

NEW YORK STATE COMPTROLLER

February 4, 2021

James Shultz and other residents)
of the Lockport City School District)
)
ADMINISTRATIVE PETITION TO INVESTIGATE
THE LOCKPORT CITY SCHOOL DISTRICT
FOR VIOLATIONS OF FIDUCIARY
RESPONSIBILITY

The petitioners, parents, students, and taxpayers in the Lockport City School District, request that the New York State Comptroller undertake an investigation of the Lockport City School District for possible serious violations of the district's fiduciary responsibilities to school and state taxpayers in the acquisition of its facial recognition surveillance system and related matters.

I. BACKGROUND

In March 2018 the Lockport City School District approved a contract to become the first district in the United States to deploy a facial recognition surveillance system in its school hallways. In a district with fewer than 5,000 students, the system cost the school district \$2.7 million of its \$4.2 allocation under the New York Smart School Bond Act.

Because of facial recognition's unprecedented intrusion into student privacy, the Lockport system quickly became a national issue, profiled by news media across the country including twice in the *New York Times*: [Facial Recognition Moves Into a New Front: Schools](#) and [Spying on Children Won't Keep Them Safe](#). Concerns about student privacy and its unproven use as a security tool led the New York Legislature to approve bipartisan legislation in 2020 that bans the use of facial recognition in New York schools for two years until its full implications can be fully analyzed. That legislation (A6787-D/S5140-B) was a direct response to the Lockport project and was [signed into law](#) by Governor Andrew Cuomo in December 2020.

II. ISSUES FOR INVESTIGATION

The manner in which the Lockport district adopted the system and contracted for it raises three urgent issues directly related to its fiduciary responsibility to taxpayers. These go well beyond questions of education policy that might be more appropriately addressed by the New York State Education Department (NYSED). They are directly about its contracting process and issues about the inappropriate use of school funds – all of which falls under the purview of the Office of the State Comptroller.

1. Adoption of a Major Project Based on the Direction of a Security Consultant with a Direct and Substantial Conflict of Interest

Assessing a school district's security needs is a serious matter, impacting both student safety and the appropriate use of public dollars. It is common for districts to rely on security consultants with outside

expertise as they develop their plans. And in doing so a top priority is assuring that the consultant involved has no conflict of interest or financial stake in any solution. As a leader in the security field [has written](#):

When a “consultant” also represents a product, there is a natural financial conflict of interest. Further, when “consultants” (who really should be called a salesperson) and vendors represent a product, you run the risk of seeing limited solution sets as these “advisors” will typically only present the products he or she represents.

This was precisely the case in the Lockport district’s acquisition of its \$2.7 million facial recognition system. The district staff and Board were steered from the start and throughout by a consultant with a clear and well-documented financial conflict of interest, Mr. Anthony Olivo.

According to public testimony by Mr. Olivo and then-Board President John Linderman at the March 28, 2018 meeting of the Board at which the contract was approved, Mr. Olivo had previously approached the district, representing himself as an independent security consultant. Olivo offered to conduct a district-wide threat assessment for “free.” [Olivo: “As the Board has stated, I reached out to the school district in 2012 after the tragedy at Sandy Hook and offered to do free security assessments for several districts.” [Video here](#), testimony starts at minute 38]. The district accepted that offer.

The core of Mr. Olivo’s recommendations based on that security assessment was that the district purchase a facial recognition surveillance system developed by a Canadian firm, SNTech. Despite repeated requests under FOIL, by journalists and the NYCLU, the district has refused to provide any portion of that assessment or the analysis that was basis of the district’s decision to make that purchase. It is unclear that any written analysis of any kind actually exists, something quite extraordinary in the case of a project costing \$2.7 million.

In point of fact, Mr. Olivo was not an independent consultant but SNTech’s U.S. distributor. Out of public view he was negotiating a \$450,000 licensing arrangement for SNTech with the school district, for use of the company’s facial recognition software. That licensing agreement specifically names Mr. Olivo as the company’s distributor and was obtained by the New York Civil Liberties Union under the New York Freedom of Information Act. It can be viewed [here](#). The agreement was never executed because the district instead chose to roll it into one overall contract for the system with Ferguson Electric Construction Company, Inc. The school district has also refused to release that contract as well.

Despite repeated requests by members of the community and the media, the school district has refused to disclose what that licensing agreement eventually cost the district and what portion of it went to Mr. Olivo in exchange for his role in securing the Lockport contract for SNTech. Nonetheless, his financial conflict of interest was both direct and substantial and well-known to the district prior to its execution of the contract. We believe that the district’s substantial reliance on technical advice from a consultant with such a clear conflict of interest is in violation of its fiduciary responsibilities.

