



UPPER DARBY SCHOOL DISTRICT
DELAWARE COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT

SEPTEMBER 2013

COMMONWEALTH OF PENNSYLVANIA

EUGENE A. DEPASQUALE - AUDITOR GENERAL

DEPARTMENT OF THE AUDITOR GENERAL



Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen

EUGENE A. DePASQUALE
AUDITOR GENERAL

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

Ms. Maureen Carey, Board President
Upper Darby School District
4611 Bond Avenue
Drexel Hill, Pennsylvania 19026

Dear Governor Corbett and Ms. Carey:

We conducted a performance audit of the Upper Darby School District (District) to determine its compliance with applicable state laws, contracts, grant requirements, and administrative procedures. Our audit covered the period August 14, 2009 through January 18, 2013, except as otherwise indicated in the report. Additionally, compliance specific to state subsidies and reimbursements was determined for the school years ended June 30, 2010 and June 30, 2009. 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 District complied, in all significant respects, with applicable state laws, contracts, grant requirements, and administrative procedures.

On November 5, 2012, the Department of the Auditor General (Department) initiated a special audit of the details surrounding the District's former Superintendent's retirement June 30, 2009, two years into his second contract with the District. This performance audit covered the period July 1, 2007 through January 18, 2013, and 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. This performance audit was separate and distinct from the District's cyclical performance audit, which was conducted simultaneously and the results of which are described in the following pages of the audit report. The Department conducts its cyclical performance audits approximately every two years.

The objectives for this audit were as follows:


- ✓ Did employment contracts with the superintendent or other administration officials contain adequate separation provisions sufficient to protect the interests of the local education agency (LEA), its students, and its taxpayers in the event the employment of the administrators ends prematurely for any reason?

- ✓ Did the LEA provide as much information as possible to its taxpayers explaining the reasons for the superintendent's separation and justifying the expenditure of funds by or through the LEA in order to terminate the contract early?
- ✓ Did the LEA enter into employment contracts with the superintendent at the three-year minimum provided by state law in order to limit potential financial liability by the LEA and its taxpayers in the event financial liability was not adequately limited through contract provisions?
- ✓ To the greatest degree possible, what is the total financial cost of the superintendent or other administration officials' early contract termination, including funds received by the LEA from private individuals or other entities to facilitate the buy-out?
- ✓ Was the separation agreement transparent and without confidentiality clauses so taxpayers are aware of why the termination occurred?

The Department's special audit of the former superintendent's retirement found that the District complied, in all significant respects, with the applicable state laws, contracts, and administrative procedures related to our specific audit objectives. However, we identified one matter unrelated to compliance that is reported as an observation. A synopsis of our results is presented in the body of this report.

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

Sincerely,



EUGENE A DEPASQUALE
Auditor General

September 20, 2013

cc: **UPPER DARBY SCHOOL DISTRICT** Board of School Directors

Table of Contents

	Page
Executive Summary	1
Audit Scope, Objectives, and Methodology	2
Findings and Observations	5
Observation – The District Will Pay an Estimated \$356,256 as a Result of the Former Superintendent’s Early Retirement	5
Status of Prior Audit Findings and Observations	9
Distribution List	10

Executive Summary

Audit Work

The Pennsylvania Department of the Auditor General conducted a performance audit of the Upper Darby School District (District). Our audit sought to answer certain questions regarding the District's compliance with applicable state laws, contracts, grant requirements, and administrative procedures and to determine the status of corrective action taken by the District in response to our prior audit recommendations.

Our audit scope covered the period August 14, 2009 through January 18, 2013, 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 2009-10 and 2008-09 school years.

District Background

The District encompasses approximately 8 square miles. According to 2010 federal census data, it serves a resident population of 90,606. According to District officials, the District provided basic educational services to 11,988 pupils through the employment of 879 teachers, 1,009 full-time and part-time support personnel, and 50 administrators during the 2009-10 school year. Lastly, the District received \$52.8 million in state funding in the 2009-10 school year.

Audit Conclusion and Results

Our performance audit found that the District complied, in all significant respects, with the applicable state laws, contracts, and administrative procedures related to our objectives. However, as noted below, we identified one matter in our special performance audit begun November 5, 2012, unrelated to compliance or the cyclical audit, which is reported as an observation.

