PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

AUDITOR GENERAL, JACK WAGNER

A Performance Audit:

GETTYSBURG AREA SCHOOL DISTRICT

SUPERINTENDENT EMPLOYMENT CONTRACT BUY-OUT

MAY 2012

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

Mr. Todd Orner, Board President
Gettysburg Area School District
900 Biglerville Road
Gettysburg, Pennsylvania 17325

Dear Governor Corbett and Mr. Orner:

The enclosed report contains the results of the Department of the Auditor General's (Department) performance audit of the Gettysburg Area School District's (District) superintendent employment contract buy-out. This performance audit covered the period January 8, 2010 through December 1, 2011, 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 audits, which the Department conducts approximately every two years. The District's last completed cyclical performance audit was released on December 1, 2009. In addition, we have just completed the fieldwork for an audit of the District covering the years ended June 30, 2010 and 2009.

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 two findings noted in this report. A synopsis of our results is presented in the Executive Summary section of this audit report.

Our audit findings and recommendations have been discussed with the District's management and its 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/
JACK WAGNER
Auditor General

May 22, 2012

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

JACK WAGNER
AUDITOR GENERAL

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AUDITOR GENERAL

Executive Summary

Audit Work

In August 2011, the Department of the Auditor General 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 audits involving the chief administrators 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 Gettysburg Area School District (District) encompasses approximately 182 square miles. According to 2010 federal census data, it serves a resident population of 29,031. According to District officials, in school year 2009-10, the District provided basic educational services to 3,032 pupils through the employment of 251 teachers, 178 full-time and part-time support personnel, and 25 administrators. Lastly, the District received more than $13.9 million in state funding in school year 2009-10.

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 (see pages 3-4) . However, as noted below, we identified two matters, which we believe deserve further attention:

Finding No. 1: The District's Early Separation from Its Superintendent Cost It $622,015 in Administrative Leave, Contract Buy-Out Expenses, and Replacement Costs. Only nine months into a four-and-a-half year contract, the Gettysburg Area School District (District) Board of Directors (Board) placed its superintendent (Superintendent) on immediate paid administrative leave, beginning September 21, 2010. The District indicated that this leave was for personal reasons, and paid the Superintendent $49,367 for the period from September 21, 2010 to January 31, 2011. Subsequent to this leave, the Board approved a Settlement Agreement and Release (SAR) between the District and the Superintendent, effective February 1, 2011. The SAR required the District to make payments to the Superintendent totaling $226,752, and to award the Superintendent mortgage loan and interest forgiveness totaling $313,293. In addition, the District spent $32,603 on expenses related to replacing the Superintendent and maintaining interim management. Consequently, prematurely ending the Superintendent's contract cost the District a total of $622,015 (see page 5).

Finding No. 2: Possible Improper Reporting of Retirement Wages and Service Years. Our audit of the Gettysburg Area School District's (District) former Superintendent's employment agreements, settlement agreements, and payroll records found that the District may have reported ineligible retirement wages in the amount of $49,367 to the Public School Employees' Retirement System for the 2010-11 school year (see page 15).

Audit Recommendations

Finding No. 1:

The *Gettysburg Area School District's* 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 by the District and its taxpayers.

2. 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.

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

4. Work with successors to the Superintendent to include in their current and future employment contracts provisions that address the compensation and benefits payable to, or on behalf of, said administrators in the event of a premature termination of their contracts.

5. Upon termination of any employee, follow the provisions of the original employment contract and pay only what is due to the employee prorated for the term of services provided.

6. Avoid future real estate deals that require the District to act as a mortgage lender.

Finding No. 2:

The *Gettysburg Area School District's* Board should:

1. Contingent upon the Public School Employees' Retirement System's (PSERS) final determination, report to PSERS only those wages allowable for retirement purposes, as provided for in the PSERS' Employer Reference Manual.

2. Implement procedures for reviewing all salary and contribution reports in order to ensure that only eligible wages are being reported to PSERS for retirement contributions.

