

# PERFORMANCE AUDIT

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## Lincoln Park Performing Arts Charter School Beaver County, Pennsylvania

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September 2016



Commonwealth of Pennsylvania  
Department of the Auditor General

Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE  
AUDITOR GENERAL

Mr. Patrick K. Poling, CEO  
Lincoln Park Performing Arts  
Charter School  
One Lincoln Park  
Midland, Pennsylvania 15059

Mr. Phil Orend, Board President  
Lincoln Park Performing Arts  
Charter School  
One Lincoln Park  
Midland, Pennsylvania 15059

Dear Mr. Poling and Mr. Orend:

We conducted a performance audit of the Lincoln Park Performing Arts Charter School (Charter School) to determine its compliance with certain relevant state laws, regulations, contracts, and administrative procedures (relevant requirements). Our audit covered the period July 1, 2011 through June 30, 2014, except as otherwise indicated in the report. Additionally, compliance specific to state subsidies and reimbursements was determined for the school years ended June 30, 2012 through June 30, 2014. Our audit was conducted pursuant to Section 403 of The Fiscal Code, 72 P.S. § 403, and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit found that the Charter School complied, in all significant respects, with relevant requirements, except as detailed in two findings noted in this report. A summary of the results is presented in the Executive Summary section of the audit report.

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

Sincerely,

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

Eugene A. DePasquale  
Auditor General

September 21, 2016

cc: **LINCOLN PARK PERFORMING ARTS CHARTER SCHOOL** Board of Trustees

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## **Executive Summary**

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### **Audit Work**

The Pennsylvania Department of the Auditor General conducted a performance audit of the Charter School. Our audit sought to answer certain questions regarding the Charter School's compliance with certain relevant state laws, regulations, contracts, and administrative procedures.

Our audit scope covered the period July 1, 2011 through June 30, 2014, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. Compliance specific to state subsidies and reimbursements was determined for the 2011-12, 2012-13, and 2013-14 school years.

### **Charter School Background**

The Charter School, located in Beaver County, Pennsylvania, opened in September 2005. It was originally chartered on February 14, 2005, for a period of five years by the Midland Borough School District. The Charter School's mission states: "The mission of the Lincoln Park Performing Arts Charter School is to enhance and improve the quality of life of all of its students and their families through experiences and education in the arts." During the 2013-14 school year, the Charter School provided educational services to 683 students from 80 sending school districts through the employment of 28 teachers, 7 full-time and part-time support personnel, and 3 administrators. The Charter School received \$6,456,337 in tuition payments from school districts required to pay for their students attending the Charter School in the 2013-14 school year.

### **Academic Performance**

The Charter School's academic performance as measured by its School Performance Profile (SPP) score was a 76 percent in the 2012-13 school year. SPP is the Pennsylvania Department of Education's (PDE) current method of providing a quantitative, academic score based upon a 100-point scale for all public schools. A score of 76 would be considered a "C (70-79)" if using a letter grade system. Weighted data factors included in the SPP score are indicators of academic achievement, indicators of closing the achievement gap, indicators of academic growth, and other academic indicators such as attendance and graduation rates.

Previously, the Charter School made Adequate Yearly Progress (AYP) for the 2011-12 school year. AYP was a key measure of school performance established by the federal No Child Left Behind Act (NCLB) of 2001 requiring that all students reach proficiency in Reading and Math by 2014. For a school to meet AYP measures, students in the school needed to meet goals or targets in three areas: (1) Attendance (for schools that did not have a graduating class) or Graduation (for schools that had a high school graduating class), (2) Academic Performance, which was based on tested students' performance on the Pennsylvania System of School Assessment (PSSA), and (3) Test Participation, which was based on the number of students that participated in the PSSA. Schools were evaluated for test performance and test participation for all students in the tested grades (3-8 and 11) in the school. AYP measures determined whether a school was making sufficient annual progress towards statewide

proficiency goals. On August 20, 2013, Pennsylvania was granted a waiver from the NCLB's requirement of achieving 100 percent proficiency in Reading and Math by 2014, so AYP measures were discontinued beginning with the 2012-13 school year.<sup>1</sup>

### **Audit Conclusion and Results**

Our audit found that the Charter School complied, in all significant respects, with certain relevant state laws, regulations, contracts, and administrative procedures, except for two compliance related matters reported as findings.

