

OWEN J. ROBERTS SCHOOL DISTRICT

CHESTER COUNTY, PENNSYLVANIA

PERFORMANCE AUDIT REPORT

FOR THE YEARS ENDED JUNE 30, 2004 AND 2003,
AND IN CERTAIN AREAS EXTENDING BEYOND JUNE 30, 2004

WITH FINDING AND RECOMMENDATIONS

THROUGH SEPTEMBER 15, 2006



OWEN J. ROBERTS SCHOOL DISTRICT
CHESTER COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT

FOR THE YEARS ENDED JUNE 30, 2004 AND 2003,
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OWEN J. ROBERTS SCHOOL DISTRICT
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The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

Dear Governor Rendell:

We have conducted a performance audit of the Owen J. Roberts School District for the years ended June 30, 2004 and 2003, and in certain areas extending beyond June 30, 2004. 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.

The objective of our audit was to determine if the Owen J. Roberts School District complied with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit.

To plan and perform our audit of the Owen J. Robert School District, we considered the district's internal controls pertinent to our audit objectives. Based on our consideration of these internal controls, we determined audit procedures for the purpose of reporting on our audit objectives, but not to provide assurance on the effectiveness of the district's internal controls. However, any significant internal control deficiencies found during our audit were included in our report.

The results of our tests indicated that, in all significant respects, the Owen J. Roberts School District was in compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit, except as noted in the following finding further discussed in the Conclusion section of this report:

Finding – The District Granted the Business Administrator a Leave of Absence/Sabbatical in Violation of the Public School Code

We believe that our recommendations, if implemented by the district, will ensure compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit.

Independent Auditor's Report (Continued)

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information and, accordingly, express no form of assurance on it.

Sincerely,

December 12, 2007

/s/
JACK WAGNER
Auditor General

OWEN J. ROBERTS SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT
BACKGROUND

Background

The Owen J. Roberts School District is located in Chester County and encompasses an area of approximately 111 square miles. The school district has a population of 28,223, according to a 2006 local census. The administrative offices are located at 901 Ridge Road, Pottstown, Pennsylvania.

According to school district administrative officials, during the 2003-04 school year, the district provided basic educational services to 4,241 pupils through the employment of 42 administrators, 307 teachers, and 167 full-time and part-time support personnel. Special education was provided by the district and the Chester County Intermediate Unit #24. Occupational training and adult education in various vocational and technical fields were provided by the district and the Center for Arts and Technology.

Generally, state subsidies and reimbursements are paid in the year subsequent to the year in which the school district incurs the cost that qualifies it for the applicable subsidy or reimbursement. While the Pennsylvania Department of Education (DE) makes partial payments to the school district throughout the year, final payments are normally made in June. Refer to the Supplementary Information on pages 13 through 16 of this report for a listing of the state revenue the district received during the 2003-04 and 2002-03 school years and for descriptions of the state revenue received by category.

In July of each year, the Commonwealth's Labor, Education and Community Services, Comptroller's Office confirms the payments that were made by DE throughout the prior fiscal year. School district annual financial reports and the related certified audits of the payments are not available before October 31st of the following fiscal year.

OWEN J. ROBERTS SCHOOL DISTRICT
PERFORMANCE AUDIT REPORT
OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE AND SCOPE

Our audit objective was to determine if the Owen J. Roberts School District complied with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit.

The scope of our audit covered the years ended June 30, 2004 and 2003, and in certain areas extending beyond June 30, 2004.

METHODOLOGY

Our audit was conducted under authority of 72 P.S. § 403, and does not supplant the local annual audit as required by the Public School Code of 1949, as amended (Public School Code).

The proper administration of a school district requires school board members to establish and maintain internal controls to provide reasonable assurance that specific school district objectives will be achieved. School board members are responsible for the adoption and use of policies and procedures that promote the economical and efficient conduct of assigned duties and responsibilities. In completing our audit, we obtained an understanding of the school district's internal controls as they relate to the district's compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit. We evaluated and tested documents, files, reports, agreements, and systems, and performed analytical procedures to the extent necessary to satisfy our audit objectives. Additionally, we interviewed selected administrators and operations personnel.

