

PERFORMANCE AUDIT

Fairfield Area School District Adams County, Pennsylvania

October 2016



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE
AUDITOR GENERAL

Ms. Karen Kugler, Superintendent
Fairfield Area School District
4840 Fairfield Road
Fairfield, Pennsylvania 17320

Ms. Pamela Mikesell, Board President
Fairfield Area School District
4840 Fairfield Road
Fairfield, Pennsylvania 17320

Dear Ms. Kugler and Ms. Mikesell:

Our performance audit of the Fairfield Area School District (District) evaluated the application of best practices in the areas of governance and school safety. In addition, this audit determined the District's compliance with certain relevant state laws, regulations, contracts, and administrative procedures (relevant requirements). This audit covered the period July 1, 2009 through June 30, 2015, except as otherwise indicated in the audit scope, objective, and methodology section of the report. The audit was conducted pursuant to Section 402 and 403 of The Fiscal Code (72 P.S. §§ 402 and 403), and in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings 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.

Our audit found that the District applied best practices in the areas listed above and complied, in all significant respects, with relevant requirements, except as detailed in our two findings noted in this audit report. A summary of the results is presented in the Executive Summary section of the audit report.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale".

Eugene A. DePasquale
Auditor General

October 31, 2016

cc: FAIRFIELD AREA SCHOOL DISTRICT Board of School Directors

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Executive Summary

Audit Work

The Pennsylvania Department of the Auditor General conducted a performance audit of the District. Our audit sought to answer certain questions regarding the District's application of best practices and compliance with certain relevant state laws, regulations, contracts, and administrative procedures and to determine the status of corrective action taken by the District in response to our prior audit recommendations.

Our audit scope covered the period July 1, 2009 through June 30, 2015, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. (See Appendix A)

Audit Conclusion and Results

Our audit found that the District applied best practices and complied, in all significant respects, with certain relevant state laws, regulations, contracts, and administrative procedures, except for two findings.

Finding No. 1: The Board's Approval of the Former Superintendent's Resignation and a Settlement Agreement Resulted in \$128,000 of Additional Costs and in Noncompliance with the Public School Code and Sunshine Act. The District's Board of School Directors (Board) decision to not renew the former Superintendent's contract, its approval of his resignation and a settlement agreement, and related legal expenses resulted in \$128,000 of additional costs to the District. Additionally, we found that the Board's actions regarding its intentions to not retain the former

Superintendent and to consider other applicants lacked the public transparency and good governance required by the Public School Code (PSC). Further, we believe that the Board did not provide adequate notice of an executive session held regarding the former Superintendent's resignation and the appointment of a Substitute Superintendent in noncompliance with the Sunshine Act. Finally, the Board's decision-making and negotiations surrounding the former Superintendent's retention as well as the appointment of and contract with the Substitute Superintendent were not discussed with **all** board members prior to the execution of and voting upon related documentation and contracts (see page 6).

Finding No. 2: Inaccurate Reporting of Eligible Retirement Wages to the Public School Employees' Retirement System.

Our review of the District's payroll records for the former Superintendent, the Settlement and Release Agreement (Agreement) signed by the former Superintendent, and the Act 93 Compensation and Benefits Programs for administrators (Act 93) found that the District incorrectly reported wages as eligible for retirement to the Public School Employee's Retirement System (PSERS) while the former Superintendent was on administrative leave from December 23, 2014 through June 30, 2015, without engaging in work for the District (see page 25).

Status of Prior Audit Findings and Observations. There were two findings and one observation in our prior audit report.

Background Information

School Characteristics 2015-16 School Year ^A	
County	Adams
Total Square Miles	61.6
Resident Population ^B	9,306
Number of School Buildings	2 ^C
Total Teachers	80
Total Full or Part-Time Support Staff	43
Total Administrators	6
Total Enrollment for Most Recent School Year	985
Intermediate Unit Number	12
District Vo-Tech School	Adams County Tech Prep

A - Source: Information provided by the District administration and is unaudited.

B - Source: United States Census
<http://www.census.gov/2010census>

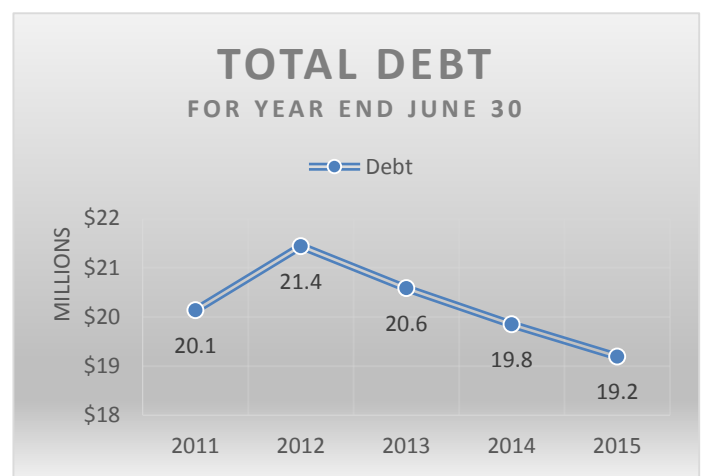
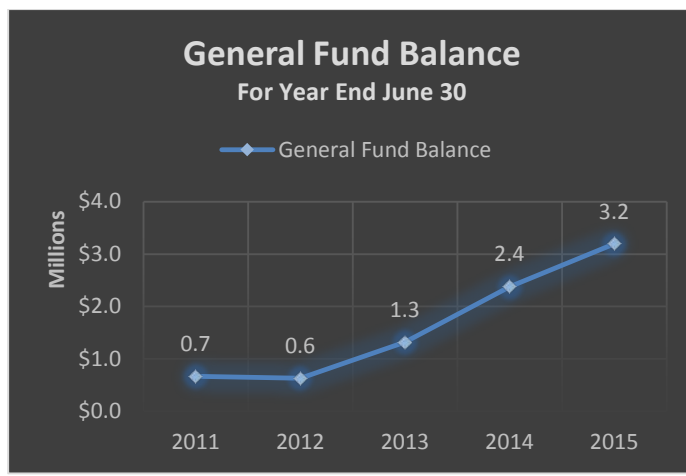
C - One elementary and one combined middle/high school

Mission Statement^A

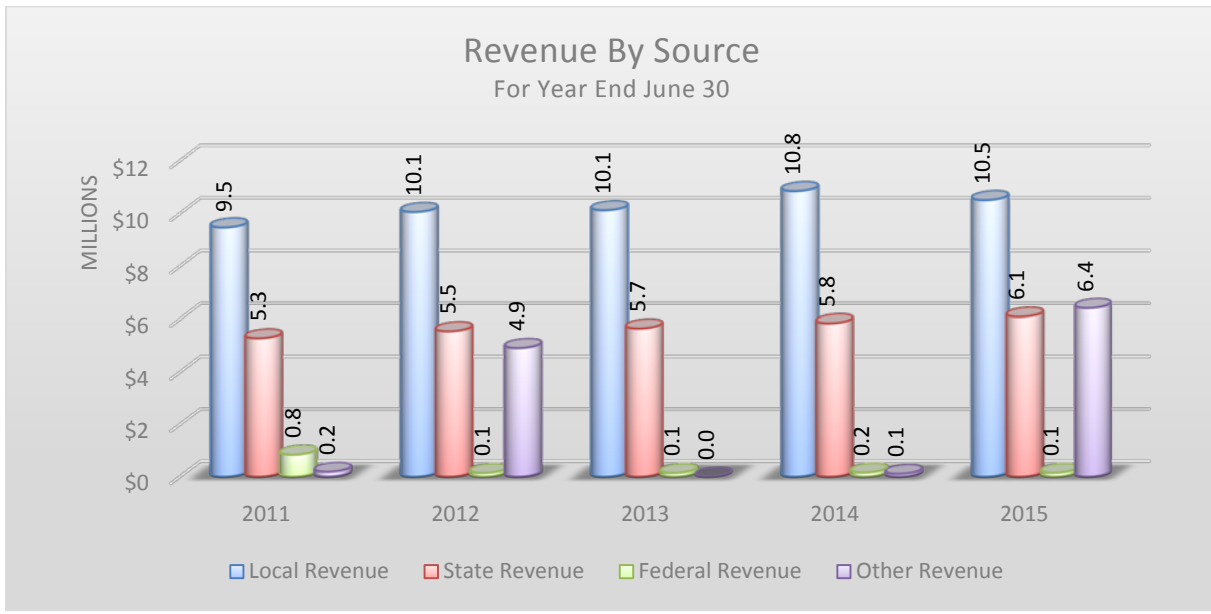
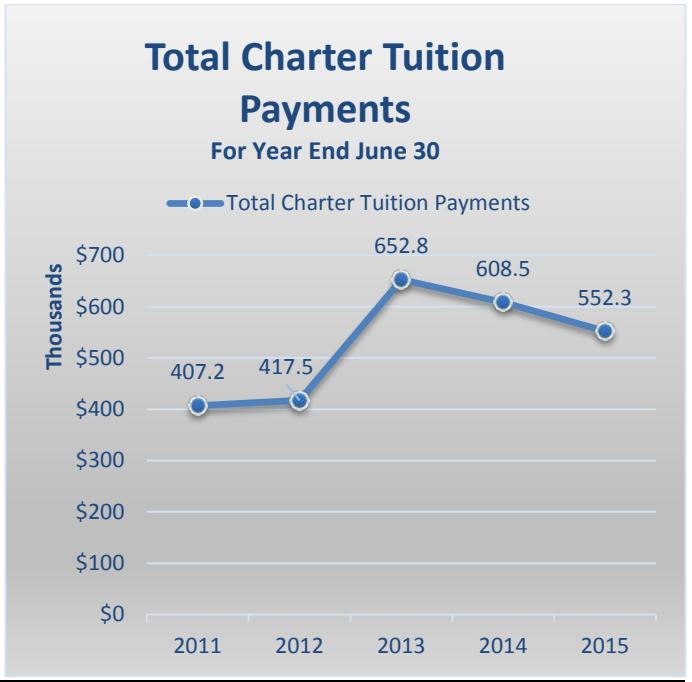
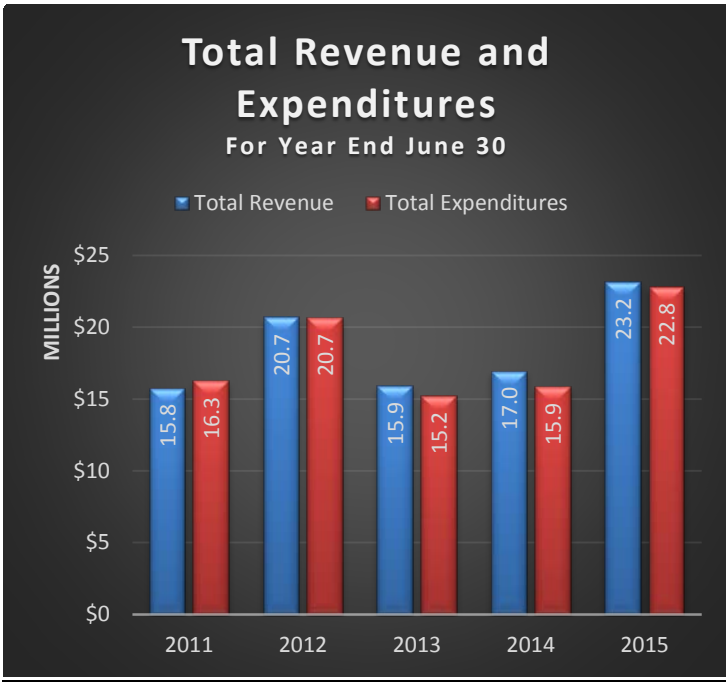
The District's mission statement is, "Student's First."

