

BOARD OF EDUCATION RETIREMENT SYSTEM

Board Meeting Agenda

December 12, 2023

1. Calendar Item 1: Noting of the Minutes of the Meeting of the Board of Education Retirement System held on October 24, 2023 – **FOR CONSIDERATION AND ACTION.**
2. Executive Director’s Update – **FOR DISCUSSION.**
3. Calendar Items 2-17: Ordinary Business – **FOR CONSIDERATION AND ACTION.**
4. Calendar Item 18: NYC Office of the Actuary: June 30, 2021 Actuarial Valuation Report – **FOR DISCUSSION.**
5. Calendar Item 19: Grant Thornton Post Audit Fiscal Year 2023 Presentation – **FOR DISCUSSION.**
6. Calendar Item 20: Authorization to the Comptroller of the City of New York to Invest, Sell and Exchange the Funds of the Retirement System – **FOR CONSIDERATION AND ACTION.**
7. Calendar Item 21: Authorization to Amend an Agreement with Baker Tilly US LLP to Provide Internal Audit Services to The Board of Education Retirement System – **FOR CONSIDERATION AND ACTION.**
8. Calendar Item 22: Authorization to Enter into an Agreement with CEM Benchmarking Inc. for the Provision of Administration Benchmarking Services – **FOR CONSIDERATION AND ACTION.**
9. Calendar Item 23: Authorization to Amend an Agreement with Vitech Systems Sub LLC – **FOR CONSIDERATION AND ACTION.**
10. Calendar Item 24: Amendment to Videoconferencing Procedures – **FOR CONSIDERATION AND ACTION.**
11. Calendar Item 25: Authorization to Permit Hardship Distributions from the BERS Tax-Deferred Annuity Program in Reliance on Self-Certification by the Applicant – **FOR CONSIDERATION AND ACTION.**
12. Calendar Item 26: Authorization to Permit Hardship Distributions from the BERS Tax-Deferred Annuity Program that Include Earnings on Contributions – **FOR CONSIDERATION AND ACTION.**

ACTION.

13. Calendar Item 27: Direction to the Comptroller Regarding the Use of BIPOC Investment Managers for the Board of Education Retirement System Portfolio – **FOR CONSIDERATION AND ACTION.**

**Board of Education Retirement System
SUMMARY MINUTES - Meeting of
the Board of Trustees
October 24, 2023**

Appearances:

Karine Apollon
Phoebe-Sade Arnold
Tazin Azad
Lilly Chan
Marjorie Dienstag
Gregory Faulkner
Anthony Giordano
Angela Green
Naveed Hasan
Alice Ho

Alison Hirsh
Jessamyn Lee
John Maderich
Donald Nesbit
Kaliris Salas-Ramirez
Maisha Sapp
Thomas Sheppard
Ephraim Zakry

Agenda Item 1 - Calendar Item 1: Noting the Minutes of the Meetings of the Board of Retirement held on September 26, 2023. On a motion by Mr. Nesbit and a second by Mr. Zakry, this item was unanimously approved.

** Lily Chan arrived at approximately 4:28pm.*

**Angela Green arrived at approximately 4:28pm.*

Agenda Item 2: Executive Director's Update.

Agenda Item 3 - Calendar Items 2-17: Ordinary Business. On a motion by Mr. Nesbit and a second by Mr. Maderich, these items were unanimously approved.

**Phoebe-Sade Arnold arrived at approximately 5:13pm.*

Agenda Item 4 – Calendar Item 18: Direction to the Comptroller Regarding the Use of BIPOC Investment Managers for the Board of Education Retirement System Portfolio. On a motion by Mr. Giordano and a second by Mr. Zakry, this item was unanimously tabled.

On a motion by Mr. Giordano and a second by Mr. Nesbit, the Board of Trustees voted unanimously to enter Executive Session.

