



**EVERGREEN COMMUNITY CHARTER
SCHOOL**

**MONROE COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT**

MARCH 2013

COMMONWEALTH OF PENNSYLVANIA

EUGENE A. DEPASQUALE - AUDITOR GENERAL

DEPARTMENT OF THE AUDITOR GENERAL



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EUGENE A. DePASQUALE
AUDITOR GENERAL

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

Ms. Joanne Storer, Board President
Evergreen Community Charter School
P.O. Box 523
Mountainhome, Pennsylvania 18342

Dear Governor Corbett and Ms. Storer:

We conducted a performance audit of the Evergreen Community Charter School (Charter School) to determine its compliance with applicable state laws, contracts, grant requirements, and administrative procedures. Our audit covered the period July 1, 2006 through October 15, 2010, except as otherwise indicated in the report. Our audit was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit found significant noncompliance with state laws and administrative procedures, as detailed in the five audit findings within this report. A summary of these results is presented in the Executive Summary section of the audit report. These findings include recommendations aimed at the Charter School and a number of different government entities, including the Pennsylvania Department of Education, the State Ethics Commission, the Internal Revenue Service, 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 and its willingness to implement our recommendations.

Sincerely,

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

EUGENE A. DEPASQUALE
Auditor General

March 7, 2013

cc: **EVERGREEN COMMUNITY 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 Evergreen Community Charter School (Charter School). Our audit sought to answer certain questions regarding the Charter School's compliance with applicable state laws, contracts, grant requirements, and administrative procedures.

Our audit scope covered the period July 1, 2006 through October 15, 2010, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. Compliance specific to state subsidy and reimbursements was determined for school years 2008-09, 2007-08, and 2006-07, as they were the most recent reimbursements subject to audit. The audit evidence necessary to determine compliance specific to state subsidy and reimbursements is not available for audit until 16 months, or more, after the close of a school year.

Charter School Background

The Charter School, located in Monroe County, Pennsylvania, opened in April 2006. It was originally chartered on April 5, 2006, for a period of three years by the Pocono Mountain School District. The Charter School's mission states: "[The Charter School seeks] to prepare young people for meaningful life experiences with respect to career decisions, interpersonal relations, and community involvement." During the 2009-10 school year, the Charter School provided educational services to 74 pupils from five sending schools through the employment of 12 teachers, 1 full-time support personnel, and 1 administrator. The

Charter School received approximately \$132,882 in tuition payments from school districts required to pay for their students attending the Charter School in school year 2009-10.

Adequate Yearly Progress

The Charter School made Adequate Yearly Progress (AYP) for the 2009-10 school year by meeting all AYP measures.

AYP is a key measure of school performance established by the federal No Child Left Behind Act 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 must meet goals or targets in three areas: (1) Attendance (for schools that do not have a graduating class) or Graduation (for schools that have a high school graduating class), (2) Academic Performance, which is based on tested students' performance on the Pennsylvania System of School Assessment (PSSA), and (3) Test Participation, which is based on the number of students that participate in the PSSA. Schools are evaluated for test performance and test participation for all students in the tested grades (3-8 and 11) in the school. AYP measures determine whether a school is making sufficient annual progress towards the goal of 100 percent proficiency by 2014.

Audit Conclusion and Results

Our audit found that the Charter School complied, in all significant respects, with applicable state laws, contracts, grant requirements, and administrative procedures; however, as noted below, we identified five compliance-related matters reported as findings.

Finding No. 1: Evergreen Community Charter School Improperly Received \$20,360 in State Lease Reimbursement.

Our audit of the Charter School found that the Charter School improperly received \$20,360 in state lease reimbursements for the 2008-09, 2007-08, and 2006-07 school years for a building that was ineligible for those payments because it was owned by the Evergreen Community School, a related party to the Charter School (see page 10).

Finding No. 2: Certification Deficiencies and Failure to Comply with the 75 Percent Certified Staff Requirement of the Charter School Law.

