

ELIZABETHTOWN AREA SCHOOL DISTRICT
LANCASTER COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT

JUNE 2011

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

Mr. Jamie H. Rowley, Board President
Elizabethtown Area School District
600 East High Street
Elizabethtown, Pennsylvania 17022

Dear Governor Corbett and Mr. Rowley:

We conducted a performance audit of the Elizabethtown Area School District (EASD) to determine its compliance with applicable state laws, regulations, contracts, grant requirements and administrative procedures. Our audit covered the period February 21, 2007 through October 20, 2009, except as otherwise indicated in the report. Additionally, compliance specific to state subsidy and reimbursements was determined for the school years ended June 30, 2008, 2007, 2006 and 2005. Our audit was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit found that the EASD complied, in all significant respects, with applicable state laws, regulations, contracts, grant requirements, and administrative procedures, except as detailed in the two findings noted in this report. A summary of these results is presented in the Executive Summary section of the audit report.

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

Sincerely,

/s/

JACK WAGNER
Auditor General

June 21, 2011

cc: **ELIZABETHTOWN AREA SCHOOL DISTRICT** Board Members

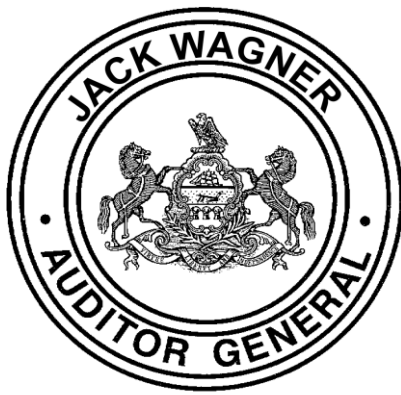


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Executive Summary

Audit Work

The Pennsylvania Department of the Auditor General conducted a performance audit of the Elizabethtown Area School District (EASD). Our audit sought to answer certain questions regarding the District's compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures.

Our audit scope covered the period February 21, 2007 through October 20, 2009, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. Compliance specific to state subsidy and reimbursements was determined for school years 2007-08, 2006-07, 2005-06 and 2004-05.

District Background

The EASD encompasses approximately 60 square miles. According to a May 2007 local census data, it serves a resident population of 26,649. According to District officials, in school year 2007-08 the EASD provided basic educational services to 3,970 pupils through the employment of 288 teachers, 215 full-time and part-time support personnel, and 23 administrators. Lastly, the EASD received more than \$12.9 million in state funding in school year 2007-08.

Audit Conclusion and Results

Our audit found that the EASD complied, in all significant respects, with applicable state laws, regulations, contracts, grant requirements, and administrative procedures, except for two compliance-related matters reported as findings.

Finding No. 1: The District Incurred Additional Costs Totaling \$11,023 Under an Agreement that Terminated the Superintendent's Employment with the District. Our audit found that on November 13, 2007, after the Superintendent had served only four and one-half months of his term, the Board approved an Agreement and Resignation of Employment with the Superintendent, which terminated his employment with the EASD effective February 28, 2008 (see page 5).

Finding No. 2: Lack of Memorandum of Understanding and Memorandums Not Updated Timely. Our audit found that the EASD did not have a signed Memorandum of Understanding (MOU) with one of its three local law enforcement agencies. We also found that the MOUs with the other two local law enforcement agencies had not been updated within the last two years (see page 10).

Status of Prior Audit Findings and Observations. With regard to the status of our prior audit recommendations to the EASD from an audit we conducted of the 2003-04 and 2002-03 school years, we found the EASD did not have any prior audit findings or observations.



Audit Scope, Objectives, and Methodology

Scope

What is a school performance audit?

School performance audits allow the Department of the Auditor General to determine whether state funds, including school subsidies, are being used 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 Local Education Agency (LEA). The results of these audits are shared with LEA management, the Governor, the PA Department of Education, and other concerned entities.

Our 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. We conducted our audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit covered the period February 21, 2007 through October 20, 2009.

Regarding state subsidy and reimbursements, our audit covered school years 2007-08, 2006-07, 2005-06 and 2004-05.

While all districts have the same school years, some have different fiscal years. Therefore, for the purposes of our audit work and to be consistent with Department of Education 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.

Objectives

What is the difference between a finding and an observation?

