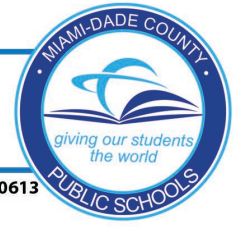





Felix Jimenez
Inspector General
Office of the Inspector General for Miami-Dade County Public Schools

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To: The Honorable Perla Tabares Hantman, Chairwoman
and Members, Miami-Dade County School Board
Alberto M. Carvalho, Superintendent of Schools, M-DCPS
Ann Stith de las Pozas, Exec. Dir., Foundation for New Education Initiatives, Inc.

From: Felix Jimenez, Inspector General 

Date: June 29, 2021

Subject: Review of K12 Florida, LLC Transfer of Funds to the Foundation for New Education Initiatives, Inc., Ref. IG-20-0008-SI

Attached please find the Final Report of the Miami-Dade County Public Schools Office of the Inspector General's (OIG's) review of the transfer of \$1.57 million from K12 Florida, LLC, a virtual instruction provider, to the Foundation for New Education Initiatives, Inc. (FNEI). The OIG examined how the donation came about and whether the solicitation of the donation from a vendor pending execution of a contract created violations or prohibited conflicts of interest pursuant to the State's Conflict of Interest and Code of Ethics Statutes and School Board Policies.

The OIG found no actual violations of the prohibitions as defined by the State Code of Ethics and the corresponding School Board policies. The School Board Code of Ethics, however, goes beyond those prohibitions; the review found that a solicitation of a donation from a vendor with a contract pending final execution, and an existing contract with a term of years remaining, creates the appearance of impropriety.

The funds, which have been transferred by K12 to FNEI at the direction of M-DCPS administrators, have yet to be disbursed. The OIG believes that FNEI should return the donation to avoid any further appearance of impropriety. The OIG report identifies areas that can be improved upon to avoid actual and apparent conflicts and ensure that the interaction of M-DCPS and FNEI are enhanced and maintained. Although the School Board has already made changes that would augment these areas, as has FNEI, the OIG makes further recommendations. The OIG requests that the School Board and FNEI provide a report regarding their review and intended implementation of the recommendations within 90 days.

We appreciate the cooperation of M-DCPS and FNEI throughout this process and look forward to a report on or before September 28, 2021.

cc: Walter J. Harvey, School Board Attorney, M-DCPS
Jon Goodman, Interim Chief Auditor, M-DCPS
Jaime Torrens, Chief of Staff, Office of the Superintendent, M-DCPS
Daisy Gonzalez-Diego, Chief Communications Officer, M-DCPS

**MIAMI-DADE COUNTY PUBLIC SCHOOLS
OFFICE OF THE INSPECTOR GENERAL**

FINAL REPORT

*Review of K12's \$1.57 Million Donation to
the Foundation for New Education Initiatives*

IG-20-0008-SI

June 29, 2021

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Exhibit 5 – Email dated 9/4/20 from Ms. de las Pozas with K12 Invoice

Exhibit 6 – K12 letter to the School Board of Miami-Dade County

APPENDICES

Appendix A – Response from Superintendent Carvalho

Appendix B – Response from Ms. de las Pozas, Executive Director, FNEI

Appendix C – Response from Ms. Mendez-Cartaya

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I. INTRODUCTION & SYNOPSIS

On September 16, 2020, the Miami-Dade County Public Schools (M-DCPS) Office of the Inspector General (OIG) initiated a review of the transfer of \$1.57 million from K12 Florida, LLC (K12), a virtual instruction provider, to the Foundation for New Education Initiatives, Inc. (FNEI), the District's direct support organization. The OIG began the review based on the School Board's discussion two days earlier, on September 14, 2020, revealing that K12's donation was solicited by M-DCPS officials and that the funds were slated for disbursement by FNEI to M-DCPS teachers in the form of \$100 gift cards. At the time the donation was solicited, M-DCPS and K12 were two days away from the start of the 2020-2021 school year utilizing a district-wide online temporary learning management system (LMS).¹ The \$15 million contract for the K12 temporary LMS was pending final execution by the Superintendent.² The OIG sought to determine how the donation came about and whether the solicitation of the donation from a vendor pending execution of a contract created violations or prohibited conflicts of interest pursuant to the State's Conflict of Interest and Code of Ethics Statutes and School Board Policies.

The OIG found that in the Summer of 2020, as the Coronavirus Disease (COVID-19) pandemic progressed, M-DCPS administrators sought a temporary LMS for the upcoming 2020-2021 school year. M-DCPS had already initiated a procurement in November 2019 for an LMS, but the timeline for completion did not make it suitable for the rapidly approaching 2020-2021 school year. M-DCPS held off developing the specifications of the temporary LMS pending the publication of the State's guidance to Florida's School Districts regarding education requirements and funding for the 2020-2021 school year. The guidance was issued on July 6, 2020, and immediately thereafter the M-DCPS administration, sought to select a temporary LMS provider that could meet the State's requirement that both online students and physically present students be taught the same curriculum. Through a statutory exemption in the competitive procurement process, K12 was selected as the vendor for a temporary LMS, specific to the 2020-2021 school year. M-DCPS and K12 had a mere six weeks to produce the fully functioning temporary LMS and set up the system in time for the first day of school.

The process was riddled with implementation issues from the beginning. The issues included delays in the integration of the systems, training, and, more importantly, the ability of the teachers to enter their class rosters in the system. While the contract was executed by K12 and had been reviewed and signed by M-DCPS senior staff, the Superintendent halted the final execution of the contract. Despite not having a fully executed contract, M-DCPS and K12 advised the OIG that they continued to work to

¹ LMS refers to a system that integrates the delivery of instruction including course content, student-teacher interaction, attendance, and grading. The services M-DCPS was seeking from K12 included course content and use of K12's LMS.

² Since 2010, K12 has had an existing contract with M-DCPS to provide a virtual instruction program, the Miami-Dade Online Academy, to the resident M-DCPS students receiving full-time virtual instruction. The services provided under that contract differed from those in the K12 temporary LMS for the 2020-2021 school year.

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resolve the problems with the goal of having a functioning temporary LMS by the first day of school. On the Saturday before the start of school, it was clear that due to the system issues, which prevented teachers from loading required content into the program, some teachers would be working over the weekend to prepare for the start of the school year. That 11th hour exasperation, which was the culmination of much frustration during the 6-week process, resulted in an M-DCPS administrator suggesting to the Superintendent that K12 should do something in recognition of the teachers. The Superintendent concurred and solicited K12 to provide a benefit for the teachers. K12 agreed to provide \$100, to be given as gift cards, to the M-DCPS classroom teachers. The distribution of the \$100 gift cards would be facilitated through a \$1.57 million donation to FNEI, which would have to purchase and distribute the gift cards.

The OIG examined Florida statutes and School Board policies to determine if a violation occurred based on the solicitation of funds from a vendor, for the benefit of other M-DCPS employees. The OIG examined Florida Statutes Section 112.3148 prohibiting the solicitation of gifts from vendors by public officials who are required to file financial disclosures or who have procurement responsibilities, for the benefit of those officials or others that are required to file financial disclosures. No violation was found, because teachers—the intended gift recipients—are not required to file financial disclosures pursuant to the State Ethics Code.

Next, the OIG examined Florida Statutes Section 112.313(2) and its equivalent School Board Policies 1129 and 1210.01, which prohibit public officers from soliciting anything of value based upon the understanding that the gift solicited would affect the public officer's official actions. The facts elicited during the review did not support any finding that the solicitation was in any way tied to the future action.

The OIG also examined Florida Statutes Section 112.313(6) and its local equivalent School Board Policy 1129, which prohibit public officials, with a wrongful intent, to use their official position, or to perform their duties, in a manner that would secure a special privilege or benefit for themselves or others. While the solicitation may have been ill-considered, as will be discussed below, our review likewise found no wrongful intent.

Lastly, the OIG's review of this matter analyzed School Board Policy 1210.01. This policy, which is part of the School Board's Code of Ethics, exceeds the prohibitions found in the State's Code of Ethics. Locally, M-DCPS employees should avoid the appearance of impropriety. The appearance of impropriety is present when, as in this instance, a vendor is solicited. K12 was not only pending the execution of the contract but was also an active vendor providing services to M-DCPS under a separate contract. The OIG recognizes that both the vendor's and the M-DCPS administration's intentions may have been to alleviate the frustration caused to the teachers, however, public officials should avoid the appearance of impropriety. Such an appearance is clearly created when a public official solicits a benefit for his or her employees, regardless of whether those employees are required to file annual financial disclosures. Here it was a monetary benefit of \$100 per

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classroom teacher. There is no doubt that this solicitation for gifts totaling over \$1.5 million—on the eve of the temporary K12 LMS go-live and with an unsigned contract hanging over it—created an appearance of impropriety.

These funds were ultimately transferred by K12 to FNEI at the direction of M-DCPS administrators, but they have yet to be disbursed. The OIG believes that FNEI should return the donation to restore the perception of transparency and fair dealing.

The initial sections of this report provide our jurisdictional statement, review methodology, and information about the key individuals and entities discussed. Section V highlights the conditions present prior to the start of the 2020-2021 school year. Section VI sets forth the factual findings explaining the progression of the procurement leading up to the donation. Section VII is our analysis of the potential conflicts and restrictions, based on those findings. Section VIII summarizes the responses received by the entities that reviewed and commented on the Draft Report (the full written responses are included in the appendices); Section VIII also contains our comments. Section IX, the report's final section, identifies areas that can be improved upon to avoid actual and apparent conflicts and ensure that the interaction of M-DCPS and FNEI are enhanced and maintained. Although the School Board has already made changes that would augment these areas, as has FNEI, the OIG makes further recommendations, including an additional one not made in the Draft Report.

II. OIG JURISDICTION AND AUTHORITY

The OIG provides inspector general services to M-DCPS pursuant to an Interlocal Agreement (ILA) between the School Board of Miami-Dade County and Miami-Dade County. The ILA governs the scope and jurisdiction of the OIG's activities. Among the authority, jurisdiction, responsibilities, and functions conferred upon the OIG through the ILA is the authority and jurisdiction to investigate M-DCPS affairs, including the power to review past, present, and proposed programs, accounts, records, contracts, and transactions. The OIG shall have the power to require reports and the production of records from the M-DCPS Superintendent, School Board members, School District departments and allied organizations, and School District officers and employees, regarding any matter within the jurisdiction of the OIG.

III. REVIEW METHODOLOGY

During the review, the OIG was provided access to email communications, text messages, and other documents, by M-DCPS, FNEI, and K12. The OIG also reviewed procurement documents and the agreement with K12. In addition, the OIG conducted numerous interviews.

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From M-DCPS, the OIG interviewed Superintendent Alberto Carvalho; Dr. Silvia Diaz, Chief Academic Officer; Marie Izquierdo, Chief Strategy Officer; Mario De Barros, Chief Procurement Officer; and Iraidia Mendez-Cartaya, former Associate Superintendent.³ From FNEI the OIG interviewed Ann Stith de las Pozas, Executive Director. From K12 the OIG interviewed Nathaniel (Nate) Davis, Executive Chairman of the Board, who, at the time, was also the Chief Executive Officer (CEO). All the above-named individuals were interviewed by the OIG under oath. The OIG also spoke with several M-DCPS administrators to obtain general information and confirmation on M-DCPS processes and procedures. Finally, the OIG spoke with Assistant School Board Attorneys to learn of their role in the procurement process.

This review was conducted in accordance with the *Principles and Standards of Offices of Inspector General* as promulgated by the Association of Inspectors General.

IV. KEY INDIVIDUALS & ENTITIES COVERED IN THIS REPORT

K12 Florida, LLC & Nathaniel (Nate) Davis

K12 Florida, LLC, is a Foreign Limited Liability Company, incorporated in Delaware and registered to do business in Florida. According to public records filed with the Florida Division of Corporations, the LLC's sole member is K12 Management, Inc., which is itself a subsidiary of Stride, Inc. (Stride), formerly known as K12 Inc. (the name change took place in December 2020). Stride, Inc. is a publicly traded, technology-based education company that manages and operates online education curriculums and programs for public school districts, private schools, and directly to individuals. Stride provides the enrollment process, software, curriculum, clubs, testing, compliance reports, and financials for over 75 schools and school districts across the US in 35 states. Stride also provides customized software solutions, training, and technology support services for school districts.

At the time of the events described in this report, Nathaniel (Nate) Davis was Stride's Chief Executive Officer (CEO) and Chairman of the Board. Mr. Davis resigned from his position as CEO in January 2021, but remains as Board Chair, a position he has held for nine years. Prior to his tenure with K12, Mr. Davis had extensive experience working at, or leading, other communications or technology related companies.

As used in this report, "K12" collectively refers to K12 Florida, LLC; K12 Management, Inc.; and its parent company, K12 Inc. (as it was named at the time). Mr. Davis, as the CEO of the parent company, K12 Inc., was involved in the M-DCPS contract negotiations and discussions involving the \$1.57 million donation.

³ As noted below, some of these individuals are no longer in the same positions. Although their current titles are stated here and in Section IV, the remainder of the report will reflect the title and positions they held at the time of the events reported.

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Foundation for New Education Initiatives, Inc. & Ann de las Pozas

The Foundation for New Education Initiatives, Inc. (FNEI), is a Direct Support Organization (DSO) registered with the State of Florida as a 501(c)3, non-profit corporation. FNEI was established in 2008 by the School Board of Miami-Dade County.⁴ FNEI is authorized by Section 1001.453, Fla. Stat., and School Board Policy 9215, which describes a DSO as being:

...organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of public kindergarten through 12th grade education and adult career and technical and community education programs in this District.

FNEI has its own separate Board of Directors. Pursuant to its by-laws, the M-DCPS Superintendent serves as the Board Chair and the School Board's Chairperson (currently Perla Tabares Hantman⁵) serves as the Vice-Chairperson of FNEI's Board of Directors. Another seat on the FNEI Board is occupied by the President of the Miami-Dade County Chapter of the Parent-Teacher Association (PTA). The remaining members of the 14-member FNEI Board were selected from the community. Since Ms. de las Pozas has been in her position, any members that have been added to the FNEI Board have been recruited by her and subject to a vote by the FNEI Board.

FNEI, through charitable donations, secures funding to support students, teachers, and schools through various programs, such as scholarships, professional development, internships, technology support for schools, and even meals to needy families. FNEI does not directly receive M-DCPS funds for its programmatic operations; however, it does receive support from M-DCPS in the form of free use of facilities, staff, and other administrative support.

Ms. de las Pozas has been the Executive Director of FNEI since 2014. As Executive Director she is responsible for the grants, fundraising, events, and day-to-day operations of FNEI. Ms. de las Pozas is not an employee of M-DCPS, she is a full-time employee of FNEI and paid by FNEI funding. In addition to Ms. de las Pozas, FNEI pays a part-time bookkeeper. All other administrative support is provided by M-DCPS, which included the support of then Associate Superintendent Mendez-Cartaya and her office.

⁴ The OIG learned that at the time FNEI was created by the School Board, the Superintendent at that time, Dr. Rudy Crew, had tasked then Assistant Superintendent Alberto Carvalho with preparing and presenting the agenda item to the Board.

⁵ On December 7, 2020, Ms. Tabares Hantman resigned from her role as Vice-Chairperson of the FNEI Board of Directors. FNEI and M-DCPS policies allow for this position to be delegated.

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Key M-DCPS Administrators

During this review, the OIG came to learn of the key individuals who were involved in the procurement decisions that resulted in K12 implementing a temporary LMS for M-DCPS and of those individuals involved in the soliciting of the \$1.57 million donation from K12. In addition to Superintendent Alberto Carvalho, these individuals, and their roles and responsibilities, were:

- Maria (Marie) Izquierdo was, at the time of the events described herein, the Chief Academic Officer. She is currently the Chief Strategy Officer. As Chief Academic Officer, Ms. Izquierdo oversaw everything related to teaching and learning, including the Division of Academics, Division of Innovation and School Choice, Family Support Services Division, Information Technology Services, and Office of Education Transformation and School Improvement. She supervised six assistant superintendents, including Dr. Sylvia Diaz. Ms. Izquierdo reported directly to Superintendent Carvalho.
- Dr. Sylvia Diaz was, at the time of the events described herein, the Assistant Superintendent in the Office of Academics and Transformation. She is currently the Chief Academic Officer. As Assistant Superintendent, Dr. Diaz had direct oversight of several divisions directly involved with teaching and learning and, as such, oversaw procurements involving classroom technology, computers and laptops, software, and textbooks. She was also responsible for School Choice programs, which includes magnet programs and running the school district's full-time virtual program.
- Ms. Iraida Mendez-Cartaya was, at the time of the events described herein, the Associate Superintendent over the Office of Intergovernmental Affairs, Grants Administration, and Community Engagement. As of January 11, 2021, Ms. Mendez-Cartaya no longer works for M-DCPS having taken a position on the staff of a Miami-Dade County Commissioner. In her position as Associate Superintendent, she provided managerial and administrative support to FNEI. Among her managerial duties overseeing FNEI, Ms. Mendez-Cartaya was one of the two required and authorized signers for FNEI disbursements. She also reviewed and finalized Ms. de las Pozas' annual goals and performance evaluation. Ms. Mendez-Cartaya reported directly to the Superintendent.
- Mr. Mario De Barros has been the Chief Procurement Officer for M-DCPS since January 2020, coming to the school district with extensive private sector procurement and supply chain experience. As the Chief Procurement Officer, Mr. De Barros oversees all purchasing, including the acquisition of technology products. Mr. De Barros reports directly to the M-DCPS Chief Financial Officer, Mr. Ron Steiger, who reports directly to the Superintendent.

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V. BACKGROUND

As teachers, students, and administrators returned to school after the winter break in January 2020, COVID-19 was starting to spread in the United States. On March 13, 2020, as the pandemic increased, the Superintendent, as authorized by School Board Policy 8420, declared an emergency closure of all M-DCPS' schools effective the following Monday, March 16, 2020. Although it was unknown at the time, students would not return to the classrooms for the remainder of the 2019-2020 school year, and all educational instruction would be completed virtually. At that time, M-DCPS had access to tools such as Microsoft Teams and Zoom to conduct virtual classes. However, M-DCPS did not have the ability to "roster"—that is, automatically enter a class roster into Teams or Zoom—requiring the teachers to manually build their classes with all their students, period by period. While this was a big task for elementary school teachers, it was a monumental task for secondary school teachers that had multiple classes and periods throughout the day with different students in each. M-DCPS needed an integrated electronic LMS.

In fact, M-DCPS had begun the procurement process for a fully integrated, single-platform LMS in November 2019, by issuing Request for Proposal (RFP) #RFP-19-026-CM. Responses to the RFP were due and received mid-January 2020.⁶ According to Mr. De Barros, the procurement process was estimated to take until late 2020 or early 2021 before the LMS was acquired and operational. The LMS would require multiple modules and vetting by numerous departments to ensure complete integration with M-DCPS systems.

As the pandemic progressed, it became clear to the M-DCPS administration that it needed a temporary LMS that could serve the needs of the District, the teachers, and the students during the COVID-19 crisis pending the completion of the LMS procurement already underway. The M-DCPS administration, through a statutory exemption in the competitive procurement process, initiated the selection of a vendor to provide a temporary LMS to M-DCPS that served students both in-person and virtually. The vendor, K12, was selected from the State's adopted list of vendors. At that time, the M-DCPS administration was unsure about what would be required for the coming school year until the Florida Department of Education (FDOE) issued, on July 6, 2020, Emergency Order 2020-EO-06 regarding the curriculum for the 2020-2021 school year. Within days of the FDOE guidance, M-DCPS began contract negotiations with K12 and began the process of trying to set up the platform, integrate its systems, train personnel, and roll out the temporary LMS in time for the first day of school.

