PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL
AUDITOR GENERAL, EUGENE A. DEPASQUALE

A Performance Audit:

CAMERON COUNTY SCHOOL DISTRICT
ALTERED SUPERINTENDENT EMPLOYMENT CONTRACT BUY-OUT

JUNE 2013

Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen

EUGENE A. DEPASQUALE
AUDITOR GENERAL

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

Ms. Annetta Horning, Board President
Cameron County School District
601 Woodland Avenue
Emporium, Pennsylvania 15834

Dear Governor Corbett and Ms. Horning:

The enclosed report contains the results of the Department of the Auditor General's performance audit of the Cameron County School District's (District) superintendent employment contract buy-out. This performance audit covered the period June 23, 2011 through July 20, 2012, and was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. This performance audit is separate and distinct from the District's cyclical performance audits, which the Department conducts approximately every two years. The District's last cyclical performance audit was released on October 11, 2011.

Our audit found that the District complied, in all significant respects, with applicable state laws, contracts, and administrative procedures related to our objectives, except as detailed in the finding noted in this report. A summary of these results is presented in the Executive Summary section of the audit report.

Our audit finding and recommendations have been discussed with the District's management, and their responses are included in this audit report. We believe the implementation of our recommendations will improve the District's operations and facilitate compliance with legal and administrative requirements. We appreciate the District's cooperation during the conduct of this audit.

Sincerely,

/s/
EUGENE A. DEPASQUALE
Auditor General

June 5, 2013

cc: **CAMERON COUNTY SCHOOL DISTRICT** Board of School Directors

Table of Contents

Executive Summary

Audit Work

In August 2011, the Department of the Auditor General began immediately auditing instances where local education agencies (LEA) prematurely ended or altered the employment contracts of their chief administrators. These performance audits do not replace the regular cyclical performance audits that the Department conducts of all Commonwealth LEAs. Instead, the Department performs these audits in addition to each LEA's regular review. The Department will still continue to audit the early separations of all other contracted administrators as part of each LEA's regular cyclical performance audit.

The Department made this policy change because LEAs that prematurely end or alter their chief administrators' contracts frequently spend large sums of taxpayer dollars without receiving any services in return. In addition, these arrangements often involve confidentiality provisions that prevent the public from learning why the LEA undertook such an action. Conducting a performance audit of these agreements as soon as the LEAs execute them helps to ensure that taxpayers have more information about these arrangements and that these facts are available as quickly as possible.

LEA Background

The District encompasses approximately 401 square miles. According to 2010 federal census data, it serves a resident population of 5,085. According to District officials, the District provided basic educational services to pupils through the employment of 65 teachers, 50 full-time and part-time support personnel, and 5 administrators during the 2009-10 school year. Lastly, the District received $6.9 million in state funding in the 2009-10 school year.

Audit Conclusion and Results

Our performance audit found that the District complied, in all significant respects, with the applicable state laws, contracts, and administrative procedures related to our objectives, except as detailed in the finding noted in this report.

Finding: The District Spent $150,000 on an Agreement that Prematurely Terminated Its Superintendent's Employment Contract. On May 17, 2012, the District's Board of School Directors approved an Agreement of Retirement and Severance Terms (Agreement) under which its former Superintendent would retire/resign toward the end of his second year of service. The Agreement required the District to pay the former Superintendent $150,000, as well as some health insurance benefits (see page 6).

Audit Recommendations

The *Cameron County School District Board* should:

1. Enter into employment contracts with prospective former Superintendents at the three-year minimum term permitted by state law, in order to limit potential financial liability of the District and its taxpayers.

2. Specify in the contracts the termination, buy-out, and severance provisions to protect the interests of the District and its taxpayers when employment ends prematurely for any reason.

3. Document in the official Board meeting minutes, in detail, why the District chooses to expend large amounts of public money when ending an administrator's contract.

Audit Scope, Objectives, and Methodology

Scope

> *What is a cyclical performance audit?*
>
> Cyclical performance audits allow the Department of the Auditor General to determine whether local education agencies (LEA) are spending their state funds, including school subsidies, according to the purposes and guidelines that govern the use of those funds.
>
> Additionally, our audits examine the appropriateness of certain administrative and operational practices at each LEA. The Department shares the results of these audits with LEA management, the Governor, the Pennsylvania Department of Education, and other concerned entities. According to the Public School Code, LEAs include all school districts, charter and cyber charter schools, intermediate units, and career and technical schools.

