PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

AUDITOR GENERAL, EUGENE A. DEPASQUALE

A Performance Audit:

LAKEVIEW SCHOOL DISTRICT
SUPERINTENDENT EMPLOYMENT CONTRACT BUYOUT

AUGUST 2013

Commonwealth of Pennsylvania
Department of the Auditor General
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EUGENE A. DEPASQUALE
AUDITOR GENERAL

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

Mr. Scott Lewis, Board President
Lakeview School District
2482 Mercer Drive
Stoneboro, Pennsylvania 16153

Dear Governor Corbett and Mr. Lewis:

The enclosed report contains the results of the Pennsylvania Department of the Auditor General's (Department) performance audit of the Lakeview School District's (District) altered superintendent employment contract. This performance audit covered the period July 1, 2008 through October 9, 2012, and was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. This performance audit is separate and distinct from the District's cyclical performance audit, which the Department conducts approximately every two years. The District's last cyclical performance audit was released on February 24, 2012.

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

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

Sincerely,

/s/
EUGENE A. DEPASQUALE
Auditor General

August 2, 2013

cc: **LAKEVIEW SCHOOL DISTRICT** Board of School Directors

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Executive Summary

Audit Work

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

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

LEA Background

The District encompasses approximately 146 square miles. According to 2010 federal census data, it serves a resident population of 8,604. According to District officials, the District provided basic educational services to 1,291 pupils through the employment of 98 teachers, 76 full-time and part-time support personnel, and 6 administrators during the 2009-10 school year. Lastly, the District received $9 million in state funding in the 2009-10 school year.

Audit Conclusion and Results

Our performance audit found that the District complied, in all significant respects, with the applicable state laws, contracts, and administrative procedures related to our objectives. However, as noted below, we identified one matter we believe deserves further attention.

Observation: The District Spent $46,911 on an Agreement that Prematurely Terminated Its Former Superintendent's Employment. Our review found that the Lakeview School District (District) prematurely terminated its former Superintendent's contract, resulting in a severance agreement that cost the District's taxpayers $46,911 (see page 6).

Audit Recommendations

The *Lakeview School District's* Board should:

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

2. Follow the termination provisions outlined in the contract when employment ends prematurely for any reason.

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

Audit Scope, Objectives, and Methodology

Scope

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

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

Our audit covered the period July 1, 2008 through October 9, 2012.

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

Objectives

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

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

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

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

Methodology

What are internal controls?

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

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

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

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

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

Findings and Observations

Observation

The District Spent $46,911 on an Agreement that Prematurely Terminated Its Former Superintendent's Employment

> *Criteria relevant to the finding*:
>
> Section 1073(a) of the Public School Code, 24 P.S. § 10-1073(a), provides, in part:
>
> "[T]he school board shall elect or approve a properly qualified district superintendent to serve a term of from three to five years from the first day of July next following his election or from a time mutually agreed upon by the duly elected district superintendent and the board of school directors."
>
> Section 514 of the Public School Code, 24 P.S. § 5-514, provides that the Board of School Directors "have the right at any time to remove any of its officers, employees, or appointees for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct."
>
> Section 1080 of the Public School Code, 24 P.S. § 10-1080, provides that "district superintendents and assistant district superintendents may be removed from office for neglect of duty, incompetency, intemperance, or immorality. . . ."

Section 1073(a) of the Public School Code requires school districts to enter into three- to five-year employment contracts with their superintendents. On March 27, 2008, the Board of School Directors (Board) of the Lakeview School District (District) entered into an employment agreement (Contract) with an individual (former Superintendent) to serve as the District's superintendent. The Contract had a term of five years, from July 1, 2008 to June 30, 2013. The Contract provided compensation to the former Superintendent of $103,500 in the first year, as well as a variety of benefits.

The Contract also included the following provisions regarding termination or separation:

> "This agreement may be terminated prior to the stated term by:
>
> 1. Mutual agreement of the parties,
> 2. Retirement of the Superintendent,
> 3. Disability of the Superintendent,
> 4. Death of the Superintendent,
> 5. Failure of the Superintendent to perform his duties in accordance with the Public School Code."

In addition, Exhibit A, point 4, of the Contract outlines the former Superintendent's benefits upon separation from the District as follows:

> "Upon separation from the District, the Superintendent shall receive a severance payment formulated by multiplying the number of unused sick days by the rate provided the professional staff in the Teachers' Contract, Article XII,

> Section 6, Part C which is current at the time of separation."

