

PERFORMANCE AUDIT

New Kensington-Arnold School District Westmoreland County, Pennsylvania

November 2017



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



**Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen
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**EUGENE A. DePASQUALE
AUDITOR GENERAL**

Dr. John E. Pallone, Superintendent
New Kensington-Arnold School District
707 Stevenson Boulevard
New Kensington, Pennsylvania 15068

Mr. Robert M. Pallone, Board President
New Kensington-Arnold School District
707 Stevenson Boulevard
New Kensington, Pennsylvania 15068

Dear Dr. Pallone and Mr. Pallone:

We have conducted a performance audit of the New Kensington-Arnold School District (District) for the period July 1, 2012, through June 30, 2016, except as otherwise indicated in the audit scope, objective, and methodology section of the report. We evaluated the District's performance in the following areas as further described in the appendix of this report:

- Governance
- Professional Certification
- Financial Stability
- Bus Driver Requirements
- School Safety

The audit was conducted pursuant to Sections 402 and 403 of The Fiscal Code (72 P.S. §§ 402 and 403), and in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

Our audit found that the District performed adequately in the areas listed above, except as noted in the following finding:

- The District's Employment Contracts with its Superintendent and Assistant Superintendent were not in Compliance with the Public School Code

Dr. John E. Pallone
Mr. Robert M. Pallone
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We appreciate the District's cooperation during the course of the audit.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eugene A. DePasquale
Auditor General

October 26, 2017

cc: **NEW KENSINGTON-ARNOLD SCHOOL DISTRICT** Board of School Directors

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Background Information

School Characteristics 2015-16 School Year ^A	
County	Westmoreland
Total Square Miles	5.0
Resident Population^B	18,273
Number of School Buildings^C	4
Total Teachers	178
Total Full or Part-Time Support Staff	120
Total Administrators	12
Total Enrollment for Most Recent School Year	2,016
Intermediate Unit Number	7
District Vo-Tech School	Northern Westmoreland Career & Technology Center

Mission Statement^A

To ensure that each student is prepared, inspired, and motivated to be a successful contributing citizen of an ever-evolving global society by engaging and challenging students with personalized instruction, teaching excellence, innovative technology, and high expectations for superior academic achievement while embracing our unique traditions, heritage, and diversity in a safe, nurturing, student-centered environment.

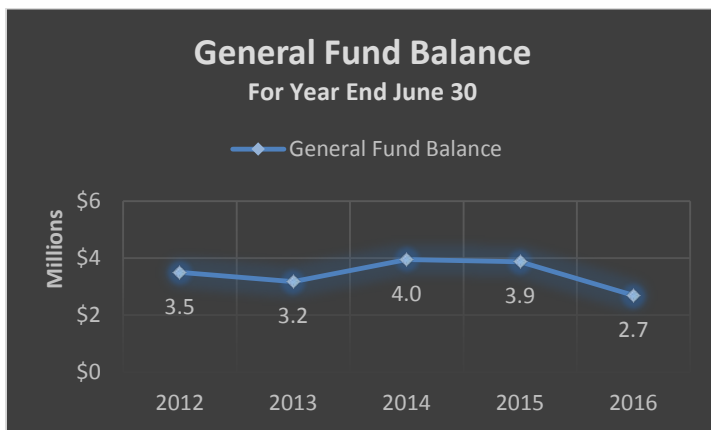
A - Source: Information provided by the District administration and is unaudited.

B - Source: United States Census <http://www.census.gov/2010census>.

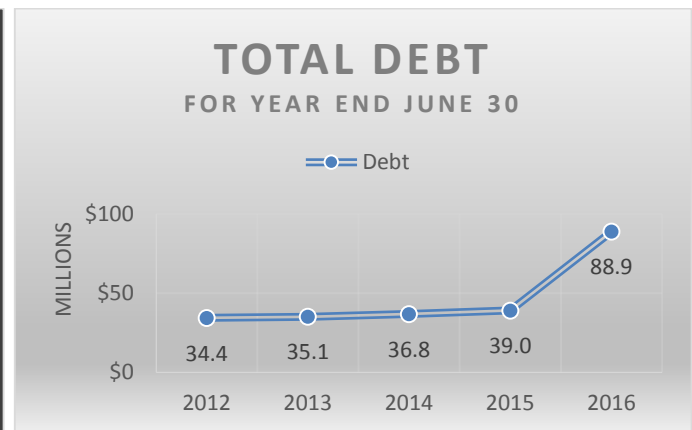
C - The Academic Data section shows three school buildings. District administration explained that four buildings are currently being used for educational purposes. The Martin Elementary School, Grades K and Preschool, does not have academic scores due to grade level of students.

