

PERFORMANCE AUDIT

Austin Area School District Potter County, Pennsylvania

December 2019



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



**Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen
www.PaAuditor.gov**

**EUGENE A. DePASQUALE
AUDITOR GENERAL**

Ms. Kimberly Rees, Superintendent
Austin Area School District
138 Costello Avenue
Austin, Pennsylvania 16720

Mr. Darwin Reese, Board President
Austin Area School District
138 Costello Avenue
Austin, Pennsylvania 16720

Dear Ms. Rees and Mr. Reese:

Our performance audit of the Austin Area School District (District) evaluated the application of best practices in the area of finance. In addition, this audit determined the District's compliance with certain relevant state laws, regulations, contracts, and administrative procedures (relevant requirements). This audit covered the period July 1, 2014 through June 30, 2018, except as otherwise indicated in the audit scope, objective, and methodology section of the report. The audit was conducted pursuant to Sections 402 and 403 of The Fiscal Code (72 P.S. §§ 402 and 403), and in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Those 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 obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit found that the District applied best practices in the areas listed above and complied, in all significant respects, with relevant requirements, except as detailed in our two findings noted in this audit report. A summary of the results is presented in the Executive Summary section of the audit report.

We also evaluated the application of best practices in the area of school safety. Due to the sensitive nature of this issue and the need for the results of this review to be confidential, we did not include the results in this report. However, we communicated the results of our review of school safety to District officials, the Pennsylvania Department of Education, and other appropriate officials as deemed necessary.

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

Sincerely,

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

Eugene A. DePasquale
Auditor General

December 13, 2019

cc: AUSTIN AREA SCHOOL DISTRICT Board of School Directors

Table of Contents

	Page
Executive Summary	1
Background Information	2
Findings	7
Finding No. 1 – The District Repeatedly Failed in Its Legal Duty to Ensure Its Contracted Bus Drivers Were Qualified and Cleared to Transport Students, Putting Its Students at Risk of Harm	7
Finding No. 2 – The District Failed to Hire a Permanent Superintendent for Over Six Years and May Have Violated PSERS Requirements When It Employed an Annuitant Continuously During That Period	13
Status of Prior Audit Findings and Observations	19
Appendix A: Audit Scope, Objectives, and Methodology	21
Appendix B: Academic Detail	24
Distribution List	28

Executive Summary

Audit Work

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

Our audit scope covered the period July 1, 2014 through June 30, 2018, except as otherwise indicated in the audit scope, objectives, and methodology section of the report (see Appendix).

Audit Conclusion and Results

Our audit found that the District applied best practices and complied, in all significant respects, with certain relevant state laws, regulations, contracts, and administrative procedures, except for two findings.

Finding No. 1: The District Repeatedly Failed in Its Legal Duty to Ensure Its Contracted Bus Drivers Were Qualified and Cleared to Transport Students, Putting Its Students at Risk of Harm.

The District failed to meet the statutory obligations related to the employment of individuals having direct contact with students during the 2018-19 school year. Specifically, we found the District did not ensure that all bus drivers had the required credentials and criminal history clearances *before* they transported students at the beginning of the school year.

We also found that the District does not have procedures in place regarding the collection, review, and retention of required qualification documents

and was not following its own transportation contract and policy. Bus driver qualifications have been the subject of an audit finding for **four consecutive audits** covering a span of at least ten years. The District's continued failure to provide legally-mandated oversight of transportation services resulted in the District placing its students at potential risk of harm by not ensuring that contracted bus drivers were properly qualified and cleared to transport students. (See page 7).

Finding No. 2: The District Failed to Hire a Permanent Superintendent for Over Six Years and May Have Violated PSERS Requirements When It Employed an Annuitant Continuously During That Period.

The District employed acting superintendents and high school principals for more than six years without conducting a good faith effort to hire someone permanently. More specifically, the District continuously switched two employees back and forth between the superintendent and the high school principal position for nearly seven years. In addition, one of the employees hired was a Public School Employees' Retirement System (PSERS) annuitant (Annuitant), and the District may have violated the Retirement Code when it failed to obtain proper approval from PSERS to hire the Annuitant. (See page 13).

Status of Prior Audit Findings and Observations.

We found that the District did not implement our prior audit recommendations regarding the failure to have all school bus drivers' qualifications on file. (See page 19). However, the District implemented our recommendations regarding monitoring key financial indicators to try to prevent further fiscal challenges. (See page 19)

Background Information

School Characteristics 2017-18 School Year ^A	
County	Potter
Total Square Miles	228
Number of School Buildings	1
Total Teachers	21
Total Full or Part-Time Support Staff	4
Total Administrators	2
Total Enrollment for Most Recent School Year	207
Intermediate Unit Number	9
District Vo-Tech School	Seneca Highlands Career and Technical Center

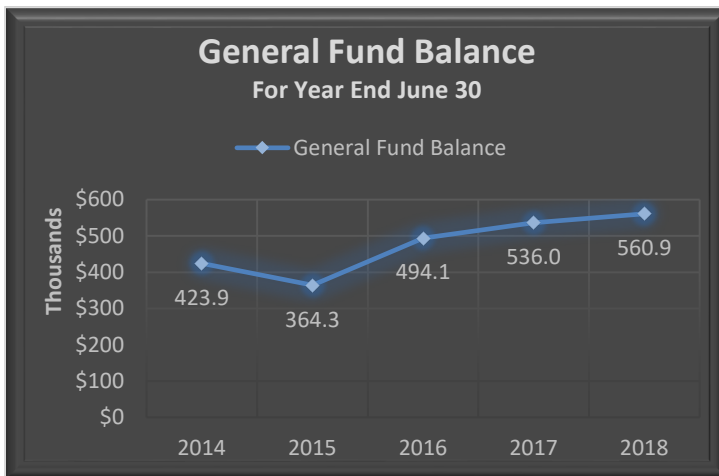
A - Source: Information provided by the District administration and is unaudited.

Mission Statement^A

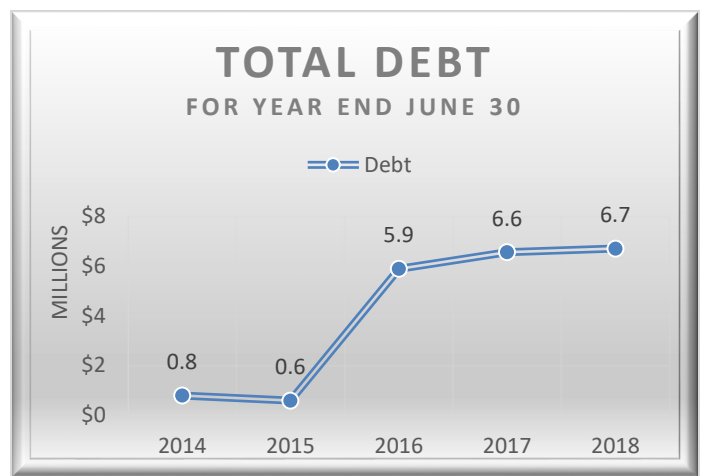
Austin Area School District, in unity with the community, parents and students, provides a supportive educational environment with opportunities to empower each student to develop the skills and knowledge necessary to become economically productive citizens.

Financial Information

The following pages contain financial information about the Austin Area School District (District) obtained from annual financial data reported to the Pennsylvania Department of Education (PDE) and available on PDE's public website. This information was not audited and is presented for **informational purposes only**.