** Thomas Sheppard left at approximately 6:03pm.*

** Donald Nesbit left at approximately 6:05pm.*

** Mr. Maderich began chairing the meeting at approximately 6:05 PM.*

** Kaliris Salas-Ramirez left at approximately 6:20 pm.*

** Naveed Hasan left at approximately 6:35 pm.*

**On a motion by Ms. Azad and a second by Mr. Giordano, the Board of Trustees voted unanimously to exit Executive Session.*

** Effi Zakry left at approximately 6:38 pm.*

** Karine Apollon left at approximately 6:40 pm.*

Agenda Item 5 – Calendar Item 19: Authorization to the Comptroller of the City of New York to Commit a Portion of the Real Assets Portfolio of the Board of Education Retirement System. This item was approved with Mr. Zakry voting to oppose.

Quorum was lost at approximately 6:38pm.

Calendar Item 20 through Calendar Item 24 were tabled until the next meeting following loss of quorum.

On a motion by Mr. Giordano and a second by Ms. Azad, the meeting was adjourned at approximately 6:44 PM.

December 2023

**AUTHORIZATION TO THE COMPTROLLER OF THE CITY OF NEW YORK TO INVEST,
SELL AND EXCHANGE THE FUNDS OF THE RETIREMENT SYSTEM**

- WHEREAS,** in order that the receipts of monies, as and when they are credited to the fund, may be invested at the earliest possible moment, it is necessary that the Comptroller of the City of New York (the Comptroller), as custodian of the funds of the Board of Education Retirement System (BERS), be authorized to invest the available cash funds of said System, as they accumulate; now therefore be it
- RESOLVED,** that the Comptroller, as custodian of the funds of BERS, is hereby authorized to invest the funds of said System during the period of January 1, 2024 to March 31, 2024, in any investment authorized pursuant to the Administrative Code of the City of New York, the Retirement and Social Security Law, the Education Law, the Banking Law or as otherwise authorized by the laws governing the investments of said System, provided the Trustees of said System have heretofore approved such investment or hereafter approve such investment; and be it further
- RESOLVED,** that during the term of this delegation, investments in any asset class or category not previously authorized by BERS shall be made by the Comptroller only with the prior approval of the Trustees of said System; and be it further
- RESOLVED,** that the Comptroller is authorized to hold, sell, assign, transfer or dispose of any of the properties, securities or investments in which any of the funds of BERS shall have been invested, including the proceeds of such investments and any monies belonging to such fund, subject to the terms, conditions, limitations and restrictions imposed by law upon the Trustees of said System; and be it further
- RESOLVED,** that the Comptroller is authorized to execute BERS' corporate governance policy, including casting BERS' proxy votes, engaging portfolio companies and regulators, and submitting shareowner proposals that have been approved by the BERS Board of Trustees or a Committee of the Board authorized to approve shareholder proposals; and be it further
- RESOLVED,** that any termination, expiration or revocation of this delegation to invest shall not affect any binding commitment previously made by the Comptroller pursuant to such delegation and the Comptroller shall have the power to discharge fully any such binding commitment according to its terms.

Respectfully Submitted,

Sanford R. Rich
Executive Director

AUTHORIZATION TO AMEND AN AGREEMENT WITH BAKER TILLY US LLP¹ TO PROVIDE INTERNAL AUDIT SERVICES TO THE BOARD OF EDUCATION RETIREMENT SYSTEM

- WHEREAS,** the Board of Education Retirement System (BERS) entered into an agreement with Baker Tilly Virchow Krause, LLP (Baker Tilly) for a period of six (6) months, beginning August 1, 2019, and terminating on February 28, 2020, to provide internal auditing services to BERS, in an amount not to exceed \$155,750; and
- WHEREAS,** on February 26, 2020, the Board of Trustees (Board) authorized an extension of the agreement with Baker Tilly to provide internal auditing services to BERS for an additional three (3) months, extending through and terminating on May 31, 2020, at no additional cost; and
- WHEREAS,** on April 29, 2020, the Board authorized an amendment to the agreement with Baker Tilly for an additional twelve (12) months at an additional cost of \$256,500 such that the total cost of the agreement was not to exceed \$412,250; and
- WHEREAS,** on February 22, 2021, the board authorized an additional amendment to the agreement with Baker Tilly for an additional twenty-one (21) months, at an additional cost of \$512,375, such that the total cost of the agreement was not to exceed \$924,625; and
- WHEREAS,** on September 20, 2022, the Board authorized an additional amendment to the agreement with Baker Tilly to add an additional twelve (12) months terminating on December 31, 2023, at an additional cost not to exceed \$388,500, such that the total cost of the agreement is not to exceed \$1,313,125; and
- WHEREAS,** it is the recommendation of the Director of Internal Audit that the Board amend the agreement with Baker Tilly to add an additional six (6) months terminating on June 30, 2024, at no additional cost; now therefore be it
- RESOLVED,** that the Board accepts the recommendation of the Director of Internal Audit and authorizes the Executive Director of BERS to amend the existing agreement by a time not to exceed six (6) months with Baker Tilly to provide internal audit services to BERS, terminating on June 30, 2024, at no additional cost to BERS, and subject to agreement by Baker Tilly. If any of the foregoing terms are not agreed upon by the parties to the contract, the proposed amendment will be brought back to the Board for further review and action before such an amendment is executed; and be it further
- RESOLVED,** that the Executive Director of BERS be authorized to receive and control funds and to direct the Comptroller of the City of New York to disburse funds in accordance with this agreement.

