8 phases. When asked about the major/minor phase breakdown distinction during his interview, the Construction Coordinator said he would consider "all phases" of the project as major phases because of either the amount of work involved or the time allotted in the schedule to complete the work.

4. District Staff Concerns

Members of the District were similarly concerned at the compressed timeline for the project. A few common themes developed across the interviews. Many knew immediately the project schedule compared against the amount of work was too strict. The witnesses also critiqued the decision to attempt the planned level of work in an occupied space on the same timeline as unrealistic.

A witness told investigators they knew right away that the timeline for the project was unrealistic. When the witness reviewed the designed schedule for the project they saw there was little, if any, margin for error to complete the project by the deadline. The witness explained that they inquired why the schedule was so rigid, and they were told "[The former Director of Capital Programs/COO] wants this done." The witness told the Office that they "couldn't understand how the District was letting kids go to school there" while the work was going on, stressing that "it's a construction site; it's dangerous."

Another stressed that there was "just-so-much work" (emphasis by the witness) called for in the project, it was a "little too ambitious," and "too difficult to do occupied." Asked by investigators why the schedule was so firmly set, the witness said "someone higher up the food chain wanted SLA kids in this year," and noted that having students/staff in the building was like working and "your hands are tied behind your back."

A third witness also took issue with the project timeline. The witness said it was unusual to be provided with a pre-set deadline for a project. They explained that ordinarily the Capital Programs staff would be told the planned nature/scope of the desired work and the Capital staff would then advise administrators about the time needed to complete the work. The witness told investigators that the directive for the timeline came "from above [the former Director of Capital Programs/COO,]" and the staff were told simply to "get it done." When asked by investigators if the same scope and timeline could have been met if the building were unoccupied, the witness said, "if no one was in the building, we're not sitting here [having this conversation]."

The Construction Coordinator likewise expressed reservation with the schedule during his interview with this Office. The Coordinator said there had been instances where a firm deadline was imposed on a project before work began, and he pointed to his work managing a ground-up build of West Philadelphia High School. When asked what he thought when he looked at the scope of work for the Ben Franklin/SLA project compared to the available time for the work, he said his gut reaction was “no,” that they were not going to make the deadline and that “[the] Design [Unit] just kept adding” scope. In particular, the Coordinator pointed to a campus design meeting he attended where the idea of moving the cafeteria to the first floor was proposed. He had reservations about the amount of work such a move would generate (e.g. coring work for mechanical shafts, utility lines etc.) relative to the project timeline, and when the District approved the request he told investigators it “blew my mind.” He said at the time he thought to himself “where are we going to get an extra summer” across the life of the project to complete that additional work. When asked by investigators whether he voiced his concerns to anyone he said that he complained to “anybody who’d listen.” The Coordinator said that he “[doesn’t] feel the Construction voice gets heard” and they are “not given credit for our knowledge and experience” when they voice concerns about projects.

The Construction Manager similarly harbored concerns about the project’s completion timeline before any work got started. The Manager told investigators that she felt it was a “completely ridiculous schedule.” She recalled that when she and the Construction Coordinator saw the schedule they were complaining “... up and down.” Asked how the schedule for the work got set, she said she did not know. The Construction Manager explained to investigators that she had gone back through old emails to try to refresh her memory, and the only thing she could find was an email from the Design Manager that laid out the proposed schedule. Investigators asked the Construction Manager whether the Design Unit or the Construction Unit typically generated the schedule, and she replied “99.9% of the time Construction sets the timeline, this was that .1%.” She recalled having a conversation with the Design Manager and former Director of Capital Programs/COO about the schedule and the Construction Manager said the former Director/COO said the timeline “came from above.” The Manager said that even when the project was originally budgeted for \$10 million and 14 months of work it could have been completed, but still would have been difficult. She recalled that by the time the SRC was voting on the awards to the prime contractors the budget had grown to almost \$25 million. Like the Construction Coordinator, when the District agreed to move the cafeteria to the first floor she said she knew the timeline was severely imperiled. The Construction Manager explained that for other projects, if there were differences of opinion on the necessary time for a project the parties would sit down and hash out an agreed upon schedule that everyone could support.

Investigators also discussed the project timeline with the former Director of Capital Programs/COO. She was asked about the feasibility study commissioned by the District and what type of review it covered. The former Director/COO explained that the District provided the firm with information like number of classrooms, program requirements and the existing square footage of SLA’s space. She said the study contemplated “**reorganization** of existing space, not **reconstruction** of existing space” (emphasis added) as far as the proposed timeline it generated. She explained that interested firms for the design work had to show how they could comply with the existing timeline. The former Director/COO told investigators that the decision to relocate the cafeteria to the first floor “was the biggest move.” She explained that she and others felt the move made sense, and they understood why Stantec wanted to do it (e.g. better community between the two schools) in the final design, but that it was a substantial financial cost added to the budget. In her capacity as Director of Capital Programs she said she spoke to the COO at the time about the budget impact because of the potential cost, and drafted a memo to the COO as well. When asked by

investigators if there was any discussion about the effect on the project timeline separate from the budget expense, the former Director/COO said, “I don’t remember any conversation about time.” She said she “vividly remember[ed] cost.”

5. Contractor Concerns

Several witnesses from the construction companies expressed reservations about the timeline for the work at the site. Many were concerned immediately by the proposed schedule standing alone, but they nevertheless bid for the work. Their fears were exacerbated as work began on the project and the District continued to add additional work to the project, an issue discussed more fully below.

Shortly after the prime contracts were awarded, a series of Requests for Information were answered in an Addendum issued by the District on July 3, 2018. It is apparent that at least one contractor – the questions do not identify the submitter – was troubled by the schedule for the work. The contractor asked, and the District answered:

“1. Specification section 01 1300 discusses the construction schedule and establishes the work to be substantially completed **in less than one year duration. This schedule is very aggressive** and results in a very high cost of construction, well beyond the stated budget. **Can the schedule be revised to allow work to be substantially completed in two (2) years, or more?** Please advise. If so, please provide revised phasing completion dates.

Response: No.” (emphasis added)

In her interview with the Office, the President of Smith Construction, Inc. said it was a “tight timeline” even before the addition of a large addendum shortly before the bids were due. The President said she voiced concerns about the phasing schedule the project set out. The Smith President said she could not recall a project similar in scope having this short of a schedule in her time working on District projects – more than 20 years total. She told investigators the timeline is “usually not this aggressive.” The Smith President said she had concerns because the project was merging two vastly different school populations, and it was essentially two separate construction projects inside one building. She said she was never told specifically why the deadline was so firm but that she intuited it was because the District broke or did not renew SLA’s lease “without a Plan B.” She said “every single one of [the prime contractors] voiced concern” about finishing the project on time, which bore out in our investigation.

A separate witness from Smith Construction echoed similar sentiments about the project schedule. The witness said the schedule was “aggressive,” and that it was possible that they had a conversation with the Construction Coordinator about it, or that they may have submitted a RFI before the bids were due to be submitted. The witness explained that in their time with Smith Construction the company had done “plenty” of projects with the spaces remaining occupied, but cautioned that they had not done a project of Ben Franklin/SLA’s size in an occupied space. The witness said Smith “absolutely” would have made the deadline without the space being occupied, and pointed to the phasing for the company’s work at Motivation High School as being better planned and accounting for additional time.

Another witness from a construction company said as early as Fall 2018 they “vividly remember[ed]” all the contractors were raising deadline concerns. A separate witness was asked about their sense of the project timeline and said it was an “aggressive” schedule and it “scared off” other bidders for the project. A third witness from a construction company said they recognized the project was “a lot of work,” and the window of time to complete the work was “basically a year,” but the timeline did not strike the witness as totally unreasonable given the portion of work they were responsible for completing. That same witness felt the most problematic aspect of the project was the amount of work that got added to the scope of work across the life of the project.

Various Ben Franklin and SLA staff members reported that the contractors shared their concerns directly to them while work was ongoing. The workers remarked that the staff should not have been in the building, and the deadline would not be met.”

C. Design

1. Prequalification

The investigation revealed that the prequalification process in place for construction contractors working for the District does not apply to professional services contracts like those for architecture/engineering services. The process had been in place for a period of time, but the practice was discontinued “years ago.” The investigation could not decipher any meaningful reason for why the practice was discontinued after previously being in place. In fact, the practice was discontinued over the objections of a witness the Office spoke to in the course of the investigation.

2. Request for Proposals Process

In her interview, the former Director of Capital Programs/COO said “ownership [of a project] rests with Design” in a construction project. The assembly of the RFP for the architect was, like the other stages of the project, compressed because of the District’s deadline. On June 21, 2017, the Design Manager sent the former Director/COO and the Construction Manager the “tentative schedule” discussed above. On July 7, 2017, a District architect sent the former Director/COO and Design Manager an email with a first draft of the RFP for architecture and design services on the project. Later that same evening, the Design Manager responded to the District architect with items to include, and some follow-up questions. On July 11, 2017, the former Director/COO held a meeting to review the RFP with the Design Manager and two other District employees. On July 13, 2017, she emailed the building’s work order history to the District architect and the Design Manager. Later that same day, she received an updated copy of the RFP incorporating the building’s work order history. That same day, the former Director/COO forwarded a copy of the existing draft RFP to SLA’s Assistant Superintendent for review. The finalized RFP for architecture services was completed on July 14, 2017 and sent to be posted online for interested bidders, but it did not get formally posted until July 17, 2017.

On July 24, 2017, the former Director of Capital Programs/COO emailed the District architect for the list of firms that participated in the mandatory walkthrough held on July 21, 2017. The architect replied with a list of the 19 firms that participated. Also on July 24, 2017, the former Director/COO sent a separate email asking the District architect a series of questions regarding the upcoming steps with the RFP, and asked which staff members would be participating in the stages. On July 26, 2017, the former Director/COO emailed the Chief of Staff to inquire about whether the

former Director/COO could alter the RFP schedule for the project because she would be on vacation during the scheduled date for the oral interviews. The Chief of Staff responded a couple minutes later to the request and agreed it “makes sense so [the former Director/COO could] participate.” The former Director/COO then notified the Design Manager and other District employees of the approved change, and instructed the Design Manager to extend the due date for the submissions and reschedule the oral interviews for August 10, 2017 and August 11, 2017. An Addendum (Addendum 002) was issued that same day to reflect the changes.

On Wednesday, August 2, 2017, the District received eight responses to the RFP for the design work. On Monday, August 7, 2017, the former Director of Capital Programs/COO sought to finalize the short list of firms that were going to be invited to make design presentations to District staff. The District architect replied that the “proposals were only distributed on [Thursday, August 3, 2017]” but they would work to complete the list of finalists by Wednesday, August 9, 2017. The former Director/COO replied that she thought “Wednesday [was] too late” and asked “what will be required to finalize [a] short list tomorrow?” The District architect acquiesced to the request.

The following morning the District architect sent the former Director of Capital Programs/COO the completed scoring rubric and advised that the group intended to select three finalists to present to the District staff. A separate District architect emailed the former Director/COO later that same day and provided “talking points about the three teams selected for interviews” and included brief descriptions about Stantec, Kimmel Bogrette, and Kelly/Maiello.

All three of the design presentations were held on August 10, 2017 and each firm was provided 90 minutes to make their presentations. Following those presentations, the District panel members chosen to score the project selected Stantec for the design work on the project.

Interviews over the course of the investigation made clear that this timeline was atypical compared to the way RFPs were traditionally both generated and reviewed. The amount of time provided to generate the RFP was described as “not common.” Between the “tentative schedule” discussed above, and the time the RFP was ready to post, a total of 24 days elapsed. By contrast, a project similar in size and scope to the renovation at Ben Franklin allowed for 2-3 months to plan that RFP for architecture and design services, and as a result had a much more specific plan, schedule, and budget. A witness told investigators that it is “usually two weeks” to pick finalists from the time someone begins to review the proposals. For this project, having less than a week to review proposals was described as “unusual” and a “quicker turnaround than normal.” The small window of time to review the materials was a function of the overall compressed schedule for the project. The schedule for the project “didn’t match other schedules” for similar type projects.

It is unclear why, but the District did not provide certain materials requested by interested parties. In one instance, a submitter asked the District, and they responded:

“8. Question: Are electronic floor plans available for the proposed teams to illustrate design option in advance of the RFP due date?

Answer: Please see attached.”

Later in the same Addendum, in response to a separate submitted inquiry, the District was asked:

“26. Question: Are there electronic documents (floor plans, etc.) of the existing 1958 building, the 1971 addition, or the recent basement renovation available to the awarded firm?

Answer: Scanned electronic versions of existing building drawings will be made available to the successful Proposer.”

The District likewise did not provide much identifying information about the schools. A party submitted an RFI asking the District:

“19. Question: Regarding the high school programs themselves, what is their nature? Do they represent special programs or academies (e.g. STEM academy, collegiate academy, career and tech academy, a focus on a special population, etc.) or are they simply separate comprehensive high schools?

Answer: Further information about the two high school programs will be shared with the successful Proposer.”

3. Blueprints

Certain witnesses recounted a marked difference between their expectations for the renovated spaces based on requests that were made during the design phase, and what the space actually delivered. In many instances, the renovated space affected instruction because teachers would either be unable to do certain activities or not do them safely.

A witness said when the blueprints were available to review for the SLA staff, there was nothing apparent from the drawings that suggested they called for what the spaces ultimately became so the staff raised no objections. The witness said they were under the impression they were set to get what they originally requested in the space. Indeed the RFP for the architectural services itself already mirrored the SLA staff's expectations in part as well. Under the “Educational” section of the described “Scope of Work” it reads:

“Provide science room equipment for approximately six (four wet and two dry) new science labs including fume hoods, teacher’s demonstration tables, casework, **student lab tables with sink and power, and emergency eye wash stations.** Provide casework with sinks at prep rooms.” (emphasis added)

The witness recounted that little work had been done and voiced safety concerns about the work that had been completed when they entered their new classroom space for the first time. The witness described finding a large hole, pictured below, left totally uncovered in the floor requiring the staff to place a table over it to limit access. They also found a large demonstration desk at the front of the room after asking that one not be included. Instead, there was both a demonstration table and it was fixed to the floor. The demonstration table also obstructed the view of the whiteboard and Smartboard because they were installed too low.



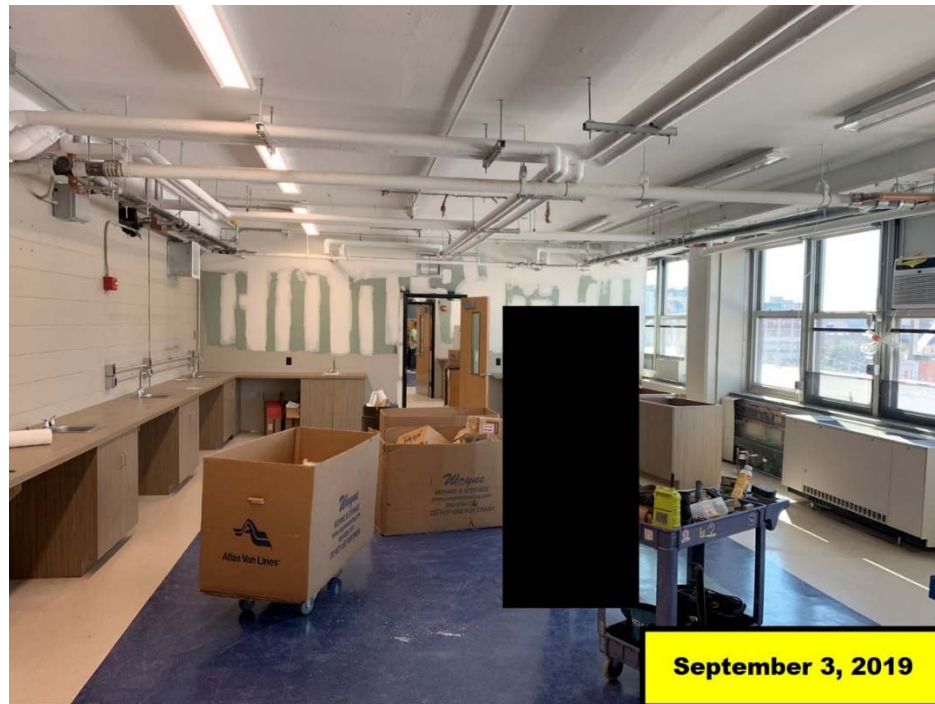
Source: Confidential

In the lab space itself, there were no metal storage cabinets to house flammable chemicals. The cabinets were not only wood, but also located over the area where students were expected to move the lab tables over to hook into the gas lines. The wooden cabinets were not necessarily a fatal design flaw because they could be modified with a protective coating inside, as they had been at SLA's Arch Street campus, but the cabinets did not have that coating. The witness had perhaps more urgent concerns about a heat source operating so close underneath both a wooden cabinet and one that was set to house additional chemicals. When the witness pointed out their safety concerns to the architects they were told "this is the way classrooms are moving."

With the SLA staff only having partial occupancy of their science spaces at the start of the school year the faculty was forced to "re-do everything" with their curriculum approximately one week before the start of the school year. When the campus officially closed entirely, the effect was felt even more deeply. In the relocation spaces for SLA they were only able to complete "1-2 labs" in the time they relocated versus the "20" they would have otherwise done at the same point in the year with a functional lab of their own.

When the witness initially came to the building for the week of professional development before the start of school there were no gas lines installed for the labs. On the third or fourth day of professional development – effectively two days before the planned start of school – the witness said they were told that there would be no gas available in the labs. Email communications corroborate that there were in fact missing gas lines in the SLA lab spaces. In an August 21, 2019 email, the Construction Coordinator asked the project's architect "[c]an you please check to see what kind of work it will take to add natural gas to the 4th floor science labs?" The witness said the gas lines were the last thing to be completed before the campus was closed. Investigators asked numerous times

throughout the investigation why gas lines were not installed and how such a design feature was overlooked, and received no satisfactory answers.



Source: Confidential



Source: Confidential

4. Environmental Specification

The Design Project Manager is the party responsible for sending the project drawings to OEMS so that the OEMS consultant can complete the inspections and generate the environmental specification for the project. There is “very little input” from the Construction Unit, and the unit does not really interact with OEMS until the construction documents are 60-90% complete. In his interview, the Construction Coordinator cautioned that the OEMS consultants are “... not

construction folks” and sometimes do not know the particulars of the construction work depicted in the drawings. The Construction Unit is usually provided with the Asbestos Inspection Report and environmental specification from OEMS at the same time.

The bid materials for the instant project included the environmental specifications for the work. One particularly troubling aspect of the specification is that it is, in certain portions, almost incomprehensible. In the very first full paragraph of the document it is replete with glaringly obvious grammatical and syntax errors raising the troubling prospect that this document could not have possibly been edited or reviewed with any measure of detail before it was included with the project documents. The paragraph reads:

“An Asbestos Inspection Report (AIR) is attached .. [sic] The (AIR) is not intended to be used fo [sic] bid purposes and is only provided as it is required and must be posted on site and ctor [sic] personnel in order to avoid the unknowing disturbance to any asbestos containing materials. The AIR to be submitted to Licenses and Inspections with permit applications. [sic] is [sic] not to be [sic] Contractors are to base the Asbestos Abatement bids upon [sic] the requirements of the Asbestos Abatement Specification included in these bid documents. used [sic] for bidding purposes.”

Before a project is advertised by the District there is a protocol in place designed to ensure accurate and complete materials have been compiled. The District utilizes a “Pre-Advertisement Checklist” that lists required tasks (e.g. “[S]pecification sections were delivered to Design Representative”) and necessary signatures from divisions like Construction, OEMS, Contracts, and Design. Despite the errors described above, the materials were approved, and the project was posted.

D. Construction

1. Prequalification Forms

Done correctly and completely, this process gathers and ultimately verifies complete information regarding a potential contractor’s financial status, prior work history, and professional references. Functioning properly, the process serves an important gatekeeping role to ensure that only qualified, financially stable and secure companies are entrusted with District funds and projects. The forms were at times facially incomplete, project references were not verified, and questions about the content of some of the applications were never asked. The pre-qualification process has been the same for a number of years and was put into place when the District previously utilized a construction management company. The District discontinued use of the firm because they had completed the \$1.8 billion in projects they were retained to manage, and the decision coincided with the steep budget cuts the District was previously forced to endure.

Despite the application specifically citing that the District will assess the “[c]ompleteness and accuracy of [the] application,” and the “[i]ntegrity” of the information it was clear the applications received little more than a cursory review. Even without a detailed examination of the documents, there were, at times, obvious deficiencies that simply went unnoticed or presumably unverified. While several notable deficiencies in the applications were uncovered during the Office’s review of the documents, the OIG was largely able to independently verify the missing information, and it

fortunately does not appear that it would have ultimately altered the District's decision to pre-qualify any of the contractors.

Investigators interviewed the employee currently responsible for processing all of the Capital Programs prequalification and requalification applications from interested contractors. He explained that the application is routed to him by the Contracts Manager. When he receives the application he uses his own "ad hoc spreadsheet" that he created to ensure all the necessary information has been provided and uses it to compile the score for the company. He explained that there is not a requirement that the companies have experience with school building projects, but most that apply do have such experience inside or outside the District. The employee admitted that the information submitted by contractors is not independently verified. The employee explained that when he joined the District in 2018 and was being trained by a consultant no longer working with the District, independently verifying the information was "never discussed." The employee said the answers are treated as "an honor system." When asked whether he ever learned of any errors in the application after the pre-qualification had been awarded the employee said "not anything big." He described an instance where one company bid on a project beyond what their class rating entitled them to bid. He described a second instance where a company was permitted to submit a bid while their prequalification/requalification was still pending. A separate witness similarly confirmed that the information provided in the application is not reviewed in great detail. Even taking the simple step of calling representatives from the reference projects was something not ordinarily undertaken.

In this case, investigators reviewed Smith Construction's most recent prequalification form with the employee who processed the application. The employee was directed to the project reference portion of the application and investigators noted the form referenced "see attached sheet" for the description of the work done on the project, and told that none was actually provided to the Office. The employee was similarly shown the portion of the application that noted an extension of time was required on one of their project references, and all three project references made no notation as to whether any liens, or penalties were assessed on the project. The employee explained those deficiencies "[don't] delay" the approval process. He noted that he is primarily "looking at the dollar amount" to be sure the company has completed large/comparably sized projects.

In response to investigators concerns that the information was not verified or complete, the employee explained there are additional protective measures in place for the District beyond the application itself. The employee explained that the District is protected because those provisions in the applications are also outlined as contract provisions. Similarly, the employee said the construction companies are required to have up to date bonding and financial documents at the time the contract is approved, so the District is protected in that fashion. The employee explained that because the bonding companies and financial companies/accounting firms would be at risk of losing their licenses if they suborned false information, the District is not as exposed as one might think. The witness explained that when the Board of Education is set to approve the Action Item for a construction contract the company is required to submit their certification of tax payment, but they are not required to submit their most up-to-date financial statements. They are also required to submit an up-to-date bonding certification.¹

¹ The current prequalification application stipulates that a "Certificate of No Change (Form 6) must be executed and included with each and every Bid Proposal submitted on or after April 1, 2016 to verify that there has been no adverse change to the bidder's financial capabilities, organization, prior experience, past performance, bonding capacity and safety record, since the approved application and questionnaire was submitted.

The prequalification form advises applicants that the review of the application “will be completed and the applicant notified in writing of the results within seven (7) days of receipt of the complete application” (emphasis in original). This window of time, in addition to the other daily responsibilities of the Contracts Unit employee who reviews the applications, provides inadequate time to make any meaningful review of the application. It also makes no provision for extending the approval window if, for example, the Contracts Unit indicated to the contractor that it was reviewing a certain aspect of the application in greater detail, or they were waiting to hear back from references.

A review of the pre-qualification applications for the prime contractors on the project revealed a number of items that certainly required follow-up or clarification. Despite these often obvious deficiencies, none of the prequalification applications appear to have been either denied, or even sent back for additional information prior to this Office beginning its investigation. While this Office did not discover any information during the investigation that would have otherwise provided grounds to deny the prequalification award, we completed some of the verification steps that should have been done at the time of the application.

a. Smith Construction, Inc. 2019 Requalification Application

The President of Smith Construction explained that the company has been doing work for the School District for many years. It should be noted that the Smith President assumed her current role when her father stepped down as President in 1998; however, he still serves as the company’s COO. The prequalification process started 10-15 years ago.

During her interview, investigators reviewed the company’s most recent 2019 prequalification form with her and asked her to explain a number of aspects of the application. When investigators initially turned to the topic of the application, the Smith President advised that she had just recently been contacted about the form by Capital Programs, and they were requesting additional information for the form. Notably, this contact occurred after investigators had spoken to the employee responsible for reviewing and approving the requalification application.

In the application, the Smith President had listed a renovation project for a law enforcement agency as one of the required project references. She explained the project involved a ground-up build of a new building for the agency. Investigators asked the President why the application noted an extension was necessary. She said the project was extended because of change order work and scheduling. The Smith President explained that when the plans were created the architects/engineers did not complete any soil sampling during the design phase. When construction started, the President said they learned that there had actually been a dump located under the space, and the soil did not compact leaving them unable to pour concrete properly. She said it required a substantial amount of additional work to correct the unforeseen issue. The Smith President also explained that the building occupants did not abide by the move out schedule. She said the design documents called for them to be entirely moved out of the space in one week, and it took them 2 months to fully complete the move. The two remaining fields – whether there had been any penalties imposed, and whether there were any liens, claims or stop notices filed – were also left blank. The President was asked about that information and she indicated the answer to all of those questions was “no.” It does not appear this information was ever sought by the Contracts Unit or the employee who processed the application, nor was it used as a basis to initially reject the application pending complete information.

In a second project referenced in the same application Smith Construction, Inc. listed work completed for a science lab renovation at a local college. Investigators inquired about the high percentage of change order work cited for the project: more than 26% of the total value of the original contract. The Smith President explained that there were originally three portions of work at the school sent out for bid. She said Smith Construction was the low bidder on two of the three projects, but that when work was set to begin the low bidder on the third project was unable to complete the work. The President said that the college decided to award Smith the third portion of work as a change order rather than re-bid the work entirely so it could all be completed on the timeline they wanted. The application did not answer whether any time extensions were necessary. The two remaining fields – whether there had been any penalties imposed, and whether there were any liens, claims or stop notices filed – were also left blank. The Smith President was asked about that information by investigators and she indicated the answer to all of those questions was “no.” Again, it does not appear this information was ever sought by the Contracts Unit, nor did it preclude the application from being approved.

Finally, investigators asked the President about work they completed for a local government agency, Smith Construction’s third project reference in the application. The application did not answer whether any time extensions were necessary. The two remaining fields – whether there had been any penalties imposed, and whether there were any liens, claims or stop notices filed – were also left blank. She was asked about that information by investigators and she indicated the answer to all of those questions was “no.” Similar to the other listed project references, it does not appear this information was ever sought by the Contracts Unit, nor did it preclude the application from being approved.

b. Dolan Mechanical, Inc. Requalification Form

Dolan Mechanical, Inc. had already been prequalified for District construction work prior to their work on the Ben Franklin/SLA project since at least 2015. In 2018, Dolan submitted a requalification application to maintain their qualification status. A review of that application showed that additional follow-up information should have been obtained before the prequalification award was made.

For their required references, Dolan noted “attached” in the field for the first project. Later in the packet, the company submitted a document they created noting their work in general construction, HVAC construction, and plumbing. While the document notably included well beyond the minimum three project references it did not include key information that the prequalification form otherwise required.

For all of the listed projects the document included the work site, an owner/contact person, and the architect/engineer for the project. The document also listed the contract amount and the value of their submitted change orders on the projects. The document did not include whether there were any extensions required on any of the projects. It similarly did not include whether any penalties, liens, or stop notices were ever issued. It does not appear the absence of this information inhibited the application from being approved.

There was an additional area of the application that should have warranted additional review. In their most recent application it listed the company’s gross receipts for the past 5 years. Dating back to as far as 2012, the company had gross earnings each year in excess of \$20 million with a peak earning of more than \$42 million in 2015. In 2016 and 2017, the company failed to top \$15 million.