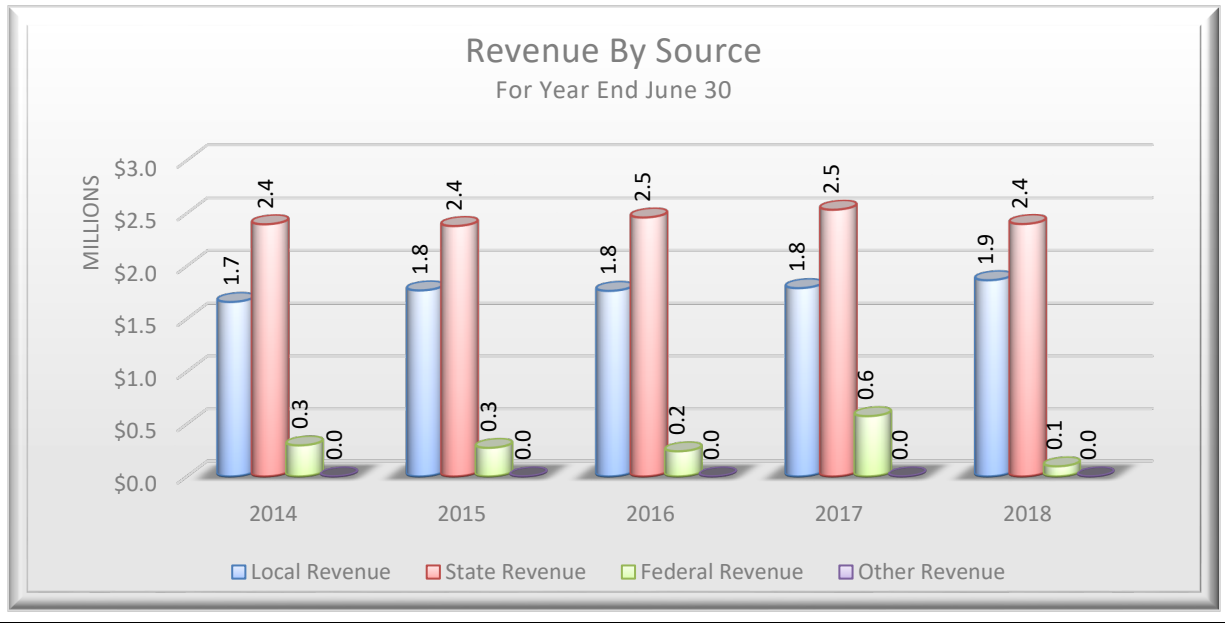
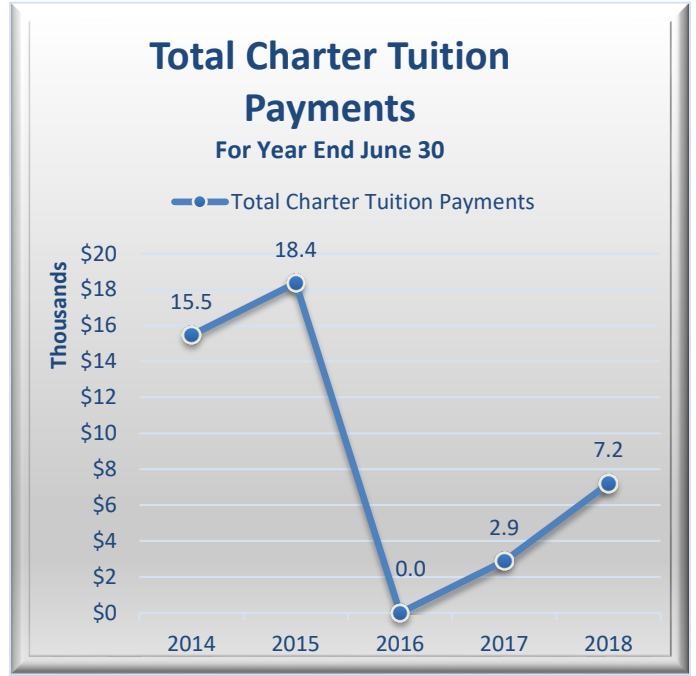
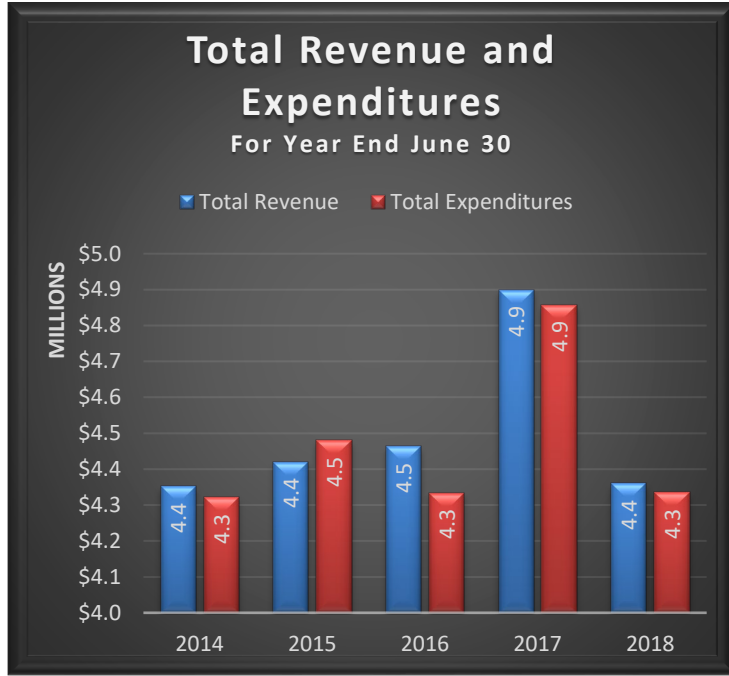


Note: General Fund Balance is comprised of the District's Committed, Assigned and Unassigned Fund Balances.



Note: Total Debt is comprised of Short-Term Borrowing, General Obligation Bonds, Authority Building Obligations, Other Long-Term Debt, Other Post-Employment Benefits, Compensated Absences and Net Pension Liability.

Financial Information Continued

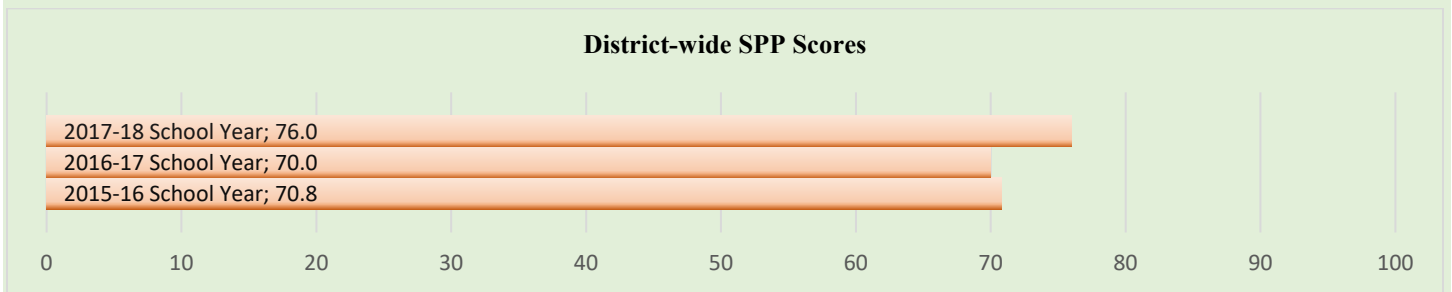


Academic Information

The graphs on the following pages present the District-wide School Performance Profile (SPP) scores, Pennsylvania System of School Assessment (PSSA) scores, Keystone Exam results, and 4-Year Cohort Graduation Rates for the District obtained from PDE's data files for the 2015-16, 2016-17, and 2017-18 school years.¹ The District's individual school building scores are presented in Appendix B. These scores are provided in this audit report for **informational purposes only**, and they were not audited by our Department. Please note that if one of the District's schools did not receive a score in a particular category and year presented below, the school will not be listed in the corresponding graph.²

What is a SPP score?

A SPP score serves as a benchmark for schools to reflect on successes, achievements, and yearly growth. PDE issues a SPP score annually using a 0-100 scale for all school buildings in the Commonwealth, which is calculated based on standardized testing (i.e., PSSA and Keystone exam scores), student improvement, advance course offerings, and attendance and graduation rates. Generally speaking, a SPP score of 70 or above is considered to be a passing rate.³



¹ PDE is the sole source of academic data presented in this report. All academic data was obtained from PDE's publicly available website.

² PDE's data does not provide any further information regarding the reason a score was not published for a specific school. However, readers can refer to PDE's website for general information regarding the issuance of academic scores.

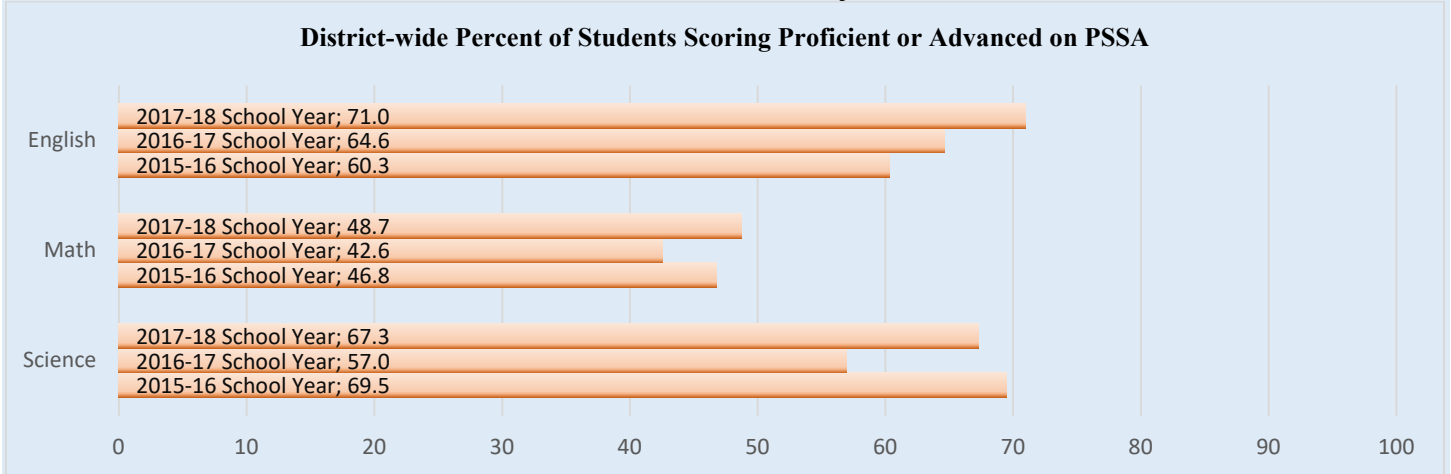
³ PDE started issuing a SPP score for all public school buildings beginning with the 2012-13 school year. For the 2014-15 school year, PDE only issued SPP scores for high schools taking the Keystone Exams as scores for elementary and middle scores were put on hold due to changes with PSSA testing. PDE resumed issuing a SPP score for all schools for the 2015-16 school year.

Academic Information Continued

What is the PSSA?

