

PERFORMANCE AUDIT

Fell Charter School Lackawanna County, Pennsylvania

November 2015



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE
AUDITOR GENERAL

Ms. Mary Jo Walsh, Principal/CAO
Fell Charter School
777 Main Street
Simpson, Pennsylvania 18407

Mr. Edward M. Diehl, Board President
Fell Charter School
777 Main Street
Simpson, Pennsylvania 18407

Dear Ms. Walsh and Mr. Diehl:

We conducted a performance audit of the Fell Charter School (Charter School) to determine its compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures (relevant requirements). We evaluated the application of best practices in the area of school safety. Our audit covered the period August 12, 2010 through October 10, 2014, except as otherwise indicated in the report. Additionally, compliance specific to state subsidies and reimbursements was determined for the school years ended June 30, 2009, 2010, 2011, and 2012. Our audit was conducted pursuant to Section 403 of The Fiscal Code, 72 P.S. § 403, and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit found significant noncompliance with relevant requirements, as detailed in the two audit findings within this report. A summary of the results is presented in the Executive Summary section of the audit report. These findings and the current status of prior findings include recommendations aimed at the Charter School and a number of different government entities, including the Pennsylvania Department of Education (PDE), the State Ethics Commission, the Public School Employees' Retirement System (PSERS), and the authorizing school district.

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

Sincerely,

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

Eugene A. DePasquale
Auditor General

November 19, 2015

cc: **FELL CHARTER SCHOOL** Board of Trustees

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Executive Summary

Audit Work

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

Our audit scope covered the period August 12, 2010 through October 10, 2014, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. Compliance specific to state subsidies and reimbursements was determined for the 2008-09, 2009-10, 2010-11, and 2011-12 school years.

Charter School Background

The Charter School, located in Lackawanna County, Pennsylvania, opened in August 2002. It was originally chartered on August 1, 2002, for a period of five years by the Carbondale Area School District. The Charter School's mission states: "The Charter School seeks to enhance the educational vision of all students, parents, educators, and community followers by offering a classical education with the latest technology." During the 2011-12 school year, the Charter School provided educational services to 127 pupils from eight sending school districts through the employment of 14 teachers, 6 full-time and part-time support personnel, and 1 administrator. The Charter School

received \$1,408,177 in tuition payments from school districts required to pay for their students attending the Charter School in the 2011-12 school year.

Academic Performance

The Charter School's academic performance as measured by its School Performance Profile (SPP) score was 73.4 percent in the 2012-13 school year. SPP is PDE's current method of providing a quantitative, academic score based upon a 100-point scale for all public schools. A score of 73.4 percent would be considered a "C (70-79)" if using a letter grade system. Weighted data factors included in the SPP score are indicators of academic achievement, indicators of closing the achievement gap, indicators of academic growth, and other academic indicators such as attendance and graduation rates.

Previously, the Charter School made Adequate Yearly Progress (AYP) for the 2011-12 school year. AYP was a key measure of school performance established by the federal No Child Left Behind Act (NCLB) of 2001 requiring that all students reach proficiency in Reading and Math by 2014. For a school to meet AYP measures, students in the school needed to meet goals or targets in three areas: (1) Attendance (for schools that did not have a graduating class) or Graduation (for schools that had a high school graduating class), (2) Academic Performance, which was based on tested students' performance on the Pennsylvania System of School Assessment (PSSA), and (3) Test Participation, which was based on the number of students that participated in

the PSSA. Schools were evaluated for test performance and test participation for all students in the tested grades (3-8 and 11) in the school. AYP measures determined whether a school was making sufficient annual progress towards statewide proficiency goals. On August 20, 2013, Pennsylvania was granted a waiver from the NCLB's requirement of achieving 100 percent proficiency in Reading and Math by 2014, so AYP measures were discontinued beginning with the 2012-13 school year.¹

Audit Conclusion and Results

Our audit found significant noncompliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures, as detailed in the two audit findings within this report.

Finding No. 1: Lack of Documentation for Child Accounting Data Resulted in Unverifiable Membership Data and Tuition Billing. Our audit of the Charter School's accounting data and tuition billings for the 2008-09 through 2011-12 school years found that the Charter School personnel did not maintain and/or were unable to acquire the documentation supporting the membership data reported to PDE or the tuition billed to the sending school district's from the former management company, resulting in our inability to verify the Charter School's attendance and tuition billing (see page 14).

Finding No. 2: Members of the Board of Trustees Failed to File or Filed Incomplete Statements of Financial Interests. Our audit of the Charter School's records for the calendar years ending December 31, 2010, 2011, 2012, and 2013, found several of its Board of Trustees' (Board) members failed to file or filed incomplete annual Statements of Financial Interests (SFI) with the State Ethics Commission. Board members and administrators, including the Chief Administrative Officer (CAO) and all other employees of a charter school who by virtue of their positions exercise management or operational oversight responsibilities, are considered "public officials" or "public employees" under the Charter School Law² (CSL) and are, therefore, subject to the Public Official and Employee Ethics Act (Ethics Act) (see page 17).

