

# LIMITED PROCEDURES ENGAGEMENT

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## Arts Academy Charter Middle School Lehigh County, Pennsylvania

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June 2016



Commonwealth of Pennsylvania  
Department of the Auditor General  
Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE  
AUDITOR GENERAL

Mr. William Fitzpatrick, Executive Director  
Arts Academy Charter Middle School  
1610 East Emmaus Avenue  
Allentown, Pennsylvania 18103

Ms. Kimberly Jamison, Board President  
Arts Academy Charter Middle School  
1610 East Emmaus Avenue  
Allentown, Pennsylvania 18103

Dear Mr. Fitzpatrick and Ms. Jamison:

We conducted a Limited Procedures Engagement (LPE) of the Arts Academy Charter Middle School (Charter School) to determine its compliance with certain relevant state laws, regulations, policies, and administrative procedures (relevant requirements). The LPE covers the period July 1, 2012 through June 30, 2015, except for any areas of compliance that may have required an alternative to this period. The engagement was conducted pursuant to authority derived from Article VIII, Section 10 of the Constitution of the Commonwealth of Pennsylvania and The Fiscal Code, 72 P.S. § 403, but was not conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

As we conducted our LPE procedures, we sought to determine answers to the following questions, which serve as our LPE objectives:

- Did the Charter School apply best practices and/or comply with relevant requirements related to the following?
  - Statements of Financial Interest
  - Lease Reimbursements
  - Contracting
  - Sunshine Act

Our engagement found that the Charter School applied best practices in the areas mentioned above and complied, in all significant respects, with relevant requirements, except as detailed in two findings noted in this report. The findings are detailed in the following section of this letter.

Mr. William Fitzpatrick, Executive Director

Ms. Kimberly Jamison, Board President

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The findings and our related recommendations have been discussed with the Charter School's management, and their responses are included in the Findings section of this letter. We believe the implementation of our recommendations will improve the Charter School's operations and facilitate compliance with legal, administrative requirements, and best practices. We appreciate the Charter School's cooperation during the conduct of the engagement.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eugene A. DePasquale  
Auditor General

June 30, 2016

cc: **ARTS ACADEMY CHARTER MIDDLE SCHOOL** Board of Trustees

**Finding No. 1**

*Criteria relevant to the finding:*

Section 1715-A(11) of the Charter School Law (CSL), 24 P.S. § 17-1715-A(11), states that:

“Charter schools shall be required to comply with the following provisions: . . .

(11) Trustees of the charter school shall be public officials.”

When enacting the Ethics Act, 65 Pa.C.S. § 1101 *et seq.*, our General Assembly stated the following, in part:

“Because public confidence in government can best be sustained by assuring the people of impartiality and honesty of public officials, this chapter shall be liberally construed to promote complete financial disclosure as specified in this chapter.” (See 65 Pa.C.S. § 1101.1(a)).

The Ethics Act requires all candidates for public office, public officials, and certain public employees to complete a SFI for the preceding calendar year annually, no later than May 1<sup>st</sup> of each year they hold their positions and of the year after leaving such positions. (See 65 Pa.C.S. § 1104(a)).

**Members of the Charter School’s Board of Trustees and Administration Failed to File, Filed Late, or Filed Incomplete Statements of Financial Interest in Noncompliance with the Public Official and Employee Ethics Act**

We found that, during the calendar years 2012, 2013, and 2014, some members of the Charter School’s Board of Trustees (Board) failed to file a Statement of Financial Interest (SFI), filed SFIs that were incomplete, or failed to file SFIs prior to the annual May 1<sup>st</sup> deadline, as required by the Public Official and Employee Ethics Act (Ethics Act). We also found that one administrator filed an incomplete<sup>1</sup> SFI for one of the three years reviewed.