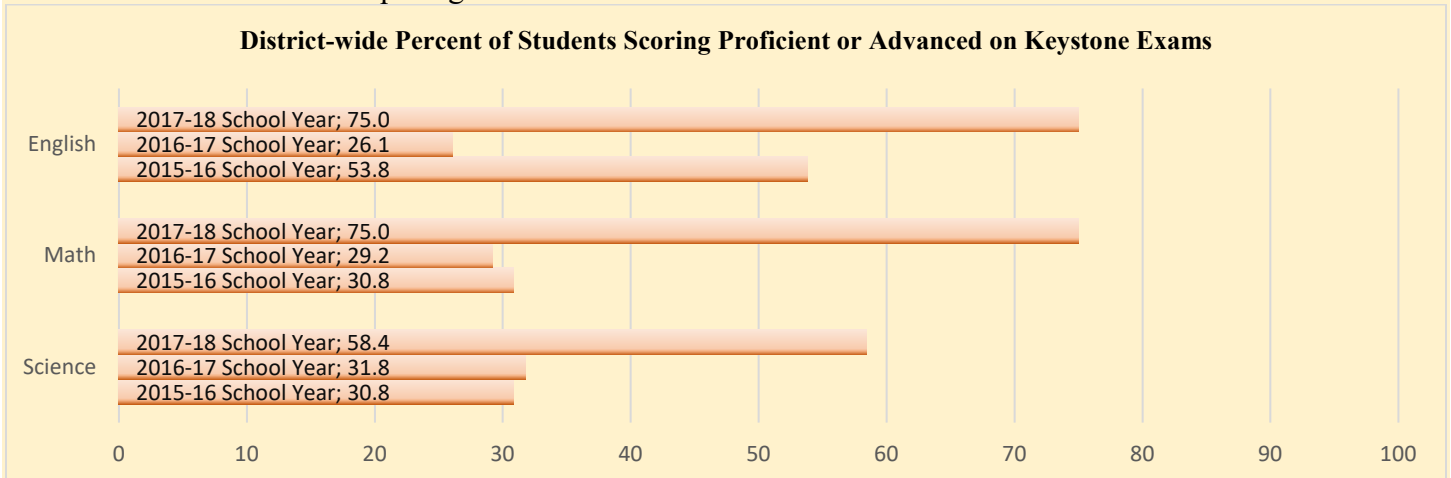
The PSSA is an annual, standardized test given across the Commonwealth to students in grades 3 through 8 in core subject areas, including English, Math and Science. The PSSAs help Pennsylvania meet federal and state requirements and inform instructional practices, as well as provide educators, stakeholders, and policymakers with important information about the state's students and schools.

The 2014-15 school year marked the first year that PSSA testing was aligned to the more rigorous PA Core Standards. The state uses a grading system with scoring ranges that place an individual student's performance into one of four performance levels: Below Basic, Basic, Proficient, and Advanced. The state's goal is for students to score Proficient or Advanced on the exam in each subject area.



What is the Keystone Exam?

The Keystone Exam measures student proficiency at the end of specific courses, such as Algebra I, Literature, and Biology. The Keystone Exam was intended to be a graduation requirement starting with the class of 2017, but that requirement has been put on hold until the 2020-21 school year.⁴ In the meantime, the exam is still given as a standardized assessment and results are included in the calculation of SPP scores. The Keystone Exam is scored using the same four performance levels as the PSSAs, and the goal is to score Proficient or Advanced for each course requiring the test.

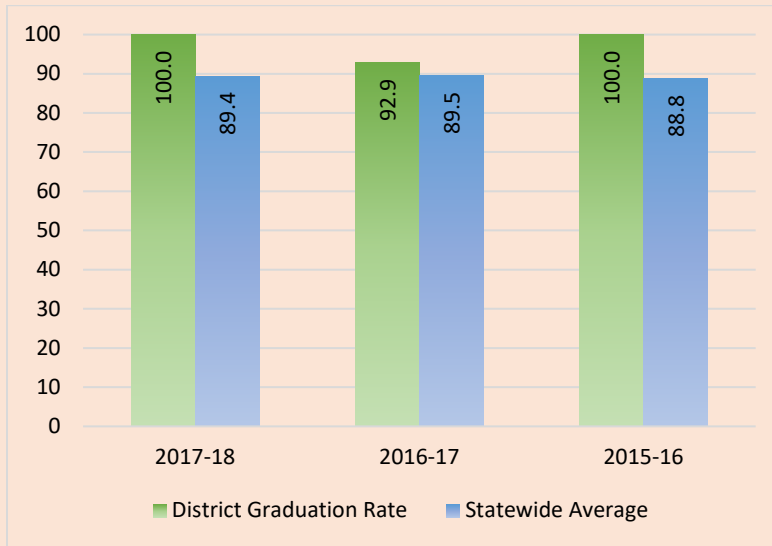


⁴ Act 39 of 2018, effective July 1, 2018, amended the Public School Code to further delay the use of Keystone Exams as a graduation requirement for an additional year until the 2020-21 school year. See 24 P.S. § 1-121(b)(1).

Academic Information Continued

What is a 4-Year Cohort Graduation Rate?

PDE collects enrollment and graduate data for all Pennsylvania public schools, which is used to calculate graduation rates. Cohort graduation rates are a calculation of the percentage of students who have graduated with a regular high school diploma within a designated number of years since the student first entered high school. The rate is determined for a cohort of students who have all entered high school for the first time during the same school year. Data specific to the 4-year cohort graduation rate is presented in the graph below.⁵



⁵ PDE also calculates 5-year and 6-year cohort graduation rates. Please visit PDE's website for additional information:
<http://www.education.pa.gov/Data-and-Statistics/Pages/Cohort-Graduation-Rate-.aspx>.

Findings

Finding No. 1

The District Repeatedly Failed in Its Legal Duty to Ensure its Contracted Bus Drivers Were Qualified and Cleared to Transport Students, Putting Its Students at Risk of Harm

Criteria relevant to the finding:

Chapter 23 (relating to Pupil Transportation) of the State Board of Education regulations, among other provisions, provides that the board of directors of a school district is responsible for the selection and approval of eligible operators who qualify under the law and regulations. *See*, in particular, 22 Pa. Code § 23.4(2).

Section 111 of the Public School Code (PSC) requires state and federal criminal background checks and Section 6344(a.1)(1) of the Child Protective Services Law (CPSL) requires a child abuse clearance. *See* 24 P.S. § 1-111 and 23 Pa.C.S. § 6344(a.1)(1), as amended.

With regard to criminal background checks, Sections 111(b) and (c.1) of the PSC require prospective school employees who have direct contact with children, including independent contractors and their employees, to submit a report of criminal history record information obtained from the Pennsylvania State Police, as well as a report of Federal criminal history record information obtained from the Federal Bureau of Investigation. *See* 24 P.S. § 1-111(b) and (c.1).

Section 6344(b)(3) of the CPSL requires, in part, that, “The applicant shall submit a full set of fingerprints to the Pennsylvania State Police for the purpose of a record check...” (Act 153 of 2014). *See* 23 Pa.C.S. § 6344(b)(3).

The Austin Area School District (District) failed to meet the statutory obligations related to the employment of individuals having direct contact with students during the 2018-19 school year. Specifically, we found the District did not ensure that all bus drivers had the required credentials and criminal history clearances *before* they transported students at the beginning of the school year. We also found that the District does not have procedures in place regarding the collection, review, and retention of required qualification documents and was not following its own transportation contract and policy. Bus driver qualifications have been the subject of an audit finding for **four consecutive audits** covering a span of at least ten years. The District’s continued failure to provide legally-mandated oversight of transportation services resulted in the District placing its students at potential risk of harm by not ensuring that contracted bus drivers were properly qualified and cleared to transport students.

Background

The District contracts for its transportation services and has utilized the same contractor since the 2003-04 school year. The District is one of the smallest in the state and only had six bus drivers during the 2018-19 school year. Three of the six drivers were new since the prior audit.

Despite repeated audit findings regarding deficiencies with bus driver qualifications, the District continued to rely on its contractor to determine driver eligibility as evidenced by the District not obtaining, reviewing, and maintaining required qualification and clearance documentation for each driver before the individual transported District students.

*Criteria relevant to the finding
(continued):*

Furthermore, both the PSC and the CPSL now require recertification of the required state and federal background checks and the child abuse clearance every 60 months (or every five years). *See* 24 P.S. § 1-111(c.4) and 23 Pa. C.S. § 6344.4.

Section 111(e) of the PSC lists convictions for certain criminal offenses that require an absolute ban on employment. Further, Section 111(f.1) of the PSC requires that a ten, five, or three year *lookback period* for certain convictions be met before an individual is eligible for employment. *See* 24 P.S. § 1-111(e) and (f.1).

Section 111(a.1)(1) specifies that bus drivers employed by a school entity through an independent contractor who have direct contact with children must also comply with Section 111 of the PSC. *See* 24 P.S. § 1-111(a.1)(1).

Section 111(c.4) further requires administrators to review the criminal background and child abuse reports and determine if the reports disclose information that may require further action. *See* 24 P.S. § 1-111(c.4).

Administrators are also required to review the required documentation according to Section 111(g)(1) of the PSC. This section provides that an administrator or other person responsible for employment decisions in a school or institution under this section who willfully fails to comply with the provisions of this section commits a violation of this act, subject to a hearing conducted by the Pennsylvania Department of Education (PDE), and shall be subject to a civil penalty up to \$2,500. *See* 24 P.S. § 1-111(g)(1).