Our performance audits may contain findings and/or observations related to our audit objectives. Findings describe noncompliance with a law, regulation, contract, grant requirement, or administrative procedure. Observations are reported when we believe corrective action should be taken to remedy a potential problem not rising to the level of noncompliance with specific criteria.

Performance audits draw conclusions based on an evaluation of sufficient, appropriate evidence. Evidence is measured against criteria, such as, laws, regulations, and defined business practices. Our audit focused on assessing the EASD's compliance with applicable state laws, regulations, contracts, grant requirements 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:

- ✓ Is the District's pupil transportation department, including any contracted vendors, in compliance with applicable state laws and procedures?
- ✓ Are there any declining fund balances which may impose risk to the fiscal viability of the District?
- ✓ Did the District pursue a contract buyout with an administrator and if so, what was the total cost of the buy-out, reasons for the termination/settlement, and do the current employment contract(s) contain adequate termination provisions?

- ✓ Were there any other areas of concern reported by local auditors, citizens, or other interested parties which warrant further attention during our audit?
- ✓ Is the District taking appropriate steps to ensure school safety?
- ✓ Did the District use an outside vendor to maintain its membership data and if so, are there internal controls in place related to vendor access?

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, regulations, 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 findings, observations and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

EASD management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the District is in compliance with applicable laws, regulations, contracts, grant requirements, and administrative procedures. Within the context of our audit objectives, we obtained an understanding of internal controls and assessed whether those controls were properly designed and implemented.

Any significant deficiencies found during the audit are included in this report.

In order to properly plan our audit and to guide us in possible audit areas, we performed analytical procedures in the area of comparative financial information.

Our audit examined the following:

- Records pertaining to financial stability.
- Items such as Board meeting minutes.

Additionally, we interviewed selected administrators and support personnel associated with EASD operations.

Findings and Observations

Finding No. 1

The District Incurred Additional Costs Totaling \$11,023 Under an Agreement that Terminated the Superintendent's Employment with the District

Criteria relevant to the finding:

Section 1073 of the Public School Code, 24 P.S. § 10-1073(a), requires school districts to enter into three-to five-year employment contracts with their superintendents.

The Pennsylvania Retirement Code, 24 Pa.C.S. § 8102, provides that a "school employee" is defined as a "person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration" (emphasis added).

On June 5, 2007, the board of school directors (Board) of the Elizabethtown Area School District (District) entered into an employment contract (Contract) with an individual (Superintendent) to serve as the District's superintendent. The Contract had a term of five years, from July 1, 2007 to June 30, 2012. The Contract provided annual compensation of \$135,000 to the Superintendent, as well as a variety of benefits. The Contract further provided that the Board would determine the Superintendent's salary in future contract years based on the discretion of the Board and based upon Superintendent exceeding performance expectations.

The Contract included the following provisions with regard to the early termination of the Superintendent's employment with the District:

- Mutual written agreement of Superintendent and the District. This contract may be terminated by mutual written agreement of Superintendent and the School District. In such event, except for the duty in Section 8 above [regarding legal defense and indemnification] or as otherwise provided by written agreement, School District will pay Superintendent's salary and provide normal benefits through the effective date of termination, and will have no further obligation for salary, benefits, or any other item under this contract after the effective date of termination.
- Disability of Superintendent. If Superintendent is unable to perform all of Superintendent's regular duties, because of physical or mental incapacity, for a period of 90 consecutive days or for a period of 120 days during any one year period, Superintendent will be considered disabled, and the Board may terminate this contract by written notice to Superintendent. In such event, prior to termination Superintendent will be subject to School District's normal policies concerning use of sick leave days, vacation days, and personal leave days, and

School District will have no further obligation for salary, benefits, or any other item under this contract after the effective date of termination (except that Section 8 above will remain in effect and Superintendent will continue to receive any benefits for which Superintendent qualifies under the disability insurance policy provided by School District as referenced above).

- Termination by District for Cause. The Board may remove Superintendent and terminate this contract pursuant to the procedures set forth in the [Public] School Code § 1080 for cause [i.e. neglect of duty, incompetency, intemperance or immorality]. For purposes of this contract, “cause” shall mean the reasons set forth in School Code § 1080, the reasons set forth in other applicable law that requires termination of employment, or misstatement of a material fact concerning Superintendent’s qualifications in connection with School District’s employment of Superintendent. If the Superintendent has been given notice of charges and of a hearing, the Board may suspend the Superintendent, with or without pay, at the discretion of the Board, pending a hearing and final decision. If School District terminates this contract for cause, School District will have no further obligation for salary, benefits, or any other item under this contract after the effective date of termination or any earlier suspension without pay, except as in Section 8 above.