Our audit of the professional employees' certification and assignments for the period July 1, 2006 through June 30, 2010, found the Charter School did not meet the 75 percent certification requirement for its professional staff, and its principal was not properly certified for the 2009-10, 2008-09, 2007-08, and 2006-07 school years (see page 13).

Finding No. 3: Possible Conflict of Interest Transactions.

Our audit of the Charter School's records, board of trustees' meeting minutes, and interviews with Charter School personnel found possible conflict of interest transactions. The Charter School's chief executive officer and board of trustees may have engaged in prohibited conduct (see page 17).

Finding No. 4: Evergreen Community Charter School Failed to File Their IRS Form 990 Return of Organization Exempt From Income Tax.

Our audit of the Charter School found that the Charter School failed to file their IRS Form 990 for the calendar years ending December 31, 2009, 2008, and 2007 (see page 20).

Finding No. 5: Lack of Documentation for Bus Driver Qualifications.

Our audit of the Charter School found that the Charter School failed to obtain and retain required documentation/clearances for two bus drivers (see page 22).

Status of Prior Audit Findings and

Observations. This was our first audit of the Charter School. Therefore, there are no prior findings or observations.

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 Charter School Law (Law), enacted through Act 22 of 1997, as amended. In the preamble of the Law, 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.¹ 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.²

The Law 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.³

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,⁴ and that board must hold at least one public hearing before approving or rejecting the application.⁵ If the local school board denies the application, the applicant can appeal the decision to the State Charter School Appeal Board,⁶ 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.⁷

¹ 24 P.S. § 17-1702-A.

² *Id.*

³ 24 P.S. § 17-1717-A (a).

⁴ *Id.* § 17-1717-A (c).

⁵ *Id.* § 17-1717-A (d).

⁶ *Id.* § 17-1717-A (f).

⁷ 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.⁸ 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.⁹

Act 88 of 2002 amended the Law 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.¹⁰ Unlike brick-and-mortar charter schools, cyber charter schools must submit their application to the Pennsylvania Department of Education (PDE), which determines whether the application for a charter should be granted or denied.¹¹ However, if PDE denies the application, the applicant can still appeal the decision to the State Charter School Appeal Board.¹² In addition, PDE is responsible for renewing and revoking the charters of cyber charter schools.¹³ 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.¹⁴

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 Charter School Law 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 Charter School Law, the sending school district must pay the charter/cyber charter school a per-pupil tuition rate based on its own budgeted costs, minus specified

⁸ 24 P.S. § 17-1720-A.

⁹ Pennsylvania Department of Education, Basic Education Circular, "Charter Schools," Issued 10/1/2004.

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

¹¹ 24 P.S. § 17-1745-A(d).

¹² *Id.* § 17-1745-A(f)(4).

¹³ 24 P.S. § 17-1741-A(a)(3).

¹⁴ 24 P.S. § 17-1750-A(e).

expenditures, for the prior school year.¹⁵ 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.¹⁶ The Charter School Law also requires that charter schools bill each sending school district on a monthly basis for students attending the charter school.¹⁷

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 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.¹⁸ 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.¹⁹

¹⁵ See 24 P.S. § 17-1725-A(a)(2).

¹⁶ See *Id.* § 17-1725-A(a)(3); 25-2509.5(k)

¹⁷ See 24 P.S. § 17-1725-A(a)(5).

¹⁸ See 24 P.S. § 25-2591.1. Please note that this provision is contained in the general funding provisions of the Public School Code and not in the Charter School Law.

¹⁹ Please note that the general funding provision referenced above (24 P.S. § 25-2591.1) has not been repealed from the Public School Code 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 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, and other concerned entities.

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

Our audit covered the period July 1, 2006 through October 15, 2010.

Regarding state subsidy and reimbursements, our audit covered school years 2008-09, 2007-08, and 2006-07 because the audit evidence necessary to determine compliance, including payment verification from the Commonwealth's Comptroller Operations and other supporting documentation from the Pennsylvania Department of Education (PDE), is not available for audit until 16 months, or more, after the close of a school year.