Respectfully Submitted,

Sanford R. Rich
Executive Director

¹ Formerly Baker Tilly V Virchow Krause, LLP

December 2023

AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH CEM BENCHMARKING INC. FOR THE PROVISION OF ADMINISTRATION BENCHMARKING SERVICES

WHEREAS, BERS has determined a need for cost benchmarking, analysis and research relating to the administrative costs and services of BERS (“administration benchmarking services”); and

WHEREAS, BERS has determined that it is necessary to utilize a sole source procurement method as CEM Benchmarking Inc. is the only known vendor capable of providing comprehensive benchmarking services that utilize actual data collected from large U.S. pension funds; and

WHEREAS, the Board has received a recommendation from the administrative staff of BERS regarding the selection of CEM Benchmarking Inc. (“CEM”) to provide such administration benchmarking services; and

WHEREAS, it is the desire of the Board to contract with CEM for a period of two years commencing in fiscal year 2024, with three one-year options to renew, for a potential contract period of up to five years; now therefore be it

RESOLVED, that the Board does hereby authorize the Executive Director to enter into a contract with CEM Benchmarking Inc. to provide administration benchmarking services to BERS for a period of two years, not to exceed \$48,750, with an option to renew for up to three additional years and subject to agreement by CEM, and if any of the foregoing terms are not agreed upon by the parties, the contract will be brought back to the Committee for further review and action before such a contract is executed; and be it further

RESOLVED that the Executive Director of BERS be authorized to receive and control funds and to direct the Comptroller of the City of New York to disburse funds in accordance with the agreement with CEM Benchmarking Inc.

Respectfully Submitted,

Sanford R. Rich
Executive Director

AUTHORIZATION TO AMEND AN AGREEMENT WITH VITECH SYSTEMS SUB LLC

- WHEREAS,** in January 2019, the Board of Education Retirement System (BERS) contracted with Vitech Systems Sub LLC (Vitech) to provide computer consulting services for the development of the next generation of its Comprehensive Pension Management System (CPMS); and
- WHEREAS,** in September 2020, the Board of Trustees authorized the Executive Director to enter into a contract with Vitech Systems Sub LLC for the addition of the V3locity Digital Self Service (DSS) platform commencing in Fiscal Year 2021 and continuing unless terminated pursuant to the terms of the associated agreements; and
- WHEREAS,** the DSS platform has been successfully rolled out and has been in active use by BERS staff, members and retirees since March 2022, with a maximum CPMS document and file repository capacity of 1 terabyte (TB); and
- WHEREAS,** after years of continuous use, administrative staff report that the CPMS document and file repository capacity has been exhausted, and recommend an increase of 1 TB to such repository capacity; and
- WHEREAS,** the Board accepts the recommendations of the administrative staff regarding the need for additional CPMS database capacity; now therefore be it
- WHEREAS,** Vitech has represented that it is willing and able to provide an additional 1 TB of CPMS document and file repository capacity at a cost of \$4,200 per month; and
- RESOLVED,** that the Board authorizes an additional commitment of funds for additional database storage capacity in an amount not to exceed \$50,400 per annum; and be it further
- RESOLVED,** that the Executive Director of BERS be authorized to receive and control funds and to direct the Comptroller of the City of New York to disburse funds in accordance with this resolution.

