



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**June 21, 2010**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that Therese Locher, the Director of Purchasing at the State University of New York's Buffalo State College, may have violated the state's code of ethics by insisting that OfficeMax be near-exclusively utilized as the vendor for office supplies and furniture for Buffalo State College while maintaining a personal relationship with OfficeMax sales representative William Ross. The Inspector General recommended that Buffalo State College consider appropriate disciplinary action against Locher. The Inspector General also forwarded these findings to the State Commission on Public Integrity, which has jurisdiction to adjudicate violations of Public Officer's Law § 74. The Inspector General further found that Buffalo State College's Procurement Manual is outdated and recommended that it be revised and disseminated to all relevant staff.

## ALLEGATION

On March 3, 2009, the Inspector General received an allegation that the Director of Purchasing at Buffalo State College, Therese Locher, maintains a personal relationship with OfficeMax sales representative William Ross, and precludes faculty and staff from ordering office supplies and furniture from any source other than OfficeMax.

## SUMMARY OF INVESTIGATION

### **Background**

OfficeMax provides office supplies and paper, in-store print and document services, technology products and solutions, and furniture to consumers and businesses, and is one of several vendors authorized pursuant to a statewide contract from which agencies such as Buffalo State College may purchase office supplies and furniture. Therese Locher has been the Director of Purchasing at Buffalo State College since 2003. During Locher's tenure, William Ross has been the OfficeMax sales representative to Buffalo State College. Shortly after Ross became the sales representative to Buffalo State College in 2001, he established direct Internet purchasing for the school. As a result, Buffalo State College employees are able to place orders for office supplies utilizing this system without having to submit a written purchase order as they do for other vendors.

According to Ross, Buffalo State College is one of his top 10 accounts, averaging between \$450,000 and \$500,000 in sales per year over the past eight years resulting in significant commissions for him.

### **OfficeMax as the Preferred Vendor**

A number of Buffalo State College employees reported to the Inspector General that Locher precludes faculty and staff from ordering office supplies or furniture from state-approved vendors other than OfficeMax. When the Inspector General asked the employees to provide specific examples, most stated that they could not because due to Locher's efforts over time everyone on campus has abandoned any efforts to order from another vendor. One Buffalo State College employee advised the Inspector General that Locher even chastised staff members who use state procurement cards for making small purchases of office supplies from vendors other than OfficeMax. Several Buffalo State College employees also informed the Inspector General that their procurement training consisted solely of being instructed on the use of the OfficeMax electronic ordering system. As a result, most employees believe that they are required to use OfficeMax exclusively. As one faculty member testified to the Inspector General, "It was sort of policy to convert all purchases to OfficeMax." Another employee stated, "We have a broken system, because [Locher] refuses to allow us to order from any vendor besides OfficeMax."

A Buffalo State College professor provided the Inspector General with a recent example of Locher's favoritism toward OfficeMax. He explained that after an overcharge by OfficeMax for delivery services in the summer of 2008, he and his staff attempted to order from other vendors. According to the professor, Locher questioned these orders and attempted to change them to OfficeMax. Locher's rationale, the professor stated, was that purchases from other vendors require a paper purchase order, which costs the college to process. Ultimately, the professor advised, he was able to "push an order through" from another state-approved vendor, but only after meeting with Locher and the Buffalo State College Comptroller.

When questioned by the Inspector General, Locher denied precluding Buffalo State College personnel from purchasing office supplies from state-approved vendors besides OfficeMax; however, Locher conceded that she recommends that purchases be made from OfficeMax. Locher explained to the Inspector General that OfficeMax is a state-approved vendor and the system has worked well since its implementation 20 years ago. She further claimed that the one-vendor system makes it easier to order and track deliveries, and saves processing costs.

When the Inspector General asked if she instructs employees that the electronic OfficeMax system should be used for office supply purchases, Locher responded that because the system has been in place for 12 or 13 years, everyone knows that is the way it is to be done. She admitted, however, that when new employees request access to purchase office supplies, her department arranges their purchases exclusively from OfficeMax. When queried if over the years there have been orders for materials from

other state-approved vendors, Locher replied that this has occurred very rarely because staff members typically use the on-line OfficeMax system. Locher added that if an employee insisted, he or she could use another vendor but that such a purchase requires approval from the college's Comptroller because of the additional expense created by a paper purchase order, approximately \$85.

