
COMMONWEALTH OF PENNSYLVANIA



**A SPECIAL INVESTIGATION OF THE
LIGONIER VALLEY SCHOOL DISTRICT,
WESTMORELAND COUNTY, PENNSYLVANIA**

JULY 2012

JACK WAGNER, AUDITOR GENERAL

PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

July 19, 2012

The Honorable Bruce Robinson, President
Board of School Directors
LIGONIER VALLEY SCHOOL DISTRICT
339 West Main Street
Ligonier, Pennsylvania 15658

Dear President Robinson:

In January 2011, the Department of the Auditor General (“Department”) received correspondence from a resident of Ligonier Valley School District (“District”) containing several allegations of improper actions by the School District.

The complainant expressed disagreement with several decisions made by the Board of School Directors (“School Board”) on matters that are outside the jurisdiction of this Department. The powers of this Department are generally limited to matters involving money appropriated by the Commonwealth or money owed to the Commonwealth. We have declined to comment upon the issues that are not within our jurisdiction.

However, during the course of this investigation, we found that, in August 2008, the Superintendent of the Ligonier Valley School District engaged the services of an educational consultant without presenting a formal contract to the School Board for approval, and during the 2008-09 school year, the District issued checks in payment of seven invoices submitted by the educational consultant for services rendered totaling \$45,012.

A copy of this report will be sent to the Pennsylvania Department of Education for its review and any further action it may deem appropriate.

The Department of the Auditor General will follow up at the appropriate time to determine whether our recommendations have been implemented.

This report is a public document and its distribution is not limited. Additional copies may be obtained through the Department’s website, www.auditor.gen.state.pa.us.

Sincerely,
/S/

JACK WAGNER
Auditor General

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EXECUTIVE SUMMARY

FINDING	RECOMMENDATIONS
<p>In August 2008, the Superintendent of the Ligonier Valley School District engaged the services of an educational consultant without presenting a formal contract to the School Board for approval, and during the 2008-09 school year, the District issued checks in payment of seven invoices submitted by the educational consultant for services rendered totaling \$45,012.</p>	<p>We recommend that the School Board do the following:</p> <ul style="list-style-type: none">• Review all existing District contracts to determine whether Commonwealth and District requirements relating to competitive selection and school board authorization and approval have been met.• In cases where the requirements were not met, take appropriate legal or disciplinary action against the persons responsible.• Refer contracts and agreements that were not authorized or approved as required by law to the District's Solicitor with instructions to pursue recovery of any District funds that were improperly disbursed.• Require that a list of contracts and agreements entered into during each calendar month be prepared and submitted as part of the financial information presented to the School Board at regular monthly meetings, together with copies of the relevant documents, and require that such lists be made part of the minutes of School Board meetings.• Ensure that all staff members with duties related to contracting and purchasing are aware of the requirements of the Public School Code relating to competitive selection and School Board authorization and approval.

BACKGROUND AND INTRODUCTION

The Ligonier Valley School District (“District”) is one of the largest geographical school districts within the Commonwealth of Pennsylvania. Its 230 square miles encompass nine municipalities in Westmoreland County.¹ The District educates approximately 1,800 students in four buildings.²

In January 2011, the Department of the Auditor General (“Department”) received correspondence from a resident of the District that contained several allegations of improper conduct by District officials. The matter was assigned to the Department’s Office of Special Investigations (“OSI”). A preliminary review of the allegations revealed that some were not within this Department’s jurisdiction, which is generally limited to money appropriated by the Commonwealth or money owed to the Commonwealth. We have declined to comment upon any of the allegations that are outside the scope of our jurisdiction.

The allegations within our jurisdiction are as follows:

Allegation #1: The District violated the Pennsylvania Public School Code of 1949 (“Public School Code”)³ because the minutes of the meetings of the Board of School Directors (“School Board”) lack authorization to enter into a contract with a certain educational consultant (“Consultant”) to provide consulting services during the 2008-09 school year.

Allegation #2: The District’s contract with the Consultant for the 2009-10 school year bears only the signature of the District’s Superintendent and lacks the signature of the Consultant and any member of the School Board.