This performance audit, conducted under authority of 72 P.S. § 403, is not a substitute for the local annual audit required by the Public School Code of 1949, as amended, or for the Department's regular cyclical performance audit (see text box left). This performance audit focused exclusively on the circumstances surrounding the early separation of the local education agency's (LEA) top administrator. This audit was completed in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit covered the period June 23, 2011 through July 20, 2012.

While all LEAs have the same school years, some have different fiscal years. Therefore, for the purposes of our audit work and to be consistent with the Pennsylvania Department of Education (PDE) reporting guidelines, we use the term school year rather than fiscal year throughout this report. A school year covers the period July 1 to June 30.

Performance audits draw conclusions based on an evaluation of sufficient, appropriate evidence. Evidence is measured against criteria, such as laws and defined business practices. Our audit focused on assessing the LEA's compliance with applicable state laws, contracts, and administrative procedures. However, as we conducted our audit procedures, we sought to determine answers to the following questions, which serve as our audit objectives:

Objectives

- ✓ Did employment contracts with the superintendent or other administration officials contain adequate separation provisions sufficient to protect the interests of the LEA, its students, and its taxpayers in the event the employment of the administrators ends prematurely for any reason?

What is a performance audit?

Performance audits allow the Department of the Auditor General to immediately review instances where local education agencies prematurely ended or altered the employment contracts of their chief administrators. These audits do not replace the Department's regular cyclical audit, but, instead, are performed in addition to that review.

- ✓ Did the LEA provide as much information as possible to its taxpayers explaining the reasons for the superintendent's separation and justifying the expenditure of funds by or through the LEA in order to terminate the contract early?
- ✓ Did the LEA enter into employment contracts with the superintendent at the three-year minimum provided by state law in order to limit potential financial liability by the LEA and its taxpayers in the event financial liability was not adequately limited through contract provisions?
- ✓ To the greatest degree possible, what is the total financial cost of the superintendent or other administration officials' early contract termination, including funds received by the LEA from private individuals or other entities to facilitate the buy-out?
- ✓ Was the separation agreement transparent and without confidentiality clauses so taxpayers are aware of why the termination occurred?

Methodology

What are internal controls?

Internal controls are processes designed by management to provide reasonable assurance of achieving objectives in areas such as:

- Effectiveness and efficiency of operations.
- Relevance and reliability of operational and financial information.
- Compliance with applicable laws, contracts, grant requirements, and administrative procedures.

Government Auditing Standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our results and conclusions based on our audit objectives. We believe that the evidence we obtained in this audit engagement provides a reasonable foundation for our results and conclusions based on our audit objectives.

The LEA's management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the LEA is in compliance with applicable laws, contracts, grant requirements, and administrative procedures. In conducting our audit, we obtained an understanding of the LEA's internal controls, including any information technology controls, as they relate to the LEA's compliance with applicable state laws, contracts, grant requirements, and administrative procedures that we consider to be significant within the context of our audit objectives. We assessed whether those controls were properly designed and implemented. Any deficiencies in internal control that were identified during the conduct of our audit and determined to be significant within the context of our audit objectives are included in this report.

As part of our audit procedures, we obtained copies of employment agreements and other relevant documents associated with the top administrative official's employment. We also interviewed select administrators and support personnel associated with the LEA's operations.

Findings and Observations

Finding

The District Spent $150,000 on an Agreement that Prematurely Terminated Its Superintendent's Employment Contract

> *Criteria relevant to the finding*:
>
> Section 1073(a) of the Public School Code provides, in part:
>
> "[T]he board shall elect or approve a properly qualified district superintendent to serve a term of from three to five years from the first day of July next following his election or from a time mutually agreed upon by the duly elected district superintendent and the board of school directors."
>
> Note: Act 82 of 2012 amends state law relevant to this issue, effective November 1, 2012. This finding is based on the law in effect at the time of the events discussed herein.

On July 8, 2010, the Board of School Directors (Board) of the Cameron County School District (District) entered into an employment agreement (Contract) with an individual to serve as the District's Superintendent (former Superintendent). The Contract had a term of three years, from July 17, 2010 to July 16, 2013. The Agreement provided compensation to the former Superintendent of $95,000 in the first year, as well as a variety of benefits.