M-DCPS and K12 had a 6-week timeframe to produce the fully functioning temporary LMS and had to do so during a global pandemic requiring social distancing and virtual work accommodations. It is clear to the OIG from the review of emails and the statements of both M-DCPS administrators and Mr. Davis, of K12, that both parties were working round-the-clock, day after day, to be ready for the first day of school. The process was

⁶ On February 10, 2021, the School Board approved the procurement.

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riddled with issues from the beginning. By mid-August it became evident that they may not be ready for the first day of school. The weekend before the start of school was a definite breaking point; at that time there were still teachers that had not been able to set up their virtual classrooms and were not prepared to start the school year on the K12 platform. Late in the evening, on the Saturday before the start of school, K12 and M-DCPS administrators held a phone conference. During the call, it was agreed that K12 would provide a monetary recognition to the teachers for their hard work, their frustration, and to incentivize those that still had to work on Sunday to be ready to start school on Monday. K12 agreed to provide \$100, to be given as gift cards, to each M-DCPS classroom teacher. The donation would be made to FNEI for disbursement to the teachers.

Based on the documents obtained and the interviews conducted, the OIG was able to establish the factual findings below.

VI. FINDINGS

Procurement of K12's Services

Dr. Sylvia Diaz, then Assistant Superintendent in the Office of Academics and Transformation, told the OIG that around the time of schools closing in March 2020, K12 was reaching out to school districts across the state and offering use of its platform. K12, through Mr. Davis, confirmed that during the early days of the pandemic, K12 offered free access to many school districts and parents. Although Dr. Diaz recalls communicating with K12 in those early days, serious discussions about K12's service did not begin until later.

The OIG has reviewed a document prepared by the Office of Academics and Transformation that indicates M-DCPS staff contacted K12 on May 4, 2020. Mr. Davis confirmed that preliminary conversations with M-DCPS began in the spring and continued through June. Dr. Diaz noted that even if they had an LMS already procured, M-DCPS did not have content or digital courseware for the students. Dr. Diaz, who was responsible for classroom technology, purchasing computers, software, and textbooks, and whose duties also included running the District's full-time virtual program, was looking ahead to the fall and began to gather information.

The OIG learned that K12 has been an M-DCPS vendor since 2010. K12 provides services for the Miami-Dade Online Academy (MDO). MDO is a full-time virtual school where students attend all their classes online, mostly serving students who are homeschooled. K12 provides the MDO system, content, and teaching. The current K12 contract for MDO, which is currently the only agreement between M-DCPS and K12, provides the Virtual Instructional Program requirements for M-DCPS resident students. The current contract runs from July 2019 through June 2023 with options to extend by consent of the parties. The cost of the services, per the contract, is calculated based on

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State funding formulas and options used, such as equipment, internet services, or other technology support, as well as student enrollment, attendance, and course completion. The OIG requested M-DCPS provide the total amount paid to K12. A search of the current M-DCPS system was able to provide information dating back to 2014. K12, from 2014 to present, has invoiced M-DCPS a total of \$6,214,701, and has an open Purchase Order in the amount of \$1,481,789.

According to Dr. Diaz, the system K12 was offering in 2020, was a different platform than the MDO already in use by M-DCPS. The requirements for the 2020-2021 school year would be quite different than that required for the MDO.

On May 28, 2020, Ms. Izquierdo, the Chief Academic Officer, and other M-DCPS administrators, met with K12 virtually to learn about its capabilities and program. Ms. Izquierdo supervised Dr. Diaz, whose department was requesting the K12 purchase. As M-DCPS began to explore the options for virtual instruction, M-DCPS administrators were concerned about how funding for students would be affected.

State funding is determined by the physical count of students attending in person, known as the Full-Time Equivalent (FTE) Surveys during the school year. For virtual students, such as those enrolled in the MDO, M-DCPS receives approximately 75% of the funding it receives for in-person students. Given the potential of numerous students receiving instruction virtually due to the pandemic, M-DCPS was uncertain as to the funding status, for FTE purposes, for the virtual students in the coming school year. By June 3, 2020, when the 2019-2020 school year ended, FDOE had not yet provided any guidance to school districts regarding the coming 2020-2021 school year. M-DCPS continued to explore its options without a full understanding of what the State would require. On June 11, 2020, Ms. Izquierdo was provided a demonstration of the K12 program.

FDOE's emergency order, DOE-2020-EO-06, was published on July 6, 2020. M-DCPS administrators advised the OIG that the order mandated the same curriculum for students regardless of whether they attended school online or in person. Compliance with the order was necessary to receive State funding based on previous projections rather than in-person enrollment for the 2020-2021 school year. M-DCPS interpreted the mandate as having to prove students were connecting from home for the same amount of time as if they were physically in school. M-DCPS needed a solution that would capture data about the students connecting from home.

The OIG learned that M-DCPS preferred a single vendor for ease of use by both M-DCPS and students/parents. One vendor serving elementary and secondary schools would avoid confusion and complications for the District and for parents who might have children in multiple grade levels with different requirements. It was also important that the system be able to provide a school day experience for the virtual student that mirrored the in-person student experience. A virtual student had to be able to access lessons, interact with peers, and complete group projects, just as an in-person student would be able to

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do. Finally, the system should be able to ensure video conferencing with teachers, students, and peers; as well as allow teachers and students to interact, submit assignments, chat, and have discussion boards.

Considering the time constraints and the scale of the transition, M-DCPS was hard pressed to get students and teachers online overnight. Mr. De Barros stated that faced with the immediate need to provide a virtual learning platform to cover the 2020-2021 school year scheduled to start in August, the M-DCPS Office of Instructional Technology, requested an immediate solution for the procurement of the services.

The services, the OIG learned, would be for a limited time—the 2020-2021 school year—as M-DCPS was in the process of procuring an LMS pursuant to #RFP-19-026-CM.⁷ According to Mr. De Barros, it would be late 2020 or early 2021 before the LMS was acquired and operational. Mr. De Barros explained that the purchase of certain educational content, including software, is statutorily exempt from the requirement of a competitive procurement by Section 1010.04(4)(a), Florida Statutes. The statutory exemption is also codified under the School Board Bylaws & Policies - Policy 6320, Section D and provides:

D. The requirement for requesting competitive solicitations for commodities or contractual services from three (3) or more sources is waived pursuant to F.S. 1010.04(4)(a), for:

2. the purchase by the Board of educational services and copyrighted materials including educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, DVDs, disc or tape recordings, digital recordings, or similar audio-visual materials, and for library and reference books, and printed library cards where these materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent with the State, a governmental agency or a recognized educational institution.

According to Mr. De Barros, the purchase of the temporary LMS would fall under the exemption. On July 17, 2020, M-DCPS obtained from FDOE, a legal opinion that the purchase of temporary curriculum and materials pursuant to the Emergency Order DOE-2020-EO-06, could be made without prior presentation at a public meeting, in accordance with Florida Statutes Sections 1006.283(2)(b)8, 9, 11 and 1006.40(4)(b). The administration proceeded to look for a solution to purchase under the exemption, and the School Board was going to be, albeit after the fact, apprised of the decision and the funding source. On July 29, 2020, the M-DCPS administration, at a special meeting of the School Board, advised the Board of its intent to use Elementary and Secondary School Relief Funds for the purchase of the K12 temporary LMS.

⁷ K12 did not submit a proposal.

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The OIG was advised that M-DCPS initiated the selection process using the State adopted list of vendors, just as it would to select textbooks or materials. The OIG was advised that M-DCPS identified three potential vendors. According to Ms. Izquierdo, there were other vendors, but they had separate platforms for primary and secondary schools. Those vendors were eliminated from the start as it would have been very difficult for parents with multiple students in different grade levels to deal with different platforms and for M-DCPS to manage two separate platforms.

Only three vendors offered the needed services for grades K through 12. The vendors were: Connections Education of Florida, LLC (Connections Academy), Florida Virtual School, and K12. Although M-DCPS staff considered all three, it became apparent that Connections Academy and Florida Virtual School were not feasible options. M-DCPS never received a response from Connections Academy, and there was some concern from staff regarding the quality of the program. Florida Virtual School was not a viable option as the platform did not allow modification of its set content, and more importantly, its capacity included training for up to 3,000 teachers and its own contracted teachers to provide instruction. M-DCPS could not displace its teachers and needed a program that would train all of them.

Ultimately, M-DCPS decided to contract with K12 based on its content, the instructional delivery of K12's materials, which M-DCPS deemed better than the others, and K12's ability to make changes or modifications to its system. In addition, Ms. Izquierdo stated that the acquisition of K12 services also provided an interface to connect teachers with their assigned students. In case the teacher of record was absent, this platform would provide standards aligned instruction with the teacher—present or not.

According to Ms. Izquierdo, K12's initial price was \$40 million for the system—a price that was not acceptable to M-DCPS. Negotiations ensued, and as Mr. Davis informed the OIG, M-DCPS repeatedly requested price reductions. Superintendent Carvalho confirmed that M-DCPS staff engaged K12 in back-and-forth negotiations to obtain the best pricing and value. Superintendent Carvalho explained that when he received and reviewed the first round of negotiations information from his staff, he was not comfortable with the pricing. The initial pricing structure provided for a per student charge which would have resulted in about a \$40 million cost. That was nowhere near the available funding that M-DCPS had for this project, particularly since the goal was to quickly implement a one-year solution while staff continued to work through the original RFP process to procure the long-term LMS. A Zoom meeting was scheduled for Superintendent Carvalho to meet with Mr. Davis, to discuss the pricing structure. The meeting took place on July 10, 2020.

According to Superintendent Carvalho, the meeting was not very pleasant because it was clear that M-DCPS could not afford the initial pricing. There was a subsequent meeting, during which Mr. Davis revisited the numbers and presented a lower cost, with some

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concessions, for a total of about \$16.5 million. Mr. Davis confirmed to the OIG that the negotiations continued until they were able to agree.

The agreed price was \$15,350,000 for a one-year contract with a one-year option to renew. Superintendent Carvalho explained to the OIG that K12 had originally wanted a two-year commitment. Instead of the two-year term, M-DCPS eventually agreed to a one-year option to renew and the ability to terminate the contract. According to Mr. Davis, the final price was a substantial reduction, but he believed K12's product was a great tool for students and its use by M-DCPS would be a great investment in K12's future and for education in general.

On July 10, 2020, the parties having reached an agreement on price, began to draft the agreement. Timelines were established for K12 to deliver integration of the M-DCPS grading system, class rosters, content, and professional development to ensure the teachers knew how to work the system. At the time M-DCPS and K12 began the work to get the system ready, it was six weeks to the scheduled first day of school, August 24, 2020. At a meeting on July 29, 2020, the School Board delayed the start of school by one week and set August 31, 2020, as the first day of the 2020-2021 school year.

An agreement was written and signed by K12's President of Academics on August 10, 2020. Mr. Davis described the services to be provided by K12 to include:

- Complex customized solution for M-DCPS, while using some of K12's standard solutions and products.
- K12's LMS platforms for Kindergarten to 5th grade and 6-12 grades.
- Student enrollment process using two (2) K12 enrollment systems.
- A system allowing for student-teacher communication in Zoom and/or WebEx, via another customized software solution.
- All of K12's curriculum and curriculum content.
- Customization of all these systems to be able to process data back-and-forth between the M-DCPS and K12 registrar systems.

According to Mr. Davis these were some but not all the components K12 would be providing to M-DCPS. Mr. Davis admitted to the OIG that K12 staff went into the project knowing it was a risk to be able to get all the work done in a 6-7 week period. However, he stated that as the K12 and M-DCPS teams started to work, everyone was focused on implementing the project by school opening.

Issues with Setting Up the K12 Temporary LMS

Both M-DCPS and K12 describe that 6-7 week period as a frenzy of work, 24/7, to ensure the system had the M-DCPS content and integrated with the M-DCPS systems. Ms. Izquierdo stated that K12 came up short on the professional development and on timelines. According to Ms. Izquierdo, if it had been agreed that something would be

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delivered by a certain date and time, then at the promised time, K12 would promise to deliver on another date and time. The OIG has learned that there were issues with loading roster data, setting up classes, loading course content, system configuration delays, and problems with the professional development training. Ms. Izquierdo described the process as K12 continuously moving the goalposts, and every time they moved the goalposts, they shrunk the amount of time that teachers had to ready their virtual classrooms, in preparation for the first day of school.

According to Mr. Davis, the project scope kept changing. The changes centered on how K12 would interface with M-DCPS processes. M-DCPS and K12 each had proprietary processes and K12 needed to find a way to make those work together. The complexity and continual scope changes produced confusion and required software changes. The additional software changes called for K12 to come up with new solutions. Mr. Davis explained that by late-July, early-August, people were working literally 24/7 to find the best way to get this done for the students, in a way that teachers could manage the system.

Superintendent Carvalho explained to the OIG, that between August 21-24, he received reports of growing concerns regarding the statement of work and deliverables following a series of Zoom meetings with K12 and M-DCPS staff. On August 23, 2020, although M-DCPS teachers logged on, they could not access the K12 system. M-DCPS administrators were concerned over the quality of the professional development, timeliness, and speed of systems integration with K12 systems. The concerns intensified as the last weekend prior to the first day of school approached. There were several Zoom meetings between M-DCPS and K12 staff, along with round-the-clock work, to attempt to address the various concerns ahead of the upcoming school opening.

One of the biggest concerns centered on the ability of teachers to perform their "Class Connects" process or rostering of classes. That is a process where each teacher logs onto the K12 platform and completes a series of set up steps to match schools, grades, classes/curriculum, teachers, and students, ahead of an actual class session. Establishing those class connections was critical for a smooth kick-off of the K12 platform on the first day of school. Some teachers were attempting to load their Class Connects, or to complete them, and were losing the data and had to repeat the process several times. Ms. Izquierdo stated that teachers, as per their collective bargaining agreement, are not asked to work weekends or after hours, however, it was clear to her that many teachers, as with everything else during the pandemic, just rolled up their sleeves and tried to get it done.

Ms. Izquierdo stated that the weekend leading up to the scheduled first day of school on August 31, 2020, included a "rolling rostering of classes" and three meetings a day for updates with the executive leadership of K12. Although it was clear to Ms. Izquierdo that little-by-little more and more students were being rostered by teachers, it was not at 100%. M-DCPS needed to have 100% of all students, all classes, and all teachers in the system

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by the first day of school. Ms. Izquierdo explained that the process should have been completed weeks prior to the first day of school, but it was the Friday before the start of school, and it was nowhere near complete. It was inevitable that some teachers would be working over the weekend, prior to the first day of school, to get their classes set up in the K12 system. Superintendent Carvalho advised the OIG that either on August 28 or 29, 2020, a heated Zoom interaction between M-DCPS staff and K12 representatives revealed several surprises over data integration challenges that K12 had not previously disclosed. M-DCPS staff was concerned and expressed sympathy and understanding for the frustration that teachers were experiencing.

Regarding the issues prior to the start of the school year, K12's Mr. Davis stated that the changing scope of work and the requirements to interface with M-DCPS necessitated continuous work. By late-August, Mr. Davis admits they were in jeopardy of not being able to test, train, and roll out the system. At that point, he personally handled phone calls from M-DCPS officials four or five times a day trying to make the system work. He acknowledged that part of the problem was that time was running out for the teachers to be able to set up their courses and class rosters in the system. Although there clearly were many issues with the system, Mr. Davis described the process as a very collaborative effort. K12 and M-DCPS were working together all hours of the day and night to get it done. Mr. Davis told the OIG that he wholeheartedly believed that had there been more than six weeks to set up, test, train, and roll out the program, it would have been a great tool for M-DCPS. He also expressed that they (K12 and M-DCPS) shared a common vision about online education and its potential.

M-DCPS administrators indicated to the OIG that they believed K12 staff were embarrassed and struggling to deliver. Ms. Izquierdo made it clear that "they are good people." She felt K12 dealt with M-DCPS honestly, and despite the issues with delivering its services on time, K12 representatives were responsive to M-DCPS. She told the OIG that if M-DCPS "...demanded to talk to them in the next 15 minutes, they would all be on the call in the next 15 minutes. They were very responsive. They were struggling, and they were struggling primarily because they had a reliance on other, I guess you call them, third-party vendors, subcontractors—if you will—that they have, that we did not know about, that were failing them."

Contract Not Executed

Dr. Diaz stated that as they were working to iron out all the issues and get the system running, the execution of the contract was halted. The agreement had been drafted and signed by K12's President of Academics on August 10, 2020. The OIG learned that the agreement then moved through the customary review and signature process at M-DCPS. It was reviewed by the Chief Procurement Officer, the Office of Risk Management, and for form and legal sufficiency by an Assistant School Board Attorney, and then sent to the Superintendent's office for his signature.

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Superintendent Carvalho explained that the originating department shepherds a contract through the process of obtaining all the necessary signatures; in this case it was Dr. Diaz who guided the process. He explained that prior to the pandemic, his assistant would have physically brought him the contract. This time, the contract was sent via email. After looking at the contract, which seemed to reflect the information that had been presented to him, he gave his “okay” to his assistant. His assistant added his electronic signature and sent it back to Dr. Diaz.

Shortly thereafter, his concern level increased based on information that was coming out of Dr. Diaz’s shop. As his staff was informing him of some of the hurdles and timeline breaches, he became so concerned that he decided to void and forbid the release of a contract with his electronic signature affixed to it. Superintendent Carvalho stated he notified his staff to stop the release of the digitally signed contract, by communicating directly to his assistant and to Chief Financial Officer Ron Steiger. He advised that the contract should not go out unless it had his original ink signature. Superintendent Carvalho believes that after he said he did not want that version of the contract to leave M-DCPS, staff moved to add “VOID” to all the pages of that contract. (Exhibit 1)

It is clear, that a fully executed contract was never returned to K12. The OIG has reviewed the electronically signed contract stamped VOID and Dr. Diaz’s email correspondence from August 21, 2020, indicating that she had not returned the executed copy of the contract to K12. (Exhibit 2) Dr. Diaz and Mr. De Barros confirmed that the contract was not delivered, and no purchase order was created that would enable payments under the contract.

Mr. Davis acknowledged that he was aware they did not have a fully executed contract as they were rushing to set up the program prior to the start of the new school year. Mr. Davis advised the OIG that he did not have any conversations with Superintendent Carvalho about executing the contract. Specifically, he stated: “There was not a contract conversation about [whether] the contract’s executed or wasn’t executed. I don’t even remember talking about that with him, because we were so focused on just how do we get this done, that really was our sole focus.”

Donation Suggested

On Friday, August 28, 2020, the last business day before the start of the 2020-2021 school year, there remained issues with loading course content and class rosters in the system. It was clear by then, that some teachers would be working over the weekend to be able to start the school year.

Ms. Izquierdo advised the OIG that in her discussions with the Superintendent regarding the ongoing K12 problems, she expressed the frustration she and her staff shared that the teachers, as of the Friday before school opening, were not able to “roster” their courses. Indeed, some teachers had been able to roster their classes and enter their

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content, but many had been required to do it multiple times, as content would be deleted from the system due to backups, upgrades, or unknown failures, and many had not been able to enter their information at all. Mr. Davis confirmed to the OIG that the Friday prior to the scheduled start of school, there remained a lot of work for teachers.

On August 28 or 29, 2020, there was a Zoom meeting between M-DCPS staff and K12 that again turned heated. Superintendent Carvalho advised the OIG that during the meeting it was revealed that there were several data integration challenges that had not been previously disclosed. Superintendent Carvalho remembers Ms. Izquierdo turning to him during the meeting and saying, "My heart is breaking for what teachers are going through, it's not fair, it's not right, they are being asked now to do work during a time where they should be already prepared for it, and we should be doing something for them. They should be getting something, K12 needs to do something for them." Superintendent Carvalho asked her, "What would that be?" Ms. Izquierdo replied, "Some sort of a gift, you know, money, a gift card, something."