#### **Finding No. 1: The Charter School and Its Board of Trustees Failed to Properly Procure and Oversee the Management Services and Curriculum Leases with a Related Vendor.**

(See page 12). The Charter School engaged the services of a related company that provided management services and curriculum leases totaling more than \$2.9 million in the four years ending June 30, 2015.

We found that the Charter School did not solicit bids for either of these services at any time during the audit period or prior. The

Charter School failed to implement best practices in its use of public funds because it executed poor agreements with its revenue-based fee structure, vague enumeration of services, automatic renewal clauses, and no vendor accountability requirements.

#### **Finding No. 2: The Charter School Failed to Ensure School Bus Drivers Met All Employment Requirements.**

(See page 18). The Charter School failed to meet the requirements related to the employment of bus drivers having direct contact with students. Specifically, we found that the Charter School did not obtain, review, and maintain documentation to support that each bus driver was qualified and suitable to transport students during the 2014-15 school year. We also found that the Charter School's Board of Trustees (Board) failed to approve these bus drivers as required by State Board of Education Regulations.

#### **Status of Prior Audit Findings and Observations.**

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

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

## Background Information on Pennsylvania Charter Schools

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### *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 National Alliance for Public Charter Schools, Pennsylvania had the 6<sup>th</sup> highest charter school student enrollment, and the 10<sup>th</sup> largest number of operating charter schools, in the United States for the 2015-16 school year.

Source: *A Closer Look at Charter School Movement: Schools, Students, and Management Organizations, 2015-16*. National Alliance for Public Charter Schools. February, 2016.

### **Pennsylvania Charter School Law**

Pennsylvania's charter schools were established by the Charter School Law (CSL), enacted through Act 22 of 1997, as amended. In the preamble of the CSL, the General Assembly stated its intent to provide teachers, parents, students, and community members with the opportunity to establish schools that were independent of the existing school district structure.<sup>2</sup> 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.<sup>3</sup>

The CSL permits the establishment of charter schools by a variety of persons and entities, including, among others, an individual; a parent or guardian of a student who will attend the school; any nonsectarian corporation not-for-profit; and any nonsectarian college, university or museum.<sup>4</sup>

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,<sup>5</sup> and that board must hold at least one public hearing before approving or rejecting the application.<sup>6</sup> If the local school board denies the application, the applicant can appeal the decision to the State Charter School Appeal Board,<sup>7</sup> 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.<sup>8</sup>

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<sup>2</sup> 24 P.S. § 17-1702-A.

<sup>3</sup> *Id.*

<sup>4</sup> 24 P.S. § 17-1717-A(a).

<sup>5</sup> *Id.* § 17-1717-A(c).

<sup>6</sup> *Id.* § 17-1717-A(d).

<sup>7</sup> *Id.* § 17-1717-A(f).

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

Act 88 of 2002 amended the CSL to distinguish cyber charter schools, which conduct a significant portion of their curriculum and instruction through the Internet or other electronic means, from brick-and-mortar charter schools that operate in buildings similar to school districts.<sup>11</sup> Unlike brick-and-mortar charter schools, cyber charter schools must submit their application to the PDE, which determines whether the application for a charter should be granted or denied.<sup>12</sup> However, if PDE denies the application, the applicant can still appeal the decision to the State Charter School Appeal Board.<sup>13</sup> In addition, PDE is responsible for renewing and revoking the charters of cyber charter schools.<sup>14</sup> 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.<sup>15</sup>

*Funding of Pennsylvania Charter Schools:*

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

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

### **Pennsylvania Charter School Funding**

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

<sup>9</sup> 24 P.S. § 17-1720-A.

<sup>10</sup> PDE, Basic Education Circular, "Charter Schools," Issued 10/1/2004.

<sup>11</sup> 24 P.S. §§ 17-1703-A, 17-1741-A *et seq.*

<sup>12</sup> 24 P.S. § 17-1745-A(d).

<sup>13</sup> *Id.* § 17-1745-A(f)(4).

<sup>14</sup> 24 P.S. § 17-1741-A(a)(3).