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 and defined business practices. Our audit focused on assessing the Charter School's compliance with applicable state laws, contracts, grant requirements, and administrative procedures. However, as we conducted our audit procedures, we sought to determine answers to the following questions, which serve as our audit objectives:

- ✓ Was the Charter School in overall compliance with the Public School Code of 1949²⁰ (PSC) and the Charter School Law (Law)?²¹
- ✓ Did the Charter School have policies and procedures regarding the requirements to maintain student health

²⁰ 24 P.S. § 1-101 *et seq.*

²¹ 24 P.S. § 17-1701-A *et seq.*

records and perform required health services, and keep accurate documentation supporting its annual health services report filed with the Department of Health to receive state reimbursement?

- ✓ Did the Charter School receive state reimbursement for its building lease under the Charter School Lease Reimbursement Program, was its lease agreement approved by its board of trustees, and did its lease process comply with the provisions of the Public Official and Employee Ethics Act?²²
- ✓ Did the Charter School comply with the open enrollment and lottery provisions of the Law?
- ✓ Does 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?
- ✓ Did the Charter School board of trustees and administrators, and the chartering school board members comply with the PSC, the Public Official and Employee Ethics Act, and the Sunshine Act?
- ✓ Were at least 75 percent of the Charter School's teachers properly certified and did all of its noncertified teachers meet the "highly qualified teacher" requirements?
- ✓ Did the Charter School require its noncertified professional employees to provide evidence that they are at least 18 years of age, a U.S. citizen, and certified by a licensed Pennsylvania physician to be neither mentally nor physically disqualified from successful performance of the duties of a professional employee of the Charter School?
- ✓ Did the Charter School accurately report its membership numbers to PDE and were its average daily membership and tuition billings accurate?

²² 65 Pa.C.S. § 1101 *et seq.*

- ✓ Did the Charter School comply with the Law’s compulsory attendance provisions and, if not, did the Charter School remove days in excess of ten consecutive unexcused absences from the Charter School’s reported membership totals pursuant to the regulations?²³
- ✓ Did the Charter School take appropriate steps to ensure school safety?
- ✓ Did the Charter School require that all of its employees enroll in the Public School Employees’ Retirement System at the time of filing its charter school application as required by the Law, unless the board of trustees had a retirement plan that covered the employees or the employees were already enrolled in another retirement program?
- ✓ Did the Charter School use an outside vendor to maintain its membership data, and if so, are internal controls in place related to vendor access?
- ✓ Were there any other areas of concern reported by local auditors, citizens, or other interested parties which warrant further attention during our audit?

Methodology

What are internal controls?

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

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

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

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

²³ 22 Pa. Code § 11.24.

Any significant deficiencies found during the audit 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 board of trustees' meeting minutes, pupil membership records, IRS 990 form, and reimbursement applications.
- Tuition receipts.

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

Findings and Observations

Finding No. 1

Relevant Public School Code provisions and criteria relevant to the finding:

Section 2574.3(a) of the Public School Code (PSC), 24 P.S. § 25-2574.3(a) states as follows:

“For leases of buildings or portions of buildings for charter school use which have been approved by the Secretary of Education on or after July 1, 2001, the Department of Education (DE) shall calculate an approved reimbursable annual rental charge.”

“Approved reimbursable annual rental for such approved leases of buildings or portions of buildings for charter school use shall be the lesser of (i) the annual rental payable under the provisions of the approved lease agreement, or (ii) the product of the enrollment, as determined by DE, times one hundred sixty dollars (\$160) for elementary schools, two hundred twenty dollars (\$220) for secondary schools, or two hundred seventy dollars (\$270) for area vocational-technical schools.”

“The Commonwealth shall pay, annually, for the school year 2001-2002 and each school year thereafter, to each charter school which leases, with the approval of DE, buildings or portions of buildings for charter school use under these provisions, an amount determined by multiplying the aid ratio of the charter school by the approved reimbursable annual rental.”