Earnings in the building trades can no doubt fluctuate from year to year, but an earnings drop of more than \$27 million dollars in one year should have certainly warranted additional inquiry by the District. Similarly, in the stockholder earnings disclosure for their most recent application Dolan indicated that the company president held 100% of the company shares. An examination of the company's 2015 requalification application showed the company president and vice president each held 50% of the shares. There had been a clear change to the structure of the company, but the District's current review process does not place it in a position to examine this type of information. The explanation could certainly be simple one (e.g. retirement), or it could be one that would seriously call into question whether the company should be prequalified. Until the reviewer asks the questions, the District will not know the answers.

c. PT Mechanical Group, LLC Prequalification Form

PT Mechanical's most recent application was submitted in 2018. A review of this application by investigators also showed that the Contracts Unit should have made additional inquiry into the application before issuing the pre-qualification award.

In the "Stockholder/Common Disclosure" portions of the application the company disclosed that they are "owned by [another] company and/or corporation." They list that Pro Tech Energy Solutions, LLC owns 75% of the shares in the company. In the course of the investigation OIG learned that PT Mechanical has only been in existence for a total of three years. The company was formed from a previously existing company named Fluidics that had done District construction work for many years. Fluidics was purchased by a holding company, and when it became clear they were intent on disbanding the construction arm of Fluidics, those employees branched out on their own and formed what is now PT Mechanical. There is not any mechanism or requirement currently in place for the Contracts Unit to investigate or review a holding company, nor does it appear that this disclosure impacted or altered the approval process in any meaningful way.

In their most recent application, the company's gross receipts for the past 5 years also warranted additional review. In two particular years, 2014 and 2016, the company reported drastically different fees - \$61 million, and \$92 million. In contrast, the balance of the three years of earnings hovered approximately around \$25 - \$35 million. There is no requirement in the application that the company separately explain such a large fluctuation in earnings, and nothing was provided to the Office from Capital Programs that any type of explanation was ever sought or provided.

d. McGoldrick Electric, Inc. Prequalification Form

The Ben Franklin/SLA renovation was McGoldrick Electric's first project working with the District. Their prequalification application was likewise the only one provided. The application itself was fully completed. Investigators were concerned only about one aspect of the reference projects McGoldrick had listed for renovation work completed at a federal law enforcement facility. The change order amount was substantial relative to the overall value of the contract. The company listed \$250,000 in change orders for what was originally a \$900,000 contract. Investigators learned that essentially 25% of the entire office space originally had been excluded from the work but got added to the project after the work had already started. The company was also asked to run additional security cabling that had not been included in the original scope of work. The District made no prior inquiry into the nature of that change order work. It does not appear this information was ever sought by the Contracts Unit, nor did it preclude the application from being approved.

2. Bid Proposals - Construction

The statutory requirement for the District to accept the “lowest responsible bidder” for a construction project forces it to be handcuffed to a bidder without having any meaningful mechanism to vet the accuracy or completeness of the submission beyond the comparison to the District’s estimates for the work. A witness said the contractors can become “incentivized” to under bid, then find mistakes in the plans and submit change orders. In contrast to professional services contracts for things such as architecture work, there is no technical evaluation process in place. The District does not get to see the supporting materials that the bidders use to craft their bid and test whether it is an accurate or reasonable bid. In her interview, the President of Smith Construction highlighted those very risks and noted the perils of “at risk public bidding.” The President explained that she is both reliant upon, and tied to the estimates of the sub-contractors she utilizes to assemble her company’s bids. She said if there is an error in assembling the estimate by the subcontractors she could ask the District to be released from her bid if it was a drastic miscalculation, but smaller errors might simply mean she is cutting into her profit margin. The District has no procedure in place to see or verify the accuracy of the materials a sub-contractor submits to the prime contractor beyond the prime contractors performing their own due diligence. Because sub-contractors are not subject to the pre-qualification requirement, even that minimal protection does nothing to protect the District here.

The change order process is discussed in substantially more detail below, but one of the effects of the deficiencies with that process reverberates back to the bid stage. A separate witness explained that the extremely slow pace that the change orders are reviewed, processed and paid means some contractors “have to cover [themselves]” in the bid they submit, and potentially bid higher than they otherwise would have to account for the delay in payment.

In the instant case, on June 11, 2018, the same week that bids for the construction work were due, the District issued a 115-page addendum, “Addendum No. 001”, for the project. The addendum itself is dated June 7, 2018, but District staff did not actually post the document online and distribute it to interested bidders, or those that had already submitted bids until June 11, 2018. The investigation did not uncover what accounted for this delay. It is troubling that such a volume of work got released so close to the original bid date, and there was even further delay in posting the materials. The bid opening was pushed back a single day from its previous date to June 15, 2018. The post-bid/de-scope conference was set to take place immediately after the bid opening.

The posting and release of the addendum prompted an immediate and understandable concern from some of the contractors. On June 13, 2018, the President of Smith Construction reached out to the Construction Manager via email and phone and told her:

[Discussions regarding another project omitted]

“I did not want to put this in the other e-mail, but I was hoping there may be another extension for the Ben Franklin bid on Friday.

I e-mailed [the former Contracts Manager]...[sic] the addendum sent out on Monday is HUGE [emphasis in original]. We are worried we will not have enough time to digest the changes by Friday.

We have also heard some of the electricians are backing out for the same reason. If it's not, we will try to bid it, but an extension would be a huge help.”

Any pre-bid communications by the Construction Manager in response to this request might arguably have violated Pennsylvania law. The Manager properly made no such communication that this Office could ascertain. The investigation did not reveal any email communication by her in response to the Smith President's expressed concerns, and available District phone records did not reveal any telephonic response by the Construction Manager to the phone call.

The addendum itself raised concern amongst witnesses the Office spoke with during the investigation. Several witnesses noted that the schedule for the project already was “aggressive” even before the addendum was issued. The addendum itself “affected half the [original] drawings” according to a witness, and it did not issue a new corresponding blueprint for the added or corrected work it contained. Throughout the document the revisions under the “Drawings” section read “Note: This sheet to be re-issued with forthcoming conformed set of drawing, after bid.” The notation was made 53 separate times in the document. The result meant that, in addition to the slew of new information in the document, an interested bidder, with 4 days' notice, had to manually go through and make the changes on the existing plans by hand so it could be analyzed for the bid.

3. Pre-Bid Walkthrough

In this case, the drawings were incomplete, and because it is an occupied school space, a more comprehensive walkthrough was not feasible. The contractors were left to generate a bid from incomplete drawings, and what they believed to be an insufficient amount of time to walk through the building.

4. De-Scope Meetings

The investigation revealed that the post-bid/de-scope conference was little more than a formality. Each of the prime contractors is required to attend a post-bid/de-scope conference that is traditionally held the day after the bids are opened. De-scope meetings are held to review the project in detail with the District, voice any concerns, and ask to ask pertinent questions about the projects. District witnesses told the Office that the de-scope meeting is hosted by the Design Project Manager, and there are instances where the Construction Project Manager cannot always attend. There is no requirement that the contractor send the project's eventual manager or superintendent. They are only required to send “someone that knows the job” and can speak on behalf of the company. A review of the de-scope forms for each contractor shows them instead to be a boilerplate document that was the same for each of the prime contractors. It contained the same 3-page set of 13 questions, and attached the same 9-page “Summary of Work” that included things like the list of work for each of the prime contractors, and the overall phasing schedule. The de-scope meeting for what was anticipated to be a total of four prime contractors when the bids were opened was scheduled for a total of one hour (2:45pm – 3:45pm). When the de-scope meeting for the electrician was actually held it got scheduled for one hour (10:30am – 11:30am).

For this project, the de-scope conference were instead set to occur immediately after the bids were opened on June 15, 2018. When the bids were opened on June 15, 2018 only those low bids for the general construction, plumbing, and mechanical contracts were received. The electrical bids were

all rejected and set to be re-bid after even the lowest bids were substantially more than the District's estimate. The only de-scope conferences to take place on June 15, 2018 were Smith Construction's (general construction contract) and PT Mechanical (mechanical construction contract). The de-scope meeting for Dolan Mechanical (plumbing construction contract) was not held until June 18, 2018. The bids for the re-posted electrical contract were due on July 11, 2018 and the de-scope conference was in fact held on July 12, 2018 with McGoldrick Electric (electrical construction contract).

A witness told investigators that a de-scope meeting should be trade-specific and should generally takes 3-4 hours for each trade. During each of the meetings the architect is also present with the trade representative.

The project manager for Smith Construction said the District usually conducts the de-scope meeting the day the bids are opened or the next day. The project manager said that all of the prime contractors usually attend, and the de-scope forms that the District provides are prime-specific. At the meeting, the District reviews and clarifies the scope of work, and the project manager explained that they would clarify any discrepancies with the District between the specifications and the de-scope form directly on the de-scope form.

5. Construction

The sound of jack hammers, grinding metal, and crash of falling concrete became part of the daily soundtrack of the Ben Franklin community's 2018-2019 school year. The environment that the Ben Franklin community dealt with in both the 2018-2019 school and the start of the 2019-2020 school year consisted of a constant struggle of trying to clean dust and other debris from their learning spaces, and a barrage of construction noise. The SLA community endured a measure of those same issues when they joined the building in Fall 2019. The conditions were the opposite of what a learning environment should consist of for any District school.

a. Conditions at Site

i. Dust, Debris & Air Quality Issues

The battle to clean and contain construction dust, and debris remained a constant struggle for the Ben Franklin community throughout the 2018-2019 academic year. When school began initially for the 2019-2020 school year many of the same problems persisted, and the SLA community now dealt with a degree of the same problems. Although there were multiple instances of deficient air quality issues throughout the building during the 2018-2019 school year little was done to improve the situation. In a single day in March 2019, the culmination of multiple days of difficulties, incident reports from the Office of School Safety detailed that four Ben Franklin staff members took ill, two leaving in ambulances. At the start of the 2019-2020 school year the hospitalization of an SLA student finally spurred District administrators and the construction staff to take meaningful action and work to improve the air quality in the building. For the Ben Franklin community that spent a year dealing with substantially worse conditions this proved to be little consolation.

The dust generated from construction activities reached alarming levels inside the building almost as soon as substantive work began at the site. When staff returned for the 2018-2019 school year the space was described by one witness as "absolute chaos, noisy as hell," and there was "just filth." The containment measures put in place by the contractors and permitted by the District

construction management staff were ineffective. The result was a school building that had entire sections of the building constantly covered with construction dust and debris, and a Ben Franklin staff in a constant – and losing – battle trying to keep their spaces clean. The collateral consequences of this environment had actual physical effects that Ben Franklin staff members attributed to the conditions. The same was true for the SLA faculty and students when they joined the building.

Efforts by the Ben Franklin staff to try and keep the building clean during the 2018-2019 school year were largely futile. The combined efforts of both Ben Franklin and SLA at the start of the 2019-2020 school year met the same results. One witness told investigators that the “place was like a war area” with dust and debris that was “impossible” to keep clean. Another witness said the Ben Franklin cleaning staff were constantly cleaning construction dust and were “mopping all day long.” A third witness said these mopping efforts were largely pointless because the spaces and floors would get dirty again in a “couple hours.” Yet another witness said “you would clean, then clean again.” The contractors also provided cleaners each morning at 4:00am to clean any leftover dirt or debris left over in advance of the new school day. A witness explained that those efforts were haphazard at best, and the Ben Franklin cleaning staff would have to travel right behind where the contractor’s cleaners went to clean what was initially missed, and the dust issue would resume immediately when the construction activities began for the day.

a. Containment

The investigation revealed what appeared to be inconsistent efforts to contain dust from escaping the construction area. The containment methods appeared not to have been uniform throughout the building in all of the work areas over the life of the construction work. The Construction Manager said that the type of containments that are permissible “depends on the work.” She explained that if there were “1 day of work” in an area that was not expected to generate a lot of dust there would be different containment required than if there were, for example, planned demolition or masonry cutting taking place.

Witnesses reported a variety of different containment protections that were put into place. The work areas ranged from having “nothing” or only plastic sheeting in place to a more substantial plywood/drywall divider that had secured doors with keypad locks.

The basement area was notably overlooked for any type of protective measures. Although the basement was not included in the scope of the project, it quickly turned into an active construction area, particularly so when work began on the first floor. Workers routinely had to access utility lines that ran through the basement and the area had no barriers or protection in place.

Many witnesses that the Office spoke with saw no air management equipment – things like fans, filters, or negative air pressure – in place in the immediate areas outside the work area or throughout the building during the 2018-2019 school year. Those that could recall seeing any air management equipment saw minimal protections in place, and did not see them until Fall 2019.

Even within the construction zone itself, air management was insufficient. A witness told investigators that there was no negative air pressure setup in place at the site. The witness recalled that air filters were sometimes there, but that the contractors were constantly reminded and forced to keep them on. The witness said sticky mats placed at the construction entrances were ineffective, and “were dirty by the time the third person used them”

b. Dust & Debris Levels

The construction specifications for the project note that “construction, renovation and maintenance projects can generate large amounts of dust, particulates, odors and debris.” The contractors are required to “prevent dust, particulates and odors in the air from dispersing into the occupied areas of the facility.” They are likewise required to “ensure [the District’s] on-site operations are uninterrupted.”

More specifically, the contractors are expected to take proactive measures like installing “dust walk off pads/sticky mats” at all of the work area exits, and install construction barriers before any work begins. Where containment is not possible by utilizing existing building walls and doors the contractors are required to use one of the following methods of isolation: “1) [a]irtight plastic barriers extending from floor to ceiling decking, or ceiling tiles if not removed[,] 2) plastic barrier seams to be sealed with duct tape to prevent dust and debris from escaping[,] 3) [d]rywall barriers [-] [s]eams or joints will be covered or sealed to prevent dust and debris from escaping[,] or 4) [s]eal holes, pipes, conduits and punctures to prevent dust migration.” The work site must also maintain negative air pressure and ventilate outside of the building.

The District sets out specific guidelines for masonry work at construction sites “to protect employees, the public, the environment, and property from the detrimental affects [sic] of silica-containing dust generated from construction and restoration/maintenance activities.” “...[A]fter the beginning of cutting or grinding tasks, the contractor [is required to] conduct personal air monitoring of workers performing the cutting/grinding tasks. An industrial hygienist [must] perform the monitoring and must be consulted prior to the execution of work.” The contractors must “conduct daily visual inspections of the site for the presence of visible dust during grinding and cutting tasks. The presence of such dust is a sign that the controls are not doing their job.”

Various witnesses described intense levels of dust that persisted throughout the project. One witness summarized the environment the Ben Franklin community dealt with during the 2018-2019 school year by telling investigators that you could “hear construction, see construction, [and] smell and taste construction dust.” Another witness told investigators they would leave school at the end of the day and were “like a funnel cake” while they demonstrated patting their pant legs to simulate the dust that would come off their clothing. A third witness recalled their hand would have a coating of dust every time they held the railing to travel upstairs. A witness who often moved through different sections of the building said when they returned to their workspace they would realize they had tracked dust into a cleaned space. The witness said “I would have to tell [the cleaner], ‘Ms. [Cleaner] I’m sorry.’” Yet another witness told the Office that the dust was “stagnant in the air” and dust on the floor was “constant.”

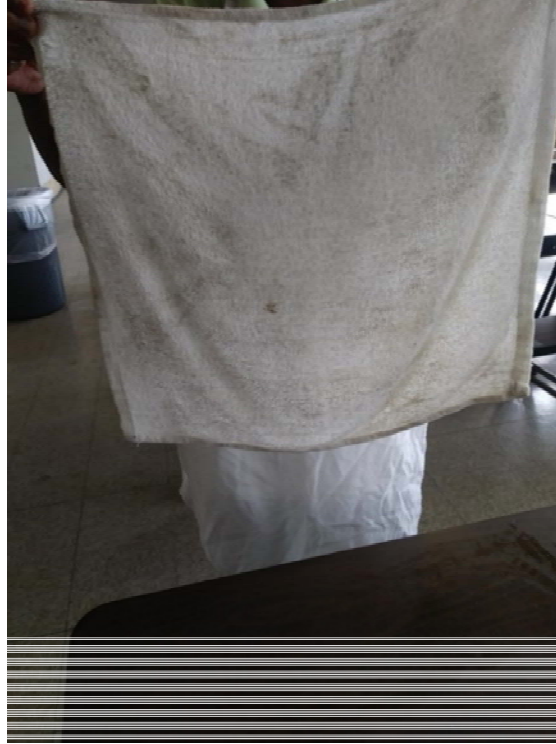


Source: Confidential

Dust pervaded throughout the building. A witness told investigators that “dust tracked everywhere” in the building. The witness observed construction workers removing debris in uncovered wheelbarrows through the cafeteria. In one instance, the witness recalled wiping their finger across a lunch table in the cafeteria, and noted a coat of dust on their hand. The witness said another staff member turned to the witness and said “it’s dirty again?” The witness provided some photographs of the encounter to investigators.



Source: Confidential



Source: Confidential

When the eventual coring of the floors began in the building the dust increased even more. One witness said there were “clouds” of “concrete dust” and “silica dust.” In one instance, the witness recalled sitting in a meeting watching a cloud of dust creep under the closed office door and the witness “thought it was a fire” in the building. Another witness said the contractors were “coring above us.” That same witness said the work was taking place directly above their classroom and it was like a “meteor shower” of debris. The witness also described silica dust coming into the classroom as the coring occurred. The witness said when you left the space you would be covered in “concrete dandruff.”

By all accounts, with the 2019-2020 school year approaching there was little appreciable improvement in managing the dust and air quality at the school. At the start of the school year one witness said the building was “100%” an active construction site “with full on construction,” dust, and drilling still happening during the first week of school. The witness told investigators the District “should have put a hard hat on us, and paid us construction pay” when describing the level of ongoing work. The witness said staff had been promised there would be no dust or drilling when they returned and there was both. Witnesses recounted conditions such as clothing being ruined, being “windied” after climbing the stairs, voices becoming hoarse, and eyes burning.

Even in the midst of what was an intolerable amount of dust and debris in the building, there were certain conditions that merit specific mention. When demolition work began on the first floor in preparation for the construction of the cafeteria in March 2019 the work generated a “big dust storm” that was so severe that witnesses “couldn’t see down the hallway.” As previously mentioned, four Ben Franklin staff members had breathing problems, discussed more fully below, and two had to be taken to the hospital in ambulances. The illness and eventual hospitalization of the Ben Franklin staff members was really the culmination of multiple days of violations of the dust management

protocols by the contractor with no measureable consequences. Finally, on March 21, 2019, demolition activity was halted. In an email, the Construction Coordinator wrote:

“For the third day this week the demolition activity has caused dust in the 1st floor area to become out of control. You are hereby directed to shut down demolition activity and clean up the building ASAP. **Demolition work cannot start back up until there is an effective dust control plan in place.**” (emphasis added)

The Construction Coordinator said that nothing like that had ever happened before on a project. He said that “dust control, in [his] opinion, is always an issue” on projects and contractors “have to be reminded” about monitoring the dust. In his time with the District, he said that “Construction has gotten better” about appreciating the seriousness of construction dust, but he felt that “in order to get [contractors’] attention, issue more harsh violations.” The Coordinator would go on to document the extent of the violations in an Indoor Air Quality Incident Report that he submitted to the Construction Manager. The report detailed that over the course of three days the site dealt with the following issues:

“On **Tuesday March 19th** it was noted verbally to the General Contractor that the demolition activity on the 1st floor east side of the building had caused the 1st floor lobby and Gymnasium corridor to become dusty.

The contractor responded by creating a barrier from the work area by pushing traffic through an area with plastic over the door and supplying fans to create negative air in the construction area. The contractor was told that he could not use the doors to the loading dock and all material had to be taken down the elevator to the dumpster. **The general contractor was directed to clean the 1st floor lobby and corridors.**

On **Wednesday March 20th**, the Assistant PM noted at 8:30 AM that the **dust levels on 1st floor rose again to an unsatisfactory level.** In addition to the measures taken earlier, **the general contractor removed a window in the demolition area to dump the debris directly to the dumpster. It was also requested that the masonry debris be wet down while moving out of the building. The general contractor was directed to clean the 1st floor lobby and corridors.**

On **Thursday March 21st**, the Assistant PM noted at 8:00 AM that **the levels of dust on 1st floor rose again to an unsatisfactory level.** The General Contractor was notified via email and phone call that this situation is unacceptable and that all demolition activity on the 1st floor must cease and will no longer be allowed during the regular school day. **Work will also not be allowed to resume until the contractors provide a written viable dust control program. The general contractor was directed to clean the 1st floor lobby and corridors.**

The issue today is most likely because a door from the construction area to the 1st floor lobby was left open and unattended.

Final resolution is to move all masonry demolition to after school hours. The General Contractor will clean the 1st floor area.

All contractors were warned that anyone found disregarding dust controls procedures will be removed from the project.” (emphasis added)

In response to the District halting demolition on the site, Smith Construction agreed to move demolition activity to off-hours. The Smith Construction President stated in an email:

“We are moving demo activities to off hours. **There is A LOT [sic] of demolition on this project and performing this activity in an occupied building is challenging to say the least.** The area is being mopped and cleaned as we speak.” (emphasis added)

Shortly thereafter, the Construction Coordinator reminded all of the prime contractors of the environmental/dust protocols required on District projects. He wrote:

“Dust control on this project is being disregarded at all levels by each prime and sub-contractor working on the project. Dust control is mandatory [by] each contractor not just the GC. Each contractor is responsible to maintain all dust control barriers, which includes doors, plastic, plywood barriers, etc. This also includes cleaning up cut offs, left over materials, cardboard, and skids. **Any person found violating any dust control measures will be removed from the project.”** (emphasis added)

The Construction Manager explained that on the first day, the contractors were spoken to and ordered to increase the protective measures from what was in place at the time. She said when there was a second day of issues, she traveled to the site and had direct contact with all of the contractors, making clear the conditions were not acceptable. When there was a third day of violations she said the work got shut down. A day later, March 22, 2019, the Construction Manager reminded the Smith President and other Smith Construction staff that demolition could not continue. Smith Construction initially proposed a new dust control plan that the Construction Coordinator rejected as insufficient. A new, more specific dust control plan was submitted, and the Construction Manager permitted demolition to resume.

The District issued no violation notices to any of the contractors for the conditions. Asked why a violation notice was not issued at that point, the Construction Manager acknowledged to investigators that it “should have been.” Before the demolition was allowed to continue, the Manager said that the contractors were required to put up more permanent barriers, and install more negative air pressure in the spaces. The Construction Coordinator separately told investigators that he “honestly thought” a violation had been issued at the time, but in going back more recently he believed it was not, or he could not find a copy.

The former Director of Capital Programs/COO reported that she received “consistent feedback” about dust issues on District construction projects where there was structural renovation work involved with the project. The former Director/COO explained that the bi-weekly construction meetings that are held on the site were the forum to discuss these issues as well as any other safety concerns people might have. She told investigators that “no one told me anything” about the series of events in March 2019 and she had no knowledge of such an issue.

When demolition began on the second floor, the prospective site of the new main office/administrative spaces, the work caused debris to fall from the ceiling on the first floor. A witness recalled “how much stuff was falling” from the ceiling and enormous amounts of dust were a constant problem. The witness said large chunks/rocks of concrete – the witness gestured with their hands in the shape of a racquetball/tennis ball at the time of the interview – were constantly falling from both the ceiling and the large-bore holes drilled through the floor for new piping or utility lines. In one instance, the witness told investigators that pieces of concrete were falling through the holes on to a common area in the first floor traveled by students. The witness was forced to place caution tape around the area on first floor, and sat in a chair working on their laptop to ensure no students went near the area. At one point during their watch, the witness said another staff member from the school came over to them and handed over a football helmet remarking “just in case.” In a second instance that occurred during that same period, a witness described a time when a contractor presumably struck some type of water line and caused a flood into the school nurse’s office causing both water and raw sewage to flood into the space.

The campus also dealt with potentially hazardous construction tools and equipment being improperly stored inside the building. Restrictions govern the use of certain tools or equipment on the site. The workers must “avoid usage of any equipment and/or tools resulting in excessive noise or vibration that impacts the [e]ducational [p]roces during [o]ccupied [s]chool [h]ours.” Likewise, any construction waste must be transported in covered containers before being transported. The items were frequently left, unsecured, outside of the construction work area. A witness described frequently finding tools lining the hallway, and recalled one instance where they found an unattended bucket of wet concrete sitting out in a hallway. In another instance, the witness recalled walking down the hall tending to other duties holding a circular saw that they found unattended in the hallway. The witness likewise told investigators about an incident where roofing supplies and equipment were improperly secured and on a particularly windy day, a strong gust of wind caused large pieces of roofing equipment and materials to blow off the roof into the direction of the students.

Incidents with construction dust throughout the building were persistent throughout the project and the District construction staff were consistently advised about the issue by both the school staff members and the Assistant Project Manager on the site. Even before the official start of the 2018-2019 school year the Ben Franklin Principal emailed OEMS to ask them to visit the school and answer concerns her staff had about the work inside the building. Her Assistant Superintendent at the time immediately elevated the request to the former Director of Capital Programs/COO, a District administrator, and the Facilities Area Coordinator and said:

“There has been angst around the amount of dust, dirt, asbestos removal and overall potential hazards within BFHS. [The Ben Franklin Principal] and I would like someone from your office to attend the staff opening meeting on 8/20 to address concerns as it pertains to environmental safety. ...”

A recovered email sent near the start of school shows those fears were well founded and the site was fully involved in construction. In a discussion about a possible stop at Ben Franklin on the District's "First Day Route" a District staff member wrote the Chief of Staff, the former Director of Capital Programs/COO and others:

"Hi [Chief of Staff] and [former Director/COO] [-] [a District employee] and I talked with [the Ben Franklin Principal] and [her Assistant Superintendent] about Benjamin Franklin and possibly doing lunch there on the 27th. They both had concerns about a possible environmental (asbestos pipe) issue discovered this morning, construction dust, missing ceiling tiles, etc. They felt going there with cameras for lunch would be very risky. However, I know we are working to get it in better shape by the 27th. Wanted to share the concerns and make sure we could make a final decision.

[Chief of Staff], below is the draft plan for the day, that [a District employee] worked up and I reviewed. It still includes Ben Franklin. I will share it as a google doc too."

Across the project, there were multiple instances where the construction staff either directly noted improper dust containment at the site, or were alerted to the same. From September 2018 – March 2019 multiple emails were sent by the District construction staff to the contractors detailing consistent dust problems. The problems persisted for months without consequences to any of the violating parties.

Other violations of health and safety conditions took place at the site. The Ben Franklin community also struggled with construction workers smoking on or near school grounds. The problem initially came to light in September 2018 when an electrician was found smoking a cigarette inside the 4th floor of the building. The issue seemingly persisted and was brought up in a December 5, 2018 email sent to the Construction Coordinator and flagged for his attention. The sender wrote:

"... Smoke outside near the building, [sic] we spoke about people smoking near the building in previous meetings and we need to keep bringing it up. There was a strong cigarette smell on the first floor. I went outside and there was a worker smoking near the door. I told him that he should not smoke by the door. He moved to across the street."

The following day a construction meeting was set to take place and the meeting minutes noted:

"12/06 – The loading dock doors need to be kept closed. Fumes are entering the elevator lobby. **SDP has asked the contractors to smoke across the street.**"

c. Physical Effects

Witnesses reported suffering a number of adverse physical conditions that they attributed to poor air quality in the space, with some getting ill for protracted periods. In addition to the four staff

members that became ill in March 2019, a number of other witnesses reported illnesses and other complications. One witness suffered from bronchitis for all of November and December 2018, and eventually was diagnosed with pneumonia. In January 2019 when the witness still had not recovered, and believing they had a broken rib, they were rushed to urgent care. When the witness was examined, the medical professional remarked to the witness that they “were surprised your lung had not collapsed.” The witness was prescribed a steroid medication and ordered by a doctor not to return to the school until they were completely healed, and finished the full complement of medication.

Another witness reported that they were “paralyzed” with Guillain-Barre syndrome. The witness explained that they were previously in good health, exercising multiple times per week, and completing other physical tasks (e.g. swimming and skiing) without issue. The witness told investigators that in a prior career they had been “shot at, rocketed, and mortared” in overseas military assignments all without issue, but time in this construction zone made them so ill. The witness was sick and recuperating from complications of the illness from January 2019 – April 2019.

Another witness explained that they routinely secured perfect attendance over their career but missed six consecutive days due to illness. The witness said they would have taken more time off but they were out of leave time. The witness told investigators that they suffered from an upper respiratory infection that eventually developed into a case of shingles that forced them to stay home and take medication.

A witness told investigators that in Fall 2019 there was a rash of colds throughout the building, and it seemed to the witness that the dust conditions “exacerbated” the illnesses. The witness said they had a sore throat for approximately a week, but noticed their condition improved on the weekend when they were not in the building.