Financial Information

The following pages contain financial information about the District obtained from annual financial data reported to the Pennsylvania Department of Education (PDE) and available on PDE's public website. This information was not audited and is presented for **informational purposes only**.



Financial Information Continued



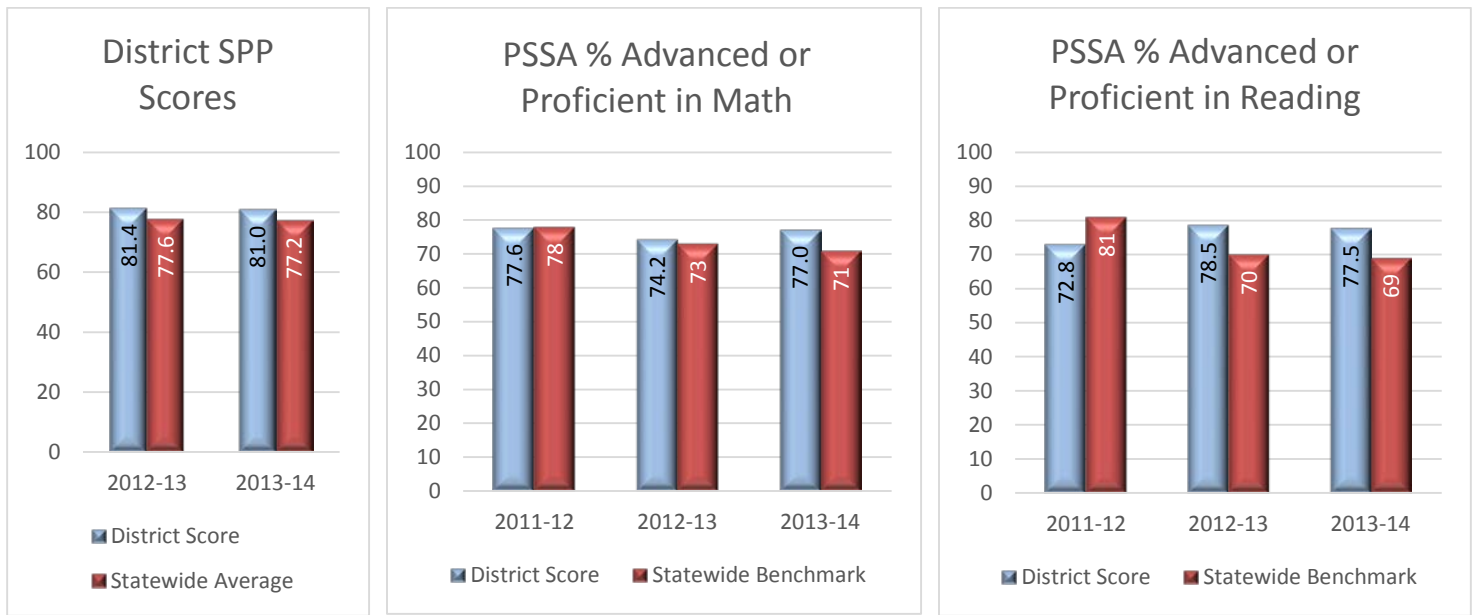
Academic Information

The following table and charts consist of School Performance Profile (SPP) scores and Pennsylvania System of School Assessment (PSSA) results for the entire District obtained from PDE's data files.¹ These scores are presented in the District's audit report for **informational purposes only**, and they were not audited by our Department.

SPP benchmarks represent the statewide average of all district school buildings in the Commonwealth.² PSSA benchmarks and goals are determined by PDE each school year and apply to all public school entities.³ District SPP and PSSA scores were calculated using an average of all of the individual school buildings within the District. Scores below SPP statewide averages and PSSA benchmarks/goals are presented in red.

Districtwide SPP and PSSA Scores

District	SPP Scores		PSSA % Advanced or Proficient in Math			PSSA % Advanced or Proficient in Reading		
	2012-13	2013-14	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
<i>Statewide Benchmark</i>	77.6	77.2	78	73	71	81	70	69
<i>Fairfield Area SD</i>	81.4	81.0	77.6	74.2	77.0	72.8	78.5	77.5
<i>SPP Grade⁴</i>	B	B						



¹ PDE is the sole source of academic data presented in this report. All academic data was obtained from PDE's publicly available web site.

² Statewide averages for SPP scores were calculated based on all district school buildings throughout the Commonwealth, excluding charter and cyber charter schools.

³ PSSA benchmarks apply to all district school buildings, charters, and cyber charters. In the 2011-12 school year, the state benchmarks reflect the Adequate Yearly Progress targets established under No Child Left Behind. In the 2012-13 and 2013-14 school years, the state benchmarks reflect the statewide goals based on annual measurable objectives established by PDE.

⁴ The following letter grades are based on a 0-100 point system: A (90-100), B (80-89), C (70-79), D (60-69), F (59 or below)

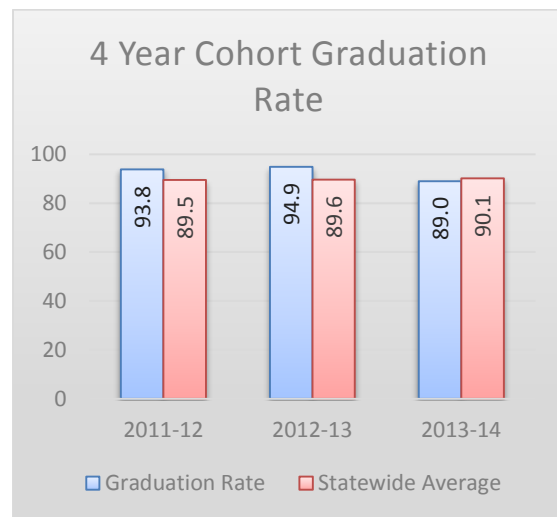
Individual School Building SPP and PSSA Scores

The following table consists of SPP scores and PSSA results for each of the District’s school buildings. Any blanks in PSSA data means that PDE did not publish a score for that school for that particular year.⁵

School Name	SPP Scores		PSSA % Advanced or Proficient in Math			PSSA % Advanced or Proficient in Reading		
	2012-13	2013-14	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
<i>Statewide Benchmark</i>	77.6	77.2	78	73	71	81	70	69
<i>Fairfield Area Elementary School</i>	78.3	73.3	86.7	80.5	79.9	78.7	78.5	80.5
<i>Fairfield Area High School</i>	81.2	83.1	68.4	63.6	70.6	71.0	82.2	77.2
<i>Fairfield Area Middle School</i>	84.7	86.6	77.6	78.4	80.5	68.7	74.6	74.6

4 Year Cohort Graduation Rates

The cohort graduation rates are a calculation of the percentage of students who have graduated with a regular high school diploma within a designated number of years since the student first entered high school. The rate is determined for a cohort of students who have all entered high school for the first time during the same school year.⁶



⁵ PDE’s data does not provide any further information regarding the reason a score was not published.

⁶ <http://www.education.pa.gov/Data-and-Statistics/Pages/Cohort-Graduation-Rate-.aspx#.V1BFCDTD-JA>

Findings

Finding No. 1

The Board's Approval of the Former Superintendent's Resignation and a Settlement Agreement Resulted in \$128,000 of Additional Costs and in Noncompliance with the Public School Code and Sunshine Act

Criteria relevant to the finding:

Settlement and Release Agreement

The former Superintendent's termination provisions state, in part:

"... 1. ADMINISTRATIVE LEAVE: Effective December 23, 2014, District will place [the former Superintendent] on paid administrative leave through June 30, 2015. . . .

3. SEVERANCE PAY AND BENEFITS: . . . [the former Superintendent] shall receive all pay and benefits under his current Employment Agreement through the Administrative Leave period until his retirement and resignation date of June 30, 2015. . . .

The District's Board decision to not renew the former Superintendent's contract, the Board's approval of his resignation and a settlement agreement, and its related legal expenses resulted in \$128,000 of additional costs to the District. Additionally, we found that the Board's actions regarding its intentions to not retain the former Superintendent and to consider other applicants lacked the public transparency and good governance required by the PSC.

Further, we believe that the Board did not provide adequate notice of an executive session held regarding the former Superintendent's resignation and the appointment of a Substitute Superintendent in noncompliance with the Sunshine Act. Finally, the Board's decision-making and negotiations surrounding the former Superintendent's retention, as well as the appointment of and contract with the Substitute Superintendent were not discussed with **all** board members prior to the execution of and voting upon related documentation and contracts.

The best practices of the *Pennsylvania School Boards Association's (PSBA) Standards for Effective School Governance* that were in effect for ten years through late 2015 provided that a board must ensure that individual board members do not act unilaterally on behalf of the board and ensure that each board member will receive the same information to review prior to making decisions. Further, *PSBA's Code of Conduct for Members of Pennsylvania School Boards* in effect during that same time

*Criteria relevant to the finding
(continued):*

8. GENERAL AND SPECIFIC RELEASE: a. In consideration for the payments provided herein, [the former Superintendent], on behalf of himself, his heirs and assigns, hereby releases and forever discharges District, its successors, affiliates and assigns, as well as any and all officers, directors, employees, agents and representatives, from any and all claims, demands, obligations, losses, cases of action and/or liabilities of any nature whatsoever, whether based on contract, tort or other legal or equitable theory of recovery, and whether known or unknown (but not including rights or claims that may arise after the Effective Date of Termination), . . . [the former Superintendent] further agrees not to bring, continue, or maintain any legal proceeding of any nature whatsoever against the District, . . .”

Section 1073(b) of the PSC, 24 P.S. § 1073(b), states, in part:

“At a regular meeting of the board of school directors occurring at least one hundred fifty (150) days prior to the expiration date of the term of office of the district superintendent, the agenda shall include an item requiring affirmative action by five or more members of the board of school directors to notify the district superintendent that the board intends to retain him for a further term of three (3) to five (5) years or that another or other candidates will be considered for the office. . . .” [Emphasis added.]

period stated, in part, “Board members should work together in a spirit of harmony, respect and cooperation, despite differences of opinion.”⁷ PSBA more recently adopted *Principles for Governance and Leadership* that continue to stress the importance of school directors collectively and individually working together in a spirit of harmony, respect, and cooperation.

By not publically announcing and voting upon its intentions regarding the retention of the former Superintendent at a public board meeting as required, the Board deprived the general public of an opportunity to discuss and question the merits of this decision. Moreover, the Board’s failure to work as a collective, united governing team resulted in a lack of circumstantial awareness and transparency among **all** board members and potentially hasty and uninformed decision-making. Ultimately, the Board’s actions and possible “back room” negotiating and decision-making among majority board members away from the public and minority board members cost the District \$128,000. We also believe that some of the Board’s actions or lack thereof were in noncompliance with the PSC and Sunshine Act.

District’s Costs to Buy-Out the Former Superintendent

Employment Contract. The District and former Superintendent originally entered into an employment contract in 2007. In December 2009, the parties entered into a five year contract extension that was effective from July 1, 2010 through June 30, 2015.

Settlement and Release Agreement. On December 1, 2014, seven months before the contract was set to expire, the former Superintendent and Board agreed to prematurely part ways by executing and approving an Irrevocable Letter of Resignation (Resignation Letter) and a Settlement and Release Agreement (Settlement Agreement). While the District argues that the former Superintendent “resigned”, we believe the facts of this situation actually constitute a buy-out because the District offered and provided the former Superintendent with administrative leave and a severance package in exchange for his resignation.