2. The Absence of a Legitimate and Fair Competitive Bidding Process

One of the most important requirements of school district contracting with outside vendors is the need for a fully competitive and transparent bidding process. This is a key protection against inside dealing of district contracts to vendors with personal or inappropriate connections with district staff and leadership. It also serves to assure maximum taxpayer benefit at the lowest cost. This is especially the case for a system as expensive as Lockport's facial recognition surveillance system. District officials continue to claim that they used a competitive bidding system for the acquisition of the facial recognition system. As recently as the district's January 20, 2021 Board of Education meeting, Board President, Karen Young, said publicly: "The Aegis system [SNTech's facial recognition software] was purchased through a competitive bidding process." [Video viewable [here](#) at 1 hour 16 minutes.]

However, a series of school district documents obtained under FOIL clearly indicate that this was not the case in fact. One of the district documents that supposedly proves that a competitive bidding process took place is a [June 16, 2016 Request for Information](#) circulated on the district's behalf by one of its contractors, ECC Technologies. The ROI asked interested companies to send in offers of what they could provide, and specifically required that their proposals offer the same functions as SNTech's proprietary Aegis system. It gave competing firms only four days to respond.

More importantly, six months prior to that ROI, the district had already pledged in writing to give the contract to Mr. Olivo and SNTech. On January 16, 2016 Assistant Superintendent Deborah Coder mailed a formal [Letter of Intent](#) to Mr. Olivo, notifying him, "We intend to acquire the SNTech product." In point of fact, the district's LOI to SNTech was also written for the district directly by Mr. Olivo, SNTech's U.S. distributor, just two days prior. On January 14, 2016, he emailed Ms. Coder: "Hi Debbie. It was great to see you as always! Attached is the Letter of Intent we discussed. Please place it on your letterhead and return it at your earliest convenience."

These documents indicate that the school district did not make the purchase of its expensive facial recognition system based on a legitimate and transparent competitive bidding process. It has never released the bids it received, a listing of them, or the analysis upon which it selected SNTech as the winning bid. In fact, it seems possible that none of this actually exists in written form. According to all documents and appearances it seems clear that the district steered its purchase from the start to Mr. Olivo and SNTech, based on Mr. Olivo's suspect role as the district's outside security expert. This too constitutes a gross violation of the district's fiduciary responsibilities to school and state taxpayers.

3. Use of School District Resources to Investigate a Parent Who Raised Issues About the Project

Shortly before the Lockport Board of Education voted its final approval of the facial recognition surveillance project in March 2018, a parent in the district, James Shultz (petitioner) raised questions about the project in an [opinion article](#) in the *Lockport Union-Sun & Journal* and spoke at the Board's public meeting on March 28 of that year (meeting minutes [here](#) and video of the meeting [here](#)). The school district responded by launching an investigation into Mr. Shultz's personal background, using school resources, and in collaboration with Mr. Olivo, who was also a private investigator under district contract at the time.

This inappropriate investigation is documented in two ways. The first is a May 9 email exchange (obtained under FOIL and included as Annex One) between Mr. Olivo and Robert LiPuma, the district technology director and the project's chief advocate. In that exchange the two discuss their investigation into Mr. Shultz's personal background, including where he went to college and with whom, his employer, and other personal information. Olivo writes that his "intelligence team" had done some digging. "Here is some information that may be of interest to you." LiPuma replies, "Thanks Tony, great information." The email clearly shows that Mr. LiPuma was participating in an investigation into a parent on school district time and using school district email (and likely on a district computer).

In fact, in a subsequent meeting in September 2018, between district staff and a reporter and editor of the *Lockport Union-Sun & Journal* newspaper, Mr. LiPuma and Ms. Coder openly boasted about their investigation into Mr. Shultz, in an apparent effort to undermine his credibility with the paper. Attached is a partial transcript (Annex Two) of a recording of that interview. Mr. LiPuma tells the paper, "There is a ton of information on Jim Shultz." Ms. Coder adds, "There is a ton out there." These district investigations into a parent, using district resources, were also well-known to district superintendent Michelle Bradley who was present during the interview.

The act of a public school district using school district time and resources to investigate a parent for the offense of asking reasonable questions about a district project is a gross violation of democratic principles. More directly for the purposes of this request, it constitutes a violation of the district's fiduciary responsibility to spend the public's resources in a prudent and appropriate manner. The district has offered no justification of its investigation into a parent, nor is it clear this is an isolated incident.

