

NEWPORT SCHOOL DISTRICT
PERRY COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT

JANUARY 2012

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

Mr. Robert H. Folk, Jr., Board President
Newport School District
420 Fickes Lane
Newport, Pennsylvania 17074

Dear Governor Corbett and Mr. Folk:

We conducted a performance audit of the Newport School District (NSD) to determine its compliance with applicable state laws, regulations, contracts, grant requirements and administrative procedures. Our audit covered the period September 3, 2008 through March 26, 2010, except as otherwise indicated in the report. Additionally, compliance specific to state subsidy and reimbursements was determined for the school years ended June 30, 2008 and June 30, 2007. Our audit was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

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

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

Sincerely,

/s/

JACK WAGNER
Auditor General

January 25, 2012

cc: **NEWPORT SCHOOL DISTRICT** Board Members



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Executive Summary

Audit Work

The Pennsylvania Department of the Auditor General conducted a performance audit of the Newport School District (NSD). Our audit sought to answer certain questions regarding the District's compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures; and to determine the status of corrective action taken by the NSD in response to our prior audit recommendations.

Our audit scope covered the period September 3, 2008 through March 26, 2010, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. Compliance specific to state subsidy and reimbursements was determined for school years 2007-08 and 2006-07.

District Background

The NSD encompasses approximately 73 square miles. According to 2000 federal census data it serves a resident population of 7,500. According to District officials, in school year 2007-08 the NSD provided basic educational services to 1,154 pupils through the employment of 103 teachers, 65 full-time and part-time support personnel, and 8 administrators. Lastly, the NSD received more than \$8 million in state funding in school year 2007-08.

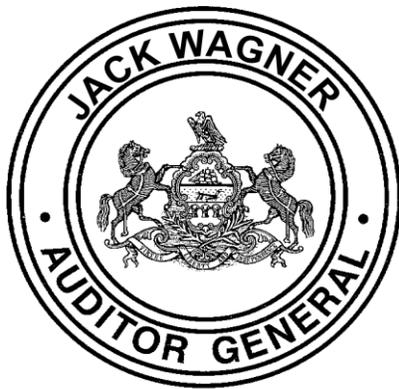
Audit Conclusion and Results

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

Finding No. 1: The Board Did Not Include Adequate Provisions in its Employment Contract with the Superintendent, Leading to a Costly and Confidential Buy-out of \$105,892 and Replacement Costs of \$231,914. On December 22, 2009, after the Superintendent had served only six months of his second three-year contract, the Board approved a Release and Settlement Agreement with the Superintendent, which terminated his employment with the NSD on December 31, 2009 (see page 6).

Finding No. 2: School Bus Drivers Lacked Required Clearances. Our audit found two bus drivers for whom the NSD did not obtain the Pennsylvania criminal background check and two other bus drivers for whom the NSD did not obtain the child abuse clearance at the time of hire as required by law (see page 10).

Status of Prior Audit Findings and Observations. With regard to the status of our prior audit recommendations to the NSD from an audit we conducted of the 2005-06 and 2004-05 school years, we found the NSD had taken appropriate corrective action in implementing our recommendations pertaining to the bus drivers' (see page 13).



Audit Scope, Objectives, and Methodology

Scope

What is a school performance audit?

School performance audits allow the Department of the Auditor General to determine whether state funds, including school subsidies, are being used according to the purposes and guidelines that govern the use of those funds. Additionally, our audits examine the appropriateness of certain administrative and operational practices at each Local Education Agency (LEA). The results of these audits are shared with LEA management, the Governor, the PA Department of Education, and other concerned entities.

Our audit, conducted under authority of 72 P.S. § 403, is not a substitute for the local annual audit required by the Public School Code of 1949, as amended. We conducted our audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit covered the period September 3, 2008 through March 26, 2010.

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

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

Objectives

What is the difference between a finding and an observation?

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

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

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

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

Methodology

What are internal controls?

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

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

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

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

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

In order to properly plan our audit and to guide us in possible audit areas, we performed analytical procedures in the areas of state subsidies/reimbursement, pupil transportation, and comparative financial information.

Our audit examined the following:

- Records pertaining to pupil transportation, bus driver qualifications, state ethics compliance, and financial stability.
- Items such as Board meeting minutes.

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

Lastly, to determine the status of our audit recommendations made in a prior audit report released on January 30, 2009, we performed additional audit procedures targeting the previously reported matters.

Findings and Observations

Finding No. 1

The Board Did Not Include Adequate Provisions in its Employment Contract with the Superintendent, Leading to a Costly and Confidential Buy-out of \$105,892 and Replacement Costs of \$231,914

Criteria relevant to the finding:

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

On February 17, 2009, the board of school directors (Board) of the Newport School District (District) entered into an employment contract (Contract) with an individual (Superintendent) to serve as the District's superintendent. The first employment contract between the parties, for a term of three years, ended on June 30, 2009. The second Contract had a term of three years, from July 1, 2009 to June 30, 2012. The Contract provided the Superintendent with annual compensation of \$99,303 for the first year of employment, as well as a variety of benefits. The Superintendent's annual salary would increase by set percentages based on satisfactory performance evaluations by the Board. The Contract also provided a variety of employment benefits to the Superintendent.