Ms. Izquierdo confirmed that she suggested to the Superintendent that something should be done for the teachers. She stated that "...we didn't want anything for us, we wanted to get it back to teachers, we didn't want to say, let's renegotiate the terms of this contract, the contract was in process, it was pretty much done, not fully executed, but done. But we wanted to squeeze them and make them hurt a little bit for the pain and suffering they had done to our teachers."

Superintendent Carvalho told the OIG that he liked the idea. He thought about it and felt the same level of frustration, while experiencing a degree of disappointment over the shortcomings of K12, as well as the pressure to have a successful online school launch on the first day of school. Out of frustration over K12's performance and shortcomings, a concern over what was being asked of teachers, and wanting to recognize the teachers for doing something that was above-and-beyond, the idea of a donation made sense to him.

On August 29, 2020, Superintendent Carvalho reached out to Mr. Davis and told him about his concerns and displeasure. They agreed that they simply needed to do something to recognize what teachers had done. According to Superintendent Carvalho, Mr. Davis liked the idea and asked for an hour to consult with his staff. Mr. Davis called the Superintendent shortly after and advised that K12 could do something for the teachers. They discussed \$50 or \$100 gift certificates and agreed to \$100, because it would not be an insulting amount.

Mr. Davis confirmed that he had a conversation about the donation on August 29 and then a conversation with a larger group late that evening. Mr. Davis recalled discussing the idea of making "...the teachers feel good that they were going to ask them to do a lot of work," and that the suggestion of the donation arose from those discussions, but he did not remember who suggested it or exactly how it came about, but eventually that was

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“the place we landed.” Mr. Davis advised the OIG that he agreed with the donation and did not feel pressured, coerced, or that the teacher recognition was in any way contingent on receipt of the fully executed contract. Mr. Davis assured the OIG that raising the contract price at that point was never discussed nor a consideration for him. He was focused on trying to solve a problem together with M-DCPS, getting the program up and running was his primary concern. After the initial discussion with Superintendent Carvalho, Mr. Davis texted the group at M-DCPS to discuss the idea, which had not been fully elaborated upon at that point.

The OIG has reviewed the text sent by Mr. Davis at 10:29 p.m., Saturday, August 29, 2020, to Alberto Carvalho, Marie Izquierdo, Jose Dotres, Chief Human Capital Officer, Jaime Torrens, Chief of Staff, and Daisy Gonzalez-Diego, Chief Communications Officer. The text reads:

All - Alberto and I will be proposing an incentive tonight that we hope will get more teachers to work on Sunday (tomorrow).
10:45 p.m. bridge call tonight. 15 mins from now to discuss ins and outs. Bridge: 1-888-824-5783 Code: 9841 9496#
Thanks all. Forgive me for a Saturday night call.
Nate

At 10:45 p.m. on August 29, 2020, M-DCPS staff, including Superintendent Carvalho and Mr. Davis, held a phone conference and discussed the donation. The discussion, as the OIG has confirmed from the sworn statements of the Superintendent, Ms. Izquierdo, and Mr. Davis, first informed the group that K12 wanted to provide the teachers with some recognition for work beyond normal work hours they had to do to prepare for the first day of classes. The OIG has also reviewed the contemporaneous notes of the meeting taken by Ms. Izquierdo and sent by email to the participants immediately after the meeting at 11:27 p.m.

Ms. Izquierdo's recollection, as corroborated by her notes, was that Mr. Davis started the phone conference call by saying “Alberto [Superintendent Carvalho] has a suggestion which I accept. The idea is a very simple idea.” The idea discussed was a monetary recognition to be provided to the teachers by K12. Ms. Izquierdo describes a back-and-forth conversation by all, as the parameters of the donation were discussed.

According to Ms. Izquierdo, it was decided that all teachers should receive the recognition because, although not all teachers had to work over the weekend, all had experienced issues and frustrations in preparing their K12 Class Connects for the upcoming school year. Ms. Izquierdo recalls there was a discussion during the call about what to call the donation. Consideration was given to “recognition”, “appreciation”, “one-time incentive”, and “gratitude” for the work done by the teachers in preparing for the first day of school. Superintendent Carvalho's recollection as to the discussion was similar to Ms.

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Izquierdo's. Ms. Izquierdo felt strongly that it should not be worded as "incentive" because by that point, Saturday night, many teachers had already been able to access their platform and set up their virtual classrooms. To her it was more than an incentive for the remaining teachers that were still trying to set up their virtual classrooms, it was appreciation and recognition for all the work teachers had done.

The amount of \$100 per teacher was also agreed upon. Ms. Izquierdo explained that while teachers are salaried and do not necessarily receive overtime pay, they are at times paid stipends for extra work. These stipends are typically for \$100. She also stated that the donation amount was easily calculated based on the 15,761 classroom teachers multiplied by \$100 totaling to a donation amount of \$1,576,100. The group also discussed how to get the donation to the teachers in the simplest and most efficient manner. It was deemed a difficult and lengthy, if not impossible, task to have K12 directly send the donation to each teacher. Moreover, as Superintendent Carvalho recalled, K12 was not comfortable with directly distributing the gift to the teachers as it did not have the logistics to handle the distribution.

The option of having K12 provide the funding directly to M-DCPS was discussed, but it presented several challenges. It was unclear how M-DCPS could process and distribute the funds, and it was unknown if such a distribution created issues with the collective bargaining agreement or required approval by the School Board. It was decided that providing the donation to the FNEI earmarked specifically for \$100 gift cards for teachers was the most efficient method of getting the recognition to the teachers.

At 1:10 a.m. on Sunday, August 30, 2020 (following the Saturday night discussion), Ms. Gonzalez-Diego sent the participants a draft email message intended to be sent to the schools and teachers regarding the \$100 gift. The gift was described as a gesture of gratitude and an incentive to set up their Class Connects on the K12 platform by the end of the day on Sunday. The message would be sent along with a K12 message informing the teachers of extended live support desk service hours for that weekend and reminders/tips for their Class Connects scheduling.

On Sunday, August 30, teachers received an email informing them that: "As a gesture of gratitude for their extraordinary commitment to provide students with an optimal schooling experience from day one, the Foundation for New Education Initiatives, through a K12 donation, is recognizing teachers who schedule their Class Connects by 11:59 p.m. today with a token of appreciation valued at \$100."

Donation to the Foundation for New Education Initiatives (FNEI)

The OIG was advised that FNEI receives donations from various sources including foundations, philanthropic associations, and individuals. Ms. de las Pozas explained that when FNEI receives funds those funds can be unrestricted, for use at the discretion of FNEI, or restricted by the donor for a specific purpose. Annually, the FNEI Board votes

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on a list of initiatives for which the foundation will be raising funds. If donations are received for those initiatives, then FNEI can immediately use those funds for that purpose. If funds are received for something other than what the FNEI Board has already decided is an initiative, then the funds would be accepted and presented to the FNEI Board for approval. If the FNEI Board does not approve the use of the funds as intended by the donor, then the funds would be returned.

The OIG also took the statement of Ms. Mendez-Cartaya, former Associate Superintendent, Office of Intergovernmental Affairs, Grants Administration and Community Engagement, whose M-DCPS responsibilities included support of FNEI. Ms. Mendez-Cartaya stated that solicitations are not made from contractors/vendors in a pending procurement process. Ms. Mendez-Cartaya was not aware of any policies, forms, or practice where communication occurs between M-DCPS and FNEI to verify if any potential conflicts exist between donating entities and pending procurement matters. Ms. de las Pozas advised that M-DCPS vendors do sponsor events such as the FNEI Gala and the 5K Race. The sponsorships typically involve the vendor providing items like t-shirts, water bottles, or towels that contain their company logos as advertisement on the items. Finally, the OIG learned that FNEI routinely provides M-DCPS employees recognition for work they have done for M-DCPS, such as Teacher-of-the-Year, the Runner-up-of-the-Year, and AFSCME (American Federation of State, County, & Municipal Employees) recognitions.

Ms. Mendez-Cartaya advised the OIG that she first became aware of the K12 donation to FNEI on Sunday morning, August 30, 2020—the day before the school year started. That morning she checked her messages and noticed she had missed an invitation for a conference call that had been set for 10:45 p.m. the night before. She contacted Tabitha Fazzino, M-DCPS' Chief Compliance Officer, to find out what she had missed and found out K12 was providing a donation to M-DCPS teachers via FNEI. This was not unusual, because processing donations for M-DCPS and its teachers is within the realm of what FNEI does. Neither Ms. de las Pozas nor Ms. Mendez-Cartaya were involved in the solicitation of the donation or the procurement of the K12 contract. Ms. Mendez-Cartaya noted that from her perspective when she received the email about the donation, she assumed the contract had been executed.

Once she became aware of the donation, she notified Ms. de las Pozas to follow the process of receiving the donation via a wire transfer. Ms. de las Pozas, in her statement to the OIG, confirmed that she received an email from Ms. Mendez-Cartaya on Sunday, August 30 regarding the donation from K12 for \$100 gift cards for teachers, the subject line read "Re: K12 is providing funding to FNEI for teacher incentives." (Exhibit 3) In the email, Ms. Mendez-Cartaya advised her assistant and Ms. de las Pozas to prepare to buy a "significant number of gift cards." She also advised Ron Steiger, the Chief Financial Officer, that accounting should lift her monthly and daily balance. The OIG learned that FNEI does not have a credit card to make purchases. An M-DCPS credit card, referred to as a purchase card (p-card), was assigned to Ms. Mendez-Cartaya for FNEI purchases.

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Ms. Mendez-Cartaya told the OIG that the M-DCPS p-card for FNEI purchases had a monthly and daily balance limit. Her email to Mr. Steiger was meant as notice to him that prior to the purchase of the gift cards those balance limits had to be raised. Ms. Mendez-Cartaya advised that she would have made a formal request that would have included a date to revert to the established limits prior to the actual purchase of the gift cards.⁸ Ms. de las Pozas explained to the OIG that for the FNEI M-DCPS p-card purchases, she would be provided a copy of the credit card statement, reconcile the bill, and issue an FNEI check to reimburse M-DCPS.

It is clear to the OIG that starting on the morning of August 30, 2020, Ms. Mendez-Cartaya and Ms. de las Pozas, when both found out about the donation, attempted to obtain the information necessary to receive the donation. To accomplish the gift card purchases, Ms. Mendez-Cartaya stated that she asked several people for information to plan the logistics of purchasing and distributing a large volume of gift cards. Although the exact details of how the gift cards were going to be purchased and distributed were not decided, Ms. Mendez-Cartaya shared what her thoughts were at the time. She stated that she probably would have purchased the gift cards in bulk electronically to be distributed electronically. The OIG learned that FNEI has a program in place through Publix to purchase Publix gift cards for homeless students. The program has controls to ensure the tracking of the receipt of the gift cards by principals and the distribution of those cards. Another possible method would be to buy gift cards in bulk and distribute set amounts to principals for them to distribute to the teachers. Again, a tracking mechanism would have to be in place to account for the gift cards delivered to the principals and then the distribution to the teachers.

One of the essential pieces of information needed was the number of teachers receiving the gift cards. The OIG has been advised that the M-DCPS Information Technology (IT) department was requested to provide the number of teachers with students assigned to grades K through 12.⁹ The OIG was provided with a document from IT's query. The entire content of the document is:

⁸ Ms. Mendez-Cartaya was interviewed by the OIG on two separate occasions. At the time of her interview regarding the p-card limits, she was no longer working for M-DCPS and could not recall if the established limit was \$2,500 or \$5,000.

⁹ In addition to the grades K through 12 classroom teachers, M-DCPS has other teachers serving as interventionists, substitutes, or in other assignments.

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K-12 Classroom Teachers

15,576 Teachers on the master schedule

Ms. Mendez-Cartaya did not recall seeing that document until the OIG asked her to review the document. She said that she had requested the total number of teachers and other information to plan the purchase and distribution of the gift cards. The OIG has reviewed emails provided by M-DCPS. On Sunday, August 30, 2020, Ms. Mendez-Cartaya asked Mr. Dotres, Chief Human Capital Officer, for the exact number of teachers. On September 2, 2020, Ms. Mendez-Cartaya inquired of Ms. Izquierdo who at K12 should be contacted for a commitment letter and FNEI invoice. Ms. Izquierdo emailed Mr. Davis and asked him to advise. Mr. Davis responded to both stating that he was the contact person. Specifically, regarding the number of teachers, Ms. Mendez-Cartaya's recollection is that she was given the number of teachers during a conversation, she wrote it down, and later provided it to Ms. de las Pozas.

On September 3, 2020, Ms. Mendez-Cartaya requested that Ms. de las Pozas prepare an invoice from FNEI to K12 for "100 per teacher that completed the Class Connect I will send you the number tonight".¹⁰ The following morning, September 4, 2020, Ms. Mendez-Cartaya emailed Ms. de las Pozas and stated, "The number is 15,761 teachers" and provided Mr. Davis' email address. (Exhibit 4) The OIG's review found that the number 15,761 was also the number Ms. Izquierdo believed to represent the grades K through 12 classroom teachers. The OIG has been advised by M-DCPS' current Chief of Human Capital, Dr. Dawn Baglos, that there is no easy way to calculate district-wide how many teachers have classroom students assigned. M-DCPS has many employees that are qualified as teachers in positions other than assigned to students in classrooms. Ms. Mendez-Cartaya, who never saw the IT document indicating 15,576 teachers on the master schedule, provided the number she received—15,761.¹¹

¹⁰ Ms. Mendez-Cartaya explained to the OIG that what she meant by "teachers that completed the Class Connect" was all the teachers that had to prepare for teaching virtually on the first day of school.

¹¹ The OIG recognizes that the number in the IT document would reduce the K12 donation by \$18,500. It appears from our review that the difference is associated with the difficulty in calculating an exact number of classroom teachers, given that so many M-DCPS employees may be classified as teachers but be working in other assignments, rather than an attempt to inflate the donation. Moreover, FNEI was not charging its typical 5% administrative fee, which would be greater than \$18,500, to cover the costs associated with carrying out the distribution of the intended gift to the teachers.

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In reply to Ms. Mendez-Cartaya's email regarding the number of teachers, Ms. de las Pozas questioned the amount:

From: Ann de las Pozas <adelaspozas@giveourstudentstheworld.org>
Sent: Friday, September 4, 2020 9:51 AM
To: Mendez-cartaya, Iraida R. <IMendez@dadeschools.net>
Subject: Re: pls provide an invoice from the foundation to me tomorrow

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I think we should talk about this. Is this the total amount of the donation/contribution?
Also, I need an address for the invoice.
Thanks

Ms. Mendez-Cartaya responded:

From: Mendez-cartaya, Iraida R. <IMendez@dadeschools.net>
Sent: Friday, September 4, 2020 10:28 AM
To: Ann de las Pozas
Subject: RE: pls provide an invoice from the foundation to me tomorrow

The donation is $100 \times 15761 = 1,576,100$.

*Iraida R. Mendez-Cartaya, Associate Superintendent
Miami-Dade County Public Schools
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Miami, Florida 33132*

*Office 305 995-2532
Mobile- 305 606-6553
imendez@dadeschools.net*

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Ms. de las Pozas prepared the invoice accepting a donation and asked Ms. Mendez-Cartaya to review it prior to sending it to Mr. Davis.¹² The OIG has reviewed the email and the invoice sent to K12. The invoice is for \$1,570,000 and not \$1,576,100. (Exhibit 5) Ms. de las Pozas admitted to the OIG that she made a mistake on the amount when she invoiced K12. Ms. Mendez-Cartaya's review did not catch the mistake, as she advised Ms. de las Pozas that the invoice was, "ok to go out." On September 4, 2020,

¹² According to Ms. de las Pozas, her request to have Ms. Mendez-Cartaya review the invoice is not a routine practice. She requested it because Ms. Mendez-Cartaya had requested she issue an invoice and Ms. de las Pozas wanted to be sure it was correct.

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after receiving the letter and invoice from FNEI, Mr. Davis sent the following email to Ms. de las Pozas:

adelaspozas@giveourstudentstheworld.org

From: Davis, Nate <nate.davis@k12.com>
Sent: Friday, September 4, 2020 7:29 PM
To: Ann de las Pozas
Cc: Marie Izquierdo
Subject: Re: Invoice 2020-200 from FOUNDATION FOR NEW EDUCATION INITIATIVES, INC.

Hi Ann.

When our offices open on Monday, I will expedite the payment process to get the payment sent.

I am confirming our committed and will make sure this contribution is done.

Nate Davis

In addition to preparing the invoice, Ms. de las Pozas prepared an agenda item for the FNEI Board to accept the donation. As this donation was not part of the FNEI Board's annual plan, it would have to go before the FNEI Board for approval before FNEI could disburse the funds. The OIG was advised that since the donation was not time sensitive for distribution, a special meeting to address it was not scheduled, and the item was added to the next regularly scheduled meeting.

Ms. de las Pozas also communicated directly with K12 through Mr. Davis and other K12 representatives regarding the donation; primarily to obtain the appropriate bank and wire transfer information. Mr. Davis also inquired if FNEI was a non-profit organization and requested verification of FNEI's 501(c)(3) status. On September 8, 2020, there were email communications between Ms. de las Pozas and K12 representatives regarding the wire transfer, which was sent to FNEI that day. The OIG has reviewed FNEI bank records indicating the receipt of \$1,570,000 from K12. The OIG learned that per FNEI's established accounting procedures to track the donation, it was placed on hold pending direction from the FNEI Finance Committee and FNEI Board at its regularly scheduled meetings in October. The funds have not been disbursed by FNEI.¹³

First Days of School – Go-Live and Cancellation of K12

August 31 through September 2, 2020, the first days of the new school year, were difficult for M-DCPS due to a combination of events that disrupted the educational process. As Superintendent Carvalho explained to the OIG, the first occurrence was a mechanical breakdown that was indispensable to M-DCPS' data center and brought down M-DCPS' ability to communicate with schools. M-DCPS also discovered it had experienced DDoS (Distributed Denial of Service) attacks and that the contracted internet provider's shield against these attacks had not performed as it should. According to Superintendent

¹³ The FNEI Board decided to defer any action pending the OIG's review.

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Carvalho, the simultaneous occurrence of those two events obfuscated M-DCPS' ability to see that K12 was underperforming.

Since the systems were not up and running normally, M-DCPS was not able to test K12's performance. During the first few days of school, it appeared that the issues were primarily from the mechanical failure and the DDoS attacks. That gave K12 a safe space until the afternoon of September 2, 2020, when it became clear that there were systemic issues with K12. The OIG learned that the K12 service for the secondary level (grades 6-12) exhibited real problematic concerns. However, significant issues could not be detected to be impacting K12's performance in the K-5 grades. M-DCPS learned that grades 6-12 were being handled by a K12 subcontractor, and it appeared that the service for those grades was significantly underperforming. M-DCPS staff began having serious doubts about the viability of the grades 6-12 platform under K12.

On September 2, 2020, the School Board's Fiscal Committee held a meeting and raised numerous questions about the K12 contract and the donation. At that time, Mr. Davis was available and waiting to speak to the School Board and answer questions. Mr. Davis did not make a presentation to the School Board but indicated to Superintendent Carvalho in a text message that he would gladly speak to the members. On the evening of September 2, 2020, Mr. Davis texted Superintendent Carvalho and then emailed him asking for a call. The email was forwarded to the Superintendent and was part of a string email with Ms. Izquierdo and Ms. Mendez-Cartaya about the donation contact person. Mr. Davis wrote:

From: Davis, Nate
Sent: Wed, 2 Sep 2020 23:53:02 +0000
To: Alberto M. Carvalho
Subject: Fwd: K-12 donation to FNEI

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Alberto,
Can you call me tonight about this? I left you a voicemail and text, as well.
Nate

Sent from my iPhone

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In a separate email, also sent on September 2, 2020, responding to a question by Ms. Izquierdo, Mr. Davis wrote:

From: [Davis, Nate](#)
To: [Izquierdo, Marie](#)
Cc: [Mendez-cartaya, Iraida R.](#)
Subject: Re: K-12 donation to FNEI
Date: Wednesday, September 2, 2020 4:54:58 PM

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Yes. I need to have a 5 minute conversation with Alberto one on one before we move forward on this.