The Agreement also included the following provisions regarding discharge or termination:

"Throughout the term of this contract, the former Superintendent shall be subject to discharge or other personnel action for lawful reasons, in accordance with the Public School Code[1] and other applicable law."

"The former Superintendent may resign at any time provided he gives the Board at least 60 days notice prior to the effective date of the resignation."

On June 23, 2011, towards the end of the first year of the Contract, the Board approved a Resolution between the District and the former Superintendent in which the District accepted the former Superintendent's resignation effective that day, with no reason given. On the same day, the Board approved a second employment agreement (Contract #2) between the District and the former Superintendent that rehired him as the District's former Superintendent for a term of five years commencing on June 23, 2011, and ending June 23, 2016. Contract #2 provided compensation to the former Superintendent at an annualized salary rate of $99,750, beginning July 1, 2011.

[1] The Contract did not reference a specific section of the Public School Code, but presumably it referred to Section 1080, 24 P.S. § 10-1080 (removal "for neglect of duty, incompetency, intemperance, or immorality" following a hearing with due process).

On May 17, 2012, towards the end of the first year of Contract #2 and the second year of the former Superintendent's cumulative service with the District in that position, the Board approved an Agreement of Retirement and Severance Terms (Agreement) that set forth the terms under which the former Superintendent would retire/resign and leave the employment of the District. No reason was provided in Agreement for the severance.

The District and the former Superintendent agreed to the following:

"1. In consideration of the time remaining in the term of an employment contract between [the former Superintendent] and the District dated June 23, 2011, the District agrees to pay [the former Superintendent] the sum of $150,000, less appropriate and required payroll deductions, payable to him on or before July 30, 2012."

"2. The parties further acknowledge that between the date of execution of the Agreement and [the former Superintendent]'s retirement on July 30, 2012, he will not be expected to be present and performing current duties of any type."

"3. By executing this Agreement, [the former Superintendent] agrees to resign his employment with the District, effective July 30, 2012. Upon execution of this Agreement, this commitment by [the former Superintendent] is irrevocable."

"4. After the effective date of his resignation, [the former Superintendent] shall have the option of remaining covered by the District's prevailing health insurance plan for employees for himself and his spouse, with the District responsible for 80 percent of the monthly cost of coverage and [the former Superintendent] responsible for 20 percent. . . ."

"The health insurance coverage provided by this paragraph shall be the coverage that prevails for active professional employees of the District, as modified from time to time, and shall be provided to [the former Superintendent] until he reaches age 65. . . . Should [the former Superintendent] or his spouse be employed prior to [the former

Superintendent] reaching age 65 under circumstances where health insurance coverage is available to [the former Superintendent] and/or his spouse at this place of employment or her place of employment, the obligation of the District to provide health coverage to [the former Superintendent], or his spouse, as the case may be, shall be suspended for the period of time that health insurance coverage is available through such an alternative employment arrangement. If the monthly premium cost assessed to [the former Superintendent] and/or his spouse exceeds the 20 percent amount [the former Superintendent] would pay the District to maintain coverage, the District will reimburse [the former Superintendent] the difference. Should [the former Superintendent] or his spouse's subsequent employment arrangements cease and insurance no longer available, he shall have the option of re-enrolling under the District's coverage.

"In no event will [his] spouse be eligible for coverage under the District's plan if he is not participating in the District's plan.

"5. The parties recognize that as of the effective date of [the former Superintendent]'s resignation, he will not have any vacation, personal day, sick leave or other paid leave entitlements remaining, and the District shall have no obligation for payment of such items."

"6. On or before the effective date of [the former Superintendent]'s retirement from the employ of the District, he will return to the District all property of the School District in his possession. The District acknowledges that [the former Superintendent]'s laptop computer and cell phone are his personal property and need not be returned."

"7. This Agreement supersedes and replaces for all purposes the employment agreement between [the former Superintendent] and the District, and fully defines the District's obligations to [him]. Upon execution of this Agreement, the employment agreement dated June 23, 2011 shall no longer be effective."

The parties also signed a Mutual Release, in which they agreed not to sue each other.