Status of Prior Audit Findings and Observations. With regard to the status of our prior audit recommendations to the Charter School, we found that the Charter School did take appropriate corrective action in implementing our recommendations pertaining to state lease reimbursement (see page 20), filing their Internal Revenue Service (IRS) Form 990 (see page 21), reporting of retirement wages (see page 21), and possible related party transactions (see page 24). We found that the District did not implement our recommendations regarding the certification status of the Charter School's Principal (see page 23) and vendor system access (see page 25).

¹ In February 2013, Pennsylvania was one of many states that applied for flexibility from NCLB standards, which was granted by the U.S. Department of Education on August 20, 2013. The waiver eliminates AYP for all public schools and replaces it with a federal accountability system specific to Title I schools only (those with a high percentage of low-income students), which identifies Title I schools as "Priority," "Focus," "Reward," or "No Designation" schools. Beginning in 2012-13, all public school buildings received a SPP score.

² See 24 P.S. § 17-1715-A(11), (12).

Background Information on Pennsylvania Charter Schools

Description of Pennsylvania Charter Schools:

Charter and cyber charter schools are taxpayer-funded public schools, just like traditional public schools. There is no additional cost to the student associated with attending a charter or cyber charter school. Charter and cyber charter schools operate free from many educational mandates, except for those concerning nondiscrimination, health and safety, and accountability.

Pennsylvania ranks high compared to other states in the number of charter schools:

According to the Center for Education Reform, Pennsylvania has the 7th highest charter school student enrollment, and the 10th largest number of operating charter schools, in the United States.

Source: "National Charter School and Enrollment Statistics 2010." October, 2010.

Pennsylvania Charter School Law

Pennsylvania's charter schools were established by the CSL, enacted through Act 22 of 1997, as amended. In the preamble of the CSL, the General Assembly stated its intent to provide teachers, parents, students, and community members with the opportunity to establish schools that were independent of the existing school district structure.³ In addition, the preamble provides that charter schools are intended to, among other things, improve student learning, encourage the use of different and innovative teaching methods, and offer parents and students expanded educational choices.⁴

The CSL permits the establishment of charter schools by a variety of persons and entities, including, among others, an individual; a parent or guardian of a student who will attend the school; any nonsectarian corporation not-for-profit; and any nonsectarian college, university or museum.⁵ Applications must be submitted to the local school board where the charter school will be located by November 15 of the school year preceding the school year in which the charter school will be established,⁶ and that board must hold at least one public hearing before approving or rejecting the application.⁷ If the local school board denies the application, the applicant can appeal the decision to the State Charter School Appeal Board,⁸ which is comprised of the Secretary of Education and six members appointed by the Governor with the consent of a majority of all of the members of the Senate.⁹

³ 24 P.S. § 17-1702-A.

⁴ *Id.*

⁵ 24 P.S. § 17-1717-A(a).

⁶ *Id.* § 17-1717-A(c).

⁷ *Id.* § 17-1717-A(d).

⁸ *Id.* § 17-1717-A(f).

⁹ 24 P.S. § 17-1721-A(a).

With certain exceptions for charter schools within the School District of Philadelphia, initial charters are valid for a period of no less than three years and no more than five years.¹⁰ After that, the local school board can choose to renew a school's charter every five years, based on a variety of information, such as the charter school's most recent annual report, financial audits, and standardized test scores. The board can immediately revoke a charter if the school has endangered the health and welfare of its students and/or faculty. However, under those circumstances, the board must hold a public hearing on the issue before it makes its final decision.¹¹

Act 88 of 2002 amended the CSL to distinguish cyber charter schools, which conduct a significant portion of their curriculum and instruction through the Internet or other electronic means, from brick-and-mortar charter schools that operate in buildings similar to school districts.¹² Unlike brick-and-mortar charter schools, cyber charter schools must submit their application to PDE, which determines whether the application for a charter should be granted or denied.¹³ However, if PDE denies the application, the applicant can still appeal the decision to the State Charter School Appeal Board.¹⁴ In addition, PDE is responsible for renewing and revoking the charters of cyber charter schools.¹⁵ Cyber charter schools that had their charter initially approved by a local school district prior to August 15, 2002, must seek renewal of their charter from PDE.¹⁶

Funding of Pennsylvania Charter Schools:

Brick-and-mortar charter schools and cyber charter schools are funded in the same manner, which is primarily through tuition payments made by school districts for students who have transferred to a charter or cyber charter school.

The CSL requires a school district to pay a per-pupil tuition rate for its students attending a charter or cyber charter school.

Pennsylvania Charter School Funding

The Commonwealth bases the funding for charter schools on the principle that the state's subsidies should follow the students, regardless of whether they choose to attend traditional public schools or charter schools. According to the CSL, the sending school district must pay the charter/cyber charter school a per-pupil tuition rate based on its own budgeted costs, minus specified expenditures,

¹⁰ 24 P.S. § 17-1720-A.

¹¹ PDE, Basic Education Circular, "Charter Schools," Issued 10/1/2004.