Financial Information

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

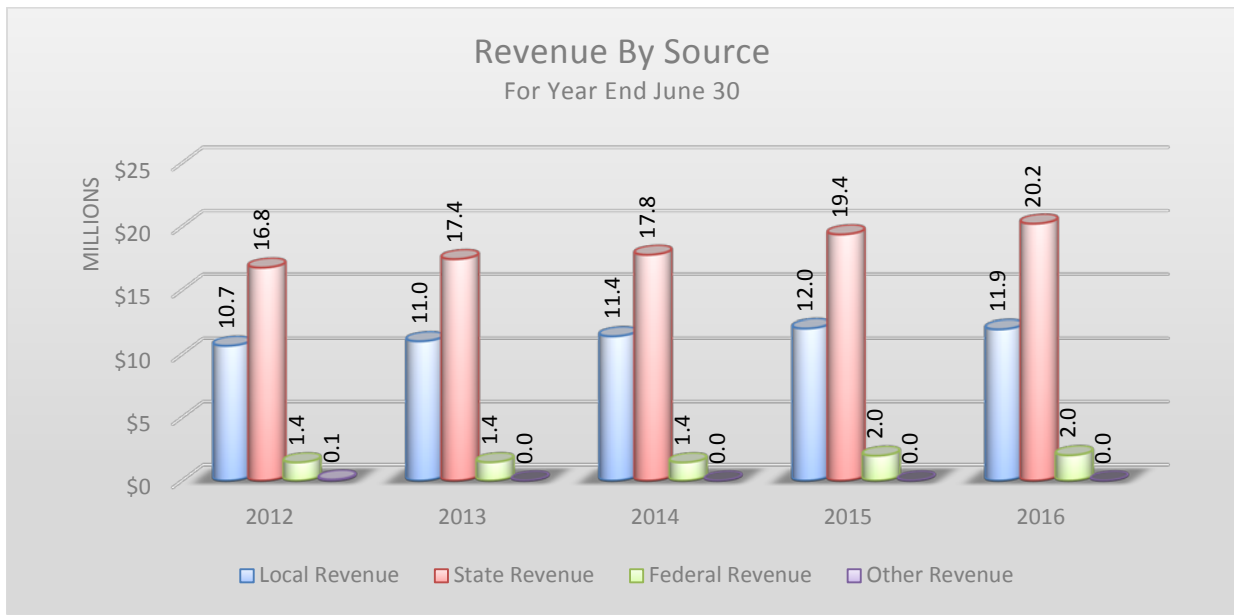
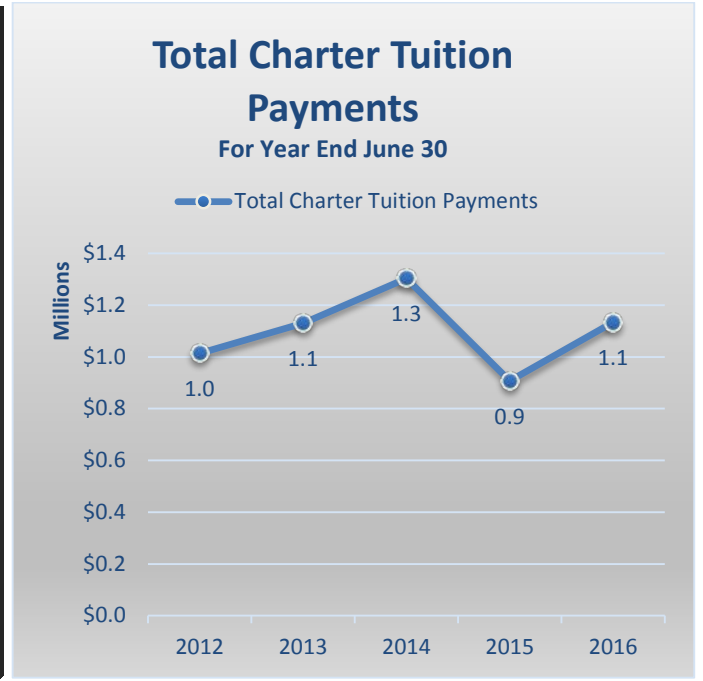
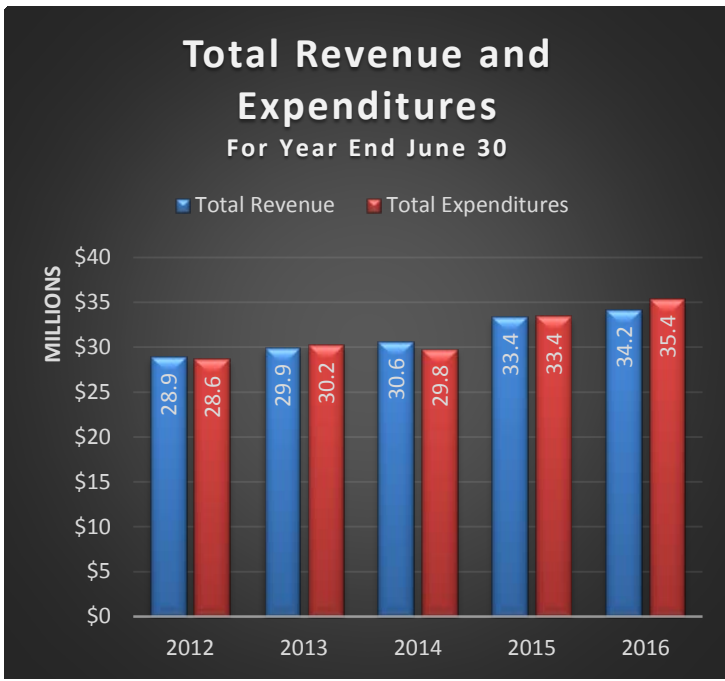


Note: General Fund Balance is comprised of the District's Committed, Assigned and Unassigned Fund Balances.



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

Financial Information Continued



Academic Information

The graphs on the following pages present School Performance Profile (SPP) scores, Pennsylvania System of School Assessment (PSSA), Keystone Exam results, and 4-Year Cohort Graduation Rates for the District obtained from PDE's data files for the 2014-15 and 2015-16 school years.¹ These scores are provided in the District's audit report for **informational purposes only**, and they were not audited by our Department. Please note that if one of the District's schools did not receive a score in a particular category and year presented below, the school will not be listed in the corresponding chart.² Finally, benchmarks noted in the following graphs represent the statewide average of all public school buildings in the Commonwealth that received a score in the category and year noted.³

What is a SPP score?

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

PDE started issuing a SPP score for all public school buildings beginning with the 2012-13 school year. For the 2014-15 school year, PDE only issued SPP scores for high schools taking the Keystone Exams as scores for elementary and middle schools were put on hold due to changes with PSSA testing.⁴ PDE resumed issuing a SPP score for all schools for the 2015-16 school year.

What is the PSSA?

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

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

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

³ Statewide averages were calculated by our Department based on individual school building scores for all public schools in the Commonwealth, including district schools, charters schools, and cyber charter schools.

⁴ According to PDE, SPP scores for elementary and middle schools were put on hold for the 2014-15 school year due to the state's major overhaul of PSSA exams to align with state Common Core standards and an unprecedented drop in public schools' PSSA scores that year. Since PSSA scores are an important factor in the SPP calculation, the state decided not to use PSSA scores to calculate a SPP score for elementary and middle schools for the 2014-15 school year. Only high schools using the Keystone Exam as the standardized testing component received a SPP score.

The 2014-15 school year marked the first year that PSSA testing was aligned to the more rigorous PA Core Standards.⁵ The state uses a grading system with scoring ranges that place an individual student's performance into one of four performance levels: Below Basic, Basic, Proficient, and Advanced. The state's goal is for students to score Proficient or Advanced on the exam in each subject area.

What is the Keystone Exam?

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

What is a 4-Year Cohort Graduation Rate?