Evergreen Community Charter School Improperly Received \$20,360 in State Lease Reimbursement

Our audit found that the Evergreen Community Charter School (Charter School) improperly received a total of \$20,360 in state lease reimbursements for the 2008-09, 2007-08, and 2006-07 school years for a building that was ineligible for those payments because it was owned by a private school that was a related party to the Charter School. As such, the Charter School maintains ownership interest in the property, thereby making it ineligible to receive the state lease reimbursements.

The Charter School is located in a building that serves the Charter School’s students in grades 6 through 12. Under the Commonwealth’s Reimbursement for Charter School Lease Program, the Charter School applied for and received \$7,614, \$6,862, and \$5,884 for its building for school years ending June 30, 2009, 2008, and 2007. The Charter School applied for, but has not received, state lease reimbursements totaling \$7,427 for the 2009-10 school year.

Relationship Between the Charter School, the Charter School’s Foundation, and a Private School

From September 22, 1997 until the 2006-07 school year, a private school owned the same building that the Charter School is located in, when the Charter School was created and first provided educational services. In 2006, all funds and property, including the educational building, were transferred from the private school to a Foundation created on behalf of the Charter School. The Foundation was set up as a safeguard in case the Charter School failed, allowing the Charter School to revert back to a private school, if needed. The Foundation’s IRS Form 990, Return of Organization Exempt from Income Tax, notes that it is an organization created to provide economic support to the Charter School and that program service revenue primarily comes from rental income provided by the Charter School. On July 27, 2006, the Charter School board entered into a lease agreement with the Foundation for the building. The lease was effective July 1, 2006 through June 30, 2011.

Charter School Lease
Reimbursement Program Directives
from Bureau of Budget and Fiscal
Management, PDE, state, in part:

“Buildings owned by the charter
school are not eligible for
reimbursement under this program.
Payments related to the acquisition
of a building do not qualify for
reimbursement under the program.”

The Pennsylvania Department of Education’s (PDE) eligibility requirements require the Charter School’s chief executive officer (CEO) and board secretary to sign off on the reimbursement request to ensure the costs are correct. As noted in Finding No. 3 of this report, the Foundation is governed by a four-member board with the Charter School’s CEO acting as board of trustees’ president. In addition, two of the board of trustees members for the Foundation are employees of the Charter School. These actions violate PDE requirements and create potential conflicts of interest.

Under PDE’s eligibility requirements, which are based on Section 2574.3 of the PSC, buildings owned by a charter school do not qualify for compensation under the Reimbursement for Charter School Lease Program. Therefore, the Charter School has improperly received rental reimbursement for this building for the past three school years, totaling \$20,360. An additional \$7,427 was pending for the 2009-10 school year.

Recommendations

The *Evergreen Community Charter School* should:

1. End the practice of leasing its permanent education building to itself and cease applying for payment from the Reimbursement for Charter School Lease Program for the building.
2. Ensure that its solicitor and business manager review and approve the terms of all and any reimbursement prior to submitting an application.
3. Request its solicitor provide a detailed summary of all the Charter School’s legal requirements under the PSC and the Charter School Law.

The *Pennsylvania Department of Education* should:

4. Require the Charter School to pay back the \$20,360 owed to the Commonwealth for the improper reimbursement it received from the Reimbursement for Charter School Lease Program.

Management Response

Management stated the following:

Evergreen applied for State Lease Reimbursement at the suggestion from PDE Department members. If we did not qualify for this program we would have expected that our application would have been denied.

If we did not meet the requirements we will certainly return the reimbursement funds.

Finding No. 2

Charter School Law, Public School Code, and other criteria relevant to the finding:

Section 17-1724-A(a) of the CSL requires “. . . At least seventy-five per centum of the professional staff members of a charter school shall hold appropriate State certification.”

Section 17-1732-A(a) of the CSL, 24 P.S. § 17-1732-A(a), requires charter schools to comply with Section 1109 of the PSC, 24 P.S. § 11-1109, which provides in part:

“Every principal . . . who devotes one-half or more of his time to supervision and administration shall be properly certified by the Department of Public Instruction in accordance with such standards as the State Board of Education may establish.”