¹² 24 P.S. §§ 17-1703-A, 17-1741-A *et seq.*

¹³ 24 P.S. § 17-1745-A(d).

¹⁴ *Id.* § 17-1745-A(f)(4).

¹⁵ 24 P.S. § 17-1741-A(a)(3).

¹⁶ 24 P.S. § 17-1750-A(e).

for the prior school year.¹⁷ For special education students, the same funding formula applies, plus an additional per-pupil amount based upon the sending district's special education expenditures divided by a state determined percentage specific to the 1996-97 school year.¹⁸ The CSL also requires that charter schools bill each sending school district on a monthly basis for students attending the Charter School.¹⁹

Typically, charter schools provide educational services to students from multiple school districts throughout the Commonwealth. For example, a charter school may receive students from ten neighboring, but different, sending school districts. Moreover, students from numerous districts across Pennsylvania attend cyber charter schools.

Under the Public School Code (PSC) of 1949, as amended, the Commonwealth also pays a reimbursement to each sending school district with students attending a charter school that amounts to a mandatory percentage rate of total charter school costs.²⁰ Commonwealth reimbursements for charter school costs are funded through an education appropriation in the state's annual budget. However, the enacted state budget for the 2011-12 fiscal year eliminated funding of the Charter School reimbursement previously paid to sending school districts.²¹

¹⁷ See 24 P.S. § 17-1725-A(a)(2).

¹⁸ See *Id.* §§ 17-1725-A(a)(3); 25-2509.5(k).

¹⁹ See 24 P.S. § 17-1725-A(a)(5).

²⁰ See 24 P.S. § 25-2591.1. Please note that this provision is contained in the general funding provisions of the PSC and not in the CSL.

²¹ Please note that the general funding provision referenced above (24 P.S. § 25-2591.1) has not been repealed from the PSC and states the following: "For the fiscal year 2003-2004 and each fiscal year thereafter, if insufficient funds are appropriated to make Commonwealth payments pursuant to this section, such payments shall be made on a pro rata basis." Therefore, it appears that state funding could be restored in future years.

Audit Scope, Objectives, and Methodology

Scope

What is a school performance audit?

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

Our audit, conducted under the authority of Section 403 of The Fiscal Code, 72 P.S. § 403, is not a substitute for the local annual audit required by the PSC 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 August 12, 2010 through October 10, 2014. In addition, the scope of each individual audit objective is detailed below.

Regarding state subsidies and reimbursements, our audit covered the 2008-09, 2009-10, 2010-11, and 2011-12 school years.

For the purposes of our audit work and to be consistent with PDE 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 statute, regulation, policy, 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, third-party studies and best business practices. Our audit focused on assessing the Charter School's compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures. Our audit focused primarily on whether the Charter School was in compliance with the PSC²² and the CSL.²³ More specifically, we sought to determine answers to the following questions, which serve as our audit objectives.

- ü Was the Charter School operating in compliance with accountability provisions included in the CSL specific to its approved charter and governance structure?

²² 24 P.S. § 1-101 *et seq.*

²³ 24 P.S. § 17-1701-A *et seq.*

To address this objective:

- Auditors reviewed the approved charter and any amendments.
 - In addition, auditors reviewed board policies and procedures, and vendor contracts for the 2009-10, 2010-11, and 2011-12 school years, IRS 990 forms for the 2010, 2011, 2012, and 2013 calendar years, and charter school annual reports for the 2009-10, 2010-11, 2011-12, and 2012-13 school years.
- ü Did the Charter School receive state reimbursement for its building lease under the Charter School Lease Reimbursement Program administered by PDE, was its lease agreement approved by its Board, and did its lease process comply with the provisions of the Ethics Act?²⁴
- To address this objective, auditors reviewed building ownership documentation, the lease agreement(s), lease payments, and the Charter School's lease documentation filed with PDE to obtain state reimbursement for the 2011-12 and 2012-13 school years.
- ü Were the Charter School's Board and administrators free from apparent conflicts of interest and in compliance with the CSL, the PSC, the Ethics Act, and the Sunshine Act?
- To address this objective, auditors reviewed SFIs for all board members and administrators, board meeting minutes, management company contract(s), and any known outside relationships with the Charter School and/or its authorizing school district for the period 2010 through 2013.

²⁴ 65 Pa.C.S. § 1101 *et seq.*

- ü Were at least 75 percent of the Charter School’s teachers properly certified pursuant to Section 1724-A of the CSL, and did all of its noncertified teachers in core content subjects meet the “highly qualified teacher” requirements under the federal NCLB of 2001?
 - To address this objective, auditors reviewed and evaluated certification documentation and teacher course schedules for all teachers and administrators for the period July 1, 2010 through June 9, 2014.

- ü Did the Charter School require its non-certified professional employees to provide evidence that they are at least 18 years of age and a U.S. citizen pursuant to Section 1724-A(b) of the CSL and that they have a pre-employment medical examination certificate pursuant to Section 1418(a) of the PSC?
 - To address this objective, auditors reviewed personnel files and supporting documentation for all non-certified professional employees for the period July 1, 2010 through June 9, 2014.