On November 13, 2007, after the Superintendent served only four-and-one-half months of the term of his contract, the Board approved an Agreement and Resignation of Employment (Agreement) with the Superintendent, which terminated his employment with the District effective February 28, 2008. However, the Agreement also states that, until the effective date of his resignation, the Superintendent “shall not report regularly to work in the School District’s office.” The Agreement characterized the separation as “early termination by mutual agreement” pursuant to the Contract.

The Agreement required the District to make the following payments to the Superintendent totaling \$53,824:

- Salary for the period November 6, 2007 through February 28, 2008 (\$42,931);
- Payment of two unused personal days at the daily rate of \$100 (\$200);
- Tax-sheltered annuity payment of \$2,500 prorated for the period of November 6, 2007 through February 28, 2008 ($\$2,500/261$ contract days or \$9.58 per day, times 83 days for the period = \$795);
- Medical and vision benefits for the Superintendent and his spouse for the period from November 6, 2007 to February 28, 2008 (\$5,424) and from February 28, 2008 to May 1, 2008 (\$3,523);
- Conference travel expenses for the Superintendent to attend the Pennsylvania/Title I Improving School Performance Conference in Pittsburgh from January 27, 2008 through January 30, 2008 (\$951).

The \$42,931 in salary, \$200 for two unused personal days, \$795 for the tax shelter annuity payment, \$8,947 for medical and vision benefits, and \$951 for conference travel expenses resulted in \$53,824 of termination-related costs to the District. The medical and vision benefits for the period from February 28, 2008, to May 1, 2008 were costs not required by the terms of the Contract.

In addition to the payments and benefits made to the Superintendent, the Board authorized a salary adjustment of \$7,500 for additional duties performed by the District's Assistant Superintendent for the period November 13, 2007 through February 28, 2008. This, along with the \$3,523 for medical and vision benefits not required by the terms of the Contract, resulted in additional costs to the District of \$11,023.

Since participation in the Public School Employees' Retirement System is predicated upon actual service, a participant cannot earn service credit merely by reporting a salary and making contributions. Because the Superintendent did not engage in any work after

November 5, 2007, the inclusion of his salary payments of \$42,931 for retirement credit is invalid.

The Agreement does not provide a reason for the buy-out. The Agreement states that the School District shall explain that the Superintendent is resigning for personal reasons.

The Department of the Auditor General requested an explanation of the reasons for the District's buy-out of the Superintendent. The Board's minutes stated simply that the Superintendent resigned "for personal reasons." The Superintendent was subsequently hired by another Pennsylvania school district.

Recommendations

The *Elizabethtown Area School District* should:

1. Ensure that future employment contracts with prospective administrators contain adequate termination provisions sufficient to protect the interests of the District and its taxpayers in the event that the employment ends prematurely for any reason.
2. Provide as much information as possible to the taxpayers of the District explaining the reasons for the termination of the Superintendent and justifying the District's expenditure of public funds to buy out the contract.
3. Work with successors to the Superintendent to include in his/her current and future employment contracts provisions that address the compensation and benefits payable to, or on behalf of, said administrator in the event of a premature termination of his/her contract.

The *Public School Employees' Retirement System* should

4. Review the Superintendent's salary payments and determine what actions, if any, are necessary with regard to the District's inclusion of his salary payments of \$42,931 for retirement credit.

Management Response

Management stated the following:

The Superintendent during the audit period of June 30, 2005 and 2006 became involved in a personal situation that adversely affected his ability to lead the

District. The Board sought the most effective and cost-efficient means to fix the problem. After evaluating the costs, risks and benefits of all options, the Board ultimately proceeded with the Agreement that it negotiated with the Superintendent. Based on the facts and the law as explained to the Board by the District's solicitor, the Board in its discretion determined that entering the Agreement was in the best interest of the District's taxpayers, students and staff. Accordingly, as permitted under the terms of the Superintendent's employment contract, the Superintendent and Board mutually reached an Agreement to end his employment with the District.

Finding No. 2

Lack of Memorandum of Understanding and Memorandums Not Updated Timely

Criteria relevant to the finding:

Public School Code Section 13-1303-A(c) provides:

All school entities shall develop a memorandum of understanding with local law enforcement which sets forth procedures to be followed when an incident involving an act of violence or possession of a weapon by any person occurs on school property. Law enforcement protocols shall be developed in cooperation with local law enforcement and the Pennsylvania State Police.