⁷ According to PSBA, more than 400 districts had voluntarily adopted PSBA’s *Standards and Code of Conduct* by the end of 2013. However, despite the former Superintendent’s recommendation to adopt them, the Board disapproved the resolution adopting PSBA’s *Standards and Code of Conduct* according to the February 10, 2014 board meeting minutes.

Criteria relevant to the finding (continued):

Section 708(b) of the Pennsylvania Sunshine Act, 65 Pa.C.S. § 708(b), states:

“The executive session may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. **If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance** of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.” [Emphasis added.]

According to *PSBA’s Standards for Effective School Governance* that were in effect for 10 years through late 2015, an effective school board models responsible governance and leadership by preparing to make informed decisions and operating as a collective board in making decisions. This includes encouraging all board members to actively participate in board discussions, deliberations and decisions, ensuring that individual board members do not act unilaterally on behalf of the board, and ensuring that each board member will receive the same information to review prior to making decisions.

Additionally, *PSBA’s Code of Conduct for Members of Pennsylvania School Boards* that was also in effect for the same time period states, in part, “Board members should work together in a spirit of harmony, respect and cooperation, despite differences of opinion.”

According to the Settlement Agreement, the former Superintendent decided to resign his position **after** being informally notified by the Board that it wasn’t going to renew his contract and **after** accepting the District’s offer to be placed on administrative leave for the remainder of his contract while receiving severance pay and benefits. Moreover, the Resignation Letter and Settlement Agreement were incorporated into one another.

The Board’s decision to not retain the former Superintendent, to place him on paid administrative leave from December 23, 2014 through June 30, 2015, and to buy-out the remainder of his contract cost the District \$89,000 in salaries, benefits, and PSERS employer contributions. The former Superintendent was paid his original, contracted 2014-15 salary through the normal payroll process during this time period. Since these payments were part of a Settlement Agreement constituting a contract buy-out and were not wages for performing work on the part of the District, we found that the District improperly reported these payments as eligible retirement wages, thereby inflating the final average salary and service credit for retirement purposes (see Finding No. 2).⁸

Additional Related Legal Costs

Overall, the District incurred more than \$39,000 in related legal costs between July 1, 2014 and June 30, 2015, to address issues which occurred as a result of the Board’s ineffective governance and lack of transparency surrounding the former Superintendent’s retention.

Legal Costs Related to Contract Buy-Out and Search for Replacement. Legal costs of \$18,000 were incurred related to the early departure and replacement of the former Superintendent. Specifically, these costs included the preparation and/or review of legal documents related to the following:

- Former Superintendent’s Settlement Agreement and Resignation Letter

⁸ It should be noted that the dollar amounts in this finding are slightly different than the dollar amounts presented in the PSERS finding (see Finding No. 2) because only eligible wages are to be used to calculate retirement benefits. However, the former Superintendent’s contract buy-out included additional costs. The \$89,000 in this finding consists of a base salary, longevity payment, incentive compensation, employer paid medical benefits, and employer paid PSERS payments.

Criteria relevant to the finding (continued):

In late 2015, PSBA created new governance standards called, *Principles for Governance and Leadership*, aimed at holding the governing body and individual school director responsible for meeting student achievement and school performance expectations. The new *Principles* continue to stress the importance of school directors collectively and individually working together in a spirit of harmony, respect, and cooperation.

- Lawsuit filed by three board members and three citizens that alleged violations of the PSC and Sunshine Act by other board members
- Substitute Superintendent's employment contract
- Search for a new superintendent

New Procedures Related to Right-to-Know Law Requests.

The Board's decision to not retain the former Superintendent officially documented an untenable relationship between the former Superintendent and the Board, which had been brewing since at least June 2014. Additionally, according to board meeting minutes during this time period, the public expressed concern about board activity, mainly a certain board member appointment and the perceived lack of board support of the Superintendent. Public comment also revealed that the community wanted to know whether or not the Board was going to renew the Superintendent's contract.

This turmoil and heightened public scrutiny surrounding the Board's decision-making and lack of transparency led to an increased number of Right-to-Know Law (RTKL) requests from the public, so the District changed its RTKL procedures to have all requests go through the District's solicitor effective November 1, 2014. Prior to that time, the District indicated that RTKL requests were minimal and handled by the Business Manager, who also served as the RTKL officer.

Legal costs incurred to have the solicitor review all RTKL requests cost the District an additional \$21,000 in legal fees, which equated to 26 percent of the total legal costs for the 2014-15 school year. These fees may have been avoided if the Board's decision-making and dealings had been more open and transparent to the public.

Additionally, the decision to submit all RTKL requests to the District's solicitor may have also resulted in delays in answering RTKL requests, because the District is entitled to request a 30-day extension for requests requiring solicitor review. Based on public comments noted in board meeting minutes, it appears that the changed procedure contributed to the public perception that there was a lack of transparency and that the District may have been trying to hide something.

Substantial Increase in Legal Fees in 2014-15. The following chart shows the District’s increased legal costs from July 1, 2009 through June 30, 2015, documenting how the Board’s ineffective governance, lack of transparency, and hasty decision-making in 2014-15 surrounding the Superintendent’s early departure impacted the District’s legal costs. As highlighted in the chart, total legal costs increased by nearly 290 percent in one year from 2013-14 to 2014-15. Much of the increase was due to legal issues related to the former Superintendent’s early departure and changes in RTKL procedures.

Fairfield Area School District Legal Costs			
School Year	Total Legal Costs	Dollar Increase/ (Decrease)	% Increase/ (Decrease)
2009-10	\$14,306	N/A	N/A
2010-11	\$17,089	\$ 2,783	19.45%
2011-12	\$42,610	\$25,521	149.34%
2012-13	\$13,190	(\$29,420)	(69.04)%
2013-14	\$20,794	\$7,604	57.65%
2014-15	\$81,032	\$60,238	289.69%

Failure to Vote Upon Retention of the Former Superintendent at a Public Board Meeting in Noncompliance with the Public School Code

The Board held a public meeting on December 1, 2014, and affirmatively voted on the acceptance of the former Superintendent’s Resignation Letter and Settlement Agreement. However, in noncompliance with Section 1073(b) of the PSC,⁹ the Board failed to publically vote upon its intentions relative to the retention of the former Superintendent at a regular board meeting before action was taken at the December 1, 2014 board meeting. Specifically, there was no agenda item or affirmative vote at any public meeting at least 150 days prior to the expiration date of the former Superintendent’s contract notifying the public and the former Superintendent that the Board intended to not renew his contract and to search for a new superintendent.

It is important to note that although the former Superintendent resigned, his resignation occurred as a result of the majority of the board members not wanting to renew his contract. While it is clear that discussions about

⁹ 24 P.S. § 10-1073(b).

not retaining the former Superintendent were taking place among some, but not all, of the board members, the Board's intentions were not presented as an agenda item and voted upon at a public meeting as required by the PSC. Since the Board's decision to not retain the former Superintendent is what led to his resignation and buy-out, we believe that a public vote noting the Board's intentions was required under the law.

Furthermore, because the Board did not publically vote upon its intentions to not renew the former Superintendent's contract prior to entering into a Settlement Agreement, the general public noted concerns during the December 1, 2014 board meeting about the Board's decision-making and lack of transparency concerning the former Superintendent's non-renewal and buy-out terms. Consequently, the Board's failure to be fully transparent about its decision-making and actions appeared to weaken public trust and confidence.

Failure to Provide Adequate Notice of Executive Session in Noncompliance with the Sunshine Act

Immediately prior to the December 1, 2014 board meeting, the Board entered into an executive session to discuss personnel matters, according to the meeting minutes. However, we found that the time and purpose of this executive session was not announced at a prior public meeting or to all board members at least 24 hours in advance, as required by Section 708(b) of the Sunshine Act.¹⁰ Pertinent excerpts of the Sunshine Act include the following: "The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. **If the executive session is not announced for a future specific time**, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session."¹¹

In fact, notification of the executive session was not given to at least three of the board members until about 5:00 p.m. on December 1, 2014, when the regular board meeting was scheduled for 7:00 p.m. This two-hour notice occurred at

¹⁰ 65 Pa.C.S. § 708(b).

¹¹ Ibid. [Emphasis added.]

the same time board members were provided with a revised, final agenda via email adding the following two new action items: 1) the former Superintendent's resignation and placement on paid administrative leave for the remainder of his contract term; and 2) the appointment of a Substitute Superintendent during the former Superintendent's paid administrative leave. However, the revised agenda did not state that an executive session was being held prior to the public board meeting, nor did it reference or provide a copy of the Settlement Agreement that had already been prepared by the District and executed by the former Superintendent and the Board President earlier that day.¹² Also, there were no announcements of an executive session for the December 1, 2014 board meeting noted in the prior board meeting minutes for November 17, 2014. Therefore, the two-hour notice of an executive session and a revised, final agenda resulted in not all board members being properly informed and prepared to discuss and vote upon these newly added action items.

Questionable Board Governance Practices

We found questionable board governance practices, a lack of board unity, and transactions occurring outside of executive session and regular board meetings surrounding the events that occurred relative to retention of the former Superintendent and appointment of a Substitute Superintendent. Specifically, decision-making and negotiations concerning the related resignation, agreement, and appointment did not occur among **all** board members in the executive session or regular board meetings **prior to** board action. As noted earlier, best governance practices suggest that school board unity, which includes working together in a cohesive manner, is important to the success of a district because board unity often sets a positive tone that can spread throughout the school system. While board members are going to have differences of opinion, the Board's ability to discuss differences and share information among all board members is key to maintaining board unity and cohesiveness.

¹² According to a civil lawsuit filed by three of the board members and three members of the public contesting the board action taken at the December 1, 2014 board meeting, the Settlement Agreement was signed by the former Superintendent and the Board President prior to the public meeting voting on the agreement. Even if signed, the Settlement Agreement would not be enforceable without board approval. However, we offer this information as an example of a lack of board unity because instead of discussing and considering information among all board members, it appears that decisions were made among select board members counting on receiving a majority vote.

The following facts, described in the order they occurred, are provided as examples of the Board's ineffective and non-transparent governance practices that resulted in a contract buy-out and related legal costs totaling more than \$128,000, while also not complying with the PSC and Sunshine Act in the process.

1. At the June 23, 2014 board meeting, one of the board members commented on a lack of respect that had been shown to the former Superintendent by some of the board members. This was the first indicator in official board meeting minutes disclosing that there were issues between the Board and the former Superintendent.
2. In late November, after her November 17, 2014 notification to the Board to retire, the Coordinator of Curriculum and Special Programs was asked by the Board President if she would be willing to be Acting Superintendent from December 23, 2014 to June 30, 2015. This proposition was made without a regular board meeting to discuss the Board's intentions regarding renewal of the former Superintendent's contract and after the Board's acceptance of her resignation to retire at the November 17, 2014 board meeting.
3. As previously mentioned, the irrevocable resignation of the former Superintendent effective June 30, 2015, the placement of the former Superintendent on a paid administrative leave as of December 23, 2014, and the appointment of the Coordinator of Special Programs as Substitute Superintendent were added as two new action items to the Board's December 1, 2014 agenda at approximately 5:00 p.m. for the 7:00 p.m. meeting. The original agenda for the December 1, 2014 board meeting did not include any mention of these items. The final agenda did not include any mention of the Settlement Agreement, and a copy of the Settlement Agreement was not provided to **all** board members with the final agenda or at any time in advance of the December 1, 2014 board meeting for review.¹³ The failure to provide **all** board members with important and necessary information to make informed decisions also resulted in a lack of transparency among board

¹³ This information was confirmed by our review of board meeting minutes, board agendas, and interviews with select administrators at the time of the audit.

members and weakened board unity by excluding some board members from the process until it was time to vote.