The *Public School Employees' Retirement System* should:

3. Review the Superintendent's salary payments and determine what action, if any, is necessary with regard to the District's inclusion of his $49,367 in administrative leave payments for retirement credit.

Audit Scope, Objectives, and Methodology

Scope

What is a cyclical performance audit?

Cyclical performance audits allow the Department of the Auditor General to determine whether Local Education Agencies (LEAs) 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 area vocational-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 LEA's 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 January 8, 2010 through December 1, 2011.

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 Department of the Auditor General to immediately review instances where LEAs 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 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 superintendent's separation and justifying the expenditure of funds by or through the LEA in order to terminate the contract early?

- ✓ Did the District enter into employment contracts with the superintendent at the three-year minimum provided by state law in order to limit potential financial liability by the District and its taxpayers in the event financial liability was not adequately limited through contract provisions?

- ✓ To determine the total financial cost of the superintendent or other administration officials' early contract termination, including funds received by the District 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.

LEA management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the LEA is in compliance with applicable laws, contracts, 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.

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 selected administrators and support personnel associated with LEA operations.

Findings and Observations

Finding No. 1

The District's Early Separation from Its Superintendent Cost It $622,015 in Administrative Leave, Contract Buy-Out Expenses, and Replacement Costs

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.

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. . . ."

Only nine months into a four-and-a-half year employment agreement (Agreement), the Gettysburg Area School District's (District) Board of Directors (Board) placed its superintendent (Superintendent) on immediate paid administrative leave beginning September 21, 2010. The District indicated that this leave was for personal reasons, and paid the Superintendent $49,367 for the period from September 21, 2010 to January 31, 2011. Subsequent to this leave, the Board approved a Settlement Agreement and Release (SAR) between the District and the Superintendent, effective February 1, 2011. The SAR required the District to make payments to the Superintendent totaling $226,752, and to award the Superintendent mortgage loan and interest forgiveness totaling $313,293. In addition, the District spent $32,603 on expenses related to replacing the Superintendent and maintaining interim management. Consequently, prematurely ending the Superintendent's contract cost the District a total of $622,015.

Terms of the Original Agreement

On January 20, 2009, the District entered into an Agreement with an individual to serve as the District's superintendent. The Agreement had a term of four years and six months, from January 8, 2010 to June 30, 2014, and followed the Superintendent's previous three-year contract for the period from January 8, 2007 to January 7, 2010. The Agreement provided for compensation of $135,630 per year, as well as a variety of benefits. The Agreement further provided that the Superintendent's salary for the 2010-11 school year, and each year thereafter throughout the term of the Agreement, could be adjusted by the Board based on the Superintendent's performance evaluation, but could not be decreased to less than $135,630.

Criteria relevant to the finding (continued):

Section 527 of the Public School Code, 24 P.S. § 5-527, provides, in part:

"(a) Any employe . . . who is convicted of delivery of a controlled substance or convicted of possession of a controlled substance with the intent to deliver . . . shall be terminated from his or her employment with the school entity . . ."

"(b) Notwithstanding any other provisions of this act, any person subject to this section who, while employed . . . is convicted of any of the offenses enumerated in subsection (e) of section 111 [of the Public School Code] shall be immediately terminated. . . ."

Section 111 of the Public School Code, 24 P.S. § 1-111(e)(1), 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.

Section 11 of the Agreement included the following provisions with regard to the early separation of the District's Superintendent (*all text is directly quoted*):

a. Discharge for Disability: The Board may terminate this contract for disability by written notice to the Superintendent at any time after the Superintendent has exhausted any accumulated sick leave and such other leave as may be available to him. In the event of a disagreement between the District and the Superintendent concerning his capacity to return to his duties, the Board may require the Superintendent to submit a medical examination to be performed by a doctor licensed to practice medicine. The Board and the Superintendent shall mutually agree upon the physician who shall conduct the examination provided that if such agreement is not made within ten (10) days of the original request for examination, the board shall have the right to select the physician. The examination shall be paid for by the District.