<sup>15</sup> 24 P.S. § 17-1750-A(e).

for the prior school year.<sup>16</sup> 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.<sup>17</sup> The CSL also requires that charter schools bill each sending school district on a monthly basis for students attending the Charter School.<sup>18</sup>

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 (PSC), as amended, the Commonwealth also paid a reimbursement to each sending school district with students attending a charter school that amounted to a mandatory percentage rate of total charter school costs.<sup>19</sup> Commonwealth reimbursements for charter school costs were funded through an education appropriation in the state's annual budget. These reimbursements were eliminated for the 2011-12 fiscal year and subsequent fiscal years.<sup>20</sup>

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<sup>16</sup> See 24 P.S. § 17-1725-A(a)(2).

<sup>17</sup> See *Id.* §§ 17-1725-A(a)(3); 25-2509.5(k).

<sup>18</sup> See 24 P.S. § 17-1725-A(a)(5).

<sup>19</sup> See 24 P.S. § 25-2591.1. Please note that this provision is contained in the general funding provisions of the PSC and not in the CSL.

<sup>20</sup> Please note that the general funding provision referenced above (24 P.S. § 25-2591.1) has not been repealed from the PSC and states the following: "For the fiscal year 2003-2004 and each fiscal year thereafter, if insufficient funds are appropriated to make Commonwealth payments pursuant to this section, such payments shall be made on a pro rata basis." Therefore, it appears that state funding could be restored in future years.

## Audit Scope, Objectives, and Methodology

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### Scope

*What is a school performance audit?*

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

### Objectives

Our audit, conducted under the authority of Section 403 of The Fiscal Code, 72 P.S. § 403, is not a substitute for the local annual audit required by the PSC, 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, 2011 through June 30, 2014. In addition, the scope of each individual audit objective is detailed below.

Regarding state subsidies and reimbursements, our audit covered the 2011-12, 2012-13, and 2013-14 school years.

For the purposes of our audit work and to be consistent with PDE reporting guidelines, we use the term *school year* rather than fiscal year throughout this report. A school year covers the period July 1 to June 30.

Performance audits draw conclusions based on an evaluation of sufficient, appropriate evidence. Evidence is measured against criteria, such as laws, regulations, third-party studies and best business practices. Our audit focused on assessing the Charter School's compliance with certain relevant state laws, regulations, contracts, and administrative procedures. However, as we conducted our audit procedures, we sought to determine answers to the following questions, which serve as our audit objectives:

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

To address this objective:

- The auditors reviewed the approved charter and any amendments for approved application requirements.
- In addition, the auditors reviewed board policies and procedures, certain vendor contracts for the 2013-14 school year, IRS 990 forms for the 2011-12, 2012-13, and 2013-14 fiscal years, and

charter school annual reports for the 2011-12, 2012-13, and 2013-14 school years.

- ✓ Did the Charter School receive state reimbursement for its building lease under the Charter School Lease Reimbursement Program administered by PDE, was its lease agreement approved by its Board, and did its lease process comply with the provisions of the Public Official and Employee Ethics Act (Ethics Act)?<sup>21</sup>
  - To address this objective, the auditors reviewed building ownership documentation, the lease agreement(s), lease payments, and the Charter School's lease documentation filed with PDE to obtain state reimbursement for the 2012-13 and 2013-14 school years.
  
- ✓ Were the Charter School's Board and administrators free from apparent conflicts of interest and in compliance with the CSL, the PSC, the Ethics Act, and the Sunshine Act?
  - To address this objective, the auditors reviewed Statements of Financial Interest for all board members and administrators for the 2012 and 2013 calendar years, board meeting minutes, management company contract(s), and any known outside relationships with the Charter School and/or its authorizing school district for the period 2011-12 through 2013-14 school years.
  
- ✓ Were at least 75 percent of the Charter School's teachers properly certified pursuant to Section 1724-A of the CSL, and did all of its noncertified teachers in core content subjects meet the "highly qualified teacher" requirements under the federal NCLB of 2001?
  - To address this objective, the auditors reviewed and evaluated certification documentation and teacher course schedules for all 44 teachers and administrators for the period July 1, 2014 through December 2, 2014.

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<sup>21</sup> 65 Pa.C.S. § 1101 *et seq.*

- ✓ Did the Charter School require its non-certified professional employees to provide evidence that they are at least 18 years of age and a U.S. citizen pursuant to Section 1724-A(b) of the CSL and that they have a pre-employment medical examination certificate pursuant to Section 1418(a) of the PSC?

