

PERFORMANCE AUDIT

School District of the City of Allentown Lehigh County, Pennsylvania

May 2016



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



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EUGENE A. DePASQUALE
AUDITOR GENERAL

Dr. C. Russell Mayo, Superintendent
School District of the City of Allentown
31 South Penn Street
Allentown, Pennsylvania 18105

Mr. David Zimmerman, Board President
School District of the City of Allentown
31 South Penn Street
Allentown, Pennsylvania 18105

Dear Dr. Mayo and Mr. Smith:

Our performance audit of the School District of the City of Allentown (District) evaluated the application of best practices in the areas of contracting, finance, and safety. In addition, this audit determined the District's compliance with certain relevant state laws, regulations, and administrative procedures (relevant requirements) as further described in the Appendix. This audit covered the period July 1, 2012 through June 30, 2015, except as otherwise stated and was conducted pursuant to Section 403 of The Fiscal Code and in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit found that the District effectively applied best practices and complied, in all significant respects, with relevant requirements, except as detailed in one finding and one observation noted in this report. A summary of the results is presented in the Executive Summary section of the audit report.

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

Sincerely,

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

Eugene A. DePasquale
Auditor General

May 25, 2016

cc: **SCHOOL DISTRICT OF THE CITY OF ALLENTOWN** Board of School Directors

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Executive Summary

Audit Work

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

Our audit scope covered the period July 1, 2012 through June 30, 2015, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. (See Appendix) Compliance specific to state subsidies and reimbursements for charter school and nonpublic pupil transportation was determined for the 2010-11, 2011-12, 2012-13, and 2013-14 school years.

Audit Conclusion and Results

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, 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.

Our audit found that the District applied best practices and complied, in all significant respects, with certain relevant state laws, regulations, and administrative procedures, except for one compliance related matter reported as a finding and one matter unrelated to compliance that is reported as an observation.

Finding: Errors in Reporting the Number of Nonpublic and Charter School Students Transported by the District Resulted in a Net Overpayment of Over \$1.7 Million. The District was overpaid a total of \$1,760,990 due to improperly reporting the number of nonpublic and charter school students transported during the 2010-11, 2011-12, 2012-13, and 2013-14 school years (see page 6).

Observation: The District Deprived the Public of Full Transparency in Its Dealings with a Local Developer and May Have Failed to Comply with the Sunshine Act. The Board of School Directors (Board) took official action on a lease and a charter school application during a public meeting. Both of these transactions involved a local property developer who supported the approval of the charter school applicant. The Board and the current Superintendent were not transparent to the public and may not have complied with, at minimum, the spirit of the Sunshine Act when they did not make the public aware of certain promises made by the developer (see page 13).

Status of Prior Findings and

Observations. With regard to the status of our prior audit recommendations to the District, we found that the District had taken appropriate corrective action in implementing our recommendations pertaining to documentation required for transportation subsidy (see page 20), student membership reporting errors (see page 21), certification deficiencies (see page 22), a lack of required documentation for bus drivers (see page 23), and debt financing (“Swap”) Agreements (see page 24).

Background Informationⁱ

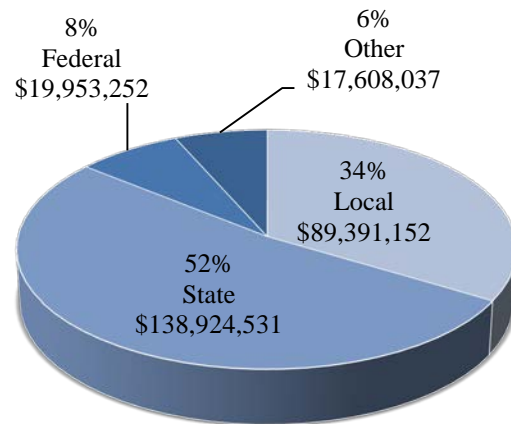
School Characteristics 2014-15 School Year ⁱⁱ	
County	Lehigh
Total Square Miles	17
Resident Population ⁱⁱⁱ	120,013
Number of School Buildings	22
Total Teachers	1,140
Total Full or Part-Time Support Staff	327
Total Administrators	83
Total Enrollment for Most Recent School Year	16,917
Intermediate Unit Number	21
District Vo-Tech School	Lehigh Career & Technical Institute

Mission Statement

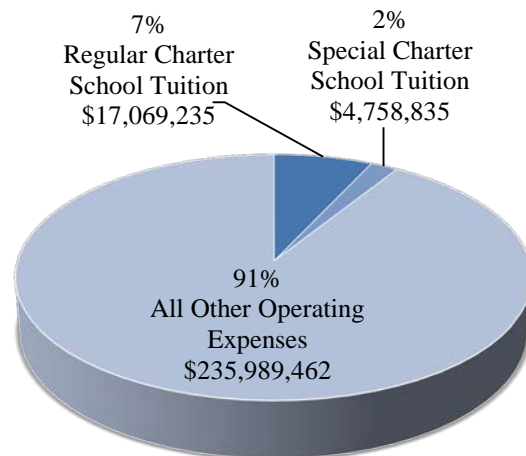
“To provide safe, rigorous, and engaging educational experiences that prepare all students to excel in learning and life.”