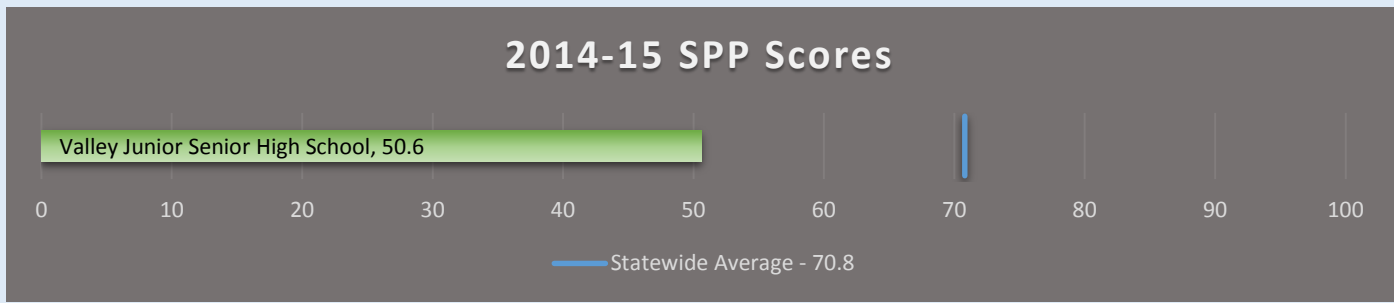
PDE collects enrollment and graduate data for all Pennsylvania public schools, which is used to calculate graduation rates. Cohort graduation rates are a calculation of the percentage of students who have graduated with a regular high school diploma within a designated number of years since the student first entered high school. The rate is determined for a cohort of students who have all entered high school for the first time during the same school year. Data specific to the 4-year cohort graduation rate is presented in the graph.⁶

⁵ PDE has determined that PSSA scores issued beginning with the 2014-15 school year and after are not comparable to prior years due to restructuring of the exam. (Also, see footnote 4).

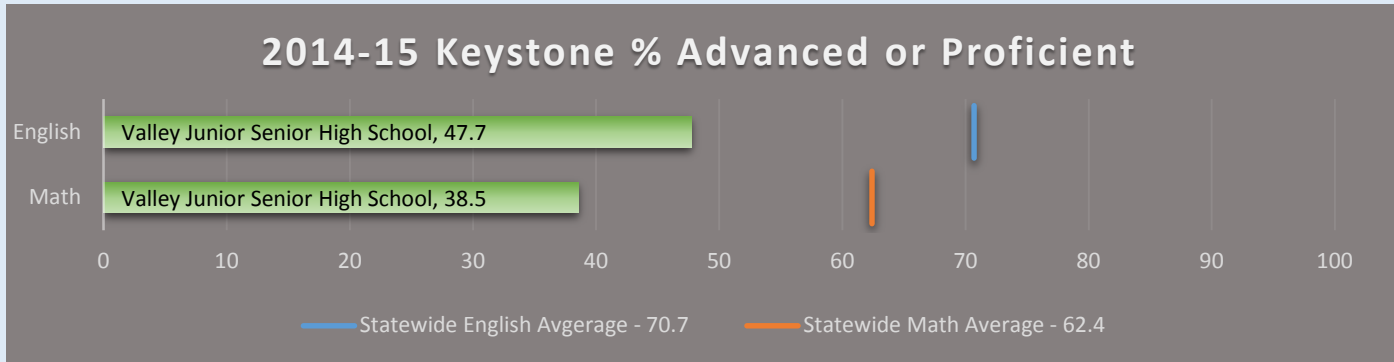
⁶ PDE also calculates 5-year and 6-year cohort graduation rates. Please visit PDE's website for additional information: <http://www.education.pa.gov/Data-and-Statistics/Pages/Cohort-Graduation-Rate-.aspx>.