b. Discharge for Cause: Throughout the term of this Agreement, the Superintendent shall be subject to discharge for any of the reasons specified in Sections 514 or 1080 of the Public School Code, as amended from time-to-time, or for conviction of any crime set forth in Section 527 of the Public School Code, as amended from time-to-time, or for any other legislatively mandated cause of dismissal. . . .

c. Agreement for Termination: In the absence of grounds to dismiss as set forth in this Agreement at Paragraph 11.b the Board may propose to the Superintendent to terminate this employment Contract upon ninety (90) days written notice to the Superintendent. If the Superintendent concurs in writing with this decision, the Board shall pay to the Superintendent as severance pay an amount not to exceed one (1) year's salary at the then current rate of pay or the amount payable to the end of the term of the Contract, whichever is less, or an amount mutually agreed upon by both parties.

d. Termination by the Superintendent: In the event the Superintendent shall desire to terminate this Contract, he shall notify the Board in writing at least one hundred fifty (150) days before said termination; at the time of said termination all benefits provided to the Superintendent pursuant to this Contract shall terminate and the District shall have no further obligations to the Superintendent.

Terms of Separation

Only nine months into the four-and-a-half year Agreement, the Board approved the Superintendent for paid administrative leave beginning September 21, 2010. The District indicated that the Superintendent needed the leave for personal reasons. Consequently, the Superintendent received $49,367 for 95 business days of paid administrative leave from September 21, 2010 to January 31, 2011.

At its January 31, 2011 meeting, the Board approved a SAR between the District and the Superintendent, effective February 1, 2011. The SAR required the District to make the following payments to the Superintendent totaling $226,752 on or about the effective date:

- $56,122 in annual salary for the 2010-11 school year, prorated for 108 business days.
- $135,630 in annual salary for the 2011-12 school year.
- $35,000 in a lump sum payment in lieu of providing any other benefits to the Superintendent as stated in his contract or pursuant to law.

In addition, under the terms of the SAR the District forgave the outstanding balance on a mortgage that the Superintendent held on real estate he had purchased from the District. This part of the agreement was made retroactive to January 1, 2011, and resulted in the District's forfeiture of $267,314. Furthermore, the District forfeited $45,979 in interest payments on the same loan, which the mortgage note required the Superintendent to make from January 1, 2011 to August 1, 2014. Therefore, the District abandoned a total of $313,293 in revenue.

Finally, in forgiving the mortgage loan, the District did not take repossession of the asset. Therefore, the Superintendent is now the owner of a piece of real estate with little investment of his own money. Consequently, he will have the opportunity to sell it and likely make a considerable amount of money from this transaction.

Therefore, it cost the District $589,412 to prematurely end its Superintendent's original Agreement. This amount encompassed: (1) $49,367 in administrative leave for the period September 21, 2010 to January 31, 2011, (2) $191,752 in annual salary for the period February 1, 2011 to June 30, 2012, (3) $35,000 lump sum payment in lieu of benefits, (4) $267,314 in mortgage forgiveness, and (5) $45,979 in lost interest revenue. However, this amount does not include any potential profit the Superintendent may realize on the real estate asset sold at a future date.

The Superintendent tendered a signed letter of resignation effective February 1, 2011, in accordance with the SAR. In addition, the SAR required that all parties acknowledge that it constituted a compromise and that the terms of the SAR would not be construed as an admission of liability or wrongdoing on the part of any party, or otherwise be admissible in any proceedings except to the extent necessary to enforce its terms. The parties also released each other from any legal claims arising out of the Superintendent's employment.

In addition to the payments and benefits the District paid to the former Superintendent as a result of his premature separation, it also incurred the following replacement costs, totaling $32,603:

- The District's assistant superintendent functioned as its substitute superintendent for 130 business days, from September 21, 2010 to March 21, 2011. During that period the District paid him an additional amount of $6,824. The Board appointed this individual as the official District superintendent on March 22, 2011, but continued to pay him the same amount for another 73 business days (until June 30, 2011). This additional payment totaled $3,832. Therefore, as a result of the former Superintendent's premature separation, the District spent a total of $10,656 on interim management expenses.