I will call him after 6pm.

Nate

When asked if the conversation took place and what was discussed, Mr. Davis, who was given an opportunity to review the emails and texts, stated: "I'm sorry, but no I don't remember exactly, I remember vaguely, but I don't remember exactly. Vaguely, it was me talking about, we've gone through a process back-and-forth, and I wanted to make sure everything was still on track, that I was talking to the right people, everything was OK and that was about all, it was a very short conversation, that I remember." Superintendent Carvalho was also asked if the conversation took place and if so, what was discussed. The Superintendent did not believe they spoke that evening and saw no record of it in his call log. He stated that his best guess was that Mr. Davis, by the end of the third day of school, was concerned over the "...systemic and catastrophic failures on the part of K12.

M-DCPS and K12 staff had Zoom conversations about the growing concerns. There were also internal conversations among M-DCPS staff about abandoning the grades 6-12 component, which was decided upon around the end of the first week of school. Sometime in the next couple of days, Superintendent Carvalho did communicate his concerns and the decision to discontinue the service for grades 6-12 to Mr. Davis. Superintendent Carvalho specifically told Mr. Davis that he no longer trusted K12's ability to deliver on that portion, and that K-5 was very much in "no man's land." Mr. Davis was not happy, but he clearly understood that the grade 6-12 element of the K12 platform was compromised and it was being suspended, possibly as of September 6, 2020.

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Mr. Davis, on behalf of K12, sent the School Board a letter expressing regret for the events that caused a difficult start to the new school year. He acknowledged that:

[a]lthough we all knew the 6-week timeframe was a challenge, we owed it to the students, their families, and their teachers to deliver. And while in any complex, highly scaled solution there will be ongoing issues to solve, we still regret we have not been able to get to where the Miami-Dade administration wants to be. To this day, we continue to make changes to resolve issues and make improvements that Miami-Dade wants to see and will continue to do so as their partner. Our teams quickly stabilized the platform that supports kindergarten through fifth grade students, however the platform that supports students in grades six through twelve needed more work, and clearly did not handle Miami-Dade's requirements from the onset. The K12 team has worked around the clock in concert with the Miami-Dade team to address our issues, and although there are more functional changes that need to be made, performance is improving each day. (Exhibit 6)

On September 9, 2020, the School Board terminated all K12 services and directed ceasing the execution of any pending contractual agreement effective September 11, 2020.¹⁴

VII. ANALYSIS OF POTENTIAL CONFLICTS AND POSSIBLE VIOLATIONS OF THE STATE AND SCHOOL BOARD CODES OF ETHICS

The OIG's review focused on determining whether there were any violations or prohibited conflicts of interest pursuant to the State's Conflict of Interest and Code of Ethics Statutes and School Board Policies, regarding the solicitation of a donation during the procurement process. The OIG examined Florida statutes and School Board policies to assess if any prohibited actions occurred. We found no violations of the State's Conflict of Interest and Code of Ethics Statutes. However, we believe the donation solicited from a vendor is contrary to the School Board's Code of Ethics as it gives rise to the appearance of impropriety. Our analysis of specific Florida statutes and School Board policies follows.

Section 112.3148 Florida Statutes

This section prohibits public employees that must file public disclosures of financial interests and procurement employees from soliciting and accepting gifts from vendors doing business with the employee's agency if the gifts are for the personal benefit of the employee, their immediate family, or other employees required to file public disclosures.

¹⁴ The School Board's decision did not affect the K12 contract for MDO. K12 did not receive any funds from M-DCPS for the temporary LMS.

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The State statute reads in relevant part:

A reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, ... where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

This statute was not violated only because the donation solicited was for the benefit of M-DCPS teachers, who are not required to file disclosures.

School Board Policy 1210.01

The School Board Policy specifically proscribes as a conflict of interest for:

[e]mployees who are in the position to make or influence a decision to spend school funds...[to] solicit or accept any personal gifts, favors, or benefits of more than nominal value during a calendar year from any single person or organization that might benefit from the employee's decision.

An actual conflict of interest did not occur because the employees who solicited the gift, although in a position to spend school funds, did not solicit a personal gift or benefit.

Section 112.313(2), Fla. Stat., and School Board Policies 1129 and 1210.01

Section 112.313(2), Fla. Stat., and School Board Policies 1129 specifically prohibit employees from:

...soliciting or accepting anything of value, such as a gift, loan, reward, promise of future employment, favor, or service that is based on an understanding that their official action or judgment would be influenced by such gift.

The School Board's Code of Ethics codified in School Board Policy 1210.01, under the Conflicts of Interests Section I, General Limitation on Solicitation, similarly states:

An employee shall not solicit, directly or indirectly any payments or other benefits under circumstances that would create in the mind of a reasonable person in the community the belief that such payments or benefits were provided with the intent to improperly influence the employee's actions.

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It is clear from the statements obtained by the OIG that the \$100 per teacher donation was solicited by M-DCPS personnel from a vendor, K-12, while official action by M-DCPS remained to be taken, that being the execution of a \$15.35 million contract with the vendor. However, it is also clear from the testimony of M-DCPS administrators and K12's CEO, as well as the review of contemporaneous emails and text messages, that there was no understanding that the gift was in any way contingent on or influenced the official action of the Superintendent or any M-DCPS official. Superintendent Carvalho stated that he and Mr. Davis never discussed the donation being a requirement for a potential contract award to K12. He reiterated, "Unequivocally, unequivocally, there was never a conversation that would establish any type of commitment on the part of the District to K12, or vice-versa, involving that donation of \$1.5 million."

Superintendent Carvalho was specifically asked by the OIG if the pricing K12 was providing M-DCPS would be increased to compensate for the donation, he replied, "No, actually, quite the contrary." He reasserted that the price was the result of tough negotiations and the donation resulted from the difficulties and challenges M-DCPS and its teachers faced. Furthermore, Superintendent Carvalho pointed out that after the agreement to the donation, but before the transfer to FNEI, it was already known that he was dismantling a "lion's share" of K12's potential business, which was the grades 6-12 component. By the end of the first week of school, it was clear that some of the issues with K12 were not fixable, and that he was already moving to decouple virtually fifty-percent (50%) of K12's business. Mr. Carvalho stated that he believed that when K12 transferred the donation, on September 8, 2020, K12 understood it would not re-coop what was declared as a gift based on M-DCPS' request for teachers, and teachers only.

Ms. Izquierdo was also asked by the OIG if any of the discussions with K12 included any mention that the donation was required or would somehow affect K12's contract award. She replied, "Negative, negative, no, at all." Ms. Izquierdo was also asked if there were ever any discussions, any intent, or planning, for K12's contract pricing to be increased in any way to compensate for the donation. Ms. Izquierdo repeatedly denied such a plan. She explained, that at that time, the only reason K12's contract had not been executed, that is returned to K12 signed and a Purchase Order created to be billed against, was because there were issues with K12 delivering the services promised. Ms. Izquierdo also noted that K12 never once inquired about the contract during the six weeks prior to the start of school.

Mr. Davis was also asked if there were ever any discussions about raising the contract pricing to make up for the amount that was being donated. He replied, "No, there was no conversation, as a matter of fact, I remember it was quite the opposite. Alberto [Superintendent Carvalho] was clear that he only had a fixed budget. He had described that in the beginning, he had described it multiple times, and I said to him, I'm not expecting that, we just need to get the project done. So, there were never any discussions about raising the prices of the contract." Mr. Davis was also asked if he ever felt he had to make the donation for the contract to be awarded. He replied, "No, I did not." Mr. Davis

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also stated there was no discussion about the contract, or whether it was executed or not at the time of the late-night conference call when they discussed the donation.

Mr. Davis was asked to explain why K12 would make such a large donation despite not having an executed contract and having committed extensive resources to developing a custom platform for M-DCPS. Mr. Davis responded, "We believe that we are an important player, and a resource, to helping school districts accomplish their goals of educating kids. We believe in school choice, we believe in school options, and different capabilities, we believe in digital as a tool that many school districts can use. So, we put forth solutions that we may not get rewarded for. We still think it helps the overall market, and it helps the school districts understand their capabilities." Moreover, Mr. Davis added that K12 had offered free access to parents to much of its curriculum during the COVID-19 pandemic. K12 also offered free access to many school districts during the early days of the pandemic, March–April 2020, and for some time until July 2020. Mr. Davis was emphatic that he viewed the potential contract with M-DCPS as an opportunity to develop something very special. He stated that he believed M-DCPS shared K12's vision about a product that would really help students easily move from working in an online environment, to working in a school, if they had to go back-and-forth.

As explained by Mr. Davis:

...teachers would have the exact same platform, with one single logon, one single system, consistent look and feel throughout the project. We believed, and I still believe to this day by-the-way, that that's a great product, and a tool, for kids. If we could have made that project work, we would have done much to make it work. The fact that they weren't paying for it yet, to us, was an investment we were making. An investment in our future and an investment in the future of education, and I'm not giving you pie-in-the-sky, I believe this is going to be one of the ways that schools work in the future. So, yeah, we put some time and energy into this, trying to make it work in a 6-week period, and much to our chagrin, you know, it was too short of a period. But the concept was still right. So, that's why we put time and energy in, not knowing that we were going to get paid, not having a payment coming in toward, because we believe it was the right project... And, by-the-way, not just Miami-Dade [M-DCPS], it would be a prototype of the capability that would help others around the country. So, we were dedicated to making that happen. Candidly, it was a lower price than we would like to get paid, would like to receive, but it was a demonstration of a product that would really help students, and that's why we did it.

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He also stated that another benefit would be that a completed project of this sort, could be exported to other school districts.

It is apparent from the statements of those involved that the donation was not tied to any official action to be taken by M-DCPS. The contemporaneous statements of the parties in the texts and emails reviewed corroborate their statements to the OIG and do not demonstrate the donation was tied to future action or coerced. The only communication which might indicate that prior to the donation some further discussions occurred were the requests on September 2, 2020, by Mr. Davis to communicate with the Superintendent. Neither party had a clear memory of the communication Mr. Davis requested. Mr. Davis remembers it was a very short conversation and had a vague recollection that the subject matter was issues with the K12 platform. Superintendent Carvalho did not recall if he spoke with Mr. Davis that evening and his call log did not reflect a call, but surmised it was about the pending issues with K12. Notably, Mr. Davis confirmed his commitment to the donation on September 4 in his email to Ms. de las Pozas. Also, despite being aware that the grades 6-12 platform would no longer be used, Mr. Davis still approved and remitted the donation on September 8, 2020.

Section 112.313(6), Fla. Stat., and School Board Policy 1129

These sections state that employees should not “corruptly use or attempt to use his/her official position or perform his/her official duties to secure a special privilege, benefit, or exemption for himself/herself or others.” Section 112.312(9), Fla. Stat. defines “corruptly” as “done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.”

Superintendent Carvalho and Ms. Izquierdo made it clear, repeatedly, that the donation was borne out of frustration and concern over what was being asked of teachers and wanting to recognize the teachers for doing something that was above-and-beyond what was required of them. The intent of the donation, that teachers be recognized for the demands required and the difficulties experienced, was expressed clearly to the OIG by all. The donation was not tied to any act or omission by M-DCPS administrators.

The OIG specifically asked Mr. Davis if he, or any member of K12, was in any way forced, or coerced, or if any M-DCPS representative did anything, to push K12 to make this donation. Mr. Davis unequivocally replied:

Absolutely no, there was absolutely no coercion here. It was a very collaborative effort. I have to describe the environment. We were...all literally working all hours of the day and night trying to get this done, and everybody was trying to figure out what's the best way to motivate teachers to get students the right product, and we were all talking about different ways to do that. Not just by-the-way, around this donation, but around other

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topics... We were having lots of conversations like that. So, at no point, did I feel like Miami-Dade [M-DCPS] was pressuring me to do something financial, or pressuring me to do something with the donation. I felt we were all trying to solve the problem together, and it was a pretty collaborative process.

School Board Policy 1210.01

This section of the School Board policies known as the School Board Code of Ethics, states that employees agree and pledge to “avoid conflicts of interest or any appearance of impropriety.” The solicitation of a donation from a vendor gives rise to the appearance of impropriety. Such solicitation was contrary to School Board Policy 1210.01.

It is clear to the OIG that the specific circumstances of this situation gave rise to the solicitation. As the OIG learned from those involved, the stress of a global pandemic, virtual working conditions, and a 6-week push to get a system up and running that would normally take months if not years, as evidenced by the timeframe required for the LMS RFP, coupled with a platform that continuously had problems, created a desire to do something for the frontline workers who were most affected. There is no evidence that K12 was coerced or pressured for the donation. That is evident not just from the statement of its CEO to the OIG, but also K12's own actions at the time. During the first and second weeks of school, when it was obvious that its contract would not be executed, K12 repeated its commitment to donate the funds and then did.

A statement made by Mr. Davis to the OIG explains the context and pressures K12 and M-DCPS were working under: “...it's difficult four and a half – five months later, looking over what was going on to understand the way the world was being operated at that point. What I can tell you, having lived it, what was going on, were a lot of conversations about how we get the project done and kids in school. We literally were worried about all the activities kids were going through and what teachers were going through, and how we'd get this done...we were so focused on just, how do we get this done, that really was our sole focus.”

Although the circumstances and pressures of the pandemic and the compressed time frame to implement the temporary LMS solution help frame the intent of the parties, regardless of whether the donation was made as an incentive or a recognition, the solicitation for a gift from a vendor should not have been made. The Superintendent and his staff have a duty to avoid situations where their official actions could be viewed as being done for the benefit of themselves or others. The School Board Policy requires employees to avoid such appearances.

Finally, the OIG's review highlighted some of the interactions between FNEI and M-DCPS staff, that could lead to conflicts, if not the appearance of conflicts, that would also be prohibited by School Board Policy 1201.01. The OIG learned that in addition to providing

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administrative support to FNEI, Ms. Mendez-Cartaya reviewed and finalized the annual goals for FNEI's Executive Director and the annual performance evaluation of those goals. Ms. de las Pozas also advised the OIG that Ms. Mendez-Cartaya conducted her annual evaluations. Ms. Mendez-Cartaya explained that her role in completing Ms. de las Pozas' evaluations was to make sure she was doing the work of FNEI. Ms. Mendez-Cartaya advised that she did not provide the evaluations to the FNEI Board. According to Ms. Mendez-Cartaya, Ms. de las Pozas works for the FNEI Board and cannot be removed by anyone at M-DCPS. Although Ms. Mendez-Cartaya fulfilled M-DCPS' responsibilities related to FNEI, she did not have an official title or position within FNEI.

The OIG learned that the Executive Director's contract does address both the specific duties of the position and the performance evaluation. Specifically, the Executive Director is required to meet annual performance goals as directed by the FNEI Board. The Executive Director's annual performance evaluation can be performed by a designee of the FNEI Board. In addition, per the contract, the Executive Director is to prepare a self-appraisal discussing the performance objectives for the period under review and proposing objectives for the upcoming period. The self-appraisal, along with an appraisal by the Chair or designee, should be presented to the FNEI Board. Ms. de las Pozas has advised the OIG that she has prepared the self-appraisals and did meet with Ms. Mendez-Cartaya regarding her performance evaluations. However, Ms. Mendez-Cartaya did not provide them to the FNEI Board. Having an M-DCPS administrator review the goals and the annual evaluations of the Executive Director without review by the FNEI Board can create the appearance of, if not an actual, conflict in the operations of FNEI. Although clearly FNEI's work is for the benefit of M-DCPS, FNEI operations should be performed as directed by the FNEI Board to ensure transparency and arms-length transactions with M-DCPS.

VIII. RESPONSES TO THE DRAFT REPORT & OIG COMMENTS

This report, as a draft, was provided to Mr. Nathaniel Davis, CEO of K12, and Ms. Ann de las Pozas, Executive Director of FNEI for their review and submission of discretionary written responses. The Draft Report was also provided to Superintendent Alberto Carvalho, Ms. Marie Izquierdo, Chief Strategy Officer, and former M-DCPS Associate Superintendent, Ms. Iraida Mendez-Cartaya, for their review and opportunity to provide written responses. The OIG received a response from the Superintendent, Ms. de las Pozas, and Ms. Mendez-Cartaya; the responses are attached as Appendices A, B, and C respectively. The OIG summaries of the responses and OIG comments follow.

Response from Superintendent Carvalho

The law firm of Gelber, Schachter & Greenberg, submitted a response on behalf of Superintendent Carvalho, incorporated herein as Appendix A. The response agrees with the OIG's "factual report of events, the relevant timeline, and [the OIG's] extensive

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findings setting forth the motives and intentions of the participants, including those of Superintendent Carvalho.”

The response’s only “quarrel” with the OIG’s report relates to the finding that the solicitation from a vendor gives rise to the appearance of impropriety. The response argues that appearance of impropriety standards “need to be deployed carefully” and should be moored to an existing rule. The response states that “[e]ven if it is the opinion of the IG that no M-DCPS employee should solicit or accept a donation to FNEI from an existing school district vendor, at the time there was no such prohibition.” The OIG notes that while no such prohibition was in place at the time, the solicitation of such a large monetary donation from a vendor was instantly recognized by several Board members as creating an appearance of conflict, and as such the School Board took immediate action and amended School Board Policies 6460 and 9215 to specifically prohibit the solicitation of a donation from a vendor pending an award.

Finally, the response disagrees with the OIG’s recommendation that FNEI return the donation to K12. The Superintendent’s response maintains that FNEI is a separate charitable entity, and like other governmental bodies are “regularly supported by businesses and individuals interested in advancing public causes . . . [a]nd some may do business with the body whose mission they are supporting. Often those causes are intertwined with the governmental functions themselves.” The response further states that because there was no prohibition on receiving the donation, FNEI should be allowed to keep the donation. According to the Superintendent’s response, returning the donation would deprive the hard-working teachers of the funds that they have been promised.

The OIG does not dispute that teachers went above and beyond in preparing for the first day of school, and that difficulties in loading their class rosters were made more problematic due to the implementation issues with K12. However, to liken this donation to all the regular donations received by FNEI ignores three simple facts: 1) that this donation was solicited by Superintendent Carvalho from a vendor, 2) whose contract was pending execution, and 3) that FNEI was only recruited to serve as a pass-through to purchase and distribute the gift cards.

Responses from Ms. de las Pozas and Ms. Mendez-Cartaya

FNEI’s Executive Director, Ms. de las Pozas, submitted a response attached as Appendix B. Ms. Mendez-Cartaya’s response is incorporated as Appendix C. Ms. de las Pozas’ response is brief and limited to an issue that Ms. Mendez-Cartaya’s response also addresses. As such, the OIG is consolidating the summary and commentary of the responses.

Both Ms. de las Pozas and Ms. Mendez-Cartaya take issue with a statement in the Draft Report indicating that Ms. Mendez-Cartaya set the annual goals for Ms. de las Pozas as FNEI’s Executive Director. Although Ms. de las Pozas’ response clearly states that she

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set the goals, as required by her contract, her initial statements to the OIG were not as definitive about the goals. Taken together with Ms. Mendez-Cartaya's statements regarding the goals, it resulted in the OIG's conclusion about the setting of the goals.