Allegation #3: The District used Title I funding⁴ to pay for a non-research-based reading program that is not eligible for payment with Title I funds.

The OSI investigation consisted of the following:

- Interviews of the complainant and the District’s Superintendent, Business Manager, and Solicitor.
- Interviews of the Superintendent and Assistant Superintendent of Blairsville-Saltzburg School District, another school district that also had hired the Consultant.

¹ The nine municipalities are Bolivar Borough, Cook Township, Fairfield Township, Laurel Mountain Borough, Ligonier Borough, Ligonier Township, New Florence Borough, Seward Borough, and St. Clair Township.

² The buildings are Laurel Valley Elementary (kindergarten through 5th grade), R. K. Mellon Elementary School (K-5), Ligonier Middle School (6-8), and Ligonier High School (9-12).

³ Act of March 10, 1949, P.L. 30, No. 14, as amended, 24 P.S. § 1-101 *et seq.* (Public School Code of 1949).

⁴ 20 U.S.C. § 6301 *et seq.* Title I is a federal program designed to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education. Title I provides funds to improve achievement of the lowest-achieving students – those who are failing, or are most at risk of failing, to meet state academic achievement standards – enrolled in high-poverty schools.

- Review of pertinent provisions of the Public School Code, District policies, and invoices, cancelled checks, and accounting records of both school districts.

Our investigation resulted in a single finding with respect to the first allegation regarding services provided by the Consultant during the 2008-09 school year. That finding is set forth within.

The second allegation was determined to be unfounded. The Consultant did, in fact, have a valid written contract with the District for the 2009-10 school year that was approved by the School Board in advance of the rendering of services by the Consultant.

With respect to the third allegation, that the District used an improper funding source to pay for the consultant's services, we have made no finding. Instead, due to the highly technical statutory provisions governing this question, we believe that this determination is more properly within the expertise of the agency that administers Title I programs. Accordingly, we are forwarding a copy of this report to the Pennsylvania Department of Education, which administers the Title I program in Pennsylvania, for its review and whatever further action it may deem appropriate.

A copy of our draft investigative report was provided to the District for its review and response. A summary of the pertinent provisions of the District's response, and our comments thereon, are included at the end of the report.

FINDING AND RECOMMENDATIONS

FINDING: In August 2008, the Superintendent of the Ligonier Valley School District engaged the services of an educational consultant without presenting a formal contract to the School Board for approval, and during the 2008-09 school year, the District issued checks in payment of seven invoices submitted by the educational consultant for services rendered totaling \$45,012.

The Public School Code states that the affirmative vote of a majority of all of the members of the board of school directors, “duly recorded,” is required to take action on entering into contracts of any kind, including purchases of supplies, where the amount exceeds \$100.⁵ The Public School Code also requires that all equipment and supplies costing \$10,000 or more shall be procured by the board of school directors only through a competitive selection process set out in the statute, including advertisement and competitive bidding.⁶

A review of District records reveals that the Consultant submitted seven invoices for services rendered and was paid the sum of \$45,012.44 during the 2008-09 school year. However, no formal written contract was submitted for School Board approval prior to the rendering of the services described in the invoices.

On February 17, 2011, the Superintendent was interviewed by OSI and, in response to questions, provided the following information:

- She hired the Consultant in August 2008 to provide continuing education in the best practices of teaching literacy to elementary students.
- She stated: “I used him when I was at Ferndale,⁷ and I brought him in here to [Ligonier Valley School District].”
- The Consultant’s services were not included in the School District’s 2008-09 budget because she hired him after the budget had been passed.
- She could not explain why a written contract with the Consultant for school year 2008-09 was never executed or why the minutes of School Board meetings do not reflect Board approval to engage his services.

On March 30, 2011, in a telephone conversation with an OSI investigator, the District’s Solicitor stated that the Consultant was working “at his peril,” i.e., he took the risk of possibly not being paid for the work he performed.⁸ The Solicitor further opined that the School Board’s

⁵ 24 P.S. §5-508.

⁶ 24 P.S. §8-807.1. However, the Pennsylvania Supreme Court has held that service contracts that require a degree of personal skill and professional expertise are exempt from the Public School Code’s competitive bidding requirements. *Malloy vs. Boyertown Area School Board*, 657 A.2d 915 (Pa. Supreme Ct., 1995).