As noted in the Background section of this report, the Department of Education generally pays state subsidies and reimbursements in the fiscal year subsequent to the fiscal year in which the district incurs the qualifying cost. Because we use the payment confirmations, annual financial reports, and certified audit data as supporting documentation of actual payments received in the performance of our audit, we cannot begin the field work of a school district's operations for a given year until after this information becomes available.

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CONCLUSION

The objective of our audit was to determine if the Owen J. Roberts School District complied with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit.

The results of our tests indicate that, with respect to the items tested, the Owen J. Roberts School District complied with applicable state laws, regulations, contracts, grant requirements, and administrative procedures falling within the scope of our audit, except as noted in the finding listed below. The finding and recommendations were reviewed with representatives of the Owen J. Roberts School District, and their comments have been included in this report.

Finding – The District Granted the Business Administrator a Leave of Absence/Sabbatical in Violation of the Public School Code

Our review of district records and supporting documentation found that the school board violated the Public School Code when it placed the former Business Administrator (BA) on a leave of absence/sabbatical for the 2006-07 fiscal year (July 1, 2006 through June 30, 2007). Under the terms of the Transition Resolution (Agreement) approved by the board, the BA did not agree to return to employment with the district following the leave of absence/sabbatical.

The district and the BA signed the Agreement on February 27, 2006. The Agreement provided that the district would pay the business administrator’s salary of \$158,994 for the 2006-07 school year, and included the following provisions:

1. The Board of School Directors and the Business Administrator concur that the [BA’s employment contract] which expires June 30, 2007 shall not be renewed;
2. The Business Administrator will be provided a leave of absence for the 2006-07 fiscal year as provided for by Section 1154 (e) of the Public School Code. . . .

OWEN J. ROBERTS SCHOOL DISTRICT
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Finding (Continued)

Contrary to the statement made in Paragraph 2 of the Agreement, Section 1154(e) of the Public School Code does not apply to the BA. Section 1154(e) addresses “the payment of salaries of employe[e]s when absent from duty,”¹ which may *appear* to include the BA when the provision is read in isolation. However, Section 1154 as a whole specifically and clearly applies to “professional or temporary professional employe[e]s,” which is a category of employees defined by Section 1101(1) of the Public School Code as follows:

The term “professional employe[e]” shall include those who are certificated as teachers, supervisors, supervising principals, principals, assistant principals, vice-principals, directors of vocational education, dental hygienists, visiting teachers, home and school visitors, school counselors, child nutrition program specialists, school librarians, school secretaries the selection of whom is on the basis of merit as determined by eligibility lists and school nurses.²

Significantly, business administrators are not included in this definition. Therefore, Section 1154(e) does not apply to business administrators.

Even if Section 1154(e) were to apply to business administrators, which, as discussed above, it does not, this provision still would not support the district’s action. Section 1154 specifically addresses the payment of salaries in cases of sickness, injury, or death; therefore, any subsection of Section 1154 would refer to same. There is no indication in the Agreement or elsewhere that the former BA’s leave of absence was related to sickness, injury, or death, and the district has acknowledged that there was no such relationship. Therefore, the Agreement was not authorized by Section 1154 of the Public School Code.

¹ 24 P.S. § 11-1154(e).

² 24 P.S. § 11-1101(1).

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Finding (Continued)

The Agreement also states that the BA “is eligible for a sabbatical leave as provided for in Section 1166 of the Public School Code. . . .” Section 1166 provides for sabbatical leaves of absence, in part, as follows:

Any person employed in the public school system of this Commonwealth who has completed ten (10) years of satisfactory service as a professional employe[e] or member of the supervisory, instructional or administrative staff, or as a commissioned officer, of any board of school directors, county board of school directors, or any other part of the public school system of the Commonwealth, shall be entitled to a leave of absence for professional development or a sabbatical leave for restoration of health or, at the discretion of the board of school directors, for other purposes.³

However, Public School Code Section 1168(a) further provides:

No leave of absence shall be granted unless such person *shall agree to return to his or her employment* with the school district for a period of not less than one school term immediately following such leave of absence.⁴

On January 30, 2006, the BA met with the district’s superintendent to discuss his current employment contract, which had a term of July 1, 2002 through June 30, 2007, as well the renewal of that contract, about which the district was required to make a decision by July 31, 2006. At this meeting, according to a subsequent letter from the district’s superintendent that confirmed the discussion in writing, the BA “stated that [he] need[ed] one more year in the public school system and might be interested in taking a sabbatical during the 2006-07 school year, with the option of not returning during the 2007-08 school year.”