4. Similarly, notification of the executive session occurred at the same time the final agenda was received, which again, was only two hours before the scheduled board meeting. This executive session was the first time that at least three of the eight board members at the time were told the highlights of the Settlement Agreement by the Board's solicitor and given an opportunity to review it upon request. Consequently, these three board members were not fully informed and involved in the negotiation process, and they were not given ample opportunity to read and understand the Settlement Agreement or to ask questions prior to the vote being called at the December 1, 2014 board meeting.
5. At the December 1, 2014 board meeting, a 5:3 affirmative board vote accepted the Resignation Letter of the former Superintendent, effective June 30, 2015, and placed the former Superintendent on paid administrative leave from December 23, 2014 through the remainder of his contract term ending June 30, 2015. According to the Resignation Letter, the Board's acceptance of the resignation also constituted the Board's agreement to all of the terms and conditions in the Settlement Agreement. The three board members who were not provided with sufficient time, information, or documentation voted against the former Superintendent's resignation.
6. Preparation and execution of a Settlement Agreement before it was discussed with or presented to **all** board members is just one example evidencing unofficial, non-transparent discussions among some board members regarding these arrangements because the District apparently knew that the terms of the Settlement Agreement would receive a majority board vote.
7. At the January 12, 2015 board meeting, the Board approved a contract of employment for the position of Substitute Superintendent for the period of December 23, 2014 through June 30, 2015. The contract provided a pro-rated salary of \$130,000, plus such other benefits as outlined in the contract's terms.

This was approved on an 8:0 vote, with one abstention by one of the three minority board members who felt he was not provided with adequate information previously discussed.

8. While the Board voted to approve the employment contract, some board members commented on the lack of transparency throughout the process. For example, board meeting minutes noted that one board member stated that she had serious concerns about the contract for the Substitute Superintendent as the Board “had not had any discussion at all.” She further stated that she had received the document via email on Wednesday with a response requested by Friday. The Board member noted that the “Board must work together and be transparent.” A second board member stated that he had many questions. He stated there were “many things like salary and benefits in the contract which should have been negotiated” and wondered “when that happened” as he was “never a part of it” and was “very unhappy with the process.” These board member comments are additional inferences pointing to the strong possibility that there were unofficial and non-transparent discussions among some board members and that some board members appear to have been shut out of what should’ve been an open and public process.
9. On January 16, 2015, three board members and three citizens filed a lawsuit in the Adams County Court of Common Pleas against five of the board members concerning the actions taken surrounding the retention of the former Superintendent and alleging violations of the PSC and the Sunshine Act. The lawsuit requested that all actions taken by the Board relevant to the former Superintendent’s contract be considered null and void.

On June 18, 2015, the court issued a decision to dismiss the lawsuit. It determined that the former Superintendent was an indispensable party to the action, but he could not join the action as a plaintiff because the terms and conditions of the Settlement Agreement prohibited him from bringing legal action against the District. However, the fact that three board members and three citizens filed this lawsuit is further evidence that the Board was not working collectively and that the

Board's actions were not transparent to the public or among all board members.

Summary. In conclusion, we found questionable board governance practices, a lack of board unity, and transactions occurring outside of executive session and regular board meetings surrounding the events that occurred relative to retention of the former Superintendent and appointment of and contract with the Substitute Superintendent. Consequently, the Board's actions cost the District \$89,000 by creating a contract buy-out situation and not being in compliance with the PSC and the Sunshine Act. Additionally, by not working together and not being transparent about its dealings, the Board ended up costing the District an additional \$39,000 in related legal costs and causing increased public concern and scrutiny. According to best practice specific to school governance, school boards should work collectively and in unity in making decisions, and all board members should have enough information to make informed decisions.

Recommendations

The *District's Board* should:

1. Consult with its solicitor and develop written guidelines and/or procedures to ensure that any future separations are in accordance with the PSC and the Sunshine Act and are transparent to all board members and the public.
2. Ensure that its intentions regarding the retention of any future superintendents are publically voted upon at least 150 days prior to the expiration date of the superintendent's contract pursuant to Section 1073(b) of the PSC.
3. Announce, at a prior public board meeting or to all board members 24 hours in advance, the date, time, and reason for an executive session in compliance with Section 708(b) of the Sunshine Act.
4. Develop written procedures to ensure that all board members receive information at the same time and that the information is received with adequate time to review before official board action is taken.

5. Along with the administration and in consultation with the solicitor, develop written guidelines distinguishing what types of RTKL requests should be considered routine and handled by the District and what types should be referred to the District’s solicitor to help minimize additional legal costs and the time needed to respond to RTKL requests.

Management Response

The District disagreed with our finding and provided a lengthy response which can be found in its entirety in Appendix B.

Auditor Conclusion

The following is our conclusion to those management comments that we deemed relevant to the facts of this finding. Our response is presented by topic area for clarity.

Audit Authority

In its response, District management questioned our authority to review and evaluate District operations from a performance aspect and doesn’t believe that many of the concerns noted in this finding warrant an “audit exception.”

Our audit authority is derived from the Constitution of Pennsylvania and The Fiscal Code, which provides the broad authority and duty of the Department to conduct audits of the Commonwealth’s public school entities - PA Const., Art. VIII, Section 10¹⁴ and Sections 402¹⁵ and 403¹⁶ of The Fiscal Code¹⁷ (72 P.S. §§ 402-403).

Furthermore, the Bureau of School Audits conducts audits in accordance with the Government Auditing Standards issued by the Comptroller General of the United States.

¹⁴ Article VIII, Section 10 of the Constitution of Pennsylvania provides the Department with the general audit authority of auditing all state and local government agencies and entities that receive state funds and with the discretion to conduct a particular audit or type of audit in accordance with generally accepted auditing standards – also known as “Generally Accepted Government Auditing Standards” (GAGAS).

¹⁵ Pursuant to Section 402 of The Fiscal Code, the Department has the power to conduct audits of state government agencies, including to conduct “special” audits of the affairs of these entities.

¹⁶ Pursuant to Section 403 of The Fiscal Code, the Department has the power to conduct audits of any person or entity that receives state funds.

¹⁷ The Commonwealth Court concluded that the Auditor General under Article VIII, Section 10 of the Constitution and Sections 402 and 403 of The Fiscal Code has the authority to conduct performance audits. *See Dep’t of the Aud. Gen. v. State Emp. Ret. Sys.*, 860 A.2d 206 (Pa. Cmwlth. 2004).

Audit objectives may include both compliance and performance areas of review, and evidence is measured against criteria, such as laws and best business practices (see Objectives/Methodology Section of this audit report). An audit finding provides our conclusions based on an evaluation of sufficient, appropriate evidence against criteria, in accordance with Generally Accepted Government Auditing Standards (GAGAS).

According to Section 1.05 of the Government Auditing Standards,¹⁸ “Audits performed in accordance with GAGAS provide information used for oversight, accountability, transparency, and improvements of government programs and operations.” Additionally, Section 2.10 states, in part, “Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.”

Consequently, we strenuously disagree with management’s belief that many of the concerns noted in this finding go beyond the scope of authority of the Department and/or do not warrant an “audit exception.” It is important to note that the mission of the Department is to serve the people of Pennsylvania by improving government accountability, transparency, and the effective use of taxpayer dollars. Our performance audits are intended to gauge whether or not government programs and activities are meeting stated goals and objectives and if tax dollars are being spent efficiently and effectively. As such, it is our position that performance audit objectives are completely representative of both the Department’s authority and mission.

Furthermore, this finding presents the facts found during our audit work, and the Department’s conclusions and recommendations based on such facts, related laws and regulations, and best practices. The District’s decision to consider this finding and/or implement any of its recommendations is at the discretion of the local school board.

¹⁸ GAO-12-331G Government Auditing Standards.

Superintendent Contract Buy-out

District management acknowledged that early termination of a superintendent's contract prior to the end of its stated term is almost always controversial and inevitably results in increased costs. However, management argues "that decision is, by law, within the exclusive province of the elected Board of School Directors and not an appropriate subject for review or critique by the DAG." District management also refers to this situation as a resignation and not a contract buy-out.

While we agree that contracting with a superintendent is an important decision left up to the Board, we disagree that the Board's decision to prematurely terminate a contract is not an appropriate subject for review or critique by the Department and that the results don't warrant mentioning in an audit finding. In an educational environment where adequate funding is frequently an issue, school boards must be held accountable for their decisions, including how they spend public tax dollars.

Consequently, an administrator contract buy-out is a performance audit objective that we have been conducting for many years. Conclusions are made based on the facts of each situation, and concerns are noted in an audit finding. We feel strongly that taxpayers have the right to be informed of an early termination of a superintendent's contract, the reason for the termination when possible without jeopardizing confidentiality, and the financial effect the buy-out has on a district. If this information is public, then the taxpayers can consider such information when determining if the board members have done what is best for them and the district.

We also disagree with the District's assertion that this situation was a resignation and not a buy-out. In this instance, public dollars intended for the education of students were spent to prematurely end the former Superintendent's contract. While the District tried to present this situation as a resignation, the facts of the matter point to a buy-out situation. Specifically, the Resignation Letter incorporates all the terms and conditions of the Settlement Agreement, and the Settlement Agreement provides for severance pay, benefits, and administrative leave. Additionally, the Settlement Agreement states that the Resignation Letter and accompanying Settlement

Agreement were executed after the former Superintendent was informed that he would not be retained. Since these arrangements resulted in an early termination of the former Superintendent's contract and duties with the District while receiving severance pay and benefits, we concluded that this situation is a contract buy-out.

Additional Legal Fees

The District responded that legal fees can differ from year to year for any number of reasons and that annual variances in legal costs are not indicative of irresponsible spending, a violation of any laws related to fiscal matters, or worthy of an audit exception. We agree that annual legal costs will vary, but we disagree that large fluctuations cannot be indicative of questionable spending or noteworthy in an audit finding.

The finding presents the facts, including the annual legal costs paid by the District from 2009-10 through 2014-15. Since the concerns noted in this finding contributed to the nearly 290 percent increased legal costs from 2013-14 to 2014-15, we found this spike in costs to be relevant and determined that some of the increased legal fees in 2014-15 may have been avoided if the Board's decision-making and dealings during this time period had been more open and transparent as further detailed in the below sections. For example, the District may have avoided increased RTKL requests due to heightened public scrutiny, which resulted in a change to the District's RTKL procedures to refer requests to its legal counsel and an additional \$21,000 in legal fees in 2014-15. Similarly, the filing of a lawsuit by minority board members and three members of the public likely would not have occurred if the Board had acted with more transparency, accountability, and unity. Furthermore, the finding does **not** state or imply that there was a violation of any laws related to fiscal matters.

RTKL Request Procedures Resulting in Increased Costs

The District responded that its changes in RTKL request procedures to refer requests to its solicitor in 2014-15 resulting in increased costs were necessary for a host of reasons, including the need for a permissible 30-day extension to respond due to a legal review, but it wasn't the result of the Board's turmoil or heightened public scrutiny as suggested in the finding. We agree that the District has

every right to handle RTKL requests as it sees fit, including referring requests to its solicitor and using a 30-day extension for legal review. There is nothing legally wrong with the RTKL process that was implemented, and we do not state otherwise in the finding. However, the automatic referral of RTKL requests to the solicitor and the reason behind these revised procedures seem to be the areas of disagreement.