⁷ Ferndale Area School District, Cambria County.

⁸ As is explained more fully in the District’s Response at the end of this report, the Solicitor’s statement regarding the Consultant working “at his peril” is a reference to the opinion of the Commonwealth Court in the case

approval for payment of the Consultant's invoices was, in essence, an approval and acceptance of his work by the School Board.

Conclusions and Recommendations:

In August 2008, the District's Superintendent engaged the services of a Consultant to provide a series of training sessions throughout the 2008-09 school year. However, no formal written contract was ever submitted to the School Board for approval. Nevertheless, during the 2008-09 school year, the District paid seven invoices for services rendered submitted by the Consultant totaling in excess of \$45,000.

The District's position, as expressed by its Solicitor, is that the Consultant was providing his services "at his peril," because he would not have an enforceable right to be paid, and that the School Board's approval of the Consultant's invoices for payment constitutes an approval and acceptance of his work by the District.

Nevertheless, the process prescribed in the Public School Code was circumvented, and we believe that the taxpayers of the District have been deprived of the safeguards and the transparency that process is intended to provide. The hiring of the Consultant in this case was carried out in a manner that prevented the members of the School Board and the public from acquiring adequate knowledge of the purpose and terms of the engagement and participating in the approval process. This is especially troubling when combined with the fact that the selection of the Consultant was exempt from the requirement to use a competitive selection process.⁹

Accordingly, we recommend that the School Board do the following:

- Review all existing District contracts to determine whether Commonwealth and District requirements relating to competitive selection and school board authorization and approval have been met.
- In cases where the requirements were not met, take appropriate legal or disciplinary action against the persons responsible.
- Refer contracts and agreements that were not authorized or approved as required by law to the District's Solicitor with instructions to pursue recovery of any District funds that were improperly disbursed.
- Require that a list of contracts and agreements entered into during each calendar month be prepared and submitted as part of the financial information presented to the School Board at regular monthly meetings, together with copies of the relevant documents, and require that such lists be made part of the minutes of School Board meetings.

of *Berkheimer Associates, ex. rel. North Coventry Township. v. Norco Motors*, 842 A.2d 966, 971 (Cmwlth Ct. 2004) in which the Court stated: "Persons asserting contracts with a school district without first obtaining approval by a vote of the majority of the members of a public meeting do so at their own peril."

⁹ See footnote 6.

- Ensure that all staff members with duties related to contracting and purchasing are aware of the requirements of the Public School Code relating to competitive selection and School Board authorization and approval.

RESPONSE OF THE LIGONIER VALLEY SCHOOL DISTRICT TO THE DRAFT REPORT

The following is an excerpt from the Ligonier Valley School District's Response dated December 21, 2011. Due to its length, we have not reproduced the Response in its entirety, and we have not reproduced the numerous exhibits attached to the Response. We have also deleted the parts of the Response that are not pertinent to matters contained in this report.

The Superintendent was hired by the School Board on March 10, 2008, and she began her employment contract with the District on July 1, 2008. During the time period from March through June, 2008, the Superintendent had several discussions with the School Board. One of the key points of emphasis by the School Board was its desire to improve the academic performance of District students on the Statewide PSSA testing. The Superintendent expressed her philosophy to the School Board, which was consistent with her experiences as an educator, that improved academic performance of the District students could only begin with the implementation of a long range professional development plan for the teaching staff.

In conjunction with these discussions, the Superintendent explained to the School Board her familiarity with the success of several professional development programs presented by the Consultant in several school districts in Western Pennsylvania over the previous twelve to thirteen years. The School Board expressed its desire to the Superintendent that she begun to implement her ideas and the Superintendent began to do so even before the formal beginning of her term on July 1, 2008.

In May, 2008, three Administrators from the District went to a professional development program presented by the Consultant in another school district. The Superintendent met with the Professional Development Committee of the District in May, 2008, and, based on the enthusiasm among the Administrators, began planning a presentation by the Consultant on one of the professional education days scheduled for the teaching staff of the District in late August, 2008.

