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WILLIAM C. THOMPSON, JR.
COMPTROLLER

September 13, 2009

Mr. Philip A. Berry
Panel for Educational Policy
Tweed Courthouse
52 Chambers Street
New York, N.Y. 10007

Dear Mr. Berry:

On Monday September 14, 2009, the Panel for Educational Policy will be asked to approve a number of Department of Education (DOE) contracts, including, a contract with Octagon Inc. I am writing to inform you of the history of DOE's involvement with Octagon Inc. and the flawed Snapple deal that culminated from that alliance. I urge you to reject this contract.

In 2003, the DOE awarded a marketing contract to Growth Through Sports Marketing, LLC. (GTSM). One of the three firms that comprised GTSM was, subsequently, purchased by Octagon. Nevertheless, instead of reopening the RFP process, as it should have, the DOE gave the marketing contract over to Octagon.

DOE then charged Octagon with issuing a RFP to select a vendor for beverages in school vending machines. Octagon failed to do so and instead, presented a number of inadequate and confusing power-point presentations to vendors, such as, Coca-Cola, Veryfine and Snapple. Octagon also failed to evaluate proposals or even to adequately describe the scope of the opportunity to all the potential vendors.

Based upon this absurd process, DOE then awarded a \$40.2 million contract to Snapple. I believed then, and I continue to believe, that the process was tainted. A copy of my audit of this flawed process can be found at http://www.comptroller.nyc.gov/bureaus/audit/PDF_FILES/ME04_123A.pdf.

Although, you are being asked to approve the contract this Monday, I understand that Octagon has already been managing a new RFP for vending machine products to be placed in schools throughout this past summer. Indeed, I note that the Request for Authorization form that you have before you indicates that the contract started over nine months ago, i.e., January 1, 2009. Yet, on the same form, the DOE also indicates that the contract is not retroactive.

Finally, I call your attention to the exorbitant rate, 15% to 18%, that the DOE plans to allow Octagon to keep from the commissions earned by the vending machines in the schools and the marketing of the DOE brand name. Not only has the DOE not disclosed whether that fee is based upon gross or net revenues, but it fails to present a reason why Octagon is necessary in the first instance. DOE should issue and evaluate the RFP on its own and the millions saved in Octagon fees would then go where it belongs – to our schoolchildren.

The Snapple and Octagon deals were bad the first time around. We teach our kids to learn from their mistakes; the DOE should learn from its mistakes.

Yours truly yours,

A handwritten signature in black ink that reads "William C. Thompson, Jr." in a cursive style.

William C. Thompson, Jr.

cc. Joel Klein