Observation: The District Will Pay an Estimated \$356,256 as a Result of the Former Superintendent's Early Retirement. At its June 9, 2009 regular monthly meeting, the Upper Darby Area School District's (District) Board of School Directors accepted the former Superintendent's letter to retire effective June 30, 2009, two years into his second contract with the District. This retirement triggered provisions in the contract that forced the District to pay the former Superintendent an estimated \$356,256 (see page 5).

Status of Prior Audit Findings and Observations. With regard to the status of our prior audit recommendations to the Upper Darby Area School District (District) from an audit released on September 8, 2010, we found that the District had not taken appropriate corrective action in implementing our recommendations pertaining to Memoranda of Understanding (MOU) not updated in a timely manner. However, the District is currently in the process of writing and adopting a policy to comply with new regulations for MOUs (see page 5).

Audit Scope, Objectives, and Methodology

Scope

What is a school performance audit?

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

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

Our audit covered the period August 14, 2009 through January 18, 2013.

Regarding state subsidies and reimbursements, our audit covered 2009-10 and 2008-09 school years.

While all districts have the same school years, some have different fiscal years. Therefore, for the purposes of our audit work and to be consistent with Pennsylvania Department of Education (PDE) reporting guidelines, we use the term school year rather than fiscal year throughout this report. A school year covers the period July 1 to June 30.

Objectives

What is the difference between a finding and an observation?

Our performance audits may contain findings and/or observations related to our audit objectives. Findings describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. Observations are reported when we believe corrective action should be taken to remedy a potential problem not rising to the level of noncompliance with specific criteria.

Performance audits draw conclusions based on an evaluation of sufficient, appropriate evidence. Evidence is measured against criteria, such as, laws and defined business practices. Our audit focused on assessing the District's compliance with applicable state laws, contracts, grant requirements, and administrative procedures. However, as we conducted our audit procedures, we sought to determine answers to the following questions, which serve as our audit objectives:

- ✓ In areas where the District received state subsidies and reimbursements based on pupil membership (e.g. basic education, special education, and vocational education), did it follow applicable laws and procedures?
- ✓ Did the District have sufficient internal controls to ensure that the membership data it reported to PDE through the Pennsylvania Information Management System was complete, accurate, valid, and reliable?

- ✓ In areas where the District received state subsidies and reimbursements based on payroll (e.g. Social Security and retirement), did it follow applicable laws and procedures?
- ✓ In areas where the District received transportation subsidies, were the District, and any contracted vendors, in compliance with applicable state laws and procedures?
- ✓ Did the District, and any contracted vendors, ensure that their current bus drivers were properly qualified, and did they have written policies and procedures governing the hiring of new bus drivers?
- ✓ Were there any declining fund balances that may pose a risk to the District's fiscal viability?
- ✓ Did the District pursue a contract buy-out with an administrator and if so, what was the total cost of the buy-out, what were the reasons for the termination/settlement, and did the current employment contract(s) contain adequate termination provisions?
- ✓ Did the District take appropriate steps to ensure school safety?
- ✓ Did the District have a properly executed and updated Memorandum of Understanding with local law enforcement?
- ✓ Were votes made by the District's Board of School Directors free from apparent conflicts of interest?
- ✓ Were there any other areas of concern reported by independent auditors, citizens, or other interested parties?
- ✓ Did the District take appropriate corrective action to address recommendations made in our prior audit?

Methodology

What are internal controls?

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

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

Government Auditing Standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our 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 District's management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the District is in compliance with applicable laws, contracts, grant requirements, and administrative procedures. In conducting our audit, we obtained an understanding of the District's internal controls, including any information technology controls, as they relate to the District's compliance with applicable state laws, contracts, grant requirements, and administrative procedures 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 control 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.

In order to properly plan our audit and to guide us in possible audit areas, we performed analytical procedures in the areas of state subsidies and reimbursements, pupil transportation, pupil membership, and comparative financial information.

Our audit examined the following:

- Records pertaining to pupil transportation, pupil membership, bus driver qualifications, professional employee certification, state ethics compliance, financial stability, reimbursement applications, tuition receipts, and deposited state funds.
- Items such as board meeting minutes and policies and procedures.