Upon her hiring on July 1, 2008, the Superintendent continued to carry out plans to meet the expectations of the School Board and she arranged for the Consultant to present a professional development program during the professional development days in August, 2008. On August 18, 2008, at the public meeting of the School Board, the Superintendent presented the Superintendent's Report. Each member of the School Board received a copy of the Superintendent's Report and copies were made available to members of the public.

The School Board knew that the Consultant was making a presentation to the Kindergarten through Grade 8 teaching staff of the District on August 22, 2008. The School Board had not previously used services such as were being provided by the Consultant. The School Board desired to use his services on a trial basis. No commitment was made by the School Board beyond each presentation made by the Consultant.

The Consultant did not present a written contract to the School Board prior to his presentation on August 22, 2008. The Consultant did not request advance approval by the School Board prior to his presentation on August 22, 2008. Following his presentation on August 22, 2008, the Consultant submitted an invoice to the District for his services and expenses for that presentation. The School Board was presented with that invoice at its public meeting on September 15, 2008, and the School Board approved that invoice.

A similar process was followed by the District and the Consultant for the remainder of the 2008-2009 school year. The Consultant made five (5) additional presentations on the following dates: September 8, 2008, the invoice for which was approved by the School Board at its public meeting on October 20, 2008... October 8, 2008, the invoice for which was approved by the School Board at its public meeting on January 20, 2009... November 8, 2008, the invoice for which was approved by the School Board at its public meeting on January 20, 2009... February 9, 2009, the invoice for which was approved by the School Board at its public meeting on March 16, 2009... April 9, 2009, (1), the invoice for which was approved by the School Board at its public meeting on May 11, 2009... April 9, 2009, (2), the invoice for which was approved by the School Board at its public meeting on June 11, 2009...

Each payment to the Consultant was approved by the unanimous vote of the School Board, duly recorded. As to whether or not there was a written contract, the District asserts that the invoice is the written document which was submitted and approved by the School Board. The School Code does not, however, require a written contract. It only requires the majority vote of all members of the School Board which occurred in each instance of a payment to the Consultant during the 2008-2009 school year.

The statement attributed to the Solicitor that the Consultant was working “at his peril” was actually a quote from the case of Berkheimer Associates, ex rel. North Coventry Tp. v. Norco Motors, 842 A.2d 966 (Comwlth Ct. 2004).

(Persons asserting contracts with a school district without first obtaining approval by a vote of the majority of the members of a public meeting do so at their own peril. Id at 971).

By legal definition, the Superintendent could not enter into a contract with the Consultant. Furthermore, the District had no potential liability to the Consultant under any alternate legal theory until the School Board approved the payments to the Consultant. In *Wayne Moving and Storage of New Jersey, Inc. v. The School District of Philadelphia*, 625 F.3d 148 (3rd Cir 2010), the Court stated that the Pennsylvania statute requiring an affirmative vote of the majority of school board members to enter into contracts barred unjust enrichment claims or implied contracts and held that a school district is not equitably estopped from relying upon such statute. Id at 153, 155, 158.

Based on the law of Pennsylvania, with the submission of each invoice by the Consultant during the 2008-2009 school year, the School Board had the right to approve or disapprove the payment. Upon submission of each invoice, however, the School Board knew that the services of the Consultant had been performed to the satisfaction of the Administration of the District. The School Board also knew that the invoice had been reviewed by the Business Office of the District to determine that the services had been completed, that the amount invoiced was fair and reasonable and that the category of the payment was properly accounted for in accordance with the budget.

What the School Board did not know in the 2008-2009 school year but what they now know is that the programs presented by the Consultant have resulted in significant improvement in the academic performance of the students in the District.

The Consultant has provided services to may *[sic]* Pennsylvania school districts since 1994. The Administrators and Teaching Staff of the District are very pleased with the services received and have seen measured improvement in the performance of District students in the areas covered by the Consultant.

**THE DEPARTMENT OF THE AUDITOR GENERAL'S COMMENTS ON
THE RESPONSE OF THE LIGONIER VALLEY SCHOOL DISTRICT TO
THE DRAFT REPORT**

The District's Response to the draft report has raised legal and factual issues that have necessitated a careful review of the law governing school district contracts and the facts gathered in this investigation. As a result of this review, we must respectfully disagree with the District's interpretation of the governing law and its application to the facts of this case.