Ms. de las Pozas was asked if anyone she reported to had ever followed the performance evaluation and/or goals procedure as outlined in her contract, to which she stated no, and that Ms. Mendez-Cartaya had always been the one doing it since she was hired by FNEI. Ms. Mendez-Cartaya's statement to the OIG indicated that she set the goals. She stated: "...like anyone else on my team, I give her a matrix she has to meet on an annual basis...right now one of her goals is to fundraise for connectivity...". In her written response, Ms. Mendez-Cartaya clarified that Ms. de las Pozas "would prepare and propose those annual goals." She also states that "[s]he and I would discuss those proposed goals and finalize them together." Additionally, although Ms. de las Pozas' response does not dispute Ms. Mendez-Cartaya's role relating to her annual evaluations, Ms. Mendez-Cartaya's response states that she discussed the evaluation at the end of the year.

The issue raised by the OIG's mention of goal setting and the performance of Ms. de las Pozas' evaluation is the perception of undue control or influence by M-DCPS personnel on the operations of FNEI. It seems clear from the responses that the goals were propounded by Ms. de las Pozas. The OIG's concern, however, is not diminished given that Ms. Mendez-Cartaya's response clearly indicates they "...would discuss those proposed goals and finalize them together." The references within the Draft Report, to the setting of the goals for the FNEI Executive Director, have been amended to reflect the process as clarified in the responses.

Ms. Mendez-Cartaya also clarified that in 2009, not 2008, she began her position as Assistant Superintendent and was later promoted to Associate Superintendent. The Final Report reflects the appropriate title in accordance with the response. Finally, Ms. Mendez-Cartaya's response expounded on two points in the Draft Report: 1) regarding the administrative support provided by M-DCPS to FNEI and 2) her belief that at the time of the donation the contract with K12 had been executed. These matters were adequately explained in the Draft Report and Ms. Mendez-Cartaya's response serves only to reinforce the facts reported.

IX. CONCLUSION & RECOMMENDATIONS

The OIG found no actual violations of the prohibitions defined by the State Code of Ethics and the corresponding School Board policies. The School Board Code of Ethics, however, goes beyond those prohibitions, exhorting employees to avoid the appearance of impropriety. The solicitation of a donation from a vendor goes against that exhortation. The vendor, K12, had a contract pending final execution, and an existing contract with a term of years remaining. The OIG recognizes that although the intent may have been honorable from both the vendor and the M-DCPS administration, such appearances must

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be avoided to ensure the continued trust in the accountability, ethics, and transparency of our public officials and their actions.

Recommendation #1 – to the FNEI Board and Superintendent Carvalho

- The FNEI Board should return the donation to K12. The solicitation of a donation from K12, a vendor pending final contract approval, creates the appearance of impropriety.
- The Superintendent should recuse himself from any discussion, vote, or decision by the FNEI Board regarding the \$1.57 million donated by K12 for \$100 M-DCPS teacher gift cards.

The circumstances surrounding this solicitation touch on so many areas that give rise to the appearance of impropriety that the OIG believes to effectively cure the perception, FNEI should return the donation. In this instance, the solicitation was made, by the individual whose signature was still needed to award the contract. Moreover, the Superintendent chairs the organization that would accept and disburse the solicited funds for the benefit of his employees—M-DCPS teachers. Acceptance and disbursement of the funds would not diminish, but rather add to the appearance of impropriety.

Recommendation #2 – to the School Board

- The School Board should examine the issue of soliciting or receiving donations from current vendors. The School Board should review the policies of other jurisdictions, particularly as they relate to targeted or general solicitations from vendors, in an effort to determine the best practices that will balance the needs of the District with the transparency and accountability owed to the public.

The OIG is aware that the School Board itself recognized the appearance created and the potential conflict of soliciting a donation from a vendor pending contract award. The School Board took immediate action amending the following policies, on January 13, 2021, to include that:

School Board Policy 6460 Business Code of Ethics

The Business Code of Ethics (Code) shall govern the conduct of all bidders seeking business and all contractors, lobbyists, and consultants that have either a pending bid or contract or are currently under contract with the School Board.

All bidders seeking business, and all contractors, lobbyists, and consultants that have a pending contract with the Board, are prohibited from making donations to any School Board DSO when they have a pending bid solicitation, proposal, or contract award for District goods or services, or

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when they are representing an entity that has a pending bid solicitation, proposal, or contract award for District goods or services.

School Board Policy 9215 – Direct Support Organizations

No District employee who has procurement authority for District goods or services, shall solicit or accept a donation on behalf of a DSO [Direct Support Organization] from any contractor, lobbyist, consultant, or bidder that has a pending bid solicitation, proposal or contract award, for District goods or services.

Clearly the change in the School Board policies directly addressed the type of donation that transpired in this case. A solicitation from a current vendor has the same potential of creating the appearance of impropriety, if not an actual conflict. Vendors with active contracts may have options to renew or other terms that necessitate agreement and approval by staff. Therefore, soliciting or accepting a gift can create the appearance that the gift was required or connected to some future action. Federal regulations such as the Standard of Ethical Conduct for Executive Branch Employees, 5 C.F.R. 2635 are instructive. The federal regulations prohibit the solicitation of any gift from a prohibited source, which includes anyone doing business or seeking to do business with the public official's agency. The School Board should consider following the federal model.

Recommendation #3 – to FNEI

- FNEI should determine best practices and establish guidelines to ensure that solicitations or acceptance of donations from donors with current M-DCPS contracts are truly arms-length, do not raise the appearance of impropriety, or create an actual conflict of interest with the FNEI Chairperson or Vice Chairperson.

The OIG recognizes that FNEI has started the process of addressing donations by those involved in a pending procurement. FNEI has instituted a procedure prior to depositing donations that the depositor confirms, in writing, that the donor does not have “a pending bid solicitation, proposal, or contract award” with M-DCPS. Also, FNEI amended its Gift Acceptance Policy at its April 20, 2021, Board of Director's meeting as follows:

...FNEI will not solicit from or accept donations from any contractor, vendor, lobbyist, consultant, or bidder that has a pending bid solicitation, proposal, or contract award for District goods or services.

FNEI's steps to preclude donations from those participating in the procurement process with the School Board are positive. However, because FNEI's Chairperson and Vice-Chairperson will always be tied to the positions of Superintendent and Chair of the School Board, FNEI should go further, and explore policies beyond donors with pending procurement matters.

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Recommendation #4 – to the FNEI Board

- The FNEI Board should amend its by-laws to account for the position of Executive Director. The FNEI Board should incorporate a reporting structure for the Executive Director, and define the position's responsibilities, the setting of annual performance goals, and the annual performance evaluation to be reviewed by or at the direction of the FNEI Board.

The OIG's review raised some concerns regarding the relationships and interactions between FNEI's Executive Director and M-DCPS administrators. While no individual at M-DCPS can remove the Executive Director, in order to avoid the appearance of, if not an actual, conflict in the operations of FNEI, any evaluations performed of the Executive Director's performance should be presented to the FNEI Board.

The OIG has reviewed the most recent proposed contract for FNEI's Executive Director. The contract contains provisions directing that the FNEI Board be presented with the Executive Director's evaluation. The OIG believes those provisions can ensure that the work of FNEI and M-DCPS is transparent and remains accountable to their respective Boards. However, the OIG notes that the provisions are found only in the Executive Director's contract and not in FNEI's by-laws.

Recommendation #5 – to the FNEI Board (*new to the Final Report*)

- The FNEI Board should amend its by-laws, practices, procedures, and all banking institution accounts to provide organizational independence from M-DCPS finances, administrators, and controls. The FNEI Board should rescind bank signature authority to the M-DCPS Administrative Director and replace it with its own representative who is not an M-DCPS administrator or employee and return, or cease use of, any M-DCPS issued p-cards.

At its April 20, 2021, meeting the FNEI Board approved Resolution 21-08. The resolution allowed for the Executive Director to update FNEI's authorized bank/check signatures to include its Executive Director, Treasurer, and an M-DCPS Administrative Director. It also updates FNEI's banking rules to allow for checks under a certain value to process with one signature, while checks over that value will continue to require two signatures. Additionally, it authorized the acquisition of an FNEI credit card directly from its bank to provide independence from M-DCPS.

While the OIG believes these measures were necessary and will promote greater independence to FNEI, the OIG recommends that the FNEI Board take additional steps to ensure the complete separation of FNEI and M-DCPS relating to FNEI financial transactions. M-DCPS Administrators should not be authorized signers for FNEI, unless the designated M-DCPS Administrator is an officer of FNEI under the control, supervision, and with some fiduciary duty or obligation directly to FNEI. In addition, the FNEI Board

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should ensure that no further FNEI transactions are conducted with any M-DCPS issued p-cards.

Finally, the OIG recognizes that as the 2020-2021 school year approached, M-DCPS teachers faced many challenges and frustrations during what was an unprecedented time. Certainly, M-DCPS teachers deserve to be recognized for their service and their unfailing commitment to their students, their profession, and the public. They learned and navigated a new system, and entered their class rosters, sometimes repeatedly, to ensure they were ready to start the school year. However, to preserve the public's trust, such reward should not be obtained in a manner that creates the appearance of impropriety. The solicitation of a gift from a vendor whose contract still remained unsigned by the soliciting party, does give rise to the appearance of impropriety.

Miami-Dade County Public Schools Office of the Inspector General

EXHIBIT 1

**Agreement marked VOID between M-DCPS and K12
(12 pages)**

**Final Report
IG-20-0008-SI**

VOID



This Online Educational Products and Services Order (this "Order"), dated as of 8/7/2020 (the "Order Effective Date"), is between the School Board of Miami-Dade County, Florida, located at 1450 NE 2nd Avenue, Miami, FL 33132 ("Customer") and K12 Florida LLC ("K12"), 2300 Corporate Park Drive Herndon, VA 20171. This Order incorporates and is in all respects subject to the K12 Online Educational Products and Services Agreement Terms (the "Terms") (the Order and the Terms, collectively the "Agreement") attached hereto as Exhibit A. All capitalized terms that are not defined in this Order will have the meanings assigned to those terms in the Terms. I am authorized by Customer to enter into this Order for the products, services and licenses indicated herein, at the prices set forth below and pursuant to the Terms.

Accepted by Customer:

Superintendent of Schools Signature: Date: 8/17/20

Name (Print): Alberto M. Carvalho Title: Superintendent of Schools

Risk Management Signature: Date: _____
jdavilla@dadeschools.net
 Office of Risk and Benefits Management
 2020.08.11 16:46:08 -04'00'

Name (Print): _____ Title: _____

Procurement Management Signature: Date: _____
Procurement Management Services
 Procurement Authority: 6320-F(2)

Name (Print): Mario De Barros Title: _____

School Board Attorney Signature: Date: 08.17.20

Name (Print): Sara M. Marken Title: Assistant School Board Attorney

Accepted by K12: _____
 Signature: Date: 8/10/2020
DocuSigned by: Kevin Chavous
 Name (Print): Kevin Chavous Title: President, Academics, Policy & Schools

1. Period: 8/7/2020 through 6/30/2021 and may be renewed by Customer for an additional one-year period with written notice of renewal to K12 no less than ninety (90) days prior to 6/30/2021.
2. Territory: Students served by The School Board of Miami-Dade County, Florida.
3. For the Services and/or Products provided under this Order, Customer shall pay the following Fees:

| Product | Product Description | Unit Price |
|---|--|------------------------|
| K12 Miami-Dade Enterprise License – Order Effective Date – 6/30/2021 ("Year 1") | Access during Year 1 for Customer's teachers and up to Two-Hundred-Seventy-Six-Thousand (276,000) students grades pre-K through 12 in Miami-Dade Public Schools to the K12 courses listed on <u>Exhibit B</u> (the "K12 Courses"), K12's Stride and Big Universe supplemental offerings, and associated learning management system(s). Includes Educational Tools and Services, Integration Support Services, Professional Development and Training Services, and Customer Support Services, each as described in Section 4 below. | \$15,350,000.00 |
| Total Price: | | \$15,350,000.00 |

4. Description of Educational Products and Services.
K12 Courses: Each K12 Course includes content as described in Exhibit B and the course catalog. K12 may from time to time, in its sole discretion, deliver or otherwise make available to Customer certain updated courseware, which such updates shall also be subject to all of the Terms. The Customer acknowledges and agrees that certain courseware and updates thereto may be designed to utilize separate course materials and Customer may be responsible for procuring such materials. A current list of course materials may be accessed at <https://getfueledservices.com/client/TotalViewMaterials.xlsx>. This list is subject to change based on K12 Course design updates to assist in reducing materials dependence for Customer use, specific K12 Course editions selected, and any other courseware updates during the Period. K12 agrees that no substantial changes will be made to the K12 Courses during the course of the school year. Substantial changes are changes made by K12 that have a material detrimental impact on Customer's use of the K12 Courses and include, but are not limited to, those which would require the procurement of materials in addition to those required as of the Order Effective Date. K12 shall advise Customer by March 30th of the preceding school year of any changes which require the procurement of additional materials for the subsequent school year (if applicable).

Educational Tools and Services: K12 will provide a variety of educational tools and services, depending on the individual needs of Customer. Such tools and services may include, but are not limited to, the set-up, configuration and hosting of the applicable courseware and associated learning management system(s) for the delivery of courses and Customer access to videoconferencing software for Customer teacher & student instruction and synchronous training & professional development.

VOID
Integration Services: K12 will provide the following Data Source Integration, Single Sign-On Integration services to be completed no later than September 8, 2020 and Gradebook Integration services to be completed no later than October 1, 2020, both contingent upon a Statement of Work to be entered into between Customer and K12 no later than August 14, 2020:

- Data Source Integration: integration between K12 systems and Customer data source to allow for Customer administrator, teacher, and student K12 account & classroom creation and course assignment;
- Single Sign-On ("SSO") Integration: integration between K12 systems and Customer M-DCPS portal to allow for Customer administrator, teacher, and student SSO access; and
- Gradebook Integration: integration between K12 systems and Customer gradebook to allow for nightly grade passback.

Professional Development and Training Services: From on or about the Order Effective Date, K12 will provide Customer staff and teachers with six (6) months of professional development and training to including the following:

- Minimum of three webinars for initial functionality teacher training to be delivered prior to start of school.
- Asynchronous training available through the K12 or affiliate On-Demand Training Resource Center. Available throughout school year.
- Minimum of biweekly teacher support office hours available throughout the school year.
- Onsite training for administrators and office support staff.
- Customized bi-monthly webinars based on unique challenges and needs identified by the teachers of Customer. Possible topics are:
 - o Teacher Grading
 - o Personalization
 - o Groupings
 - o Discussion Boards
 - o Communication
 - o Non-Cognitive skills development
 - o Accessing and using data/reports
 - o Other topics as needed
- K12 training manager will facilitate a weekly meeting as needed, in order to assess additional training needs.

Customer Support Services: From the Order Effective Date through November 1, 2020, K12 will provide standard telephone and web-based helpdesk support services for Customer, Customer administration, and Customer students in troubleshooting issues related to the K12 courseware or learning management system. Areas of support may include, but not be limited to, Customer account access and SSO, Customer account & course navigation, K12 Course integration assistance, general "Getting Started" support for K12 Courses & systems, videoconferencing software support, and equipment compatibility for K12 systems. In the event K12 is contacted by Customer administrators or students with issues related to a laptop, systems, or any other technology not provided by K12, K12 will provide basic troubleshooting without changing or removing software to assist and, in the event that does not resolve the issue, K12 will direct the Customer administrators or students to Customer. In preparation for and following November 1, 2020, K12 will provide Customer with training and support not to exceed eighty (80) hours as reasonably required to assist Customer in establishing its own help desk for support of the program. Although Tier 1 support will not be available to Customer after November 1, 2020, Tier 2 support allowing Customer help desk to contact K12 directly will remain available to Customer for the remainder of the Period. Additionally, K12 will provide a dedicated Client Success Manager to support Customer and coordinate with appropriate Customer personnel for the delivery of educational products and services.

5. Billing Terms.

K12 Miami-Dade Enterprise License Billing: Customer will provide K12 a purchase order ("PO") within 30 days after the completion of fully executed contract. K12 shall invoice Customer for Year 1 promptly following the receipt of a PO with payment due within thirty (30) days of Customer's receipt of invoice.

6. Additional Terms.

Customer User Content and Customer Modified Courses: The K12 learning management system and other K12 systems (the "K12 Systems") may allow Customer teachers and staff to submit content (including text, photos, images, sound, video and another other materials) to the K12 Systems (collectively, "Customer User Content"). Customer acknowledges that Customer is solely responsible for contents of Customer User Content, including, but not limited to, ensuring that such Customer User Content does not infringe on the rights of any third party and does not violate Customer policy. The K12 Systems may allow Customer teachers and staff to perform certain modifications to K12 Courses for access and use by Customer teachers and students (the "Customer Modified Courses"). Except for Customer's rights in the Customer User Content, Customer shall have no intellectual property rights in the Customer Modified Courses and such courses will be considered "Works" as that term is defined in the Intellectual Property provision of the Terms.

EXHIBIT A

VOID
K12 Online Educational Products and Services Agreement Terms

PERIOD: The period of this Agreement is as specified in the Order ("Period").

DESCRIPTION OF SERVICES: Customer will be provided with those products and services, including where applicable a limited, non-exclusive, nontransferable license, without sublicense rights, for access to K12 or its Affiliates online courses, curriculum, learning management system and applicable instructional tools and online services, for the Period.

PRICE AND PAYMENT: The prices and billing terms for the products, services, and licenses will be as set forth on the Order, except as set forth herein. Invoices shall be submitted to Customer by K12 or its Affiliates and full payment of such invoices shall be due by Customer no more than thirty (30) days from Customer's receipt of an invoice. Notwithstanding anything contained in this Agreement, if full payment is not timely received, K12, in its sole discretion, may cease the provision of any or all products, services, and licenses. If Customer wishes to dispute any charge invoiced to Customer by K12 or its Affiliates, Customer must submit a good faith claim regarding the Disputed Amount, in a format clearly delineated to coincide with the format of the disputed invoice and with documentation as may reasonably be required by K12 and its Affiliates to support the claim no later than ninety (90) days after the date of the invoice.

TAXES: Customer represents that it is exempt from sales and use taxes imposed by the state and local governmental divisions in which it is located. Customer must provide K12 with Customer's exemption certificates or other proof of Customer tax-exempt status reasonably acceptable to K12.

TERMINATION: Either party may terminate this Agreement at any time with ninety (90) days' prior written notice to the other party for cause. Termination for cause may be used if a party breaches any material term or fails to fulfill any representation, warranty, or material condition, term, provision or obligation contained in this Agreement and fails to cure within thirty (30) days of such notice from the terminating party. Upon termination, the non-breaching party shall be entitled to seek any remedies to which it shall be entitled at law or in equity. If any change in applicable law that is enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of any party to carry out its obligations under this Agreement, such party, upon written notice to the other party may request renegotiation of this Agreement. Such renegotiation shall be undertaken in good faith. If the parties are unable to renegotiate and agree upon revised terms within 120 days of such notice of renegotiation, then this Agreement shall be terminated effective at the end of the school year in which such notice was given. Termination of this Agreement does not relieve Customer of any obligations for payments outstanding to K12 as of the date of termination and does not relieve either party of any obligations that continue upon termination.

INFORMATION REQUIREMENTS: Customer will provide K12 with all information reasonably required by K12 to provide the products, services, and licenses.