The construction meeting minutes for those held near the start of school in Fall 2019 likewise showed a similar pattern of respiratory issues across the student body for SLA. The meeting minutes for the September 12, 2019 construction meeting noted:

“09/12 – Both Ben Franklin and SLA have not used the gym since the start of school. The gym has been too dusty to operate. Only (9) windows open and the windows must be opened from the low roof. VCT needs to be installed at the gym foyer. There are holes in the new gym curtain. There is exposed FA wiring at the wall mounted jboxes [sic]. Without the gym, [the Ben Franklin Principal] feels that the schools should not be operating. **SLA sent two students, who have Asthma, home today. One child went to the doctor with lung issues. 16% of SLA’s population has Asthma related issues. Mitigating the construction dust in occupied areas is a very high priority.** SLA will be hosting parents in the gym tonight.” (emphasis added)

Only a day after that same construction meeting an SLA student had to be hospitalized with respiratory difficulties. In the very early morning hours of September 14, 2019, the SLA Principal wrote a lengthy email to the former Director of Capital Programs/COO, Construction Manager, Construction Coordinator and other District administrators advising of the situation. The Principal wrote:

“I’m writing from Children’s Hospital, where I’ve been since this afternoon. ... [An SLA student got taken to the emergency room today and has now been admitted to the hospital.]

I’ve spoken to multiple doctors here and **while obviously correlation is not causation, every doctor has said that high levels of dust in the building absolutely could have triggered what we are seeing now.**

Unfortunately, this aligns with many reports that I am getting from parents who are telling us that their kids are having asthma flares, coming home complaining of burning eyes and burning throats, and even a student who has cough variant asthma who was sent home from school and then had several hours of vomiting. Personally, my eyes and throat have been burning every day, and I am starting to feel what feels like a cumulative effect and many students and teachers report the same. After today’s incident with the tarring of the second floor roof, parents are now asking if they should be keeping kids home from school during construction.

I don’t know what all the answers are here. **I know that people are getting sick at school.** And I know that I am sitting here ... in the hospital, and I am deeply concerned **I believe that we have to do much more to ensure the safety of all of the students and staff in the building.”** (emphasis added)

It was at this point that the District directed facilities staff to “conduct a dust control sweep for the entire building” that weekend, and stopped construction until they could meet with the contractors and be sure that occupied areas were completely sealed off from construction areas. On Monday, September 16, 2019, the District construction staff met with all of the prime contractors. Until this incident, closing the campus was never an option considered by the District.

ii. Noise

As previously noted, the construction noise inside Ben Franklin was “constant” throughout the 2018-2019 school year. Specifications for the project also detail particular requirements for issues related to noise at District construction sites. The specifications within the contract documents note that “student testing or other noise-sensitive programs may take place on up to 40 school days per calendar year.” The regulations state clearly that “[c]ontractors may not be allowed to perform any work at the school while testing or other noise-sensitive programs are actually taking place ... but they may be allowed to work after test hours, at the sole discretion of the District.”

By way of example, a witness told investigators “when you have [a District administrator] coming into the building and jumping at noise that [the Ben Franklin staff] barely reacted to, you have a problem.” The noise inside the space impacted both instruction, and the staff members’ ability to interact with people inside the building. When construction began inside the building, a witness said

there was “jackhammering and it sounded like it was coming through the walls.” The witness said when the workers were coring through the floors on the construction side of the building you could hear the noise “floors away.” The witness recalled sitting with a parent “and it would get so loud that you would have to stop talking and tell them ‘wait a second’” for the noise to die down and be able to resume speaking to them. Another witness said the environment was “absolute chaos,” there was “drilling nonstop” and the noise grew so loud that the witness had to pause instruction until it died down. When the construction noise itself was not independently disruptive, the workers frequently played music while they worked and raised the volume loud enough to be heard over the tools or work they were doing.

During the work itself, a witness told investigators that the noise from rotary hammers and sledge hammers was “constant.” The result, according to another witness, was “gnawing in your head” and “headaches.” Another recalled the industrial grade construction trash chute set up directly outside classroom windows, the noise of trash going down, and the thud into the dumpster below that continued throughout the day.

Certain student communities within Ben Franklin were also acutely impacted by the construction noise. In particular, both the volume and sporadic nature of the construction noise proved a difficult environment to tolerate for certain special education students. For example, a witness told investigators that after traveling up the stairs to the cafeteria – they had to travel on foot because the elevator they usually took was out of service due to the construction – the space was frequently so loud that the students had difficulty staying in the space and chose instead to eat their lunches in the classroom. Because the environment was so taxing on the students, the witness said Ben Franklin staff tried to find as many activities outside the building as possible.

In one particularly poignant recollection by multiple witnesses the Office spoke with, many independently volunteered frustration that the noise and work continued unabated during the school’s Keystone testing despite the Ben Franklin principal stressing to the construction staff and workers that it was imperative that the building be kept quiet during the testing period. One witness recalled the Ben Franklin principal and school counselors “running” down the hall to the construction area to ask them to stop making noise during critical testing. Emails recovered during the investigation corroborated the teachers’ frustrations. Keystone testing was scheduled to take place from December 3, 2018 – December 14, 2018. In a November 29, 2018 email, an employee of Smith Construction reached out to the Construction Coordinator and others and wrote:

“... The attached calendar is our proposed **coring, grooving and concrete schedule for the month of December** ... Starting on either tomorrow or Monday (10/3)[sic] ProCore will be grooving and coring the 4th floor. The following week (12/10), ProCore will jump down to the 2nd Floor **while we are shoring and placing rebar on 4.** ... The week of the 17th ProCore will be working on the 6th floor while we are shoring and placing rebar on 2 and when they are finished on 6 [the Smith Construction Superintendent] will be right behind them shoring and placing rebar. ... [the Smith Construction Superintendent] would like to run the temporary partition ... [near] 14D **to try and reduce the amount of dust leaving the work area.**” (emphasis added)

Discussed in more detail below, this process is incredibly noisy, and each stage of the process independently would produce a tremendous amount of noise. As the email communication makes clear, all three processes would essentially be happening at the same time albeit in different sections of the building.

iii. Construction & Environmental Specifications

The existence and importance of the environmental specifications were not unknown to the District construction staff. In fact, the next day after the SRC awarded the prime construction contracts for this very project, the Construction Manager sent a reminder email to her staff about the environmental specifications in place for District Construction projects. She wrote:

“As we have discussed before, we need to focus on the environmental impacts of our projects. We will not continue to allow contractors to dust buildings or cause failed air samples. If air sampling for asbestos removal is taking place, construction activities CANNOT [sic] be completed near this area. The construction dust causes overloaded samples. I continually field questions daily in an attempt to defend the work we do. I will not continue to tolerate actions from the construction unit that feeds into this negative pressure.

Each project contains an environmental coordination section. I suggest each of you take 10 minutes to review this section on each of your projects and also review the information at your progress meetings. ‘All SDP contractors and [s]ub-contractors are responsible for preventing dust, particulates, odors and debris from impacting or reaching any occupied areas within the facility as a result of any and all aspects of their work activities on this site.’ This specification section also requires isolation barriers be built if natural barrier cannot be utilized.

If you are unaware of the negative attention that we have been receiving, please search Toxic Schools on philly.com. Each of you should be very aware of this information.” (emphasis in original)

That any of the contractors, particularly as it related to the demolition work, would claim either lack of familiarity or awareness of the District’s requirements similarly is not a valid defense. The specifications make clear that a contractor working on a District project is required to utilize “an experienced firm that has specialized in demolition work **similar in material and extent to that indicated for this [p]roject.**” (emphasis added)

The contractors similarly could not point to the building being occupied as a reason for any of their difficulties at the site. The specifications stated clearly that the “[o]wner will occupy portions of [the] site ... immediately adjacent to [the] selective demolition area.” The contractors were required to “[p]rovide not less than 2 weeks’ notice to [the District] of activities that will affect [the District’s] operations.”

The requirements for handling and cleaning areas affected by dust generating work at the site are also plainly laid out in the specifications within the contract documents. Although Smith Construction, following the March 2019 issues at the site in particular, proffered accommodations like “dump carts being used to transfer demolished materials [being] covered with plastic” and demolition commencing “during off hours” the specifications either already required such a measure, or the management of the District’s Construction unit should have invoked the provision. Instead, it appears to have gone unenforced for no satisfactory reason. The specifications require that the contractors “use water mist, temporary enclosures, and other suitable methods to limit spread of dust and dirt.” The specifications likewise demand that contractors [r]emove and transport debris in a manner that will prevent spillage on adjacent surfaces and areas.” Most importantly, the specifications required that contractors “clean adjacent structures and improvement of dust, dirt, and debris cause by selective demolitions operations.” The contractors were also required to “return adjacent areas to [the] condition existing before selective demolition operations began.”

The District’s construction staff had meaningful enforcement mechanisms at their disposal and regrettably either were unaware of the policies or elected not to utilize them. Instead, they chose to employ a strategy that largely consisted of maintaining an unachievable deadline, and hollow demands that the conditions at the site be improved. They chose not to consult the Office of General Counsel, and they made no substantive effort to seek any sanction against any of the contractors until what can only be described as the 11th hour of the project. The result left the Ben Franklin community, and later SLA, in a building that was unsafe to occupy for practically all of the 2018-2019 academic year, and the outlook for the 2019-2020 appeared to feature many of the same difficulties.

b. Change Orders

The District’s process in reviewing and approving change orders was perhaps the most inefficient aspect of the Construction Unit uncovered by the investigation, and surely was its most critiqued amongst contractors that do work with the District. The inefficiency primarily results in the District losing interested, qualified construction companies because they cannot financially sustain the delays in payment. The latent effect is losing an opportunity to have more competitive bidders for all projects and the potential for added savings to the District. With less contractors in the mix for District construction contracts, there is less incentive for the companies to submit competitive bids. The District has a tedious and duplicative process for tracking the change orders. It takes a substantial amount of time to review and approve the change order, and still longer for contractors to actually receive payment. A witness bluntly told investigators, “how they process everything monetarily needs to be thrown away.”

The current change order process begins with a contractor submitting an RFI to the architect noting that they believe the work to be a change from the original scope of work. The architect issues a Notice to Proceed with the work, but the architect is only instructing what/how to do the work, not ruling on whether the work is base contract work or change order work. In contrast with private sector work, the contractors rarely have a signed change order in hand before they start the actual work. There is no current method in place to uniformly track who gave direction to proceed with the work in change orders. The District largely directed work to proceed via email, but that was not universally the rule. This was problematic for both the District and the contractor. The contractor assumed the risk of completing additional work they might not be paid for, and the District does not have the best evidence possible if it does not follow a set protocol in directing work to move forward.

The contractor tabulates labor, time, and materials on a work ticket then submits a change order to the Construction Project Manager who reviews the request. After the Construction Project Manager approves, denies, or returns the change order for additional information, it gets sent to the Contracts Manager who assigns the review to a District estimator. The approval process was also, at times, hampered by the prime contractors failing to submit complete backup documentation. The contractors do not get notified from the Project Manager when the change order has been approved and forwarded to the estimators. The Construction Manager acknowledged that the process can be slow, but there are time and resource limits for the unit's staff. She explained that the Construction Unit would prefer to have additional staff on a project like Ben Franklin, but they do not have the resources.

The District's estimating staff are all currently contract employees. The estimators reach out directly to the contractors, and several witnesses reported a lack of communication between the Project Manager and the estimator because they were answering the same questions from the estimators about things they already told the Project Manager. A witness questioned the estimators' trade experience because it seemed the estimator's analysis was frequently formula-based, and there was not always an informed reasoning behind why certain deductions to the change order amount were being proposed. Another witness also said there is no set timetable or range for when they might expect to hear from the estimator, and one said it can be "weeks." The estimators and contractors then agree on either the submitted or a negotiated amount for the work and a spreadsheet that details what is approved is sent to the contractor that both the contractor and estimator have to sign. Witnesses reported they had "no idea" where the change order goes after the estimators approve an amount. In contrast, another reported that after the estimator and contractor reach an agreement they eventually received a letter from the Contracts Manager that the Board approved the change order. Witnesses that are more familiar with District construction work told investigators that the review process does not ordinarily take this long, and the delay is more attributable to the nature of the change order work completed and the volume of change orders.

The change orders themselves are difficult to track. Because of the separate prime contractor requirement, when each of the prime contractors submits a change order they sequence them according to the trade (e.g. General Contractor – GC-01, Electrical Contractor – EC-01). When the District receives a change order they are consecutively numbered regardless of the prime contractor that submits it (e.g. SDP-01 [GC-01], SDP-02, [EC-01]). When the Construction Project Manager approves the request, and it ultimately gets assigned to an Estimator the change order gets an "official" number – the third – for submission to the Board. This leaves contractors and the District constantly cross-referencing indexes of change orders and leaves the contractors reconciling the payments by either the nature of the work, or the specific amount of the change order rather than the change order number.

At the time of their interviews with this Office, all of the prime contractors for the project were owed huge sums for change order work that had been submitted to the District. All of the work had already been completed and the contractors paid out their sub-contractors. A more recent accounting of the change order totals was recently provided to this Office. The change order amounts for this project include both the base project work, along with a second package of work scheduled to be completed this summer.

Contractor	Number of Change Orders	Submitted Change Order Amount	Approved Change Order Amount
Smith Construction, Inc.	97	\$7,585,740	\$6,345,771
Dolan Mechanical, Inc.	30	\$496,303	\$380,088
PT Mechanical Group, LLC	26	\$404,254	\$387,329
McGoldrick Electric, Inc.	52	\$3,498,999	\$3,096,091
	205		\$10,209,279

The change orders themselves are categorized as either: “Design Error(s),” “Design Omissions,” “Unforeseen Condition(s),” or “Owner Request.” A summary of the reasons for the change orders is included below.

Contractor	Total Approved	Approved Amount	Percentage of Total Amount
Design Error	24	\$478,323	4.69%
Design Omission	32	\$1,104,006	10.81%
Unforeseen Condition	48	\$1,526,493	14.95%
Owner Request	97	\$3,718,687	36.42%
Summer 2020 Work	4	\$3,381,770	33.12%
	205	\$10,209,279	

The Smith Construction President explained that she warns all of her sub-contractors on a project about the risks of doing work with the District. She explained that although she does have a “pay if paid” provision in all the contracts with sub-contractors she is reluctant to enforce the clause from a business perspective because she frequently needs to work with them in the future and does not want to alienate a company. Another witness told investigators, it is a “foregone conclusion [they will lose money]...” even if they were paid full dollar on every one of the pending change orders. Yet another witness explained they are left financing the payments already made on this project with income from other jobs that the company is working. A separate witness stressed that the District’s “check is good, people want the work,” but they cannot tolerate the extremely slow payment process. The same witness recalled a conversation where they spoke with a contractor that they were attempting to recruit to do work with the District and the contractor “audibly laughed” at the suggestion. Another witness likewise stressed that the District is losing business and qualified firms/companies that would otherwise do business with the District if the payment deficiencies could be rectified.

The number of change orders on this project was “absolutely” higher than normal for a District construction project according to the Construction Manager, but she reported that many of the change orders were owner-added requests. In terms of the dollar amount of the work, the Construction Manager said it is “way more” than is typical on District construction projects. She told investigators the unit’s change order amount is typically “under 5%” of the total value of the project. A former contract employee serving as an interim District administrator, previously spoke at a Finance and Facilities Committee Meeting on December 5, 2019 and told Board Members present that projects should target a change order rate in the “range of 3-7[%], and when you start bumping up over 7[%] you want to figure out what’s going on.” At the time the former administrator delivered the remarks, the change order rate for the project was estimated at approximately 5%, but he expected that rate to

climb before the project was completely closed out. His expectations proved correct. The current change order rate for the project is expected to close at an overall rate of approximately 20%.

c. Major Delay Drivers

There were aspects of the work at the site that had a disproportionate impact on the overall schedule of the project and delayed completion of the project. Certain areas of delay resulted from the planned scope of work, but other areas became problematic when work began at the site. With the timeline for the project as rigid as it was, these drivers of delay were the critical items that caused delay that could not be recovered across the life of the work. Even one of the items, standing alone, might possibly have cost the District its planned deadline, but taken together, they rendered the deadline impossible. Concerns were raised well in advance by many parties, and the District instead chose to forge ahead under the misguided belief that the project could or would still be finished in time.

i. Re-Bid of Electrical Work

Before any substantive work was ever able to start, the project encountered scheduling difficulties. On June 15, 2018, all of the bids for the construction work were opened, and the lowest bid for the electrical work came in well over the District's anticipated budget for that portion of the work. The electrical bid was more than double the advertised budget and a decision was made to re-bid the work. In an apparent attempt to understand the disparity between the budget and the bids that were received the Construction Manager contacted the Smith Construction President the day after the bids were opened and asked about "why the electricians backed out." The Smith President replied to the Construction Manager the same day and reported that two firms she was aware of could not review the 115-page addendum issued by the District shortly before the bids were originally due.

The District construction staff appeared to acknowledge the significance of not having the electrical contractor chosen with the other prime contractors. The Construction Manager arranged a meeting for June 22, 2018 between the relevant District staff members, and representatives from the other prime contractors "to review [the] electrical impact of [the] Ben Franklin major renovation."

Steps were taken to promptly re-advertise and re-bid the work. The work was publicly advertised on both the District website and in several local newspapers on June 19, 2018, June 24, 2018, and June 26, 2018. Walkthroughs of the space were provided to interested parties on June 26, 2018 and June 27, 2018. The bids were originally set to be due on Friday, July 6, 2018 but that date was extended until July 11, 2018. McGoldrick Electric was selected as the lowest bidder and on August 16, 2018 the Board of Education authorized the action item to award the electrical contract to the company.

The overall effect of discarding the first round of bids was beneficial in one respect, but largely detrimental to the project's overall schedule. In re-bidding the electrical work, the District ultimately saved \$1 million compared to the initial round of bids. The downside was a two month delay in getting the electrical contractor on to the site between the bidding process and securing Board approval. Because there was a delay in securing the electrical contractor, Smith Construction was forced to sub-contract electrical work to McGoldrick Electric for a period of time so they could have functioning electric at the job site for things like the demolition work that was able to begin before McGoldrick's contract was finalized.

ii. Relocation of the Cafeteria

The decision to relocate the cafeteria space in the building from its existing location on the 6th floor of the building to the first floor was the most significant driver of delay. The decision resulted in a significant amount of work to accomplish the design, and it also resulted in a collateral consequence, the coring/stitching of the floors discussed in more detail below, that also contributed to a huge delay in the project. Once again, even though a design decision was made to move the cafeteria, no additional time was added to finish the project.

The original plan for the project did not call for the cafeteria to be moved. In the RFP for the architecture and design services, the initial plan for the project detailed no intention to complete major work in the cafeteria. Indeed, the only planned work for the cafeteria included new “air handling units” and lighting updates.

By the time the District was prepared to release the bid materials for the construction work on the project that decision notably had changed. The contract and bid materials make clear that the cafeteria was set to be relocated from the 6th floor to the first floor. The “Summary of Work” in both the de-scope interview forms and contract documents explained that “[i]nterior improvements **include[d] relocating the cafeteria and kitchen from the sixth to the first floor** to help create open and inviting entry points for each school.” (emphasis added)

In an email at the time the SRC was set to vote on the awards for the prime contractors, the former Director of Capital Programs/COO spelled out both the change and the additional scope as it related to the cafeteria space. She wrote:

“1. The Spring 2017 estimate provided by Kimmel Borgrette [sic] [KB] **assumed that the renovations would be in place and that no movement of programs or spaces would occur.** The KB estimate did not reflect Principal input given that a decision on approving a co-location was still pending. When a design firm was formally selected for this project, District staff worked with both school administrations on a layout for the building that would maintain the identities of each program while creating opportunities for shared interaction. **As a result, the approved final design includes major changes to the building layout.**

...

The additional scope included the following:

Relocation of Cafeteria and Kitchen to the First Floor: \$1,400,000;

...

Refinish Culinary Suite: \$100,000;

BFHS cafe and student exhibit space: \$200,000; ...” (emphasis added)

The decision to move the cafeteria became problematic for two reasons. First, there was no existing infrastructure in place on the first floor to house a culinary space. It would involve the

construction and installation of things like utility lines and the main exhaust shaft that now would need to run up and through all six floors of the building and involve drilling multiple concrete cores through each of the floors. Second, a great deal of work on the space could not begin in earnest until the end of the 2018-2019 academic year because the existing cafeteria space actively served the Ben Franklin community. Certain preparatory work could be done but demolition on the 6th floor, which would now have to be redesigned, and the new cafeteria space itself could not begin until there was comparatively little time (i.e. the summer break), left to complete the project.

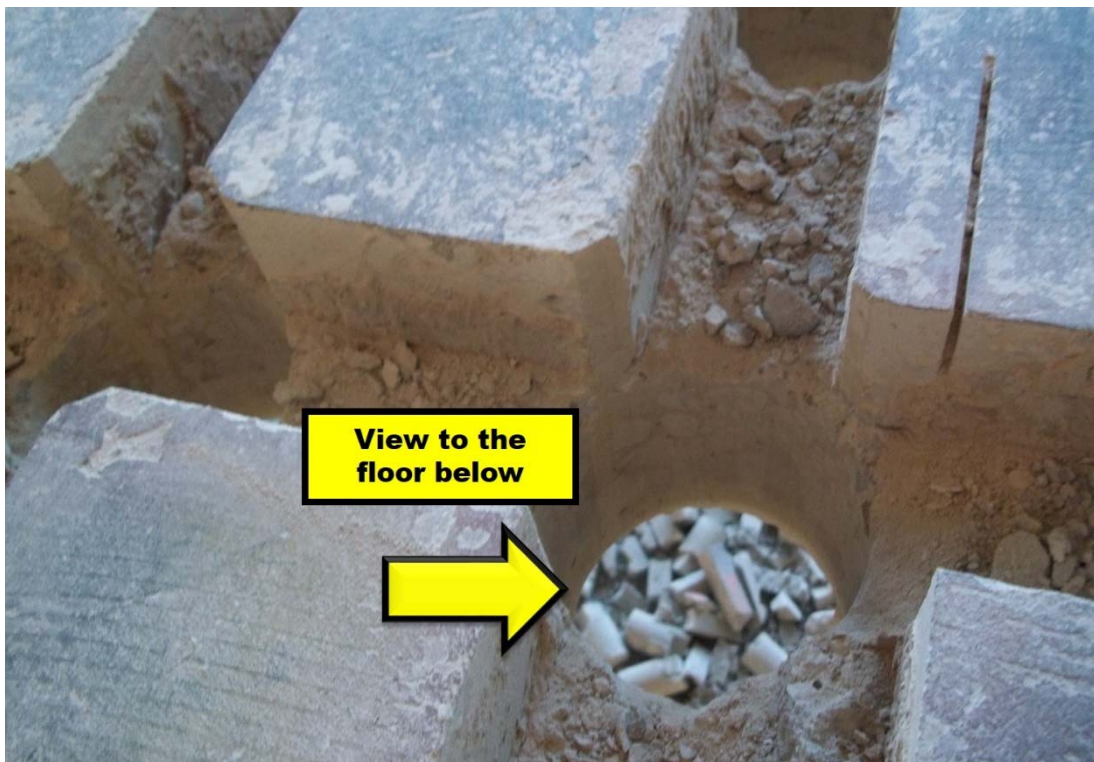
Two separate shafts, one fresh air and the other exhaust, had to be run from the first floor through to the roof thereby affecting the entire building. When a witness tried to explain the significant delay it caused to the District they said the construction staff just maintained that the “job has to get done; we have to get done.” The witness said the District told them additional time on the project was “not an option.”

The work was in fact so substantial that it did not get completed by the start of the 2019-2020 school year. Certain kitchen infrastructure work was not completed, equipment was not installed, and required inspections were not completed. As a result, both school communities were forced to eat boxed lunches until the work got completed. On several occasions, the lunches came to the schools “still frozen and border[ed] on inedible.”

As a result of the decision to move the cafeteria and the necessary requirement to have an exhaust vent servicing the space, a large section of the concrete slab through the entire building had to be scored, cut, and cored. That resulted in the contractor having to reinforce the structural integrity of the floors by installing additional rebar into the concrete slab so the structure of the floors could be maintained. The process was tedious and time consuming. The process required moving slowly even if everything went according to schedule. As in so many other phases of the project, this work encountered difficulty along the way and severely impacted the timeline for the project.

A witness explained to investigators what the coring and stitching of the floor involved. In order to complete the work Smith needed to sure up/stitch the floor with a massive I-beam of concrete immediately below the floor, then core the floor across and latch the I-beam to the floor with rebar. Throughout the process the company needed to take concrete samples, and hire a structural engineer to inspect all of the work as it progressed. A series of photos below have been provided to demonstrate the breadth of what the work involved for each of the floors, and the expected dust and noise that work would produce. The photographs also include the start of the new pour of concrete once the work was completed.







The Construction Coordinator told investigators that he had “never seen anything like that in my life” when he assessed the extent of the coring work called for in Stantec’s design and said it “blew my mind.” He recalled that even the teams doing the work had only seen a comparable amount of coring work on one other project. When the work began at the site, the Construction Coordinator saw the extremely slow progress the work was making and said he knew immediately that it would be a problem for the overall schedule. The Coordinator explained that he did not think Stantec “fully comprehended the labor [involved] to complete this task” and felt that there had to have been an easier way to complete the work. He recalled speaking at the time with a consultant structural engineer that previously worked for the District, and having them review the coring and floor stitching design plan. The Construction Coordinator said the engineer was surprised at Stantec’s decision to proceed in the fashion they had.

The contractors were also quickly aware that the process would put the project behind schedule. In her interview with investigators, the Smith President said the process required both a large volume of work and a long time to complete it. The President said she was incredibly concerned about having the work done properly because she knew children would be in the space, and what would be in many of the classrooms (e.g. heavy CTE shop equipment). She said she told her staff to complete the work “as fast as you safely can” but that, regardless of the schedule, she wanted it to be done properly. The President said Smith had to personally hire an engineer to assess the situation before they could proceed, and to check the work after.

In a September 2018 email, the Stantec architect emailed both the District staff and the prime contractors that “it ha[d] come to [their] attention that slab coring ha[d] begun” and reminded everyone that “the contractor must scan existing rebar in slabs and beams before creating slab penetrations” while also reiterating that “slab penetrations include cores.” Recognizing the impact that this requirement would have on the pace of the work, the Construction Coordinator wrote to the architect to ask clarifying questions and note that it might mean the work “may never get through this phase.”

When Smith Construction began their coring work after scanning each of the floors, it became apparent that the process would move slower than anticipated. The Smith President told investigators in her interview that she told the Construction Manager and the Construction Coordinator in either conversations or meetings that the floor “worried me,” but said there was still “pressure to get it done.” She said the District was not disputing that the work needed to be done, but they also were not willing to make any adjustments to the schedule. An email thread recovered in the investigation corroborated the Smith President’s position, and also demonstrated that the District was acutely aware of the impact to the schedule. In October 2018, the Construction Manager sent an email to a Smith Construction official and said:

“ ... I walked Ben Franklin this morning with [the Construction Coordinator]. I am very concerned with the process of cutting the floor openings. They are getting about 20 cores a day making the process about a week and then they have to chip out the concrete which is about another week. Then the epoxy and new concrete needs to sit for 28 days. And to complicate it, you can only do the odd floors and then move to the even floors. Reviewing your schedule, I don’t see this time frame allotted and your selective demo was scheduled to

be complete by 10/4 on floors 3-5. With the current plan on site, I don't see how you are turning over floors 3-5 by the end of December.

An updated schedule is going to be crucial. We also need to discuss what steps can be taken to expedite this process. (2nd shift, 2nd crew, longer days)"

The Smith Construction official wrote back to the Construction Manager less than 30 minutes later and said:

"... I will have an updated schedule prepared by Monday. We will be increasing the manpower for the cutting and coring. We had some concerns [sic] about the depths and locations of the existing rebar that we needed to review with the structural engineer. We met with him yesterday and were given direction on how to proceed."

A minute after that reply, the Smith President also sent an email to the Construction Manager and said:

"[Construction Manager -] I also left you a message.

I have a lot of concerns with this floor.

Give me a call when you can[.]"

The work necessarily proceeded at a measured pace. Despite concerns raised before and during the work, the District still made no contingency plans for the community that would inhabit that space.

iii. Doors

The design, approval, and construction of the doors and accompanying hardware throughout the building greatly strained the project timeline. A witness explained certain features of the planned door designs were incompatible with each other. Because the details on the doors were not finalized, the general contractor could not frame out spaces properly; without framed spaces the plumbing and electrical contractors could not continue their work properly. The witness told investigators that the District, general contractor and Stantec went "back and forth" for 3 months before the issue was finally resolved.