- ü Did the Charter School accurately report its membership numbers to PDE, and were its average daily membership and tuition billings accurate?

To address this objective:

- Auditors attempted to review charter school tuition rates and tuition billings for all sending school districts for the 2008-09, 2009-10, 2010-11, and 2011-12 school years; however, the administration was unable to acquire the tuition billings from the former management company for all four years (see Finding No. 1).

- In addition, auditors reviewed the Charter School’s membership reports, instructional time summaries, entry/withdrawal procedures, and supporting documentation for the 2009-10 and 2010-11 school years.

Ü Did the Charter School ensure that the membership data it reported to PDE through the Pennsylvania Information Management System (PIMS) was complete, accurate, valid, and reliable for the most current year available?

To address this objective:

- Auditors randomly selected 10 out of 165 total registered students from the vendor software listing, for the 2010-11 school year, and verified that each child was appropriately registered with the Charter School.
- In addition, we selected one out of two school terms reported on the Summary of Child Accounting for the 2010-11 school year and verified the school days reported on the Instructional Time Membership Report and matched them to the School Calendar Fact Template.

Ü Did the Charter School provide its employees with a retirement plan, such as PSERS, as required by Section 1724-A(c) of the CSL, and were employees enrolled in PSERS eligible to receive plan benefits?

To address this objective:

- Auditors reviewed the approved charter and any amendments.
- In addition, auditors reviewed board meeting minutes, personnel listings, payroll reports, and PSERS wage reports for all employees for the 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, and 2013-14 school years.

Ü Did the Charter School take appropriate steps to ensure school safety, including maintaining a current Memorandum of Understanding (MOU) with local law enforcement?

To address this objective:

- Auditors reviewed a variety of documentation including MOU(s), safety plans, training schedules, anti-bullying policies, and after action reports to assess whether the Charter School is in compliance with relevant safe schools requirements in the PSC²⁵ and with best practices for ensuring school safety.
- In addition, auditors conducted an on-site review of the Charter School's building to assess whether it had implemented basic physical safety practices based on national best practices.

ü Did the Charter School provide the services required for its special education students through outside agencies and/or through properly certified professional staff with the required instructional hours and/or training pursuant to Chapter 711 of Pennsylvania's Special Education Regulations?²⁶

- To address this objective, auditors reviewed the approved charter and any amendments, relevant policies and procedures, special education service contracts for the 2008-09, 2009-10, 2010-11, and 2011-12 school years, special education certification results for the period July 1, 2010 through June 9, 2014, and charter school annual reports for the 2009-10, 2010-11, and 2011-12 school years.

²⁵ 24 P.S. § 13-1301-A *et seq.*

²⁶ 22 Pa. Code § 711 *et seq.*

ü Did the Charter School have policies and procedures regarding the requirements to maintain student health records, perform required health services, and keep accurate documentation supporting its annual health services report filed with the Pennsylvania Department of Health to receive state reimbursement as required by law?²⁷

- To address this objective, auditors reviewed the Charter School’s annual health services reports and supporting documentation, policies and procedures regarding student health services, and wellness policy for the 2009-10, 2010-11, and 2011-12 school years.

ü Did the Charter School comply with the open enrollment and lottery provisions under Section 1723-A of the CSL?

- To address this objective, auditors reviewed the approved Charter and any amendments, admission policies and procedures, wait lists, lottery results, and other supporting documentation for the 2013-14 school year.

ü Did the Charter School take appropriate corrective action to address recommendations made in our prior audit?

To address this objective:

- Auditors interviewed Charter School administrators to determine whether they had taken corrective action.
- Auditors then reviewed documentation to verify that the administration had implemented the prior audit report’s recommendations and/or physically observed these changes in person.

²⁷ Article XIV, School Health Services, 24 P.S. § 14-1401 *et seq.*, is applicable to charters and cyber charters in its entirety through its incorporation in 24 P.S. § 17-1732-A(a) and 24 P.S. § 17-1749-A(a)(1), respectively, of the CSL.

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 certain relevant state 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 results and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our results and conclusions based on our audit objectives.

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

Our audit examined the following:

- Records pertaining to professional employee certification, state ethics compliance, student health services, special education, lease agreements, open enrollment, vendor contracts, and student enrollment.
- Items such as the approved charter and any amendments, board meeting minutes, pupil membership records, IRS 990 forms, annual reports, and reimbursement applications.
- Tuition receipts and deposited state funds

Additionally, we interviewed select administrators and support personnel associated with the Charter School's operations.

To determine the status of our audit recommendations made in a prior audit report released on March 7, 2013, we reviewed the Charter School's response to PDE dated April 22, 2013. We then performed additional audit procedures targeting the previously reported matters.

Findings and Observations

Finding No. 1

Lack of Documentation for Child Accounting Data Resulted in Unverifiable Membership Data and Tuition Billing

CSL and other criteria relevant to the finding:

The charter school funding section of PDE's website (www.education.pa.gov) provides the format for the documentation required from a charter school to substantiate its claim to funding.