The chart below details the exceptions noted in the current audit:

<b>Board of Trustees</b>				
Calendar Year	# of Trustees	Failed to File	Filed Late	Filed Incomplete
2012	8	0	2	6
2013	10	2	0	4
2014	9	1	0	3
<b>Administrators</b>				
Calendar Year	# of Administrators	Failed to File	Filed Late	Filed Incomplete
2012	2	0	0	0
2013	2	0	0	0
2014	2	0	0	1

Board members and administrators, including chief executive officers and all other employees of a charter school who by virtue of their positions exercise management or operational oversight responsibilities, are considered “public officials” under the CSL and are, therefore, subject to the Ethics Act.

Public office is a public trust sustained by assuring the members of the public of the impartiality and honesty of public officials and public employees. Accordingly, the Ethics Act requires all candidates for public office, public officials, and certain public employees to complete an SFI for the preceding calendar year annually, no later than May 1<sup>st</sup> of each year they hold their positions and for the year after leaving such positions.

<sup>1</sup> A SFI is considered incomplete when any of the fields have been omitted (i.e., left blank or only partially filled in).

*Criteria relevant to the finding (continued):*

Section 1104(d) of the Ethics Act, 65 Pa.C.S. § 1104(d), which pertains to the failure to file the required SFIs, provides in pertinent part, as follows:

“No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a [SFI]. . . .”

Section 1104(e) of the Ethics Act, 65 Pa.C.S. § 1104(e) states, in pertinent part:

“All [SFIs] . . . shall be made available for public inspection . . .”

Section 1109(b) of the Ethics Act, 65 Pa.C.S. § 1109(b), provides that any person who is required to file a SFI but fails to do so may be found guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Section 1109(f) of the Ethics Act, 65 Pa.C.S. § 1109(f), provides, in pertinent part, that any person who is required to file a SFI but fails to do so in a timely manner or who files a deficient SFI may be subject to a civil penalty at a rate of not more than \$25 for each day such statement remains delinquent or deficient, with a maximum penalty under this chapter or \$250.

The Ethics Act specifically requires public officials and certain public employees to disclose matters on the SFI that currently or potentially create conflicts of interest with their public duties. When a public official does not file or fully complete a required SFI, the public cannot examine the statement’s disclosures in order to determine whether conflicts of interest exist. This in turn erodes the public’s trust. In addition, an individual’s failure to file and/or failure to file complete and accurate SFIs may constitute violations of the Ethics Act and subject the individual to fines and/or penalties.

These errors occurred because Charter School personnel were not aware that SFIs were required to be filed by May 1<sup>st</sup> for the preceding calendar year for board members that resigned. The board and administrators did not adequately ensure one administrator filed a complete SFI for one of the three years reviewed, and failed follow-up with the resigned board members who did not file SFIs and did not review the SFIs for completeness.

A copy of this finding has been forwarded to the State Ethics Commission for additional review and whatever action it deems necessary.

### **Recommendations**

The *Arts Academy Charter Middle School* should:

1. Seek the advice of its solicitor with regard to the Board’s responsibility when a member fails to file a SFI or files an incomplete form.
2. Develop a review process of established procedures to ensure that all individuals required to file SFI forms do so in compliance with the Ethics Act.

### **Management Response**

Management stated the following:

“Management did not properly review the State Ethics forms when returned by Board members/Administration resulting in incomplete filings; failure to file; or failure to file by May 1<sup>st</sup> deadline.

Management of the Arts Academy Charter Middle School will, going forward:

- Consult with counsel regarding the Board's responsibility when a member fails to file an SFI or files an incomplete form, and apprise Board members of what is required.
- The Board Secretary will distribute forms to board members at the first regularly scheduled board meeting after State Ethics forms are received, and will request the forms be completed and returned to him/her at the end of the meeting for review. Time will be allocated before or after the board meeting for this purpose. The forms will be reviewed by the Board Secretary at that time in order to ensure the completeness and accuracy of said forms.
- Board members who are absent from the meeting where SFI forms are distributed will be sent a form via email with a request to return completed form on or before May 1<sup>st</sup> of the current year.
- The Board Secretary and Executive Director of the Charter School will continue to follow up with board members until all SFI forms are filed correctly and in a timely manner.
- Board members not complying will be reported to the President of the Board."