We do not challenge the BA’s eligibility for a sabbatical leave as provided for in Section 1166 because his service with the district began in 1979. However, because neither the BA nor the district intended for the BA to return to his employment for at least one school term immediately following his leave of absence, the sabbatical violated Section 1168. Furthermore, Section 1168 lists the financial consequences of an employee’s failure to return to employment after a sabbatical: forfeiture of all benefits to which the employee would have been entitled under the Public School Code during the sabbatical; and deduction of amounts contributed by the employee’s retirement account with the Public School Employees’ Retirement System (PSERS) and the refunding of such contributions to the district.⁵

³ 24 P.S. § 11-1166.

⁴ 24 P.S. § 11-1168(a) (emphasis added).

⁵ See 24 P.S. § 11-1168(c), (d).

OWEN J. ROBERTS SCHOOL DISTRICT
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Finding (Continued)

The district's decision to grant the BA's request that he be relieved of his contractual obligation to work through June 30, 2007, and yet be paid for a year of service anyway, is a matter for consideration by the taxpayers of the district. However, it is clear that the district should not have facilitated such an arrangement through a contrived use of a sabbatical in violation of the Public School Code.

The board and district administration should:

- ensure that future leaves of absences/sabbaticals are granted to employees in compliance with the requirements of the Public School Code; and
- determine if the district should recover the salary and benefits paid to the BA for the 2006-07 fiscal year.

In addition, a copy of this report will be forwarded to PSERS for its review and whatever action it may deem appropriate with regard to the district's contributions to the BA's retirement account during the 2006-07 fiscal year.

Response of Management

The district responded to the finding as follows:

The School District respects the authority of the Auditor General to issue his determination that the Transition Resolution violates § 1154 and § 1166 of the School Code, and to make recommendations on School District operations.

The Auditor General has made two recommendations, namely that the School District should:

- Ensure that future leaves of absences and sabbatical leaves are granted to employees in compliance with the requirements of the Public School Code; and
- Determine if the District should recover the salary and benefits paid to the Business Administrator for the 2006-07 fiscal year.

Although the School District respectfully believes the legal analysis in the Auditor General's finding is wrong, the School District will nevertheless follow both recommendations.

OWEN J. ROBERTS SCHOOL DISTRICT
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Finding (Continued)

To begin with, the School District is always attentive to legal compliance. Accordingly, the School District will ensure that future leaves of absences and sabbatical leaves are granted to employees in compliance with School Code requirements.

Further, the School District will determine if the District can recover the salary and benefits paid to the Business Administrator for the 2006-07 fiscal year. As a first step in this direction, the School District will notify the Business Administrator of the Auditor General's finding and request repayment of salary and benefits based on such finding.

The School District also assures the Auditor General that it has no intention of entering into agreements similar to the Transition Resolution with other employees in the future.

As to the School District's prior action in entering the Transition Resolution, we point out:

- The School District proceeded in a very careful manner from a legal perspective.
- Prior to entering the Transition Resolution, OJR received written legal opinions from two different law firms approving the Transition Resolution, specifically Sweet Stevens Tucker & Katz, OJR's labor relations counsel, and Fox Rothschild, LLP, OJR's employment counsel.

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Finding (Continued)

- Further, after entering the Transition Resolution, a lawsuit was filed to determine whether the Transition Resolution violates §§ 1154 and 1166 of the School Code. After a full trial, the Honorable Robert J. Shenkin of the Chester County Court of Common Pleas issued a written decision on June 4, 2006, expressly finding that the Transition Resolution complies with the law, as follows:

After careful and thorough consideration, we find that the plaintiff's complaint has no basis in law. . . . Where, as here, the actions of a School Board are permitted by law and are within its discretion, it is our duty to not disturb those actions. . . . Where, as here, the actions of defendants are lawful on their face, we cannot look behind those actions, as plaintiff would have us to do, to recast the actions into unlawful activity. Although plaintiff contends that many of the provisions of the Transition Resolution of unlawful . . . we are constrained to disagree.