Respectfully Submitted,

Sanford R. Rich
Executive Director

AMENDMENT TO VIDEOCONFERENCING PROCEDURES

- WHEREAS,** Chapter 56 of the Laws of 2022 (“Chapter 56”) amended the Open Meetings Law to establish requirements for how and when a public body may use videoconferencing when conducting its meetings; and
- WHEREAS,** in accordance with Chapter 56, on May 26, 2022, the Board of Trustees adopted videoconferencing procedures establishing requirements for how and when the Board and/or its committees may use videoconferencing when conducting meetings; and
- WHEREAS,** on May 3, 2023, Governor Kathy Hochul signed legislation enacting Chapter 58 of the Laws of 2023 (“Chapter 58”), which amended the Open Meetings Law to permit the Board, through its written videoconferencing procedures, to allow for a member of the Board with a disability to attend a Board meeting or a committee meeting via videoconference and to be considered present for purposes of fulfilling quorum requirements; and
- WHEREAS,** the Board wishes to amend its videoconferencing procedures pursuant to Chapter 58 so as to permit trustees with a disability to attend meetings via videoconference; now therefore be it
- RESOLVED,** that the Board adopts the following amended videoconference procedures on behalf of itself and its committees:
1. A quorum of Trustees must be present at one or more noticed physical locations where members of the public may attend in person. Notice of a meeting shall state the physical location(s) where the meeting will be held, where in-person attendance is possible, and state that the meeting will include a videoconferencing component and indicate where members of the public may view and, if applicable, participate in the meeting.
 2. A Trustee not needed for a quorum may attend a meeting via videoconferencing in a location that is not accessible to members of the public under “extraordinary circumstances,” including, but not limited to, a disability, illness, caregiving responsibilities, or any “other significant or unexpected factor(s) or event(s).” Should a Trustee qualify to attend a meeting via videoconferencing at a location that is not accessible to members of the public, they may participate in the meeting and vote.
 3. **Notwithstanding Paragraphs 1 and 2 above, any Trustee who has a disability¹ as defined in §292 of the Executive Law, where such disability renders the Trustee unable to participate in-person at any meeting location where the public can attend, shall be considered present for purposes of fulfilling the quorum requirements despite attending such meeting via videoconference, provided, however, that the remaining criteria required by the Open Meetings Law are otherwise met; and provided, further, that the Board or committee maintains at least one physical location where the public can attend such meeting.**

¹ Pursuant to §292 of the Executive Law, “the term “disability” means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment...”.

4. Should the Board choose to use videoconferencing in a particular meeting, it will include audio and visual components that ensure that participants can be heard, seen and identified during the meeting. If a Trustee participates in a meeting by videoconference at a location which is not accessible to members of the public, members of the public will also be allowed to attend the meeting by videoconference.
5. Public sessions of Board meetings will be webcast for public viewing to the extent practicable.
6. Minutes of each meeting shall list all members of the Board who attended remotely at a location not accessible to members of the public.
7. Meetings conducted using videoconferencing will be recorded and the public session will be posted on BERS' website within five business days of the meeting and remain available for at least five years.
8. Procedures governing member and public attendance of Board meetings via videoconference will be posted on BERS' website.

Respectfully Submitted,

Sanford R. Rich
Executive Director

December 2023

**AUTHORIZATION TO PERMIT HARDSHIP DISTRIBUTIONS
FROM THE BERS TAX-DEFERRED ANNUITY PROGRAM
IN RELIANCE ON SELF-CERTIFICATION BY THE APPLICANT**

- WHEREAS,** the BERS Tax-Deferred Annuity Program (“the BERS TDA Program”) was originally established in 1970 pursuant to 26 U.S.C. 403(b) and Section 3109-A of the New York Education Law, and consistent with legacy regulations applicable to 403(b) plans, currently permits hardship distributions only when written records are submitted to support the type and amount of financial hardship; and
- WHEREAS,** on December 29, 2022, the President signed into law the SECURE 2.0 Act of 2022¹, which authorizes 403(b) plans to permit hardship distributions in reliance on self-certification by the applicant²; now therefore be it
- RESOLVED,** that the Board of Trustees hereby authorizes the Executive Director to permit hardship distributions from the BERS TDA Program in reliance on self-certification by the applicant, and delegates the implementation of any related operational revisions to the Executive Director or his authorized delegate.