- According to the same individual's contract, effective July 1, 2011, in his position as the new superintendent, his salary for the 2011-12 school year was $124,250.

This salary is $14,824 more than the $109,426 he would have received if he had remained the District's assistant superintendent.

- The District also paid its coordinator of educational services a $36.53 stipend for 195 business days, an amount totaling $7,123, from October 1, 2010 to June 30, 2011, because he/she took on additional duties in the absence of an assistant superintendent.

The District spent a total of $622,015 to break its contract with the previous Superintendent ($589,412) and to fill the vacancy this created ($32,603).

The District still would have had to pay the salaries of a superintendent, assistant superintendent and coordinator of educational services, even if the Board had not prematurely ended the former Superintendent's Agreement. However, because the former Superintendent's severance package included more than a year's salary, the District was essentially paying for two superintendents at once. In addition, the increased wages for the assistant superintendent and coordinator of educational services were expenses that the District would not have incurred if the former Superintendent had remained in his position.

In order to determine why the Board had prematurely ended the former Superintendent's contract, we interviewed two current Board members who were also serving at the time of the contract buy-out. They indicated that the Board decided to take this action because the former Superintendent was making important decisions about District operations without the Board's approval, and conveying inconsistent information to the public and District staff. In addition, according to these same Board members, over the course of several months, the former Superintendent became confrontational, less accessible to the Board, the District's staff and the public, and was unwilling to try to improve his relationship with the Board.

The two Board members we interviewed detailed five specific incidents that, in their opinion, led the Board to prematurely end the former Superintendent's contract:

- In the fall of 2009, the former Superintendent publicly criticized the District's state legislators for their positions on certain issues.

- Also in the fall of 2009, the former Superintendent worked poorly with a budget committee comprised of a variety of District stakeholders, such as current and former employees and members of the public.

- In April 2010, the former Superintendent rejected the performance evaluation given to him by the Board, and refused to try to improve in the areas noted by the Board.

- In the spring/summer of 2010, the Board authorized the former Superintendent to discuss its proposal with the District's teachers. However, its members felt that he significantly misrepresented their intentions.

- In September 2010, the former Superintendent announced to District staff, and the public, that the Board planned to close an elementary school, and then convert it to a middle school. However, that scenario was merely a proposal that the Board had been considering, and it had not made its final decision. Moreover, the Board had not authorized the former Superintendent to discuss the issue publicly.

The two Board members we interviewed indicated that based on the issues above, and on the former Superintendent's overall unwillingness to work with the Board, they determined that it was necessary to prematurely end the contract. Specifically, they felt this course of action was in the best interest of the District because removing the former Superintendent would allow it to move on with important issues, such as contract negotiations and a redistricting process. In addition, the two Board members indicated that this was the only option the Board felt was open to it, since it could not discharge the former Superintendent for cause.

The reasons for the contract buy-out enumerated by the two current Board members we interviewed were echoed in several articles published in the area's local newspapers, the *Hanover Evening Sun* and the *Gettysburg Times*. In fact, articles published in these newspapers, demonstrate that several of the Board's other members, including the President at the time of the contract buy-out, had similar motivations for deciding to prematurely end the former Superintendent's contract.[1] For example, a *Hanover Evening Sun* article published on February 12, 2011, stated that "Board members interviewed say [the former Superintendent] was making decisions without consulting the school board and seemed unwilling to fix performance concerns presented in his latest evaluation, like delegating more responsibility to other administrators, improving communication with the school board and fostering a positive working environment throughout the district."[2]

Despite the problems outlined by the District's Board members, both in our interviews and in the media, the District's early separation agreement with its former Superintendent was not in the best interest of its taxpayers. Specifically, the District expended more than half a million dollars on an endeavor unrelated to the education of its students. Moreover, the District's taxpayers will not see any return on this investment because it was not expended for the purpose of obtaining a service or an asset.