The Pennsylvania Certification Manual published by PDE provides guidance to public school entities, including charter schools, for complying with laws and regulations governing certification and staffing practices. CSPG No. 1 and CSPG No. 24 require the school entity to maintain a position description for all professional staff assignments for certification audit purposes.

Certification Deficiencies and Failure to Comply with the 75 Percent Certified Staff Requirement of the Charter School Law

Our audit of professional employees’ certification and assignments for the period July 1, 2006 through June 30, 2010, was performed to determine compliance with the Charter School Law (CSL), the Public School Code (PSC), and the Pennsylvania Department of Education’s (PDE) Certification and Staffing Policies and Guidelines (CSPG).

Our audit of the 2009-10, 2008-09, 2007-08, and 2006-07 school years found the following certification violations:

- The Evergreen Community Charter School (Charter School) did not meet the requirement under the CSL that at least 75 percent of its professional staff hold appropriate state certification;
- The Charter School’s director performed duties reserved in whole or in part to the existing state certification of a principal without proper certification; and
- The Charter School did not maintain a position description for a professional staff member’s assignment as required under PDE’s CSPGs No. 1 and No. 24.

Non-Compliance with Seventy-Five Percent Certification Requirement

The Charter School was in violation of the CSL’s requirement to have at least 75 percent of its professional staff appropriately certified in their area of administrative responsibility or subject area in which they teach. Instead, 72.73 percent of the Charter School’s professional staff had state certification for each year under the audit period. The Charter School employed 11 total professional employees with 3 individuals working with no certification for each year.

The Charter School’s failure to employ at least 75 percent certified professional staff and a certified school principal

could result in the Charter School's students not receiving the quality education to which they are entitled. In addition, non-compliance with the requirements of the CSL may force a chartering school district to revoke or not renew a charter because the Charter School has not fulfilled its obligations, such as providing the required percentage of certified teachers and employing a certified school principal.

Non-compliance with Principal Certification Requirement

Our audit found that the Charter School's director employed from July 1, 2006, to the current year was performing assignment duties, responsibilities, and functions reserved in whole or in part to a principal certification without holding a valid Pennsylvania principal's certificate as required. For example, this individual provided instructional leadership and administrative supervision to Charter School staff, including assessing the performance of certified teachers, without appropriate state certification as a principal in accordance with the standards required by the State Board of Education.

All public school principals must be certified pursuant to Section 1109 of the PSC, which is applicable to charter schools through Section 17-1732-A(a) of the CSL. Moreover, principals cannot be part of the 25 percent noncertified professional staff allowed at charter and cyber charter schools.

Administrative personnel did not have a thorough knowledge of PDE's certification requirements or Section 1109 of the PSC.

Certification Determination from PDE

Information pertaining to the certification deficiencies was submitted to PDE's Bureau of School Leadership and Teacher Quality (BSLTQ) for review. On May 17, 2011, the BSLTQ determined that the principal was employed by the Charter School for the 2006-07, 2007-08, 2008-09, 2009-10, and 2010-11 school years without the proper principal certificate or emergency permit.

Unlike traditional school districts, charter schools are not subject to subsidy forfeitures for certification deficiencies.

As such, the BSLTQ issued citations for these deficiencies, but no monetary penalties were imposed upon the Charter School.

Lack of Position Description

Additionally, the Charter School failed to maintain a copy of a professional staff member's position description (i.e. job description) in personnel files as required by PDE's CSPGs, which contain all certification requirements in Pennsylvania. CSPGs No. 1 and No. 24 require school entities to maintain a position description for each professional assignment listing specific duties to be performed/fulfilled so appropriate certification requirements for an assignment can be determined.

A position description is a necessary aid in determining whether an individual is properly certified to perform an assignment and is utilized in certification audits. The absence of a position description for a staff member's assignment impedes upon certification review and verification that an individual is properly qualified and certified to perform the assignment.