- To address this objective, the auditors reviewed personnel files and supporting documentation for all eight non-certified professional employees for the period July 1, 2014 through December 2, 2014.

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

To address this objective:

- The auditors used a random number generator to select 8 of the 80 (10%) sending school districts to review charter school tuition rates and tuition billings for the 2013-14 school year.
- In addition, the auditors reviewed the Charter School's membership reports, instructional time summaries, entry/withdrawal procedures, and supporting documentation for the 2013-14 school year.

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

To address this objective:

- For the 2013-14 school year, the auditors randomly selected 5 out of 681 total registered students from the vendor software listing and verified that each child was appropriately registered with the Charter School.

- In addition, the auditors reviewed the Charter School's only school term reported on the Summary of Child Accounting and verified the school days reported on the Instructional Time Membership Report and matched them to the School Calendar Fact Template.
- Also, the auditors tested 2 out of 12 students that had more than ten consecutive days of unexcused absences to verify that students are in fact removed from rolls or that the Charter School is actively pursuing removing students from the rolls.
- ✓ Did the Charter School provide its employees with a retirement plan, such as the Public School Employees' Retirement System (PSERS), as required by Section 1724-A(c) of the CSL, and were employees enrolled in PSERS eligible to receive plan benefits?
  - To address this objective, the auditors reviewed board meeting minutes, personnel listings, payroll reports, and PSERS wage reports for all employees for the 2014-15 school year.
- ✓ Did the Charter School take appropriate steps to ensure school safety?

To address this objective:

- The auditors reviewed a variety of documentation including safety plans, training schedules, anti-bullying policies, and after action reports to assess whether the Charter School is in compliance with relevant safe schools requirements in the PSC<sup>22</sup> and with best practices for ensuring school safety.
- In addition, the auditors conducted an on-site review of the Charter School's building to assess whether it had implemented basic physical safety practices based on national best practices.

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<sup>22</sup> 24 P.S. § 13-1301-A *et seq.*

- ✓ Did the Charter School ensure that bus drivers transporting Charter School children at the time of the audit have the necessary license, physicals, training, background checks, and clearances?
  - To address this objective, we reviewed personnel files for all 11 bus drivers hired by the Charter School’s contractor from July 1, 2014 through June 30, 2015, and reviewed documentation to ensure the Charter School complied with bus driver’s requirements. We also determined if the Charter School had written policies and procedures governing the hiring of bus drivers and if those procedures were sufficient to ensure compliance with bus driver hiring requirements.
  
- ✓ Did the Charter School 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 current employment contract(s) contain adequate termination provisions?
  - To address this objective, the auditors reviewed the contract, settlement agreement, board meeting minutes, and payroll records for the one administrator who separated from employment with the Charter School during the 2012-13 school year.

## Methodology

*What are internal controls?*

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

- Effectiveness and efficiency of operations.
- Relevance and reliability of operational and financial information.
- Compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures.

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

The Charter School’s management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Charter School is in compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures (relevant requirements). In conducting our audit, we obtained an understanding of the Charter School’s internal controls, including any information technology controls, as they relate to the Charter School’s

compliance with relevant requirements that we consider to be significant within the context of our audit objectives. We assessed whether those controls were properly designed and implemented. Any deficiencies in internal controls that were identified during the conduct of our audit and determined to be significant within the context of our audit objectives are included in this report.

Our audit examined the following:

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

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

## Findings and Observations

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### Finding No. 1

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### The Charter School and Its Board of Trustees Failed to Properly Procure and Oversee the Management Services and Curriculum Leases with a Related Vendor

*Criteria relevant to the finding:*

Subsection (a) of Section 1716-A (relating to Powers of the Board of Trustees) of the CSL, 24 P.S. § 1716-A(a), states: “The board of trustees shall have the authority to decide matters related to the operation of the school, including, but not limited to, budgeting, curriculum and operating procedures, subject to the school’s charter. The board shall have the authority to employ, discharge and contract with necessary professional and nonprofessional employee’s subject to the school’s charter and the provisions of this article.”