The Construction Coordinator candidly acknowledged during his interview that resolving issues with the doors, frames, and hardware was a difficult process on the project. He explained to investigators that door frames and hardware are an "issue on just about every project" but on this project in particular the issue was particularly difficult. The Coordinator said the submittals from the contractors were constantly being returned as "revise and resubmit" (i.e. starting the design over entirely), and he felt that Stantec wanted a certain design look for the space but did not plan it well enough during the design. He explained that the process was also frustrated because the original Design Project Manager left the District as did their replacement. The Coordinator said the original project architect for Stantec also left the company.

In her interview with the Office, the Smith Construction President said the doors always take time to design and get ordered/delivered. The President said even with an approved design, there is an 8-12 week lead time before the materials are actually on site. Another witness said the doors, frames, hardware, and glazing were “critical to the job.”

Smith Construction’s initial door submittal was made within 30 days of receiving their Notice to Proceed but the drawings were returned as “revise and re-submit” (i.e. rejected in its entirety) rather than “proceed as noted” (e.g. use a different door lock, but otherwise acceptable). The final decision was still in flux as late as November. In a November 29, 2018 email, the Construction Coordinator contacted the Stantec architects, members of Smith Construction, and assorted District staff members to convene a meeting because the issue was “very old” and needed resolution.

The parties agreed to a meeting for the following day. In advance of that meeting, a Smith Construction official sent the Construction Coordinator an email that contained “a summary from [the door consultant] detailing all the revisions to date requested from Stantec for the doors frames and hardware.” The Smith Construction official noted that “[d]ue to the numerous revisions requested by the design team it has delayed us from releasing material.” The email contained a lengthy summary of the repeated difficulties that Smith Construction had in getting the door design approved, and the various submissions that Smith Construction’s consultant generated.

In December 2018, Stantec approved the doors, frames, and hardware. In January 2019, Smith Construction formally notified the District that they were “delayed by approximately 90 days” because of the “numerous submittal exchanges and eventual redesign of the doors, frames and hardware.” With the delay in ordering the doors, Smith Construction had to install temporary door cores in the Ben Franklin spaces when they moved over into their renovated spaces. It caused a potential security risk because each of the temporary keys gave parties access to every door in the building. A witness stressed that “long lead times should be hammered out in bid documents,” and the struggles Stantec had with the doors should not have been happening while the project was ongoing.

iv. Wireless Access Points/Data Drops

A construction bulletin allows the District to direct additional work on a project, or alter/clarify the existing scope of work after bid and contract. A total of 17 bulletins were issued during the construction phase. Bulletins had to be issued regarding data cabling that was demolished due to a particular design specification, causing work to be re-done and additional delay to the project. A witness described that one bulletin alone generated almost \$900,000 in change orders by the time the work was entirely completed. The witness explained that the discrepancy between the volume of some of the installation according to the original plans versus work added via the bulletins were sometimes drastically different, and the witness could not explain how there could be such a disparity.

During the design phase the Construction Coordinator said that the design staff “kept bringing up” adding wireless access points (WAPs) to the space. The Coordinator said during his interview that he stressed that it was unnecessary work because the building was already a functioning space with a working wireless infrastructure in place. He said the Design Project Manager agreed with him but the materials nevertheless got added to the scope. On a walkthrough of the space, the Construction Coordinator said he noticed a cut data cable. When he inquired of the contractor why it was cut he said he was told of a note on the drawings that instructed the contractor to demolish “low voltage cable.” The Coordinator said it was difficult for him to find the note they referenced but after a lot of

searching he was able to locate it. He told investigators it was fair for the contractors to read the note as instructing that action, but the result of the demolition that had taken place to date caused a substantial amount of work to be added. The Coordinator said resolution of the issue also encountered difficulties. He told investigators that it was “3 weeks, [and] 4 meetings” to resolve the issue, and even something as basic as getting someone into the space to assess what was salvageable was difficult. Ultimately, he said they had to issue one bulletin to correct the earlier bulletin.

v. Elevator Renovations

The project called for both the passenger and freight elevators in the building to be renovated. A witness told investigators the elevators needed a substantial amount of work in order for them to pass inspection, and they felt that the project timeline did not allow enough time for the necessary work to be completed. Indeed, the elevators seemed to be a frequent problem area in the building before the renovation project. In a building wide email the building engineer in place before construction started quipped “[b]oth elevators are up and running ... for now” Delays in the work forced the schools to use the passenger elevator for both freight and passenger services, requiring permits that ultimately delayed the opening of the schools.

It is clear from a review of the construction meeting minutes that the design submittals for the work took several months to complete. By the time the designs were finalized, Smith Construction’s subcontractor projected that all of the work would be completed in 28 weeks when a total of 29 weeks were left on the project. The work on the passenger elevator in the building did not begin until February 14, 2019. Smith Construction expected to complete the work on the passenger elevator by June 23, 2019. Nevertheless, the work was still incomplete as late as the August 2019 construction meetings. The passenger elevator did not actually get inspected until August 29, 2019 – mere days before the planned start of school – and it failed its inspection.

A former District administrator contacted a former colleague and was able to secure a second inspection over the Labor Day holiday. The elevator was able to pass inspection and was turned over to the school. Because the passenger elevator failed its inspection, the campus delayed opening until September 6, 2019 given that the elevators were a necessity for things like injured students and those with physical disabilities. Only after the passenger elevator passed inspection could construction begin on the freight elevators. The freight elevator was then set to be under construction from November 2019 until March 2020.

The Construction Coordinator explained in his interview that there was a lot of miscommunication between Stantec’s elevator consultant and Smith Construction’s elevator consultant on getting the various submittals completed and approved. He explained that Stantec essentially wanted the entire submittal completed at once before they would sign off on any of the initial stages while Smith Construction’s elevator consultant was really asking them to approve the initial phases of the submittal so work could get started, and the rest of the submittal could continue to be completed. The Construction Coordinator said that often in instances like that the subcontractor/consultants just ask for permission to communicate directly with each other if there are frequent struggles getting something approved. He said that once he got everyone to the table together he was able to get the issues cleared up.

vi. Awareness of delays

Concerns about delays in the project were made clearly and directly throughout the project to the District. A witness told investigators that it was readily apparent very early into the project that “things were not going as they should,” and any time the progress schedule for the project was reviewed it was “like Christmas lights – all red” along the critical path of the project. A separate witness told the Office that the project was “misplanned [sic] from start to finish” as far as the schedule was concerned. During a walkthrough of the space in early 2019 the witness said it was clear they “were passing a red line” and the District construction staff “didn’t grasp what was going on.” This was the first time there was any meaningful discussion about contingency planning on the project. The witness told investigators that as early as March 2019 the plan needed to shift to achieving partial occupancy if the District still wanted to maintain their original deadline. The witness said the project as originally planned should have had a deadline of December 2019 in order for it to be completed on time. A separate witness said the Construction Manager and Construction Coordinator said the project had a “recovery schedule” and told the witness that the work was still expected to be completed on time. The witness was independently told by the former Director/COO and another District administrator that “there was no Plan B” and “we’re on schedule.”

The construction meeting minutes also make clear that deadlines were going to be missed, and parties were expressing their concerns. In the January 31, 2019 construction meeting, the minutes noted, “6 East will not be complete by August.” At the following scheduled construction meeting on February 14, 2019 the SLA Principal raised concerns about the progress on the SLA side of the building. The meeting minutes noted, “...SLA is concerned that the overall project deadline will not be met.” The SLA Principal again sounded considerable alarm in a July 11, 2019 email – just 6 weeks before the start of school. He expressed concern about the state of the project and included pictures with the email that he sent to the Construction Coordinator, the former Director of Capital Programs/COO, and his Assistant Superintendent. The Principal wrote:

“[Construction Coordinator],

I have very serious concerns about the status of the building. I don't see how this is going to be ready for the start of school, let alone the August 1st deadline. I am attaching several photos to document my concerns.

1) This first picture is significant because it shows that demolition is still not finished. This is where the doorway giving access to the cafeteria for Ben Franklin students is supposed to be. We are three weeks away from completion date and demolition still isn't complete.



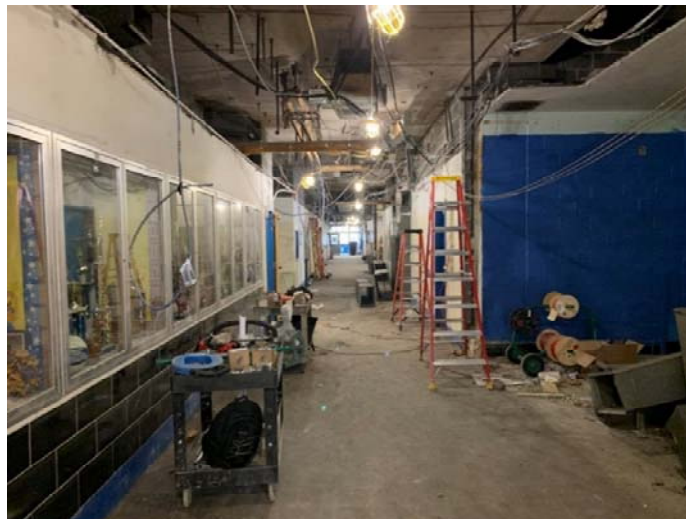
IMG_0869.JPG

2) This is the entrance and "living room" for SLA. As these photos show, it is nowhere near completion



IMG_6337.JPG

3) This is the connecting hallway on the first floor. As you can see, there is a great deal undone here. This hallway will also contain [the Ben Franklin Principal's] office and the school stores for both schools. None of those rooms have been framed out yet at all.



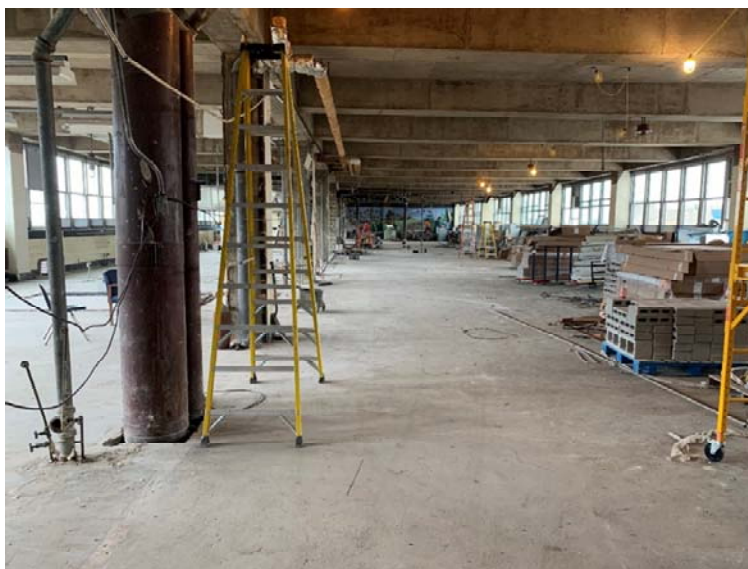
IMG_5023.JPG

4) This is the Engineering CTE space on the 6th floor. As you can see, two of the three spaces have flooring down, but there is nothing else done here. The riggers are coming to SLA to move the specialized equipment next week. The delays here mean that we will have this put on the floor and then the riggers will have to be brought back once all the walls are build and the specialized power and venting lines are completed to finish the install.



Note: Image has been cropped from original
IMG_5992.JPG

5) This is the sixth floor on the Ben Franklin side. Nothing has been done here other than demo.



IMG_0266.JPG

6) This is the fifth floor science lab. The walls are not framed, and as you can see, there's almost nothing else done here.



IMG_7438.JPG

In short - there's nothing completed on the entire SLA side.

A brief summary from my admittedly lay-person's view is that the first floor is nowhere close to completion. The second floor is closest to completion, but even there, there is still significant work to be done. The third floor is nearly done as far as getting all the walls completed, but there is still all of the work that has to be done after that. The fourth floor is far from done, and the fifth and sixth floors are nowhere close. In addition, all of the hurry-work done to get Ben Franklin into floors two through five this spring is now being addressed, which is very good, but it is more work that has to be done before the start of the year.

I am at a loss to see how this will be completed for the start of the school year....”

The construction meeting minutes across the summer months were a variety of updated schedules and progress notes. With the school year fast approaching it became clear that the consistently stated goal of an August 1, 2019 completion date would not occur. Yet again, the Ben Franklin community would be forced to make accommodations to the construction, and SLA would now be directly impacted coming into the space for the first time. The minutes for the August 1, 2019

construction meeting noted work on the “1[st Floor] West corridor,” and “6[th Floor] East” would not be complete by September 3, 2019 and the Ben Franklin Principal would need to relocate five classrooms. At the following meeting on August 15, 2019 both the Ben Franklin Principal and the SLA Principal expressed concerns about the ability to open their schools safely and on time. The meeting minutes noted the Ben Franklin and SLA Principals’ “concern[s] about the ability of the building to be operational for September 3rd.” The minutes detailed that “SLA need[ed] their 6[th Floor] West CTE space to be complete for school opening” and “Ben Franklin need[ed] the Basement to be cleaned, its ceilings to be reinstalled, and its camera system to be operational for [the] school opening.”

The District construction staff were acutely aware the project’s timeline was at risk before the original deadline for the work. The Construction Coordinator told this Office that in “mid-June 2019” he realized they were “not gonna [sic] make it. He recalled a meeting around that same time where the current Director of Capital Programs “capitulated two spaces” – the 1st floor commons area and the 6th floor CTE spaces – and instructed the contractors to focus on the remaining areas. The Coordinator felt the District should not have made the concession, and, in speaking to the contractors after the meeting, he recalled them telling him the meeting had gone better than they expected. He said that, given the status of the project, the contractors “...were expecting to get their head smashed” regarding the slow progress. After the contractors were given the concession instead of insisting the work get completed, the Construction Coordinator said the pace of the work got “monumentally slower” from that point forward. He said that the contractors “never hit another deadline” for the remainder of the project after that meeting.

Investigators similarly asked the Construction Manager when she first had a real sense that the work would not be completed by the deadline. She likewise recalled what appears to be the same meeting though believed it to be in the end of June or beginning of July 2019. She told investigators that she and the Construction Coordinator sought to take a tone of “not accepting” that certain spaces would not be turned over by the start of school. At the meeting she also recalled the current Director of Capital Programs conceding certain spaces – she recalled a 5th floor lab, and the SLA entrance – would not be finished and instructed the contractors to focus on the remaining areas. When that happened the Construction Manager said the contractors “took a deep breath.” She recalled being called by the Smith Construction President after the meeting and the President remarked “what the hell was that meeting? He gave us an out.”

The former Director of Capital Programs/COO was also aware in advance that the spaces would not be fully completed by the start of the school year. The former Director/COO told investigators that in May/June 2019 she began her first walkthroughs in the space because the work should have been nearing completion by that stage of the project, and that was the first time she heard of any problems at the site. She said there were no discussions about re-locating either or both schools to alternate sites. The former Director/COO said there were discussions about extending the substantial completion date, but said “I don’t remember when” those discussions might have occurred. She told the Office “the intent was to get SLA in with the understanding that work would continue into the school year.” She explained that the current Director of Capital Programs told her that they could open school for the year but the 6th floor of the building would not be complete. She said the unavailability of the 6th floor was less problematic for Ben Franklin because they were primarily raising punchlist items in those spaces. Notably, this stands in contrast to the construction meeting minutes that noted “[The Ben Franklin] must relocate five classrooms” and “[o]ther than [R]oom 19 there are no other free spaces in the basement. ...” The former Director/COO said the

unavailability of the 6th floor was more problematic to SLA because that floor was where SLA's CTE programming would be located.

d. Site Staffing

The District did not have adequate staffing in place to manage a project of this size. Throughout the project, the District had a Construction Project Manager, an Assistant Project Manager, and a Construction Inspector assigned to the Project. The Construction Coordinator served as the Project Manager until Fall 2019. During that time he was responsible for a number of other projects besides the Ben Franklin/SLA renovation. The Assistant Project Manager for the project remained on site every day, but he joined the District and project as a consultant from an outside company. This renovation project constituted his first dealings with a District project/site. The Construction Inspector for the project initially joined the project in that role but got promoted to a Construction Project Manager in July 2019. In his capacity as a Construction Inspector he was not on site every day because he had other responsibilities. Beginning in Fall 2019, shortly after the campuses were closed, the District contracted the firm Johnson, Mirmiran & Thompson, Inc. ("JMT") to join the project as full-time construction managers. JMT staffed the project with a lead project manager, and two assistant project managers. The three worked on site every day, and it was the only project in their portfolio.

Witnesses the Office interviewed in the investigation did not take issue with the District construction staff's technical competency, but instead felt they needed "training on the management level" particularly with "large scale projects." One witness said the District construction staff were "overwhelmed" and only able to give the project "an hour or two per day for a day or two per week." A separate witness explained that a project the size of the Ben Franklin/SLA renovation required at least a senior project manager, a junior project manager, and one mechanical/electrical inspector on site every day because you want the primes to "see the management" on site every day.

When one considers that JMT effectively tripled the number of management staff on site daily for the portion of work they were responsible for, the staffing levels the District maintained over the majority of the project appear glaringly deficient.

e. Site Security Issues

Benjamin Franklin's physical security was substantially compromised by the construction taking place in their building, and the staff's repeated requests for assistance frequently went either unanswered or the response proved inadequate. The Ben Franklin and SLA staff suffered from lost or damaged property, and an inability to adequately investigate climate incidents.

i. Identification & Background Clearances

The construction employees were required to complete and possess the requisite state and federal background checks and clearances. As discussed above, it is a requirement that every construction worker, regardless of their designation as an employee of one of the prime contractors or that of a subcontractor, is required to possess visible identification while on the site.

A number of witnesses from both Ben Franklin and SLA expressed concern to investigators about the lack of visible identification worn by many of the workers. A witness from Ben Franklin

explained that the staff were told that the workers would wear ID and have company shirts clearly marking who they were as they moved around the building. When the work began at the site, the witness said the workers did not abide by that guideline. Another witness from Ben Franklin said workers were coming and going with no identification in the form of an ID card or on their clothing. The witness said there were people coming in and out of the building and the staff were left with “no idea who anyone [was]” inside. A third witness from Ben Franklin expressed concern to investigators about the background checks on the workers inside the building during the construction work. The witness had particular concern since there were workers around young students and the witness did not know if they had approved criminal background checks. The witness explained they were largely left maintaining security based on which workers they could regularly recognize. However, contractors would then substitute new crews of workers on to the site leaving the witness to become familiar with the workers all over again. A fourth witness told investigators that “parents were concerned” about some of the workers on site not having completed the requisite clearances.

A witness from SLA told investigators that some parents of SLA students expressed concerns about construction workers being in the space around children without proper clearances. The witness recalled that either the PFT or at a Town Hall meeting “someone said they have clearances,” but they were not provided any information beyond that assurance.

A witness familiar with doing construction work inside schools outside the District expressed dismay at the lack of attention to either verifying the clearances or ensuring security at the site. The witness explained they had a completed background check available and a company-made identification card, but the District construction personnel “never asked” for any identification or inquired about the clearances. By comparison, the witness described their experience with a suburban school district outside Philadelphia. The witness explained that before a worker could even enter the site each day they had to display their identification and clearances. To their knowledge, nothing like this was practiced by the District at this site.

The investigation revealed inconsistencies amongst District staff for what is actually required before a construction worker can enter an occupied District space to work. The former Director of Capital Programs/COO told investigators that she “knows it’s in the specifications,” and believed the companies were required to submit the background/clearance materials sometime between the Board vote and their receipt of a Notice to Proceed letter, usually within 6-8 weeks. The former Director/COO said that she thought a failure to submit the required materials should hold up the issuance of the Notice to Proceed letter.

The Construction Manager told investigators that the members of the Construction Unit “do not collect those [materials].” She told investigators that the construction staff tell the contractors if the District “ask[s for the materials] for any reason, they have to provide” them. The Construction Manager explained that the contractors are required to declare to the District if any of the employees have a conviction on their record checks, and if they incur any new arrests. If there are any criminal contacts, the Manager said that someone in Human Resources, she could not specifically recall the name during the interview, reviews the records and decides whether the person can be allowed on site.

The Construction Coordinator told the Office during his interview that the District requires nothing other than what is in the specifications, and his understanding is that the employer is required to maintain the materials. The Coordinator told investigators that he instructs contractors that the

checks cannot be older than one year. He said the District does not request the materials, and he has not asked for copies of the checks/clearances. He told investigators that he "...[couldn't] judge" what would or would not be appropriate to see on a background clearance check, and decide whether it was appropriate to permit the worker on to the site. The Construction Coordinator said that when the District utilized a prior construction management company a site safety officer would check the materials before a worker was permitted on site. The investigation found that there was no site safety officer at the location and no District employee collected or verified any of the background or clearance information.

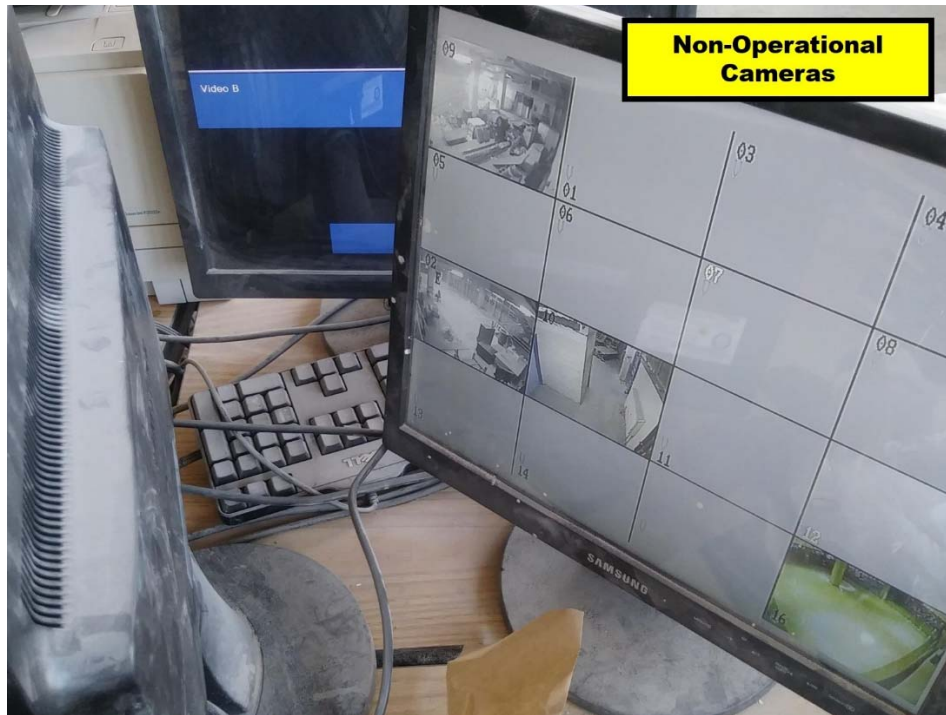
ii. Surveillance Cameras

The staff at Ben Franklin struggled mightily with being able to actively monitor such a large space with a small security/climate staff and a fraction of their full surveillance equipment working for a majority of the construction. It is a testament to the professionalism, dedication and collegial relationship of the Ben Franklin staff that the building was kept as secured as it was in 2018-2019 in the face of so many obstacles. Despite their best efforts, the staff had climate and security instances that could have otherwise been more completely investigated, or not happened at all if they were not kept in the construction space.

Throughout the construction, the school's surveillance cameras in the building were substantially impacted. At the start of construction the school had 53 cameras at their disposal. When construction began only 23 of the 53 cameras remained operational, and amongst those 23 operational cameras they would occasionally drop out of service with various construction work. As early as November 2018 the architect noted during a field visit that "[w]hen [they] were onsite [they] noticed that the old camera room cabling, computers, and monitors did not have protection from the construction dust." In that same email, the architect said "[they would] direct the [general contractor] to provide temporary protection for this equipment."



Source: Confidential



Source: Confidential

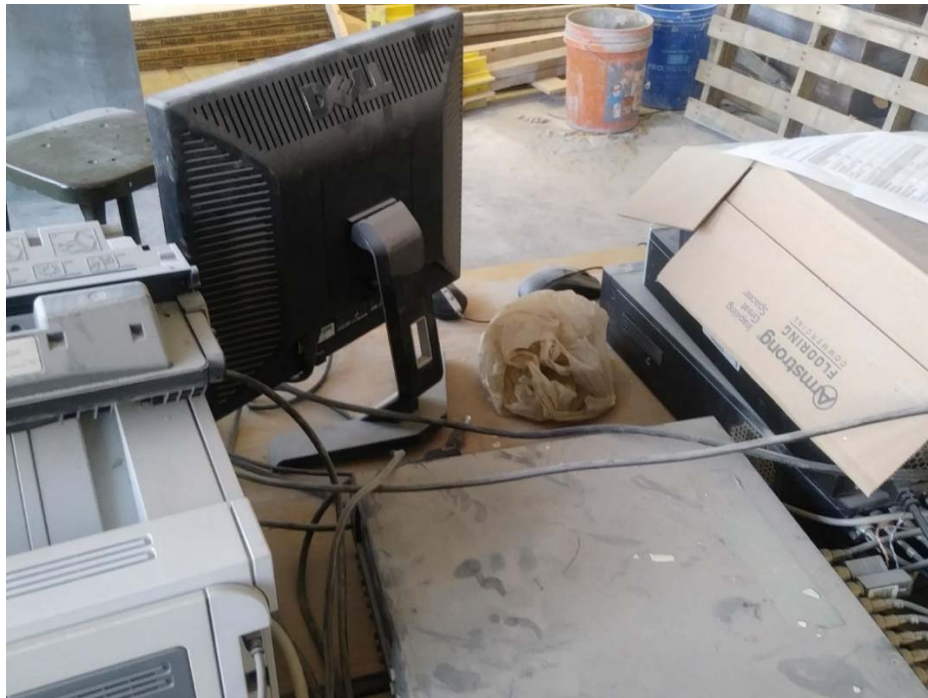
The problems with protecting the cameras and equipment continued into March 2019 when a Ben Franklin staffer sent an email that the Ben Franklin Principal forwarded to the Construction Coordinator with pictures attached to the email and partially reproduced below. The email noted "... [t]he pictures show the dust/dirt on EVERYTHING [,] the camera room and equipment [,] a lot of cameras are ou[t]..." (emphasis in original).



Note: The photographs have been annotated by the Office for guidance. The original photographs were not annotated. Source: Confidential



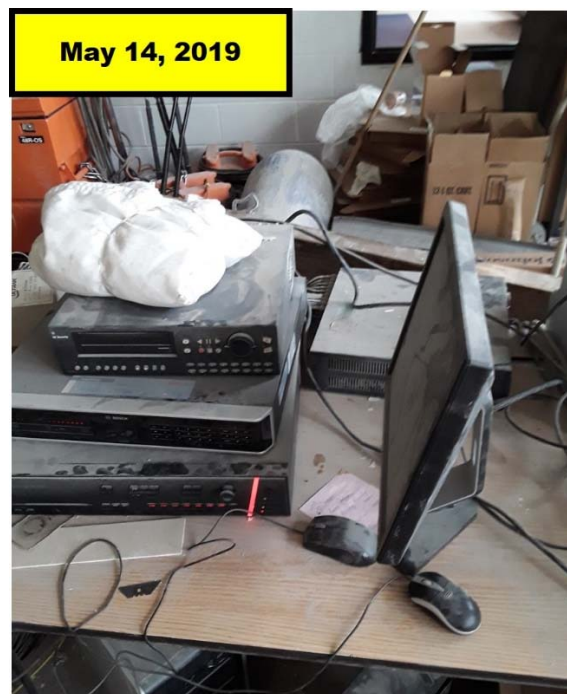
Source: Confidential



Source: Confidential

Again, the District construction staff made little progress in addressing this issue. In May 2019, the Office of School Safety assessed the surveillance cameras inside the space. The School Safety staff were able to confirm that the DVR units for the equipment were all functioning, but the connection to the cameras in areas affected by the construction had been lost. The staff concluded that the lines

had likely been cut or damaged in the course of the construction, and described the issue as “unfortunately ... a common occurrence during other projects across the District.” The School Safety staff provided a summary of the functioning equipment, and included photos of the space. Notably, the conditions the School Safety staff saw on their visit bear a striking resemblance to conditions in the March 2019 email to the Ben Franklin Principal.