According to the PDE's annual *PIMS User Manuals*, all Pennsylvania local education agencies must submit data templates as part of the year-end child accounting data collection.

Days Enrolled is used to calculate average daily membership, which is an integral element of subsidy calculations for each of the Charter School's sending districts. Additionally, since each sending district is responsible for the payment of tuition for its resident students, Days Enrolled, as reported to PDE through PIMS, should agree with tuition invoicing for each sending district.

Section 518 of the PSC, 24 P.S. § 5-518 (to which the Charter School is subject pursuant to 24 P.S. § 17-1732-A(a)), requires that records be retained for a period of not less than six years.

PDE guidelines and instructions require the maintenance and retention of adequate documentation to verify the district's entitlement to state payments. Failure to maintain and retain this documentation could result in the loss of state funding.

The Charter School was unable to produce appropriate supporting documentation for membership and tuition billings for the 2008-09 through 2012-13 school years. The inability to produce this documentation calls into question the amount of tuition paid by sending districts. The Charter School attributed the failure to produce required documentation to Mosaica Education Inc. (MEI), a management company hired by the Charter School to run the daily business operations of the school during this time period.

Charter schools are required by the PSC to bill each sending school district on a monthly basis during the time period a student is enrolled. Based on this requirement, the Charter School was billing sending districts, but we could not verify the billings were accurate. The Charter School's inability to produce this information for review does not allow membership data to be verified for accuracy. Membership data is used for billing purposes. Errors in this data can affect the amounts billed for tuition by the charter schools. The inability to retain this data also prevents the sending districts from requesting a reconciliation of tuition billings to ensure accurate payments were made to the charter school.

The reconciliation process provides a mechanism to align tuition billing with membership reporting and to ensure that sending school districts pay tuition only for the actual number of days a student is enrolled at the Charter School.

The signed contract between MEI and the Charter School stated that MEI's primary responsibilities were financial and child accounting data. The Charter School has since terminated its contract with MEI, effective July 1, 2013. Errors found by the Charter School in membership data and billing invoices were two of the contributing factors in terminating the contract. The Charter School was not able to acquire the necessary documentation required for

membership and tuition billing due to terminating the contract.

Hiring a management company does not absolve the Charter School of their duties outlined in the PSC, and the Charter School should more actively monitor the performance of future contractors hired by the Charter School to assist with their operations.

Recommendations

The *Fell Charter School* should immediately establish procedures to:

1. Ensure documentation for membership and tuition billings are retained and available for audit purposes.
2. Prepare year-end billing reconciliations for all sending school districts to ensure tuition payments were accurate.
3. Annually review and verify the child accounting membership information provided to it by its authorizing school district.
4. Collect exactly the amount of tuition due as calculated on the year-end billing reconciliation. Any excess tuition collected should be refunded or credited to a future bill.

Management Response

Management stated the following:

“Our former management company, MEI, withheld documentation during the audit. The Charter School settled a law suit with MEI prior to the audit. MEI held what was their proprietary information. The Charter School is no longer with MEI, it is now a stand-alone school. All operations are managed by the school beginning with the school year July 1, 2013.”

Auditor Conclusion

The Charter School has the responsibility to maintain required child accounting membership records in accordance with Section 518 of the PSC and copies of tuition bills as good business practice, regardless of whether or not a management company was responsible for generating the documents during the audit. During our next audit, we will determine if adequate records are maintained for membership data and tuition billing as of July 1, 2013.

Finding No. 2 →

Members of the Board of Trustees Failed to File or Filed Incomplete Statements of Financial Interests

Criteria relevant to the finding:

When enacting the Ethics Act, 65 Pa.C.S. § 1101 *et seq.*, our General Assembly stated the following: “Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this chapter shall be liberally construed to promote **complete** financial disclosure as specified in this chapter.” (See 65 Pa.C.S. § 1101.1(a) [emphasis added]).

The Ethics Act requires all candidates for public office, public officials, and certain public employees to complete a SFI for the preceding calendar year annually, no later than May 1st of each year they hold their positions and of the year after leaving such positions. (See 65 Pa.C.S. § 1104(a).

Section 1104(d) of the Ethics Act, 65 Pa.C.S. § 1104(d), which pertains to the failure to file the required SFI, provides in pertinent part, as follows:

“No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests. . . .”

Section 1104(e) of the Ethics Act, 65 Pa.C.S. § 1104(e), states, in pertinent part:

“All statements of financial interests . . . shall be made available for public inspection”

As part of our audit of the Charter School, we requested the SFI for the 2010, 2011, 2012, and 2013 calendar years. We found that several members of the Board failed to file or failed to file complete annual SFIs with the State Ethics Commission. Board members and administrators, including the CAO and all other employees of a charter school who by virtue of their positions exercise management or operational oversight responsibilities, are considered “public officials” or “public employees” under the CSL²⁸ and are, therefore, subject to the Ethics Act. The Ethics Act requires all candidates for public office, public officials, and certain public employees to complete a SFI for the preceding calendar year annually, no later than May 1st of each year they hold their positions and for the year after leaving such positions.