Best practices for publicly-funded organizations commonly recommend competitive selection procedures for procurement of professional services. *See* among other best practices, the IBM Center for the Business of Government. “Effectively Managing Professional Services Contracts: 12 Best Practices.” 2006.

Section 1715-A(11) of the CSL, 24 P.S. § 1715-A (11), states:

“Trustees of a charter school shall be public officials.”

The Charter School engaged the services of a related company (Management Company) that provided management services and curriculum leases totaling nearly \$3.3 million during a four year period ending June 30, 2015. Both the Charter School and the Management Company were founded by the same person (Founder).<sup>23</sup> In addition, a former trustee of the Charter School was the son of the warehouse manager at the Management Company.<sup>24</sup> As a result of these relationships, the Charter School should have utilized an open and public process when it obtained management services and curriculum leases.

We found the Charter School did not utilize an open and public process for either of these services at any time during the audit period or prior. As a result, the Charter School may have been in noncompliance with the Ethics Act. Furthermore, the Charter School failed to implement best practices in its use of taxpayer funds because it executed poor agreements with the Management Company because of weak terms such as 1) a revenue-based fee structure; 2) vague enumeration of services; 3) automatic renewal clauses; and 4) no vendor accountability requirements.

The ongoing failure of the Charter School and its Board to require accountability of the Management Company puts the Charter School at risk of:

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<sup>23</sup> *United States of America v. Nicholas Trombetta et al.* Criminal No. 13-227 (18 U.S.C. §§ 2, 371, 666(a)(1)(B), 1340; 26 U.S.C. §7206(1)). Filed 08-21-13. Clerk U.S. District Court Western Dist. of Pennsylvania. Various news stories also mention this relationship.

<sup>24</sup> The “son” was a trustee of Lincoln Park Performing Arts Charter School until February 2012. The “father” was a warehouse manager at the Management Company for several years, including all years in the audit period from fiscal year 2011-12 until his death in September 2014. His September 18, 2014 obituary in the *Beaver County Times* (*timesonline.com*) also mentions him as a former board member of the Lincoln Park Performing Arts Center.

*Criteria relevant to the finding (continued):*

Section 1715-A(12) of the CSL, 24 P.S. § 1715-A(12), states, in part:

“A person who serves as an administrator for a charter school shall be a public official under 65 Pa.C.S. Ch. 11 (relating to ethics standards and financial disclosure). A violation of this clause shall constitute a violation of 65 Pa.C.S. § 1103(a) (relating to restricted activities), and the violator shall be subject to the penalties imposed under the jurisdiction of the State Ethics Commission.”

Section 1102 of the Ethics Act, 65 Pa.C.S. § 1102, defines the terms *business with which he is associated*, *conflicts of interest*, and *immediate family*.

*Business with which he is associated* is defined as “any business in which the person or a member of the person’s immediate family is a director, officer, owner, and employee or has a financial interest.”

A *conflict of interest* is defined, in part, 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 family is associated.”

- Paying more for services than it needed to
- Paying for lower quality services
- Paying for services that it did not receive

The following chart highlights the Charter School’s payments to the Management Company during the four years through 2014-15:

LINCOLN PARK PERFORMING ARTS CS PAYMENTS TO MANAGEMENT COMPANY				
Fiscal Year	Management Services	Curriculum Leases	Other Costs	Total
2011-12	\$671,165	\$100,000	\$48,773	\$819,938
2012-13	\$709,090	\$100,000	\$4,049	\$813,139
2013-14	\$647,634	\$76,319	\$3,624	\$727,577
2014-15	\$808,544	\$111,434	\$7,563	\$927,541
<b>Total</b>	<b>\$2,836,433</b>	<b>\$387,753</b>	<b>\$64,009</b>	<b>\$3,288,195</b>

**Failure to utilize an open and public process.** The three-page management services agreement in place during the audit period of fiscal years 2011-12 through 2013-14 was built upon the terms of the original agreement, signed in July 2006. At no time in the intervening period did the Charter School utilize an open and public process when it obtained management or curriculum services. As a result of the related parties mentioned above, we believe the Charter School’s payments to the Management Company may have constituted conflicts of interest and may have been in noncompliance with the Ethics Act. Furthermore, there are numerous other problems with these transactions, described further below.