On July 12, 2012, the Board approved an addendum to the Agreement to clarify the former Superintendent's status through the effective date of his retirement on July 30, 2012. This addendum stated that the former Superintendent had "been on paid leave from May 18, 2012 and will remain on paid leave through July 30, 2012." Our audit confirmed that at the time he began his paid leave he had sufficient accrued vacation and personal time to account for the absence from May 18, 2012 through July 30, 2012.

The addendum stated:

"The parties agree as follows:

"1. [The former Superintendent]'s absence from May 18, 2012, through July 30, 2012 has been, and is, deemed and intended by the parties to constitute the use of accrued paid vacation and personal time for which the District was obligated to him."

"2. By being on paid leave from May 18, 2012, through July 30, 2012 the District is discharging all of its accrued obligations to [the former Superintendent] related to accumulated paid leave, as provided for in the parties' agreement of May 18, 2012."

"3. While on the paid leave referred to above, [the former Superintendent] remains an employee of the District and continues to perform those official functions which can only be performed by the commissioned former superintendent."

We determined that, without the Agreement, the former Superintendent would have only been entitled to receive from the District a payment for his unused vacation days, which amounted to $5,559 or $144,441 less than the actual payment made to him.

As of the completion of our fieldwork, the former Superintendent had opted not to maintain coverage by the District's prevailing health insurance plan for himself and his spouse, instead remaining on his spouse's health insurance plan. However, under the terms of the Agreement, he may choose to obtain coverage from the

District at any time in the future, which could result in further costs to the District.

In these very difficult economic times, both nationally and throughout Pennsylvania, it is incumbent upon school boards to be good stewards of the taxpayer money entrusted to them. The District's early separation agreement with its former Superintendent expended a significant amount of taxpayer dollars on an endeavor unrelated to the education of its students. Moreover, the District's taxpayers will not see any return on this investment because it was not expended for the purpose of obtaining a service or an asset.

This buy-out may have been averted, or the costs significantly reduced, if the District had included provisions in its employment contracts with the former Superintendent regarding the compensation and benefits payable upon the premature termination of the contract. The time to negotiate those terms is at the outset of the employment relationship, not when matters turn potentially hostile between the parties.

The auditors requested an explanation of the reasons for the District's buy-out of the former Superintendent. The Board President stated the former Superintendent approached the Board of Directors through the District Solicitor desiring a premature termination of the contract, stating his terms for such termination. The Board and the former Superintendent came to a mutual agreement on those terms, and proceeded to execute the agreement.

In a letter to the local newspaper, published on May 23, 2012, the former Superintendent stated that policies imposed by new Board members, with which he disagreed, led to his decision to retire.

Recommendations

The *Cameron County School District Board* should:

1. Enter into employment contracts with prospective former Superintendents at the three-year minimum term permitted by state law, in order to limit potential financial liability of the District and its taxpayers.

2. Specify in the contracts the termination, buy-out, and severance provisions to protect the interests of the District and its taxpayers when employment ends prematurely for any reason.

3. Document in the official Board meeting minutes, in detail, why the District chooses to expend large amounts of public money when ending an administrator’s contract.

Management Response

Management provided a response agreeing with the finding and provided no further comment at the time of our audit.

Distribution List

This report was initially distributed to the Superintendent of the District, the Board of School Directors, our website at www.auditorgen.state.pa.us, and the following stakeholders:

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

The Honorable Ronald J. Tomalis
Secretary of Education
1010 Harristown Building #2
333 Market Street
Harrisburg, PA 17126

The Honorable Robert M. McCord
State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Ms. Nichole Duffy
Director
Bureau of Budget and Fiscal Management
Pennsylvania Department of Education
4th Floor, 333 Market Street
Harrisburg, PA 17126

Dr. David Wazeter
Research Manager
Pennsylvania State Education Association
400 North Third Street - Box 1724
Harrisburg, PA 17105

Mr. Tom Templeton
Assistant Executive Director
School Board and Management Services
Pennsylvania School Boards Association
P.O. Box 2042
Mechanicsburg, PA 17055

This report is a matter of public record and is available online at www.auditorgen.state.pa.us. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 231 Finance Building, Harrisburg, PA 17120; via email to: news@auditorgen.state.pa.us.