Recommendations

The *Evergreen Community Charter School* should ensure that:

1. At least 75 percent of its professional employees are properly certified for their assigned positions, for the entire school year, in compliance with the CSL.
2. The Charter School's Director obtains proper certification to perform the duties reserved to a principal's certification or cease from performing those duties.
3. Principal related duties are assigned to a staff member holding appropriate state certification in accordance with standards of the State Board of Education.
4. Administrative personnel are provided with sufficient training in order to understand and manage certification requirements as defined by the CSL, PSC, and PDE's CSPGs.

As the authorizing school district, the *Pocono Mountain School District* should:

5. Follow up with the Charter School to ensure professional employees are properly certified for their assigned positions, including the principal.
6. Ensure that the Charter School is meeting the CSL's requirement to employ at least 75 percent certified staff.
7. Review the Charter School's charter and determine whether the Charter School is violating certification terms of its approved charter with the District.

Management Response

Management stated the following:

Our certification percentage currently falls below 75 percent (72.7) because we have hired an art teacher who is certified in Texas and is working on completing the paperwork for PA certification. 100 percent of the staff at Evergreen is considered Highly Qualified and includes a college professor (PhD.) who is qualified to teach biology, physics, and mathematics at the college level. One of our HQ teachers who have come from industry is currently exploring the intern certification program through Pennsylvania.

Evergreen does not employ a Principal. Discipline is handled through a staff/team approach and is overseen by the Director and Board of Trustees. Teacher evaluations are conducted by the mentor teachers and submitted to the Director and Board of Trustees. If deemed necessary the Director will complete the PRAXIS requirements for Educational Leadership: Admin/Supervision.

Auditor Conclusion

As stated in the body of the finding, the Charter School was in violation of Sections 17-1724-A(a) and 1732-A(a) of the CSL, Section 1109 of the PSC, and PDE's CSPGs No. 1 and No. 24. Moreover, PDE's BSLTQ confirmed the certification deficiencies noted. As such, the finding will remain as written. Any further disagreement on the part of the Charter School must be addressed to PDE's (BSLTQ).

Finding No. 3

Relevant statutory provisions and criteria relevant to the finding:

Section 1716-A(a) of the Charter School Law (CSL), 24 P.S. 17-1716-A(a), requires the board of a charter school to exercise control over budgeting and operating procedures.

Section 1102 of the Public Official and Employee Ethics Act (Ethics Act), 65 Pa.C.S. 1102, defines “conflict” or “conflict of interest” as use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated.

Section 1103(a) of the Ethics Act, 65 Pa.C.S. 1103(a), states that no public official shall engage in conduct that constitutes a conflict of interest.

Section 1103(f) of the Ethics Act, 65 Pa.C.S. 1103(f), states that no public official or public employee or his spouse or child of any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract.

Possible Conflict of Interest Transactions

Our audit of the Evergreen Community Charter School’s (Charter School) records, board of trustees’ meeting minutes, and interviews with Charter School personnel found possible conflict of interest transactions. The Charter School’s chief executive officer (CEO) and board of trustees may have engaged in prohibited conduct.

The following possible conflicts of interest will be forwarded to the State Ethics Commission for additional review and investigation, as it deems necessary.

Lease Agreement

As noted in Finding No. 1 of this report, the Charter School is located in a building that serves students in grades 6 through 12.

A private school, Evergreen Community School (ECS), operated in the building until the Charter School opened in the 2006-07 school year. When the Charter School opened, all its funds and property, including its building, were placed in the name of the Charter School’s Foundation. This approach was taken so that if the Charter School failed, it would revert back to a private school. In fact, the Foundation’s Internal Revenue Service (IRS) Form 990, Return of Organization Exempt from Income Tax notes that the Foundation is an organization maintained to provide economic support to the Charter School and that program service revenue primarily comes from rental income provided by the Charter School.

According to the Charter School deed, the Charter School has owned the building since March 30, 1998. On July 27, 2006, the Charter School board entered into a lease agreement with the Foundation for the educational building it already owned. The lease was effective July 1, 2006 through June 30, 2011.