FERPA AND CONFIDENTIALITY: If Customer is a public entity receiving federal Title I funds, Customer represents that K12 is a "school official" with a "legitimate educational interest" under the definitions of those terms set forth in the Customer's Family Educational Rights and Privacy Act ("FERPA") notification(s) to students and parents during the Period of this Agreement. K12 agrees to develop, implement, maintain and use appropriate administrative, technical or physical security measures to the full extent required by FERPA in order to maintain the confidentiality of "education records" as that term is defined by FERPA. K12 agrees not to disclose said "educational records" to any third party except as allowed or required under applicable law and pursuant to the Data Sharing Agreement between Customer and K12 dated July 26, 2020. Customer recognizes and agrees that for purposes of all applicable laws, K12 has a legitimate educational interest for purposes of Customer disclosing to K12 students' education records. Regardless of whether Customer is a public entity receiving federal Title I funds, to the extent permitted by applicable law K12 or its affiliates may provide Customer with confidential information (as designated by K12) required by Customer in writing for its internal use or reporting to regulatory authorities. Customer agrees to develop, implement, maintain and use appropriate administrative, technical or physical security measures to maintain the confidentiality of such confidential information.

ENGLISH LANGUAGE LEARNERS, SPECIAL EDUCATION, AND DISABILITIES: If Customer is a public entity receiving federal Title III and/or Title I funds, Customer agrees that it is the Local Educational Agency responsible for the provision of English Language Learner education and special education. Although K12 or its Affiliates may provide products and services that may be used in furtherance of professional development programs and/or language instruction education programs for English Language Learners, Customer is responsible for the provision and/or implementation of any services of any nature as required by Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the English Language Acquisition, Language Enhancement, and Academic Achievement Act or any similar law, whether federal, state or local. The provision of special education, the creation, implementation or provision of Individualized Education Programs, the provision of reasonable accommodations or any services of any nature under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act or any similar law, whether federal, state or local are not services provided under this Agreement. Notwithstanding the foregoing, during the Period of this Agreement, K12 will discuss, formulate and make adjustments and accommodations in furtherance of IEPs or reasonable accommodations established by Customer, but solely to the extent that K12 may do so without incurring direct or indirect costs.

PUBLICITY: During the Period of this Agreement, Customer hereby agrees that K12 and its Affiliates shall have the right, but not the obligation, to list Customer as a customer in other materials promoting the Content. K12 will remove Customer's name from any such list within thirty (30) days after any termination of this Agreement.

WARRANTY: K12 warrants that the services will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND K12 MAKES NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS. WITHOUT LIMITING THE FOREGOING, K12 MAKES NO GUARANTEES AND SHALL NOT BE LIABLE FOR OUTAGES OR OTHER NON-ACCESSIBILITY TO THE K12 WEBSITE, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS REGARDLESS OF THE CAUSE. K12 OFFERS NO WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. K12 DOES NOT WARRANT THAT USE OF THE SITE OR CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE. WITHOUT LIMITING THE FOREGOING, K12 WARRANTS THAT (1) K12 WILL CORRECT OR PROVIDE REASONABLE WORKAROUNDS FOR ERRORS THAT MATERIALLY IMPACT THE SITE OR CONTENT AND (2) K12 WILL TAKE COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT THE SITE OR CONTENT ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

INTELLECTUAL PROPERTY: Customer acknowledges and agrees that all courses, content, software, graphics, pictures, documents, licenses, designs, and materials, and any and all derivatives thereof (collectively, Works) made available to Customer pursuant to this Agreement are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws and K12 (or its Affiliates or licensors) own all right, title and interest in and to the Works. Customer acknowledges and agrees that it has no intellectual property interest or claims in the Works and has no rights to make any use of such Works except as expressly granted herein. Except as expressly authorized in writing by an officer of K12 or as contained in this Agreement,

Customer agrees not to sell, license, sublicense, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from any of the Works. Customer will not take any action that would impair any of K12's (or its Affiliates' or licensors') rights in the Works. Customer agrees not to: (a) disassemble, reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Works (or any portion thereof); (b) distribute, rent, sell, transfer, or grant sublicenses to, or otherwise make available the Works (or any portion thereof) to third parties, including, but not limited to, making such Works available (i) through resellers, OEMs, other distributors, or (ii) as an application service provider, service bureau, or rental source, unless expressly permitted in the Order; (c) embed or incorporate in any manner the Works (or any element thereof) into other applications of Customer or third parties; (d) use or transmit the Works in violation of any applicable law, rule or regulation, including any export/import laws, (e) in any way access, use, or copy any portion of the Works (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Works, (f) remove, obscure or alter any copyright notices or any name, logo, tagline or other designation of K12 or its Affiliates displayed on any portion of the Works. Customer shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions. Customer acknowledges that in the event Customer breaches any provision contained in this paragraph, K12's interests will be irreparably injured, the full extent of K12's damages may be impossible to ascertain, and monetary damages will not be an adequate remedy. Customer agrees that K12 will be entitled to enforce this agreement by an injunction or other legal or equitable relief in any court of its choice without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy.

INDEMNIFICATION AND LIMITATION OF LIABILITY: K12 agrees to defend, indemnify, and hold harmless Customer and its employees, contractors, officers, and board members from and against any and all liabilities, claims, damages, injuries, judgments, demands and expenses, including court costs and attorney's fees, that arise out of or in connection with any acts or omissions of K12 related to or arising from this Agreement (collectively "Claims") except to the extent that such Claims arise out of actions or omissions of Customer and subject to the conditions precedent that a) Customer provide written notice to K12 within thirty (30) days of its receipt of the Claim and b) Customer permits K12 to assume the control and defense of the Claim with counsel selected by K12. IN NO EVENT SHALL K12'S LIABILITY TO CUSTOMER AND ITS EMPLOYEES, CONTRACTORS, OFFICERS AND BOARD MEMBERS UNDER THIS AGREEMENT OR FOR ANY MATTER OR CAUSE OF ACTION ARISING IN CONNECTION HERewith EXCEED THE AMOUNT PAID BY CUSTOMER TO K12 HEREUNDER. IN NO EVENT SHALL K12 BE LIABLE TO CUSTOMER, WHETHER UNDER THE THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER K12 IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Subject to the limitations of §768.28, Fla. Stat., Customer agrees to defend, indemnify, and hold harmless K12 and its Affiliates and all of their employees, contractors, officers, and board members from and against any and all liabilities, claims, damages, injuries, judgments, demands and expenses, including court costs and attorney's fees, that arise out of or in connection with any acts or omissions of Customer related to or arising from this Agreement (collectively "Claims") except to the extent that such Claims arise out of actions or omissions of K12 and subject to the conditions precedent that a) K12 provide written notice to Customer within thirty (30) days of its receipt of the Claim and b) K12 permits Customer to assume the control and defense of the Claim with counsel selected by Customer.

NON-SOLICITATION/NON-HIRE: To the extent permitted by law and during the Term of this Agreement and for a period of twelve (12) months after the latter of its termination or expiration, the parties agree not to directly or indirectly solicit for hire or hire any employee of the other party without the express written consent of the other party, and the payment to that party of a direct hiring conversion fee equal to fifty percent (50%) of that person's base starting salary as an employee of the hiring party. A party's general solicitation of employees (through, for example, employment websites or advertisements in newspapers, magazines or trade journals) will not be a violation of this provision.

DISPUTE RESOLUTION: The parties agree that they will use their best efforts to settle any and all disputes arising out of, under or in connection with this Agreement, including without limitation the validity, interpretation, performance and breach hereof, prior to initiating any legal proceeding, whether judicial or administrative in nature. The efforts shall be primarily between the President of K12 and the Superintendent of the Customer or their respective designees. The laws of the State of Florida, without regard to its conflict of laws provisions, will govern all disputes arising out of or related to this Agreement, including the validity, enforceability or construction thereof. Each party submits to the jurisdiction of the state and federal courts located in the State of Florida for purposes of any action, suit or proceeding arising out of or related to this Agreement and agrees not to plead or claim that any action, suit or proceeding arising out of or related to this Agreement that is brought in such courts has been brought in an inconvenient forum. Each party shall be responsible for its own attorneys' fees and costs, from pre-trial through all appeals.

ENTIRE AGREEMENT AND ADDITIONAL TERMS: This Agreement and the documents to which it refers form the entire Agreement between the parties with respect to the subject matter herein. Customer may not rely on any other documents, proposals, statements, or representations by any sales or service representatives or other parties, unless expressly contained herein. By accepting this Agreement, Customer hereby agrees that any additional or different terms contained in Customer's purchase order or other related documents ("Purchase Order") shall be of no force or effect and shall not become part of this Agreement unless they are specifically accepted in signed writing by K12. If Customer issues any Purchase Order, it shall be deemed solely for the administrative convenience of Customer and not binding on K12, even if acknowledged or acted upon by K12.

MISCELLANEOUS: a) A waiver of any part of this Agreement in one instance is not a waiver of any other part or any other instance; b) If any part of this Agreement is held invalid or if the applicability of any part of this Agreement is held invalid to a particular set of circumstances for any reason, such holding or declaration shall not in any way affect or impair the remaining provisions or the application to a different set of circumstances; c) Except as otherwise provided in this Agreement, neither party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other party and any such assignments shall be void and of no effect, except that K12 may assign all of its rights and obligations under this Agreement to any person or entity that controls K12, is controlled by K12, or is under common control with K12 or to any successor in interest that acquires all or substantially all of the assets of K12; d) This Agreement does not create any legal or equitable rights on the part of any third party, as a third party beneficiary or otherwise; e) K12 is not a division or any part of Customer. Customer is not a division or any part of K12. Nothing herein is intended to be construed as or to create a partnership or joint venture by or between K12 and Customer; f) Notwithstanding any other section of this Agreement, no party will be liable for any delay in performance or, except with respect to payment hereunder, inability to perform due to acts of God or due to war (declared or undeclared), riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, labor strike, internet outage or other acts beyond its reasonable control and unrelated to its fault or negligence; g) Customer and all users of licensed products shall comply with the terms and conditions of the Terms of Use pertaining to the use of courseware, web sites and learning management systems, as such terms are set forth therein; h) All representations, warranties and indemnities made in this Agreement will survive termination of this agreement; i) K12 Florida LLC will provide all services, licenses and materials under this Agreement either directly or in conjunction with its Affiliates. An "Affiliate" of K12 Florida LLC is an entity that controls, is controlled by, or under common control with, K12 Florida LLC and "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through the ownership of securities, by contract or otherwise. K12 Florida LLC and its Affiliates shall be referred to collectively as K12; k) All written notices required by the terms of this Agreement will be sent to the Superintendent of the Customer and School Board Attorney at the addresses set forth above and to the General Counsel of K12 at 2300 Corporate Park Drive, Herndon, VA 20171 (and such addresses may be changed upon proper notice to such addressees). Notice may be given by either certified or registered mail, postage prepaid, return receipt requested, or reputable overnight carrier, postage prepaid and is deemed to have been given three days after mailing or, as to overnight delivery, on the date of personal delivery to the address stated thereon.

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CHILDREN'S ONLINE PRIVACY PROTECTION ACT ("COPPA"): With respect to the COPPA, 15 U.S.C. 6504-6505, and its implementing regulations (16 C.F.R. 312, et seq.), K12 and Customer acknowledge that COPPA permits the Customer, acting in the role of "parent," to provide required consents regarding personal information of students who are under the age of 13, where such consent is limited to the collection of personal information from students for the educational use and benefit of the Customer, and does not extend to any commercial purpose. K12 and Customer acknowledge that K12, and "operator" under COPPA, relies on this form of consent for such Customer users under this Agreement. K12 shall provide the Customer all notices required under COPPA, as applicable to ensure that the Customer, in providing its COPPA consent, has full information and assurance that K12's practices comply with COPPA.

ADA COMPLIANCE: K12 agrees and warrants that its services and products comply with the American with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, along with its implementing regulations, to ensure that individuals with disabilities have an equal opportunity to participate in the Customer's programs and activities. K12 agrees to promptly respond and resolve any complaints regarding accessibility of its services and/or products. K12 further agrees to defend, hold harmless and indemnify the Customer, including reasonable attorneys' fees, for any claims or actions arising out of K12's failure to comply with this requirement.

COMPLIANCE WITH SCHOOL CODE: K12 agrees to comply with all applicable sections of the Florida K-20 Educational Code, Title XLVIII Sections 1000-1013 Florida Statutes as its presently exists, as it may be amended from time to time. Further, K12 agrees that failure to comply with the Florida K-20 Education Code shall constitute a material breach of this Agreement and may result in the termination of this Agreement by the Customer.

COMPLIANCE WITH BOARD POLICIES: K12 certifies agreement with the following Customer Policies: 6465 Commercial Anti-Discrimination, Diversity, and Inclusion; 6460 Business Code of Ethics; 6325 Code of Silence; 6320 Purchasing; 6320.01 Outside Vendors Selling; and 6320.02 Minority/Women Business Enterprise Certification Procedures, and agree to comply with all applicable Customer contracting and procurement policies and procedures. Attached and incorporated herein is K12's completed Certification of Compliance with Customer Policy 6465. K12 certifies to abide by all applicable Customer Policies which may be found at <http://www.dadeschools.net/schoolboard/rules/>.

ACCESS TO RECORDS/FLORIDA'S PUBLIC RECORDS LAWS

K12 understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. K12 shall keep and maintain public records required by the Customer to perform the service. K12 shall keep records to show its compliance with program requirements. K12 and subcontractors must make available, upon request of the Customer, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of K12 which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon request from the Customer's custodian of public records, provide the Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. K12 shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if K12 does not transfer the records to the public agency. K12 shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1). Upon completion of the contract, transfer, at no cost, to the Customer all public records in possession of K12 or keep and maintain public records required by the Customer to perform the service. If K12 transfers all public records to the Customer upon completion of the contract, K12 shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If K12 keeps and maintains public records upon completion of the contract, K12 shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer, upon request from the Customer's custodian of public records, in a format that is compatible with the information technology systems of the Customer.

IF K12 HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-995-1128, pr@dadeschools.net, and 1450 NE 2 Avenue, Miami, Florida 33132.

INSURANCE REQUIREMENTS

Prior to commencement of work under the agreement, K12 shall obtain and maintain without interruption the insurance as outlined below. K12 agrees to furnish a fully completed certificate of insurance naming the School Board of Miami-Dade County, Florida as a certificate holder, signed by an authorized representative of the insurer providing such insurance coverages. The insurance coverages and limits shall meet, at a minimum, the following requirements:

General Liability Insurance

Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) without any restrictive endorsements.

The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

| | |
|--------------|---|
| \$ 1,000,000 | General Aggregate |
| \$ 1,000,000 | Products/Completed Operations Aggregate |
| \$ 1,000,000 | Personal and Advertising Injury |
| \$ 1,000,000 | Each Occurrence |

K12 shall name "The School Board of Miami-Dade County, Florida and its members, officers and employees" as an additional insured on a form no more restrictive than the CG 20 10 (Additional Insured – Owners, Lessees, or Contractors).

Professional Liability

Such insurance shall be on a form acceptable to the Customer and shall cover K12 for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in the Agreement including any hold harmless and/or indemnification agreement. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 1,000,000 Each Claim/Annual Aggregate

Cyber Liability Insurance

K12 shall maintain Cyber Liability insurance with limits of not less than \$1,000,000 for each wrongful act, and Liability for security or privacy breaches, including loss or unauthorized access to the Customer's data; Costs associated with a privacy breach, including consumer notification, customer support/crisis management, and costs of providing credit monitoring services; Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties; Costs of restoring, updating or replacing data; Privacy liability losses connected to network security, privacy, and media liability "insured versus insured" exclusion prohibited. The insurance provided by K12 shall apply on a primary basis. Any insurance, or self-insurance, maintained by the Customer shall be excess of, and shall not contribute with, the insurance provided by K12.

Unless otherwise notified, the certificate of insurance shall be delivered to
Miami-Dade County Public Schools
Office of Risk and Benefits Management
1501 N.E. 2nd Avenue, Suite 335
Miami, Florida 33132

VOID

The above insurance requirements may only be amended or waived via written approval of the Office of Risk and Benefits Management.

EXHIBIT B
VOID
 K12 COURSES

K12 Courses listed may be subject to change based on K12's provision of Integration Services and based on K12 Course design updates to assist in reducing materials dependence for Customer and other courseware updates during the Period. Customer may map to any proprietary K12 catalog course OR request blank "course shells" for Customer requested course that K12 does not have an equivalent to. A subset of the K12 Courses will be optimized for "digital first" use, with reduced materials dependency through content changes, which may include but not be limited to, adding eBook links or making fillable PDFs.

All remaining K12 Courses are expected to be used as-is, which may require Customer teachers to modify course scope, sequence, or content availability due to reliance on materials or absence of an adult present at home with Customer students at all times.

Where commercially reasonable and feasible within timelines, K12 will enable or support Customer in (i) customizing content or sequences in some K12 Grades 6-12 courses, including an ability to modify Semester B content through November 2020 and release that content into courses over winter break in December 2020 and (ii) limited customization for some K12 PreK-5 full-year courses to better match Customer's content scope and pacing expectations, with a list of such courses to be agreed to by the curriculum teams of Customer and K12 for SY20-21.

Florida Recommended Courses - High School

ENGLISH

1009320 Creative Writing 1
 ENG030AD Summit Creative Writing

1009330 Creative Writing 2
 ENG030BD Summit Creative Writing

1001310 English 1
 ENG108AE2/BE2 Summit English 9 FL

1001320 English Honors 1
 ENG109AE2/BD Summit English 9 Honors FL

1001340 English 2
 ENG208AE2/BE2 Summit English 10 FL

1001350 English Honors 2
 ENG209AE2/BD Summit English 10 Honors FL

1001370 English 3
 ENG306A/B Summit American Lit FL

1001380 English 3 Honors
 ENG304AD/BD Summit American Lit Honors FL

1001400 English 4
 ENG403A/B English 4 FL

1001410 English 4 Honors
 ENG404A/B English 4 Honors FL

MATH

1200370 Algebra 1-A
 MTH107AD/BD Summit Developmental Algebra

1200380 Algebra 1-B
 MTH207AD/BD Summit Continuing Algebra

1200310 Algebra 1
 MTH128AD/BD Summit Algebra 1 FL

1200320 Algebra 1 Honors
 MTH129AD/BD Summit Algebra 1 Honors FL

1206310 Geometry
 MTH208AD/BD Summit Geometry FL

1206320 Geometry Honors
 MTH209AD/BD Summit Geometry Honors FL

1200330 Algebra 2
 MTH308AD/BD Summit Algebra 2 FL

1200340 Algebra 2 Honors
 MTH309AD/BD Summit Algebra 2 Honors FL

1207300 Liberal Arts Mathematics 1
 MTH332AD/BD Summit Integrated Math

SCIENCE

2003310 Physical Science
 SCI102AD/BD Summit Physical Science

2003320 Physical Science Honors
 SCI102A/ SCI102B Summit Physical Science Honors FL

2001310 Earth/Space Science
 SCI113AD/BD Summit Earth Science

2001320 Earth/Space Science Honors
 SCI114AD/BD Summit Honors Earth Science

2000310 Biology 1
 SCI203AD/BD Summit Biology

2000320 Biology 1 Honors
 SCI204AD/BD Summit Honors Biology

2003340 Chemistry 1
 SCI303AD/BD Summit Chemistry

2003350 Chemistry 1 Honors
 SCI304AD/BD Summit Honors Chemistry

2003380 Physics 1
 SCI403AD/BD Summit Physics

2003390 Physics 1 Honors
 SCI404AD/BD Summit Honors Physics

1202340 Pre-Calculus Honors
 MTH403AD/BD Summit Pre-Calculus/Trigonometry

1210300 Probability & Statistics with Applications Honors
 MTH413AD/BD Summit Probability and Statistics AR

1202300 Calculus Honors
 MTH433AD/BD Summit Calculus

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SOCIAL STUDIES

2107300 Psychology 1
HST020D Psychology

2102310 Economics
HST413D Summit US and Global Economics

2102320 Economics Honors
***HST414D Summit US and Global Economics Honors FL

2109310 World History
HST103AD/BD Summit World History

2109320 World History Honors
HST104AD/BD Summit Honors World History

2104320 Global Studies
HST203AD/BD Summit Modern World Studies

2100310 United States History
HST303AD/BD Summit US
History

2100320 United States History Honors
HST304AD/BD Summit Honors US
History

2106310 United States Government
HST403D US Summit Government and Politics

2106320 United States Government Honors
***HST404D Summit US Government and Politics Honors FL

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WORLD LANGUAGES

0708340 Spanish 1
WLG100A/B Spanish I

0701320 French 1
WLG110A/B French I

0702320 German 1
WLG120A/B German I

0711300 Chinese 1
WLG140A/B Chinese I

0708350 Spanish 2
WLG200A/B Spanish II

0701330 French 2
WLG210A/B French II

0702330 German 2
WLG220A/B German II

0711310 Chinese 2
WLG240A/B Chinese II

0708360 Spanish 3 Honors
WLG300A/B Spanish III

0701340 French 3 Honors
WLG310A/B French III

ELECTIVES

1506320 HOPE-Physical Education Variation
OTH010D Summit Skills for Health
OTH020AD/BD Summit Physical Education

1501390 Comprehensive Fitness
OTH020AD/BD Summit Physical Education

1501300 Personal Fitness
OTH020B Summit Physical Education (cannot be used in conjunction with HOPE)

1700380 Career Research and Decision Making
CAR100 Summit Career Planning

800330 Personal Social and Family Relationships
OTH090 Summit Life Skills

8500355 Nutrition and Wellness
OTH080 Summit Nutrition and Wellness

0108370 Digital Art Imaging 1
TCH028 Digital Arts I
TCH029 Digital Arts II (Both - FL course is yeartong. TCH028 and TCH029 are each semester long.)