2014-15 Academic Data
School Scores Compared to Statewide Averages

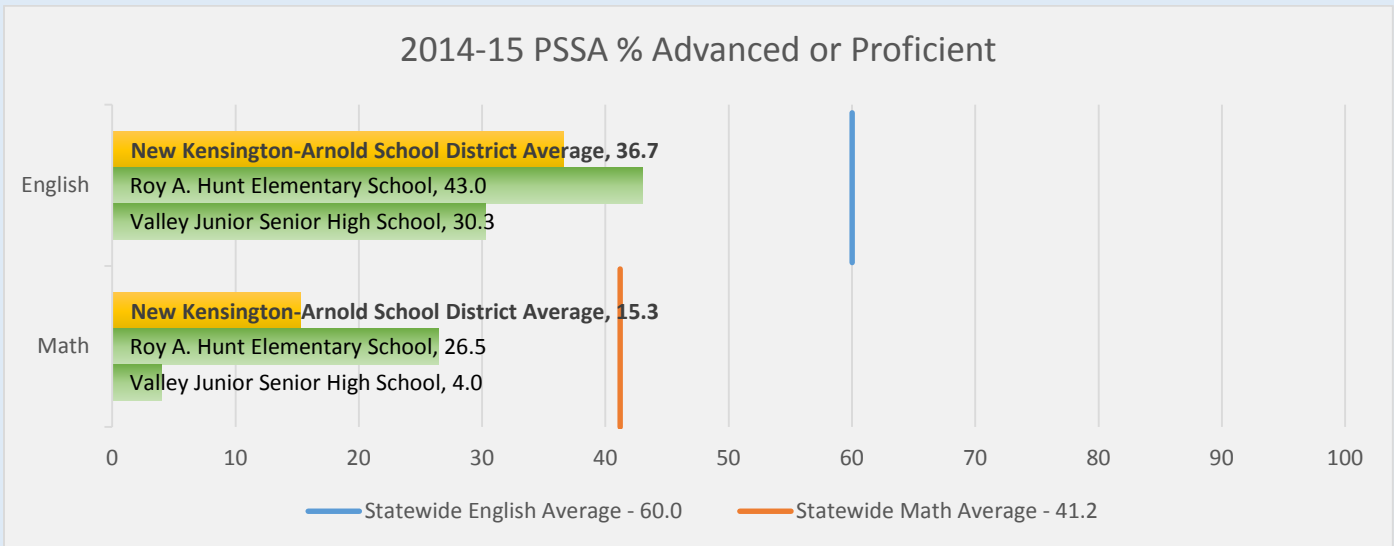
2014-15 SPP Scores



2014-15 Keystone % Advanced or Proficient

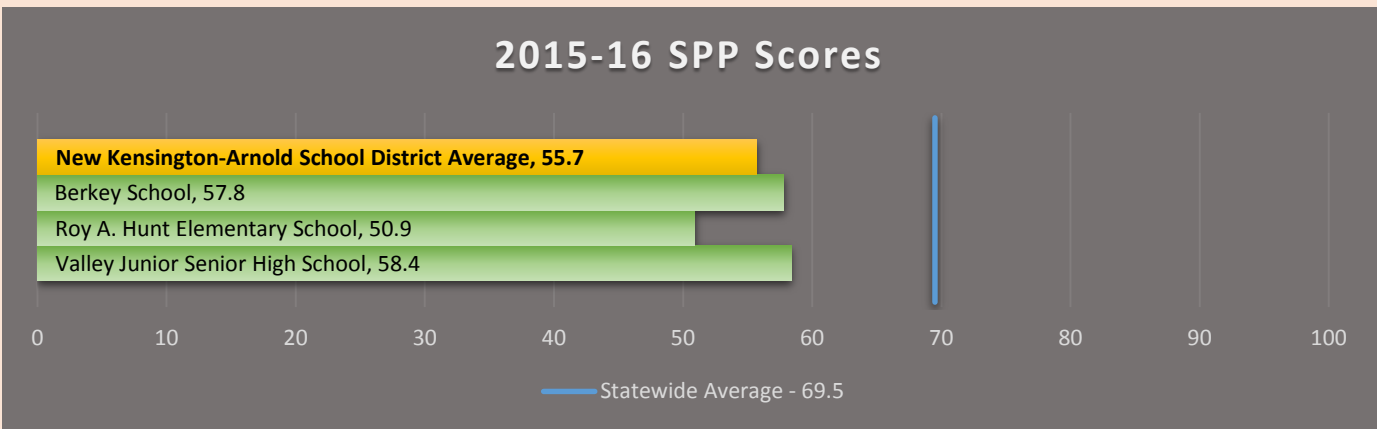


2014-15 PSSA % Advanced or Proficient

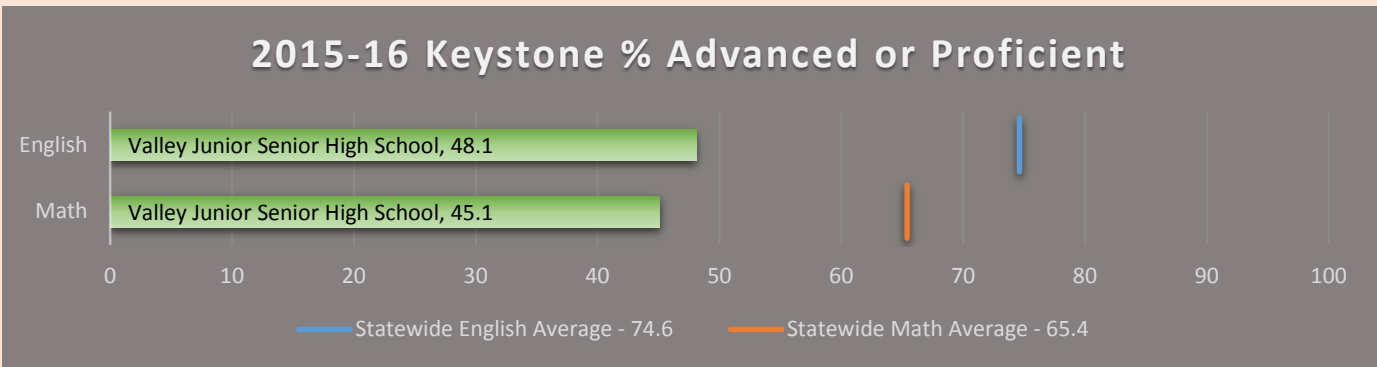


2015-16 Academic Data
School Scores Compared to Statewide Averages

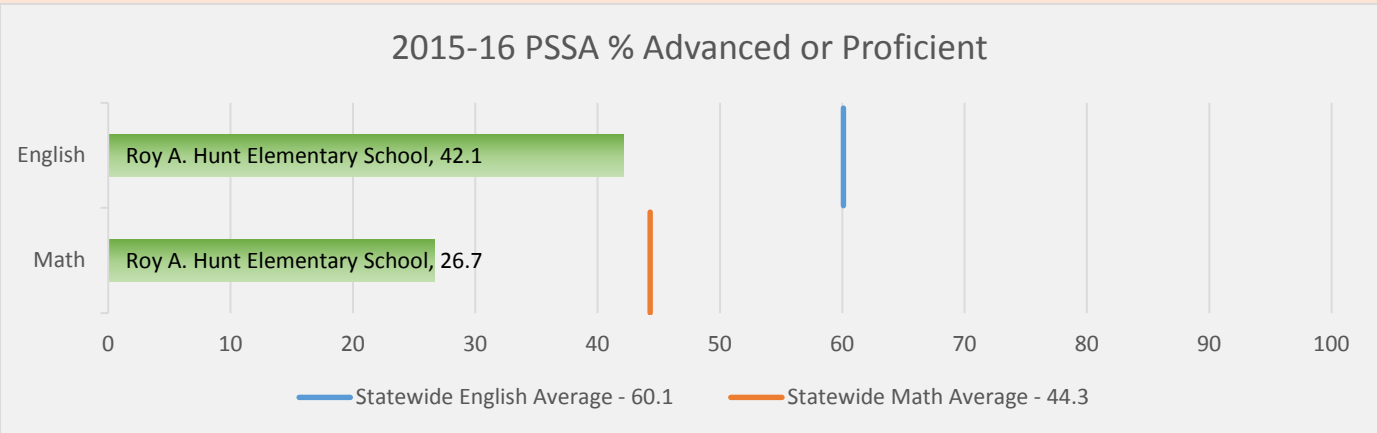
2015-16 SPP Scores



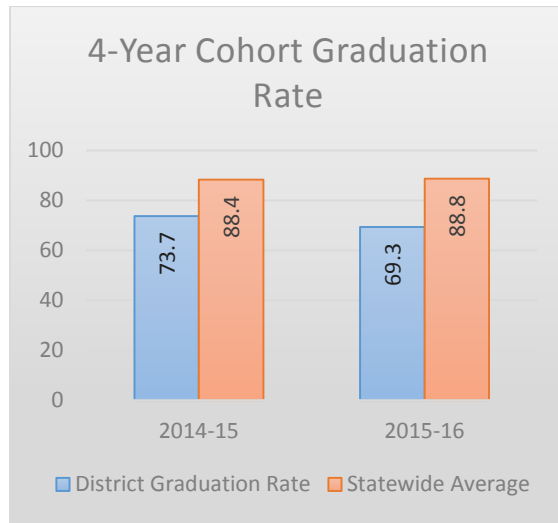
2015-16 Keystone % Advanced or Proficient



2015-16 PSSA % Advanced or Proficient



4-Year Cohort Graduation Rate



Finding(s)

Finding

The District's Employment Contracts with its Superintendent and Assistant Superintendent were not in Compliance with the Public School Code

Criteria relevant to the finding:

Section 1073 of the Public School Code (PSC), 24 P.S. § 10-1073(e), states, in part:

“(e) The following shall apply:

(1) Notwithstanding any other provision of law, no individual shall be employed as a district superintendent or assistant district superintendent by a school district except pursuant to a written contract of employment expressly stating the terms and conditions of employment.

(2) A contract for the employment of a district superintendent or assistant district superintendent shall do all of the following:

(ii) Consistent with State Board of Education certification requirements, specify the duties, responsibilities, job description and performance expectations, including performance standards and assessments provided for under Section 1073.1. (iii)

Incorporate all provisions relating to compensation and benefits to be paid to or on behalf of the district superintendent or assistant district superintendent.

(v) Specify the termination, buyout and severance provisions, including all postemployment compensation and the period of time in which the compensation shall be provided. Termination, buyout and severance provisions may not be modified during the course of the contract or in the event a contract is terminated prematurely. . . .”