Respectfully Submitted,

Sanford R. Rich
Executive Director

¹ Division T of the Consolidated Appropriations Act of 2023.

² Section 312 of the SECURE 2.0 Act.

December 2023

**AUTHORIZATION TO PERMIT HARDSHIP DISTRIBUTIONS
FROM THE BERS TAX-DEFERRED ANNUITY PROGRAM
THAT INCLUDE EARNINGS ON CONTRIBUTIONS**

- WHEREAS,** the BERS Tax-Deferred Annuity Program (“the BERS TDA Program”) was originally established in 1970 pursuant to 26 U.S.C. 403(b) and Section 3109-A of the New York Education Law, and consistent with legacy regulations applicable to 403(b) plans, currently permits hardship distributions to include only contributions; and
- WHEREAS,** on December 29, 2022, the President signed into law the SECURE 2.0 Act of 2022¹, which conforms the hardship distribution rules for Section 403(b) plans to those of Section 401(k) plans,² thus authorizing 403(b) plans to permit hardship distributions that include earnings on contributions; now therefore be it
- RESOLVED,** that the Board of Trustees hereby authorizes the Executive Director to include earnings on contributions in hardship distributions from the BERS TDA Program, and delegates the implementation of any related operational revisions to the Executive Director or his authorized delegate.

Respectfully Submitted,

Sanford R. Rich
Executive Director

¹ Division T of the Consolidated Appropriations Act of 2023.

² Section 602 of the SECURE 2.0 Act.

December 2023

**DIRECTION TO THE COMPTROLLER REGARDING THE USE OF BIPOC
INVESTMENT MANAGERS FOR THE BOARD OF EDUCATION RETIREMENT
SYSTEM PORTFOLIO**

WHEREAS, the Board of Trustees (Board) is committed and required to invest the members' pension assets with qualified managers to generate investment returns for the exclusive benefit of, and in order to pay retirement benefits to, BERS members and their beneficiaries; and

WHEREAS, the Board implements all policies consistent with the Trustees' fiduciary duties, BERS Investment Policy Statement (IPS), and applicable federal, state and local laws; and

WHEREAS, a "Staff FAQ Relating to Investment Adviser Consideration of DEI Factors" published by staff of the United States Securities Exchange Commission advises:

An investment adviser is required to have a reasonable belief that the advice it provides is in the best interest of the client based on the client's objectives. Such a reasonable belief that advice is in the best interest of the client typically includes consideration of a variety of factors. Accordingly, an adviser that recommends other investment advisers to or selects other advisers for their clients may consider a variety of factors in making a recommendation or selection, *including, but not limited to, factors relating to diversity, equity, and inclusion*, provided that the use of such factors is consistent with a client's objectives, the scope of the relationship, and the adviser's disclosures. Further, the adviser's fiduciary duty does not mandate restricting such a recommendation or selection to investment advisers with certain specified characteristics, such as a minimum amount of assets under management or a minimum length of track record.; and

WHEREAS, legal scholars, citing studies by prominent business schools and investment institutions, have found evidence supporting a correlation between diversity practices and financial performance, and stronger evidence that diversity is a "key ingredient for cognitively 'smart' businesses," and have posited that there is a "business argument for Diversity" based on "its impact on the corporation's reputation with regulators and key stakeholders and, by extension, on its cost of capital, access to talent and business partners, and its attractiveness to customers ... [and] the rational basis for business leaders to conclude that attention to good [diversity, equity and inclusion]

practices makes good business sense in terms of improving the likelihood that a corporation will be sustainably profitable;” and

WHEREAS, the Board is committed to integrating diversity and inclusion into its decision-making, including consideration of firmwide diversity in the selection of consultants and investment managers and supporting diversity among service providers to its investment managers; and

WHEREAS, the Board believes that professionals and decision-makers who come from diverse backgrounds contribute different points of view that enhance organizational quality and economic performance; and