Employment Requirements

Regardless of whether they use their own drivers, or use a contractor's drivers, school districts are required to verify and have on file a copy of the following documents for each employed or contracted driver, *before* he or she can transport students with the Board of School Directors (Board) approval:

1. Driver qualification credentials,⁶ including:
 - a. Valid driver's license (Commercial driver's license if operating a bus).
 - b. Valid school bus endorsement card, commonly referred to as an "S" card, indicating completion of skills and safety training (if operating a bus).
 - c. Annual physical examination (if operating a bus).
2. Criminal history reports/clearances:
 - a. State Criminal History Record (PSP clearance).
 - b. Federal Criminal History Record, based on a full set of fingerprints (FBI clearance).
 - c. PA Child Abuse History Clearance.
 - d. Arrest/Conviction Report and Certification Form (PDE-6004).⁷

Missing Criminal History Documentation

In May 2019, we obtained a list of bus drivers authorized by the Board to transport students during the 2018-19 school year.⁸ On May 21, 2019, we reviewed the personnel files of all six drivers employed by the District's transportation contractor for our review period. **We found that all six drivers, or 100 percent of drivers, were missing one or more of the required criminal history documents noted above.** Specifically, we found the following issues:

- four drivers were missing the FBI clearance
- two drivers were missing the PSP clearance
- one driver was missing the PA Child Abuse History Clearance
- six drivers were missing the Pennsylvania Department of Education's (PDE) Arrest/Conviction Report and Certification Form

After notifying the District of the aforementioned deficiencies, the District attempted to obtain the missing documentation from the contractor, who was also unable to provide complete records for each driver. Consequently, the contractor requested new background clearances and

⁶ Pennsylvania's Vehicle Code, 75 Pa.C.S. §§ 1508.1 (relating to Physical examinations) and 1509 (relating to Qualifications for school bus driver endorsement).

⁷ *See* Section 111 of the Public School Code (PSC), 24 P.S. § 1-111.

⁸ This Board authorization is a requirement of the State Board of Education regulation. *See* 22 Pa. Code § 23.4(2).

Criteria relevant to the finding (continued):

Effective July 1, 2012, Section 111(j) (2) of the PSC was amended to require all *prospective* employees to submit an *Arrest/Conviction Report and Certification Form* (PDE-6004 Form), including the newly added Section 111(f.1) criminal offenses, to their administrator prior to employment indicating whether or not they have ever been arrested or convicted of any of the reportable offenses provided for in Section 111(e) or (f.1). Further, retroactively effective on December 31, 2015, Section 111(j)(2) was amended by Act 4 of 2016 to require that the PDE-6004 Form include a certification of whether or not an employee was named as a perpetrator of a founded report of child abuse within the past five (5) years as defined by the CPSL. *See* 24 P.S. § 1-111(f.1) and (j)(2) (Act 82 of 2012 and Act 4 of 2016) and PDE-6004 Form instructions.

Section 8.2 of Title 22, Chapter 8 (relating to Criminal Background Checks) of the State Board of Education regulations requires, in part, “(a) School entities shall require a criminal history background check **prior to hiring an applicant or accepting the services of a contractor**, if the applicant, contractor or contractor’s employes would have direct contact with children.” (Emphasis added.) *See* 22 Pa. Code § 8.2(a).

Section 23.4 of Title 22, Chapter 23 (relating to Pupil Transportation) of the State Board of Education regulations provide that the board of directors of a school district is responsible for the selection and approval of eligible operators who qualify under the law and regulations. *See* 22 Pa. Code § 23.4(2).

See also PDE’s “Clearances/Background Check” web site for current school and contractor guidance (<https://www.education.pa.gov/Educators/Clearances/Pages/default.aspx>).

the PDE-6004 Form for all drivers. During our follow-up review on June 12, 2019, some but not all of the required documentation had been obtained. On October 1, 2019, we followed-up for a final time and found that one driver was still missing the FBI clearance and two of six drivers were still missing the PDE-6004.

Criminal Convictions Potentially Impacting Employment Eligibility

We also found that one driver had convictions that occurred in 2007 that required a period of time to elapse from the date of expiration of the sentence for each conviction before the individual would be eligible for employment that involved having direct contact with children. Specifically, the driver had multiple felony convictions of the second degree that required a ten-year lookback period, and a few misdemeanor convictions of the first degree that required a five-year lookback period. Exact sentencing information is not included on background clearances and must be obtained from the courts. The sentence expiration date is needed to determine employment eligibility based on the lookback period.

School districts are responsible for determining driver fitness, including making a determination whether or not required lookback periods have been met. Therefore, it is the District’s responsibility to obtain any additional information necessary from the courts to calculate lookback periods. The driver in question was approved to drive for the District in 2018. The District admitted that it was unaware of the criminal convictions at the time the driver was approved.

As a result of our review, the District was made aware of the convictions. Only then did the District consider the convictions and determine that the required lookback periods have been satisfied. As of October 1, 2019, the driver continued to transport District students.

By not obtaining and reviewing the driver clearances prior to employment, the District failed to fulfill its responsibility to determine the employment eligibility of this driver prior to transporting District students.

Non-Compliance with Transportation Contract and Policy

The District’s transportation contract states that new drivers are required to have the three required criminal background clearances before employment begins. However, the District failed to ensure compliance with its transportation contract by not obtaining and evaluating these documents prior to allowing contracted individuals to drive for the District. Moreover, it appears that the District’s contractor also did not comply with the contract because it did not have the required documentation readily available when the District requested this information as a result of our audit. As previously noted, due to missing documentation, the contractor required all of the drivers to apply for new clearances.

It is important to note that this is the fourth consecutive audit that bus driver qualifications have been the subject of an audit finding. Three of six drivers reviewed were hired since our prior audit, and we continue to find both previously cited and newly hired individuals with missing criminal history documentation.

Additionally, the District's Transportation Policy No. 810, revised in March 2010, was the policy that was in effect during the Board approval process for the 2018-19 school year. This policy also states that a driver shall not be employed until she/he has complied with the mandatory background check requirements for criminal history and child abuse, **and the District has evaluated the results of that screening process.** The District, therefore, did not comply with its own policy.

Finally, we noted that the District approved a revised Transportation Policy on April 8, 2019, and a Contracted Services Policy on June 10, 2019, which contain specific provisions related to bus driver qualifications and independent contractors. While having updated policies outlining these important requirements is a positive step, it is imperative that the District ensures compliance with these policies. Similarly, it is critical that the District understands that the ultimate responsibility to determine driver fitness lies with the District and not the contractor. Given the District's continued failure to adequately oversee the employment eligibility of its contracted bus drivers, in combination with some of the provisions in the revised policies, it appears that District management may not have a full understanding of its responsibilities.

Failure to Take Corrective Action

The District has failed to take corrective action as promised in its responses to our three prior audit findings on this subject. Specifically, the District indicated that it would require its contractor to provide a copy of all qualifications for bus and van drivers, including substitutes, to the District prior to the 1st day of school. The District further responded that a copy of all required documents would be kept on file in the main office of the District. If not all credentials were presented, the driver would not be permitted to transport students until such documents were available. The District also indicated that it would develop a form that can be used as a tool to verify all credentials were received and evaluated.

According to the District, it implemented a tracking form to verify driver credentials for the 2014-15 school year, but continued use of the form and maintaining required documentation was a procedure that "fell through the cracks." As evidenced by our current review, the District has not implemented the promised corrective actions, and the Board continue to approve drivers without ensuring that all required documentation and clearances were obtained and reviewed.

Considering that the District and its Board approve less than ten drivers annually, and were notified of deficiencies via audit findings on three previous occasions since 2010, it is difficult to understand why the District has not corrected the problem.

Conclusion

The District did not meet its critical statutory obligation to ensure that bus drivers are qualified and eligible to transport students. Specifically, the District failed to comply with laws, regulations, PDE guidance documents, board policy, and its own transportation contract. As a result, drivers were permitted to transport students without the District ensuring they were qualified and cleared in accordance with state and federal laws incorporated into state law including the PSC, CPSL, and the Pennsylvania Vehicle Code.

Recommendations

The *Austin Area School District* should:

1. Ensure that drivers are qualified with the proper credentials and have obtained all clearances *before* the District authorizes them to transport District students.
2. Develop a tracking system to monitor upcoming expiration dates to ensure timely renewal of driver qualification documents, such as licenses, physical exams, and background clearances, which are now required to be renewed every five years.
3. Develop and implement detailed written procedures to provide approval and ongoing monitoring of required background clearances for all employees who have direct contact with students, including contracted employees such as bus drivers, cafeteria staff, etc.
4. Review the District's recently revised transportation and contracted services policies to ensure that they are in close alignment with amendments to the PSC and the CPSL, and appropriately train staff to follow the District's policies. These policies should clearly establish both the District's obligations and the Board's legal duty to ensure that drivers are qualified and have obtained all clearances, regardless of whether they are employed by contractors, before the District authorizes them to transport District students.
5. Ensure that both the District and the contractor are fulfilling all of their responsibilities outlined in the transportation contract.