- This Chester County Court decision negates the Auditor General's legal analysis. The Auditor General's finding, though, does not reconcile its opinion that the Transition Resolution is unlawful with the Court's decision finding that the Transition Resolution is lawful.
- An issue addressed before the Court, which the Auditor General does not acknowledge in his finding, is that School Code § 1089 expressly permits school districts to enter written employment agreements with business administrators that define terms and conditions of employment, including leave and severance terms.

Notwithstanding what we believe respectfully to errors in the Auditor General's legal analysis, the School District is following both of the Auditor General's recommendations as set forth above.

Auditor's Conclusion

We commend the district for agreeing to implement our recommendations. We will follow-up during our next audit of the district to determine whether and to what extent that has actually occurred.

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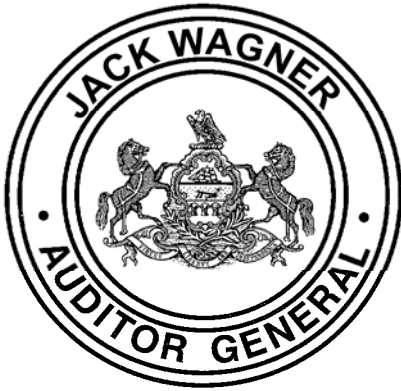
Finding (Continued)

We stand by the legal analysis in our finding. With regard to the court decision referenced in the district's response, it is important to understand that the court simply held that the *pro se* plaintiff (an individual who represents himself in litigation, without the aid of an attorney) was unable to prove his allegations that the district's actions were improper. In contrast, our department's Office of Chief Counsel, based on its experience in such matters, was able to demonstrate that the district's actions violated state law, as explained in the finding.

Contrary to the district's assertion, Section 1089 of the Public School Code has no bearing on the finding. This provision authorizes a district to enter into an employment agreement with a business administrator that spells out the terms of employment and the consequences of terminating the agreement;⁶ it does not provide authorization for a district to enter into an agreement that separates an employed business administrator from the district in a way that violates various sections of the Public School Code. The district obviously believed that the termination provisions in its original employment contract with the business administrator were insufficient; it should ensure that future employment contracts with prospective employees 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. The Transition Resolution may have been averted, or the cost significantly reduced, if the district had included provisions in its original employment contract with the BA regarding the compensation and benefits payable to, or on behalf of, the BA upon the premature termination of the contract. The time to negotiate those terms is at the outset of the employment relationship, not at its conclusion.

With some minor revisions based on the district's response to a draft copy of this finding, the finding shall remain as stated.

⁶ 24 P.S. 10-1089(b).



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SUPPLEMENTARY INFORMATION
[UNAUDITED]

Schedule of State Revenue Received

The district reported it received state revenue of \$12,261,956 and \$11,765,476, respectively, for the years ended June 30, 2004 and 2003, as detailed in the following schedule:

STATE REVENUE	<u>2004</u>	<u>2003</u>
Basic Education	\$ 4,519,021	\$ 4,374,597
Read to Succeed	-	48,414
Charter Schools	128,785	132,572
School Performance Incentives	-	75,560
Tuition for Orphans and Children Placed in Private Homes	17,283	27,938
Homebound Instruction	568	233
Vocational Education	52,683	53,902
Alternative Education	8,192	13,320
Special Education	1,681,163	1,821,297
Transportation	2,584,949	2,431,977
Rental and Sinking Fund Payments	1,761,061	1,659,461
Health Services	92,859	91,661
Sewage Treatment Operations	-	13,312
Safe Schools	-	12,863
Social Security and Medicare Taxes	953,999	865,427
Retirement	455,393	142,942
Regional Summer School of Excellence Grant	6,000	-
 <u>TOTAL STATE REVENUE</u>	 <u>\$12,261,956</u>	 <u>\$11,765,476</u>

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SUPPLEMENTARY INFORMATION
[UNAUDITED]

Description of State Revenue Received (Source: Pennsylvania Accounting Manual)

Basic Education

Revenue received from Commonwealth appropriations as subsidy for basic education.

Read to Succeed

Revenue received from the Commonwealth to ensure that all students learn to read and write by the end of the third grade.

Charter Schools

Revenue received from the Commonwealth to fund the Charter Schools initiative. The state subsidy received includes revenue for startup funding, nonpublic transfers, and transitional grants.