Our review of the current Superintendent and Assistant Superintendent's employment contracts revealed that the contracts did not contain elements required by the Public School Code (PSC) in the areas of performance standards, assessments, and termination provisions. In addition, provisions in the contracts concerning performance assessments did not align with the requirements of the PSC. Finally, compensation terms in the Superintendent's contract were not clearly delineated.

Failure to include the required provisions in these contracts results in reduced District transparency and a diminished accountability of the Board of School Directors (Board), Superintendent, and Assistant Superintendent to District taxpayers. In addition, the lack of required termination provisions in the contracts leaves the District financially vulnerable to additional and unnecessary costs in the event that either administrator separates employment from the District prior to the completion of their current employment contracts.

Superintendent and Assistant Superintendent Employment Contracts

The District entered into two contracts with their current Superintendent during our audit period. The first employment contract covered the period October 1, 2012, through September 30, 2015. The second contract began on July 1, 2016, and ends on June 30, 2021. The Superintendent continued employment under the original contract for the period October 1, 2015, through June 30, 2016, due to reappointment provisions included in the first contract. The reappointment provisions stated that the Board must notify the Superintendent, in writing, 150 days prior to the expiration of the contract of the Board's intent not to reappoint the Superintendent. Absent this notification, the Superintendent would continue employment under the provisions of the original contract.

*Criteria relevant to the finding
(continued):*

Section 1073 of the PSC, 24 P.S. § 10-1073.1, states, in part:

“Performance Review.—

(a) In addition to any other requirements provided for under this act, the employment contract for a district superintendent or assistant district superintendent shall include objective performance standards mutually agreed to in writing by the board of school directors and the district superintendent or assistant district superintendent.

(b) The board of school directors shall conduct a formal written performance assessment of the district superintendent and assistant district superintendent annually. A time frame for the assessment shall be included in the contract.

(b.1) The board of school directors shall post the mutually agreed to objective performance standards contained in the contract on the school district's publicly accessible Internet website. Upon completion of the annual performance assessment, the board of school directors shall post the date of the assessment and whether or not the district superintendent and assistant district superintendent have met the agreed-to objective performance standards on the school district's publicly accessible Internet website. . . .”

Board Policy #312 entitled “Evaluation of Superintendent”; adopted May 24, 2006; states, in part:

Regular, periodic evaluation of the Superintendent's performance is a Board responsibility. The Board shall evaluate the performance of the Superintendent annually and at any time such action is prudent.

The current Assistant Superintendent’s contract is effective for the period beginning on July 1, 2015, and ending on June 30, 2018. Prior to entering into this contract, the District did not employ an Assistant Superintendent.

Lack of Performance Assessments

The PSC requires all school districts to do the following:

1. Include written, mutually agreed upon objective performance standards in the Superintendent and any Assistant Superintendents’ contracts.
2. Post the mutually agreed to objective performance standards contained in the contracts on the District’s publicly accessible internet website.
3. Annually conduct a formal written performance assessment of the district’s Superintendent and Assistant Superintendent.
4. Post the date of these performance assessments and whether or not the Superintendent and Assistant Superintendent met the agreed upon performance standards on the district’s publicly accessible internet website.

We found that the District failed to comply with any of these four PSC requirements. The District’s employment contracts with both the Superintendent and Assistant Superintendent did not include performance standards. In addition, written performance assessments were not performed for either administrator; therefore, performance standards and assessments were not posted on the District’s publicly accessible website.

In addition to not complying with the PSC, the District violated its own board policy by not performing annual performance assessments for either top district administrator. Mutually agreed upon performance standards are an integral component to ensuring that the Board and Superintendents are working towards common goals. Publicly posting these standards and the results of annual performance reviews helps to increase transparency to the public and provide assurance that the Board is holding the administrators to accountability standards.

*Criteria relevant to the finding
(continued):*

Board Policy #313 entitled “Evaluation of Administrative Employees”; adopted May 24, 2006; states, in part:

There shall be a plan for regular, periodic evaluation of all administrative employees, including the Assistant Superintendent. The Board directs that evaluations of administrative employees be performed at least annually.

Superintendent Compensation

Both contracts entered into with the District’s Superintendent contained unclear compensation terms and performance review terms that do not align with the PSC requirements. Under the “Compensation and Benefits” section, both contracts stated that the Superintendent was eligible for annual salary increases upon receipt of a satisfactory performance review. Under the “Assessment of Performance” section, the contracts state that the District “may” evaluate the performance of the Superintendent and the parties have “the right to mutually waive a formal performance assessment in any year of the Agreement.” As discussed in the previous section of this finding, annual performance assessments are a requirement of the PSC and, therefore, cannot be waived.

We found that the Superintendent received salary increases each year of employment with the District, even though the Board never conducted the annual performance assessments. The Superintendent’s original contract provided an initial salary of \$90,000 annualized over the period October 1, 2012, to March 31, 2013.⁷ The original contract further outlined an annualized salary of \$109,733 effective April 1, 2013.⁸ The Superintendent was then eligible for annual salary increases upon receipt of a satisfactory performance review beginning on October 1, 2013. The annualized salary effective April 1, 2013, is the last mention of a gross salary amount for the Superintendent. The current contract did not contain a salary amount and, therefore, makes it impossible to determine what the correct Superintendent’s salary would be going forward. Similar to the first contract, the second contract states that the Superintendent is eligible for annual salary increases for each fiscal year, “upon receipt of a satisfactory performance review.”

⁷ The actual contract stated a time period of October 1, 2012, to March 31, 2012. We confirmed with the District that this was a typographical error.

⁸ The actual contract stated an effective date of April 1, 2012. We confirmed with the District that this was a typographical error.

During the January 22, 2015 board meeting, the Board passed a motion by a 5-2 vote⁹ to adjust the Superintendent's salary. At this meeting, the Superintendent's salary was retroactively increased by \$634 for the 2012-13 school year and \$2,537 for the 2013-14 school year. The motion also increased the Superintendent's salary by \$2,538 for the 2014-15 school year and stipulated that the Superintendent's salary should be no less than \$1,000 more than the highest paid administrator in the District going forward.¹⁰ During the public comment period of the board meeting, a member of the public asked why the Superintendent's salary was being adjusted. A board member responded by stating that the adjustments were outlined in the original contract. We found that statement to be untrue.

The Superintendent's original contract contained language indicating that any salary adjustments shall be in the form of an amendment to the contract. The contract did not contain specific language about when those salary adjustments would occur and for what reasons. The Board did not comply with the provisions of the original contract when it approved salary adjustments nor did it prepare amendments to the contract as required.