1300340 Music of the World
ART020A/B Summit Music Appreciation

0100310 Introduction to Art History
ART040 Summit Art Appreciation

CREDIT RECOVERY

1200315 Algebra I for Credit Recovery
MTH126A/B Summit Algebra 1

1200335 Algebra 2 for Credit Recovery
MTH306A/B Summit Algebra 2

1001315 English 1for Credit Recovery
ENG106A/B Summit English 9

1001345 English 2 for Credit Recovery
ENG206A/B Summit English 10

1206315 Geometry for Credit Recovery
MTH206A/B Summit Geometry

2000315 Biology for Credit Recovery
SCI206AE3/BE3 Summit Biology

2109315 World History for Credit Recovery
HST106A/B Summit World History

ADVANCED PLACEMENT

0708400 Advanced Placement Spanish Language & Culture
WLG500A/B AP(R) Spanish Language and Culture

0701380 Advanced Placement French Language and Culture
WLG510A/B AP(R) French Language and Culture

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Florida Recommended Courses - Middle School

ENGLISH

1001010 M/J Language Arts 1
ENG06AXE3/ENG06BXE3 Summit Grade 6 Language Arts

1001020 M/J Language Arts 1, Advanced
***ENG06A/B Summit M/J Language Arts 1 FL Advanced

1001040 M/J Language Arts 2
ENG07AXE3/ ENG07BXE3 Summit Grade 7 Language Arts

1001050 M/J Language Arts 2, Advanced
***ENG07A/B Summit M/J Language Arts 2 FL Advanced

1001070 M/J Language Arts 3
ENG08AXE3/ENG08BXE3 Summit Grade 8 Language Arts

1001080 M/J Language Arts 3, Advanced
***ENG08A /B Summit M/J Language Arts 3 FL Advanced

MATH

1205010 M/J Grade 6 Mathematics
MTH06A/B Summit Math 6 FL

1205020 M/J Accelerated Mathematics Grade 6
***MTH06A/B Summit Math 6 Advanced FL

1205040 M/J Grade 7 Mathematics
MTH07A/B Summit Math 7 FL

1205050 M/J Accelerated Mathematics Grade 7
***MTH07A/B Summit Math 7 Advanced FL

1205070 M/J Grade 8 Pre-Algebra
MTH08A/B Summit Pre-Algebra 8 FL

SOCIAL STUDIES

2106010 M/J Civics
SOC07A/B Summit Intermediate Civics and Economics

2106020 M/J Civics, Advanced
***SOC07A/B Summit Int Civics and Economics Adv FL

2100010 M/J United States History
SOC08A/B Summit American History Before 1865

2100020 M/J United States History Advanced
***SOC08A/B Summit Amer History Before 1865 Adv FL

2109010 M/J World History
HST07A/B Summit MS World History I FL

2109020 M/J World History Advanced
***HST07A /B Summit World History I FL Advanced

***Requires supplemental activities, lessons, or resources from teachers. For Advanced or Honors courses, we recommend teachers add an Advanced or Honors project.

SCIENCE

2002040 M/J Comprehensive Science 1
SCI06A/SCI06B Comprehensive Science 1

2002050 M/J Comprehensive Science 1Advanced
SCI06A/SCI06B Comprehensive Science 1

2002070 M/J Comprehensive Science 2
SCI07A/SCI07B Comprehensive Science 2

2002080 M/J Comprehensive Science 2 Advanced
SCI07A/SCI07B Comprehensive Science 2

2002100 M/J Comprehensive Science 3
SCI08A/SCI08B Comprehensive Science 3

2002110 M/J Comprehensive Science 3 Advanced
SCI08A/SCI08B Comprehensive Science 3

2001010 M/J Earth/Space Science
SCI116A/BE2 Summit Earth Science

2001020 M/J Earth/Space Science, Advanced
***SCI06A/ B Summit Earth Science FL Advanced

2000010 M/J Life Science
SCI07A/SCI07B Summit Life Science

2000020 M/J Life Science, Advanced
***SCI07A/ B Summit Life Science FL Advanced

2003010 M/J Physical Science
SCI06AE3/SCI068BE3 Summit Physical Science

2003020 M/J Physical Science, Advanced
***SCI08A/B Summit Physical Science FL Advanced

ELECTIVES

0701000 M/J French, Beginning
WLG MS French IA/IB

0701010 M/J French, Intermediate
WLG MS French IIA/IB

0708000 M/J Spanish, Beginning
WLG MS Spanish IA/IB

0708010 M/J Spanish, Intermediate
WLG MS Spanish IIA/IB

0100070 M/J Art in World Cultures
ART07 Summit Intermediate World Art I FL

0101005 M/J Exploring Two-Dimensional Art
ART08 Summit Intermediate World Art II FL

0100060 M/J Introduction to Art History
ART06 Summit Intermediate American Art II FL

1508000 M/J Fitness - Grade 6
OTH06 Summit Physical Fitness 6

1508060 M/J Comprehensive - Grades 6/7
OTH07 Summit Physical Fitness 7

1508070 M/J Comprehensive - Grades 7/8
OTH08 Summit Physical Fitness 8

Florida Recommended Courses – Elementary

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LANGUAGE ARTS

(Note: K-2 ELA courses are broken into multiple "stranded" courses. All recommended strands are listed below.)

5010041 Language Arts - Grade K
Handwriting - ELA Blue Summit ED - fit with district philosophy to be confirmed
Language Arts - ELA Blue Summit ED
Literature & Comprehension - ELA Blue Summit ED
Phonics - ELA Blue Summit ED

5010042 Language Skills - Grade 1
Handwriting & Writing Skills - ELA Green Summit ED - fit with district philosophy to be confirmed
Literature & Comprehension - ELA Green Summit ED
Phonics & Spelling - ELA Green Summit ED
Vocabulary - ELA Green Summit ED

5010043 Language Arts - Grade 2
Handwriting - ELA Orange Summit ED - fit with district philosophy to be confirmed
Literature & Comprehension - ELA Orange Summit ED
Spelling - ELA Orange Summit ED
Vocabulary - ELA Orange Summit ED
Writing Skills - ELA Orange Summit ED

5010044 Language Arts - Grade 3
ELA 3 Summit ED

5010045 Language Arts - Grade 4
ELA 4 Summit ED FL

5010046 Language Arts - Grade 5
ELA 5 Summit ED FL

SOCIAL STUDIES

5021020 Social Studies Grade K
Social Studies K Summit ED NC

5021030 Social Studies Grade 1
Social Studies 1 Summit ED NC

5021040 Social Studies Grade 2
Social Studies 2 Summit ED NC

5021050 Social Studies Grade 3
History 3 Summit ED

5021060 Social Studies Grade 4
State History Summit FL

5021070 Social Studies Grade 5
Early American History 5 Summit ED

MATH

5012020 Mathematics - Grade K
Math+ Blue Summit ED

5012030 Mathematics - Grade 1
Math+ Green Summit ED
5012040 Mathematics - Grade 2
Math+ Orange Summit ED

5012050 Mathematics - Grade 3
Math 3 Summit ED
5012060 Mathematics - Grade 4
Math 4 Summit ED FL
5012070 Mathematics - Grade 5
Math 5 Summit ED FL

SCIENCE

5020010 Science - Grade K
Science K Summit ED NG

5020020 Science - Grade 1
Science 1 Summit ED NG

5020030 Science - Grade 2
Science 2 Summit ED NG

35020040 Science - Grade 3
Science 3 Summit ED FL

5020050 Science - Grade 4
Science 4 Summit ED FL

5020060 Science - Grade 5
Science 5 Summit ED FL

ELECTIVES

5001010 Art - Grade K
Art K Summit

5001020 Art - Grade 1
Art 1 Summit

5001030 Art - Grade 2
Art 2 Summit

5001040 Art - Intermediate 1
Art 3 Summit

5001050 Art - Intermediate 2
Art 4 Summit

5001060 Art - Intermediate 3
Early American Art Summit

5015020 Physical Education - Grade K
PE K-2 Summit

5015030 Physical Education - Grade 1
PE K-2 Summit

5015040 Physical Education - Grade 2
PE 3 Summit

5015050 Physical Education - Grade 3
PE 3 Summit

5015060 Physical Education - Grade 4
PE 4 Summit

5015070 Physical Education - Grade 5
PE 5 Summit

ADDITIONAL K12 COURSES (Included in Price Point)

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High School

Business Accounting 1(0.5)
Business Accounting 2 (0.5)
Achieving Your Career and College Goals (0.5)
Algebra 2 Bridge (1)
Algebra I Bridge (1)
Anthropology (0.5)
Business and IT Explorations (0.5)
Business and Marketing Explorations (0.5)
Career Planning (0.5)
Civics (0.5)
Computer Literacy (0.5)
Consumer Math (1)
Contemporary World issues (1)
Credit Recovery US Government and Politics (0.5)
Credit Recovery American Literature (1)
Credit Recovery British and World Literature (1)
Credit Recovery Chemistry (1)
Credit Recovery Earth Science (1)
Credit Recovery US and Global Economics (0.5)
Credit Recovery Geography (1)
Credit Recovery Health (0.5)
Credit Recovery Integrated Mathematics I (1)
Credit Recovery Integrated Mathematics II (1)
Credit Recovery Integrated Mathematics III (1)
Credit Recovery Modern US History (1)
Credit Recovery Physical Education (0.5)
Credit Recovery Physical Science (1)
Credit Recovery Spanish I (1)
Credit Recovery US History (1)
Credit Recovery Modern World Studies (1)
English Foundations I (1)
English Foundations II (1)
Entrepreneurship 1 (0.5)
Entrepreneurship 2 (0.5)
Environmental Science (0.5)
Fine Art (1)
Forensic Science (0.5)
Geography (1)
Geometry Bridge (1)
Grammar and Composition (1)
Green Design and Technology (0.5)
Image Design and Editing (0.5)
Integrated Mathematics I (1)
Integrated Mathematics II (1)
Integrated Mathematics III (1)
Introductory Finance (0.5)
IT and Manufacturing Explorations (0.5)
IT Explorations (0.5) Journalism (0.5)
Latin I (1)
Latin II (2)
Marketing 1 (0.5)
Marketing 2 (0.5)
Math Foundations I (1)
Math Foundations II (1)
Modern US History (1)
Modern US History Honors (1)
Personal Finance (0.5)
Personal Fitness I (0.5)
Personal Fitness II (0.5)
Personal Health (0.5)
Practical Math (1)
Public Speaking (0.5)
Reaching Your Academic Potential (0.5)
Web Design (0.5)

Middle School

Summit Math 8 (1)
Intermediate Global Studies (1)
American History Since 1865 (1)
World History 2 (1)
Health 6 (1)
Health 7 (1)
Health 8 (1)
Computer Literacy (0.5)
Intermediate American Art 1(1)
MS Chinese I (1)
MS Chinese II (1)
MS German I (1)
MS German II (1)
MS Latin I (1)
MS Latin II (1)

Elementary

Beginning Chinese I (1)
Intermediate Chinese I (1)
Beginning French I (1)
Intermediate French I (1)
Intermediate French II (1)
Intermediate German I (1)
Beginning Spanish I (1)
Beginning Spanish II (1)
Intermediate Spanish I (1)
Intermediate Spanish II (1)

Miami-Dade County Public Schools Office of the Inspector General

EXHIBIT 2

**Email dated 8/21/20 from Dr. Diaz
(2 pages)**

**Final Report
IG-20-0008-SI**

Izquierdo, Marie

From: Feild, Gisela F.
Sent: Wednesday, September 2, 2020 1:18 PM
To: Izquierdo, Marie
Subject: FW: k12 Agreement
Attachments: Miami-Dade_Public_School_K12 FE Executed Contract[2].pdf; Waiver of Minimum Contract Standards. K12 mf[2].pdf

Gisela Feild
Administrative Director
Assessment, Research and Data Analysis
305--995-2943

From: Diaz, Sylvia J. <SDiaz@dadeschools.net>
Sent: Friday, August 21, 2020 5:44 PM
To: DE BARROS, MARIO A <mdebarros@dadeschools.net>; Steiger, Ron Y. <RSteiger@dadeschools.net>
Cc: Feild, Gisela F. <GFeild@dadeschools.net>; Baker, Eugene P. <GBaker@dadeschools.net>
Subject: FW: k12 Agreement

Here is the executed contract. I haven't returned a copy to K12.

Top of page 2 - Integration services to be completed by date – Sept 8. I was stressing over that when I read it last night but I don't think it is an issue. Gisela and Gene feel similarly.

Dr. Sylvia J. Diaz

**Assistant Superintendent
Innovation and School Choice**
1501 N.E. Second Avenue, Suite 337
Miami, FL 33132

Office: 305-995-7602
Fax: 305-995-7610

sdiaz@dadeschools.net | www.dadeschools.net Giving Our Students a World of Choices



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From: "MACY, KAREN J" <kmacy@dadeschools.net>
Date: Tuesday, August 18, 2020 at 10:01 AM

To: SYLVIA DIAZ <SDiaz@dadeschools.net>

Subject: k12 Agreement

Contract and Waiver are signed

Miami-Dade County Public Schools Office of the Inspector General

EXHIBIT 3

**Emails dated 8/30/2020 between Ms. Mendez-Cartaya and Ms. de las Pozas
(1 page)**

**Final Report
IG-20-0008-SI**

de las Pozas, Ann

From: Mendez-cartaya, Iraida R.
Sent: Sunday, August 30, 2020 4:47 PM
To: de las Pozas, Ann; Mendez-cartaya, Iraida R.
Cc: Jones-oneal, Andrea M.; Steiger, Ron Y.
Subject: RE: K12 is providing funding to FNEI for teacher incentives

Yes.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "de las Pozas, Ann" <adelaspozas@dadeschools.net>
Date: 8/30/20 3:37 PM (GMT-05:00)
To: "Mendez-cartaya, Iraida R." <IMendez@dadeschools.net>
Cc: "Jones-oneal, Andrea M." <AMJones@dadeschools.net>, "Steiger, Ron Y." <RSteiger@dadeschools.net>
Subject: Re: K12 is providing funding to FNEI for teacher incentives

Iraida,

Sounds good! We are just purchasing the gift cards? Someone in the District will track who they go to and how they are distributed? Please let me know.

Thanks!

Ann

Sent from my iPhone

On Aug 30, 2020, at 8:10 AM, Mendez-cartaya, Iraida R. <IMendez@dadeschools.net> wrote:

Andy/ Ann- We need to be prepared to purchase significant # of gift cards.

Ron, I need accounting to lift my monthly and daily balance to do this.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

Miami-Dade County Public Schools Office of the Inspector General

EXHIBIT 4

**Email dated 9/4/2020 from Ms. Mendez-Cartaya
(2 pages)**

**Final Report
IG-20-0008-SI**

adelaspozas@giveourstudentstheworld.org

From: Mendez-cartaya, Iraida R. <IMendez@dadeschools.net>
Sent: Friday, September 4, 2020 9:24 AM
To: Ann de las Pozas
Subject: RE: pls provide an invoice from the foundation to me tomorrow


The number is 15,761 teachers

Send to Nate Davis at nate.davis@k12.com

Cc me. Pls

*Iraida R. Mendez-Cartaya, Associate Superintendent
Miami-Dade County Public Schools
1450 NE 2nd Avenue, Suite 931
Miami, Florida 33132*

*Office 305 995-2532
Mobile- 305 606-6553
imendez@dadeschools.net*

M-DCPS COUNTS 
SEPTEMBER 30, 2020

From: Ann de las Pozas <adelaspozas@giveourstudentstheworld.org>
Sent: Thursday, September 3, 2020 5:48 PM
To: Mendez-cartaya, Iraida R. <IMendez@dadeschools.net>
Subject: Re: pls provide an invoice from the foundation to me tomorrow

CAUTION: This email originated outside of dadeschools.net. Do not click on links or attachments unless you are expecting the email or recognize the sender and know the message is safe.

Okay, will do. I will need the K 12 Address and an email address.

Sent from my iPhone

On Sep 3, 2020, at 5:28 PM, Mendez-cartaya, Iraida R. <IMendez@dadeschools.net> wrote:

To K12
From FNEI

\$100 per teacher that completed the class connect

I will send you the number tonight.

*Iraida R. Mendez-Cartaya, Associate Superintendent
Miami-Dade County Public Schools
1450 NE 2nd Avenue, Suite 931
Miami, Florida 33132*

*Office 305 995-2532
Mobile- 305 606-6553
imendez@dadeschools.net*

<image001.jpg>

Miami-Dade County Public Schools Office of the Inspector General

EXHIBIT 5

**Email dated 9/4/2020 from Ms. de las Pozas with K12 Invoice
(5 pages)**

**Final Report
IG-20-0008-SI**

From: Davis, Nate <nate.davis@k12.com>
Sent: Friday, September 4, 2020 7:29 PM
To: Ann de las Pozas
Cc: Marie Izquierdo
Subject: Re: Invoice 2020-200 from FOUNDATION FOR NEW EDUCATION INITIATIVES, INC.

Hi Ann.

When our offices open on Monday, I will expedite the payment process to get the payment sent.

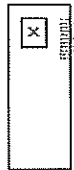
I am confirming our committed and will make sure this contribution is done.

Nate Davis

Sent from my iPhone

On Sep 4, 2020, at 7:13 PM, Ann de las Pozas <adelaspozas@giveourstudentstheworld.org> wrote:

INVOICE 2020-200



Dear Mr. Davis,

Thank you for your generous donation in support of our virtual learning community at Miami-Dade County Public Schools. The enclosed invoice represents the fulfillment of your commitment to purchase \$100 gift cards for teachers providing online learning during this school year.

Sincerely,

Ann de las Pozas
Executive Director
Foundation for New Education Initiatives, Inc.

\$1,570,000.00

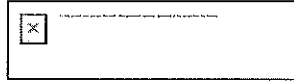
Print or save

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1450 NE 2nd Ave. Miami, FL 33132 US

305-995-1516

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Ann Stith de las Pozas

Executive Director

The Foundation for New Education Initiatives, Inc.