During our audit work, we were informed by District personnel that the RTKL procedures were changed to have **all** RTKL requests automatically go through the District's solicitor effective November 1, 2014, due to an increased number of RTKL requests received from the public and the nature of those requests at the time. We were never told that only "not routine" requests proceed to legal counsel, as indicated in management's reply. Furthermore, the January 12, 2015 board meeting minutes appear to further confirm what auditors were told by District personnel, in that RTKL requests were received by the District's RTKL officer, but then forwarded to legal counsel. While these same board meeting minutes include comment from the District's solicitor about the revised RTKL process, there wasn't anything noted that specifically contradicted all of the other information received about the RTKL process throughout the audit, and the solicitor's noted comments seemed to focus on justifying why the requests were being sent to legal.

Furthermore, we found that the District's revised procedures coincided with a time period of public discontent with board activity, which contributed to the increased number of RTKL requests. We also believe that automatically referring requests to the District's solicitor may have stalled some replies that could have been responded to more quickly if they were handled by the District's RTKL officer under the old process. Consequently, our conclusion that the revised RTKL procedures cost the District an additional \$21,000 in legal fees in 2014-15 that may have been avoided absent public concern about the Board's decision-making and transparency during that time period stands as presented.

Board's Decision-Making and Lack of Transparency

District management asserts that the Board's dealings are part of a democratic process that can be "messy" at times, but the finding's noted concerns about a "lack of board unity and cohesiveness go beyond the Department's authority, have no relevance, and cannot be used to support an audit citation." Again, we disagree. Since the Board's lack of unity and cohesiveness contributed to the concerns and additional costs noted in this finding, they are certainly relevant and noteworthy. As stated in this finding, we acknowledge that there will be differences among board members. However, the manner in which the Board handles these differences is critical to its effectiveness and efficiency. In this instance, we presented concerns about the way the Board handled the entire process surrounding its intentions to not renew the former Superintendent's contract and the eventual buy-out arrangements, as well as the additional legal costs incurred.

Public School Code - Notice of Intent Noncompliance

District management contends that the public notice requirement under Section 1073(b) of the PSC does not apply because the former Superintendent resigned. We respectfully disagree. As stated in the finding and in our auditor's conclusion under the buy-out section, we consider this situation to be a contract buy-out and not a true resignation. Additionally, we believe the public notice requirement did apply even under these unique circumstances because it was the Board's intention to not renew the former Superintendent's contract that led to a dispute and early parting of ways.

Since the Board's contract discussions and decision to not retain the former Superintendent were the driving forces behind the early separation, it remains our position that the Board had a responsibility to publically vote upon its intentions relative to the retention of the former Superintendent at a regular board meeting pursuant to Section 1073(b) of the PSC in order to officially and publically provide notice and document its intentions prior to voting on the Resignation Letter and Settlement Agreement. Moreover, as pointed out in management's reply, the Resignation Letter states, in relevant part, "I acknowledge and agree that the School Board is not required to provide me further public notice under 24 P.S. §

1073(b) . . .” In our opinion, this language implies that the District also thought that the notice requirement applied, but waiving “further public notice” doesn’t waive the notice requirement altogether in the first place.

Finally, we agree, and never stated otherwise, that the District considered renewal of the former Superintendent’s contract within the required time frame prior to its expiration, and that a contract buy-out can occur at any time during the contract period.

Sunshine Act - Notice of Executive Session Noncompliance

District management asserts that the Sunshine Act doesn’t require a 24-hour advance notice of Executive Session when a board meeting is scheduled. We disagree. Management also provided a discussion about its right to hold executive session to discuss personnel matters, such as retention of the former Superintendent, and noted the timeframe for which a complaint can be filed on any legal challenge to the Board’s actions. However, we do not respond to these discussions below since they were not included in the finding.

Under a strict interpretation of Section 708(b) of the Sunshine Act, we believe a 24-hour notice of executive session is required. While Section 708(b) provides that an executive session can occur during an open meeting or at the conclusion of an open meeting or be announced for a future specific time, the provision further states, in relevant part, “If the executive session is **not announced for a future specific time**, members of the agency shall be notified **24 hours in advance** . . .” [Emphasis added.]

We interpret this language to mean that board members should be provided with at least 24 hours advance notice of an executive session, particularly when the executive session is planned, such as in the instance noted in this finding. If a board were to decide to go into an impromptu executive session during a public board meeting because an unexpected topic comes up, then the 24-hour notice requirement wouldn’t be applicable. However, in an instance where the board plans to hold an executive session, we believe that board members must receive a 24-hour notice. That being said, we also recognize that this provision is worded in such a way that leaves room for

different interpretations. But even if it were not required, we think that a 24-hour advance notice is appropriate as a best practice when board members are making important decisions impacting the District.

In conclusion, we have noted and responded to management's disagreement, but our conclusions remain unchanged. As such, this finding stands as presented.

Finding No. 2

Inaccurate Reporting of Eligible Retirement Wages to the Public School Employees' Retirement System

Criteria relevant to the finding:

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).

Per the PSERS Employers Reference Manual, Chapter 8, page 10 (3/26/15 edition):

"Administrative Leave including Suspension – A paid or unpaid administrative leave does not meet the criteria for an approved leave of absence under the Retirement Code. A PSERS member may be granted other types of leaves of absence (or in this case, a disciplinary suspension), not authorized by the Retirement Code, but the leaves will not entitle the member to any credited service during the period of leave. The Retirement Code defines an 'Approved Leave of Absence' as a leave of absence for activated military service or which has been approved by the employer for sabbatical leave, service as an exchange teachers, service with a collective bargaining organization or professional study.

If the member in question is on paid or unpaid suspension, but not actually performing any work for the school employer during the suspension/leave, the member is not entitled to receive retirement credit for the period of suspension/leave."

Our review of the District's payroll records for the former Superintendent, the Settlement Agreement signed by the Superintendent, and Act 93 found that the District incorrectly reported wages as eligible for retirement to PSERS while the former Superintendent was on administrative leave from December 23, 2014 through June 30, 2015.

Under the Settlement Agreement, the former Superintendent was paid \$65,725, while on administrative leave from December 23, 2014 through June 30, 2015, which was the unpaid balance of his \$122,113 salary for the 2014-15 fiscal year. In addition, the former Superintendent received a \$2,000 longevity increase in accordance with the Settlement Agreement. Although the District's practice is to add the longevity increases to the base salary when computing the total salary for the year, the former Superintendent never returned to work for the District beginning December 23, 2014, thus the \$2,000 should not be considered eligible wages for individual retirement purposes. The remaining salary of \$65,725 and the \$2,000 longevity increase were incorrectly reported to PSERS as wages eligible for retirement. The incorrect reporting of these wages to PSERS resulted in an overstatement of the individual's eligible wages to be used to calculate his retirement benefits.

The former Superintendent contributed 7.5 percent of his total salary, including the longevity payment, to PSERS. The District also contributed the 2014-15 PSERS employer rate of 21.4 percent. Therefore, the former Superintendent paid \$5,079 and the District paid \$14,493 in PSERS contributions on the former Superintendent's salary and longevity payment during the administrative leave period.

*Criteria relevant to the finding
(continued):*

Furthermore, the PSERS Employers Reference Manual, Chapter 8, page 6 (3/26/15 edition), states, in part:

“Longevity payments – Longevity payments refer to payments made by an employer, typically in a one-time amount, to an employee who reaches a certain level of service credit. Such payments will be excluded from retirement-covered compensation if they are not included in the base salary of the employee for the following year. . . .”

Since participation in PSERS is predicated upon actual service, a participant cannot earn service credit merely by reporting a salary and making contributions. Because the former Superintendent did not engage in any work for the District between December 23, 2014 and June 30, 2015, the inclusion of his salary and longevity payments of \$67,725 for retirement credit is invalid.

The Settlement Agreement states in part:

1. ADMINISTRATIVE LEAVE. Effective December 23, 2014, District will place [the former Superintendent] on paid administrative leave through June 30, 2015. [The former Superintendent] will remain operating as the Superintendent through December 22, 2014, with a substitute Superintendent taking over at the initiation of his administrative leave on December 23, 2014.
2. EFFECTIVE DATE OF TERMINATION. [The former Superintendent’s] Effective Date of Termination will be June 30, 2015, and shall constitute the end of his Employment Agreement.
3. SEVERANCE PAY AND BENEFITS. Provided that [the former Superintendent] enters into this Agreement, including an Irrevocable Letter of Resignation, and returns it to the District on or before December 22, 2014, [the former Superintendent] shall receive all pay and benefits under his current Employment Agreement through the Administrative Leave period until his retirement and resignation date of June 30, 2015. [The former Superintendent] shall receive such payment regardless of whether he engages in other employment outside of the public school system. More specifically, [the former Superintendent] will receive:
 - a. As outlined in Section 4 (SALARY) of his current Employment Agreement, in lieu of the longevity supplement in the District’s Act 93 Plan, the \$2,000.00 longevity increase he was otherwise entitled to in year five (5) of his contract, that he has previously disclaimed, to be paid over the length of his administrative leave.

Upon learning about the error, the District took action to resolve the issues noted above, as confirmed by PSERS on March 23, 2016. As a result, we recommend the following:

Recommendations

The *District* should:

1. Review the PSERS Employees manual to determine what is eligible to be reported as wages and service credit towards retirement.
2. Work with PSERS to verify that all corrections have been made and determine whether any further action is necessary with regard to the inaccurate reporting of wages and service credit and to resolve the incorrect reporting of eligible wages and overpayments made by the District to PSERS.

The *Public School Employees Retirement System* should:

3. Ensure that all necessary adjustments have been made with regard to the District's inclusion of salary and longevity payments of \$67,725 for retirement credit, including adjustment of payments to resolve the overpayments by the former Superintendent and the District.

Management Response

District management provided the following response, in relevant part:

“The District acknowledges that pay received by the former Superintendent during the period of Administrative Leave (including a \$2,000.00 longevity increment) was incorrectly reported to PSERS as wages eligible for retirement, thus resulting in payment to PSERS of the employer contribution rate and payment of the employee contribution rate which had been withheld via payroll deduction. This error was inadvertent and simply the result of a failure to recognize the unique circumstances and consequences of the administrative leave with pay.

Once this was brought to the District's attention, a corrected report was made to PSERS and both the employer and employee contributions have been refunded

to the District. Additionally, the District is in discussion with counsel for the former Superintendent about this discrepancy and will, of course, refund the amount of the employee contribution to the former Superintendent. While the District certainly regrets the error, the corrected report has resulted in the recovery of the contributions and PSERS has made the appropriate adjustment to the pension benefits of the former Superintendent.”

Auditor Conclusion

We commend the District for taking action to correct the ineligible wages reported to PSERS as soon as the error was brought to its attention. It is important to note that the error was detected, and ultimately corrected, as a result of our audit work. Had the error remained uncorrected then the \$67,725 in ineligible wages reported to PSERS could have resulted in inflated retirement benefits for the former Superintendent.

Status of Prior Audit Findings and Observations

Our prior audit of the District released on April 12, 2010, resulted in two findings and observation, as shown below. As part of our current audit, we determined the status of corrective action taken by the District to implement our prior audit recommendations. We interviewed District personnel and performed audit procedures as detailed in each status section below.