SFIs are intended to provide those charged with governance with information about the existence or nonexistence of relationships between public officials and parties with whom the charter school transacts business.

| Year | Classification/Job Title |
|-------------|--|
| 2010 | 4 Board Members -All failed to file |
| 2011 | 4 Board Members -2 failed to file -2 filed late |
| 2012 | 3 Board Members - All failed to file |
| 2013 | 5 Board Members -All failed to file |

²⁸ See 24 P.S. § 17-1715-A(11), (12).

*Criteria relevant to the finding
(continued):*

Section 1105(a) of the Ethics Act, 65 Pa.C.S. § 1105(a), which requires the filing of a SFI states, in part:

“All information requested on the statement shall be provided to the best of the knowledge, information and belief of the person required to file and shall be signed under oath or equivalent affirmation.”

Section 1105(b) of the Ethics Act, 65 Pa.C.S. § 1105(b), which specifies required information on a SFI form, includes requirements to list any office, directorship, or employment of any nature whatsoever in any business entity and any financial interest in any legal entity engaged in business for profit.

Section 1109(b) of the Ethics Act, 65 Pa.C.S. § 1109(b), provides that any person who is required to file a SFI but fails to do so may be found guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Section 1109(f) of the Ethics Act, 65 Pa.C.S. § 1109(f), provides, in pertinent part that any person who is required to file a SFI but fails to do so in a timely manner or who files a deficient SFI may be subject to a civil penalty at a rate of not more than \$25 for each day such statement remains delinquent or deficient, with a maximum penalty under this chapter or \$250.

The Board President and Board Secretary failed to file all four years. The Board Vice-President failed to file for two years and filed late for one other year. Three additional board members failed to file for one year, and a seventh individual failed to file for one year and filed late for another year.

The board members’ failure to file SFIs and filing SFIs after the May 1st deadline constitute violations of the Ethics Act. Additionally, members of the general public and others, such as the chartering school district, were not provided with complete and accurate information regarding financial disclosures and potential conflicts of interests involving the Charter School’s administrators and board members.

In addition to violating the Ethics Act, the aforementioned filing deficiencies prevented the Charter School from producing the required financial disclosure information for all board members during the audit period. This lack of proper documentation restricted our ability to review this information for potential conflicts of interests between the Charter School’s administrators and/or board members and the entities with which the Charter School was doing business.

The errors occurred because Charter School personnel were not aware that the SFIs needed to be filed by May 1st for the preceding calendar year. In addition, they did not have a procedure to adequately follow-up with those board members who did not file SFIs.

Public office is a public trust sustained by assuring the taxpayers of the impartiality and honesty of public officials and public employees. Accordingly, the Ethics Act requires all candidates for public office, public officials, and certain public employees to annually complete a SFI for the preceding calendar year, by no later than May 1st of each year they hold their positions and the year after leaving such positions.

A copy of this finding will be forwarded to the State Ethics Commission for additional review and whatever action it deems necessary.

Recommendations

The *Fell Charter School's* Board of Trustees should:

1. Seek the advice of its solicitor regarding the Board's responsibility when board members fail to file or file incomplete SFIs.
2. Develop procedures to ensure that all individuals required to file SFIs do so in compliance with the Ethics Act.
3. Establish a procedure to ensure there is an administrative review of all SFIs to detect potential conflicts of interests.

Management Response

Management stated the following:

“The Board of Trustees (Board) did file the SFI forms. However, dates on filing were in question due to the Board not having accurate dates for filing. During charter renewals and audits the Board was given conflicting dates. The CAO now has (after audit) on file all the forms filled out, dated and have a note if they were lost or incorrectly dated. Forms are signed and saved by year now.”

Auditor Conclusion

The Ethics Act requires all candidates for public office, public officials, and certain public employees to complete a SFI for the preceding calendar year annually, no later than May 1st of each year they hold their positions and of the year after leaving such positions. We are encouraged that the administration has indicated that it obtained the SFIs for the years noted above. During the next audit, we will determine the effectiveness of the procedures implemented subsequent to our review.

Status of Prior Audit Findings and Observations

Our prior audit of the Charter School released on March 7, 2013, resulted in four findings and two observations. As part of our current audit, we determined the status of corrective action taken by the Charter School to implement our prior recommendations. We performed audit procedures and interviewed the Charter School's personnel regarding the prior findings and observations. As shown below, we found that the Charter School did implement recommendations related to: state lease reimbursement, filing their IRS form 990, inaccurate reporting of retirement wages, and possible related-party transactions and ethics violations. The Charter School did not implement recommendations related to the certification deficiency and unmonitored vender system access and logical access control weaknesses.

Auditor General Performance Audit Report Released on March 7, 2013

Prior Finding No. 1: Fell Charter School Improperly Received \$94,266 in State Lease Reimbursement (Resolved)

Prior Finding Summary:

Our prior audit of the Charter School found that between July 1, 2006 and June 30, 2009, the Charter School improperly received \$94,266 in state lease reimbursements for three buildings that were ineligible for those payments because they were modular classrooms. Furthermore, the modular units were leased from a related party to the Charter School's management company.

