



Komisar Spicola, P.A.  
P.O. Box 664  
Tallahassee, FL 32303  
Phone: (850) 328-4447  
www.KomisarSpicola.com

March 10, 2022

TO: Charles Trippe (General Counsel)  
Office of Attorney General Moody  
400 South Monroe  
PL-01 The Capital  
Tallahassee, FL 32399  
Charles.trippe@myfloridalegal.com

CC: Anastasios Loannis Kamoutsas (General Counsel)  
Florida Department of Education (Affected Agency)  
325 W Gaines St Rm 1544B  
Tallahassee, FL 32399  
Anastasios.kamoutsas@fldoe.org

John MacIver (General Counsel)  
Office of Chief Financial Officer Patronis  
400 South Monroe  
PL-11 The Capital  
Tallahassee, FL 32399  
John.MacIver@myfloridacfo.com

Re: 68.087(3) Original Source Disclosure (Voluntary Disclosure) (False Claims Act)

Client Name: John/Jane Doe

Dear Office of the Attorney General,

We write you on behalf of our client John/Jane Doe (Doe) who would like to make a Section 68.087(3) voluntary original source disclosure to the Office of the Attorney General and Department of Financial Services. Per Doe's information and belief notwithstanding certifications to comply with Section 1006.38(5)-(7) pricing restrictions, some out of State instructional materials publishers (Publishers) engage in a pattern and practice of overcharging small/rural Florida school districts resulting in false claims for payment being made against the State.

Per Doe's information and belief, the Publishers offer a percentage of free instructional materials (i.e., student textbooks and workbooks) to certain large purchasing school districts and

do not provide the same free materials to small/rural districts. Florida Statutes Section 1006.38(5)-(7) require that the Publishers;

(5) Furnish the instructional materials offered by them at a price in the state which, including all costs of electronic transmission, may not exceed the lowest price at which they offer such instructional materials for adoption or sale to any state or school district in the United States.

(6) Reduce automatically the price of the instructional materials to any district school board to the extent that reductions are made elsewhere in the United States.

(7) Provide any instructional materials free of charge in the state to the same extent as they are provided free of charge to any state or school district in the United States.

The publishers are aware of and pledge to follow Section 1006.38(5)-(7) F.S. during the adoption process. Specifically, the publishers all certify understanding of and compliance with the pricing laws on the “IM3 Bid Signature Sheet” and the “IM6 Publisher Acknowledgement Form.” At the end of the adoption/bid process the Department of Education (DOE) publishes the agreed contract prices for each material on a “Detailed Bid Report.”

Per Doe’s information and belief, the Florida School Book Depository (FSBD)<sup>1</sup> is made aware/notified by a Publisher (and/or District) when a Publisher offers free materials, or a lower price not offered to other districts. The FSBD assists the Publisher in completing the discounted transaction, but the FSBD does not require the Publisher follow the law and offer the same discount or free materials to all districts or notify the DOE that a possibly illegal discount or free materials have been provided to a single district. Per Doe’s information and belief, the FSBD is aware of the laws prohibiting free instructional materials being provided to one district at the detriment of other districts, yet the FSBD appears to regularly process transactions including free materials not being offered to other districts.

The DOE publishes “Policies and Procedures Specifications for The Florida Instructional Materials Adoption” which specifically states, “The bid deadline will not be extended. After the bid deadline, **publishers will not be allowed to revise a bid except for the reduction of price and/or the addition for free items offered.** [s.1006.38(6) and (7), F.S.]”<sup>2</sup> When a publisher provides a free material offer to a single district, they are obligated under the law to amend their bid with DOE to provide those same free materials to all other districts. Similarly, if a Publisher provides a lower price to one district, they are required to amend their bid to provide the same lower price to all districts.

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<sup>1</sup> <https://www.fsbd.com/>

<sup>2</sup> <https://www.fldoe.org/academics/standards/instructional-materials/>

While Doe has focused on specific transactions within the last six (6) years, in 2003 a similar concern was raised in OPPAGA Report No. 03-28<sup>3</sup> which focused on pre-2003 transactions. OPPAGA found that;

“Although Florida law requires publishers to provide the same free materials to all districts, **the department does not monitor compliance with this requirement**, and it appears to be regularly violated. Twelve Florida school districts reported they were able to negotiate a better deal for free materials than what was listed in the state catalog. A special deal that is inconsistent with the state contract may appear to be a good deal for the district but it ultimately harms the other 66 districts that were not privy to the offer. It can also create the appearance of improper deal-making in that it can give one publisher an advantage in marketing their materials to districts compared to other publishers who comply with the law and do not provide special free materials.”

The DOE responded to OPPAGA noting that;

“Existing contracts between the state and publishers contain clear provisions for free items provided when "cost" items are purchased. In the event a school district “negotiates” additional or more advantageous offers of free materials or services, the publisher would legally be required to offer the same to all school districts. The Department of Education will re-address these requirements and make clear in pre-bidding forms and procedures that these requirements, if not met, will result in the cancellation of the contract”

Per the records Doe has compiled and Doe’s internal understanding of and personal interaction with the Florida instructional materials procurement marketplace, nearly twenty (20) years have passed since the OPPAGA report but a similar practice of offering free materials to large districts while overcharging small/rural districts exists. Additionally, any mid-sized or large district who does not receive a Publishers best-in-nation free materials offer is being overcharged. This practice is a detriment to Florida taxpayers and the students in the overcharged districts. The practice results in a windfall to Publishers who appear to violate the free materials statute with impunity. Additionally, there is still no state agency actively monitoring Publisher’s compliance with Section 1006.38(5)-(7) F.S.

While Doe is continuing to investigate a possible False Claims Act suit, Doe would like to make your agencies aware of particular transactions Doe has identified as containing free materials where other Florida districts paid full bid list price and did not receive the same percentage of free materials (or any free materials at all).

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<sup>3</sup> <https://oppaga.fl.gov/Documents/Reports/03-28.pdf>

1. Polk County's 2021 purchase of McGraw Hill's Florida Comprehensive Student Bundle with 5-year print/digital subscriptions (FSBD product #13-527-0) for Grade 1 students vs. Madison County's purchase of the same.
2. Hillsborough County's 2021 purchase of McGraw Hill's Florida Comprehensive Student Bundle with 5-year print/digital subscriptions (FSBD product #13-527-0) for Grade 1 students vs. Hamilton County's purchase of the same.
3. Volusia County's 2021 purchase of Benchmark Education's FL Benchmark Advance 2 Gr. 1 Comprehensive Student 5-Year Package Print and Digital (FSBD product #23-222-0) for Grade 1 students vs. Charlotte County's purchase of the same.
4. Miami-Dade County's 2021 purchase of Savvas (formerly Pearson) Florida my Perspectives 5-year consumable student edition print/digital + Realize license (FSBD product #77-394-1) for Grade 9 students vs. Madison County's purchase of the same

/S/ William N. Spicola

William N. Spicola

Florida Bar Number: 70732

William@KomisarSpicola.com

/S/ Adam J. Komisar

Adam J. Komisar

Florida Bar Number:86047

Adam@KomsiarSpicola.com

www.KomisarSpicola.com