Auditor General Performance Audit Report Released on April 12, 2010

Prior Finding No. 1: Certification Deficiency

Finding Summary:

Our prior audit found that an individual assigned as Coordinator of Curriculum and Special Programs did not hold the required Pennsylvania certification for her assignment. The District was subject to subsidy forfeitures of \$2,902, \$3,211, and \$3,191 for the 2006-07, 2007-08, and 2008-09 school years, respectively.

Recommendations:

We recommended that the District should:

Require the individual cited to obtain the proper certification or reassign her to a position for which she was properly certified.

We also recommended that PDE should:

Recover the subsidy forfeitures of \$9,304 from the District's allocations.

Current Status:

The District and PDE implemented our recommendations. The administrator obtained emergency certificates to cover July 1, 2009 through June 30, 2011, and the appropriate certificate was issued June 1, 2011. PDE recovered the revised subsidy forfeiture of \$9,304 through a deduction from the December 30, 2010 Basic Education Funding payment.

Prior Finding No. 2:

Memoranda of Understanding Not Updated Timely

Finding Summary:

Our audit of the District’s records found that the Memorandum of Understanding (MOU) between the District and the Pennsylvania State Police (PSP) was signed on May 16, 2007, and has not been updated in accordance with the MOU. In addition, the MOUs with the Hamiltonban Township Police Department (HTPD) was signed on December 22, 1998, and also has not been updated.

Recommendations:

We recommended that the District should:

1. Review, update and re-execute the current MOUs between the District, the PSP, and HTPD.
2. Follow the General Provisions of the District’s MOU (Section VI, item B) with the PSP which states this Memorandum may be amended, expanded, or modified at any time upon the 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. This provision should also be included in the re-executed MOU with HTPD.
3. Adopt a policy requiring the administration to review and re-execute all MOUs at least every two years.

Current Status:

The District implemented our recommendations. MOUs between the District and the PSP have been executed every two years. Due to the disbanding of the HTPD effective December 31, 2012, no MOUs were obtained after 2011.

Prior Observation:

Internal Control Weaknesses in Administrative Policies Regarding Bus Drivers’ Qualifications

Observation Summary:

Our prior audit found that the District had not implemented our prior audit recommendations regarding bus drivers’ qualifications. Neither the District nor the transportation contractor had adopted written policies or procedures to ensure that they are notified if current employees have been charged with or convicted of serious criminal offenses which should be considered for the purpose of determining an individual’s continued suitability to be in direct contact with children.

Recommendations:

We recommended that the District should:

1. Develop a process to determine, on a case-by-case basis, whether prospective and current employees of the District or the District's transportation contractors have been charged with or convicted of crimes that, even though not disqualifying under state law, affect their suitability to have direct contact with children.
2. Implement written policies and procedures to ensure that the District is notified when current employees of the District's transportation contractors are charged with or convicted of crimes that call into question their suitability to continue to have direct contact with children and to ensure that the District considers on a case-by-case basis whether any conviction of a current employee should lead to an employment action.

Current Status:

Our review of bus driver qualifications confirmed the District does have procedures in place to address our recommendations. However, these procedures are only documented in transportation contracts and/or a transportation contractor's employee handbook, not in a written District policy or written administrative procedures.

The District has purchased policy services from the PSBA and is in the process of updating all District policies. Therefore, we again recommend that the District adopt a policy to address all charges or convictions of employees of the District's transportation contractors to ensure that such charges or convictions are properly disclosed to the District.

Appendix A: Audit Scope, Objectives, and Methodology

School performance audits allow the Pennsylvania 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, PDE, and other concerned entities.

Our audit, conducted under authority of Section 402 and 403 of The Fiscal Code,¹⁹ is not a substitute for the local annual financial 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. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings 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.

Scope

Overall, our audit covered the period July 1, 2009 through June 30, 2015. In addition, the scope of each individual audit objective is detailed on the next page.

The District's management is responsible for establishing and maintaining effective internal controls²⁰ to provide reasonable assurance that the District is in compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures (relevant requirements). In conducting our audit, we obtained an understanding of the District's internal controls, including any information technology controls 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 controls 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.

¹⁹ 72 P.S. § 402 and 403.

²⁰ 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; and compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures.

Objectives/Methodology

In order to properly plan our audit and to guide us in selecting objectives, we reviewed pertinent laws and regulations, board meeting minutes, academic performance data, financial reports, annual budgets, and new or amended policies and procedures. We also determined if the District had key personnel or software vendor changes since the prior audit.

Performance audits draw conclusions based on an evaluation of sufficient, appropriate evidence. Evidence is measured against criteria, such as laws, regulations, third-party studies, and best business practices. Our audit focused on the District's efficiency and effectiveness in the following areas:

- Governance
- Administrator Contract Buy-Out
- Professional Certification
- Data Integrity
- Bus Driver Requirements
- School Safety
- Sunshine Act

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

- ✓ Did the LEA's Board and administration maintain best practices in overall organizational governance?
 - As part of our review of the District's practices, we conducted surveys with board members, and conducted interviews with the Substitute Superintendent and Business Manager. In addition, we reviewed the following documents: RTKL requests, invoices for legal fees, payroll records, employment contracts, a settlement and release agreement with a former superintendent, and the Board's meeting agendas and minutes. See Finding No. 1 beginning on page 6 for the results of our review of this objective.
- ✓ Did the District pursue a contract buy-out with an administrator and if so, what was the total cost of the buy-out, what were the reasons for the termination/settlement, and did the current employment contract contain adequate termination provisions?
 - To address this objective, we reviewed the contracts, a settlement and release agreement with a former superintendent, board meeting minutes, and payroll records for the only administrator whose District contract was bought-out during the period July 1, 2009 through June 30, 2015. See Finding No. 1 beginning on page 6 and Finding No. 2 beginning on page 25 for the results of our review of this objective.

- ✓ Did the District take appropriate actions to ensure all teachers and administrators are properly certified?
 - To address this objective, we reviewed the 2014-15 school year professional personnel list, personnel directory, and board meeting minutes relating to personnel actions to ensure that the professional personnel list provided for the audit was accurate and complete. We selectively reviewed 21 of 87 certified employees to ensure that professional personnel were properly certified. Our review of this objective did not disclose any reportable issues.

- ✓ Did the LEA ensure that the membership data it reported in the Pennsylvania Information Management System (PIMS) system was accurate, valid, and reliable?
 - To address this objective, we reconciled student membership totals from the District’s Student Information System to PDE’s Summary of Child Accounting Membership report for agreement. In addition, we reviewed documentation for all 20 nonresident students who were reported on the 2009-10 school year PIMS student calendar fact template details report. Our review of this objective did not disclose any reportable issues.

- ✓ Did the District ensure that bus drivers transporting District students had the required driver’s license, physical exam, training, background checks, and clearances as outline in applicable laws?²¹ Also, did the District have adequate written policies and procedures governing the hiring of new bus drivers?
 - To address this objective, we randomly selected 5 of the 87 bus drivers hired by the District bus contractors, during the period of July 1, 2009 through March 9, 2015, and reviewed documentation to ensure the District complied with bus driver’s requirements. We also determined if the District had written policies and procedures governing the hiring of bus drivers and if those procedures were sufficient to ensure compliance with bus driver hiring requirements. See Status of the Prior Audit Observation beginning on page 29 for the results of our review of this objective.

- ✓ Did the District take appropriate actions to ensure it provided a safe school environment?
 - To address this objective, we reviewed a variety of documentation including, safety plans, training schedules, anti-bullying policies, MOUs, and after action reports. Due to the sensitive nature of school safety, the results of our review of objective area are not described in our audit report. The results of our review of school safety are shared with District officials and, if deemed necessary, PDE.

²¹ 24 P.S. § 1-111, 23 Pa.C.S. § 6344(a.1), 24 P.S. § 2070.1a *et seq.*, 75 Pa.C.S. §§ 1508.1 and 1509, and 22 *Pa. Code Chapter 8.*

- ✓ Did the District comply with the requirements and best practices relating to the Sunshine Act, PSC relating to the Sunshine Act, adopt board policy to address the Board's responsibilities under the Sunshine Act and implement administrative procedures to comply with the requirements of the Sunshine Act?
 - To address this objective, we reviewed a variety of documentation including, district policies, board meeting minutes, and public meeting notices and advertisements. See Finding No. 1 beginning on page 6 for the results of our review of this objective.

Appendix B: Management Response

District management provided the following response to Finding No. 1.

While we appreciated the opportunity to respond to the draft findings, it was disappointing that the DAG has, for the most part, ignored that response. Accordingly, and with all due respect, the Final Report continues to state as “fact” assertions that are unsubstantiated or speculative and to misstate the law. Accordingly, in order for the record to reflect what we strongly feel is a more accurate statement of both the facts and the law, we hereby incorporate that prior response by reference and a copy of the prior response is [included herein]. As a supplement to that document, this letter will address what we believe to be a fundamental lack of understanding of the role of a Board of School Directors as the elected body that determines fundamental policy, including but not limited to the selection and appointment of a Superintendent as Chief Executive Officer; additionally, for the reasons indicated, we believe that much of the criticism in the Report goes beyond the scope of authority of the DAG.

With respect to the finding that the Board’s decision not to renew the former Superintendent’s contract resulted in additional costs of \$128,000.00, it is undisputed that the non-renewal of a Superintendent’s contract, or the termination of that contract prior to the end of its stated term, is almost always controversial and inevitably results in increased costs. However, that decision is, by law, within the exclusive province of the elected Board of School Directors and not an appropriate subject for review or critique by the DAG. Indeed, the election of the chief executive officer, and thus any decision as to when it may be appropriate to replace that officer, are among the most significant of the duties and responsibilities left to the discretion of Board of School Directors.

Under the DAG’s rationale, *every* early termination of a Superintendent’s contract would be subject to an audit exception based on the resulting increase in costs. However, the Public School Code (hereinafter “Code”), specifically provides for circumstances under which a Board can remove a Superintendent and/or where a Superintendent can receive severance pay when terminated prior to the end of the contractual term. Similarly, whenever a change like this is made, it is necessary and appropriate for a District to incur both legal and recruiting expenses. While such terminations prior to the expiration of a contract term are certainly the exception rather than the rule, they occur with some frequency every year among the 500 Pennsylvania public school districts where, based on any number of considerations, a Board has determined that a change in the leadership of the District is needed.

Despite the DAG’s focus on increased costs resulting from the Board’s decision not to renew the contract of [the Superintendent], it is rather obvious from a review of the entirety of the Report that that decision itself is *not* what motivated this finding as much as *the way* the decision was handled by the Board. In that regard, there is no question that representative democracy can be rather “messy” at times, as is currently being shown in the presidential election process. However, it is respectfully noted that the DAG has no authority to critique that democratic process, except where government entities violate the law with respect to their fiscal affairs. For example, as a direct result of the failure of the Governor and the Legislature to reach

a timely agreement on a budget for 2015-2016, public school districts incurred millions of dollars of “additional expense” for interest on loans required to maintain operations. Assuming the DAG had any jurisdiction over those entities, would there be an audit exception issued with respect to such failure? We think not, as this is, for better or worse, an inherent part of the democratic process and beyond the province of the DAG.

Indeed, the fact that the Final Report resorts to citations to Pennsylvania School Boards Association (PSBA) publications related to recommended guidelines for effective governance and a suggested code of conduct for members of school boards is telling. There is no dispute that it is better when school boards can agree on a course of action and work cooperatively to implement decisions, just as it would have been better if the Governor and the Legislature had reached agreement on a budget at the beginning rather than the end of the fiscal year. However, in the real world, elected officials sometimes disagree and the mere fact of such disagreement does not give rise to an audit exception, nor does the DAG exist to pass judgment or serve as disciplinarian over such disagreements, no matter how hotly contested. Accordingly, while it may or may not be appropriate for the DAG to express opinions that go beyond the scope of its authority, the various criticisms of the Board for not “working together in a cohesive manner” and “failing to maintain “board unity and cohesiveness” have no relevance and cannot be used to support an audit citation.