Prior Recommendations:

Our prior audit finding recommended that the Charter School:

1. Ensure that its solicitor and business manager review and approve the terms of all and any reimbursement prior to submitting an application.
2. Request its solicitor to provide a detailed summary of all the Charter School's legal requirements under the PSC and the CSL.

We also recommended that PDE:

3. Require the Charter School to pay back the \$94,266 owed to the Commonwealth for the improper reimbursement it received from the Reimbursement for Charter Schools Lease Program.

Current Status: During our current audit, we found that the Charter School did implement the recommendations and are no longer filing for state lease reimbursements. As of August 31, 2015, PDE has not deducted the \$94,266 from the Charter School. Again, we recommend PDE recover this overpayment.

Prior Finding No. 2: Fell Charter School Failed to File Their IRS Form 990 Return of Organization Exempt from Income Tax (Resolved)

Prior Finding Summary:

Our prior audit of the Charter School records found that the Charter School failed to file their Return of Organization Exempt from Income Tax, IRS Form 990, for calendar years ending December 31, 2007, 2008, and 2009.

Prior Recommendations:

Our prior audit finding recommended that the Charter School:

1. File IRS Forms 990 for calendar years ending 2007, 2008, and 2009, and each subsequent year.
2. Request its solicitor provide a summary of all the Charter School's legal requirements under CSL and the Internal Revenue Code.

It also recommended that PDE:

3. Improve its monitoring and oversight of charter schools.

Current Status: During our current audit, we obtained the IRS form 990 for calendar years 2009, 2010, 2011, and 2012. We found that the Charter School did implement the recommendations. The Charter School did file IRS Form 990 from 2007 through 2012.

Prior Finding No. 3: Possible Inaccurate Reporting of Retirement Wages (Partially Resolved)

Prior Finding Summary:

Our prior audit of the Charter School's payroll and retirement records found that retirement wages may have been overstated in reports submitted to PSERS for the 2006-07 and 2007-08 school years.

Prior
Recommendations:

Our prior audit finding recommended that the Charter School:

1. Ensure that personnel report to PSERS only those wages allowable for retirement purposes, as stated in PSERS regulations.
2. Review reports subsequent to the 2007-08 school year and revise the applicable wages reported to PSERS.

Our prior audit finding recommended that the *Public School Employees' Retirement System* should:

3. Review the compensation reported for the 2006-07 and 2007-08 school years and render an opinion on the propriety of the wages reported by the Charter School for employees that received payments in lieu of benefits.
4. If any part of the payments is determined to be ineligible for retirement, make the necessary correction to pension benefits and contributions.

Our prior audit finding recommended that the *Pennsylvania Department of Education* should, in conjunction with PSERS determination of the propriety of wages reported for retirement:

5. Determine if the Charter School was overpaid retirement subsidy and make the necessary adjustments.

Current Status:

During our current audit, we tested the 2008-09 through the 2012-13 school years to see if employees were still receiving a payment in lieu of health insurance and if that payment was reported to PSERS. We found that the Charter School could not implement the recommendations until the 2013-14 school year due to the March 7, 2013 release of our previous audit. Therefore, the Charter School continued to submit the payments employees received in lieu of benefits to PSERS for the 2008-09 through the 2012-13 school years. Retirement wages included payments in lieu of health insurance for employees. Employees electing to receive payments in lieu of benefits received \$70 per pay period resulting in overstatements of retirement wages by \$8,400 for five employees in the 2008-09 school year, \$6,720 for four employees in 2009-10, \$6,720 for four employees in 2010-11, \$3,360 for two employees in 2011-12, and \$5,040 for three employees in 2012-13, respectively.

A detailed report for use in recalculating eligible retirement wages for these amounts has been provided to PSERS. As of the 2013-14 school year, the Charter School has implemented our recommendations. Our review of the 2013-14 school year payroll records found the Charter School no longer includes the payments in lieu of health insurance as part of PSERS wages.

Prior Finding No. 4: Certification Deficiency (Unresolved)

Prior Finding Summary:

Our prior audit found that one individual held the position of Principal without a proper certificate required by the State Board of Education for the 2009-10 school year. While this individual did not hold a Principal certificate for the 2007-08 and 2008-09 school years, she did obtain a valid emergency permit in the area of Principal K-12 for both years.

Prior Recommendations:

Our prior audit finding recommended that the Charter School:

1. Ensure professional employees are properly certified for their area of administrative responsibility or subject in which they teach, for the entire school year, in compliance with the CSL and PDE's Certification Staffing and Policy Guidelines (CSPG).
2. Ensure the individual cited in this finding obtain proper certification or is re-assigned to a position for which proper certification is held.
3. Ensure administrative personnel are provided with sufficient training in order to understand and manage charter school certification requirements as defined by the CSL and PDE's CSPGs.

We also recommended that PDE:

4. Follow-up with the Charter School regarding future professional assignments and certification status.
5. Ensure that the Charter School is meeting the CSL's requirement to employ at least 75 percent certified staff.