Lack of Termination Provisions in Superintendent and Assistant Superintendent Contracts

The District failed to include PSC-required termination, buyout, and severance provisions in its contracts with the current Superintendent and the current Assistant Superintendent. The PSC requires that all contracts with Superintendents and Assistant Superintendents specify the termination, buyout, and severance provisions, including all postemployment compensation and the period of time in which the compensation shall be provided. Termination provisions are an integral component of contracts with top district administrators to ensure that the district is financially protected in situations in which a top administrator separates employment with the district prior to the end of the contract.

⁹ One board member abstained from the vote because the Superintendent is his brother.

¹⁰ One-time payroll adjustments were made in the 2015-16 and 2016-17 school years to ensure that the Superintendent was the highest paid administrator in the District.

Recommendations

The *New Kensington-Arnold School District* should:

1. Ensure that employment contracts with the Superintendent and Assistant Superintendent comply with the PSC. Specifically, ensure that all contracts contain termination, buyout, and severance provisions, as well as mutually agreed upon performance standards.
2. Conduct annual performance assessments for both the District's Superintendent and Assistant Superintendent based on mutually agreed upon performance standards.
3. Post on the District's publicly accessible website the mutually agreed upon performance standards for the Superintendent and Assistant Superintendent along with the results of the annual performance assessments.
4. Ensure any adjustments to the Superintendent's salary is included as an amendment to the signed employment contract.

Management Response

District management provided the following response to our finding:

Issue #1

Effective November 11, 2012, 24 P.S., section 10-1073(e) was amended to implement changes and improvements to the school code as it relates to Superintendent and Assistant Superintendent employment contracts. The original superintendent's employment contract at issue for the current Superintendent was approved, implemented and effective prior to the effective date of the noted recent changes and improvement the school code and therefore the current Superintendent's contract may be non-compliant with the current law in as much as it was adopted and implemented by the parties prior to the November 11, 2012 effective date of the noted changes and improvement to the school code. The principle of "No Ex Post Facto Law" would apply in this instance given the fact that the action of the employment contract existed before the effective date of the referenced law; therefore there cannot be retroactive legal consequences.

As for the original contract extension, the extension was the result of the fact that the Board of School Directors was satisfied with the performance of the Superintendent and did not notify the Superintendent in writing 150 days prior to the expiration of the original contract that the District intended to open the position. Given that the original contract contained an automatic renewal clause, the original contract renewed or extended without any rewritten, modified or changed terms and conditions. Given the automatic renewal, the renewed existing contract may be non-compliant with the current law as it was changed and improved since the original contract by self-renewal was entered into prior to the November 11, 2012 effective date of the changed and improved law. The principle of “No Ex Post Facto Law” would also apply in this instance given the fact that the action of the original employment contract as automatically renewed existed before the effective date of the referenced law, therefore there cannot be retroactive legal consequences.

As for the third contract beginning July 1, 2016 through June 30, 2021, it was based on the original contract and the automatic renewal; therefore the newly extended contract was adopted with minor changes. Although the current contract contains many, if not all, of the provisions that the Audit has questioned, including but not limited to notice as to termination by either party. The District maintains that the lack of contract language relative to “termination, buyout, and severance” is a defacto contract provision that does not apply to the current superintendent and generally accepted employment contract law and any other prevailing applicable law would apply. The Assistant Superintendent contract was entered into July 1, 2015 through June 30, 2018 and contains many, if not all, of the provisions that the Audit has questioned, including but not limited to notice as to termination by either party. The District maintains that the lack of contract language relative to "termination, buyout, and severance" is a defacto contract provision that does not apply to the current assistant superintendent and generally accepted employment contract law and any other prevailing applicable law would apply.

Issue #2

The current and past superintendent contract and current assistant superintendent contract include provisions to enable the Board of School Directors or its agent to conduct a formal written performance assessment and to establish performance standards. The Board is a group of independent elected officials serving in a volunteer capacity and clearly by the Board's decision to or not to formally evaluate the superintendent rests with the independent elected officials in spite of the current law. Neither "the District nor the Superintendent" possess any enforcement real authority or reasonable sanction to encourage, influence or otherwise mandate the Board to actually conduct an evaluation of the superintendent. However, it is noted that the Board has in fact evaluated the Superintendent in some prior years and established a satisfactory performance. In any year that the Board did not conduct an evaluation of the Superintendent, it is reasonable and logical for one to conclude that the Board was satisfied with the performance [sic] of the Superintendent during any such period. Additionally, the Auditor was given the opportunity to review the actual superintendent evaluations that were conducted by the Board and the Auditor did in fact review the evaluations.

The Assistant Superintendent was in fact evaluated by the Superintendent in each of the years of his current contract years, the written performance evaluations were reviewed with the Board of School Directors, the Auditor was given the opportunity to review the assistant superintendent's written performance evaluations that were conducted and the Auditor did in fact review the written evaluations.

Issue #3

While the District's current web site does not contain the results of the superintendent and/or assistant superintendent evaluations, the district web site is currently limited. On September 21, 2018, the District approved an agreement to reconstruct the district web site and update the web site, including but not limited to expanded information availability, additional links, staff access ports, student & parent access ports, public access and announcements, and to become ADA compliant. The district web site is currently being reconstructed and formatted to enable convenient in-house web management. Once the web site

has been switched over from the old format to the new expanded and ADA compliant format, the District will make every effort to post any future performance evaluation results for the superintendent and/or assistant superintendent.

Issue #4

The current and past employment contracts between the District and the Superintendent contain compensation language that clearly delineates with an appreciable degree of understanding what and how the annual salary and benefit emoluments are established. The annual salary for each year is based on the original contract as stated with a minimum annual percentage increase as stated for satisfactory performance, including official Board minutes that state any additional emolument adjustments. The Superintendent's salary is public knowledge and the District maintains a comprehensive electronic payroll system depicting each employee's annually and bi-monthly payroll, including the superintendent's. The annual increases, if any, are based on the prior year's salary and the Director of Administrative Services administers the emoluments based on documented and verified support authorization. The current and prior contracts further provide that the Board of School Directors, at its discretion, may increase the annual salary of the Superintendent if it is deemed appropriate by the Board. While it would be nice to establish a salary matrix with a fixed annual salary scale, it would be virtually impossible to implement a fixed salary scale when the increase may in fact be discretionary based on annual percentage increases. The salary for subsequent years is clearly based on the documented salary of record at that time and the percentage increase is then calculated accordingly. If no discretionary increase in excess of the contracted minimum has been granted, then the contracted percentage increase is administered and implemented. Any Board minutes documenting the approved salary and/or emolument adjustments are “defacto” amendments to the original contract at issue.

In the interest of cooperation, the District will do the following:

In future contract negotiations, the District will make every effort to ensure that employment contracts with the Superintendent and Assistant Superintendent will be

improved to include agreed upon stated language to address buyout provisions, specific severance provisions and mutually agreed upon performance standards.