On June 18, 2012, the Board approved an Agreement of Separation (Agreement), which set forth the terms under which the former Superintendent would resign from the District. The Board did not provide a reason for the former Superintendent's resignation in the official board meeting minutes. However, the Agreement stated that due to the District's administrative reorganization and the former Superintendent's personal circumstances, the District would not be renewing his employment Contract.

The Agreement included the following stipulations:

> "1. By executing this Agreement, [the former Superintendent] hereby tenders his irrevocable resignation from employment with the District, to be effective June 30, 2012.
>
> 2. [The former Superintendent] will no longer be employed by the District after June 30, 2012.
>
> 3. The District will continue to pay [the former Superintendent] his salary, in the usual bi-weekly installments, less lawful deductions, through and until June 30, 2013. However, [the Superintendent] will no longer be entitled to the continuation of his salary if he becomes employed. If that occurs, salary payments will cease immediately upon notice that he has been hired.
>
> 4. The District will continue [the former Superintendent's] health insurance coverage through June 30, 2013. Coverage will be for [the former Superintendent] and his spouse. The District's obligation to continue [the former Superintendent's] health insurance until June 30th, however, will cease upon his employment by an employer that makes available to him health insurance coverage.
>
> 5. [The former Superintendent] acknowledges that the salary and health insurance coverage continuation and other arrangements which the

> District has agreed to provide pursuant to this Agreement are benefits to which [the former Superintendent] would not be entitled were it not for this Agreement and General Release.
>
> 6. [The former Superintendent] will receive compensation for thirty-eight (38) unused sick days at the rate of ten dollars for each day.
>
> 7. [The former Superintendent] will be permitted to take and keep as his own the laptop computer he used during his services as Superintendent.
>
> 8. [The former Superintendent] agrees not to disclose any information regarding the cause existence or substance of this Agreement and General Release, except to an attorney with whom he chooses to consult regarding this Agreement and General Release, to his financial advisors, accountants, or professional advisors, or to his spouse."

The District's solicitor, in a correspondence to the auditors dated September 11, 2012, stated that the District ceased making salary payments to the former Superintendent after September 10, 2012, because he obtained employment at another school district. The letter also stated that the former Superintendent's benefits from the District would cease as of October 1, 2012, when he would begin receiving health benefits from his new employer. We calculated that, according to the terms of the Agreement, if the former Superintendent had not become employed elsewhere, the District would have had to pay him a salary of $111,250.

For the period July 1, 2012 through September 10, 2012, the District paid the former Superintendent $21,822 in salary. The District also paid the former Superintendent $3,839 in health benefits until October 1, 2012, when his new benefits began. Consequently, in total, the District paid the former Superintendent $25,661. However, according to the terms of the former Superintendent's employment Contract, and as stated in the Agreement, the District was only obligated to pay the former Superintendent $380 for unused sick days.

On June 18, 2012, the Board approved the appointment of an Acting Superintendent, effective July 1, 2012. His approved salary was $500 per day, with total earnings of $21,250 for 42.5 days. A new superintendent was appointed by the Board on July 24, 2012, for a four-year term commencing on September 1, 2012.

As a result of this Board's decision to prematurely terminate the former Superintendent's employment, and its decision not follow the termination provisions outlined in the Contract, the District incurred costs of $46,911, as follows:

Prior Superintendent's Salary	$21,822
Prior Superintendent's Benefits	3,839
Acting Superintendent's Salary	21,250
Total	$46,911

We reviewed the new superintendent's contract and found it contained the same terms by which the contract could be terminated as the former Superintendent's Contract. Regarding terms of separation, the new superintendent's contract, Exhibit A, paragraph 5, states only that "upon voluntary separation for the District or his retirement . . . the Superintendent shall receive a severance payment formulated by multiplying the number of unused sick days by the rate of fifty ($50) to a maximum of two hundred (200) sick days." We recommend that the District follow these provisions in the future.

Recommendations

The *Lakeview School District Board* should:

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

2. Follow the termination provisions outlined in the contract when employment ends prematurely for any reason.

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

Management Response

Management provided a written response waiving their opportunity to respond at this time.

Distribution List

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

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