**Revenue-based fees.** Rather than a cost-based fee formula, the agreement stipulated the Management Company would receive 12 percent of the revenues received from sending schools in the 2011-12 and 2012-13 school years and 10 percent of revenues in the 2013-14 and 2014-15 school years. This type of revenue-based fee structure further eroded the level of accountability required of the vendor since fees were not based upon the actual costs of services.

*Criteria relevant to the finding  
(continued):*

Section 1103(a) of the Ethics Act, 65 Pa.C.S. § 1103(a), states: “No public official or public employee shall engage in conduct that constitutes a conflict of interest.”

Subsection (f) of Section 1103 of the Ethics Act, 65 Pa.C.S. § 1103(f), states, in part: “No public official . . . or his spouse or child or **any business in which the person** or his spouse or child is associated shall enter into any contract . . . with the governmental body with which the public official . . . is associated or any subcontract . . . 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 . . .” [Emphasis added.]

**Vague enumeration of services.** The agreement governing the audit period enumerated a broad range of services to be provided, including general business advice, assistance with contract negotiations, accounting and legal assistance, professional development and human resources services, marketing, curriculum development, quality assurance, procurement, and technology and other services. The parameters of each of these types of services were not further specified in the contract, nor were any performance measures or accountability requirements defined.

According to Charter School administration, the curriculum services provided by the Management Company included the leasing of online courses, such as Spanish language courses, and summer courses including core courses, such as math, English, and science.

**Automatic renewals.** The initial term of this vague professional services agreement was for one year, but it allowed for automatic, unlimited one-year renewal terms. Best business practices state that management should not engage in long contract terms and automatic renewal clauses because they do not foster competitive pricing and services.

**Failure to monitor.** We reviewed the board meeting minutes for the audit period and noted no evidence of discussion or approval of any management or vendor reports on either the curriculum or management services provided by the Management Company, nor did there appear to be any discussion of the corresponding costs for the three year audit period ending June 30, 2014.

Commonly accepted best practices related to the monitoring of contracts and professional services agreements typically include recommendations for the following as part of an overall management strategy:<sup>25</sup>

- Implementation of a fair bidding or other public procurement process.

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<sup>25</sup> One of several sources of best practices recommendations is from the IBM Center for the Business of Government. “Effectively Managing Professional Services Contracts: 12 Best Practices.” 2006.

- A clear definition of roles and expectations for government<sup>26</sup> and contractor staff.
- Routine monitoring of vendor performance and written documentation of approval and other feedback.
- Limitations on terms of contracts to a reasonable length of time and the prohibition of automatic or unlimited renewal options.

None of the above practices were in place during the audit period.

### **Recommendations**

The *Lincoln Park Performing Arts Charter School* should:

1. Develop standardized rubrics for use by its administrators to evaluate each type of professional service provided by the Management Company, including curriculum, and it should routinely report to the Board. The Board should be required to review and approve these reports prior to payment to the Management Company or any other vendors.
2. Solicit open and public bids for management and curriculum services as soon as possible.
3. With the assistance of the Charter School's legal counsel, review the Ethics Act, identify any related parties, and address issues that may affect the Charter School's ability to conduct business free of conflicts of interest.
4. Review with PDE its online courses and any other curricula provided by the Management Company to determine appropriateness for the Charter School's students, particularly in light of curriculum delivery issues at a related cyber charter school.

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<sup>26</sup> In this context, it would involve Charter School staff assigned to monitor the Management Company's services and curriculum leases.

## **Management Response**

*The following is a portion of the Charter School's management response to this finding:*

The Board and Administration of the Lincoln Park Performing Arts Charter School disagrees with this draft audit's finding that the school has engaged in "related party transactions."

How is a Charter School that is a Division of Federal Programs, top performing Title I school in Pennsylvania, 85 SPP Building Level Academic score under the Pennsylvania Educator Effectiveness System, whose graduating senior scholarships totaled \$1.9 million in 2011-12 to \$2.3 million in 2015-16, and whose Board has accomplished these milestones all while maintaining the lowest per student education costs in Beaver County, considered to be ineffectively governed and found to be run with a lack of adherence to best business practices? The conclusion in the Proposed Finding that the Board "failed in their stewardship of the school, its students, and the taxpayer funds it used to operate the school" is utterly incompatible with the work that the Board is doing in managing the Charter School as evidenced by these accomplishments.