While it is clear that both the majority and minority members of the Board held very strong beliefs, there is no evidence that any Board Member acted in any way other than in furtherance of his or her good faith judgment as to what was in the best long term interests of the District and its stakeholders. Where a majority of the Board determined, rightly or wrongly, that those interests were best served by a change in leadership of the District, neither the fact that this resulted in additional costs or that the process was disruptive and unpleasant, provide the basis for an audit exception.

With respect to the matter of “Additional Related Legal Costs,” many of the same principles apply. Once the decision not to renew was made, it was entirely appropriate to incur legal expense in order to negotiate the terms and document the agreement that was ultimately reached between the District and the former Superintendent: And once several residents and three of the minority members of the Board filed a lawsuit against the majority members of the Board, it was likewise appropriate for the District to incur legal expenses in defense of that suit. Again, this is not a matter of whether, at the end of the day, the actions of either the majority or the minority were “right or wrong”, but simply a matter of the appropriate actions that are required to be taken once a lawsuit is filed.

Additionally, the DAG’s criticism of legal fees incurred, based on a comparison of annual fees paid in past years, is without any rational basis. There are any number of reasons why a school district’s expenditures for legal fees vary from year to year, including, whether or not, in a particular year, the district is involved with: (a) negotiations with one or more collective bargaining units or to address other personnel issues; (b) litigation, including but not limited to claims related to special education, tax assessment appeals, grievance arbitration, or other disputes; (c) new construction or major renovations to existing facilities; (d) issuing bonds to finance construction and/or to restructure prior debt that has been incurred; or (e) substantial requests under the Right to Know Law (RTKL). Mere variations in legal expense from year to

year are in no way an indicator of irresponsible spending nor of a violation of any laws related to fiscal matters and provide no basis for an audit exception.

With respect to the DAG's allegations that the Board violated provisions of the Code and of the Sunshine Act, and caused an increase in legal fees as a result of additional RTKL requests, those issues are thoroughly addressed in the District's earlier response, incorporated by reference herein. It is also noted that, by law, citizens have the right to make requests under the RTKL and government entities have a duty to make an appropriate and legal response to those requests; again, this is simply another example of the democratic process at work and hardly a matter that is subject to scrutiny by the DAG.

Finally, with respect to Finding #2, the District has clearly acknowledged that compensation paid to the former Superintendent was incorrectly reported to PSERS, an inadvertent error and the result of a failure to recognize the unique circumstances involved. That being said, it is noted that the DAG auditor on site specifically told the District's Business Manager (and confirmed in writing) that no "finding" would be made if corrective action was taken. Prior to the issuance of the Final Report, the DAG was specifically advised that such corrective action was taken, the PSERS records have been corrected, and that both the employer and employee retirement contributions have been fully refunded to the District. Regrettably, this would appear to be another instance where our prior response to the preliminary findings was simply ignored.

More specifically, the Management responds as follows:

Page 2-3 of Finding No. 1:

Public School Code Notice Concerns

Finding No. 1 fails to discern that any Board decision not to retain [the Superintendent] is not at issue; it is a red herring. [The Superintendent] resigned, on December 1, 2014. The District could not violate the notice requirement contained in Section 10-1073(b) of the Public School Code because the notice requirement under 10-1073(b) does not apply; [the Superintendent] tendered his voluntary and irrevocable resignation. The resignation was accepted at the open public meeting of the District Board meeting held on December 1, 2014, thus rendering the notice requirement moot. Resignations are not covered by 24 P.S. § 10-1073, which states:

(b) At a regular meeting of the board of school directors occurring at least one hundred fifty (150) days prior to the expiration date of the term of office of the district superintendent, the agenda shall include an item requiring affirmative action by five or more members of the board of school directors to notify the district superintendent that the board intends to retain him for a further term of three (3) to five (5) years or that another or other candidates will be considered for the office. In the event that the board fails to take such action at a regular meeting of the board of school directors occurring at least one hundred fifty (150) days prior to the expiration date of the term of office of the district superintendent, he shall continue in office for a further term of similar length to that which he is serving.

Additionally, [the Superintendent], in his voluntary letter of resignation, stated “I acknowledge and agree that the School Board is not required to provide me further public notice under 24 P.S. 10-1073(b) . . .” The reason for, and intended beneficiary of, the School Code’s notice requirement is to give a Superintendent notice in sufficient time that his contract either is or is not going to be renewed, so he will know if he has continued employment. The Pennsylvania Commonwealth Court has explicitly recognized the “protective” purpose of this provision in Bologna v. St. Marys Area Sch. Board, 699 A. 2d 831, 834 (Pa. Cmwlth. 1997); the “protection” is one to provide knowledge to the superintendent of whether he has continued employment. The Board had until January 22, 2015 to give [the Superintendent] that notice under 1073(b). Once [the Superintendent] resigned, there simply was no purpose for the notice, and [the Superintendent] resigned well before it was even required. Notice, pursuant to 1073(b) became legally and practically moot, and the purpose of providing “notice” to the Superintendent of the Board’s intentions, irrelevant. Lastly, [the Superintendent’s] employment contract explicitly permitted his resignation. The Board voted to accept the Superintendent’s resignation 212 days prior to the expiration of his contract term.

There is no suggestion in the recently revised Public School Code provisions relating to legally permitted “buyouts” of superintendents that these actions also simultaneously require “notice” that the Board will not be reappointing the Superintendent. Section 10-1073(e) explicitly recognizes buyouts that could even occur years prior to the end of a Superintendent’s term, years before any such “notice” might normally be given.

(3) No agreement between the board of school directors and a district superintendent or assistant district superintendent for a negotiated severance of employment prior to the end of the specified contract term shall provide for severance compensation to the district superintendent or assistant district superintendent, including the reasonable value of any noncash severance benefits or postemployment benefits not otherwise accruing under the contract or pursuant to law, that:

(i) If the agreement takes effect two (2) years or more prior to the end of the specified contract term, exceeds the equivalent of one (1) year’s compensation and benefits otherwise due under the contract.

(ii) If the agreement takes effect less than two (2) years prior to the end of the specified contract term, exceeds the equivalent of one-half of the total compensation and benefits due under the contract for the remainder of the term.

What is more, 24 P.S. § 10-1080 (Removal), contains no suggestion that “notice” of an intent to retain is required when a Superintendent is *removed* from office via hearing proceedings:

(a) District superintendents and assistant district superintendents may be removed from office and have their contracts terminated, after hearing, by a majority vote of the board of school directors of the district, for neglect of duty, incompetency, intemperance, or immorality, of which hearing notice of at least one week has been sent by mail to the accused, as well as to each member of the board of school directors.

(b) The board of school directors shall publicly disclose at the next regularly scheduled monthly meeting the removal of a district superintendent or assistant district superintendent from office under subsection (a).

Taking the Auditor General's position, a District terminating a Superintendent pursuant to Section 1080, at any point in the contract period, would later be required to give notice of non-retention 150 days before the end of the now terminated contract.

Sunshine Law Concerns

A Board has the statutory right under the Sunshine law to meet in executive session to discuss personnel issues, including the performance and retention or non-retention of a superintendent. 65 Pa.C.S. 708(a)(1). A personnel exception is contained in Section 708(a)(1) of the Sunshine Act, 65 Pa.C.S. 708(a)(1), which provides:

An agency may hold an executive session for one or more of the following reasons:

- (1) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting.

Under Section 708(a)(1) of the Sunshine Act, the Board had every right to discuss [the Superintendent's] continued employment as Superintendent in executive session. Moreover, even if there was a technical violation of the Sunshine Act (which we deny), such violation was cured by the Board's deliberation and formal action taken on an agenda item (accepting his resignation and thereby approving his Settlement Agreement) during the regularly scheduled public meeting of the Board held on December 1, 2014. The Minutes of that meeting demonstrate the item was moved on to the floor, offered for discussion, and voted upon. The Minutes of the December 1, 2014 meeting also show that there was an executive session prior to the meeting to discuss personnel matters. As indicated in the Minutes, the Board received comments on the Amended Agenda, both from the Public and the Board members, and took action by vote in a public meeting. Therefore, any alleged violation of the Sunshine Law was cured. Subsequent public action "cures" the effect of prior action taken in private. Kennedy v. Upper Milford Township Zoning Hearing Board, 834 A.2d 1104, 1125-26 (Pa. 2003) (citations omitted).

Additionally, pursuant to Section 713 of the Sunshine Act, any legal challenge to the Board's action needed to be taken within 30 days of the alleged violation. Because the minority Board members and public did not file a suit challenging the December 1, 2014 agenda items and procedure challenge until well after the 30 day period, any legal action was barred. Thus, anyone concerned should have filed a complaint by December 31, 2014. The court case filed by members of the Board and the public, which included claims well-beyond a Sunshine Law violation, was filed on January 16, 2015 – after the 30-day period had expired.

Beyond the explicit legal support for the Board's actions, the facts support that there was no Sunshine Law violation, including facts taken straight from the verified Amended Complaint submitted by the three (3) minority Board members who sued the remaining five (5) Board members. In their Amended Complaint dated, March 11, 2015, in averment 23, the 3 minority board members admit that "notification of the executive session for the purpose of informing them of the resignation and Settlement and Release Agreement and the appointment of a substitute superintendent was given to the three agency member Plaintiffs at about 5:00 p.m. on December 1, 2014 at that same time they were informed that these action items had been added to the agenda." These 3 verified that they were *aware* of the topics for Executive Session.

With respect to the time frame for notice, all three (3) complaining/minority Board members attended the executive session, thus rendering any argument about more advance notice, moot. What is more, the executive session could have just as readily been called upon opening exercises of the public board meeting. The 24 hours' notice period is relevant only to allow individuals to make arrangements to timely attend the meeting, because it may not be the time of a normally scheduled. The time for notice is not to have 24 hours to "prepare" for the subject matter of the executive session. The Board President could have easily called the executive session at the start of the December 1, 2014 meeting with all Board Members present and provided the announced reason, "personnel," providing even less subject matter and time-based notice to Board members than they received at the alleged 5 p. m. notice point. Averment 23 of the minority Board Member's Amended Complaint avers that the board members saw the Amended Agenda and knew of the executive session. Greater than 24 hours of advance notice that [the Superintendent] had resigned was impossible, seeing as [the Superintendent] executed his resignation just before the executive session meeting. The December 1, 2013 Minutes also indicate, "There was an executive session prior to the meeting to discuss personnel matters," (p. 4060), such that the time and purpose of the executive session was announced and Sunshine Law requirements were doubly covered.

As to the Finding's conclusion that Board Members were not given access to the Settlement Agreement, in averment 24 of the Amended Complaint, [one] Board Member, verifies that he was given a copy of the Settlement Agreement prior to a Board vote. In averment 24, the other two (2) minority board members confirmed that they saw [the Superintendent's] Resignation letter, which was attached as an exhibit to the Settlement Agreement. The solicitor attending the Executive Session on December 1, 2014, from Stock & Leader, would explicitly verify, and affirm, that she reviewed the Settlement Agreement terms, and Board members were told they could review the entire physical agreement if they wanted to; several copies were available. [One board member] did access the Agreement. Board members were all given the opportunity to review the agreement and ask questions.