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

Lastly, to determine the status of our audit recommendations made in a prior audit report released on September 8, 2010, we performed additional audit procedures targeting the previously reported matters.

Findings and Observations

Observation

Criteria relevant to the observation:

Section 1073 of the Public School Code, 24 P.S. § 10-1073(a), requires school districts to enter into three-to-five-year employment contracts with their superintendents.

Section 321 of the Public School Code, 24 P.S. § 3-321, provides, in part:

“Before entering upon the duties of their office [school director] each shall take and subscribe to the following oath or affirmation. . . .

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity.”

The phrase in the oath, “with fidelity” implies that the Board will act in the best interest of the District when conducting its business, not necessarily in the best interest of individuals or groups employed by the District.

The District Will Pay an Estimated \$356,256 as a Result of the Former Superintendent’s Early Retirement

On July 1, 2007, the Upper Darby School District’s (District) Board of School Directors (Board) entered into an employment contract (Contract) with an individual to serve as the District’s Superintendent (former Superintendent). The Contract had a term of three years, from July 1, 2007 through June 30, 2010. However, on June 9, 2009, the former Superintendent informed the Board that he would retire on June 30, 2009, after serving two years of his Contract. This Contract was the former Superintendent’s second with the District.

The Contract included the following provisions:

- **“Retirement Incentive:** At the time of his retirement, the District will provide the following to the Superintendent:
 1. A lump sum Retirement Incentive equivalent to 75 percent of his salary for the then current fiscal year; and,
 2. Split-Dollar Life Insurance (Collateral assignment – Cost Recovery Method) in the face amount of Three Hundred Thousand Dollars (\$300,000).”
- **“Termination/Discharge:** This Employment Contract may be terminated prior to the end of the stated term by mutual consent of the District and the Superintendent upon ninety (90) days notice. Additionally, this Employment Contract may be terminated by the District upon:
 1. Retirement of the Superintendent.
 2. Permanent disability of the Superintendent.
 3. Death of the Superintendent.
 4. Removal of the Superintendent in accordance with the provisions of Section 1080 of the Public School Code, as amended.”

At its June 9, 2009 regular monthly meeting, the Board accepted the former Superintendent’s letter to retire effective June 30, 2009, after two years into his second

contract with the District. This retirement triggered the provisions in the Contract described above, as well as other provisions that entitled the former Superintendent to payouts of leave and benefits. Together, these terms committed the District to making payments to the former Superintendent totaling an estimated \$356,256. The elements in these payments are as follows:

- A lump sum retirement incentive of \$148,106, which was 75% of the former Superintendent’s \$197,474 salary at the time of his retirement.
- Annuity compensation payments for 169 unused sick leave days at the daily rate of \$756. 61, totaling \$127,866.
- Actual and estimated costs for major medical, hospitalization, prescription drug, vision, and dental coverage totaling \$65,152. These costs were based on the amount that the District had already paid on behalf of the former Superintendent as of June 30, 2009, plus the District’s estimated costs during the 4-year period before he reached age 65.
- Compensation for 20 accrued and/or unused vacation days at the daily rate of \$756.61, totaling \$15,132.

Payment	Total
Lump Sum Retirement Incentive <i>(Annual Salary X 75%)</i>	\$148,106
Unused Sick Leave <i>(169 days X \$756.61)</i>	127,866
Health Benefits <i>(Estimated until Age 65)</i>	65,152
Unused Vacation Leave <i>(20 days X \$756.61)</i>	<u>15,132</u>
Total:	\$356,256

In addition to the lump sum payment to the former Superintendent upon his retirement, the District is also responsible for an annual \$24,300 life insurance premium payment for the rest of the former Superintendent’s life, or the year 2047.

The Board’s decision to approve the generous terms in the former Superintendent’s Contract was not in the best interest of the taxpayers. The \$356,256 in retirement

compensation that the District's Board contractually agreed to pay to the former Superintendent should have been spent on the education of the District's students. Moreover, the District's taxpayers had already met their obligations for funding the former Superintendent's retirement through the District's regular payments to the Public School Employees' Retirement System, which guaranteed the former Superintendent a state pension.