Footnote 5 of the Finding cites to a source entitled "Effectively Managing Professional Services Contracts: 12 Best Practices." Best Practice 1 of that publication is to "Clearly Define Expectation of Success for the Contract." That same publication suggests that the use of a "Statement of Objectives" rather than the more traditional statement of "Work" can help ease the process of measuring and defining the quality of services delivered. By all accounts, including educational results and cost considerations, Lincoln Park Performing Arts Charter School has had tremendous success with the management and curriculum contracts.

Further, the school more emphatically points out that the basis for the claim of "related company" is 100% based on the fact that the founder of the school and the management company was the same person. There is no claim that the founder was involved in any way in either entity during the

audit period, or, for that matter, at any time beyond the start of each entity.

It is worth noting that, while charter schools are not required to undergo an annual independent audit, the Lincoln Park Performing Arts Charter School has voluntarily done so in each and every year of its existence. This is a testament to the Board's commitment to going above and beyond expectations and requirements for the sake of accountability and transparency, and to its dedication to providing sound and prudent oversight of its finances and operations.

### **Auditor Conclusion**

We continue to encourage the Charter School to conduct an open and public procurement process for management services and curriculum leases. Since the Charter School and Management Company were founded by the same person as acknowledged by the Charter School in their management response, we believe it is especially prudent for the Charter School's Board to engage in a public procurement process. Not only will this help alleviate concerns about related party transactions, but it could lead to lower fees for the Charter School and greater enumeration of services.

Further, we note that as the governing body of the Charter School, the Board, as part of its primary governance and management responsibilities, has the duty of closely vetting and monitoring any of its contracts and leases, as well as any questionable related party transactions. We believe that adhering to these responsibilities will lead to improved governance and greater transparency with taxpayer funds.

## Finding No. 2

## The Charter School Failed to Ensure School Bus Drivers Met All Employment Requirements

### *Criteria relevant to the finding:*

Chapter 23 of the State Board of Education regulations provides that the Board is responsible for the selection and approval of eligible operators who qualify under the law and regulations. *See Pa. Code § 23.4(2)*.

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

Specifically, Section 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 (CHRI) obtained from the Pennsylvania State Police, as well as a report of federal CHRI records obtained from the Federal Bureau of Investigations.

Section 111(e)(1)-(2) of the PSC lists convictions for certain criminal offenses including most major criminal offenses, such as criminal homicide, rape, and drug convictions, that require an absolute ban on employment.

Further, effective September 28, 2011, Act 24 added Section 111(f.1) to the PSC which provides that a ten, five, or three year look-back period for certain convictions be met before an individual is eligible for employment.

The Charter School failed to meet the requirements related to the employment of bus drivers having direct contact with students. Specifically, we found that the Charter School did not obtain, review, and maintain documentation to support that each bus driver was qualified and suitable to transport students during the 2014-15 school year. We also found that the Charter School's Board failed to approve these bus drivers as required by State Board of Education Regulations.

The Charter School was unable to produce any of the required employment qualifications and clearances for the 11 bus drivers who transported students during the 2014-15 school year. By not reviewing the required employment qualifications and clearances, the Charter School exposed itself to the risk that unqualified drivers were transporting students. If unqualified drivers transport students, there is an increased risk to the safety and welfare of students.

### **Employment Qualifications and Clearances**

Several statutes and regulations establish the minimum required qualifications for school bus drivers. The ultimate purpose of these requirements is to ensure the safety and welfare of the students transported. The Charter School is required to obtain, review, and maintain the following pre-employment qualification requirements and background clearance documentation (criminal history reports).

### **Qualification Requirements:**

- Valid driver's license.
- S-Endorsement for operation of school bus.<sup>27</sup>
- Annual physical examination.

<sup>27</sup> Pursuant to *Chapter 71 (relating to School Bus Drivers) of the Title 67 of Pennsylvania Code*, the S-Endorsement is added to the Commercial Driver's License for the operation of school buses. *See 67 Pa. Code § 71.2*.

*Criteria relevant to the finding (continued):*

Additionally, Section 111(b) provides, in part, administrators shall maintain a copy of the required information.

Section 111(g)(1) of the PSC provides that an administrator, or other person responsible for employment decisions in a school or other 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 PDE, and shall be subject to a civil penalty up to \$2,500.