In these very difficult economic times, both nationally and throughout Pennsylvania, it is incumbent upon school boards to be good stewards of the taxpayer money entrusted to them. The District's Board disregarded this responsibility when it spent limited taxpayer resources on ending an employment contract. Moreover, the total amount that the District spent on the early separation agreement, including its replacement costs, represents one of the largest contract buy-outs our Department has examined over the seven years it has been reviewing this issue.

In addition, the Board's decision to essentially use taxpayer dollars to buy the Superintendent a piece of real estate was

[1] Faulhefer, Heather, "School board rated Hall as good," *Hanover Evening Sun,* February 12, 2011, accessed March 5, 2012, and Messeder, John, "Board: Ousted Hall became different person," *Gettysburg Times,* February 19, 2011, accessed March 5, 2012 at http://www.gettysburg times.com/news/local/article.
[2] Faulhefer, February 12, 2011.

completely counter to its obligation to appropriately manage public funds. The only party that benefited from this decision was the former Superintendent - not the taxpayers, and not the District's students. Furthermore, while the Board was eventually forthcoming with the details regarding why it decided to prematurely end the former Superintendent's contract, it did not record this reasoning in the board meeting minutes. Doing so, would have provided the public with a formal record of why such a significant expenditure of taxpayer money took place.

We acknowledge the District's attempt to address the possibility of the former Superintendent's premature separation in his original Agreement. However, the language in this section of the contract was too generous and too open ended to truly protect the interests of the taxpayers. Specifically, the Agreement called for paying the former Superintendent a year's worth of salary, regardless of how much time he actually worked. Furthermore, it also left the former Superintendent with the option of negotiating for a larger severance if he so desired.

Our review of the employment agreements for the District's current superintendent and assistant superintendent (commencing January 3, 2012), found that, once again, neither agreement adequately addresses the compensation and benefits payable to, or on behalf of, the administrators in the event of a premature separation without cause. Both contracts referred to the same Public School Code sections as the former Superintendent's Agreement when enumerating reasons that the individuals might be subject to discharge, but included no other provisions that would limit the District's financial liability.

Finally, given the uncertainty of the housing market, and the complicated nature of superintendent employment contracts, in the future the District should avoid acting as a mortgage lender, especially if it is willing to forgo the benefits of such an investment.

Recommendations

The *Gettysburg Area School District's* 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 by the District and its taxpayers.

2. 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.

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

4. Work with successors to the Superintendent to include in their current and future employment contracts provisions that address the compensation and benefits payable to, or on behalf of, said administrators in the event of a premature termination of their contracts.

5. Upon termination of any employee, follow the provisions of the original employment contract and pay only what is due to the employee prorated for the term of services provided.

6. Avoid future real estate deals that require the District to act as a mortgage lender.

Management Response

Management stated the following:

The financial findings of the special audit by the Auditor General's Office are generally consistent with the previously released information from the District with two exceptions. The AG's report included possible lost interest revenue on the future payment for the house [the Superintendent] received as part of the settlement. The AG's report also included a future year of salary differential for replacing [the Superintendent]. It is important to note that no unlawful activity was uncovered by the Auditor General's Office. The report did confirm the negative financial impact to the district for the severance of service between [the Superintendent] and the previous school board. The report also confirmed the substantial financial gain [the Superintendent] received from cash payments and a property transfer.

The board values the recommendations made by this agency and will consider them as they relate to future situations and current state law.

Auditor Conclusion

We agree with Management's assertion that the Board's decision to prematurely end the former Superintendent's contract, and to pay for the costs associated with that separation, was not illegal. However, we again emphasize that this arrangement was not a prudent use of the District's limited taxpayer funds, particularly because the taxpayers will not receive a return on their large investment.

In addition, although we were pleased that the Board did eventually provide the media with details on why it chose to expend such a large amount of money on prematurely ending the former Superintendent's contract, these reasons should have been documented in the Board's meeting minutes so that there would be an official record of these issues.