In September 2019, District administrators reached out to the District construction staff about several key services and functions that still were either incomplete or not available for the schools. One of the areas of concern included the security cameras. A witness told investigators the communications with the construction staff at that time were marked by “hairsplitting” and a lack of

clarity that then required additional follow up from the administrators to verify information. As an example, the witness outlined the number of cameras that were expected to be installed at the school. In one of the construction updates they received it noted that only “[X] cameras were installed and pointed.” When a follow-up question was asked about the lack of progress made on the camera installation, an ensuing communication from the Construction Manager indicated “80 cameras are installed” leaving the witness to wonder if that meant the cameras were also properly pointed. The Construction Manager responded via email that she would “confirm the number that are aimed and focused. In a separate instance, the construction staff initially sought to place blame on the Ben Franklin staff for canceling a training session on the operation of the new surveillance equipment. A separate witness explained to investigators that the Ben Franklin staff had nothing to do with canceling the training session. The witness said the trainer had come to the school one time, but left the campus without permission and without teaching any of the staff how to operate the system. That information was later acknowledged by the District construction staff in a construction progress meeting.

The design and installation of the security cameras was also marked with several problems. The number of cameras along with the proposed layout did not appear to utilize the institutional knowledge that Ben Franklin staffers had for the space. Although the building underwent a drastic renovation and experienced a number of structural changes to its layout, the Ben Franklin staff were familiar with certain trouble spots in the building, and, given an opportunity to get additional cameras during the renovations, had hoped to take advantage and get additional cameras to cover those areas. Instead, the Ben Franklin staff returned in Fall 2019 to find what they thought were insufficient number of cameras to safely secure the space. Even the location of the camera room itself raised concerns when staff learned the camera room and School Safety quarters for the building were located in the sub-basement in a closed space without ventilation, which risked damaging the equipment.

On September 11, 2019, a Ben Franklin staff member alerted the Ben Franklin Principal via email to a list of outstanding camera locations that were not installed, separate from the inability to access the system. The staffer noted they had consulted the electrician and learned the areas were “not on the floor plans for camera installation[.]” but stressed that “they are necessary.” The staff member explained that “due to prior incidents ... it is imperative to have cameras in these areas/blind spots[.] ... to prevent incidents, [and] be proactive regarding the safety and security of students, staff and [District] property.” The Ben Franklin Principal forwarded the staffer’s concerns to District administrators less than two hours after being alerted.

Around that same time, the SLA Principal raised similar concerns about the adequacy of the number of cameras in the space. The construction meeting minutes for September 12, 2019 memorialized that “[the SLA Principal] stated that School Safety walked through the building and was concerned that the design did not contain enough cameras. This information was passed on to [the District].”

Despite the concerns from both campuses, no meaningful action appears to have been taken until early October 2019. On October 3, 2019 the Construction Coordinator emailed the Stantec architects saying “we have received notice ... that there are spaces in the building where the new camera system does not cover,” and asked them to “please provide a sketch showing proposed additional cameras to cover these spaces.” The Coordinator’s notification to the architect is problematic given that it follows several weeks of Ben Franklin staffers, the Ben Franklin Principal, and an Assistant Superintendent pleading for access to the system itself. More troubling though is that it does not appear that the architects, despite the clearly outlined concerns of the Ben Franklin staff

and the Principal, finalized the layout of the camera locations until October 28, 2019. This design change ultimately generated a substantial amount of change order work.

Most importantly, the inability of the schools to surveil the space also had an impact on the school's climate and safety. Despite spending the 2018-2019 academic year with a deficient surveillance system, the problem still was not cured by the start of the 2019-2020 academic year. At the start of the school year the school had no accessible cameras on the entire campus. The installed cameras were operational and recording, but none of the staff had the ability to access and review historical footage if necessary.

The Assistant Superintendent for Ben Franklin advised both the Construction Manager and the Construction Coordinator in an email that "we were promised these cameras would be up and running before the start of the school year[;] this is a significant safety concern." The following day, September 12, 2019, the Construction Manager, in a separate email from a District administrator seeking similar information explained that: "82 of the 105 cameras are installed. I will confirm the number that are aimed and focused. The DVR is recording. I have conflicting reports regarding training. We are working with Siemens to reschedule the training for next week. ..." As discussed above, there was not conflicting information regarding the training. The Ben Franklin staff stood ready to be taught how to use the system but the trainer simply left the campus.

There were a number of climate incidents that took place over the life of the project where school staff were unable to adequately investigate the matters because of either inoperable security cameras or the inability to view the footage. As far back as March 2019, the Ben Franklin Principal contacted the Assistant Superintendent at the time to raise imminent safety concerns stemming from recent community issues, and express that "[t]he construction project [had complicated her] ability to secure the building. The Assistant Superintendent contacted the former Director of Capital Programs/COO and other District administrators to forward the Principal's concerns. Available email communications do not show that the Assistant Superintendent ever received a response to the concerns.

The Ben Franklin Principal's concerns were validated when the 2019-2020 school year began. A series of climate incidents took place and the staff were unable to fully investigate the matters because they had no access to the surveillance cameras. In one particular instance, there was a camera directly in the area that would have captured the incident, but none of the staff had the ability to review the camera because they had not been given the required training. In less than an hour, the Principal notified her Assistant Superintendent of the staff member's concerns noting that there was "... [s]till no progress and it's a major issue."

iii. Door Security

Throughout the construction during the 2018-2019 school year, the Ben Franklin staff grappled with keeping the building doors secured. The staff struggled with keeping both the doors leading out of the building, and the doors to the construction areas closed and locked because contractors would leave them open. Despite the size of the school community, the Ben Franklin staff took meticulous care to maintain security of the space. During this investigation, OIG staff arrived to speak with a witness and errantly entered the building from a side door left ajar. Nearly immediately, a Ben Franklin staffer stopped the OIG investigator to verify their identity after not recognizing them. A witness told investigators that doors into the school were left propped open "with no idea who any

one [was].” In particular, the witness noted the side door to the building and the loading dock were always open for “the whole year.” Another witness separately reiterated that the loading dock was consistently left open.

Keeping the loading dock door secured was also a recurring topic at the bi-weekly construction meetings. Despite securing the doors being reiterated multiple times, it continued to be a problem. Beginning as early as the December 16, 2018 meeting, the minutes note “[t]he loading dock doors need to be kept closed. ...” In a particularly troubling entry in the February 28, 2019 construction meeting the minutes noted “[a]n intruder made their way into the building [and] [c]amera footage suggest[ed] that they entered at the loading dock.”

The threat to place locks on the door apparently rang hollow as the doors continued to be left open. At the March 28, 2019 meeting the minutes noted “SDP needs Smith to lock the wood loading dock double doors. Too many people are entering the building and this location is one of the access points.” Despite the issue being raised across five separate construction meetings during the 2018-2019 academic year, the problem persisted into the 2019-2020 academic year. During the September 12, 2019 construction meeting, the minutes indicated “[e]xterior doors have been propped open during school hours.”

The issue of keeping the doors secured takes on added significance because it appears from the investigation that door security sensors were disabled because of construction so keeping the doors closed was a critically essential means of security. On December 19, 2019, the Construction Manager contacted the previous building engineer and asked whether the exterior doors had functional alarm contacts. The building engineer confirmed that the alarm system “worked correctly until construction started.”

Maintaining security of the construction areas also proved problematic for the Ben Franklin staff. In March 2019, a staff member noted that “[f]loors 1, 3, 4, 5 and 6 have security doors with [w]arning signs blocking the area under construction, but a large amount of times [sic] the workers leave the doors open” and said “[the Ben Franklin Principal] has addressed that issue.” A witness described two separate incidents where students were able to access the construction area. In the first, the student got into the work area and took tools. In the second, a student threw a fire extinguisher out of a window and into the area of construction workers standing below the window. Both of those incidents occurred after Ben Franklin staff pressed to have additional protections (e.g. hard wall, key pad lock, etc.) but those protections were not followed by keeping the space locked.

iv. Window Security

A less apparent, but no less significant aspect of the building’s security involved the failure to install window guards/locks to prevent them from being opened to an unsafe height. On September 3, 2019, the Assistant Superintendent sent an email concerning securing the windows and mentioned that “[w]indows need locks that prevent them from opening all of the way up[;] [t]his is essential in the bathrooms.” The concerns proved prescient.

When classes began in September 2019 the Ben Franklin staff responded to a climate incident on September 17, 2019. In investigating that incident it prompted the school’s climate staff to review other bathroom spaces and they discovered other security vulnerabilities. The Ben Franklin Principal sent an email to her Assistant Superintendent, the former Director of Capital Programs/COO,

Construction Manager and others outlining her concerns. Less than 30 minutes later, her Assistant Superintendent responded to the email thread and noted that the Principal had “requested on numerous occasions that the safety grates and stoppers be installed on bathroom windows” and stressed that “it is only a matter of time before a kid ... [hurts] him/herself.” The Assistant Superintendent asked if it was “possible to get the window safety equipment installed” that night or the following day. One minute after the Assistant Superintendent sent their email, the former Director/COO responded “no” and advised it was “not in the scope of work[, but] was added to be ordered.” As a short-term solution, the former Director/COO explained that they would “look at screwing [the windows] closed until they arrive.”

v. Building Security & Work Area Restriction

Ben Franklin staff similarly dealt with contractors working beyond the construction area dividers and moving throughout the building where they otherwise should not be traveling. Multiple witnesses reported the contractors performing work in student occupied areas. One witness described workers running electrical wires through the ceiling directly outside a classroom with classes actively in session. Another described frequently seeing construction beyond the dividers for the work areas.

There were several instances where witnesses reported personal items or instructional items were stolen from classrooms. One witnesses reported a classroom being “trashed” four separate times. Another witness described the theft of \$3,000 in aluminum metal that was signed for when the CTE instructor needed to sign for the delivery was neither on site nor working. The incident was reported to the police. Teachers also had personal items taken from their classrooms. Another witness described the security at the site as “pretty much nil” and had classroom items valued at several hundred dollars a piece that were lost and presumed stolen.

The Ben Franklin Principal repeatedly raised concerns about construction workers accessing student/staff occupied areas well beyond the construction area. She reported a number of significant concerns directly to the District construction staff and there was little to no progress to address her concerns. In a July 9, 2019 email to the Construction Coordinator and others she wrote:

“... I just want to raise some awareness about concerns that I observed today:

- 1.) The main office is not being secured. Construction workers are utilizing the bathroom (and making a mess!!!).
- 2.) The nurse's office is also being used. There were water bottles stored in there that are now in several areas of the building (meaning that someone helped themselves to these bottles and are using them for personal use).
- 3.) Today my office door was propped open with a magazine. My office should NEVER be unsecured. All items from the school store are being held in there. It appears that someone rummaged through the t shirt [sic] boxes. Additionally, I have confidential staff files in my office.

4.) There are deer park water bottles by the loading dock elevator that should be in the teachers lounge. They are now covered in dirt.

5.) The football coach was in today looking for newly ordered shoulder pads that should have been delivered in a Riddell box. Where are deliveries being taken when they arrive?”

(emphasis and punctuation in original)

With the 2019-2020 school year approaching, the Ben Franklin Principal saw little progress to the many concerns she raised in her July 9, 2019 email. Exactly one month later, August 9, 2019, she sent another email to the Construction Manager and the Construction Coordinator underscoring her concerns yet again. Amongst a litany of other frustrations about the condition of the building, the Principal noted that she had “removed candy bar wrappers, food containers, half[-]filled smoothies and applesauce cups that were moldy from classrooms where work had been completed.” She expressed frustration that “...insects and rodents are able to feast in my classrooms due to contractors' failure to clean up their personal food items.” The Principal sent her email shortly before 7:00am that morning. At 5:15pm that same day she forwarded the email to the Assistant Superintendents for each school explaining that “[the SLA Principal] and I were hoping to receive a response; however, we didn’t hear anything. ...”

Any hope that the official start of the school year would ease the Ben Franklin Principal’s frustrations was quickly dispelled. When school began in September 2019 contractors continued to work beyond the construction areas. The construction meeting minutes memorialized concerns from both the SLA and Ben Franklin Principals about the construction workers continued failures to abide by the area restrictions. The minutes for the September 12, 2019 meeting noted:

“[Both Principals] observed the following contractor activities taking place during school hours in occupied areas: Contractors working in the cafeteria with plans spread out. Contractors working on drinking fountains, directly outside of the cafeteria girls toilet room. Contractors working in the 1 West corridor. Contractors not letting injured students in the passenger elevator. Contractors working in the middle of Ben Franklin’s freshmen orientation with a ladder and drill. Additionally, tools have been left in occupied areas. Contractors must work during the night in occupied spaces. If they are found working in occupied spaces during school hours they will be removed from the job site. Smith and Dolan are moving to night shift next week.”

f. Violation Notices

Throughout the project, the District failed to utilize a key enforcement mechanism in the form of violation notices to remedy problematic site conditions, and progress delays. When work fails to comply with project deadlines, or does not meet project or contract standards, the District has the ability and authority to issue a contract violation notice. Over the life of the project, despite a number of instances where the project failed to meet deadlines, or abide by the environmental specification there was only a single violation notice formally issued, and one warning letter. Investigators spoke with a witness that said the violation notices are “not usually” used because “it’s the hammer, you

don't want to use it too much so it loses its effect" and the notice can have repercussions beyond the project for the contractor like a negative impact to their bond rating. The witness explained that the Contracts Manager, Construction Manager, or the Construction Project Manager has the authority to issue a violation notice. Typically, a warning is issued and the contractor is given 72 hours to cure the problem. If the issue is not addressed during that time, the witness said a "Stop Work" order is issued. If the defective item is not rectified after a stop notice is issued, the matter gets forwarded to the Office of General Counsel ("General Counsel") for further action. The witness could not recall an instance where General Counsel was needed to take further action on a District project, and said the 72 hour cure window would usually prove effective. The witness said there are no penalties (e.g. fines, withheld payment) if the problem is corrected in that cure window.

As the project consistently fell behind schedule, and deadlines continued to be missed there was no effort to potentially pursue more severe contractual remedies outlined in the contract documents. Similarly, when there were instances where contract requirements specific to the condition of the site were violated no action was taken. Indeed, when the contract awards for the projects were finalized there was no interaction whatsoever with the Office of General Counsel. While General Counsel typically counsels the parties to reach an agreement to extend deadlines, there was no advice sought when it should have been abundantly clear the project would not be completed on time or in its entirety by the original deadline.

District personnel confirmed that violation notices are rarely used. In fact, the former Director of Capital Programs/COO told investigators that "we really try not to" issue them. She recalled that there were "less than 10 times" when she had to bring contractors in about issues, and explained that the other times "they would course correct." The former Director/COO told investigators that her interactions with the Office of General Counsel might involve something like the language for a warning letter, and would involve concerns about progress on a project, but not conditions on the site or concerns about the quality of the work. She said things like complaints about dust would go to the Construction Manager, and not get elevated to her.

The Construction Manager acknowledged to investigators that there is "room for improvement" in the District's practice issuing violation notices. The Manager said she had difficulties tracking the notices. She explained that before the current Contracts Manager took over, no central repository with the violation information for particular projects or contractors existed because the prior manager kept none. The Construction Manager told investigators that if she wants to know the history of violations for a contractor she only has information back approximately two years, the time the current Contracts Manager has held the position. She explained that both she and the Contracts Manager have to sign off on a violation notice request from a Project Manager before it is formally issued so she can be sure the notice is tracked, and it is being issued for cause.

The first time a potential violation notice was discussed on the project occurred when the Ben Franklin community was delayed moving into their renovated space from January 2019 to April 2019. A discussion was held and a violation warning was drafted but not formally issued. Instead, the District sought and received a recovery schedule from the general contractor that took the remaining make up time from the balance of the schedule, but put the project on pace to finish as scheduled.

The only formal violation notice to be issued for the entire project came at the direction of the former Director of Capital Programs/COO, and it was issued on September 16, 2019 to each of the prime contractors. The notice charged each of the prime contractors with identical breaches of

“General Conditions [4.15] Cleaning Up,” “General Conditions [4.12] Use of Site,” and “Section 01 1100 Environmental Coordination.” The Smith Construction President explained that the notice alleged a breach of dust protections at the site. She acknowledged that “construction is dusty” but that there were people at that time going through their construction area and breaking their containment. She said dust escaped and “got everywhere.” The President confirmed there were complaints from the school after an SLA student got sick and was taken to the emergency room. She said they had no issues with Ben Franklin. She explained in her interview that a violation letter was issued and all work stopped. The Smith President said all of the prime contractors got together at Smith Construction’s office to assemble a dust control plan, and the new plan put into place and approved by the District was similar to the setup at a hospital. The President recounted that the additional measures they constructed were submitted as a change order that had already been paid at the time of her interview.

The investigation revealed that the other issues discussed more fully above regarding deadlines and the condition of the site also fell within criteria already in place within the District contract documents, but violations were nevertheless not issued. In particular, the contract documents make clear that the “contractor shall pre-plan, coordinate, and execute all [p]roject activities in a manner that assures the prevention and control of conditions that may cause students, teachers, school staff personnel, school visitors, and [p]roject neighborhood residents injury and work-related illness[.]” “In order to reduce [c]ontractor and [s]ubcontractor safety violations, the [District] has instituted penalties for safety violations.” Any violations or fines that are issued “affect both the employee(s) observed violating safety policies and his/her employer, who is responsible for the safety of their employees.” The contract conditions make clear that “for ANY [emphasis in original] safety violation” an enumerated list of penalties “shall apply” and list the penalties for up to a third offense. The District “requires a detailed safety orientation” where “specific safety requirements must be reviewed in detail” prior to a contractor or subcontractor beginning work at the site. Because the District “considers the safety orientation to be the [e]mployee’s ‘written’ warning” the contract documents note “individuals shall be cited without warning [-] there shall be no second chances.” A chart specifically enumerating the fines is enclosed in the materials. The violation table also notes that “[s]afety [v]iolation [f]ines are issued per violation” and if there is “more than [one] employee in violation of a known safety requirement ... the [contractor] is subject to a \$1,000 fine per violation. The [District] considers this [two] violations since [two] employees were exposed.”

The repeated struggles outlined above regarding issues such as maintaining work area security, and workers smoking outside the school are either directly implicated as a safety violation (e.g. smoking) or indirectly under the catchall “all others” at the close of the violation chart. Yet, across the life of the project, the enforcement amounted to a series of repeated stern warnings that frequently failed to achieve their objective. Moreover, the contract documents make clear that the violation “shall be issued without warning” and does not place discretion in the hands of the contractor or the District’s Project Manager. Nevertheless, these provisions were not followed or enforced.

6. Environmental Work & Closure of the Campuses

Following the delayed opening because of difficulties with the elevators, the campus would first close because of dust/air quality issues at the campus. The campus closed a second time beginning on October 1, 2019 incidental to an inspection completed to monitor air quality protective measures put into place where asbestos materials were found.

a. Fall 2019 Dust Issues

It was not until the early morning hours of September 14, 2019, when the SLA Principal alerted District administrators that an SLA student was sick and admitted to the hospital, that construction was finally stopped. The former Director of Capital Programs/COO said she was contacted directly by the SLA Principal via phone as well. Following her phone call with the SLA Principal, the former Director/COO told investigators she “called my team to express frustration and say it was completely unacceptable.” The Construction Manager told this Office that there was a plastic barrier in place at the time, and no major demolition taking place, but the space did have active construction. She said by that point in the project there was no negative air pressure or hard barriers in place. When asked why there was no negative air pressure still in place given the change after the March 2019 incident, the Construction Manager candidly acknowledged to investigators it was a “bad decision” to not keep it in place.

The Construction Manager also acknowledged there was “dust throughout that entire building,” but that because of the nature of the work left they did not think a lot of dust would get generated. The Manager pointed to two separate issues that made it difficult for them to both clean the space and keep it clean. She explained that many materials for the school had been stored in the gym for safekeeping and were dusty. When those items were being moved out of storage and back into their original areas in the schools she said it caused a lot of dust to be tracked throughout the building. The Construction Manager said the other difficulty was that there was never a period of time when the building was completely unoccupied to deeply clean it. Because there was ongoing construction and the schools were in session, the Manager said they did not have a time where no work was going on, kids were not in the building, and the dust could settle entirely and be fully cleaned up.

The District directed facilities staff to “conduct a dust control sweep for the entire building” the weekend of September 14-15, 2019, and stopped construction until they could meet with the contractors and be sure that occupied areas were completely sealed off from construction areas. That Monday, September 16, 2019, the District construction staff met with all of the prime contractors. Following that meeting an employee sent the former Director of Capital Programs/COO an email update advising that the contractors were issued contract violation notices, along with a summary of the other “critical items” discussed during the meeting. The employee wrote:

“We made sure to be very clear that if work is permitted to begin again, the School District is taking a zero tolerance approach and major ramifications will be delivered for any violations....”

That same evening, the Superintendent updated the Board of Education on the situation at the schools, the steps the District had taken, and the plan moving forward.

The District’s response to the issues in Fall 2019 was notably more prompt and comprehensive than any effort during the 2018-2019 school when Ben Franklin struggled with the same or worse conditions. The environmental improvements needed were so significant that they took approximately a week from the September 16, 2019 meeting to be finished. On September 23, 2019, one of the contractors emailed the District construction staff and the project manager for JMT, the District’s recently retained construction management company, asking if they were cleared to resume work at

the school the following day. In response, the JMT project manager emailed back noting work could not yet return because “the environmental barriers and fans [had] yet to be completed ...”

Work resumed at the site on September 25, 2019. An inspection was conducted that same day to “evaluate the dust control measures.” Despite earlier stressing in the September 16, 2019 contractor meeting that the District was taking “a zero tolerance approach” that promised “major ramifications” for any future violations none were issued. A recovered email detailed the findings of that site inspection and detailed numerous deficiencies:

“We performed a walk through this morning at Ben Franklin High School with PFT, JMT, and Criterion to evaluate the dust control measures. The 6th floor, 5th floor west, 1st floor cafeteria, and 1st floor commons were sealed and have negative air flow. These areas meet the agreed approach to resume work. However, we noted the following areas of concern that should be addressed:

- Common Area - open HVAC supply ducts should be sealed
- Common Area - mold growth on old fiberglass duct insulation needs to be removed
- Cafeteria Serving Area to Elevated Lobby - the floor appeared dusty and should be cleaned
- Crews are not maintaining the walk-off mats, several were overloaded and not effectively removing debris from our shoes
- 6th Floor Work Areas - A general cleaning is suggested to help keep dust levels down when work resumes

In the basement, we have concerns with welding fumes migrating to occupied areas of the building. We spoke to the mechanical crew and evaluated the boiler room for potential air exchange with occupied areas. The following information was gathered and is open for discussion:

- There are 3 welders on-site and only 1 smoke eater. We recommended having a smoke eater for each welding activity.
- Open access panels were observed on duct work and should be sealed to prevent fumes from migrating to occupied areas of the building.
- There was talk of using the boiler exhaust fan and associated exterior louver for increased ventilation, however, since the boilers are off-line so is the fan.
- In addition to using the smoke eaters it may help to have an air scrubber close to where the work is being performed.
- We discussed the possibility of moving welding work to 2nd shift....”

It was at this point that the District began to monitor dust and particle levels inside the space, and issued weekly monitoring reports. The monitoring company took baseline levels of “respirable

dust” and “Total Dust” from “in and around various construction areas” while the schools were closed and “empty of all students, staff and construction personnel.” The sampling took place at different times throughout the day. In the inspections moving forward, if the “respirable dust” or “Total Dust” level exceeded either those baseline levels, or those set by the Occupation Safety and Health Administration (“OSHA”), the American Conference of Governmental Industrial Hygienists (“ACGIH”) and Environmental Protection Agency (“EPA”) then “corrective action must be taken...”

The initial week of readings from the collected samples were found to be within the OSHA, ACGIH, EPA and baseline readings. Despite a successful first week of monitoring and maintenance of the dust protections, the ensuing weeks’ test results revealed a number of instances where the dust levels exceeded either the baseline levels or OSHA, ACGIH, and EPA levels. In summary, the monitoring company cited a total of 77 violations from 29 particular test days between October 2019 and January 2020. Of significance, there were 11 days where there were 3 or more violations logged for the day. No violations were issued, and no work stoppages were ever ordered.

The reports submitted to the District documented a litany of instances in which the samples exceeded the baseline and/or governing standards – sometimes many multiples times over the limit – for air quality at the site. Such a result is particularly alarming given the reason these measures were put in place. A host of protective measures were put in place before work could resume, and the air was being monitored on a daily basis. The reports do little more than codify that the problems that shut down the site largely persisted. The monitoring reports make clear that the inspectors immediately stopped work in the areas at issue and ordered the area cleaned, but the results above also make clear that incidents of poor air quality continued largely unabated.

The Construction Manager took exception to the use and value of the air monitoring reports during her interview. She explained that the OSHA and EPA standard that were used in establishing the baseline levels for the reports were not strict enough for a school setting, and permitted a dust/particulate level that was too high. The Manager told investigators that even though the test might be deemed passing one could still walk around the school and see dust.

Setting aside the challenge to the value of the dust monitoring reports, it nevertheless paints another harrowing picture about the conditions inside the space during the 2018-2019 school year for Ben Franklin. The reports show repeated failures to achieve what some might argue is a relaxed standard. When these protections were put into place in Fall 2019 the results merely attached a measured value to what many in the Ben Franklin community already knew to be the case: the building had excess levels of dust and particulates in non-construction spaces. The violations are concerning when one contemplates that there was still ongoing construction at the time, but it paled in comparison to the height of construction and demolition activities that took place during 2018-2019. Because these monitoring measures were not installed prior to Fall 2019 the true measure of the environment at that time cannot meaningfully be assessed.

b. Fall 2019 Asbestos Material Discovery

The District initially discovered additional asbestos materials inside the sub-basement boiler room during the same walkthrough on September 25, 2019 to assess the air quality measures. During the walkthrough, the environmental consultant retained by the PFT and the District’s Environmental Director by chance noticed a damaged corner of fiberglass insulation on a duct inside the boiler room.

When the parties looked behind the insulation there was a “suspicious material” that was tested and later confirmed to contain asbestos. The duct in question was wrapped in insulation that was confirmed as non-asbestos fiberglass, but at the seams/ends of each of the sections of fiberglass insulation there was a “troweled on” glue-type material that contained asbestos and held the insulation on to the ductwork. The fan unit associated with that ductwork insulation in the boiler room was not operational or part of the planned work for the construction project. A witness described that finding the material would have been extremely difficult if not for a damaged piece of insulation being slightly peeled back. The witness remarked that even with “20 years of doing this” someone “could almost never catch that,” and they could bring a number of experienced inspectors into the space and it similarly would be missed if not for the damaged corner of fiberglass insulation. The Construction Manager noted to investigators that an experienced Asbestos Project Inspector walked past it “100 times” without noticing the materials. As a result of the finding the asbestos materials, it necessitated looking for or following that material to see if it existed in other places in the building. The same type of material was ultimately found in the boiler room, basement ceilings, and first floor. It was not located in floors two through six.

Following the discovery and subsequent confirmation of the asbestos materials in the boiler room the District first notified the PFT of the findings and began to craft a letter, also in conjunction with the PFT, to notify both school Principals of the information on September 26, 2019. The Chief of Staff, on behalf of the Superintendent, notified the Board of Education of the discovery on September 26, 2019 as well. The same day, the District took steps to take air samples in the occupied areas around and near the boiler room to ensure there was no contamination in the surrounding areas. The District collected a total of 10 air samples, and the PFT’s environmental consultant collected the same number. On September 27, 2019, those test results were returned and all 10 samples collected by the District were “None Detected [sic]” for the presence of airborne asbestos materials. The PFT sample results indicated 9 of the 10 samples were “non-detected for the presence of airborne asbestos fibers” and one air sample was at the laboratory limit of detection, but below the City of Philadelphia’s re-occupancy limit.

In addition to the air sampling on September 26, 2019 the boiler room was fully inspected by the District’s environmental consultant given the recent discovery of the damaged asbestos materials. The District environmental staff and PFT consultant also conducted a follow-up evaluation of all the basement and first floor areas that might also contain the same asbestos containing material at issue in the boiler room that same day. During the walkthrough on September 26, 2019 the Construction Manager noted that insulation on the 1st floor commons area looked like the ductwork in the boiler room that was positive for asbestos material so it was sampled and tested. The following day, September 27, 2019, the District received notification that the first floor ductwork in the SLA commons area also tested positive. The SLA Principal was notified of the discovery the same day. The District construction staff alerted the construction management company and contractors and ordered all work in the area to stop immediately. Because the area was the subject of active construction work at that time, and it was so close to occupied SLA spaces, air sampling was conducted on September 29, 2019. The testing was completed to ensure, similar to the testing outside the boiler room, that the surrounding areas were not contaminated.