Management Response

District management provided the following response:

1. We are assigning a new Transportation Director who will not take drivers to the board for approval until all required paperwork has been given to the school.
2. We have met with Incident Tracker, a tracking software company, and are working with them to develop a tracking system that will also notify us when items are set to expire.
3. We are adding procedures to our hiring policy for background check approvals. We are also creating procedures for clearance renewal approvals.
4. We have reviewed the transportation and contracted services policy and the new Transportation Director will ensure it is adhered to.
5. The new Transportation Director will create a list and meet with the contractor prior the start of each school year.

Auditor Conclusion

We are pleased that the District has initiated corrective actions based upon our recommendations. We continue to stress the importance of developing and following written procedures based on the District's duties under the PSC, the CPSL, and the Pennsylvania Vehicle Code that will ensure all drivers transporting students are properly qualified. We will review the effectiveness of these and any other actions taken by the District during our next audit.

Finding No. 2

The District Failed to Hire a Permanent Superintendent for Over Six Years and May Have Violated PSERS Requirements When It Employed an Annuitant Continuously During That Period

Criteria relevant to the finding:

Public School Code (PSC)

Section 1079 (relating to Vacancies; acting and substitute superintendents and assistants) of the PSC states, in part: “[w]henver a board of school directors finds it *impossible or impracticable to fill immediately any vacancy* occurring in the position of district superintendent or assistant district superintendent, the board may appoint an acting district superintendent or an acting assistant district superintendent to serve no longer than one year from the time of his appointment.” (Emphasis added.) See 24 P.S. § 10-1079.

Public School Employees’ Retirement Code (Retirement Code)

Section 8346(a) of the Retirement Code states, in part: “[i]f an annuitant returns to school service...any annuity payable to him under this part will cease effective upon the date his return to school service.” See 24 Pa.C.S. § 8346(a).

The District employed acting superintendents and high school principals for more than six years without conducting a good faith effort to hire someone permanently. More specifically, the District continuously switched two employees back and forth between the superintendent and the high school principal position for nearly seven years. In addition, one of the employees hired was a Public School Employees’ Retirement System (PSERS) annuitant (Annuitant), and the District may have violated the Retirement Code when it failed to obtain proper approval from PSERS to hire the Annuitant.

When the former superintendent resigned effective January 2012, the District hired an annuitant to serve as acting superintendent while a search for a permanent superintendent was conducted. Section 1079 of the PSC allows a school district that is having difficulty filling a superintendent position to appoint an acting superintendent to serve no more than one year from the time of appointment.⁹ In an effort to comply with this provision of the PSC, the District appointed a new acting superintendent each year beginning in 2011 until it finally hired a permanent superintendent in August 2018. To further complicate matters, during this same time frame, the District appointed persons to serve as the acting high school principal.

⁹ 24 P.S. § 10-1079, not amended since Act 1 of 1974.

As shown in the table below, the District switched the same people back and forth between the acting superintendent and the acting high school principal positions.

Austin Area SD Timeline of Acting Superintendents and High School Principals December 2011 to August 2018		
Appointment Effective Dates	Superintendent	High School Principal
Dec 2011 – Dec 2012	Annuitant	Annuitant
Dec 2012 – Dec 2013	Employee A	Annuitant
Dec 2013 – June 2014	Annuitant	Employee A
Dec 2014 – Dec 2015	Employee A	Annuitant
Dec 2015 – Dec 2016	Annuitant	Employee A (resigned from the District in March 2016) Employee B hired March 2016
Dec 2016 – Dec 2017	Employee B	Annuitant
Dec 2017 – Aug 2018	Annuitant	Employee B
Aug 2018	Employee A (re-hired as Permanent Superintendent)	Employee B

Criteria relevant to the finding (continued):

Section 8346(b) of the Retirement Code, in part: “[w]hen, in the judgement of the employer, an emergency creates an increase in the work load such that there is serious impairment of service to the public or in the event of a shortage of appropriate subject certified teachers or other personnel, an annuitant or participant receiving distributions may be returned to school service for a period not to extend beyond the school year during which the emergency or shortage occurs, without loss of his annuity or distributions, provided that the annuitant meets the conditions set forth in subsection (b.2). . . .” See 24 Pa.C.S § 8346(b).

When asked why the District failed to permanently fill the superintendent position, District officials indicated they had difficulty finding a qualified candidate to accept the position. When we pressed for details on the search for a permanent superintendent, District officials did not produce any evidence of a search other than a job posting on the intermediate unit’s website.

As discussed earlier, Section 1079 of the PSC permits a school district to appoint an acting superintendent to serve no more than one year from the time of appointment if it finds it impossible or impracticable to immediately fill any vacancy. We believe that the intent of this provision was to provide a school district with some flexibility in appointing an acting superintendent on a temporary basis because of for example, potential superintendent hiring shortages including a lack of qualified candidates.¹⁰ The District failed to hire a permanent superintendent for over six years and instead relied on the PSC provision that allows the appointment of an acting superintendent. Therefore, while the District technically complied with PSC Section 1079, it appears that the District did not comply with the *intent* of the provision.¹¹

¹⁰ Ibid.

¹¹ Subsection (a) of Section 1921 of the act (relating to Legislative intent controls) provides “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.” See 1 Pa.C.S. § 1921(a).

*Criteria relevant to the finding
(continued):*

PSERS Publication #9682: Return to Service Exceptions (in part) – The Retirement Code prohibits retirees from returning to “school service” for a “public school” in any capacity, full-time or part-time, qualifying or non-qualifying service, while receiving a PSERS retirement benefit. If a retiree renders “school service” for a “public school,” the retiree’s retirement benefit ceases immediately and the retiree is re-enrolled as an active member of PSERS.

A retiree may be permitted to perform service for a “public school” without a loss of annuity under extremely limited exceptions, subject to review by PSERS at any time.

A member can return to service and continue to receive a pension from PSERS if: (1) there is a shortage of personnel or (2) an emergency creates a serious impairment of service. Both “Emergency” exceptions extend only for the length of the school year or until the emergency no longer exists.

A shortage of personnel does not exist until the employer attempts to hire somebody and is unsuccessful. Thus, a lack of a pool of candidates must be established before the PSERS retiree is hired for a shortage. This requires that the employer promptly undertake an *Adequate and Good Faith* search to find an immediate replacement after notification of a resignation. PSERS will not allow an employer to claim a continuing shortage for the same position year after year without a continued bona fide effort each year to fill the position with someone who is not a PSERS retiree.

Possible Violation of Retirement Code

The Annuitant employee mentioned above was originally retired in 2002 but was hired by the District in December 2011 to serve as the acting superintendent. The District obtained approval from PSERS to hire the Annuitant under the emergency exception—shortage of personnel. The Annuitant worked continuously for the District from December 2011 through August 2018 while he continued to collect regular monthly pension payments from PSERS.

We contacted PSERS to determine if it had approved the continuous employment of this Annuitant and if so, under what circumstances. We found that PSERS approved the employment of the Annuitant beginning in the 2011-12 school year through the 2014-15 school year. However, PSERS did not approve his employment beyond the 2014-15 school year, yet the Annuitant continued to work for the District for at least three more school years.

According to a PSERS official, the District requested to employ the Annuitant in an emergency capacity again for the 2015-16 school year. The letter was not received by PSERS until December 2015.¹² The PSERS official stated that several phone conversations were held with the Annuitant after receiving the emergency request in December 2015. Since the District used the shortage of personnel exception as the reason for keeping an annuitant employed for more than four years, PSERS requested documentation to confirm that the District had conducted an “adequate and good faith” search for a permanent superintendent. In a letter dated March 7, 2016, PSERS requested the following information:

- Documentation of advertising for the position of superintendent since July 1, 2014.
- A description/summary of the results of recruitment efforts - number of applicants or respondents, number of people interviewed, etc.
- Board minutes showing the date of appointment as acting/substitute superintendent.

According to PSERS officials, it does not have a record of receiving a response to its request for the above information. However, the District provided us with some documentation that the District says was sent to PSERS in March 2016. Further, the District asserts that in March 2016, PSERS provided a verbal approval of “the continuation of the Annuitant’s employment until a permanent replacement is found.” According to PSERS officials, written approval must be obtained on an annual basis. Since the District never submitted any further requests for emergency employment of the Annuitant after the 2015-16 school year, it appears that the Annuitant’s continued employment was not approved for the 2016-17 and 2017-18 school years.

¹² PSERS grants approvals for emergency exceptions on a school year rather than a calendar year.

*Criteria relevant to the finding
(continued):*

If the employer does not submit sufficient information and/or documentation to satisfy one of the *Emergency* exceptions, the request will be denied and, if the retiree renders service, may result in the retiree being reenrolled in PSERS and the retiree's benefit being stopped retroactive to the date the retiree first began service.

According to the PSERS' *Return to Service Exceptions* guidelines, if the employer does not provide sufficient information and/or documentation to satisfy one of the *Emergency* exceptions, the request to employ the Annuitant will be denied. If, however, the annuitant continues to render service to the District, it may result in the Annuitant being re-enrolled in PSERS and the Annuitant's benefit being stopped retroactive to the date the retiree first began service with the school district. The guidelines also state that PSERS will not allow an employer to claim a shortage for the same position year after year without a continued bona fide effort each year to fill the position with someone who is not a PSERS retiree.¹³

The District also could not provide evidence that there was a shortage of personnel for the Principal position. The District submitted requests to PSERS for approval to hire the Annuitant for both the acting superintendent and the acting high school principal positions. However, based on Board documents we reviewed, it appears that the Annuitant was serving in the acting superintendent position for most of the time and the appointment as acting high school principal was on paper only. With regard to the PSC, the appointments to acting superintendent and acting high school principal every other year may have been the District's way to comply with the PSC, but those actions certainly were not compliant with the intent, plain meaning, and even the spirit of the law.