The Administration will continue to encourage the voluntary, independently elected School Board of Directors to timely conduct an annual evaluation of the Superintendent and the Superintendent will continue to evaluate the Assistant Superintendent annually and review that evaluation with the Board.

The District will post a summary of the Superintendent and Assistant Superintendent evaluations on the District Web site as soon as the new improved ADA compliant District Web Site is up and running.

The District will include an annual supplemental notation to the Superintendent and Assistant Superintendent contracts to reasonably identify and/or clarify the annual salary as determined in each physical year.

Auditor Conclusion

Issue # 1

In response to paragraph 1, Section 1073 of the PSC was actually amended by **two** legislative acts (Act 82 and Act 141) to add Subsection (e) relating to Superintendent and Assistant Superintendents' contracts in mid-2012.¹¹

The first was **Act 82 of 2012**, enacted June 30, 2012, which contained a technical provision (see Section 34(1)) that provided that “the amendment or addition of Sections 1073 . . . [and related provisions] shall apply to contracts of district superintendents or assistant district superintendents entered into or renewed on or after **November 1, 2012.**”

The second was **Act 141 of 2012**, enacted July 12, 2012, which also contained a technical provision (see Section 20) that provided that “the amendment or addition of Sections 1073 . . . [and related provisions] shall apply to contracts of district superintendents or assistant district superintendents entered into or renewed on or after the

¹¹ 24 P.S. § 10-1073(e).

effective date of this section [i.e., immediately effective on **July 12, 2012**¹²].”

It is a fundamental tenet of the Statutory Construction Act that a provision enacted later in time is applicable to the newer provisions, including effective dates,¹³ and therefore, Section 1073(e) of the PSC applies to Superintendent contracts entered into or renewed on or after July 12, 2012.

To that end, the original Superintendent’s employment contract at issue, dated September 6, 2012, for the current Superintendent was approved, implemented, and effective **after** the Act 141 requirement under Section 1073(e) of the PSC that the contract provisions apply to Superintendent contracts entered into or renewed on or after July 12, 2012. Therefore, the current Superintendent’s contract was non-compliant with the current law in as much as it was adopted and implemented by the parties after the July 12, 2012 effective date.

As to management’s argument that the principle of “No Ex Post Facto Law” would apply to these circumstances, we strongly disagree since 1) the employment contract in question only existed **after** the effective date of the referenced law and 2) it is clear that the “No Ex Post Facto” provision of the Pennsylvania Constitution applies to criminal and penal statutes.¹⁴

As to paragraph 2, it presents moot arguments since the original Superintendent’s employment contract at issue, dated September 6, 2012, for the current Superintendent was approved, implemented, and effective **after** the Act 141 effective date of the requirements of Section 1073(e) and, as discussed above, management’s reference to “No Ex Post Facto Law” does not apply.

¹² Please note that this effective date has been confirmed with the Legislative Reference Bureau, which noted that Section 22(3) of Act 141 provided that the date of “this section” was immediately effective on July 12, 2012.

¹³ See for example, 1 Pa.C.S. § 1933.

¹⁴ The Pennsylvania Supreme Court recently reiterated the long standing history and intent of Article I, Section 17 of the Pennsylvania Constitution - Ex Post Facto clause as applying to criminal or penal matters. Article I, Section 17 of the Pennsylvania Constitution provides: “No ex post facto law, **nor** any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.” Pa. Const., art. I, § 17. See *Commonwealth v. Muniz*, ___ Pa. ___, 164 A.3d 1189, 1195 (July 19, 2017).

<http://www.pacourts.us/assets/opinions/Supreme/out/j-121b-2016oajc%20-%2010317692521317667.pdf>

Please note that it is clear that the clause makes a distinction between the “ex post facto law” and the impairment of contracts provision (see bold Emphasis above).

As to paragraph 3, the District's defacto contract argument regarding "termination, buyout, and severance" does not apply to these circumstances since Section 1073(e) of the PSC does not make any distinction between "generally accepted employment contracts" and "defacto contracts."

Issue #2

Not only are performance evaluations a requirement of the PSC, but in this District, the Superintendent and Assistant Superintendent's salaries were determined by the results of their performance evaluations. Since the Superintendent and Assistant Superintendent's salaries were linked to satisfactory performance evaluations, it is imperative that the Board completes the evaluations to not only be in compliance with the PSC, but also to be fully transparent to District taxpayers concerning any/all salary changes. As the elected leaders of the District, it is vital that the Board annually complete performance evaluations of the District's Superintendent and Assistant Superintendent.

Performance evaluations help to ensure that the District's top administrators are held accountable for their job responsibilities and the overall progress of the District. We disagree with the District's statement that "in any year that the Board did not conduct an evaluation of the Superintendent, it is reasonable and logical for one to conclude that the Board was satisfied with the performance (sic) of the Superintendent during any such period." We find it illogical and unreasonable for the District to tie salary increases for the Superintendent and Assistant Superintendent to the results of performance evaluations and then not actually perform the performance evaluations.

We also disagree with the District's statement that the auditor was given the opportunity and did review the Superintendent and Assistant Superintendent evaluations for some years. Performance evaluations must contain certain elements like agreed upon performance standards. Performance evaluations must also be signed and dated by the reviewer and specify a time period of evaluation. The documents we were given did not contain most of the required elements needed to be deemed a performance evaluation. We did review documents that the District referred to as "performance evaluations," but these documents did not have required elements of performance

evaluations, and therefore, we believe it is not appropriate to label them as such.

Issue # 3

We agree with the District that its current website does not contain the results of the Superintendent and Assistant Superintendent's performance evaluations as required by the PSC. However, we disagree with the District that the failure to have the results of the evaluations posted online is due to the District's website being "limited." We believe that the results of the performance evaluations were not posted because the performance evaluations were not completed for the time periods during our audit period.

Once again, we appeal to the Board to complete these annual performance evaluations and to post the results on the District's website. This will ensure that the District is in compliance with the PSC and will also ensure that the Board is being transparent to District taxpayers concerning the Superintendent and Assistant Superintendent's job performance and any/all salary changes that resulted from the results of the performance evaluations.

Issue #4

We agree with the District that the Superintendent's contract contains compensation language. However, we disagree that the salary increases were clearly delineated. As previously stated, that compensation language states that salary increases will be based on satisfactory performance evaluations. As stated in the finding in this report, we found that the Board approved salary increases for the Superintendent without completing performance assessments.

The Board also approved salary increases retroactively and stated at public meetings that this was done per the original contract. This statement is untrue and adds to the confusion related to the Superintendent's salary.