The air sampling results for the SLA commons areas were returned on September 30, 2019. Both the District and the PFT’s consultant took a set of samples inside the sealed construction area and a set outside the work area near the occupied spaces. The District’s samples showed asbestos fibers on 2 of the 10 total samples, with both of the positive results at the laboratory limit of detection

but below the re-occupancy limit and inside the work area. The District's Environmental Director nevertheless recommended that the 1st floor work area remain closed until abatement work could be completed. The PFT consultant's samples taken inside the construction area "show[ed] asbestos fibers as being present on 3 of the 6 samples" and one of those three had a "modestly elevated" reported level that exceeded the City of Philadelphia's re-occupancy standards. The consultant retained by the PFT cautioned the District that he felt the results should be "considered only as 'best case' test conditions and not reflective of either the typical 'worst case' conditions" because a leaf blower was not used "to dislodge dust, dirt, debris and fibers from floor surfaces, equipment, etc. ..." Without deploying such a measure the consultant felt the conditions utilized during the testing allegedly did not "represent realistic and 'normal' conditions and occupancy patterns when mechanical work is occurring." The District did not necessarily agree with that suggested method. In any event, the results for the 4 PFT samples taken outside the construction area were all "non-detected for the presence of airborne asbestos fibers."

A two phase abatement work plan was generated for the work inside the boiler room on September 27, 2019. The abatement repair work in the boiler room began immediately over that weekend and air sampling was conducted after the work was thought to be complete. The initial abatement/remediation effort and subsequent air sampling returned elevated levels of asbestos beyond the occupancy threshold on September 29, 2019 in both the District and PFT samples. An expanded, more comprehensive scope of work for the boiler room was re-issued on October 2, 2019. The work inside the boiler room was completed and air sampling took place on October 17, 2019 with both the District and PFT's consultant. The District took a total of 10 samples – 5 samples inside the containment, and 5 samples outside the containment area – and all 10 of the samples passed re-occupancy standards. In addition, the PFT's consultant's samples were "all non-detected for airborne asbestos fibers at the laboratory's limit of detection ..." and acceptable for re-occupancy as well.

An abatement work plan for the work at the 1st floor commons area was generated on October 2, 2019. The ductwork that contained the asbestos material was removed in its entirety in order to ensure all of the contaminated material got removed instead of only repairing the damaged area. The abatement and demolition work was completed by October 7, 2019 and the air sampling got conducted that morning. The District collected a total of 10 samples – 5 inside the containment area, 5 outside the containment – and all 10 samples were returned as "None Detected" for asbestos materials. The PFT's consultant also reported their results were all "acceptable" to the District's consultant via phone. Following the completion of the abatement work and satisfactory air testing, the contractors re-installed a new, in-kind duct free of any asbestos materials inside the space.

When the materials were discovered in the boiler room and commons area a series of necessary notifications were made to certain regulatory bodies, and the District met with certain stakeholders on the project. As required, the District contacted the City of Philadelphia, Department of Public Health – Air Management Services on September 27, 2019 and notified them of the discoveries. The District sought and obtained the necessary approvals from Air Management Services to proceed with that initial cleaning attempt over the weekend. A separate meeting was held with District personnel, contractors, and the building trades on October 1, 2019. During the meeting, concerns were expressed about the elevator shaft in the building being a pathway for air to travel from the basement boiler room through to the other floors in the building. In response, the District took steps to jointly plan a

sampling protocol with the PFT and collect TEM air samples² from occupied spaces throughout the building beginning October 1, 2019 and continuing through at least October 3, 2019 utilizing a leaf blower “to simulate [a] worse [sic] case scenario.”

Both the District and the PFT’s environmental consultant conducted sampling as planned on October 1, 2019. The results for all 10 of the District’s samples were “none detected” for asbestos fibers. The samples collected by the PFT’s environmental consultant showed 9 of the 10 samples collected were “non-detected for airborne asbestos fibers” and one showed asbestos fibers present but below the occupancy threshold. Despite having an apparent testing protocol arranged for the remainder of the week, the PFT’s environmental consultant contacted the District’s construction and environmental staff via email late in the evening on October 1, 2019 and claimed to not believe there was testing scheduled for October 2, 2019. The inquiry prompted immediate frustration from District staff. In separate emails, the Construction Manager and the District’s Environmental Director either responded directly to the consultant, or their superior. The Construction Manager wrote to the current Director of Capital Programs:

“We spent at least 5 hours with [the PFT’s environmental consultant] today. We spoke endlessly about Ben Franklin. We have been 100% clear with him regarding our plan. He was even present during the meeting with the building trades counsel [sic] and various business agents today. I even had a 20 minute conversation with him this afternoon [about an unrelated project]. ...

In the building today, we told him we would send the work plan over to him as soon as it was completed and cleared that the only work being completed prior to the review was starting to [build] the barriers. [The abatement contractor] has only started that on the first floor and some in the boiler room. ...”

The Environmental Director wrote back directly to the PFT consultant and said:

“I really don’t understand why you think we’re not sampling tomorrow after spending 5-6 hours today developing plans onsite for abatement and further testing. ...”

With the building temporarily closed for testing, the District and PFT’s consultant planned to take air samples at two separate times on October 2, 2019. Following the collection of the morning samples, the PFT’s consultant canceled the second round of sampling planned for the afternoon and elected not to analyze the samples that got collected in the morning testing session; the PFT consultant requested that the testing laboratory hold the samples already collected “until further notice.” At approximately 1:00pm on October 2, 2019 the District’s Environmental Director notified the former

² Phase contrast microscopy (PCM) is a screening tool for asbestos air monitoring that is acceptable under both EPA and City of Philadelphia guidelines, but it cannot distinguish between asbestos and other kinds of fibers, and it also cannot detect certain short or thin asbestos fibers. Transmission electron microscopy (TEM) provides more accurate information on actual levels of airborne asbestos fibers, and requires the use of an accredited laboratory to interpret the results.

<https://www.epa.gov/asbestos/monitoring-asbestos-containing-material-acm>

Director of Capital Programs/COO, in the course of a separate email update, that “when the [PFT’s consultant] called me back about additional sampling for tonight [October 2nd], they wanted to let us know they will not support opening the school until all abatement is completed and cleared for occupancy.”

The District did not allow the PFT consultant’s abrupt refusal to continue air testing disrupt the continued efforts to clean and test the spaces in the hopes of being able to promptly re-occupy the spaces. The former Director of Capital Programs/COO provided a series of directions to the District’s Environmental Director. She instructed the Director to continue the testing throughout the building as planned, apprise the PFT of the District’s intent, and extend their consultant the opportunity to test alongside the District. The former Director/COO also said that the abatement work in the boiler room and SLA Commons should continue as planned, and the same testing invitations should again be extended both in writing and via phone.

The Environmental Director did as instructed for the planned testing on October 3, 2019 and October 4, 2019. Early in the morning on October 3, 2019 the PFT’s environmental consultant responded via email that he was writing “in response to your informing me last night that the District had decided to proceed with asbestos air sampling throughout BFHS/SLA starting early this morning.” The PFT’s consultant wrote that he “...[didn’t] understand the purpose of the District conducting further testing at this point” and that “[t]he position of the PFTH&WF/U, as communicated to [the Superintendent] and the SDP and released publicly [see News Release below], has not changed: all asbestos abatement activities, including removal, cleaning and testing must be completed prior to any further re-occupancy by students and staff.” (punctuation in original) The consultant then explained that he was “recommending the following Action Items now be implemented” and listed four items he purported needed to be put in place. In response, the District’s Environmental Director replied via email to the PFT consultant and the numerous parties he included in the original email and wrote:

“This testing was planned with you on Tuesday while on-site together. The actual sample locations were mapped out on drawings with you yesterday morning for the basement and first floor. I called you last night asking if we could meet on the site this morning to discuss re-starting this already planned diagnostic sampling that was not completed on the first floor or in the stairwells.”

Confronted by that information, the PFT’s environmental consultant replied shortly thereafter and appeared to confirm such a testing plan was in fact made, and acknowledged that “over the past 2 days” they spent “10-12 hours on site.” Despite the time already spent planning a testing protocol, the consultant then suggested that the District’s staff “let [him] know if [they] are able to reach out to discuss a sampling plan in light of the most recent information and situation.”

By October 5, 2019, a total of 102 TEM diagnostic samples were collected between the District and the PFT, for the time they participated in the sampling, throughout the building. The District’s environmental consultant collected 72 diagnostic samples around the building and 10 project samples in the boiler room. The PFT’s environmental consultant collected 30 diagnostic samples around the building and 10 project samples in the boiler room. The only results during that time that were above the re-occupancy standard were inside the boiler room after the asbestos repair/cleaning work was performed, though there were elevated readings prior to that time.

A lack of clear communication exacerbated the confusion and fear surrounding the discovery of asbestos materials inside the campus. This resulted in understandable distrust of the District from staff and families of both schools. At times necessary parties were not timely or completely briefed while others had incomplete information. There were many instances where outside entities then filled that void and stoked those concerns publicly to a point that largely left the District unable to make any meaningful, credible response. The fact that these missteps all occurred when the topic involved asbestos inside a school building only made the situation worse.

Following the unsuccessful first round of cleaning and abatement/remediation in the sub-basement boiler room and the results from the commons area testing the District made the decision to close the campuses from October 1, 2019 – October 2, 2019 and sent a letter to families detailing the planned abatement and testing. The District then ultimately decided that the campuses would remain closed October 3, 2019 – October 4, 2019. The letter sent to families noted that “[t]his extended closure will enable abatement and re-testing to happen in the SLA Common Area.” These closure decisions, and the communications sent out by the District were, in many ways, emblematic of the communication difficulties across the project.

Members of the Board of Education were initially left largely unaware of the decision to close the school. A Board Member sent an email early in the morning on October 1, 2019 with the subject “SLA BF Closed?” and asked “[w]hat is going on? ... This is insane.” A separate Board Member requested that Board staff keep the Member informed and wrote in an email:

“... [C]an you make sure [another Board Member] and I are kept abreast of testing and of discussions with PFT throughout this process.

I only became aware of the closure decision when [Inquirer Reporter] Kristen Graham’s news story appeared on my Twitter feed, and I want to make sure in the future that [Board Member] and I know what’s going on for when folks reach out to us.”

The Board Member followed up again a short time later and explained:

“FYI the only correspondence I got yesterday from either of my accounts was the press release that went to everyone in the District.”

At 6:00pm on October 1, 2019, the Superintendent sent the Board of Education a lengthy email update summarizing the lead-up to and his rationale behind the decision to close the campuses. He wrote:

“...The decision to close the facility today and tomorrow was made after considering a request from [the PFT’s environmental consultant] to close the school for the remainder of the week to perform additional testing. While I’ve included a full version below, the long and short of it is that we have worked tirelessly to collaborate, coordinate and align our work with the Health and [W]elfare arm of the PFT. While there were agreements and expectations for how we would work together, yesterday those changed. I concluded yesterday after a lot of back and

forth with [the PFT President] that it was better to close than to have what might have turned out to be some sort of teacher action because the PFT was indicating that they would not guarantee that the building was safe. Given the sensitivity around the environmental issues, I wanted to exercise an abundance of caution. ...

[The Superintendent summarized the recent asbestos discoveries, testing efforts and sample results to date]

On Monday[, September 30, 2019], [the] District and PFT exchange[d] emails to share results [of testing in the SLA Commons area].

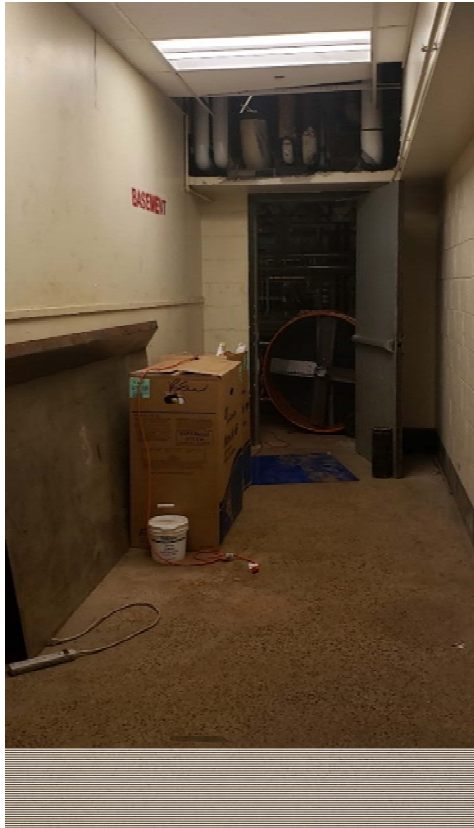
In an email [the PFT's environmental consultant] stated that although the samples passed, he did not feel that it was a representation of activity in an occupied building and contacted our environmental director to say more testing needed to occur. We agreed that testing should not happen during the school day and should take place after 3PM.

“There were several phone calls with [the] PFT to finalize a plan for testing. Around 1 pm [on September 30, 2019,] [the PFT's environmental consultant] informed us that he was now recommending the building be closed for the entire week so that testing could occur. He stated that he did not feel that he could tell his members with full confidence that the building was safe for occupancy (despite test results below threshold) and that the PFT was ‘not backing down off its request to close the building.’

Immediately following this request, I had several conversations with [the PFT President] who indicated that he would follow the direction of his [environmental consultant]. ... This morning our Environmental Director and [the] PFT did a visit to BFHS/SLA to coordinate on testing. ...

It is unclear whether we will get the results back fast enough to reopen on Thursday. We are planning on sending additional communications out tomorrow to families of both schools and we are also working on a plan to identify make up days for students.”

Communications with both Ben Franklin and SLA regarding the asbestos work were at times disjointed and appeared inaccurate to some of the staff. In the September 26, 2019 letter, the District told the staff that “[a]ccess to the boiler room was restricted and all construction activities stopped until further notice.” The following day, a staff member showed the Ben Franklin Principal a photo that was taken of the open boiler room door.



Source: Confidential

The Ben Franklin Principal reached out to the Construction Manager and provided her with the same photo. The Construction Manager responded that the “building engineer didn’t close the door.” The Principal reached out to her building engineer who explained that “no one told him it needed to be closed” and that he would have closed it if the tester explained it was necessary to do so.

Similar miscommunication affected the information surrounding asbestos materials in the basement ceiling area. Although the September 26, 2019 letter sent by the District did note that it is “also known that at least some of this same material is on ductwork above the basement hallway ceiling” it also advised “the condition [would] be assessed” and “if remediation is required, a work plan will be developed and shared.” When the school communities were later advised that abatement/repair was only set to take place in the boiler room and commons area, there was an understandable belief that the instant material was not damaged in any other areas. The Ben Franklin community would later learn that additional work needed to be completed in the basement ceilings area prompting extraordinary frustration.

This announcement of additional work highlighted several communication issues. The Ben Franklin Principal learned of the damaged materials a day before the October 3, 2019 weekly construction/PFT meeting. The Principal said she confronted the District construction staff at the meeting, and after repeatedly pressing the attendees, who she felt were being evasive, was told that it was present and needed to be removed/repared. The difficulty in obtaining the concession prompted the Principal to announce to the group that she “[didn’t] trust any of [them]” and walk out of the meeting. The contractors were notified of the findings the following day.

Even amongst the District staff there was unnecessary confusion around the same issue. The areas in question had in fact been identified and inspected as part of the September 26, 2019 walkthrough to identify additional areas where the same suspect asbestos material in the boiler room might be located. A report or scope of work simply never got generated in the initial hectic days between the damaged asbestos discovery and the start of work in both the boiler room and commons area. Despite this, when the need for additional work in the basement ceiling was purportedly discovered parties within the District and PFT could not coordinate to determine when the information was new, missed, or already known.

Email communications recovered during the investigation show that both District staff and the PFT's environmental consultant were aware that the area should be inspected more closely or might need to be repaired. By the time the issue got more direct attention, the communication failure caused parties to blame each other. Correspondence between the District construction and environmental staff, along with the PFT's environmental consultant make clear the issue was not hidden from anyone. It simply was not managed and communicated properly.

In the September 26, 2019 letter to the Ben Franklin/SLA staff it plainly states that the "same material is on ductwork above the basement hallway ceiling." That language was the subject of review and revision by both the District and PFT's environmental consultant following the confirmed positive tests results for the material in the boiler room. On September 26, 2019, the District Environmental Director sent an initial draft of the letter to the former Director of Capital Programs/COO and Construction Manager and provided them an opportunity to include their edits. The former Director/COO returned her edits a short time later and shared them with both the Environmental Director and the Construction Manager. Shortly after receiving the return comments from the former Director/COO, the District's Environmental Director sent the letter to the PFT's environmental consultant for comment. The PFT's environmental consultant replied immediately and said he "will take a look now – will share with [a PFT employee.]" Approximately a half hour later, the PFT's environmental consultant sent back his proposed edits. He wrote:

"Please see attached [as a word doc] with revisions in ***bold, italicized yellow highlights*** - also a few strikethroughs.

Let me know if you want to discuss further before meeting at the school." (emphasis and punctuation in original)

In the attached document, in pertinent part, the PFT consultant made the following proposed alterations to the opening paragraph of the letter:

"... On September 25, 2019, during a joint walkthrough with the School District's Environmental Director and and [sic] the Environmental Science Director for the Philadelphia Federation of Teachers' Health & Welfare Fund ("PFT H&WF/U") a damaged ***insulation*** material ~~presumed to contain asbestos was discovered~~ was observed on ductwork in the boiler room. This material ~~is located on a section of ductwork,~~ it was sampled and confirmed to contain asbestos. The fan unit associated with this ductwork is not operational and is not part of the on-going construction project. ***It is also known that at least some of this same material is on ductwork above the***

basement hallway ceiling[.] ...” (emphasis and punctuation in original)

The District’s Environmental Director sent the PFT’s environmental consultant a revised version of the letter incorporating many of the consultant’s proposed edits. The Construction Manager, copying the former Director of Capital Programs/COO and the District’s Environmental Director, weighed in a short time later via email and specifically cited the basement hallway ceiling in her proposed edits. The letter ultimately was revised once more. Following the former Director/COO’s approval, the letter got issued under both her signature and name, along with the Environmental Director’s name.

Other communications also show that both the District and PFT were aware of the possibility of additional asbestos material in the basement ceiling, but did not timely act on the information. While efforts to produce a letter outlining the discovery were ongoing simultaneous efforts to create a work plan for the boiler room were occurring. In the course of those coordinating efforts the PFT environmental consultant sent the District a “preliminary draft summary and plan ... re: the asbestos issue and concern recently discovered in the school[.]” He wrote:

“... 4) During a **previous construction and modernization project [basement CTE]** (punctuation in original) at BFHS conducted a few years ago, the District’s environmental consultant at the time ... observed and documented what is considered to be the **same material on duct work in the basement hallway**[.]” (emphasis added)

In his reply, the District’s Environmental Director sent not only prior AHERA reports, but also the AIRs for both the CTE renovation and the original AIR for this project. This constituted a second, separate instance where the basement ceiling materials could have been flagged for both closer inspection and follow-up by either the District or PFT.

The issue came back to the parties’ attention on or about October 3, 2019. It largely seemed to come as a shock to both members of the District and the PFT, through email correspondence, with the exception of the District’s Environmental Director. On the evening of October 3, 2019, the Construction Manager sent the District’s Environmental Director an email indicating she was in contact with the former Director of Capital Programs/COO regarding ductwork in the basement and was worried that they would have a “credibility issue” since the correspondence only mentioned the boiler room and first floor. The Construction Manager said in an email she was under the impression that an inspection had been completed over the weekend and there was no damage to report. The former Director/COO replied that she was currently on a conference call and was “now learning [on the call] there’s more damage in spaces outside of those [two areas].” The Environmental Director confirmed that the inspection of that area was completed, but a formal report or scope of work did not get completed in error. After the former Director/COO replied that she had concerns about “[her] credibility and the District’s credibility” along with the fact that the Superintendent gave potentially incomplete information at a press conference because of a perceived lapse by the Environmental Director, the Director issued a frank and candid rebuttal to the charge. He wrote:

“The fact the insulation was present in other areas was know [sic] to all, it was reported in the 9/26 letter to staff indicating it would be inspected and repaired as needed. Synertech performed the inspection

on the 26th during the air sampling in the basement. I requested a report as soon as possible, however it wasn't completed. Between setting up particulate sampling, coordinating dozens [of] sampling events, assisting in abatement designs, attending staff and home and school meetings, dealing with [the PFT's environmental consultant], scheduling inspections at Nebinger and other locations, keeping tabs on Meredith, trying to keep up with the daily requests, providing guidance to our consulting firms, and holding the office together - I lost sight of this report and for that I apologize.

I need to you understand that I'm doing my absolute best trying to keep things together. I'm a very dedicated worker and it's unacceptable for things to slip, however, the reality is that if I continue trying to manage everything this will happen again. I've actually been ill over this whole thing with BFHS/SLA and now I feel even worse. I worry about these things and want the best for our students as you do. [The PFT's environmental consultant] has also been impossible to work with lately in a cooperative manner, I'm [convinced] he's not aligned with our goals.”

Follow-up inspection of the basement ceiling area also appeared to have escaped notice of the PFT's environmental consultant as well. Despite participating in a walkthrough of the space, noting in his September 26, 2019 email that a District consultant “observed and documented what is considered to be the same material on duct work in the basement hallway[.]” and being provided the AIR for that prior renovation project detailing that material that same day, he elected not to inspect those areas. Late in the evening of October 3, 2019 the PFT environmental consultant wrote that he had been “asked if there were any asbestos materials ... in basement areas of BFHS/SLA[.]” He then asked the District's Environmental Director and consultant to “let me know if these are simply rumors – which I suspect they may be – or if there is any basis to them.” When he was provided with the expanded scope of work that included the basement areas on October 4, 2019, the PFT's environmental consultant nevertheless then charged that he “... was not provided with anything nor an opportunity to inspect those areas.” He advised that he “[would] consult further with [the PFT] about how to proceed.”

At the time the work was set to be completed the building was already closed so no additional students or staff were in those spaces. The existing scope of work for the boiler room and commons areas was expanded to include necessary areas in the basement on October 3, 2019. The work in those areas was completed and air sampling results were returned on October 10, 2019 and all 13 of the District's samples were returned as “None Detected.” A total of 18 samples were collected by the PFT's environmental consultant and all were returned as “non-detected for the presence of airborne asbestos fibers.” This area had also been excluded from the original AIR for the project.

Both Principals also continued to receive incomplete communications about existing asbestos materials in the campus auditorium the two school are set to share. Following the closure of the campus and decision to temporarily relocate the schools the District conducted the additional air sampling throughout the building discussed above. The District took the additional step of accelerating the building's scheduled six-month AHERA visual inspection “to identify any other areas where damage may have occurred.” The former Director of Capital Programs/COO convened a

conference call for October 15, 2019 with both Principals and the contract employee serving as an interim administrator to “brief [them] on the results of the environmental inspections at Ben Franklin.” There were no other parties on the call. The former Director/COO disclosed that asbestos materials were located in the auditorium and in a concealed location above the locker room area in the gym. The Ben Franklin Principals explained to the former Director/COO that the District “knew of the auditorium concerns” from Fall 2018 when work was done in the ceiling of the auditorium. The Principal further explained that a work order was submitted by her building engineer and the space was inaccessible for a period of time, but she never received any word on what was or was not found in the ceiling. In response to that information, the former Director/COO responded “I guess I should know about that.”

Email records show that the former Director/COO then made internal inquiries to speak with the Ben Franklin building engineer at the time of the prior work as well as obtain any work order history for the auditorium ceiling. The following day, a repair report was assembled and confirmed what the Ben Franklin Principal explained to the former Director/COO on the phone call.

On October 16, 2019, the District released yet another letter to the schools detailing the District’s “commitment to keep [the school communities] informed about the progress of construction.” The letter accurately detailed the additional air sampling that took place throughout the building through the week of September 30, 2019, and explained that there was damaged asbestos materials found in “the concealed space above the gym locker rooms, which [was] inaccessible to students and non-custodial staff.” The Ben Franklin Principal noted that the letter did not explain the finding in the auditorium ceiling that she learned the day prior on the conference call, nor did it mention the asbestos materials found in the basement hallway/classroom. As a result, the Principal refused to distribute the letter and a District administrator came to hand it out and speak to her staff that afternoon.

In light of the closure of the school and the additional inspection that took place from October 13, 2019 to October 16, 2019 the District added additional asbestos abatement scope to the project. The District and PFT agreed that damaged areas identified during the inspection would be set for abatement while the construction got finished, and the asbestos from the auditorium ceiling was set for removal. Although the asbestos materials on the ceiling would be removed, the ceiling could not be refinished given the length of time that required. That phase of the work was set for the summer. The project had not initially included the removal of all the asbestos materials from the building, only those materials potentially impacted by the renovation. The expanded scope included areas like the gym mechanical rooms, damaged tiles, pipe fittings, and the auditorium.

Like the Ben Franklin Principal, the SLA Principal also sought clearer, more timely communication with little success. When the Principals were provided the September 26, 2019 notification letter the SLA Principal sought to quickly notify the SLA families about the new discovery. On the afternoon of September 27, 2019 he reached out to the Construction Manager and the Environmental Director and asked:

“Parents are reaching out to me because they are hearing rumors about more asbestos. Can we finalize language so we can send something to families today? I really want to get ahead of any rumor mill stuff.”

The SLA Principal received no response that day, and sought again on September 28, 2019 to assemble and release communications to his school's families. In an email, he sent his own draft language to the former Director of Capital Programs/COO, Construction Manager, Construction Coordinator and other District administrators asking:

"I am receiving communication from parents who are hearing rumors of asbestos in the building.

Although we have known that there is asbestos in the SLA / BFHS building for two days, I have not yet received information about how to communicate this to families. I would appreciate knowing if the letter I drafted would be appropriate to send to the parent community, or if there is other language or more detailed information we can provide to parents and families about the situation."

The Ben Franklin Principals and SLA Principal independently exchanged a pair of emails expressing their frustration to each other.

A short time later, the former Director of Capital Programs/COO appears to have excluded the Ben Franklin Principal and other District administrators off of the SLA Principal's initial email and wrote only to him, the Construction Manager, and the Environmental Director:

"I've asked [the Construction Manager] and [the Environmental Director] to work on whatever support you need."

and a short time later:

"If you got a specific question please share[.]

Otherwise[,] we will have a communication ready to send for Tuesday[, October 1, 2019] when school is back in session[.]

In response, the SLA Principal wrote back:

"Yes. I think it is essential that we inform parents of the situation before their children are in the school."

Despite the SLA Principal's request to promptly release information, the Construction Manager explained in a separate email that:

"[The SLA Principal] requested a letter to be sent home to parents and faculty. [The former Director of Capital Programs/COO] has asked me and [the Environmental Director] to draft a letter after all of the results are back so it can be sent out Monday/Tuesday morning, one letter instead of multiple. [The Principal] is not happy with that. I'm following [the former Director/COO's] direction and will have a letter to review on Monday."

The requested communication ultimately got sent on September 30, 2019. The letter largely confirmed what the parties had known days prior, and merely added the additional information regarding the test results from the samples inside the construction zone for the commons area. The schools were in fact closed indefinitely four days later on October 4, 2019.

Similar to explanations and correspondence about the discovery of asbestos materials, the closure discussions and announcements failed to adequately include the Principals of the affected schools. The SLA Principal hosted members of the District from OEMS and Construction and the SLA Home & School Association for their monthly meeting inside his home to explain the project and cleanup efforts. At the same time, the District was considering language for a pending press release. When the Principal asked the District staff in attendance what he could tell the SLA community and parents he reported being told “wait for the release.” The Superintendent announced the closure to the local media in a press conference before any information could be disseminated to the SLA community.