WHEREAS, in order to achieve the best economic performance, the Board wishes to maximize opportunities for members of the Black, Indigenous, and People of Color (BIPOC) community, to be considered for positions as managers of BERS assets;

RESOLVED, that the Board will establish prudent parameters for investment manager searches that promote the consideration of qualified BIPOC managers and financial service providers; and

BE IT FURTHER RESOLVED, that the Board directs the Bureau of Asset Management (BAM), in coordination with BERS administrative staff, to take prudent steps to increase the use of qualified BIPOC managers. These steps shall include but not be limited to the following:

- BERS’ general consultant shall include at least one BIPOC manager in recommendations to BAM for public markets searches when appropriate and consistent with the searches’ evaluation criteria; and
- BERS’ private asset specialty consultants and BAM shall consider qualified BIPOC private asset managers in the private asset classes in which BERS invests, when appropriate and consistent with evaluation criteria; and

BE IT FURTHER RESOLVED, that BAM and BERS staff provide the Board with an annual diversity report with a section describing assets managed by BIPOC managers, broken out by class

and manager; and a section describing diversity metrics of all managers; and

BE IT FURTHER RESOLVED

that this Direction to the Board shall, in all effects and terms, supersede the “Resolution to Amend the Investment Policy Statement in Relation to the Use of Black, Indigenous, and People of Color Financial Institutions for the Board of Education Retirement System of the City of New York” introduced to and voted on by the Board on June 13, 2023.

Respectfully Submitted,

Sanford R. Rich
Executive Director

MEMORANDUM

FROM: SHARON KOPPULA, DIRECTOR OF CONTRACTS AND PROCUREMENT
TO: BERS BOARD OF TRUSTEES
SUBJECT: SOLE SOURCE DETERMINATION – CEM BENCHMARKING
DATE: OCTOBER 5, 2023

Below, please find a determination report regarding sole source procurement.

The New York City Board of Education Retirement System (BERS) seeks to obtain services for the provision of cost benchmarking, analysis and research relating to the administration costs and services of BERS.

BERS has previously contracted with CEM Benchmarking Inc. (CEM) as the sole source for the aforementioned services. However, as BERS wishes to continue such pension benchmarking services, BERS has performed its due diligence to determine whether any competitors have emerged in this space.

BERS has taken the following actions to determine whether CEM is the sole source for this type of service:

- Obtained a letter from CEM indicating that to their knowledge, “no other company offers a comprehensive pension administration benchmarking service that utilizes cost, service, and transaction volume data collected from U.S. pension plans.”
- Obtained a letter from BERS’ investment consultant, Segal Marco Advisors, indicating that to their knowledge, “no other firm offers an ongoing collection of data among public plans for benchmarking purposes.”
- Placed an inquiry via the National Association of Public Pension Attorneys (NAPPA) listserv, asking whether any fund/system was aware of an organization other than CEM that provided public pension benchmarking services. BERS received a response from Hank Kim, Executive Director and Counsel at National Conference on Public Employee Systems (NCPERS) indicating that NCPERS conducts an annual survey of public plans, where BERS can access the NCPERS members only dashboard and apply filters to get comparisons of like plans and their expenses. This information was brought to the attention of BERS Executive Director, Sanford Rich, who indicated that he previously discussed the issue with Mr. Kim and determined that the data provided by NCPERS is not comparable to the analysis conducted by CEM.
- Emailed the other New York City and State Retirement Systems to find out if the other systems were aware of any competitors for the service provided by CEM. BERS received responses from the New York City Employees’ Retirement System (NYCERS), New York City Teachers’ Retirement System (NYCTRS), and New York State and Local Retirement System (NYSLRS), who all indicated that they use CEM. NYCTRS further indicated that they were not aware of any other vendor who provided the services in question.

- Confirmed via email with the New York City Office of the Comptroller that the Comptroller's office contracted with CEM via sole source procurement.

Based on the foregoing, sufficient information has been obtained to make a determination that CEM is the only vendor capable of providing comprehensive benchmarking services that utilize actual data collected from large U.S. pension funds. To our knowledge, there is no competition for this service within the United States utilizing actual data collected from U.S. pension funds. Accordingly, BERS seeks to hire CEM as the sole source provide such services.

Should you have any additional questions, please do not hesitate to contact me.