Recommendations

The *Austin Area School District* should:

1. Ensure that in the future, it complies with the PSC and best practices by appointing a superintendent as soon as possible or practicable after a vacancy is created and utilizing the long-established and customary superintendent hiring process.
2. Ensure that it complies with the PSC and the Public School Employees' Retirement Code and its related guidelines when it is necessary to hire a PSERS annuitant due to an emergency personnel shortage.

The *Public School Employees' Retirement System* should:

3. Review the circumstances surrounding the continuous employment of the District's Annuitant, especially those years without PSERS approval, and take appropriate action as it deems necessary.

¹³ PSERS' *Return to Service Exceptions*, Publication No. 9682, July 2018.

Management Response

District management provided the following pertinent response:

1. Contrary to Finding No. 2, that the District failed to hire a permanent Superintendent “for over Six Years,” the undisputed fact that “PSERS approved the employment of the Annuitant beginning in the 2011-12 school year through the 2014-15 school year”, confirms that AASD had obtained appropriate permission and provided justification for such hiring during that four (4) year period. Thus, AASD maintains that it neither violated the School Code nor the PSER Code during that time frame.
2. Pertaining to the 2015-17 and 2017-18 school years, the AASD maintains that it did use “good faith” efforts to hire a permanent Superintendent during that period. Contrary to the averment that “PSERS did not receive a response to their [March 7, 2016] request for additional information,” AASD did send a response letter dated March 8, 2016, with accompanying packet of requested information, to PSERS Administrative Officer. In fact, having received no responsive reply to PSERS, then acting Superintendent (the Annuitant) subsequently contacted the PSERS Administrative Officer via phone. Recently, the Annuitant has confirmed the Administrative Officer then orally approved the continuation of the Annuitant serving as acting Superintendent “until such time that a permanent replacement is hired.” In reliance upon that representation, AASD and the Annuitant continued their professional arrangement while the search for a permanent Superintendent continued.
3. The auditors were provided a complete, chronological packet of all pertinent correspondence and information previously provided to PSERS, including the March 8, 2016 response identified in #2 above (which was also previously provided to you during the Audit), as well as correspondence to PDE. AASD believe that the information contained in the packet demonstrates AASD’s good faith and lawful justification for utilizing an acting Superintendent during all time relevant to the Audit, and PSERS’ approval of same, all in conformity with the School Code and the PSER Code. Accordingly, AASD must respectfully disagree with Finding No. 2.
4. Nonetheless, in the event of a future vacancy in the office of Superintendent, AASD will heed the “Recommendations” suggested in the Audit by utilizing long-established and customary hiring methodology (e.g. through PSBA and/or the IU 9, if then available and financially feasible) to hire a permanent replacement. Additionally, in the event of an emergency personnel shortage necessitating the hiring of an annuitant, AASD will ensure that unequivocal consent is first obtained from PSERS.

Auditor Conclusion

We agree that the District sought and received approval from PSERS to employ the Annuitant in an emergency capacity for the 2011-12 through 2014-15 school years. However, written approval from PSERS was never obtained for 2015-16 school year, and the District did not file any request/documentation to PSERS to continue to employ the Annuitant for the 2016-17 or 2017-18 school years.

We are encouraged by the District's response that in the future they will follow our recommendations.

Status of Prior Audit Findings and Observations

Our prior audit of the Austin Area School District (District) released on March 19, 2015, resulted in one finding and one observation, as shown below. As part of our current audit, we determined the status of corrective action taken by the District to implement our prior audit recommendations. We reviewed the District's written response provided to the Pennsylvania Department of Education (PDE), interviewed District personnel, and performed audit procedures as detailed in each status section below.

Auditor General Performance Audit Report Released on March 19, 2015

Prior Finding: **Continuing School Bus Drivers' Qualifications Deficiencies**

Prior Finding Summary: During our prior audit, we found that not all of the required bus driver qualification records were on file at the District. Specifically, a valid child abuse clearance was missing for one driver and five drivers did not have valid criminal history records on file.

Prior Recommendations: We recommended that the District should:

1. Prior to approving drivers to transport students, review each driver's qualifications. If proper documentation is not available, the District should require the contractor to provide substitute drivers until it can produce evidence of proper qualifications.
2. Maintain files, separate from the transportation contractor's files, for all District drivers to ensure that each driver's records are up-to-date and complete.
3. Implement the corrective action plan included in the management response from the prior audit regarding this situation.

Current Status: The District did not implement our prior recommendations. See Finding No. 1 in this report for more information.

Prior Observation: **The District Should Monitor Key Financial Indicators to Try to Prevent Further Fiscal Challenges**

Prior Observation Summary:

During our prior audit, we assessed the District's financial stability. We found that the District was potentially in a financially declining position.

Prior Recommendations: We recommended that the District should:

1. Provide the Board of School Directors (Board) standard monthly updates on key financial benchmarks so that policy changes can be made before the District's financial condition worsens.

2. Monitor and maintain budgetary control over expenditures so that expenditures do not exceed revenues.

Current Status:

During our current audit review, we noted the District did implement our prior recommendations. The District's fund balance has steadily increased, and the Board is provided monthly updates on key financial benchmarks so that the Board has the most updated financial information to make decisions. The Board and administration monitor expenditures and revenues monthly so they can maintain budgetary control.

Appendix A: Audit Scope, Objectives, and Methodology

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, the Pennsylvania Department of Education (PDE), and other concerned entities.

Our audit, conducted under authority of Sections 402 and 403 of The Fiscal Code,¹⁴ is not a substitute for the local annual financial audit required by the Public School Code of 1949, as amended. We conducted our audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. Those 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 obtained provides a reasonable basis for our findings and conclusions based on our audit.

Scope

Overall, our audit covered the period July 1, 2014 through June 30, 2018. In addition, the scope of each individual audit objective is detailed on the next page.

The Austin Area School District's (District) management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the District is in compliance with certain relevant state laws, regulations, contracts, and administrative procedures (relevant requirements).¹⁵ In conducting our audit, we obtained an understanding of the District's internal controls, including any information technology controls, if applicable, that we considered 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.

¹⁴ 72 P.S. §§ 402 and 403.

¹⁵ 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; and compliance with certain relevant state laws, regulations, contracts, and administrative procedures.

Objectives/Methodology

In order to properly plan our audit and to guide us in selecting objectives, we reviewed pertinent laws and regulations, board meeting minutes, annual financial reports, annual budgets, new or amended policies and procedures, and the independent audit report of the District's basic financial statements for the fiscal years July 1, 2014 through June 30, 2018. We also determined if the District had key personnel or software vendor changes since the prior audit.

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 the District's efficiency and effectiveness in the following areas:

- ❖ Bus Driver Requirements
- ❖ Administrator Separations
- ❖ Financial Stability
- ❖ School Safety

As we conducted our audit procedures, we sought to determine answers to the following questions, which served as our audit objectives:

- Did the District ensure that bus drivers transporting District students had the required driver's license, physical exam, training, background checks, and clearances¹⁶ as outlined in applicable laws?¹⁷ Also, did the District have written policies and procedures governing the hiring of new bus drivers that would, when followed, provide reasonable assurance of compliance with applicable laws?
 - ✓ To address this objective, we selected all of the six bus drivers transporting District students as of May 21, 2019. We reviewed documentation to ensure the District complied with the requirements for bus drivers. We also determined if the District had written policies and procedures governing the hiring of bus drivers and if those procedures ensure compliance with bus driver hiring requirements. The results of our review of this objective can be found in the first finding in this report.
- Did the District pursue a contract buy-out with an administrator and if so, what was the total cost of the buy-out, what were the reasons for the termination/settlement, and did the employment contract(s) comply with the Public School Code¹⁸ and Public School Employees' Retirement System (PSERS) guidelines?
 - ✓ To address this objective, we reviewed the contracts, board meeting minutes, board policies, and payroll records for all three individually contracted administrators who separated employment from the District during the period July 1, 2014 through June 30, 2018. We also reviewed the employment contracts for both current District administrators to ensure that the contracts complied with the Public School Code and PSERS guidelines. Additionally, we interviewed District and PSERS officials and obtained relevant communications between District and PSERS

¹⁶ Auditors reviewed the required state, federal and child abuse background clearances that the District obtained from the most reliable sources available, including the FBI, the Pennsylvania State Police and the Department of Human Services. However, due to the sensitive and confidential nature of this information, we were unable to assess the reliability or completeness of these third-party databases.

¹⁷ 24 P.S. § 1-111, 23 Pa.C.S. § 6344(a.1), 24 P.S. § 2070.1a *et seq.*, 75 Pa.C.S. §§ 1508.1 and 1509, and 22 Pa. Code Chapter 8.

¹⁸ 24 P.S. § 10-1073(e)(2)(v).

officials. Finally, we obtained documentation from the District supporting the District's search for a permanent superintendent. The results of our review of this objective can be found in the second finding in this report.