The Contract also provided that the Superintendent was "subject to discharge for those reasons set forth, and in accordance with the Notice and Hearing procedures set forth in Section 1080 of the Public School Code, as amended [i.e., neglect of duty, incompetency, intemperance, or immorality]." The Contract also included provisions with regard to the termination of the Superintendent's employment in the event of illness, accident, or other disability.

On December 22, 2009, after the Superintendent had served only six months of his second three-year contract, the Board approved a Settlement Agreement and Release (Agreement) with the Superintendent, which terminated his employment with the District effective at the close of business on December 31, 2009. The Agreement noted the Superintendent "freely, voluntarily and knowingly desires to resign from his employment" with the District. The parties also agreed not to sue each other.

The Agreement required the District to make the following payments to the Superintendent, which were not provided for in, or required by, the Contract, the projected value of which we calculated to be \$105,892:

- \$100,000 to be paid in two installments (\$80,000 was paid by January 8, 2010; the remaining \$20,000 was paid on September 17, 2010);
- On behalf of the Superintendent, payments in the amount of \$982 per month to maintain the Superintendent's current hospitalization, medical, and health insurance benefits through June 30, 2010 (6 months @ \$982 = \$5,892).

As of June 30, 2010, the District had not incurred any costs to replace the Superintendent. The Board expanded two current principals' assignments to include the responsibilities of an acting superintendent, with no additional compensation.

Subsequent to completion of our fieldwork, we learned that the District appointed a new superintendent for a three-year term beginning July 1, 2010. We obtained a copy of the contract and found that it again provides for termination for the reasons set forth in Section 1080 of the Public School Code. It also defines the limits of payouts for unused vacation and sick days after completion of service with the District. However, the contract fails to set any limits on the District's liability in the event of early termination of the contract for reasons not covered by Public School Code Section 1080. Additionally, the contract provided the Superintendent with annual compensation of \$99,500, beginning July 1, 2010.

By prematurely terminating the Superintendent's contract, the District incurred costs of \$105,892, as discussed above, for which no services were provided to the District. In addition, there were salary expenditures for the new superintendent, projected to the end of the terminated superintendent's contract, of \$231,914.

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

The Agreement does not provide a reason for the buy-out. It merely states that, “having engaged in discussions regarding [the Superintendent’s] continued employment in the District, the parties have come to an agreement that it is in their mutual interest to release one another from the [Contract]...in an amicable manner.” The Agreement contains a confidentiality clause which stated, “The parties hereto shall maintain the existence and terms of this Agreement and Release in confidence to the extent permitted by law.”

The Department of the Auditor General requested an explanation of the reasons for the District’s buy-out of the Superintendent’s contract. The Board President stated that there was a “mutual agreement to part ways,” which was the language used in a letter from the former Board President to the Superintendent.

The Board President stated that he could not provide any additional information beyond what was provided for in the Agreement, the Superintendent’s resignation letter, and the letter from the former Board President to the Superintendent. He further stated that the Board could not terminate the Superintendent for cause because the Superintendent had not done anything illegal.

We note that the minutes of the Board meeting for December 22, 2009, at which the Board approved the Agreement, include the following entries:

- “[The District’s solicitor] explained that there is a confidentiality clause in the [Agreement]. He is trying to protect the school board and the district from additional potential claims.”
- “[A Board member] stated that there are too many violations of [the Superintendent’s] contract for this board to even consider relieving him from his responsibilities. Releasing him of his responsibilities could cost this district tens and thousands of dollars under his proposed agreement. We have major issues that have many unanswered questions – the warehouse scandal; the unanswered finances; the over budget building; the overspending. . . .” This Board member

was the only one to vote against the approval of the Agreement.

- Another Board member “agrees . . . on wanting to release this information and doesn’t want to see us spend more money, but what is the end result. How do we move on as a Newport community? We need to put this to rest, bury it and start to heal and focus on the real issue which is the children of the district.”

The minutes suggest that there were additional reasons for the termination of the Contract other than a “mutual agreement to part ways.”

Recommendations

The *Newport School District* board should:

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

Management Response

Management stated the following:

The District will ensure that future contracts are structured such that the District will be protected to the greatest extent possible.

Finding No. 2 →

School Bus Drivers Lacked Required Clearances

Criteria relevant to the finding:

Public School Code (PSC) Section 111 (24 P.S. § 1-111) requires prospective school employees who would have direct contact with children, including independent contractors and their employees, to submit a report of criminal history record information obtained from the Pennsylvania State Police and the Federal Bureau of Investigation. Section 111 lists convictions of certain criminal offenses that, if indicated on the report to have occurred within the preceding five years, would prohibit the individual from being hired.