III. THE REFUSAL OF THE SCHOOL DISTRICT TO RESPOND TO QUESTIONS FROM THE COMMUNITY

The fiduciary irregularities and questions surrounding the Lockport district's facial recognition surveillance project have been the subject of community concern for three years and at every step the district staff and Board of Education have refused transparency. Requests for basic information – from residents, from the national media, and others – have been met with ongoing refusal. The district consistently demands that requests from citizens be submitted under FOIL and its FOIL responses have frequently been incomplete. It has also shielded some key information from the FOIL process by the ways in which the district has structured its contracts with the vendors involved.

As a final resort, more than 100 members of the Lockport community – parents, students, teachers and taxpayers – formally petitioned the Board of Education in January 2021 (attached as Annex Three), calling for specific answers to some of the questions and issues raised here. At its January 20 public meeting the Board refused to reply to those questions in any direct way and instead read a statement that was unresponsive (viewable [here](#) at 1 hour 13 minutes).

IV. AUTHORITY OF THE NEW YORK COMPTROLLER TO INVESTIGATE

The Office of the New York State Comptroller, through its Division of Local Government and School Accountability, has the clear authority and mandate to audit the fiscal and other activities of New York school districts, "to ensure that State and local governments use taxpayer money effectively and

efficiently to promote the common good.” The Comptroller’s Office conducted 76 such audits and investigations into New York school districts in 2020. The issues raised in this petition certainly rise to the level of warranting further investigation to determine whether the Lockport district’s actions, of both its Board of Education and staff, have complied with the requirements of the school district’s fiduciary responsibilities to residents and taxpayers. Efforts to obtain the full facts in these matters – by district residents, by journalists, by the New York Civil Liberties Union and others – have been stymied by the district repeatedly.

The taxpayers of New York and of Lockport have a legal right to know if the \$2.7 million in state funds spent on this project were spent legally and in accordance with appropriate fiduciary norms and standards. New York law allows the Comptroller’s Office access to material and documentation that the school district has refused to disclose. The petitioners respectfully request that the Comptroller’s office use its authority to investigate this matter and issue a public report on its findings.

V. AUTHORITY TO SEEK ACTION FROM THE COMPTROLLER’S OFFICE

This administrative petition is respectfully submitted under the authority of [Section 204](#) of the New York State Administrative Procedure Act which states:

“On petition of any person, an agency may issue a declaratory ruling with respect to...whether any action by it should be taken pursuant to a rule.” And further, “Within thirty days of receipt of a petition with respect to paragraph (ii) of subdivision one of this section, an agency shall issue either a declaratory ruling or a statement declining to issue a declaratory ruling, unless the agency's rules provide for a different time period not to exceed sixty days from receipt of such petition.”

Filed February 4, 2021

James Shultz

A handwritten signature in black ink that reads "Jim Shultz". The signature is written in a cursive, flowing style.

Parent and Taxpayer in the Lockport City School District
11 Continental Dr. Lockport, NY
Email: jimshultz@democracyctr.org

ANNEX ONE: Email between Robertt LiPuma and Anthony Olivo on investigation of parent.

Message

From: LiPuma, Robert [rlipuma@lockportschools.net]
Sent: 5/9/2018 10:03:17 AM
To: Tony Olivo [Tony Olivo <tolivo@corporateconsultantsinvestigations.com>]
Subject: Re: Kogniz

Thanks Tony, great information.

On Wed, May 9, 2018 at 9:55 AM, Tony Olivo <tolivo@corporateconsultantsinvestigations.com> wrote:
Good morning!

Our Intelligence Team and the SN Tech Team did some competitive analysis of Kogniz. Here is some information that may be of interest to you;

[REDACTED]

From their pricing model it appears its [REDACTED]

Let's assume that its simply \$99 a month:

[REDACTED]

Also there is no mention of forensic unmanned search capability. Or a roadmap to geo-mapping, integration with police broadcasting, etc.

Daniel and Jed Putterman are indicated as the Co-CEO's for Kogniz. It looks like they just pump money into start up companies and get them going. There are several other technology start ups that are linked to them over the years. There's no visible connection for them to Schultz online. The Democracy Center (Schultz) is funded under some Community Initiative Group which is based in San Francisco. They provided resources to a number of non-profit entities including several related to educational activism. Putterman also went to college with Schultz.

**ANNEX TWO: Portion of Transcript of Meeting Between Superintendent Bradley,
School District Staff, and the *Lockport Union-Sun & Journal*
September 2018**

(furnished by the newspaper)

Superintendent Michelle Bradley: The parent [Jim Shultz] creates a lot of drama and it probably would help to sell newspapers, or whatever. But the initial publication in the newspaper was just a surprise to us. We hadn't heard anything from anyone about the project other than it had been approved by the state and we were continuing to move forward. And then the message was printed in the newspaper in February. We weren't expecting it.