The Foundation is governed by a four-member board with the Charter School’s CEO acting as board president. Two of the remaining board members for the Foundation are employees of the Charter School. These actions create a conflict of interest.

Any contract or subcontract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.

Section 1104 (a) of the Ethics Act, 65 Pa.C.S. 1104(a), provides that each public official/public employee must file a Statement of Financial Interests for the preceding calendar year, each year that he holds the position and the year after he leaves it.

Section 1716-A requires the board of a charter school to exercise control over budgeting and operating procedures.

Board Member Employed by the Charter School

Our audit of the board of trustees' meeting minutes from July 23, 2009 through April 22, 2010, found that a board of trustees' member abstained from voting on all financial motions. Upon further review, we found this board of trustees' member was appointed as the Charter School's accountant effective July 2009. The board of trustees' member was provided monthly payments of \$500 for services rendered.

Furthermore, as addressed in Finding No. 4 of this report, the Charter School failed to submit IRS Form 990 for the 2007, 2008, and 2009 calendar years. According to a letter dated September 14, 2010, from the Charter School's accountant, the Charter School was not required to file these forms as a government entity. For a charter school to establish exemption under Internal Revenue Code (IRC) 501(c)(3), whether it purchases some or all of the services required to operate, it must establish that it is organized and operated for the benefit of the public and not for the benefit of any private person, such as a service provider (i.e. management company). This resource may provide additional information about board members, salaries, contracts, and expenditures that can be used to identify if undisclosed related party transactions and/or conflicts of interests may have occurred.

Recommendations

The *Evergreen Community Charter School* board of trustees should:

1. Strengthen controls to help ensure compliance with state laws regarding board of trustees' conducting business with the Charter School and public disclosure of contracts awarded.

Management Response

Management stated the following:

Evergreen Community Charter School enrolled in the State Lease Reimbursement program at the advice of individuals from PA Department of Education. The office of Bureau of Budget and Fiscal Management has reviewed the documentation and approved the School's application for partial lease reimbursement every year (2006-2010).

[One individual who] serves on the Board of the Charter School and prepares all of the financial statements for the Board members and budgeting files. Her office [is incorporated as a CPA firm and] is paid \$500 per month to handle our tax and auditing preparation. [She] abstains from any and all votes regarding budget. Her expertise is invaluable to the Board.

Auditor Conclusion

As stated in the body of this finding, there are a multitude of potential conflicts of interest, including for example, that two of the four board members of the Foundation are employees of the Charter School and a board member was appointed by the board of trustees as a highly paid Charter School employee. Therefore, this finding will stand as presented and will be forwarded to the State Ethics Commission for additional review and investigation, as it deems necessary.

Finding No. 4

Evergreen Community Charter School Failed to File Their IRS Form 990 Return of Organization Exempt From Income Tax

Public School Code and criteria relevant to the finding:

Section 17-1720-A, 24 P.S. 17-1720-A, states, in part:

A charter will be granted only for a school organized as a public, nonprofit corporation.

Charter School filing requirements of July 1, 2003, state:

Charter schools must file IRS Form 990, "Return of Organization Exempt from Income Tax," or IRS Form 990EZ, "Short Form Return of Organization Exempt from Income Tax" because they are required to be incorporated as a non-profit entity.

Our audit of the Evergreen Community Charter School's (Charter School) records found that the Charter School failed to file their Return of Organization Exempt from Income Tax, Internal Revenue Service (IRS) Form 990, for calendar years ending December 31, 2009, 2008, and 2007.

The Charter School Law (CSL) requires charters schools to incorporate as a nonprofit corporation. Filing requirements for incorporation require the Charter School to file its Articles of Incorporation and a Docketing Statement with the Pennsylvania Department of State, Corporations Bureau.

For a charter school to establish exemption under Section 501(c)(3) of the Internal Revenue Code (IRC), whether it purchases some or all of the services required to operate, it must establish that it is organized and operated for the benefit of the public and not for the benefit of any private person, such as a service provider (i.e. management company). The Charter School did apply for and receive tax-exempt status from the IRS.