The Adams County Court of Common Pleas opinion and order, dated June 8, 2015, states that "at the same time as the new agenda was published and sent to them, an executive session was scheduled and the Board were notified of same," recognizing that all the Board Members knew the purpose of the meeting was to approve the resignation and Settlement and Release Agreement listed on the amended agenda.

As to your final concern on deliberation, there is extensive deliberation and commentary by the 3 minority Board members in the Director Comments section of the December 1, 2014 meeting minutes including one member's request for Solicitor action to research the merits of a 1 year contract extension, which was moved, voted upon, and not approved. Therefore, all Board members had opportunity to deliberate and comment in public on the agenda items related to [the Superintendent's] resignation. Nonetheless, no board member discussion was *required* on the resignation of the Superintendent. Typically Board members do not comment on personnel agenda items.

Prior to December 1, 2014, the Board members had discussed, at length in executive sessions, their opinions about [the Superintendent's] performance pursuant to his potential retention. The entire Board was aware that [the Superintendent] was going to be informed that there were not five (5) votes to support his retention. As the solicitors negotiating [the Superintendent's] severance, Stock & Leader informed [the Superintendent] that five (5) members of the Board had essentially communicated, in executive session, with all Board members present, that they did not intend to vote to provide notice of retention of [the Superintendent] for a further term of 3-5 years. Five (5) members expressing that intention constitutes notice that there was not majority support for an agenda item supporting his retention, and [the Superintendent] was offered the opportunity to resign, and did so.

On the issue of the Board executing the Settlement Agreement prior to the vote only: [the Superintendent] executed his resignation and the Settlement Agreement prior to the Executive Session on December 1, 2014; Stock & Leader, as solicitor, was present to such, and witnessed his signature.

Pages 3-4 of Finding No. 1:

RTKL Request Procedures

"...procedures were changed requiring all requests to go through the District solicitor effective November 1."

Based upon the District's review of the November 4 and November 17, 2014 meeting Minutes, there is no mention of a change in Right to Know Law (RTKL) procedures. Neither is the Auditor General's conclusion that the RTKL procedures were changed as a result of the "turmoil and heightened public scrutiny" documented in the public meeting Minutes. The reason for the solicitor's participation in the RTKL review was detailed in the January 12, 2015 Minutes, by the solicitor, at a public meeting. In November of 2014, [the Superintendent] was still the Superintendent of record. In November and December 2014, the District received more than ten (10) right to know requests and, as four (4) fell in November 2014, [the Superintendent] specifically requested that the Solicitor review them. The RTKR information requested around that time was NOT related to [the Superintendent] or any cessation to his contractual term/resignation, as identified on the attached requests, dated November 14 (2), 20 and 21. As demonstrated by the requests, the public was upset with the current Board President and with the person appointed to fill an empty board seat. A 30 day review was required, for a variety of reasons, depending on the nature of the request. For example, one of the requests was for emails among board members that required a search of the District's email server, as well as a search of

the personal emails of each Board member, which cannot be done in five (5) days. Legal review was then necessary, after gathering of the emails, to ascertain what emails were “records” according to PA case law, and what emails were not. That particular request was then appealed, thus additional time in prepare an appellate response did incur additional legal fees.

In January 2015, the minority Board members sued the remaining board members. The RTKL requests that preceded and succeeded this event were related to this conflict, and eventual lawsuit. The change in procedure to require legal review of requests related to a legal conflict is understandable, considering the imposition of a formal lawsuit. A conclusion that the public scrutiny and lack of transparency were the reason for the change in procedure is not supportable by anything other than the wild assertions of the public in Minutes, which the AG office apparently accepts as truth. If the facts surrounding the changed procedure - including who was Superintendent at the time, the nature and complexity of the RTKL requests (emails, and other documents requiring more than 5 days for review), the presence of a legal conflict, among many other things - are not considered relative to this finding, then the Auditor General’s office is comfortable with accepting as fact the miscellaneous opinions of the public.

“Based on public comments noted in Board meeting minutes, it appears that the changed procedure contributed to the public perception that there was a lack of transparency and the District may have been trying to hide something.”

The Auditor General’s conclusion fails to denote the content of the January 12, 2015 meeting Minutes, which indicate that all RTKL requests still went to the business manager/Open Record Officer first, and then proceeds to legal counsel when they are “not routine.” Page 4071. The Auditor General’s report suggests that the District was only relying upon the “legal review” reason for an extension. Instead, the District’s extensions were expressly permitted under several of the reasons permitted for a 30-day extension under the RTKL. The legal review is not the only statutory excuse enumerated. Though legal review was the cited reason for extension each time, numerous reasons could have been cited for many of the requests, including time constraints related to the notice of the request. Section 901 of the [RTKL](#) requires agencies to make a good faith effort to determine if a requested record is public under the law, and to respond to requests “as promptly as possible under the circumstances,” but not longer than five business days from the date a request is received. Section 902 of the RTKL allows agencies to take up to 30 additional calendar days to respond to requests if the agency can show one of the following apply:

- (1) the request for access requires redaction;
- (2) the request requires the retrieval of a record stored in a remote location;
- (3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
- (4) a legal review is necessary to determine whether the record is subject to access;
- (5) the requester has not complied with the agency's policies regarding access to records;

- (6) the requester refuses to pay applicable fees; or
- (7) the extent or nature of the request precludes a response within the required time period.

If an agency takes an extension, it must do so within the initial five business days permitted by section 901, and the agency must explain, in writing, the reason for the extension and a date by which a response will be provided. As demonstrated by the District’s response in the designated extensions, and in letters supporting production of record requests, many of the District’s RTKR’s fell under these other purposes for an extension and required extensive review of applicable exemptions from disclosure.

Stock and Leader’s Legal fees in 2015-16, in their entirety, were \$63,359; this is a \$17,673 reduction from the prior year, 2014-2015.

As to the concern about Board Members not receiving information at the same time, the President is the only Board Member authorized to contact the Solicitor on behalf of the majority of the Board Members. If for no other reason than efficiency and through the essence of his position, it is necessary and appropriate for the Board president and District Solicitor to have candid conversations about whether there is Board support for proposed agenda items. Such conversations are not a violation of the Sunshine Law and any resulting contracts, information, or advice that is then distributed to the rest of the Board is not an illustration of “ineffective governance, lack of transparency, or hasty decision-making,” but rather the efficiency of having a spokesperson to act on the will of the majority recognized in Section 5-508 of the Public School Code.

Page 5 of Finding No. 1:

“In violation in Section 1073(b) of the Public School Code, the Board failed to publically discuss and vote upon its intentions relative to the retention of the former Superintendent . . . before action was taken at the December 1, 2014 board meeting . . . or disclose its reason for not wanting to renew the former Superintendent’s contract at any board meeting.”

First, as suggested above, the Board was not operating under any of the notice principles of 10-1073, as outlined above. Discussions of “intentions” were irrelevant upon the voluntary resignation of the Superintendent. Second, even if Section 1073 were relevant to the course of action taken by the District, the plain language of Section 1073 does not require anything more than formal “vote” to notify the Superintendent, not public discussion or “public announcement” by the Board members on same. If the Board had voted to notify the Superintendent of its intention to not retain him, that would have constituted an “announcement” of sorts. However, no vote was required upon receipt of a resignation. Third, in spite of the concern that there was allegedly not “public discussion” on the renewal of [the Superintendent’s] contract before accepting his resignation, the Minutes of the November 17, 2014 meeting say otherwise; they are full of specific public comment from multiple sources suggesting that [the Superintendent] should be renewed. The public was aware of the end of [the Superintendent’s] contract, was obviously provided the opportunity to comment on the same, and did comment in support of [the Superintendent’s] retention, given the documented comments on page 4052 of the Minutes.

Fourth, neither Section 10-1073, nor any other part of the Public School Code requires the reason for “nonrenewal” to be expressed by the Board. The District’s solicitor has never seen a Board release a specific “reason” for not renewing, in an obvious need to protect personnel confidentiality concerns demonstrated by lawful Executive Session Privilege.

Page 6 of Finding of Fact No. 1:

“Questionable Board Governance Practices”

Three (3) minority members of the Board often did not agree with the decisions made and votes cast by the other five and/or six members of the Board, who constituted a majority during 2014 and 2015. However, disagreement among board members should not create an automatic inference that this is due to a lack of information. Section 5-508 of the Public School Code sets out when a vote of the majority of all Board members is required. The actions of the Board on December 1, 2014 were acted upon in public by Board Members constituting a majority (5) and are legally sound on that basis. The question of whether [the Superintendent] would be renewed as Superintendent was discussed in Executive Session as a legitimate personnel item. Even the public comments indicate they knew it was being discussed by the Board. The Board Minutes and interviews with the current Superintendent and Business Manager would not reveal that information. However, it was evident from these executive session discussions, that there was not support for renewal of [the Superintendent] for another contract of 3-5 years. [A board member’s] question about a 1 year extension in public, made on December 1, 2014, was not the first time that the question had arisen, as evidenced by his reference to researching a Representative’s opinions and asking for a “second opinion” from another solicitor.

Page 8-9, Finding No. 1:

The conclusions of #6 are not supported by any public facts of record. As a witness to [the Superintendent’s] execution of and signature to the Settlement Agreement, I can attest, to the best of my knowledge and recollection, that the Board President did not sign the Agreement until it was voted upon at a public meeting and approved by the Board. Even if he had signed prior to a Board vote, as demonstrated by Section 5-508 of the Public School Code, it was of no effect as a contract of more than \$100.00, until ratified by an affirmative vote of five (5) members of the Board has no effect.

As to the facts supporting the conclusion made in #7, the Minutes of January 12, 2015 document that no Board member complained about the Substitute Superintendent Contract with [the Substitute Superintendent], excepting two (2) Board Members. [One] Board Member never mentioned “notice” or “information;” rather he said he wanted more “negotiation” and was “unhappy with the process.” [Another board member’s] response indicated that [the Substitute Superintendent] had “satisfied” any of her concerns by answering all of her questions about the Contract. What public source the Auditor General is relying upon, beyond these Minutes, is not indicated.

As to conclusion #9, the Auditor General cites to a news article to support its conclusions about the Court’s decision to dismiss the lawsuit among members of the Board, instead of the publically available Court decision for its conclusion on dismissal. A copy of the June 8, 2015

Decision and Order is [provided]. The case was dismissed because the Plaintiffs failed to join a dispensable party, [the Superintendent].

Page 10, Finding No. 1: Recommendations

As demonstrated by the above-stated concerns, the District would have substantial concerns with the listed advice in Recommendations #2 and 5, respectively:

2. The Public School Code does not require public discussion of retention, but only public vote of retention or non-retention. Public discussion of the merits of retention would likely violate confidentiality rights of the individual employee that can be rightfully preserved by a legal executive session for personnel reasons under the Sunshine Law. Section 1073(b) is not even applicable to the resignation of [the Superintendent].

5. Written guidelines on RTKL cannot be developed to address the variety of requests made by the average district. Stock & Leader receives weekly requests for guidance on RTKL requests from its district clients simply because it is aware of requests made in multiple school districts across the Commonwealth, and districts routinely seek advice simply on that basis, for the efficiency of a common response. Binding the District to a procedure, instead of a case by case determination prevents the District from utilizing any necessary 30 day extensions, as well as seeking the legal advice to determine if any of the 20+ exceptions from disclosure (many of which have been litigated and require review of Court and Office of Open Records decisions) would apply to the requested documentation.

Distribution List

This report was initially distributed to the Superintendent of the District, the Board of School Directors, and the following stakeholders:

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