Additionally, amendments to Section 111 required all current school employees to submit an "Arrest/Conviction Report and Certification" form (PDE-6004) to local education agencies indicating whether or not they have ever been arrested or convicted of any Section 111 offense by December 27, 2011. Furthermore, all employees subsequently arrested or convicted of a Section 111 offense must complete the form within 72 hours of the arrest or conviction. Please note that Act 4 of 2016 has clarified that prospective employees (i.e., new applicants) are also required to complete the Arrest/Conviction Report and Certification Form as part of the hiring process indicating they have not been disqualified from employment. Act 4 is retroactively effective December 31, 2015.

Chapter 8.2 of the State Board of Education regulations states: "(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 employees would have direct contact with children."

### **Criminal History Reports/Clearances:**

- Criminal Background Check (Act 34).
- Federal Criminal History Record (Act 114).
- Pennsylvania Child Abuse History Clearance (Act 151).
- Arrest/Conviction Report and Certification Form PDE 6004 (Act 24).

Charter School officials stated that they were unaware of their responsibility to obtain, review, and maintain this documentation. Charter School officials also stated that they were unaware that the Board was required to formally approve bus drivers. District officials stated that the Charter School relied on their bus contractor to ensure that all drivers met the pre-employment requirements.

After we informed Charter School officials about the Charter School's responsibility of ensuring all bus drivers meet employment qualifications, the Charter School requested pre-employment qualification and clearance documentation for all drivers from the bus contractor.

Although all necessary bus driver qualifications and criminal history clearances were not on file at the Charter School for the 11 bus drivers during the 2014-15 school year, the bus contractor was able to provide the Charter School with qualifications and criminal history clearances for all 11 bus drivers. Our review of this documentation did not reveal any concerns with the Charter School bus drivers and the drivers' suitability to transport students.

As a result of our review of bus driver qualifications and our discussion with Charter School officials, the Charter School did obtain, review, and maintain documentation to support that each bus driver was qualified and suitable to transport students during the 2015-16 school year. The Charter School's Board also properly approved the bus drivers transporting students for the 2015-16 school year.

### **Recommendations**

The *Lincoln Park Performing Arts Charter School* should:

1. Develop and implement procedures to ensure all bus drivers' employment qualifications and clearances are reviewed and approved prior to transporting Charter

School students. In addition, the Charter School should ensure that appropriate documentation to evidence the review and approval is maintained by the Charter School.

2. Annually present to the Board a list of bus drivers to be approved prior to the start of the school year.

### **Management Response**

Charter School management provided the following response:

The Board and Administration of the Lincoln Park Performing Arts Charter School disagrees with this draft audit's finding that the school was unable to produce any of the required employment qualification and clearances of the bus drivers who transported students during the 2014-2015 school year. The C.E.O. was able to produce those records and to the extent that requested documents were not located at the Charter School, those documents were readily available and provided to the Auditor.

The Lincoln Park Performing Arts Charter School has an active Transportation Committee Chairperson, who carefully monitored the qualifications and credentials of the bus drivers. All clearances have always been in place for all drivers and this has not been disputed by the Auditor. The Charter School secured a contract with the transportation provider that required that provider to use drivers who were in compliance with all laws regulating that position and to provide the Charter School with access to the records of the compliance with that provision.

This contract shows both the Charter Schools acute awareness of the qualifications and of its obligation to continually review this area of concern. Thus, it is inaccurate to state that the Charter School relied on the bus contractor to ensure compliance with all pre-employment requirements for bus drivers.

The Charter School now formally approves each bus driver upon review of the necessary credentials and [our] Trustee, continues to maintain consistent oversight of the bus drivers and bus company.

### **Auditor Conclusion**

We are encouraged that the Charter School implemented new procedures and now formally approves the bus drivers upon review of all necessary documentation. While management asserts that the Charter School had the necessary documentation readily available, we stand by our statements that the Charter School did not have the necessary bus driver clearance documentation on file at the Charter School for the 2014-15 school year. These clearances were with the transportation contractor until we requested to review them.

## **Status of Prior Audit Findings and Observations**

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**T**his is the first audit of the Charter School. Therefore, there are no prior audit findings or observations.

## **Distribution List**

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

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