- Based on an assessment of financial indicators, was the District in a declining financial position, and did it comply with all statutes prohibiting deficit fund balances and the over expending of the District's budget?
 - ✓ To address this objective, we reviewed the District's annual financial reports, General Fund budgets, and independent auditor's reports for the 2014-15 through 2017-18 fiscal years. The financial and statistical data was used to calculate the District's General Fund balance, operating position, charter school costs, debt ratio, and current ratio. These financial indicators were deemed appropriate for assessing the District's financial stability. The financial indicators are based on best business practices established by several agencies, including Pennsylvania Association of School Business Officials, the Colorado Office of the State Auditor, and the National Forum on Education Statistics. Our review of this objective did not disclose any reportable issues.

- Did the District take actions to ensure it provided a safe school environment?¹⁹
 - ✓ To address this objective, we reviewed a variety of documentation including, safety plans, training schedules, anti-bullying policies, and after action reports. In addition, we conducted an on-site review at the District's sole school building to assess whether the District had implemented basic safety practices.²⁰ Due to the sensitive nature of school safety, the results of our review of this objective area are not described in our audit report. The results of our review of school safety are shared with District officials, PDE, and other appropriate agencies deemed necessary.

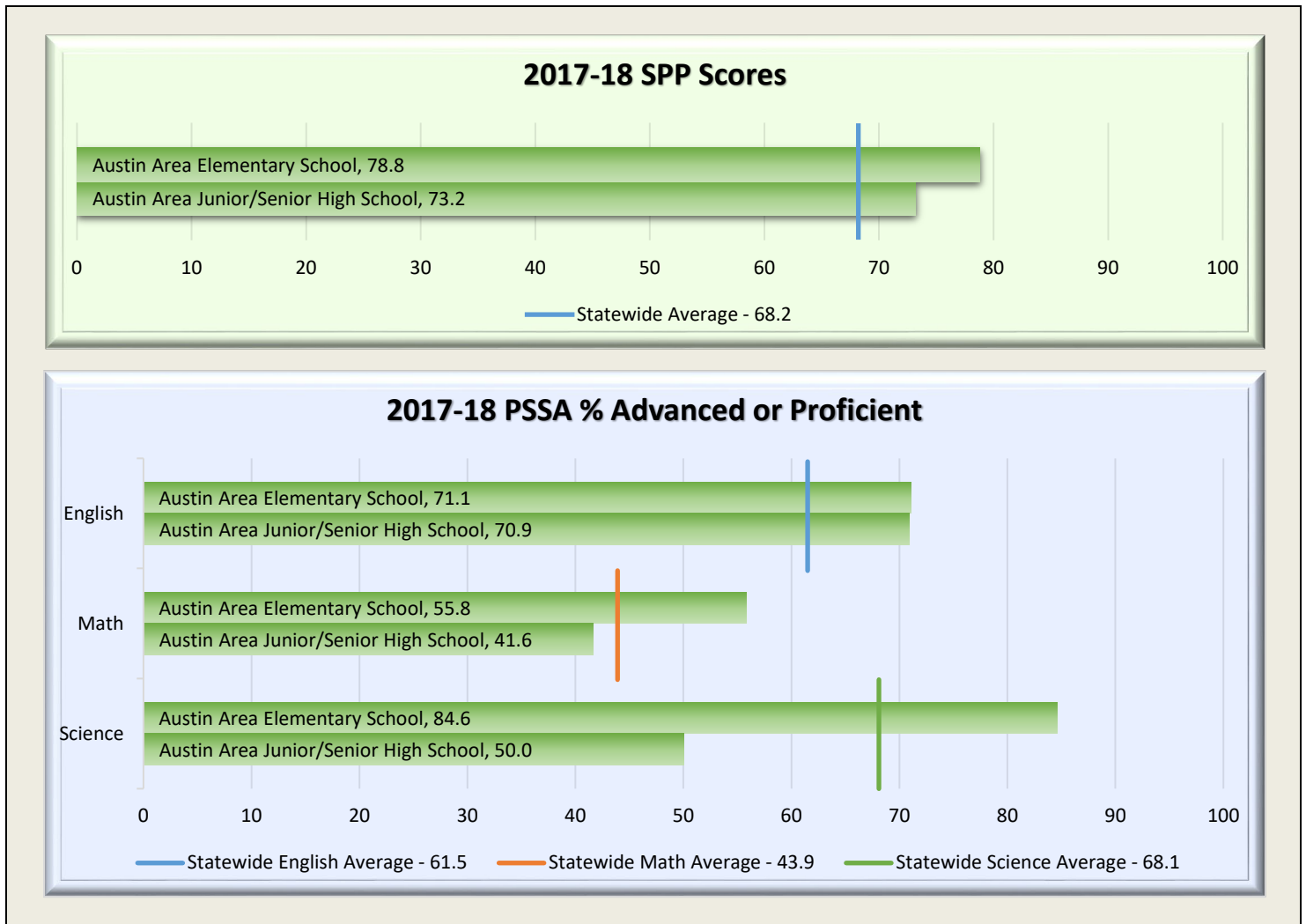
¹⁹ 24 P.S. § 13-1301-A *et seq.*

²⁰ Basic safety practices evaluated were building security, bullying prevention, visitor procedures, risk and vulnerability assessments, and preparedness.

Appendix B: Academic Detail

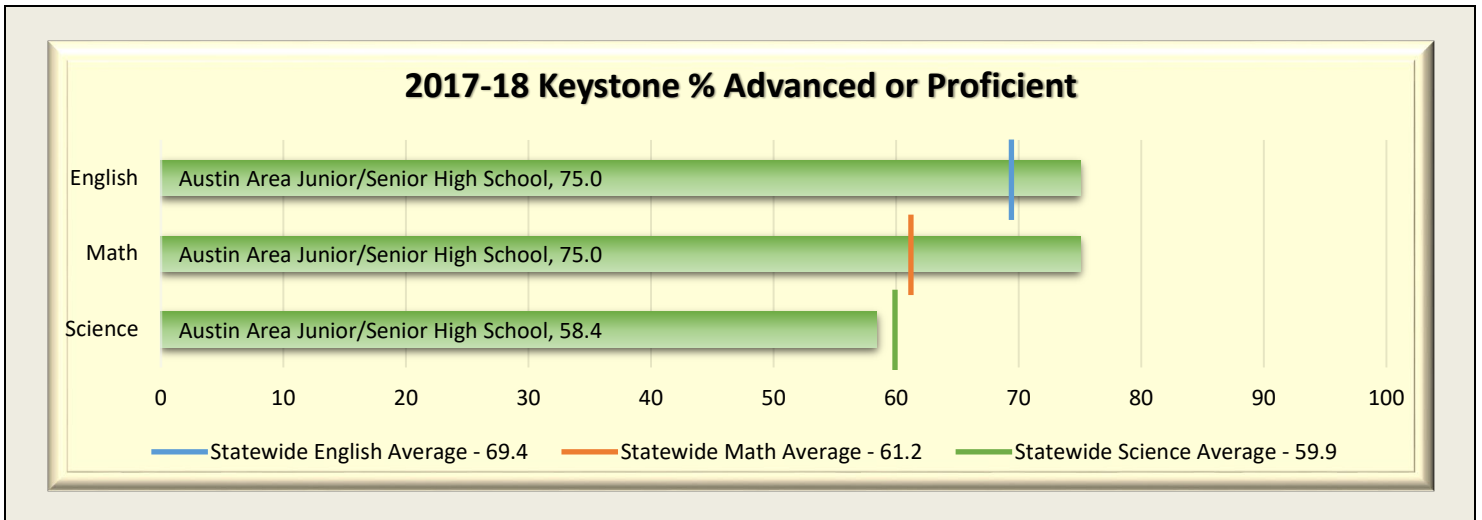
Benchmarks noted in the following graphs represent the statewide average of all public school buildings in the Commonwealth that received a score in the category and year noted.²¹

2017-18 Academic Data School Scores Compared to Statewide Averages



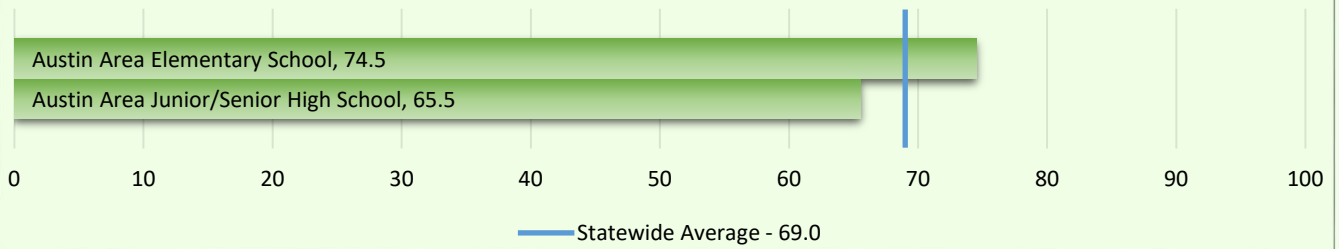
²¹ Statewide averages were calculated by our Department based on individual school building scores for all public schools in the Commonwealth, including district schools, charters schools, and cyber charter schools.