#### **Auditor Conclusion**

We are encouraged that management has developed a sensible corrective action plan to address the issues noted in this finding beginning with the first regularly scheduled board meeting and each year thereafter. We will evaluate the effectiveness of this and any corrective action during our next review of the Charter School.

**Finding No. 2**

**The Charter School and its Board of Trustees Failed to Comply with the Sunshine Act by not Adequately Notifying the Public About Special Board Meetings**

*Criteria relevant to the finding:*

Pursuant to Section 1716-A(c) of the CSL, 24 P.S. § 17-1716-A(c), “(c) The board of trustees shall comply with the act of July 3, 1986 (P.L. 388, No. 84), known as the ‘Sunshine Act.’”

Section 709(a) of the Sunshine Act, 65 Pa.C.S. 709(a), provides, in part:

“An agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting. . . .”

Section 703 of the Sunshine Act, 65 Pa.C.S. § 703, defines public notice as follows:

“Publication of notice of the place, date and time of a meeting in a newspaper of general circulation. . . .”

By way of further background, the legislative intent of the Sunshine Act, 65 Pa.C.S. § 701 *et seq.*, is as follows: “(a) Findings.-The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.”

During our review of the board meeting dates from July 16, 2012 through January 18, 2016, we found that the Charter School and its board of trustees failed to notify the public about special board meetings as required by the Sunshine Act.

We determined the Charter School and its board properly notified the public about regular board meetings since opening during the 2012-13 school year, but Charter School officials were unaware of the requirement to notify the public about the three special meetings that were conducted on August 20, 2012, June 21, 2013, and July 23, 2013.

A special meeting<sup>2</sup> is a meeting scheduled by an agency after the agency's regular schedule of meetings has been established.

As required under the CSL, an agency should give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice.

Failure to adequately give public notification of special board meetings erodes public trust. In the absence of notification to the public, the public is unaware that the Charter School is holding a meeting. Without prior knowledge of a board meeting, a taxpayer cannot attend the meeting if they choose to do so.

The Charter School acknowledged that they were unaware of the requirement to notify the public about special board meetings. As a result of our review, the Charter School is now cognizant of the notification requirement and stated that they will notify the public about special board meetings the same way they notify the public about regular board meetings.

<sup>2</sup> The Sunshine Act defines as “Special meeting” as “[a] meeting scheduled by an agency after the agency's regular schedule of meetings has been established.” *See* 65 Pa.C.S. § 703.

*Criteria relevant to the finding  
(continued):*

(b) Declarations.--The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.” [Emphasis added.] See 65 Pa.C.S. § 702.

### **Recommendation**

The *Arts Academy Charter Middle School* should:

Follow the requirements under the Sunshine Act to give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice.

### **Management Response**

Management stated the following:

“Management acknowledges that it was in error in that it was unaware of giving public notification of special board meetings.

Management of the Arts Academy Charter Middle School will, going forward:

- Give public notice at least 24 hours in advance of convening each special, or each rescheduled regular or special meeting specified in the notice to remain compliant with Sunshine and Charter School Law.
- Require the Board Secretary to review any such meeting to insure that proper advice has been given to the public.”

### **Auditor Conclusion**

We are encouraged that management plans to address the issues noted in this finding. We will evaluate the effectiveness of any corrective action during our next review of the Charter School.

## **Distribution List**

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This report was initially distributed to the Chief Executive Officer of the Charter School, the Board of Trustees, and the following stakeholders:

**The Honorable Tom W. Wolf**  
Governor  
Commonwealth of Pennsylvania  
Harrisburg, PA 17120

**The Honorable Pedro A. Rivera**  
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Harrisburg, PA 17126

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