Assistant Superintendent Deborah Coder: Tim Fenster wrote a very positive story initially. He sat here and wrote a positive story.

USJ Report Connor Hoffman: I can't comment on Tim Fenster's reporting.

Coder: No, but after that we did an okay this was objective. And then when your guest editorial or whatever starting writing that's when it starting turning negative.

Technology Director Rob LiPuma: And we talked a lot about what came up and what would be the motive for somebody to do that. This is a person who that's what he does. He writes articles and has a long history of confrontation with organizations.

Hoffman: You're talking about Jim?

LiPuma: Yes. We looked at that and deciding this is not a game we want to play. We're running a school district. We're not going to play the game. I don't know how much you know about Jim.

Coder: Look at the World Bank case.

Hoffman: What do you mean the World Bank case?

Coder: He writes a lot of editorials concerning certain passions.

LiPuma: There is a ton of information on Jim Shultz.

Coder: There is a ton out there.

LiPuma: We just decided based on our own research just not to engage.

Hoffman: How much research did you guys do on Jim Shultz?

Bradley: We're not here to talk specifically about that.

ANNEX THREE: Citizens Petition for School District Accountability: January 2021

We are parents, students, and taxpayers in the Lockport City School District. The Lockport Board of Education functions on the basis of public trust. But that trust only works if there is accountability when mistakes are made. The district's facial recognition surveillance project, now blocked under New York State law, was a mistake that cost taxpayers \$2.7 million.

As a community we have a right to answers to three sets of questions and we are calling on the Board to answer these questions, in writing and publicly on the district Web site:

1. Financial Conflicts: Who made the decision to rely on the guidance of Anthony Olivo in developing the district's security plan? When did the school district staff and board become aware that Mr. Olivo had a direct financial connection to SNTech, the company selling the facial recognition system? How was that conflict of interest brought to the Board's attention?

2. False Alerts: How many times has the district's Aegis system triggered false alerts of any kind? How many false gun alerts and how many false facial alerts? How many times has the Aegis system discovered the presence of any of the people in its data base of watched persons? How many people are in that data base and what criteria was used to put them in the system?

3. Investigating a Parent: In an email exchange obtained by the *Union-Sun & Journal*, Anthony Olivo and Rob LiPuma, the district technology director, discuss their investigation into the background of a district parent, Jim Shultz, who raised concerns about the project. That investigation included his employer, the college he went to, past associations, and other matters. In a meeting between with the newspaper's staff that included Superintendent Michelle Bradley, Assistant Superintendent Deborah Coder openly bragged about the district staff's investigation into Mr. Shultz's background. How does the district justify its use of public resources to investigate the background of a parent solely on the basis of him raising questions about a district project?

We look forward to your prompt reply to these questions.

Monica Roland

Abbie Cole

Peter Glaubitz

Maya Bradberry

Nick Doxey

Allie Morris

Debora Thompson

Ronald Cheatham

Melissa Vasser

Kim Marie

Melissa Wiley

Tara Clayton

LaToya Harrison

Paul Crane

Julie Muscato

Jennifer Fitzgerald

Lynn Nesselbush

Bill Rutland

Tom Stamp

Stephanie Sansone

Bethany Patterson

Kristin Kelley

Keenan Bull

Malorie Weibert

Valerie Scherrer

Stacey Stoll

Teria Young

Kim Sova

Mary Edmister

James Nogle

ROBIN DONOVAN

Kiki Cheatham

Christina Lopez

Jon Wiley

Shannon Patterson

Stephen Wallace

Russell Hamilton

Alice Patterson

Shaqueda Ruiz

Carol Gala

Rose Mason

Tiffany McClain

Flora Hawkins

Crystal Williams

Ikea Edwards

Susie Carsee Herring

Alexis Cheatham

Nicole Calamita

George Fritz

Anne Bald

Devon Abbott

Jack Bull

Scott Bartel

Lori Yoelker

Michael Smith

Dennis Fish

Beverly Frank

Christopher Sherman

Ashley Miller

Steven McDonough

Sheldon Yount

Richard Bertrand

Joe Rivera

Paula Travis

Lori Wiley

Carol Schubauer

Mariana Shultz

Kenward Laurey

Sara Boylan

Heather Abbott

Michael Bartlett

Nanette Fenzel

Connor Abbott

Amy Houseman

Lizzie Bull

Adam Updegraph

Suzette Bicker

Charles Garlock

Teresa Maslowski

Dawn Lambalzer

Sharon Voelker

Lucinda Goehle

Michael Ignatowski

Jeffrey Doyle

Joan Schrier

Kyle Lambalzer

Elizabeth Mulligan

Jim Reynolds

Ellen Schratz

Jim Shultz