E. Office of Environmental Management & Services

1. Deficient Asbestos Inspection Report

The original AIR for the project was deficient in a number of respects. The report utilized an outdated set of architectural drawings from November 2017 at the time the initial inspection was completed in April 2018. The original AIR also failed to address a number of areas inside the building presumably because those areas were “excluded” from the planned scope of the project. While it might seem appropriate not to evaluate areas not encompassed by the planned scope of work, the project otherwise involved working near or around those areas that were excluded from the inspection. When Synertech was contracted to supervise the environmental work on the site, and the work began, it became clear the original AIR from April 2018 was incomplete. The designated Asbestos Project Inspector for the project eventually had to issue and file a 4-page addendum of additional areas containing asbestos materials that needed to be removed.

a. Outdated Drawings

The inspection utilized an outdated and incomplete set of project drawings to complete the review of the space. The design and drawings for the project, like others within the District, go through three separate stages: 1.) Schematic Design, 2.) Design Development, and 3.) Construction Documents. As scheduled, the Schematic Design phase was scheduled to be completed from August 18, 2017 – October 13, 2017; the Design Development phase was scheduled to be completed from October 14, 2017 – January 5, 2018; and the Construction Document phase was scheduled to be completed from January 6, 2018 – March 16, 2018.

The original AIR for the project was completed on April 11, 2018. The AIR lists that “a review of the [District] Design Drawings was performed.” The inspector provided both a list of drawings and the date of the drawing set they utilized.

The Design Unit’s practice required that the AIR be completed when the drawings were 60% complete at the Construction Document phase of the drafting process. The drawing set for the original AIR was dated November 22, 2017, slightly less than halfway through the **Design Development** phase. At the time the inspection was completed, the inspector could have had access

to **100%** complete **Construction Documents** for the site. The District did not abide by its standard practice for this inspection. It allowed an incomplete inspection to be conducted, and the result meant there was an inaccurate accounting of necessary environmental work that needed to precede the substantive construction work.

A review of the drawings that were utilized during the inspection and listed on the original AIR against a complete list of the drawings that were otherwise available at the time of the inspection demonstrates the depth of the deficiencies. The list of the drawings is a mix of a total failure to utilize certain portions of the drawings available, inaccuracies in listing some of the utilized drawings, and listing drawings that do not appear on the drawing list inside the contract documents. The summary of the findings is provided in the table below.

No Examination		
AIR Entry	Drawing List	Finding
N/A	"Interior Design"	No drawings utilized in inspection
N/A	"Food Service"	No drawings utilized in inspection
N/A	"Structural"	No drawings utilized in inspection
N/A	"Plumbing"	No drawings utilized in inspection
N/A	"Telecommunications"	No drawings utilized in inspection
N/A	"Security"	No drawings utilized in inspection

Inaccuracies		
AIR Entry	Drawing List	Finding
"A101-A107"	A101.1-A101.3	AIR does not specify A101.1-A101.3
	A107.1-A107.3	AIR does not specify A107.1-A107.3
"A200-A201"	A201.1 - A201.3	AIR does not specify A201.1-A201.3
"M100.1-M100.2"	M100, M100.2	Drawings list does not list a M100.1
"M101.1-M101.2"	M101, M101.2	Drawings list does not list a M101.1
"E100-E107"	E100.1-E100.2	AIR does not specify E100.1-E100.2
	E101.1-E101.3	AIR does not specify E101.1-E101.3
"E100"		Duplicated second time
"E101"		Duplicated second time
"E102"		Duplicated second time
"E601"		Duplicated second time

Not Listed		
AIR Entry	Drawing List	Finding
"A200-A201"	N/A	A200 does not appear on the drawings list
"M200.1-M200.2"	N/A	Neither drawing appears on the drawings list
"M202"	N/A	M202 does not appear on the drawings list
"M207"	N/A	M207 does not appear on the drawings list
"ED100"	N/A	ED100 does not appear on the drawings list
"ED101"	N/A	ED101 does not appear on the drawings list
"ED102"	N/A	ED102 does not appear on the drawings list

b. Excluded Areas

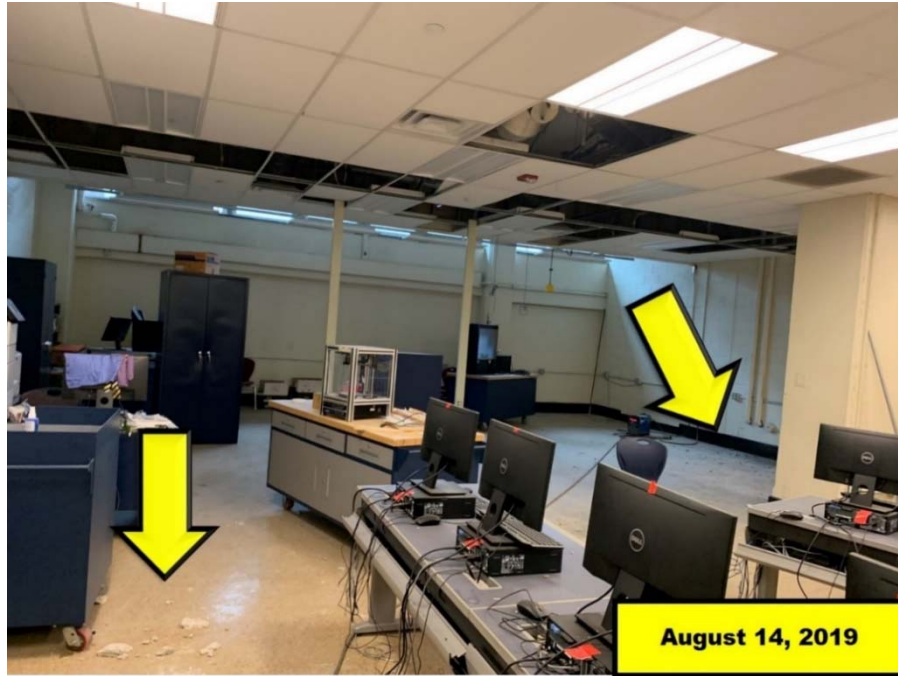
As mentioned, some areas were excluded because they did not fall within the planned areas of work, but the project nevertheless did impact those areas. Although they were not included in the

planned work area they nevertheless would eventually be affected by the construction. The architects from Stantec toured the gym, auditorium, and basement (including all classroom spaces) during the design process. Nevertheless, the initial AIR indicated that its “Scope of Work” did not include “the [b]asement, [a]uditorium, [g]ym, and 1st floor hallway (above ceiling).”

The basement of the building was not part of the renovation project, and had previously been the subject of a separate renovation project for the CTE spaces in the building. The basement should nevertheless have been inspected as work was taking place both directly above and below the basement. Some of the most intense and substantial work of the entire project took place on the first floor. With the cafeteria space being entirely relocated from the 6th Floor to the 1st Floor there was a tremendous amount of demolition that took place, as discussed above, and overall construction work that was necessary to allow the space to accommodate a cafeteria.

During the construction, Ben Franklin had operating instructional spaces in the basement area while the construction work took place. During the 2018-2019 school year those spaces were impacted by the work taking place on the 1st floor, and in several instances the work intruded into those spaces. Contractors were in those spaces because they needed to access utility lines that ran through the basement. Staff had instances where debris came in through the ceiling of the classroom, and they felt it necessary to move themselves to a safer location. Staff also had to be moved and relocated to other spaces in the building because workers needed to access the basement ceilings inside the classrooms. In two separate basement classrooms debris from the ceilings came down into the classrooms when contractors were working above the spaces. The contractors were coring through the concrete floor directly above a classroom and there was a “meteor shower” of debris. One witness told investigators that you could enter the basement classrooms and when you left you’d be covered in “concrete dandruff.”

The basement also became an unofficial staging area for the contractors, and had increased foot traffic. The space usually only had relatively minor foot traffic on a daily basis prior to construction. When work began at the school there was both increased foot traffic and contractors began storing and moving heavy construction equipment and supplies across the basement floors. The problem remained consistent across the project. As late as August 2019 the ceilings had been impacted and the spaces soiled by the contractors. The condition of one section of the basement is pictured below:



With the space clearly being impacted by construction – whether it had been intentional or not – the inspection of the space should have included this area so that both the school community and contractors could know and be aware of what materials were in the space.

The gymnasium was likewise excluded from the scope of the inspection, but it too was an area where the planned scope of work called for work in and around the space. In the “Summary of Work”

included in both the General Specifications of the contract documents, and the packet of materials signed for during the de-scope meetings the planned work included a new coating on the gym roof, steel support for a new operable partition, and a refinished/restriped wood floor. The construction work clearly contemplated working in and above the gymnasium. It defies reasonable explanation that with work planned in that space it would not have been inspected for the safety of both the school community and the construction workers.

The report also excluded the auditorium from review. As was the case with the two previous spaces, the auditorium would be either be impacted by construction, or deteriorated from age. The failure to inspect the space precluded the District from having the most up to date condition of the ceiling. By all accounts, the auditorium served as “the hub of [the Ben Franklin] community” and the space was used daily for events like town hall meetings, dances, and talent shows all the academic year. In October 2018 “a chunk” of material fell from the ceiling and the school’s building engineer thought it prudent to have the material tested suspecting it could possibly contain asbestos. The space was sealed off and no one from the school was permitted to enter. The District environmental staff responded promptly the same day the issue got discovered, testing confirmed it was asbestos, and the space was cleaned and reopened following several days of work along with air sampling results that permitted re-occupancy.

The difficulties that the school communities later encountered in Fall 2019 highlighted how imperative a complete and thorough inspection would have been. A full year later, in October 2019, staff from Ben Franklin learned for the first time there were asbestos materials in the auditorium. The Ben Franklin Principal confronted the former Director of Capital Programs/COO about the revelation, and explained that the District “knew of the auditorium concerns” from Fall 2018 when work was done on the ceiling of the auditorium. The Ben Franklin Principal pointed out that the space had been inaccessible for a time while the ceiling was repaired, but the staff were not told about any of the test results.

c. Incomplete Inspection

Another deficiency in the AIR centered on the AHERA volumes utilized during the inspection. The AIR indicated that it only consulted the building’s “AHERA 3-Year Inspection Report” but did not specify the year nor did it indicate that the prior AHERA volumes were examined. This lead the inspector on site to conclude that the 2015 AHERA report, the most recent volume available, was used since that was the most recent inspection period. This prompted the inspector to conduct a full building re-examination that resulted in a 4-page addendum to the AIR being issued and filed with the City of Philadelphia.

2. Asbestos Inspection Report Protocol

At the start of construction, Synertech could not get immediate access to the AIR or the abatement specification. The District procedure, according to a witness, required the Asbestos Project Inspector to ask OEMS for permission to contact Capital Programs to obtain a copy. Synertech was not the company that completed the AIR or assessment of the building before the work began at the site so they needed to have the District provide those materials to them. Synertech was “more or less flying blind” monitoring the project during that time. It took three weeks for the Project Manager to send the AIR to Synertech.

The discovery came to light in an August 2018 email exchange about the removal of asbestos containing pipe fittings amongst the Construction Manager, Construction Coordinator, and the Asbestos Project Inspector overseeing the work for Synertech. The Asbestos Project Inspector noted Synertech did not complete the initial inspection so they were requesting a copy of both the AIR and the abatement specification for the project. The Construction Coordinator replied and provided the materials, but the issue alarmed the Construction Manager. Appreciating the significance of what the Inspector said about lacking critical materials, the Construction Manager replied shortly after the Construction Coordinator and said:

“... If [the on-site Asbestos Project Inspector] does not have the AIR, what is he working with? And why have you not been provided this document from day one?”

Moving forward, if your API on site does not have the appropriate documentation on a construction site abatement cannot start. **How many projects do the APIs not have the AIR and/or scope of work? This is unacceptable on the school district's end. [The PFT's environmental consultant] would justifiably have my head for this!”** (emphasis added)

The Asbestos Project Inspector replied to the Construction Manager and told her that they had been “politely asking for the AIR and Specs [sic] for weeks now” before explaining they were “more interested in acquiring the [s]pecification that was prepared” and advising they were able to use Smith Construction's onsite copy of the AIR. The Construction Manager replied:

“... Please do not be so polite to me and my PMs. Same goes for your APIs. During construction projects, you guys are our eyes and ears during abatement. I would expect my construction inspectors to be screaming at me if they didn't have drawings and specifications.”

3. Staffing

The Office of Environmental Management & Services serves one of the most critical roles in the District given the age of much of its physical infrastructure yet the unit is woefully understaffed compared to the volume of work it is expected to handle on a daily basis. OEMS currently responds to issues surrounding lead, mold, asbestos, and other hazardous materials within District facilities. They handle the District's AHERA Management Plan, as well as any smaller scale asbestos abatement or removal within District facilities. The office utilizes a number of consultant companies to complete the scope of their work.

Many of the positions within OEMS have, according to witnesses, become a “24/7 job” and necessitate near constant work related communication both during and after work hours. The jobs have in many instances become “all consuming.” The staff are constantly left wondering what the next crisis will be in the District. A witness told investigators that “money is not going to fix” all the problems, and the unit needs “bodies, [and] procedural improvement” within the District to assist them. Working within the unit is “very tough” and there is a “foreboding sense of ‘we can't win.’” With the constant influx of reporting of various environmental issues from facilities staff and teachers/staff along with work generated from the routine inspection protocols like AHERA, the unit

is constantly inundated but does not have the staff available to comprehensively and efficiently process the information.

Although District administrators have acknowledged to the OEMS staff that additional hiring does need to take place, no substantive progress beyond allotting funds has been made in the past. The administrators have largely left OEMS staff to recruit and interview potential hires and the recent crush of work has simply left no additional time to accomplish that. The District's current posture toward OEMS staffing forces the unit to utilize a short-term solution in the form of a series of consultants that really only contributes to a longer term problem. In at least one instance, an OEMS staff member reported they are paid considerably less than the consultants that directly report to them. In the past, the unit sought to recruit certain consultants to join the District, but the offers are frequently rejected because there is little financial incentive for them to leave their current positions. One consultant who did elect to join the District before leaving almost immediately remarked that they "had no idea what [they were] walking into" and they elected to return to their old company.

Reliance on consultants has tempting short-term financial appeal but it does not advance the District's long-term welfare. When using consultants, the District obviously does not incur certain expenses (e.g. health care benefits) nor is it necessarily bound by certain protections afforded to particular District employees (e.g. collective bargaining rights). However, consultant work is typically transactional and short term. The District cannot truly invest in or teach a consultant when the nature of the work means they will not be with the District long term. There are staff members working in key roles within OEMS that have labored tirelessly for the District, in some instances, for decades, and there is no succession plan or employee waiting to assume those roles. Retirement or a decision by those employees to leave the District means a loss of institutional knowledge that cannot be meaningfully measured. For a division of the District with such an important role in keeping students, teachers, and staff safe in our buildings this is an unacceptable operational structure.

4. Equipment/Software/Data Storage

Certain important data is stored by OEMS in ways that they are not able to best utilize the information. In particular, the AHERA building inventory for all of the District buildings is kept in a Google Document. This information is not backed up in the same fashion as standard District servers/network drives. When information is added, edited, or deleted parties with access to the document can view the changes. The Google Document was designed to be "a bridge" to the eventual development of a software platform that OEMS can use to keep the information securely, uniformly, and in a format that OEMS staff could make more use of the information. The request for the development of a software program has languished for years.

F. Contingency Planning

Despite commissioning a project on an extremely compressed timeline and piling additional work atop an already ambitious scope of work no contingency plans were made for the project. As the project continued through the 2018-2019 academic year toward the start of the 2019-2020 academic year key milestones were not met, and still no meaningful efforts to initiate any type of contingency plan. The investigation revealed the reason: there were no contingency plans in place. There was no meaningful backup plan in place before the emergency closure of the campus. The result was a harried and haphazard effort to relocate not one but two school communities. It caused both schools to miss valuable instructional time, and, because the eventual relocation sites had to be so

urgently secured, the spaces critically impacted curriculum and program offerings for both schools. This did not need to be the case, and the District was not without warning that something like a relocation site may have been necessary in connection with the project.

As early as September 2017, in the same letter discussed above, the SLA Home & School Association laid out a number of specific concerns following a meeting with the Superintendent and other District administrators. The Association asked him and members of the School Reform Commission:

“... The RFP essentially calls for reworking both electrical and plumbing systems. The building was constructed in 1958 with periodic renovations, but is known to contain, at a minimum, asbestos and lead paint. Generally, abatement issues take far longer than any contractor ever believes. The RFP calls for the roof to be ripped down and replaced.

While the building is certainly big enough to move the students from one area to another, what environment will that create for the Ben Franklin students to live in a demolition and construction zone for 18 months?

What will happen if the building is not ready for occupancy or only partially cleared for occupancy when the co-location is scheduled in the fall of 2019?

Will students be put at risk and will construction continue around two separate high schools simultaneously?

If the building is not complete, where do you intend for the SLA students and the Ben Franklin students to begin that year of school, precisely?

We need to know where you would place the children in the interim while the building is completed. And this is an issue which must be addressed immediately as it will be a question faced by our HSA parents at the High School Fair the day AFTER the SRC votes. It is not acceptable for us to say to parents, ‘we do not know where your child will be in the Fall of 2019.’ That is not an acceptable answer for any child in this District.

This appears to be a risk without any potential reward for the District. Why not allow the contractor an additional year to complete all necessary abatement and construction, allowing for a thoughtful discernment of the needs of the two student bodies rather than cramming everything into the next three months for design and development? ...”

In response to that letter, an SRC Commissioner echoed some of the concerns in a follow-up email to the other SRC Commissioners and then-SRC staff and stated:

“I would like answers to these questions as well. I have not seen any information about space at 440 nor have I seen a plan for Constitution High. I asked for both of these things when we discussed this in August.

The parents are correct in inquiring about building renovations on an occupied building. I have extensive experience with this issue **and contingency plans needs to be made.**

We have a financial problem with the current site and I support a move but I do not support a bad move.” (emphasis added)

The SRC formally discussed those concerns in a meeting held shortly before the SRC meeting where Stantec was awarded the design contract for the project. The written agenda for their May 25, 2017 meeting noted that the SRC sought information about potentially co-locating SLA inside District headquarters, plans for Ben Franklin when work begins or whether they should be moved, and “contingency plans if the construction is not complete by July 31, 2019.”

Despite an awareness of these issues at the inception of the project, no meaningful plans got made by the District. In fact, nearly the opposite was true. Witnesses from different aspects of the project, and different roles within the District echoed a refrain that was repeated what seemed like dozens of time throughout the investigation: “there was no ‘Plan B.’” The only option that ever seemed to be contemplated involved completing the project on schedule.

Throughout this investigation, it became apparent that the culture of the Construction Unit revolved around the belief that projects could always somehow or some way get completed on time. When various personnel on the site expressed concerns about finishing the project the Construction Manager and Construction Coordinator continued to reiterate that completion of the work was the only option, no contingencies were considered, and relocation was never discussed. When a witness spoke to the Construction Manager and Construction Coordinator they were told “we’ve never turned a project in late” and that it may “take until the 11th hour, but we’ve always pulled it out.” The witness said they mentioned relocating the Ben Franklin community to another site and were told “no.” Another witness, when asked about what the District’s construction management did in response to the schedule delays, told investigators “we just keep marching.”

The contractors themselves knew very early – some told investigators they knew effectively a year in advance – that the project was too ambitious to complete in the planned window. They repeatedly expressed their concerns to District construction staff to no avail. The Smith President told investigators she was never told specifically why the deadline was so firm, but that she intuited it was because the District either broke or did not renew SLA’s lease “without a Plan B.” She said “every single one of [the prime contractors] voiced concern” about finishing the project on time. In response, the President said she simply heard the same refrain: “there is no Plan B.”

A separate contractor said as early as Fall 2018 he “vividly remember[ed]” all the contractors were raising deadline concerns. In response, he said the District construction staff continuously

repeated to them they were behind schedule. The witness explained that all of the trades were repeatedly raising the issue at the bi-weekly progress meetings.

A separate contractor witness told investigators that by Spring 2019 Smith Construction again expressed concern to the District about needing a contingency plan and again the District simply responded that there was “no Plan B.”

A third contractor witness explained to investigators there was talk of delay in the deadline as early as October 2018 when it was clear the project was falling considerably behind, but no one at the District grew concerned about the timeline until the Construction Coordinator raised the issue in June 2019. The contractor witness asserted that when you interacted with the District construction staff you “never knew what to expect,” and felt there was “no one manning the ship for the District.”

District staff were similarly skeptical of the project’s timeline, and saw well in advance of the start of the 2019-2020 school year that contingency planning would be necessary. One witness with prior experience building schools said they “never believed” the work could be accomplished in the project window. The witness said their concerns were expressed to the former Director of Capital Programs/COO, but they were told there was “no backup plan” and the project had to be completed on time. The witness said these representations continued despite the project continually missing important construction deadlines.

According to the witness, as late as the first week of August there was “nothing” on the 5th and 6th floors of the building, and there was a strong likelihood an off-site location would be necessary to accommodate all the students from both schools by the start of the school year. At the end of July and beginning of August, an SLA parent who is a member of Congregation Rodeph Shalom, proposed reaching out to their congregation about their willingness to host the students. The two relocation sites that were ultimately chosen were Congregation Rodeph Shalom/440 N. Broad Street (SLA), and a vacant charter school building (Ben Franklin). The witness lamented to investigators that “we didn’t have to be here.”

It was clear at the beginning of August that there were concerns about the project. Those concerns were expressed to the former Director of Capital Programs/COO, and she sent an email in response spelling out what portions of the building would not be complete, and reinforced that no visitor walkthroughs would be provided so that work could continue uninterrupted. In fact, the former Director/COO confirmed to investigators that the District’s intent was to “get SLA into the space, and work would continue into the school year.” In a walkthrough the week before school began, the SLA Principal again raised a question of whether there was a swing space plan, and the Ben Franklin Principal was concerned about being able to open on time. The former Director/COO’s August 1, 2019 email to District officials and those directly involved with the project – the date the project was originally set to be completed – is reproduced below to show the extent of what was incomplete in the building, the accommodations both Ben Franklin and SLA were going to be forced to make, and to show the intention was still to try and complete the project.

“Good Afternoon,

I am writing to give you an update on the Major Renovation project at Ben Franklin High School which will house both Franklin HS and SLA in the Fall.

Today was the day we were to reach substantial completion on the project. That will not occur. I walked the building with the Capital Programs team on Monday to discuss next steps.

Here is the direction they have been given:

1. **All spaces are to be ready by August 31, 2019.** Please note that floors are being completed in phases so areas will be cleaned and turned over sooner; however, we will need the holiday weekend to do a major push on cleaning.

2. **There are three exceptions to #1.** They are:

a. SLA will use the 15th Street Entrance for the start of school. Their new entrance on Green Street will not be ready by the start of school.

b. **Ben Franklin will not have use of classroom space on Floor 6, East side.** This area will have a barrier constructed to prevent entry. Capital was told that these are not needed for the start of the school year and that the existing classrooms plus the CTE Center in the basement will suffice for the instructional space needs.

c. **The two science labs for SLA on Floor 5 West will not be complete for the start of school.** Capital Programs has been directed to meet with [the SLA Assistant Superintendent] and [the SLA Principal] to discuss contingency space within the building.

3. The classroom spaces and restroom on Floor 5 West are to be complete for the start of school. I hope this clears up any confusion on previous communication regarding that area.

My ask of you:

1. I mean this in as nice of a way as I can say it-please stay out of our way. Please do not request construction walkthroughs for the next two weeks. Please ask your Principals not to request walkthroughs or take folks through the building without our knowledge. [The current Director of Capital Programs] and [the Construction Manager] need to focus their attention on managing the contractor and pushing to get work completed. I was explicit on what their priorities need to be over the next few weeks.

2. Please keep the Principals focused on preparation and coordination for opening. Make sure relevant offices have bell times/rosters/practice schedules/etc. If you need floor plans, please request through [the current Director of Capital Programs]. We will

schedule a time to meet with everyone to draft a communication for families prior to opening of registration. I would also recommend connecting with [Office of School Safety staff] to discuss school [safety staff assignments] and logistics. Please also provide Food Services with each school's roster so that they can finalize meal service plans.

3. If either school needs alternate meeting space, please let [a District employee] know. She will coordinate with Facilities to support the need. We certainly understand and know the Main Offices have to be cleaned and ready for start of summer pre-registration activities.

4. Put all good ideas on the table related to the contingency space for SLA. Is this frustrating it's not done? Yes. However, I ask that we not engage in panic emotions and stay focused on a successful opening and creative/thoughtful planning.

5. If SLA asks, we have identified parking spaces in the Stoddart lot. [The Construction Manager] can tell you the exact number (contractor is parking there now)

I hope you find this helpful. **We remain committed to having both programs ready for a successful opening. My team knows the contractors need to deliver; we will not accept any excuses or entertain any plans different than those described above.** (emphasis added)

Attendants at the project meetings said they were simply and repeatedly told the District was going to finish the project. Notably, when it was clear the project was behind schedule and would not be completed on time a witness said members of the academic staff were the ones voicing that the opening should be delayed. The witness said the Capital Programs/Construction staff pushed back and insisted the project would get completed on time. The witness told investigators the eventual closure and the problems surrounding that decision illustrated what the witness believed to be a “culture of fear” in the District and an inability for people to feel they can speak up without consequence.

The former Director of Capital Programs/COO stated there were no discussions about relocating either or both schools to alternate sites while the work got completed. She explained that there had only been some discussions about extending the substantial completion date of the project.

The Construction Coordinator told investigators that “contractors always wanted people out” of the building from the very beginning of the project. Yet, the District never considered moving Ben Franklin out of their space. He stated that such a move had never been done before.

The Construction Manager expressed dismay to investigators during her interview that the project proceeded without a meaningful contingency in place. She said that she never worked on a project with the District “with no safety net.” She said the former Director of Capital Programs/COO told her that “you gotta [sic] get done” but she “assume[d] that [direction] was above [the former Director/COO]” and cautioned she was not a part of meetings the former Director/COO might have

had with other District administrators. By comparison, the Construction Manager said that on other District projects deadlines could be pushed back, there might be swing spaces available within the buildings, or a school might stay in their old building until the new building could be completed. The Manager said she never worked on a District project where one of the schools would be “homeless” if the work could not be completed in time, and stressed that you “don’t do construction without a contingency.” She said of the District’s singular plan of getting construction done by the deadline, “this was Plan A, B, C, D, E, F, and G.”

G. Budget & Final Overall Cost

Across the life of the project, the total budget for the project grew considerably. In September 2017, when the SRC approved the initial award to Stantec, the resolution made clear that the project had an estimated construction budget of \$20 million. However, at the time the SRC was set to vote on the award for the prime contractors in June 2018, the SRC expressed concern that the project had grown in cost from what they believed to be a \$10 million budget to a budget of \$20 million. In a June 20, 2018 email, the Chief of Staff forwarded a series of questions from the SRC related to the renovation project that principally focused on the rise of the project cost.

The following day, the former Director of Capital Programs/COO responded and made clear the SRC had already been made aware of the total budget increase at a February 2018 committee meeting. The email reply from the former Director/COO appears, however, to conflate budget increases because of major structural work that had been excluded from the original budget, and increases stemming from specific design changes. The distinction is important because the initial budget estimate relied upon by the District was facially inadequate. In her response, the former Director/COO noted “the Spring 2017 estimate [of \$10.1 million] ... assumed that the renovations would be in place and that no movement of programs or spaces would occur.” This was an accurate statement, but it notably failed to specify what the District was told about work and expenses that were not included in the initial estimate. The feasibility study estimated a relatively minimal amount of work in the space. The scope of work from the study is reproduced below:

Renovation Scope

Science Leadership Academy

- Partial 1st Floor Renovation
 - Entry, Lobby, Gym, & Auditorium
 - New flooring, paint, ceilings, and lighting
- Renovate Floors 4 & 5
 - Classrooms, Offices, & Labs
 - New flooring, paint, ceilings, and lighting
- Partial 6th Floor Renovation (Cafeteria)
 - New flooring, paint, ceilings, and lighting

Ben Franklin High School

- Partial 1st Floor Renovation
 - Entry, Lobby, & main offices
 - New flooring, paint, ceilings, and lighting
- Renovate Floors 2 & 3
 - Classrooms, Offices, & Labs
 - New flooring, paint, ceilings, and lighting
- Partial 6th Floor Renovation (ROTC Area)
 - New flooring, paint, ceilings, and lighting

* Refer to Basis of Design Document

KIMMEL BOGRETTE
Architecture + Site

February 3, 2017

The estimate failed to consider items that were unavoidable and significant expenses, and others that would later prove time-consuming on site:

Estimated Costs	
1 st & 6 th Floor:	\$2,680,000
2 nd & 3 rd Floor:	\$2,390,300
4 th & 5 th Floor:	\$2,500,900
Contingency & GC Costs:	\$2,549,400
TOTAL PROJECT ESTIMATE:	\$10,120,600
Refer to Back-up	
Exclusions	
- A/E FEES	
- Excludes items included in the FCA	
- Hazardous Materials Removal	
- IT/AV Infrastructure	
- Furniture	

As discussed above, the architecture and engineering fees were a function of the overall value of the project so utilizing those services would certainly have increased the budget for the project. The District, according to a witness, was already aware that the boiler would need work, and there were a series of plumbing leaks in the building that would necessitate repair. Nevertheless, the District utilized an estimate that “exclude[d] items included in the [Facilities Condition Assessment].” Most glaringly, the estimate failed to consider “[h]azardous [m]aterial[s] [r]emoval.” Given the age of most District buildings generally, and the amount of environmental work this project involved specifically, it seems incredible that any estimate that failed to consider such work would ever be meaningfully relied upon to budget a project. Nevertheless, the District did so only to have to account for the cost later on. As the former Director of Capital Programs/COO noted in the email:

“...What took the project from \$10M to \$20M was the addition of the following scope:

Window Replacement (\$3M),
Mechanical Pipes replacement (\$3.5M),
Roof Replacement (\$1M),
Elevator Replacement (\$600K),
Electrical Wiring System Replacement (\$3M)

[F]or a total of \$11M.”