6. Review the charter of the Charter School and determine whether the Charter School is violating certification terms of its approved charter with the District.

Current Status:

On September 18, 2011, the Bureau of School Leadership and Teacher Quality (BSLTQ) determined that the individual employed by the Charter School as Principal was assigned without a proper Principal certificate for the 2009-10 school year.

Our current review found that the Charter School's Principal is still not certified for her position. In summary, this employee was not properly certified for the position of Principal from the 2009-10 school through June 9, 2014 (the end of our review period) and began the 2014-15 school year without certification. We discussed this issue with the Principal and discussed PDE's determination of our findings in the previous audit. The Principal acknowledged her lack of certification and verbally stated that she would apply for a Principal certification in the fall of 2015.

Although the CSL does not allow for the withholding of subsidy penalties against charter schools for certification violations, the charter is required to employ certified personnel for their assignments.

Prior Observation No. 1: Possible Related-Party Transaction and Ethics Violations (Resolved)

Prior Observation Summary:

Our prior audit found that on August 1, 2002, the Charter School entered into a non-cancelable escalating lease agreement, which expired in 2012, with a leasing division of the Charter School's management company for the modular units. On June 30, 2003 and June 30, 2004, the Charter School signed promissory notes to borrow \$672,803 and \$475,278, respectively, from its management company for start-up costs. These agreements, as well as the related expenses, created a conflict of interest and possible ethics violations.

Prior Recommendations:

Our prior audit observation recommended that the Charter School:

1. Ask its solicitor to review the terms of any contract, as well as possible related-party agreements, prior to approval.

2. Ensure proper bidding procedures are followed to mitigate the possibility of violations of the Ethics Act.
3. Require the management company to submit a detailed list of monthly bills by vendor to the Board so they may approve all bills for payment.
4. Maintain repayment documentation independent of the management company to ensure balances are correct.

The *State Ethics Commission* should:

5. Review actions taken by the Charter School and determine if the Ethics Act has been violated.

The *Pennsylvania Department of Education* should:

6. Review any possible related-party financial transactions and/or possible conflicts of interests for the Charter School.

Current Status:

During our current audit, we found the recommendations, as of July 1, 2013, to the Charter School were no longer applicable because the Charter School entered into a settlement agreement with the former management company. The Charter School no longer has a contract with the former management company and now all operations are being managed by the Charter School. As of October 10, 2014, the Charter School had not received any correspondence regarding any reviews completed by the State Ethics Commission and PDE.

Prior Observation No. 2: Unmonitored Vendor System Access and Logical Access Control Weaknesses (Partially Resolved)

Observation Summary:

Our prior audit found the Charter School used software purchased from an outside vendor for its critical student accounting applications (membership and attendance). Additionally, the Charter School's entire computer system, including all its data and the vendor's software, was maintained on the vendor's servers, which was physically located at the vendor's location. The vendor also provided the Charter School with system maintenance and support.

Prior
Recommendations:

Our prior audit observation recommended that the Charter School:

1. Develop an agreement with the vendor to provide student accounting applications and related information technology services. The agreement should cover legal, financial, organizational, documentary, performance, security, intellectual property, and termination responsibilities and liabilities (including penalty clauses). All contracts and contract changes should be reviewed by legal advisors.
2. The Acceptable Use Policy should include provisions for authentication (password security and syntax requirements).
3. Implement a security policy and system parameter settings to require all users, including the vendor, to change their passwords every 30 days. Passwords should be a minimum length of eight characters and contain alpha, numeric, and special characters. Also, the Charter School should maintain a password history to prevent the use of a repetitive password (i.e., approximately last ten passwords).
4. Only allow access to their system when the vendor needs access to make pre-approved changes/updates or requested assistance. This access should be removed when the vendor has completed its work. This procedure would also enable the monitoring of vendor changes.
5. Generate monitoring reports (including firewall logs) of vendor and employee access and activity on their system. Monitoring reports should include the date, time, and reason for access, change(s) made and who made the change(s). The Charter School should review these reports to determine that the access was appropriate and that data was not improperly altered. The Charter School should also ensure it is maintaining evidence to support this monitoring and review.
6. The updates/upgrades to the Charter School's system should be made only after receipt of written authorization from appropriate Charter School officials.

Current Status:

During our current audit, we found the Charter School District did not implement recommendations # 1, 3, 5 and 6. The administration noted they have an acceptable use policy, which includes provisions for authentication (Recommendation #2) and that the Charter School only allows access to their system when the

vendor needs access (Recommendation #4). However, the administration did not provide any documentation for verification of this corrective action. The administration noted, as of July 1, 2013, the former management company contracted with the software vendor and not the Charter School. Therefore, going forward, the Charter School can make changes to the terms and conditions of the software vendor contract. Therefore, we again recommend the Charter School reconsider implementing all of our prior recommendations to reduce the risk of unauthorized access and unwanted changes to student accounting data.

Distribution List

This report was initially distributed to the Chief Executive Officer of the Charter School, the Board of Trustees, and the following stakeholders:

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