Finding No. 2

Possible Improper Reporting of Retirement Wages and Service Years

Criteria relevant to the finding:

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

The PSERS Employer Reference Manual (ERM), Chapter 2, states to be eligible for PSERS membership as a full-time employee, the employee must work 5 hours or more per day, 5 days per week or its equivalent. It further states to be eligible as a part-time employee, the employee must be contracted to work less than 5 hours per day, 5 days per week or its equivalent and must have their salaries and retirement deductions reported to PSERS through monthly Work Report Records. Additionally, the PSERS ERM states that independent contractors are not eligible for PSERS membership.

PSERS allows only qualified salary and wages to be included for retirement purposes. According to Pennsylvania School Employees' Retirement Board Regulations, Section 211.2, reported compensation should: "exclude . . . payments or similar emoluments which may be negotiated in a collective bargaining agreement for the express purpose of enhancing the compensation factor for retirement benefits."

Our audit of the Gettysburg Area School District's (District) former superintendent's (Superintendent) employment agreements, settlement agreements, and payroll records found that the District may have reported ineligible retirement wages in the amount of $49,367 to the Public School Employees' Retirement System (PSERS) for the 2010-11 school year.

At a public meeting on September 20, 2010, the District's Board placed the former Superintendent on paid administrative leave. This leave resulted in his being paid $49,367 for 95 business days, from September 21, 2010 to January 31, 2011. The District's current administration confirmed that the former Superintendent did not perform any work for the District after September 20, 2010.

Nevertheless, the District reported the former Superintendent's administrative leave to PSERS as full-time wages. Therefore, the former Superintendent received service credits and eligible salary payments for the year ending June 30, 2011, even though he was no longer working for the District. Service credits and salary payments are used to determine the percentage of salary and average salary that a former employee would receive in retirement payments.

Participation in PSERS is based on actual service time. A participant cannot earn service credit merely by reporting a salary and making contributions. Because the former Superintendent did not work for the District after September 20, 2010, his $49,367 administrative leave payments would not have been eligible for retirement credit.

Although the Board has the authority to craft the terms of an employment agreement, it may not supersede PSERS' benefit structure. PSERS makes the final determination on the eligibility of all wages for inclusion in retirement credit. If it determines that the former Superintendent's administrative leave wages were not eligible retirement wages, their inclusion in PSERS would result in reporting errors and overpayments to the former Superintendent for the 2010-11 school year.

Recommendations

The *Gettysburg Area School District's* Board should:

1. Contingent upon the PSERS's final determination, report to PSERS only those wages allowable for retirement purposes, as provided for in the PSERS' Employer Reference Manual.

2. Implement procedures for reviewing all salary and contribution reports in order to ensure that only eligible wages are being reported to PSERS for retirement contributions.

The *Public School Employees' Retirement System* should:

3. Review the Superintendent's salary payments and determine what action, if any, is necessary with regard to the District's inclusion of his $49,367 in administrative leave payments for retirement credit.

Management Response

Management stated the following:

When the administration was made aware of the possibility of the cancellation of the employment contract with [the Superintendent], the Business Office and Human Resources Office contacted PSERS directly to seek advice on the procedures that should be followed. PSERS provided the District with guidance and the District consistently followed that advice. As a result, the termination pay was correctly calculated in all respects. The finding refers to the payrolls made while [the Superintendent] was still employed and, we understand, PSERS is responsible to follow up on this finding and make any adjustments that may be necessary.

The District will continue to contact PSERS for guidance with abnormal situations, and will cooperate fully with PSERS with any response it initiates as a result of the Auditor General's recommendation in this situation.

Auditor Conclusion

We commend the District's administration for its efforts to contact PSERS regarding the early separation of its former Superintendent, and we concur with management's assertion that PSERS will ultimately make the final determination as to whether any adjustments are necessary. However, we would also like to point out that while the administrative leave payments were part of the overall cost of the former Superintendent's premature separation, they were not included in the Settlement Agreement and Release. Therefore, it is possible that PSERS was not made aware that the former Superintendent received additional salary payments that were not eligible for inclusion in his service credits and eligible salary payments. In addition, we do not dispute that the Superintendent was technically still employed by the District.

Our finding will remain as written.

JACK WAGNER

AUDITOR GENERAL

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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