These costs were those almost exclusively connected with areas excluded by the feasibility study. Notably, one of the changes – the elevator replacements – were also one of the key drivers of

delay on the project discussed more fully above. The former Director of Capital Programs/COO noted later in the same email that "... District staff worked with both school administrations on a layout for the building that would maintain the identities of each program while creating opportunities for shared interaction." She explained that "[a]s a result, the approved final design includes major changes to the building layout." Many of these items (e.g. "Relocation of Cafeteria and Kitchen to the First Floor" and "Replace additional classroom doors and hardware in six-story building") were the design changes that critically affected the timeline for the project, but they were not the key drivers of the budget increase. The items totaled \$4.5 million in additional cost to the budget.

By the time all of the prime contractors were secured the overall budget grew to \$33 million. The construction budget has since been updated to include both the final cost of the base project work and a new package of work for this summer. The final cost for the base project work is \$41.7 million and consists principally of: construction (\$35.4 million), design (\$2.7 million), furniture and equipment (\$2.8 million), and contingency paid for change orders (\$10 million). The summer work includes assorted renovations in the auditorium, gymnasium, laboratory spaces, and associated environmental work. The budget for the summer work is \$9.4 million.

To date, a total of 205 change orders worth more than \$10.2 million in change orders have been submitted for the project. The summer work accounts for \$3.3 million of that change order total. When a former interim District administrator, previously spoke at a Finance and Facilities Committee Meeting and told the Board members present that a project should target a change order rate in the "range of 3-7[%], and when you start bumping up over 7[%] you want to figure out what's going on." At the time he delivered the remarks the change order rate for the project was estimated at approximately 5%, but he expected that rate to climb before the project was completely closed out. The overall change order rate for the project is 22.8% not including the summer work.

V. Recommendations

1. The District must enhance the prequalification process for contractors

The prequalification process in both Design and Construction protects the District from potential liability and deficient work. The Design Unit should re-institute pre-qualification for professional services contracts like those for architecture and engineering services. This requirement had been in place but was lifted "years ago" with little explanation. Discussed more fully below, the process must be a thorough review of both the company's technical qualifications and their financial health. Given that design services are currently subject to the existing technical evaluation process, concerns about the selected company's technical competencies to complete the instant work are mitigated. However, the process fails to include any in-depth analysis of important indicators of fiscal health of the company such as the finances of the company beyond what they submit for approval by the Board.

It is imperative that the District implement a more comprehensive examination of pre-qualification applications from contractors. This investigation made clear that the current review process consists of little more than a stamp of approval on the contractor's submission. Even glaring omissions of basic information on the applications did not draw a second look by the evaluators. Before the District parts with what is often multiple millions of dollars in many instances, and permits a contractor to work on its buildings, it should have the utmost confidence that the companies are in

a position to complete the work safely and on time. That cannot be said with the current practice in place.

The prequalification review process fails to do any real in-depth analysis of the applications. Information submitted by the contractors is taken largely at face value. Fortunately, in this instance, in the level of review the Office was able to take of the applications on this project it does not appear that there was any information that should have caused those applications to ultimately be denied. However, the pre-qualification process is one of the most important gatekeeping tools the District has at its disposal. It provides a means and mechanism to prevent deficient, if not potentially dangerous, work from being done in a District building, and potentially saves District funds from going to companies that are not equipped to handle the work.

We are recommending that the District enhance this process by delegating this responsibility to an investigator/auditor who is equipped to perform a full service background investigation on the potential contractor to determine their relevant work history and references, their fiscal health, and ability to complete the work they are bidding on. The investigator/auditor will ensure the vendor remains in good standing throughout the duration of their work with the District.

2. The OIG recommends that the District utilize construction management firms on major renovation projects to alleviate workload on the District's Construction Unit

Over the course of the investigation, the Office learned that the District previously utilized independent construction managers on all construction projects. Several years ago, this practice was discontinued. The District should consider instituting a policy that utilizes a construction management company for projects meeting a designated monetary/size threshold that the District deems appropriate. Projects meeting that threshold would no doubt constitute a substantial volume of work and demand a considerable amount of attention from the District's construction staff. Utilizing a construction management company would also pay dividends from a liability standpoint. Construction management companies provide expertise on the project, and also insulate the District from potential liability while providing options to challenge quality of work issues.

3. The District should restructure the change order process to enable it to operate more efficiently

The District's change order process is one shrouded in confusion, slowed by inefficiency, and the source of considerable frustration amongst contractors. There is a lack of uniformity in how the change order work is directed to proceed, as well as the documentation for those directions. Throughout the investigation, multiple witnesses who currently conduct business with the District could often only articulate parts of the District's change order approval and payment process, and said their experiences varied from project to project. One aspect of the process was roundly criticized – the slow approval and payment by the District.

The current system causes otherwise interested companies not to do business with the District for fear of slow payment. The result costs the District access to a wider, more diverse pool of companies. It leaves the District with this group of contractors less inclined to make bids that are more competitive because there are only the same core of regular contractors likely to bid on the work. This hinders the District because this small pool of contractors can only work on a certain number of

projects at any given time. The District might be even be able to complete more projects if there were changes in how it processes and pays contractors for change order work.

The District might consider consolidating to a “One Bulletin/One Change Order” requirement where applicable. When a construction bulletin is set to be issued the District should send the bulletin to each of the prime contractors for them to estimate the cost of their portion of the work outlined in the bulletin, and submit all the backup documentation for their proposed work. The District could then consolidate all the materials/work on one single change order for processing and payment. Such a change would also limit the duplicative and confusing numbering system discussed above.

Too often, the District merely utilizes the construction management staff in more of a clerical role by having the staff gather the supporting document for the change order and then submit it to the District construction staff. The actual review and approval is completed by the evaluators in Capital Programs, and adding to its backlog of approving change orders. Enhanced involvement in the review of the change orders by the construction management representatives on the job site may streamline the process and result in quicker reconciliation and payment.

4. The District should standardize the site inspection and activity log protocols

The Construction Unit should formalize the site inspection and activity log protocols and generate a standardized inspection form for all of its Inspectors to use. Inspectors are currently only required to report their daily observations in a narrative form that gets recorded in a spreadsheet/Google Document. Some entries contained more information than others, and there were not always uniform updates on all of the work at the site. Inspectors are largely left to their own devices when checking a particular work site.

The District’s construction inspectors serve as the Construction Project Manager’s eyes and ears on the job sites. It is incumbent on the District to have documented verification that the inspector has checked both the required areas of a job site and the surrounding areas. Because there is no set form that must be filled out, the completeness of any inspection from one inspector to the next cannot be independently verified. Likewise, without a protocol in place for work progress at the site, a project manager could lose a valuable tool to monitor the work on the site if they are unable to physically be on site for a period of time. The inspection forms and activity logs would also serve as a valuable documentary evidence should the District need to challenge any of the work on the site after the fact. Rather than relying on mere recollections of a Project/Assistant Project Manager or Construction Inspectors weeks, months or possibly more than a year later there would be a reliable record to rely upon.

5. The District should continue to monitor and upgrade air quality on construction sites

The District has already implemented a new Indoor Air Quality specification that would otherwise have been a critically important recommendation of this report. The requirement has already been included in bid materials for projects sent out for bid since this investigation began. A review of the new specification does two things. First, it is necessary step forward to ensuring District construction sites are clean and hazard free. Second, it lays bare how deficient the protections were

before the updated policy. The Ben Franklin community and later SLA were left in an environment that would fall drastically short of the new requirements.

6. The District should enhance the Office of Environmental Management & Services so that staffing levels are adequate for the level of environmental work that the unit is expected to undertake

Given the District's aging building inventory, the OEMS serves one of the most important functions within the District, yet it is drastically understaffed. OEMS employees that do staff the unit are racing toward becoming burnt out, and, to perhaps compound the problem, there would be no one in place if the employees leave the District. Because of the current workload, many of the positions within OEMS have become, as discussed above, a "24/7 job" and "all consuming."

The unit is essentially, and seemingly endlessly, being asked to do more with less. There has been little substantive effort by the District to provide additional resources. The workload of OEMS only promises to grow in the future. The District's building inventory is dated, and the infrastructure requires constant inspection and maintenance. In a unit that is such a critical frontline defense to the safety of students, teachers, and staff it is incumbent upon the District to give them the resources they need to do their job. The District continues at its peril if it does not make substantive investments into OEMS staffing. If the District instead chooses to saddle the dedicated staff of OEMS with the same, or greater, amount of work in jobs that already are frequently thankless and frustrating, they will lose the dedicated staff that they are fortunate to have.

The District should consider staffing OEMS in a fashion similar to the Learning Network or Facilities Area Coordinator model that is currently employed within the District. Using this model, the OEMS staff could keep its same organizational and response structures in place, but have a more tailored response for each school. The District would need to assess an equitable way to balance workload of the staff against the nature and age of buildings each would be assigned. The thrust of this recommendation is to provide continuity in terms of communication and work.

7. The District should endeavor to upgrade the technology and software used by the Office of Environmental Management & Services

Currently, the OEMS stores important information primarily in Microsoft Excel or a Google Document. Witnesses explained this was designed to be "a bridge" to the eventual development of a software platform that OEMS can use to keep the information securely, uniformly, and in a format that OEMS staff could make more use of the information. The request for the development of a software program has languished for years and it needs to be a priority of the District.

The District should obtain a software package that the OEMS could use to maintain, store, and use the information. Clearly, any software purchase would require modification tailored to the specific needs of OEMS, so that even if or when the District eventually approves the purchase, it would still take time to develop and formally roll out the software. Without a comprehensive software package at their disposal OEMS staff are frequently left utilizing archaic and inefficient means to complete their jobs.

Accuracy and security of data is paramount in a division like OEMS. Checks and balances for that information need to be something more robust than the diligence of one District employee

manually verifying and tracking information. The District's building inventory is both aging and too vast for the primary means of tracking and using information to be the dated method it utilizes.

8. The OIG recommends that the District improve its methods of communication regarding environmental issues to both its internal staff and its external stakeholders

Knowledge about, and information regarding, environmental issues in District buildings is imperative. Any time there are discussions about environmental issues inside District buildings the topic is understandably emotionally charged for the safety of students, teachers, and staff is the District's most important responsibility. Many of the environmental issues in District buildings (e.g. asbestos, mold, lead paint) are topics most people have little understanding of and many times garner anxiousness for those who may be affected. Unfortunately, that same lack of familiarity and uncertainty can breed fear when someone hears word that an environmental issue affects their school or building.

The District must improve the way that it communicates information about environmental issues to both the school communities and the general public. Without question, the District has made missteps in recent months regarding how and when it has informed stakeholders. There have also been instances when the narrative has been hijacked from the District and sensationalized by both the media and for possible political gain. This comes from a combination of the District not having an effective way to consistently and accurately to respond to environmental issues.

There is a unique blend of communication ability and professional knowledge about environmental issues that is required to properly communicate this type of information. The District too often requires the OEMS staff to handle its own external communications. In these instances, the professional staff of the OEMS are essentially tasked with what is tantamount to two full time jobs at many points. These employees are required to complete their daily, voluminous responsibilities then they are frequently fielding inquiries from concerned parents, teachers or staff via phone, email, or community meetings after hours. Dispatching OEMS staff directly to events like community meetings exceeds what they should be asked to do. The District needs to bridge the existing gap between Communications and OEMS to ensure all external communications are clear, concise, and complete.

9. The District must develop a continuity of operations plan and identify relocation spaces in the event they must relocate a school community

As a result of having to relocate almost 1,000 Ben Franklin/SLA students in a matter of days, the District has begun the process to secure temporary relocation sites to utilize should a District building become uninhabitable for a variety of reasons. This initiative must remain a priority for the District, and the review of this project provides no better example of why that should be the case. While construction projects throughout the District must often take place in occupied spaces, it is incumbent on the District to have a contingency plan in place in the event the spaces cannot be safely occupied.

As recent events have shown, it is entirely foreseeable that any number of issues (e.g. environmental, construction, emergency) could cause the District to close one of its buildings. Having

a concrete contingency plan in place lets families, and staff know where they would be in the event of such an issue, and plan what effects that might have on them. Not having a ready plan in place means significant consequences like lost instructional time, and disruption to key District services like health services and meals for students in need.

10. The District should monitor the use of outside email domains used to conduct District business

Incidental to the investigation, this Office discovered the use of several outside email domains to conduct official District business including several of the emails cited above. Science Leadership Academy continues to use a non-District email domain (“@scienceleadership.org”), and a former contract employee, until November 2019, utilized a private business email domain (“@[name of company].com”) to conduct District business. While attempting to gather information for this investigation, the former contract employee was provided with a District contractor email address after OIG alerted District IT staff of the matter. The use of such email accounts violates School District Policy 815 which provides, in pertinent part, that:

“The district-provided email is the official email of record for the district and **must be used by employees for all official district business**, including but not limited to email communication with district staff, students, parents/guardians, family members, associates, and external agencies and service providers. ...

Guests/Contractors are not automatically eligible for a district email account. Email or network access accounts may be granted if directly sponsored by a district administrator and it has been determined by the Superintendent or designee that a technical need exists. ...

Email communications that qualify as district records shall be maintained in accordance with applicable policy, administrative procedures and/or record retention schedule(s). [Citation omitted]

Use of the district email system is subject to all applicable laws, regulations, SRC policies and district administrative procedures.”

The use of outside email domains to conduct a party’s District business similarly puts the District in a position where they cannot properly certify that certain relevant, responsive communications have either been preserved or produced for instances like Right to Know inquiries, litigation, or internal/external investigations.

11. The District should endeavor to provide environmental hazard awareness training to its employees

Also incidental to the investigation, an overwhelming majority of the witnesses the Office spoke to during the investigation possessed minimal knowledge about asbestos beyond the minimal requirements like knowing where the AHERA binder is kept in the building. Those that did have familiarity with the topic had knowledge largely obtained separately from their District employment,

generally either prior career experience or, sadly, dealing with an asbestos-related illness of a family member or friend. Nearly all the witnesses expressed an openness and willingness to learn more about the topic (e.g. where it typically is found, what it typically looks like, and who/where to report it if they suspect it to be damaged). A more informed District body will both ease worries about the topic, and arm the District with sets of observant eyes in places they do not generally inspect or visit every day.

VI. District Response to OIG Recommendations

Prior to the release of this report, the District was provided an opportunity to review it and they were asked to make proposed additions or corrections they felt were necessary. The District was likewise asked to assess the recommendations proposed by this Office, and advise of any steps that may have already been taken towards the recommendations. The District's response is attached.

VII. Conclusion

The work planned at Ben Franklin/SLA was substantial; it was effectively renovating and ultimately building two separate schools in one structure. The design called for a tremendous amount of demolition and new construction in the spaces, and it did so in an extraordinarily compressed timeline due to the desire to terminate what the SRC and District determined to be an expensive lease with a private landlord. In light of the massive scope of work scheduled for a minimal amount of time, working in an occupied space would prove to be impossible and costly. What should have been abundantly clear very early into the work at the site was that the building could no longer be safely occupied while also adhering to District and common sense guidelines. Even if the District Construction Unit and other District administrators had sought to move the Ben Franklin community out of the space, and temporarily relocate SLA there was nowhere for them to go. It would have been the same frenzied, last minute effort to find a location that did eventually take place in Fall 2019 when the campuses closed. Because of the conditions the District created, this project ballooned from an estimated \$10-20 million to what will ultimately cost taxpayers more than \$51 million.

William R. Hite, Jr., Ed.D.
Superintendent

August 19, 2020

**School District of Philadelphia Response to the *Office of Inspector General's*
Report of Investigation Re: Benjamin Franklin High School & Science Leadership
*Academy Shared Campus Major Renovation Project***

Dear School District of Philadelphia Community,

As superintendent, I am grateful to the Board of Education for joining with me last Fall in calling for an investigation into the Benjamin Franklin High School and Science Leadership Academy renovation and co-location project, which ultimately led to the temporary relocation of both schools, and to the Office of the Inspector General (IG) for pursuing a comprehensive investigation and issuing the report. As I've shared before, I deeply regret how the project unfolded and the significant, negative impact it had on the students and staff of both school communities. While we have already implemented numerous changes to improve our operating practices, it is only by objectively assessing what happened -- and why -- that we can truly understand the interplay of problems with the project, and identify and implement the changes needed to avoid similar mistakes in the future. Our School District is fully committed to learning from this experience and making any needed changes.

We have carefully reviewed the IG Report's critical assessment of the District's role in the planning, design, and oversight of the BF-SLA project, and the eleven recommendations outlined on pages 107-113 of the report. This response reaffirms our commitment to the core value that all School District of Philadelphia children are entitled to a quality education in a safe and healthy setting, by walking through how the District has and will continue to respond to the issues identified in the recommendations.

DISTRICT PROCESS IMPROVEMENTS

- **Contractor Qualification, Quality & Responsibility:** The District is reviewing how it can augment contractor prequalification and assessment processes to ensure better quality, value and accountability from contractors, including construction contractors and professional services contractors (e.g., architects, engineers as discussed by the report) on capital projects.

We are currently in the process of evaluating and modifying our procurement processes. Part of this effort includes exploring what latitude we have in defining "responsible" bidder and determining contractor "responsibility" to further strengthen our pool of contractors, within the parameters of the Pennsylvania Public School Code. The Public School Code imposes competitive procurement requirements on school districts to award construction contracts to the lowest responsible bidders, as opposed to being able to determine which contractor would provide the best value for the type and life of a project as the City of Philadelphia is legally permitted to do. While the intent of the statute is for school districts to obtain the lowest prices for construction work at the outset, this form of procurement can be more expensive in the long run. The Public School Code also requires

four-part bidding on most construction projects, meaning that the District must run separate competitive bidding processes and award separate contracts for electrical, plumbing, HVAC, and general contractor portions of the same construction project. Both of these requirements impact the scope of contractors available and willing to bid on our projects, and can add unnecessary time and cost. Inherent in four-part bidding is split responsibility among multiple contractors. Because no single construction contractor is ultimately responsible for a project, and the work of each can hinge on the work and schedules of the others, it is more difficult to hold contractors accountable.

The District has been developing a new multi-million dollar Enterprise Resource Planning (ERP) system for over two years. The first phase of the ERP launched on July 1, 2020. As part of the ERP system, the District has invested in an add-on module that is being configured to facilitate collection and accessibility of information and documentation concerning contractor financials, compliance and responsibility, performance, and accountability. Once fully operational, the advanced internal controls will allow for better tracking of projects, the relationship between invoices and project status, and oversight of project payments to contractors and sub-contractors.

Also, since March 2020, the School District has been negotiating a new Partnership Labor Agreement with the Building Trades that should help the District prequalify more contractors and increase the pool of available contractors that could be qualified to compete for District contracts.

Collectively, these improvements should increase the pool and quality of available contractors, and strengthen the District's ability to prequalify vendors, make determinations concerning contractor responsibility, and maintain contractor accountability. Over time, this should improve the costs, quality and timeliness of projects for the District.

- **Improving the Change Order Process:** The Report rightly points out that the District's change order system is cumbersome and invoicing (not payments) are slower than they should be. As part of the District's contract with JMT, we are implementing a centralized system that will make the change order process more efficient and allow for complete transparency as to where change orders are in the process. Overall change order system improvements will be focused in the following areas:
 - broader, better defined scope of work from design to construction
 - early addition of comprehensive environmental work
 - development of realistic schedules that are rigorously evaluated before bidding
 - creation of project control systems to monitor early warning signs
 - quarterly reporting to the Board on current projects and the change order rate

This system will be accessible by the Office of Capital Programs and contractors, and provide a more effective and prompt invoicing process which will improve timeliness of invoicing.

- **Site Inspection and Activity Log Protocols:** We fully acknowledge that the current process for logging site inspection activity needs to be updated and improved. We are currently working to develop an updated protocol that we will implement by the end of the calendar year.
- **Monitoring and Upgrading Air Quality on Construction Sites:** As acknowledged in the report, the District has already implemented a new Indoor Air Quality specification in our bid materials for

projects. Our current projects at Ethan Allen, Anne Frank and Richmond Elementary schools are all compliant with this specification.

- **Environmental Communications Processes:** As part of the Environmental Safety Improvement Plan, OEMS and Capital Programs have developed and been adhering to a dedicated process to clearly communicate capital projects and environmental work in schools. The Environmental and Capital websites are updated with new information as it is received. Individual school websites are updated with any communications that are sent out to families and any testing results. Additionally, ARC Environmental was retained by the City of Philadelphia to work with the District and the PFT in developing a best practices document that continues to reflect the District's efforts to exceed City guidelines and allows all of us to respond to the needs of our schools with consistency. In advance of our launch of the "Best Practices" guidelines developed by ARC Environmental, OEMS and the District's Communications team are working to develop a tighter communication protocol that will be shared out so schools and families know what to expect and next steps for communication through all projects.

CONTINGENCY PLANNING

To help address future relocation needs, we have begun developing dedicated "swing spaces" for school communities affected by environmental and capital projects. In January 2020, the Operations Department began the process of identifying (with input from the community) and vetting potential swing space sites within and beyond District facilities. Although the list of potentially suitable and available sites citywide that can support the needs of a functioning school is very limited, to date we have created a short list. Two District sites with appropriate capacity have been prioritized. Martin Luther King Jr. High School is currently being prepared as a swing space for Fall 2020. Preparation of South Philadelphia High School will begin in the Fall of 2020. Additionally, once the new Thomas M. Peirce School building is complete, the Anna C. Pratt School will also become a viable swing space option. Additional sites on the list will require significant renovation and environmental work to be readied for use as swing space.

STRUCTURE, STAFFING AND TRAINING

- **Contracting for Additional Expertise and Leadership:** In fiscal year 2020, the District extended and expanded the scope of its 2018 contract with Creedon Management Associates to enable Jim Creedon, former Secretary of the Pennsylvania Department of General Services, to further his support of facilities and operations. Mr. Creedon provided recommendations and support with respect to:
 - developing a structured process for building-by-building planning and monitoring of summer cleaning;
 - program management assistance for the lead paint stabilization program and assistance in the development of the process to comply with the City's Lead Safe Ordinance;
 - evaluating the District's work order management system to provide recommendations for improving data review, decreasing response time and improving customer service and communication; and

- project management assistance and assessment in areas including custodial and maintenance services, asbestos abatement, lead abatement, water quality improvement, and mold identification programs.

During Mr. Creedon's tenure as interim COO, the District pursued the following:

- **Expanding OEMS Staffing and Improving How We Work with PFT:** The Report correctly points out that OEMS is significantly understaffed. This is an unfortunate combination of the 2012 reduction in force legacy, burn-out from the ever-increasing flow of work orders and documentation, and the lack of an aligned and consistent process with the PFT. During the past school year, the District hired a new Director of the Office of Environmental Management Services and an Environmental Response Manager, as well as two additional abatement staff for the A-team. We also assigned three project managers to support environmental staff, and added three companies to our roster of environmental consultants in order to enlarge our capacity to evaluate and more timely address asbestos inspections, repairs, abatement, and testing. The District has been reorganizing and adding staff in alignment with proposed best practices as endorsed by ARC Environmental.
- **Hiring a Project Management Firm:** Learning from the BF-SLA project and recognizing that the District lacked the internal staffing capacity to appropriately oversee and supervise the substantial number and size of projects in the construction pipeline in connection with the \$500 million capital borrowing, we worked with the City of Philadelphia on a competitive solicitation for a project management firm. On January 30, 2020, the Board of Education authorized the District to enter into a contract with Johnson, Mirmiran & Thompson, Inc. (JMT), for an amount up to \$20 million. JMT's project management team is responsible for overseeing projects including HVAC, electrical, paint and plaster, and other capital improvements in schools district-wide. JMT is responsible for adherence to timelines, quality of work, and communication with contractors and the District about project status and needs. The firm is currently serving as project manager on the BF-SLA project; the major renovation projects at Anne Frank Elementary School and Ethan Allen School; the construction of the new school on Ryan Avenue; and construction of replacement buildings for T.M. Peirce School, Lewis C. Cassidy Academics Plus School, and S. Solis Cohen Elementary School.
- **Additional Capital Programs Support:** In October 2019 and June 2020, to further support timely and quality completion of capital projects, the Board authorized expanded contracting with multiple vendors for professional supplemental services to support proper levels of staffing to implement the \$500 million Capital Improvement Plan by facilitating as-needed staffing to ensure priorities including new facilities and additions, renovations of existing facilities, life-cycle replacements, and educational programming needs are met. These contracts supplement our professional staff in architecture, engineering, estimating, claims analysis, technical specification writing, project management, and construction scheduling disciplines. These supplemental professional staff people are fully integrated into the Office of Capital Programs, working as part of the capital projects team, and monitored for quality and timeliness.
- **Expanding Environmental Training and Awareness:** Earlier this year, OEMS provided Asbestos Awareness training to Facilities Area Coordinators (FACs) and Building

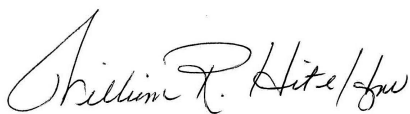
Engineers. OEMS is currently working with Criterion Laboratories to provide asbestos awareness training to all school-based personnel during the 2020-2021 school year.

- **Evaluation of Operations and Facilities:** Receiving Board authorization in December 2019, the District, through the Superintendent's Office, contracted with District Management Group, LLC, to work with the Superintendent, District central office staff, and other stakeholders to analyze and create an Operations Department Strategic Plan. The work was intended to provide an overall long-term vision and commitment for schools; assist with prioritization, organizational structure, role recommendations, and goals and key performance indicators; and create a path forward for additional targeted support in the future to modify and improve processes and service delivery across Operations. The proposed Strategic Plan can be found [here](#).
- **New Leadership:** In addition to personnel changes and structural changes (such as moving toward contracted project management), the District undertook a national search for a new chief operating officer (COO) who will continue to expand our vision for the Operations Team. The new COO, Reggie McNeil, will join the District later this month. Mr. McNeil, a stand-out candidate during our national search, will bring a combination of deep technical knowledge, demonstrated experience leading large-scale projects, and a clear commitment to students and community.

The Inspector General's Report and the DM Group's proposed Strategic Plan will be shared with the incoming COO and provide valuable information as he undertakes his new role and builds on improvements already underway. COO McNeil will be evaluating and implementing the Strategic Plan, making additional staffing improvements to support this work. His leadership will be critical to help the District confront the many operational challenges we face head-on, and work together with all stakeholders -- including those critical of our efforts -- who share our commitment to providing all students and staff with healthy and safe learning and work environments.

Again, I appreciate the objective insights and criticisms provided by the IG's report. We have also learned that the Environmental Protection Agency is conducting an investigation, and the District is cooperating with all requests for information. In sum, I pledge to use all insights and assessments from the IG's report and what we may learn from other investigations to help inform how we move forward to better serve the needs of our young people, schools and families. As a School District, we must model what we expect of our students, and that's exactly what we will do here. We will learn and grow from our mistakes. Regaining the trust that was lost during this project is a top priority for me and my leadership team. We will begin to regain that trust not simply by what we say but by what we do and how we do it. We remain fully committed to doing everything we can with the resources we have to support healthy and safe environments for every child and staff member who walks through the door of any School District of Philadelphia building.

Sincerely,

A handwritten signature in black ink, reading "William R. Hite Jr." with a stylized flourish at the end.

William R. Hite Jr., Ed.D.
Superintendent
The School District of Philadelphia