We believe that the District should have the ability to adjust the salary of the Superintendent. However, this should be done under the terms of the contract and should be discussed at a public meeting where the Board is fully transparent with the terms and conditions of the contract, as well as the amount of the salary increase.

We are pleased that the District is going to implement our recommendations. We encourage the District to implement our recommendations not “in the interest of cooperation,” but in compliance with the PSC and to be fully transparent to District taxpayers and the public.

Status of Prior Audit Findings and Observations

Our prior audit of the District released on June 19, 2013, resulted in one finding as shown below. As part of our current audit, we determined the status of corrective action taken by the District to implement our prior audit recommendations. We reviewed the District's written response provided to PDE, interviewed District personnel, and performed audit procedures as detailed in each status section below.

Auditor General Performance Audit Report Released on June 19, 2013

Prior Finding: **Certification Deficiency**

Prior Finding Summary: During our prior audit, we found one District professional employee taught on a lapsed certificate during the period of July 1, 2010, through June 30, 2011. The District was subject to a subsidy forfeiture of \$1,610 for the 2010-11 school year.

Prior Recommendations: We recommended that the District should:

Review its current procedures for ensuring that all professionals hold valid certifications throughout their tenure with the District and make any necessary improvements.

Our prior audit also recommended that PDE should:

Adjust the District's allocation to correct the overpayment of \$1,610.

Current Status: During our current audit, we found that the District has written procedures regarding certification and the employees selected for review during our current audit were properly certified (see the appendix below for more details of testing during our current audit). The professional employee cited in our previous finding is properly certified. This employee received permanent certification on June 1, 2011. On December 26, 2013, PDE adjusted the District's allocation to recover the \$1,610 overpayment to the District cited in the previous finding.

Appendix: Audit Scope, Objectives, and Methodology

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

Our audit, conducted under authority of Sections 402 and 403 of The Fiscal Code,¹⁵ is not a substitute for the local annual financial audit required by the Public School Code of 1949, as amended. We conducted our audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit.

Scope

Overall, our audit covered the period July 1, 2012, through June 30, 2016. In addition, the scope of each individual audit objective is detailed on the next page.

The New Kensington-Arnold School District's (District) management is responsible for establishing and maintaining effective internal controls¹⁶ to provide reasonable assurance that the District is in compliance with certain relevant state laws, regulations, contracts, and administrative procedures (relevant requirements). In conducting our audit, we obtained an understanding of the District's internal controls, including any information technology controls, which 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.

¹⁵ 72 P.S. §§ 402 and 403.

¹⁶ Internal controls are processes designed by management to provide reasonable assurance of achieving objectives in areas such as: effectiveness and efficiency of operations; relevance and reliability of operational and financial information; and compliance with certain relevant state laws, regulations, contracts, and administrative procedures.

Objectives/Methodology

In order to properly plan our audit and to guide us in selecting objectives, we reviewed pertinent laws and regulations, board meeting minutes, academic performance data, annual financial reports, annual budgets, new or amended policies and procedures, and the independent audit report of the District's basic financial statements for the fiscal years July 1, 2012, through June 30, 2016. We also determined if the District had key personnel or software vendor changes since the prior audit.

Performance audits draw conclusions based on an evaluation of sufficient, appropriate evidence. Evidence is measured against criteria, such as laws, regulations, third-party studies, and best business practices. Our audit focused on the District's efficiency and effectiveness in the following areas:

- ✓ Governance
- ✓ Professional Certification
- ✓ Financial Stability
- ✓ Bus Driver Requirements
- ✓ School Safety

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

- ✓ Did the District's Board and administration maintain best practices in overall organizational governance?
 - As part of our review of the District's practices, we reviewed the District's Act 93 employment agreement with administrators along with the employment contracts for the District's Superintendent and Assistant Superintendent. We also reviewed payroll records and the Board's meeting agendas and minutes. In addition, we conducted interviews with District staff. See the finding in this report beginning on page 8 for the results of our review of this objective.
- ✓ Did the District take appropriate actions to ensure all teachers are properly certified?
 - To address this objective, we randomly selected 9 of 186 employees from the District's 2015-16 professional personnel listing and 10 of 191 employees from the 2016-17 professional personnel listing. We reviewed the selected teachers to ensure that each certification was current and to ensure that each had the correct level of certification for their position. Our review of this objective did not disclose any reportable issues.
 - Additionally, we tested two high-ranking administrative positions, the Superintendent and the Assistant Superintendent, to determine if their employment contracts complied with the Public School Code. Our review of this objective resulted in a written finding dealing with the Superintendent and Assistant Superintendent's contracts.

- ✓ Based on an assessment of financial benchmarks, was the District in a declining financial position, and did it comply with all statutes prohibiting deficit fund balances and the over expending of the District’s budget?
 - To address this objective, we reviewed the District’s annual financial reports, budgets, and independent auditor’s reports for fiscal years 2012-13 through 2015-16. The financial and statistical data was used to calculate the District’s General Fund balance, operating position, charter school costs, and current ratio. These financial indicators were deemed appropriate for assessing the District’s financial stability. The financial indicators are based on best business practices established by several agencies, including the Pennsylvania Association of School Business Officials, the Colorado Office of the State Auditor, and the National Forum on Education Statistics. Our review of this objective disclosed no reportable issues.

- ✓ Did the District ensure that the bus drivers transporting District students had the required driver’s license, physical exam, training, background checks, and clearances as outlined in applicable laws?¹⁷ Also, did the District have written policies and procedures governing the hiring of new bus drivers that would, when followed, provide reasonable assurance of compliance with applicable laws?
 - To address this objective, we selected 3 of 38 bus drivers hired by the District bus contractors, during the current school year July 1, 2016, through June 30, 2017, and reviewed documentation to ensure the District complied with the requirements for bus drivers. We also determined if the District had written policies and procedures governing the hiring of bus drivers and if those procedures ensure compliance with bus driver hiring requirements. Our review of this objective did not disclose any reportable issues.

- ✓ Did the District take actions to ensure it provided a safe school environment?¹⁸
 - To address this objective, we reviewed a variety of documentation including, safety plans, elementary training curriculum, anti-bullying policies, and student discipline reports. In addition, we reviewed the District’s website noting if the District had applicable safety policies and anti-bullying policies and any other documentation for parents and community to view. Due to the sensitive nature of school safety, the results of our review of this objective area are not described in our audit report. The results of our review of school safety are shared with District officials, and if deemed necessary PDE.

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

¹⁸ 24 P.S. § 13-1301-A *et seq.*

Distribution List

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

The Honorable Tom W. Wolf

Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

The Honorable Pedro A. Rivera

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

The Honorable Joe Torsella

State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Mrs. Danielle Mariano

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

Dr. David Wazeter

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

Mr. Nathan Mains

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

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