The District contends that the school board's approval and payment of each invoice submitted by the Consultant for services rendered cures the initial failure by the Board to approve in advance a written contract covering the services to be rendered. The District's legal position may be persuasive as a matter of general contract law, but contracts with school districts must also comply with the Public School Code. The requirements of the Public School Code are clear. Section 508 of the Public School Code provides in pertinent part, as follows:

§ 508. Majority vote required; recording

The affirmative vote of a majority of all the members of the board of school directors in every school district, duly recorded, showing how each member voted, shall be required in order to take action on the following subjects:

* * *

Entering into contracts of any kind, including contracts for the purchase of fuel or any supplies, where the amount involved exceeds one hundred dollars (\$100).

* * *

Failure to comply with the provisions of this section shall render such acts of the board of school directors void and unenforceable.

These provisions are not mere suggestions. The failure to have a written contract approved as set forth in Section 508 does not make payment for services rendered discretionary with the School Board, as the Solicitor argues. It prohibits the School Board from making payment at all.

The District in its Response makes the following legal argument:

Each payment to the Consultant was approved by the unanimous vote of the School Board, duly recorded. As to whether or not there was a written contract, the District asserts that the invoice is the written document which was submitted and approved by the School Board. The School Code does not, however, require a written contract. It only requires the majority vote of all members of the School Board which occurred in each instance of a payment to the Consultant during the 2008-2009 school year.

However, the District cites no authority to support this argument. In fact, all the case law cited supports the contrary position that a school district has no authority to pay for services rendered in the absence of an express contract approved in advance by the School Board, and equitable and other theories, such as quantum meruit and implied contract, cannot be used to circumvent the Public School Code's strict requirements.¹⁰

Moreover, a review of School District records reveals that the Consultant submitted a total of seven invoices for services rendered during the 2008-09 school year, and, as illustrated in Table 1, all seven checks issued by the District in payment thereof were dated prior to approval of the invoice by the School Board. In fact, five of the seven checks actually cleared the School District's bank account prior to approval of the invoice by the School Board, demonstrating clearly that the Consultant actually received at least five of the seven payments prior to the approval of the invoices.

Table 1
Summary of Seven Invoices Submitted in 2008-09

Date of Services	Invoice Date	Amount	Check Date	Board Approval Date	Cleared Date
08/22/08	08-23-08	\$2,188.21	09-09-08	09-15-08	09-22-08
09/3-5/08	09-06-08	\$6,342.82	09-19-08	10-20-08	09-24-08
10/13-16/08	10-17-08	\$8,659.65	11-07-08	01-20-09	11-17-08
11/12-14/08	11-15-08	\$6,285.39	12-09-08	01-20-09	12-18-08
02/23-26/09	03-01-09	\$8,584.72	03-06-09	03-16-09	03-17-09
04/2-3/09	04-06-09	\$4,276.78	04-20-09	05-11-09	04-28-09
04/27-30/09	05-01-09	\$ 8,674.87	05-18-09	06-11-09	05-29-09

Even if the District's assertion that the School Board had the "right to approve or disapprove the payment" of each invoice were correct, that so-called right was thwarted because the Consultant had already received payment in at least five of the seven instances before the School Board had even met.

Accordingly, we stand by the finding and recommendations of this report. The Department of the Auditor General will follow up at the appropriate time to determine whether all of our recommendations have been implemented.

¹⁰ This is also consistent with the provisions of Article XXIV of the Public School Code, "**Auditing of School Finances**," which prescribes the remedy of surcharge for unauthorized expenditures of school district funds. Section 24-2406 provides, in pertinent part, as follows:

§ 24-2406 Audits; surcharges; examination of official bonds

The auditors . . . shall carefully inspect every school order issued for the payment of money by the board of school directors and the accounts of each official or person whose accounts are to be audited Any school order issued in any other manner or for any other purpose than herein authorized shall, if paid, be disallowed by the auditors and charged against the person or persons voting for or approving the same.

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