### **The Relationship Between Locher and Ross**

Buffalo State College employees informed the Inspector General that Locher and Ross have an unusually close relationship which is perceived as the basis for Locher's granting of favored vendor status to OfficeMax. Employees stated they often saw Locher and Ross having lunch together, and that Ross regularly uses an office next to Locher's. When questioned by the Inspector General, Locher admitted she maintains a close personal friendship with Ross. She said that they have known each other for many years, and that she often speaks with him. Locher, however, denied that their relationship went beyond friendship or that their business dealings involved any untoward behavior. Locher denied ever receiving any money, kickbacks or other personal benefits from Ross for steering business to OfficeMax. The Inspector General examined, among other things, Locher's personal bank records, and found no evidence that Locher received money from Ross.

Buffalo State College employees interviewed by the Inspector General advised that for years they have complained to supervisors about Locher requiring them to order from OfficeMax and the appearance of a conflict of interest created by her relationship with Ross. In fact, in a memorandum dated February 14, 2008, Lawrence Flood, then-Dean of the Department of Political Science, raised these concerns with the Buffalo State College Provost. In his memorandum, Flood reported that over the previous several months he had received complaints regarding the Purchasing Department. Specifically, he stated that employees were complaining about the, ". . . . Insistence by Purchasing on using OfficeMax/Boise." He also reported that two employees told him that, "The OfficeMax salesperson appears to have a desk in the purchasing office...." Flood explained to the Inspector General that he wrote the memorandum because he received a "crescendo of complaints" from several sources. Flood related that he began hearing grumblings about the Purchasing Department several years prior. Initially, he believed these complaints were merely personality conflicts, but as the complaints continued he became more concerned. Flood said that employees had suggested that an inappropriate relationship existed between Locher and the OfficeMax salesperson, and that the Purchasing Department was changing orders to OfficeMax based upon this personal connection.

Stanley Kardonsky, Vice President of Finance and Management for Buffalo State College, advised the Inspector General that although he had never seen Flood's memorandum, he had heard about it. He said that he was first made aware of concerns related to Locher's relationship with Ross by Gary Phillips, then Buffalo State College Comptroller. Phillips informed Kardonsky that Ross maintained a desk in the Purchasing Department and that there existed a perception of a relationship between Locher and

Ross. Kardonsky said that he verbally instructed Phillips to have Ross vacate the office and tell them to “knock it off.” He reported that to his knowledge, his order was followed. Although he could not recall when this conversation occurred, he believed it may have been around the time Phillips left employment with Buffalo State College, in 2007 or early 2008.

James Thor, the current Buffalo State College Comptroller, stated that sometime in 2008, he also received complaints from individuals on campus regarding a relationship between Locher and Ross, and he confronted her about it. Thor related that he was also aware that Ross used a vacant office next to Locher’s, and that he has witnessed Ross there numerous times. He understood that when Ross came on campus to conduct OfficeMax business, he worked from that office. Thor reported that he instructed Locher to limit Ross’s time on campus or he would have OfficeMax assign another sale representative to the college.

Locher claimed that Ross was present at the campus frequently because she was short of staff and Ross helped with returns and other problems; nevertheless, after her discussion with Thor, Locher assigned this work to a member of her staff and, therefore, Ross was not on campus as often.

### **The Appearance of Impropriety**

Public Officers Law § 74 contains the state’s code of ethics. Sections 74(3) (f) and (h) of the Public Officers Law provide:

f. An officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position, or influence of any party or person.

h. An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

Regardless of whether an actual conflict of interest existed based upon Locher’s relationship with Ross, there exists no doubt that Locher’s actions caused a widespread reasonable impression that this relationship influenced her official duties. As one employee stated, reflecting numerous such remarks from employees recounted to the Inspector General, although she wasn’t certain about the nature of Locher’s and Ross’s relationship, it “smacked” of impropriety. A faculty member also reported that there were widespread conversations among college staff about Locher and Ross and, whether the relationship was “nefarious” or not, the close relationship created the widespread appearance of a conflict of interest. Indeed, the Inspector General confirmed, as described by Flood, a “crescendo of complaints” regarding Locher’s relationship with

Ross and her insistence that OfficeMax be used, almost exclusively, as the vendor for office supplies and furniture. It is clear that numerous Buffalo State College employees perceive that the near-exclusive use of OfficeMax is a result of Locher's close relationship with Ross including openly spending time with Ross both professionally and personally, permitting him to work from an office in the Purchasing Department, and her insistence that employees use the OfficeMax electronic ordering system.