School Performance Incentives

Revenue received from Commonwealth appropriations to reward significant educational and school-specific performance improvements as measured by improvements in student attendance and student accomplishments.

Tuition for Orphans and Children Placed in Private Homes

Revenue received from the Commonwealth as tuition for children who are orphans and/or children who are placed in private homes by the court. Payments are made in accordance with Sections 1305 and 1306 of the Public School Code.

Homebound Instruction

Revenue received from the Commonwealth as subsidy for expenses incurred for instruction of homebound pupils. Payments are made in accordance with Section 2510.1 of the Public School Code.

Vocational Education

Revenue received from the Commonwealth as subsidy for vocational education expenditures which are classified as current operating expenditures and also for preliminary expenses in establishing an area vocational education school. Payments are made in accordance with Sections 2504, 2506 and 2507 of the Public School Code.

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SUPPLEMENTARY INFORMATION
[UNAUDITED]

Alternative Education

Revenue received from the Commonwealth as subsidy for alternative education. Alternative education is specialized educational instruction and support services to students that must be removed from regular classrooms because of disruptive behavior.

Special Education

Revenue received from the Commonwealth as subsidy for expenditures incurred for instructing school age special education students.

Transportation

Revenue received from the Commonwealth as subsidy for pupil transportation expenditures and/or board and lodging in lieu of transportation. Payments for pupil transportation are made in accordance with Section 2541 of the Public School Code. Payments for board and lodging in lieu of transportation are made in accordance with Section 2542 of the Public School Code. This revenue also includes subsidy for the transportation of nonpublic and charter school students.

Rental and Sinking Fund Payments

Revenue received from the Commonwealth as a full or partial subsidy payment for approved lease rentals, sinking fund obligations, or any approved district debt obligations for which the Department of Education has assigned a lease number.

Health Services

Revenue received from the Commonwealth as subsidy for health services. Payments are made in accordance with Section 2505.1 of the Public School Code and include revenue for medical, dental, nurse and health services.

Sewage Treatment Operations

Revenue received from the Commonwealth via the Department of Environmental Protection as subsidy for the annual operation costs of a sewage treatment plant. Payments are made in accordance with Act 339 of 1953.

Safe Schools

Revenue received from the Commonwealth as subsidy for Safe School programs.

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SUPPLEMENTARY INFORMATION
[UNAUDITED]

Social Security and Medicare Taxes

Revenue received from the Commonwealth as subsidy designated as the Commonwealth's matching share of the employer's contribution of the Social Security and Medicare taxes for covered employees who are not federally funded.

Retirement

Revenue received from the Commonwealth as subsidy designated as the Commonwealth's matching share of the employer's contribution of retirement contributions for active members of the Public School Employees' Retirement System.

Other Program Subsidies/Grants

Revenue received from the Commonwealth not specified elsewhere.

BUREAU OF SCHOOL AUDITS

AUDIT REPORT DISTRIBUTION LIST

This report was initially distributed to the superintendent of the school district, the board members, and the following:

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

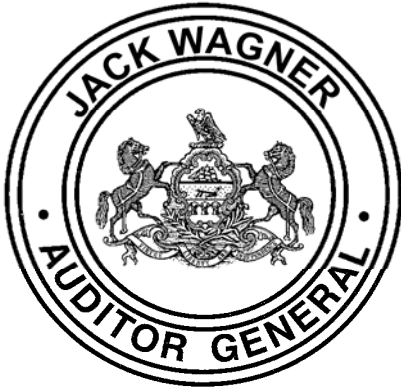
The Honorable Gerald Zahorchak, D.Ed.
Secretary of Education
1010 Harristown Building #2
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Harrisburg, PA 17126

The Honorable Robin L. Wiessmann
State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Mr. John Godlewski
Director, Bureau of Budget and Fiscal Management
Department of Education
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Harrisburg, PA 17105

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Director of Research Services
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Mechanicsburg, PA 17055



BUREAU OF SCHOOL AUDITS

AUDIT REPORT DISTRIBUTION LIST (Continued)

Mr. Donald Halke
Internal Auditor
Public School Employees' Retirement System
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P.O. Box 125
Harrisburg, PA 17108

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