Similarly, Section 6355 of the Child Protective Services Law, (CPSL), 23 Pa. C.S. § 6355, requires prospective school employees to provide an official child abuse clearance statement obtained from the Pennsylvania Department of Public Welfare. The CPSL prohibits the hiring of an individual determined by a court to have committed child abuse.

Our audit of the District's transportation contractor's bus driver files for the 2009-10 school year found the District did not obtain the Pennsylvania criminal background check for two drivers who were transporting District students. Additionally, the District did not obtain child abuse clearance statements as required by law for two other drivers who were transporting District students.

Several different state statutes and regulations establish the minimum required qualifications for school bus drivers. The ultimate purpose of these requirements is to ensure the protection and the safety and welfare of the students transported in school buses. We reviewed the following five requirements:

1. Possession of a valid driver's license;
2. Completion of school bus driver skills and safety training;
3. Passing a physical examination;
4. Lack of convictions for certain criminal offenses; and
5. Official child abuse clearance statement.

The first three requirements were set by regulations issued by the Pennsylvania Department of Transportation pursuant to 67 Pa. Code §71.1 *et seq.* As explained further in the box to the left, the fourth and fifth requirements were set by the PSC and the CPSL, respectively.

We reviewed the personnel records of eight drivers currently employed by the transportation contractors whose records were not reviewed during the prior audit. Our review found two driver's files did not contain a Pennsylvania criminal history record check. The drivers have been employed since September 2009 and August 2004. On February 4, 2010 and February 18, 2010, we informed District management of the missing documentation and instructed them to obtain the necessary documents. On February 5, 2010 and

February 18, 2010, District personnel provided us with the necessary documentation, which indicated the drivers did not have criminal records.

We also found two driver's files that did not contain the required child abuse clearance statement. These drivers have been employed since October 2007 and September 2006. On February 4, 2010, we informed District management of the missing documentation and instructed them to obtain the necessary documents. On February 23, 2010 and March 1, 2010, District personnel provided us with the necessary documentation, which had no indications of child abuse.

District personnel noted they obtained criminal background history records and child abuse clearances for all drivers at the time they are hired; however, due to one contractor thinking the FBI criminal record check took the place of the Pennsylvania criminal record check, the contractor didn't apply for the Pennsylvania check. It was also stated that the driver hired in 2004 did apply for the criminal record check at the time but neither the contractor nor the driver retained the document. Furthermore, the other contractor failed to obtain and retain the child abuse clearances for the two drivers. When the contractor asked the drivers for the clearances previously applied for, the drivers were unable to produce the documents. The District's failure to obtain and retain criminal history record checks and child abuse clearances not only violated the provisions of the law detailed previously in this finding, but may also place students at unnecessary risk if a driver had a criminal record which would bar employment or an indication of child abuse.

District personnel failed to ensure all contracted drivers held the necessary clearances which allowed this issue to go undetected until found by our current audit.

Recommendations

The District board and administrators should ensure that files documenting bus drivers' qualifications are up-to-date and complete. Any file found to be lacking required documentation should be updated immediately.

Management Response

Management stated the following:

During audit, it was found that two of our bus drivers did not have their PA Criminal History record check and two drivers did not have their Child Abuse clearance on file. There was a misunderstanding with one contractor thinking the FBI criminal record check took the place of the PA Criminal History check. Upon these findings, our contractors applied for and obtained the required forms, with no indication of child abuse or criminal records for these drivers.

The corrective action that we have in place will eliminate this oversight from happening in the future. We now require all the necessary paperwork on bus drivers prior to having them board approved; whereas, in the past, bus drivers were board approved pending receipt of their clearances. Beginning with the 2010-2011 school year, the District will monitor driver clearances through the . . . software program.

Status of Prior Audit Findings and Observations

Our prior audit of the Newport School District (NSD) for the school years 2005-06 and 2004-05 resulted in one observation. The observation pertained to internal control weaknesses in administrative policies regarding bus drivers' qualifications. As part of our current audit, we determined the status of corrective action taken by the District to implement our prior recommendations. We performed audit procedures and questioned District personnel regarding the prior observation. As shown below, we found that the NSD did implement recommendations related to administrative policies regarding bus drivers' qualifications.

School Years 2005-06 and 2004-05 Auditor General Performance Audit Report

Observation: **Internal Control Weaknesses in Administrative Policies Regarding Bus Drivers' Qualifications**

Observation Summary: Our prior audit found that neither the District nor the District's transportation contractors had adopted written policies or procedures to ensure that they were notified if current employees were 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 subsequent to being hired. We considered this lack of written policies and procedures to be an internal control weakness that could result in the continued employment of individuals who may pose a risk if allowed to continue to have direct contact with children.

Recommendations: Our audit observation recommended that the NSD:

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 the District is notified when drivers are charged with or convicted of crimes that call into question their suitability to continue to have direct contact with children.

Current Status: Our current audit found that the District has taken appropriate corrective action in implementing our recommendations.



Distribution List

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

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