1450 NE 2nd Avenue, S/931

Miami, FL 33132

305-995-7317

www.GiveOurStudentsTheWorld.org

<Invoice_2020200_from_FOUNDATION_FOR_NEW_EDUCATION_INITIATIVES_INC.pdf>

INVOICE 2020-200

<image001.jpg>

Dear Mr. Davis,

Thank you for your generous donation in support of our virtual learning community at Miami-Dade County Public Schools. The enclosed invoice represents the fulfillment of your commitment to purchase \$100 gift cards for teachers providing online learning during this school year.

Sincerely,

Ann de las Pozas
Executive Director
Foundation for New Education Initiatives, Inc.

\$1,570,000.00

[Print or save](#)

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305-995-1516

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<image002.jpg>

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<image003.jpg>

<image003.jpg>

Ann Stith de las Pozas

Executive Director

The Foundation for New Education Initiatives, Inc.

1450 NE 2nd Avenue, S/931

Miami, FL 33132

305-995-7317

www.GiveOurStudentsTheWorld.org

<Invoice_2020200_from_FOUNDATION_FOR_NEW_EDUCATION_INITIATIVES_INC.pdf>

<FNEI IRS EMPLOYER ID CERTIFICATE.pdf>

--

Ann Stith de las Pozas

Executive Director

The Foundation for New Education Initiatives, Inc.

1450 NE 2nd Avenue, S/931

Miami, FL 33132

305-995-7317

1450 NE 2nd Ave.
Miami, FL 33132 US
305-995-1516

FOUNDATION for
NEW
EDUCATION
INITIATIVES, Inc.
Supporting More Kids, One by One™

2020-200

BILL TO
K12, Inc.
Mr. Nathaniel A. Davis
Chief Executive Officer

DATE
09/04/2020

PLEASE PAY
\$1,570,000.00

| DATE | ACTIVITY | DESCRIPTION | QTY | RATE | AMOUNT |
|------|-------------------------------------|---------------------------------|--------|--------|--------------|
| | Virtual Learning Teacher Support | Donation for Teacher Gift Cards | 15,700 | 100.00 | 1,570,000.00 |

Thank you for supporting the Foundation for New Education
Initiatives.

TOTAL DUE

\$1,570,000.00

THANK YOU.

Make all checks payable to:
The Foundation for New Education Initiatives, Inc.
1450 NE 2nd Avenue, Room 931
Miami, FL 33132

Tax ID: 61-1566768

If you have any questions concerning this invoice, contact:

Ann de las Pozas
305-995-7317

adelaspozas@giveourstudentstheworld.org

Miami-Dade County Public Schools Office of the Inspector General

EXHIBIT 6

**K12 letter to the School Board of Miami-Dade County
(2 pages)**

**Final Report
IG-20-0008-SI**

Nate Davis

CEO and Chairman of the Board

Office: 703.483.4599

Email: Nate.Davis@K12.com



Board of Miami-Dade County Public Schools:

K12 wants to express our regret for the series of events that caused Miami-Dade County Public School students, families, teachers, and administrators to have a difficult start to this school year during these unprecedented times. As previously reported by the Miami-Dade administration, a number of external factors caused a disruption in service for school this past week. K12 recognizes that our service delivery issues further contributed to the difficulties experienced.

Looking ahead, we believe that Superintendent Carvalho's vision of a blended and flexible school plan is still a viable and innovative option. This plan would have one digital curriculum that is aligned to, and satisfies, Florida Department of Education requirements, an integrated single sign on capability, and flexibility for teachers to insert and remove content so they can customize their instruction. This is a capability that no one has ever done at the scale of Miami-Dade's size. Historic changes like this are often not easy, and almost never come without some challenges.

We sought to partner with Miami-Dade because of its sterling reputation, capabilities, and the strong relationship we have had since 2011. It is based on this history that we agreed to accept Superintendent Carvalho's challenge to work on all of the integration and teacher training that was needed prior to finalizing our contract with the school district, and before any payments were made.

Although we all knew the 6-week timeframe was a challenge, we owed it to the students, their families, and their teachers to deliver. And while in any complex, highly scaled solution there will be ongoing issues to solve, we still regret we have not been able to get to where the Miami-Dade administration wants us to be. To this day, we continue to make changes to resolve issues and make improvements that Miami-Dade wants to see and will continue to do so as their partner. Our teams quickly stabilized the platform that supports kindergarten through fifth grade students, however the platform that supports students in grades six through twelve needed more work, and clearly did not handle Miami-Dade's requirements from the onset. The K12 team has worked around the clock in concert with the Miami-Dade team to address our issues, and although there are more functional changes that need to be made, performance is improving each day.

Our initial performance clearly hurt Miami-Dade's and K12's reputation and more importantly, caused confusion with teachers, frustration for parents, and delayed student learning. However, we remain committed to the Miami-Dade School District and their plans to provide an innovative solution for seamless integration between online and in building instruction using the K12 products and services to

Nate Davis

CEO and Chairman of the Board

Office: 703.483.4599

Email: Nate.Davis@K12.com



the extent deemed appropriate. This commitment also extends to database design upgrades and other changes that satisfy Miami-Dade's high standards of availability and quality for students and teachers.

Throughout our twenty-year history we have provided services for nearly two million students with an integrated solution that includes some of the best content and interactive curriculum in the industry. Unfortunately, COVID-19 has stretched us, our partners, and our customers, with unprecedented demands on how we all operate. Those challenges have made working in a completely virtual work environment that much more difficult. Nonetheless, we are fully committed to providing a customized, planned solution to the students and teachers of Miami-Dade and to help the school district demonstrate to the world the continued innovation and quality they are known for.

Sincerely,

A handwritten signature in blue ink that reads "Nate".

Nate Davis

K12 CEO & Chairman of the Board

Miami-Dade County Public Schools Office of the Inspector General

APPENDIX A

Response from Superintendent Carvalho
(5 pages)

Final Report
IG-20-0008-SI

Gelber Schachter & Greenberg

Dan Gelber
Direct: (305) 728-0954
E-mail: dan@gsgpa.com

SunTrust International Center
One Southeast Third Avenue
Suite 2600
Miami, Florida 33131
Telephone: (305) 728-0950

May 21, 2021

Via Email

Honorable Felix Jimenez
Office of the Inspector General
Miami-Dade County Public Schools
601 NW 1st Court, 22nd Floor
Miami, Florida 33136

RE: OIG Draft Report – SB20-0008-SI

Dear Mr. Jimenez:

Superintendent Alberto Carvalho has asked our law firm to analyze and offer our thoughts on your *Review of K12's \$1.57 Million Donation to the Foundation for New Education Initiatives*. On his behalf, we thank you for your thorough report. We believe it is properly within your jurisdiction to review this matter, and we welcome your suggestions on ways to improve the administration of school operations. As you know, Superintendent Carvalho supported the creation of your Office and fully appreciates the need for everyone to embrace its oversight.

By way of summary, we agree with your factual report of events, the relevant timeline, and your extensive findings setting forth the motives and intentions of the participants, including those of Superintendent Carvalho. We note, significantly, that you correctly found that there was no violation of Florida Statutes gift rules or the attendant disclosure requirements (Section 112.3148 Florida Statutes). Similarly, you expressly found there was no violation of School Board policies regarding improper gifts, conflict of interest (*School Board Policy 1210.01*) or improper solicitation (Section 112.313(2), Fla. Stat., and *School Board Policy 1129*).

Most importantly, your investigation accurately determined that at no point and in no manner was there any connection between the award and oversight of K12's contract, and its donation to our public-school teachers. As your interviews of all the participants made clear, "[i]t is apparent from the statements of those involved that the donation was not tied to any official action to be taken by M-DCPS." (*OIG Report*, p. 30) In fact, your report confirmed that the contemporaneous conduct of K12 supported this conclusion:

There is no evidence that K12 was coerced or pressured for the donation. That is evident not just from the statement of its CEO to the OIG, but also K12's own actions at the time. During the first and second weeks of school, when it was obvious that its contract would not be executed, K12 repeated its commitment to donate the funds and then did. (*OIG Report*, p. 31)

The report seems to recognize the highly unusual and unprecedented context in which these events occurred. At the time K12 made the donation, this matter was no longer in procurement. The contract had been awarded and signed, though not yet released to K12 in light of serious concerns that the Superintendent and others had about K12's performance. With the start of school days away during a time of great stress throughout the community, administrators, teachers, parents and students were scrambling to prepare for classes on a new platform that was simply not performing as promised. The Superintendent believed that this donation would be a unique opportunity to show appreciation for teachers and reward them for their extremely hard work under difficult conditions. As with other donations from outside companies for the benefit of teachers, students or the schools, it was determined that this donation should be made to the Foundation for New Education Initiatives (FNEI), which would distribute it to the teachers. FNEI is an independent foundation that, contrary to certain public reports, is not run or managed by the Superintendent, who merely serves on its board as a result of his office. *As the report recognizes, no rule in place at the time of these events precluded this donation.*

This background and the facts that you set forth undoubtedly support your ultimate finding as to the motivation and context for the donation:

The intent of the donation, that teachers be recognized for the demands required and the difficulties experienced, was expressed clearly to the OIG by all. The donation was not tied to any act or omission by M-DCPS administrators. (*OIG Report*, p. 31, emphasis added)

In brief, you found that no administrator, including Superintendent Carvalho, ran afoul of any prohibited conduct. You also made a number of thoughtful and important recommendations, many of which have already been implemented at FNEI and the School Board.

The only quarrel with your report may be one of semantics and style, rather than substance. But it is worth raising. You found that “[t]he solicitation of a donation from a vendor gives rise to the appearance of impropriety. Such solicitation was contrary to School Board Policy 1210.01.” It was based upon this finding that you recommend that FNEI return the donation. We have a different view.

The IG Should Not Find an *Appearance of Impropriety* When It Simultaneously Concludes that Nobody *Actually Acted Improperly*.

First, your very extensive investigation made clear that there was no actual violation of any applicable rule or statute. In other words, after interviewing everyone involved and reviewing every relevant document and email, the Inspector General found that there was no gift violation, no improper influence and, importantly, no conflict of interest by any M-DCPS administrator. The report does not even suggest *it is* possible there was misconduct. In the report's 35 pages the IG fully exonerates every administrator of violating any applicable rule.

This finding of an appearance of impropriety in the face of an affirmative determination that there was no actual rule violation seems contrary to the applicable standards for appearances of impropriety, as well as notions of fairness. By way of example, Florida and federal law have considered these issues in the context of recusals of judges and attorneys based on a claimed appearance of impropriety. In Florida, federal and state courts have recognized that to find an appearance of impropriety, “there must be at least a reasonable possibility that some specifically identifiable impropriety did in fact occur.” *Hicks v. State*, 468 So.2d 1045, 1046 n.2 (Fla. 3d Dist. Ct. App. 1985) (internal citations omitted); *see also, e.g., First Impressions Design & Mgmt., Inc. v. All That Style Interiors, Inc.*, 122 F. Supp. 2d 1352, 1354 (S.D. Fla. 2000); *Bammac, Inc. v. Grady*, 500 So.2d 274 (Fla. 1st Dist. Ct. App.1986). The reason for this is simple: someone can’t appear to do something improper that was not, in fact, at the time improper.

Findings of “appearances of impropriety” are discouraged except in limited contexts, and with good reason. As the late Justice Scalia observed during an oral argument in *Nevada Commission on Ethics v. Carrigan*, 131 S. Ct. 2343 (2011), “If there’s anything vaguer than [an appearance of impropriety rule] I can’t imagine what it might be.” If a body, be it a judge or ethics officer, could declare something “appeared improper” even if it wasn’t actually violative of a then-existing rule, our system of review would lack the guiderails of fairness essential to any just review. Officials would thus be left without any meaningful instructions or understanding as to what might be deemed an appearance of impropriety. This is why “appearance of impropriety” standards need be deployed carefully, especially outside the realm of judicial recusal cases.

Even if it is the opinion of the IG that no M-DCPS employee should solicit or accept a donation to FNEI from an existing school district vendor, at the time there was no such prohibition. That is critical to the analysis. Simply put, if a rule does not exist, it is impossible to have an appearance that the rule was violated. Phrased another way, an appearance of impropriety means an appearance that an actual rule was broken, even if it was not. Without an actual rule, there can be no appearance that an actual rule was broken, and thus no appearance of impropriety.

Here, as the report accurately explains, no violations occurred, the laudable purpose of the donation was clear, and no existing rules were even implicated. Accordingly, there is no basis to find that anything “appeared” wrong.

FNEI Should Be Allowed to Consider Accepting K12’s Donation to Teachers.

The Foundation for New Education Initiatives was created “to receive, hold, invest, and administer property and to make expenditures to or for the benefit of educational initiatives of Miami-Dade County Public Schools.” (*FNEI Bylaws*, p. 1) It operates under the Sunshine Law, and its Directors serve without compensation and must comply with prohibitions against conflicts of interest and self-dealing. While its Board of Directors includes the Chair of the School Board or the Chair’s designee as well as the Superintendent, it also includes representatives from the PTA and the County’s law and business communities who share a passion for elevating public education in Miami-Dade County. Again, FNEI is not the Superintendent’s fund. It is, as you know, a separate charitable entity that has on its Board whoever is serving as Superintendent.

Governmental bodies (including school systems) are regularly supported by businesses and individuals interested in advancing public causes and may even provide goods and services to the entity or municipality. And some may do business with the body whose mission they are supporting. Often those causes are intertwined with the governmental functions themselves. During this pandemic, for instance, many people and entities donated millions in care and goods to governmental agencies (including public hospitals) responsible for the care of our citizens. Food stores and individuals supplemented government-run food drives with enormous donations of foodstuffs, funds and personnel. Often the businesses or individuals donating can be vendors or do business with government entities. These donations are usually accepted by government bodies publicly and transparently.

Part of the purpose of FNEI was to fashion some suitable airspace that provides a transparent mechanism by which people and organizations in the community, even vendors and those doing business with the school district, could donate to help the children and schools for which we all care. Your recommendations, which have been largely accepted and already adopted, will help formalize that objective.

In deference to your ongoing review, neither Superintendent Carvalho nor anyone at the Foundation has moved forward with the formal acceptance of K12's donation. Indeed, the item was removed from consideration before the FNEI board. Now that the IG's work has concluded, FNEI is eager to provide teachers with this long-awaited gift.

As you have noted, at the time of the gift, there was no prohibition on receiving the donation. Further, the IG has found that "the donation was not tied to any official action to be taken by M-DCPS." The donation benefits no one other than our teachers, and the reason that it was offered – namely, to give a gift of appreciation to hard-working employees who had endured more than they should have during the incredibly difficult start of school during the pandemic – remains. Superintendent Carvalho is comfortable recusing himself from any discussion, but especially in light of the finding that no violations occurred, there is no reason in law or equity to deny the teachers of Miami-Dade County the gift that was donated. Prohibiting receipt of the gift would deprive teachers of funds they have been promised and merely send it back to K12 at the expense of our hard-working employees. The IG found that nobody did anything wrong; FNEI should therefore be allowed to do right for our teachers.

Again, we appreciate your work on this matter, your determination that no violations occurred, and all your service to the Miami-Dade County Public Schools. We simply ask that you reconsider the certain points that we have made today in light of your own thoughtful and accurate findings.

Felix Jimenez
Office of the Inspector General
May 21, 2021
Page 5

We are of course happy to discuss any of this with you. Thank you again.

Sincerely,



Dan Gelber

and



Gerald E. Greenberg

Miami-Dade County Public Schools Office of the Inspector General

APPENDIX B

**Response from Ms. de las Pozas, Executive Director, FNEI
(1 page)**

**Final Report
IG-20-0008-SI**

May 4, 2021

Mr. Felix Jimenez
Inspector General
Office of the Inspector General for M-DCPS
1501 NE 2nd Avenue, Suite 343
Miami, FL 33132

Re: OIG Draft Report – SB20-0008-SI
Review of K12's \$1.57 Million Donation to the Foundation for
New Education Initiatives, Inc.

Dear Mr. Jimenez,

I am in receipt of the above-mentioned draft report. Please note a correction on page 32, paragraph 3, in reference to who set the annual goals for FNEI. The person who established the annual goals for FNEI was Ms. de las Pozas, Executive Director of FNEI.

Thank you,



Ann de las Pozas
Executive Director

Board of Directors

Alberto M. Carvalho • Carlos Curbelo • Matthew S. Anderson • Natacha Munilla Bastian • Celia de la Llama
Alan H. Fein • David L. Marcus • Suzan McDowell • Kadisha Phelps • Peter E. Salomon • Alfred G. Smith
Wayne E. Stephens • Sandra West • Julie A.S. Williamson
1450 N.E. Second Avenue, Suite 315 • Miami, FL 33132 • 305-995-7317 • www.giveourstudentstheworld.org

Miami-Dade County Public Schools Office of the Inspector General

APPENDIX C

Response from Ms. Mendez-Cartaya
(1 page)

Final Report
IG-20-0008-SI

May 17, 2021

Mr. Felix Jimenez
Inspector General
Office of the Inspector General for Miami-Dade County Public Schools
Miami-Dade County
1501 NE 2nd Avenue, Suite 343
Miami, Florida 33132

Via email to: felix.jimenez@miamidade.gov

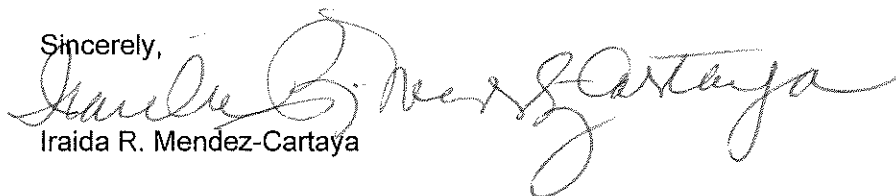
Regarding: Draft OIG Report- SB20-0008- SI, Review of K12's \$1.57 Million Donation to the Foundation for New Education Initiatives

Thank you providing me a copy of the draft report of the review of the K-12 donation to the Foundation for New Education Initiatives, Inc., that your Office prepared in response to a request by The School Board of Miami-Dade County, Florida. In response to the draft OIG Report- SB20-0008- SI, Review of K12's \$1.57 Million Donation to the Foundation for New Education Initiatives received on Tuesday, April 20, 2021, I have some comments to the report as follows:

- On page 6 of 35, the year should be 2008, not 2009. On November 2018, Agenda Item A-3, I was promoted to Assistant Superintendent, later June 9, 2014, as part of Agenda Item SP-1, I was promoted to Associate Superintendent.
- On page 32 of 35, related to the discussion on the setting Ms. De las Pozas' annual goals for the year, those goals were always tied to the expectations in her contract as well as the annual funding priorities/initiatives adopted the FNEI Board annually. Furthermore, Ms. De las Pozas would prepare and propose those annual goals. She and I would discuss those proposed goals and finalize them together. At the end of the year, Ms. de la Pozas would prepare her annual evaluation and discuss it with me.
- As you noted in your report, the Foundation has one full-time position and one part-time staff. In addition to providing secretarial support, M-DCPS provided administrative support to the Foundation. That support was provided to ensure that there are sufficient internal controls in place for the organization while maintaining a low administrative cost rate to maximize funding for programs for the students of M-DCPS.
- On page 20 of 35, I would like to expound on the reason I was under the impression that the contract with K-12 was fully executed. First, the School Board had been advised on July 29th at a virtual meeting that K-12 was going to be the provider of the online curriculum, teachers had been trained on the system for weeks, and it was the day prior to the first day of school.

Hopefully, this provides greater clarity on the matter. Thank you for the opportunity to provide comments and I do want to note that your staff was very courteous and always performed their duties with the upmost professionalism. Should you have any questions or need any additional information, please feel free to contact me.

Sincerely,



Iraida R. Mendez-Cartaya