Additionally, the Basic Education Circular issued by the Department of Education entitled Safe Schools and Possession of Weapons, as well as the Complete All-Hazards School Safety Planning Toolkit disseminated by the Pennsylvania Emergency Management Association, contain a sample MOU to be used for school entities. Section VI, General Provisions, item B of this sample states:

This Memorandum may be amended, expanded or modified at any time upon written consent of the parties, but in any event must be reviewed and re-executed within two years of the date of its original execution and every two years thereafter.

Our audit of the Elizabethtown Area School District records found that the District did not have a signed Memorandum of Understanding (MOU) with one of its three local law enforcement agencies available for audit.

Furthermore, we found that the current MOUs between the District and the other two local law enforcement agencies were signed July 16, 2007 and October 26, 1998, and have not since been updated.

The failure to obtain and update a signed MOU with all local law enforcement agencies could result in a lack of cooperation, direction and guidance between District employees and law enforcement agencies if an incident occurs on school property, at any school-sponsored activity, or on any public conveyance providing transportation to or from a school or school-sponsored activity. This internal control weakness could have an impact on law enforcement notification and response, and ultimately the resolution of a problem situation.

Recommendations

The *Elizabethtown Area School District* should:

1. In consultation with the solicitor, develop and implement a MOU between the District and the local law enforcement agency for which no MOU exists.

2. Review, update and re-execute the current MOU between the District and the other two local law enforcement agencies.
3. Adopt a policy requiring the administration to review and re-execute all MOUs every two years.

Management Response

Management stated the following:

The Elizabethtown Area School District agrees with the auditor's finding and the following actions will be taken to ensure that the district has Memorandums of Understanding (MOUs) that will be updated in a timely manner with all applicable police departments:

- The Elizabethtown Area School District will procure MOUs with [all local law enforcement agencies].
- The Business Office will keep a copy of all three current MOUs in its "contracts" file.
- The Director of Support Services will track and update all three MOUs every two years.

District administration will share the corrective action steps listed with all involved parties by October 23, 2009. The Director of Support Services for the district will work to secure the three MOUs by no later than November 30, 2009. Upon receipt of each MOU, the district's Business Office will begin maintaining the MOUs in its files.

While turnover of district personnel in the department responsible for maintaining the MOUs is the cause of the finding, the lack of MOUs certainly doesn't reflect the district's position on community partnerships. The district believes wholeheartedly that building strong collaborations with the community is paramount to the district's success and this includes having a strong relationship with our local municipalities.

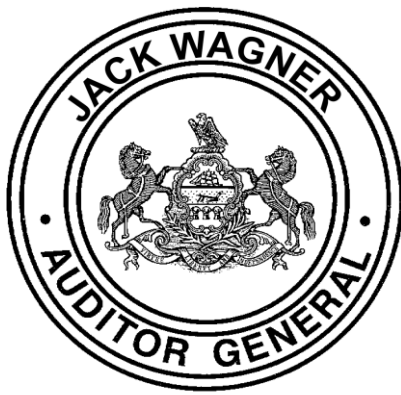
Currently in our schools, we have officers that run the D.A.R.E. [Drug Abuse Resistance Education] program at the elementary level and a School Resource Officer who supports maintaining a positive learning environment at the secondary level. The district successfully partnered with [a

local law enforcement agency] to secure over \$150,000 through a COPS [Community Oriented Policing Services] grant for enhanced security at several of our schools. The district has also coauthored a grant with [another local law enforcement agency] to secure funds that would allow an officer to spend some time in two district schools promoting making positive choices with the students. Most recently, the district formed an emergency response committee comprised of school district leaders, local first responders, community partners, and LEMA [Lancaster Emergency Management Agency] that will meet two times a year to discuss current affairs in the community.

The district is proud of the programs it has in place that make use of the invaluable resource that is the local police. We are confident the proposed corrective action steps that secure MOUs will enhance our already strong relationship with local law enforcement.

Status of Prior Audit Findings and Observations

Our prior audit of the Elizabethtown Area School District resulted in no findings or observations.



Distribution List

This report was initially distributed to the superintendent of the school district, the board members, our website address at www.auditor.gen.state.pa.us, and the following:

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