### **Buffalo State College's Procurement Policies**

Several Buffalo State College employees reported to the Inspector General that they are not aware of the college's purchasing policies because they have never received a concise, written policy statement on the subject. As mentioned above, staff described training as including almost exclusively instruction on the OfficeMax electronic ordering system.

Thor advised the Inspector General that Buffalo State College has a "Purchasing Policy and Procedure Manual." He conceded, however, that it requires updating. Despite the information provided by Buffalo State College staff, Thor professed his belief that, in general, staff members understand the policy but acknowledged that the policies could be made clearer and that Locher needs to revise and distribute a new purchasing policy manual.

The Inspector General reviewed Buffalo State's Purchasing Policy and Procedure Manual. The manual is dated 1995 and pre-dates the OfficeMax electronic ordering system which Locher essentially required staff to utilize. With regard to OfficeMax, Thor stated, "It's okay to have a primary vendor for your office supplies and what not, but we have other state contracts out there . . . [If] there are better prices . . . it can't be ignored. It can't be just slam this down your throat . . . so if there are other options and there's good customer service . . . and it's easy to use and it's not a drag on the staff, they need to look to that."

The existing policy manual includes a provision stating that it is college policy to "ensure that minority and woman-owned business enterprises are given the opportunity to demonstrate their ability to provide the college with goods and services at competitive prices." Given the almost exclusive use of the OfficeMax electronic ordering system, no evidence exists of any effort having been made to purchase office supplies from other companies such as minority and woman owned businesses.

When asked if he believed a revised policy should include a provision that orders to state-approved vendors other than OfficeMax should be reviewed by someone other than Locher, Thor responded that the review should be based on a dollar amount threshold, and that having checks and balances in the Purchasing Department "[s]hould give the campus a little bit more comfort." Notwithstanding Thor's belated recognition of the need to implement measures to avoid this obvious appearance of impropriety, the Inspector General is troubled by Buffalo State College's historic refusal to address this situation. Locher's reasonably perceived conflict regarding OfficeMax was well known

within the college administration and the subject of numerous complaints to the administration; yet, despite these allegations from various employees including the dean of a department, no effective action was taken to remedy the situation. The Inspector General reminds Buffalo State College officials of their own ethical obligations and that pursuant to Executive Law § 55(1), Buffalo State College officials are required to “report promptly” to the Inspector General “any information concerning . . . conflicts of interest or abuse” by other state officials such as Locher.

## FINDINGS AND RECOMMENDATIONS

The Inspector General found that Buffalo State College Director of Purchasing Therese Locher’s relationship with OfficeMax sales representative William Ross and her insistence to purchase supplies and furniture almost exclusively from OfficeMax created a “reasonable basis for the impression” that Ross “can improperly influence” Locher or “unduly enjoy” her favor, in violation of Public Officers Law § 74(3)(f), and that Locher also may have violated Public Officers Law § 74(3)(h) by failing to “endeavor to pursue a course of conduct which will not raise suspicion among the public” that she is “likely to be engaged in action that are in violation of [her] trust.”

The Inspector General recommended that Buffalo State College take appropriate disciplinary action against Locher for these violations. In addition, the Inspector General referred these findings to the Commission on Public Integrity, which possesses jurisdiction to adjudicate violations of Public Officers Law § 74.

The Inspector General further found that the Buffalo State College Procurement Manual is 15 years old and outdated. The Inspector General recommended that the policy manual be updated and should include provisions expressly establishing that departments may order from any approved state vendors and clearly delineate the procedure for doing so. It was also recommended, in view of the perceived favoritism by Locher to OfficeMax, that the manual include a means by which orders submitted to state-approved vendors, other than OfficeMax, be reviewed by someone other than Locher.

Furthermore, the Inspector General recommended that Buffalo State College review its procurement practices to ensure that it adheres to its existing policy of providing minority and woman-owned business enterprises with opportunities to demonstrate their ability to provide the college with office supplies and furniture at competitive prices.

### **Response of Buffalo State College**

In response, Buffalo State College advised the Inspector General that it accepted all of the report’s findings and recommendations. Specifically, it advised that it has reorganized Procurement Department management and assigned day-to-day management responsibilities to the Assistant to the Comptroller for Procurement Services and Contracts, not Locher. The college also advised that the President’s Designee for Labor

Relations will initiate an investigation for potential disciplinary action. It further advised that the Procurement Manual is undergoing review and will address the process for ordering goods and services from other state vendors. Lastly, the college advised that it will review its procurement practices to ensure adherence to existing policy regarding minority and woman-owned businesses.