Non-profits with annual gross receipts less than \$25,000 may be exempt from this filing requirement, but this exception is rare. The Charter School received total revenue of \$1,189,390 for the school year ending June 30, 2009.

IRS Form 990 is a public document open to inspection and may provide additional information about board members, salaries, contracts, and expenditures that can be used to identify if undisclosed related party transactions and/or conflicts of interests may have occurred.

According to the Charter School's personnel, the Charter School was not required to file an IRS Form 990 because it was a government entity. Ordinarily, charter schools are not treated as governmental units or affiliates of governmental units because they are not "operated, supervised, or controlled by" a governmental unit. Most charter schools operate under a contract with the governmental unit, and the governmental unit does not elect or appoint the Charter School's board of directors.

Recommendations

The *Evergreen Community Charter School* should:

1. File IRS Form 990s 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 the CSL and the IRC.

The *Pennsylvania Department of Education* should:

3. Improve its monitoring and oversight of charter schools.

Management Response

Management stated the following:

Evergreen Community Charter School has relied on information from the IRS and is requesting written determination regarding this matter.

Auditor Conclusion

Although the Charter School stated that it's exempt from the filing requirement as a "governmental unit", Charter School Filing Requirements specifically state that charter schools must file IRS Form 990. The CSL requires Pennsylvania charter schools to organize as a public **nonprofit corporation** before a charter may be granted by a local school district or the Pennsylvania Department of Education in the case of cyber charter schools. Although charter schools are public schools, this incorporation status provides a distinct difference between charter schools and local school districts in Pennsylvania. Charter schools must be formed as nonprofits, whereas local school districts are formed as corporate bodies (24 P.S. § 2-211) that are considered "governmental entities" and further defined as "political subdivisions" (1 Pa.C.S. § 1991). Since the Charter School is not "operated, supervised, or controlled by the district" and consistent with the CSL's definition of a charter school as "an independent public school," the Charter School is not a governmental unit or an affiliate of a governmental unit under state law. Therefore, the Charter School does not qualify for exception from filing an IRS Form 990 as a governmental entity as indicated by management. This finding will be forwarded to the IRS for further review and determination.

Finding No. 5

Lack of Documentation for Bus Driver Qualifications

Criteria relevant to the finding:

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

Additionally, Section 111(7)(b) provides, in part:

“Administrators shall maintain a copy of the required information and shall require each applicant to produce the original document prior to employment.”

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

Chapter 23 of the State Board of Education Regulations indicates 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.

Our audit of the Evergreen Community Charter School (Charter School) found that the Charter School failed to obtain and retain the required documentation/clearances for two bus drivers.

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

We reviewed the following six requirements:

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

The first three requirements were set by the regulations issued by the Pennsylvania Department of Transportation. As explained in the criteria box, the fourth and fifth requirements were set by the PSC, and the sixth requirement was set by the CPSL.

We reviewed the records of the two bus drivers currently employed by the Charter School. Our review found both drivers did not have the proper child abuse clearance required by the PSC. The Charter School stated it was unaware of the requirements.

By not having required bus drivers’ qualification documents on file at the Charter School, the Charter School’s personnel were not able to review the documents to determine whether all drivers were qualified to transport students. If unqualified drivers transport students, there is an increased risk to the safety and welfare of students.

Prior to completing fieldwork, the Charter School did obtain the required documentation.

Recommendations

The *Evergreen Community Charter School's* board of trustees and administrators should:

1. Ensure that the Charter School's transportation coordinator reviews each bus driver's qualifications prior to that person transporting students.
2. Maintain files for all bus drivers and ensure that the Charter School's files are up-to-date and complete.

Management Response

Situation has been addressed. The proper documents are now on file.

Status of Prior Audit Findings and Observations

This was our first audit of the Evergreen Community Charter School. Therefore, there are no prior audit findings or observations.

Distribution List

This report was initially distributed to the chief executive officer of the Charter School, the board of trustees, our website address at www.auditorgen.state.pa.us, and the following:

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