Recommendations

The *Upper Darby School District* should:

1. Avoid paying additional retirement benefits to individual employees, and instead, use this taxpayer money for the education of its students. .
2. Limit the amount of unused sick leave that administrators can accumulate and/or transfer and limit the amount that administrators can be paid for their unused sick leave to no more than 50 percent of their per diem rate.

Management Response

Management stated the following:

“Management disagrees that this should be listed as an observation. What is the purpose of listing this as an observation?”

Any payments under the lawful terms of the Superintendent's contract and payable in his retirement were deferred compensation, earned by the Superintendent at the time that his services were delivered to the School District (Budget in excess of \$140,000 Million Dollars, 12,000 students and 1,800 employees.)

Each Superintendent's contract was publicly discussed and adopted by a School Board vote, at a public meeting. Each contract was arrived at as a result of an arm's length negotiation between the Board and the Superintendent. All payments under the Contract were for services rendered and not as a bonus or early buyout of an agreement. The deferral of the School District's obligation to pay certain parts of the Superintendent's compensation until after the Superintendent retired was a fiscally prudent decision, resulted in a cash savings to the School District and reduced the District's overall operating expenses.”

Auditor Conclusion

At no point in this observation do we suggest that the former Superintendent's retirement compensation was illegal or outside the terms of his Contract. Rather, we question whether the Board's decision to agree to the terms of that compensation was a prudent use of taxpayer money. Furthermore, we question the District management's assertion that the additional retirement provisions in the former Superintendent's Contract saved the District money. The only additional retirement costs to the District are the ones the Board negotiated. At best, the cash payment deferral of this compensation was a short-term gain and not necessarily one that furthered the District's educational mission. Therefore, our observation will stand as written.

Status of Prior Audit Findings and Observations

Our prior audit of the Upper Darby School District (District) released on September 8, 2010, resulted in an observation. The observation pertained to Memoranda of Understanding (MOU) not updated in a timely manner. As part of our current audit, we determined the status of corrective action taken by the District to implement our prior recommendation. We performed audit procedures and interviewed District personnel regarding the prior observation. As shown below, we found that the District did not implement our recommendation related to MOU not being updated in a timely manner. However, the District, with the assistance of Pennsylvania School Board Association, is currently in the process of writing and adopting a policy to comply with new regulations for MOUs. The District is currently in compliance with Act-104, as stated below.

Auditor General Performance Audit Report Released on September 8, 2010

Observation	Memoranda of Understanding Not Updated in a Timely Manner
<u>Observation Summary:</u>	Our audit of the District's records found that the current MOU between the District and its three local law enforcement agencies were last updated October 22, 2001.
<u>Recommendations:</u>	Our audit observation recommended that the District: Adopt a policy requiring the administration to review and re-execute the MOUs every two years.
<u>Current Status:</u>	During our current audit, we found that the District did not implement our prior recommendation to adopt a policy to update its MOUs. However, the District has procedures in place to update the MOUs every two years. The District is currently in compliance with Act-104 of 2010 as the District has re-executed and filed with the Pennsylvania Department of Education all the MOUs as required by Section 13-1303-A(c) of the Public School Code, as amended November 17, 2010. The Act provides, in part: “ . . . each chief school administrator shall enter into a memorandum of understanding with police departments having jurisdiction over school property of the school entity. Each chief school administrator shall submit a copy of the memorandum of understanding to the office by June 30, 2011, and biennially update and re-execute a memorandum of understanding with local law enforcement and file such memorandum with the office on a biennial basis. . . . ”

Distribution List

This report was initially distributed to the Superintendent of the District, the Board of School Directors, our website at www.auditorgen.state.pa.us, and the following stakeholders:

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

The Honorable Carolyn Dumaesq
Acting Secretary of Education
1010 Harristown Building #2
333 Market Street
Harrisburg, PA 17126

The Honorable Robert M. McCord
State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Ms. Lori Graham
Acting 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

Dr. David Davare
Director of Research Services
Pennsylvania School Boards Association
P.O. Box 2042
Mechanicsburg, PA 17055

This report is a matter of public record and is available online at www.auditorgen.state.pa.us. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 231 Finance Building, Harrisburg, PA 17120; via email to: news@auditorgen.state.pa.us.