2017-18 Academic Data
School Scores Compared to Statewide Averages (continued)

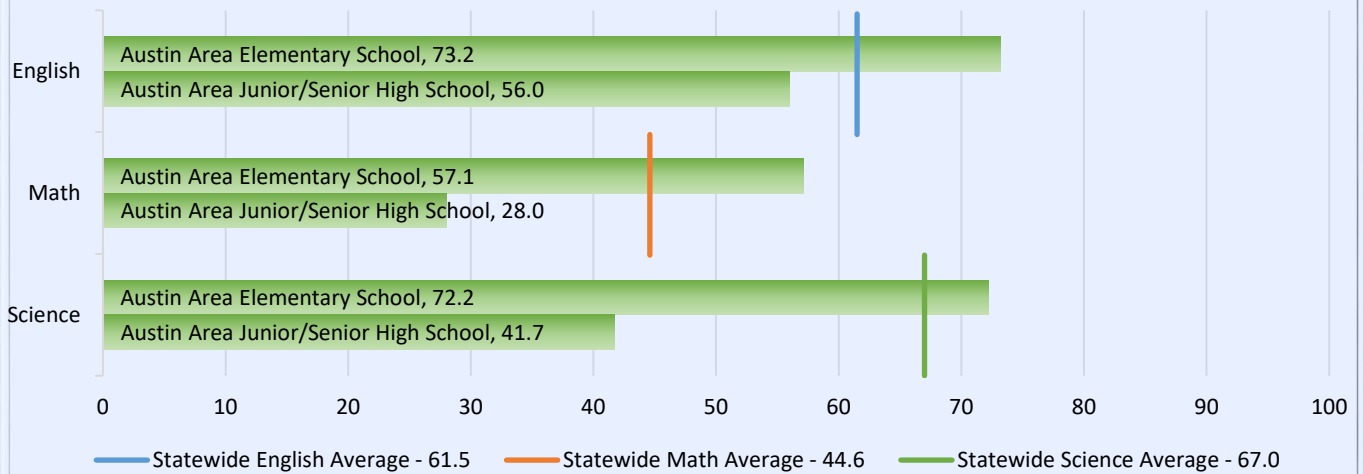


2016-17 Academic Data
School Scores Compared to Statewide Averages

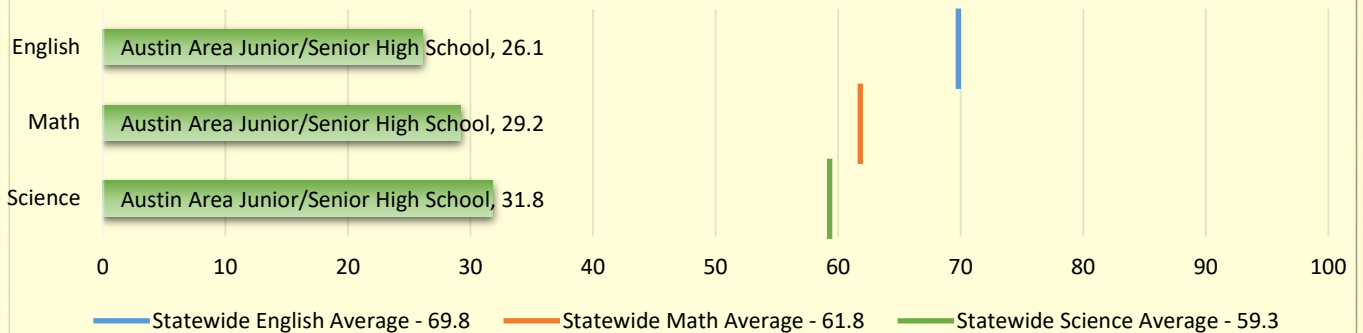
2016-17 SPP Scores



2016-17 PSSA % Advanced or Proficient

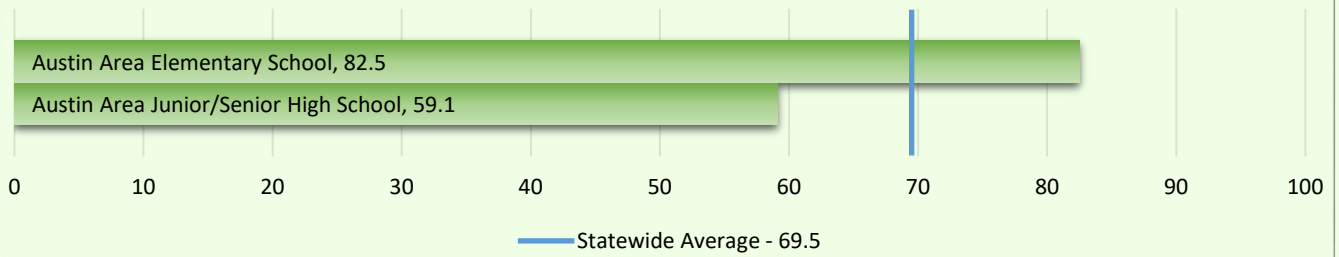


2016-17 Keystone % Advanced or Proficient

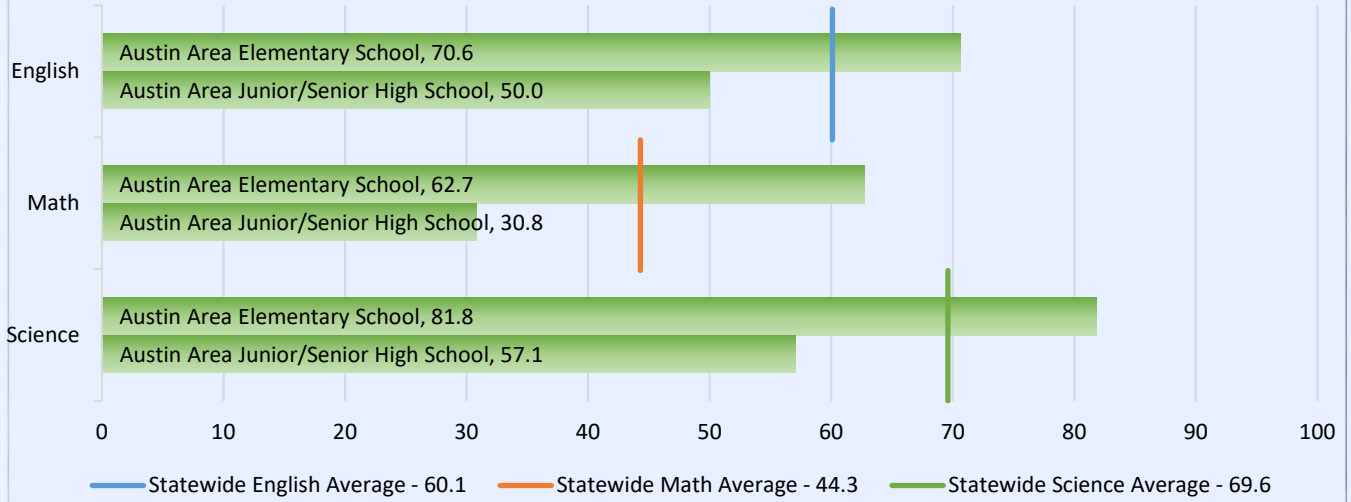


2015-16 Academic Data
School Scores Compared to Statewide Averages

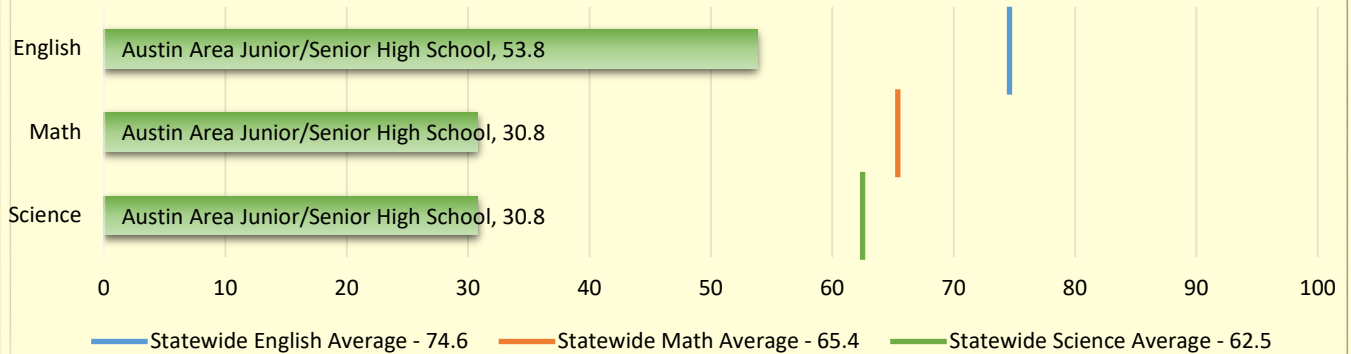
2015-16 SPP Scores



2015-16 PSSA % Advanced or Proficient



2015-16 Keystone % Advanced or Proficient



Distribution List

This report was initially distributed to the Superintendent of the District, the Board of School Directors, and the following stakeholders:

The Honorable Tom W. Wolf

Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

The Honorable Pedro A. Rivera

Secretary of Education
1010 Harristown Building #2
333 Market Street
Harrisburg, PA 17126

The Honorable Joe Torsella

State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Mrs. Danielle Mariano

Director
Bureau of Budget and Fiscal Management
Pennsylvania Department of Education
4th Floor, 333 Market Street
Harrisburg, PA 17126

Dr. David Wazeter

Research Manager
Pennsylvania State Education Association
400 North Third Street - Box 1724
Harrisburg, PA 17105

Mr. Nathan Mains

Executive Director
Pennsylvania School Boards Association
400 Bent Creek Boulevard
Mechanicsburg, PA 17050

This report is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: News@PaAuditor.gov.