Financial Information

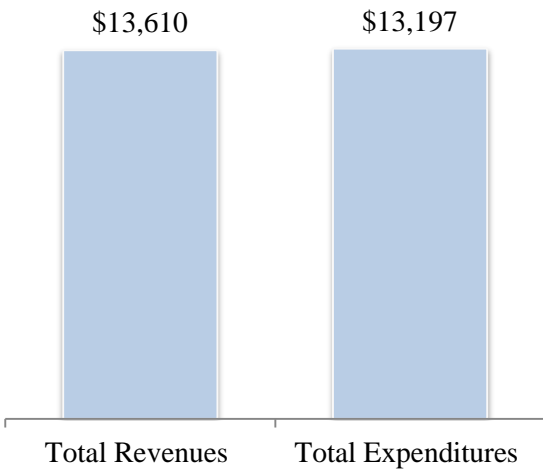
Revenue by Source for 2013-14 School Year



Select Expenditures for 2013-14 School Year

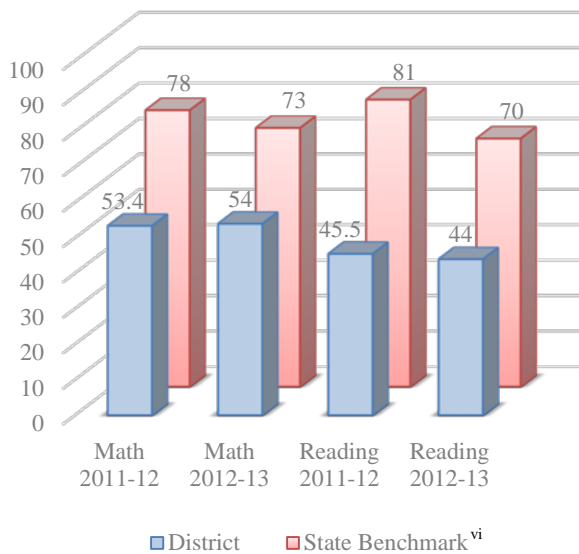


**Dollars Per Student
2013-14 School Year**



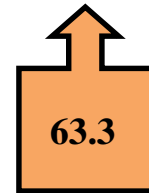
Academic Information

Percentage of District Students Who Scored "Proficient" or "Advanced" on 2011-12 and 2012-13 PSSA^{iv v}



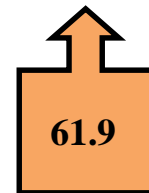
District's 2012-13 SPP Score^{vii}

A	B	C	D	F
90-100	80-89.9	70-79.9	60-69.9	<60
▲	▲	■	▼	▼



District's 2013-14 SPP Score

A	B	C	D	F
90-100	80-89.9	70-79.9	60-69.9	<60
▲	▲	■	▼	▼



Individual Building SPP and PSSA Scores ^{viii} 2012-13 School Year						
School Building ¹	SPP Score	PSSA % School Proficient and Advanced in Math	PSSA % Statewide Benchmark of 73% Above or Below	PSSA % School Proficient and Advanced in Reading	PSSA % Statewide Benchmark of 70% Above or Below	Federal Title I Designation (Reward, Priority, Focus, No Designation) ^{ix}
Central Elementary	56.0	42	31	28	42	Focus
Cleveland Elementary	57.0	50	23	31	39	Focus
Francis D. Raub Middle	58.8	50	23	42	28	No Designation
Harrison-Morton Middle	68.6	56	17	44	26	No Designation
Hiram W. Dodd Elementary	65.4	69	4	54	16	No Designation
Jefferson Elementary	59.4	45	28	35	35	Focus
Lehigh Park Elementary	67.3	69	4	58	12	No Designation
Louis E. Dieruff High	60.3	38	35	51	19	Focus
Luis A. Ramos Elementary	60.7	62	9	45	25	No Designation
McKinley Elementary	69.5	61	12	50	20	No Designation
Mosser Elementary	60.1	53	20	42	28	No Designation
Muhlenberg Elementary	67.5	74	1	66	4	No Designation
Ritter Elementary	72.1	79	6	61	9	No Designation
Roosevelt Elementary	58.9	66	7	50	20	No Designation
Sheridan Elementary	65	63	10	46	24	No Designation
South Mountain Middle	68.6	63	10	48	22	Priority
Trexler Middle	53	50	23	42	28	No Designation
Union Terrace Elementary	65.7	63	10	48	22	No Designation
Washington Elementary	52.8	56	17	33	37	No Designation
William Allen High	53.1	33	40	47	23	Focus

¹ The District also operates two additional school buildings: (1) Lincoln Early Childhood Center, which is grades Pre-K & K5, and (2) Building 21 is a new career based high school that opened in August 2015. Standardized testing in Pennsylvania is performed for grades 3 to 11; therefore, Lincoln Early Childhood Center does not participate in testing and no scores are available.

Findings and Observations

Finding

Errors in Reporting the Number of Nonpublic and Charter School Students Transported by the District Resulted in a Net Overpayment of Over \$1.7 Million

Public School Code (PSC) sections relevant to the finding:

Section 2509.3 of the PSC states, in part, that each school district shall be paid the sum of \$385 for each nonpublic school pupil transported. *See* 24 P.S. § 25-2509.3.

Subsection (a) of Section 1726-A (relating to Transportation) of the PSC. Students who attend a charter school located in their school district of residence, a regional charter school of which the school district is a part or a charter school located outside district boundaries at a distance not exceeding ten miles by the nearest public highway shall be provided free transportation to the charter school by their school district of residence on such dates and periods to students attending in regular session whether or not transportation is provided on such dates and periods to students attending schools of the district. *See* 24 P.S. § 17-1726-A(a).

Section 1361 (relating to When Provided) of the PSC. Districts providing transportation to a charter school outside the district shall be eligible for payments under Section 2509.3 for each public school student transported. *See* 24 P.S. § 13-1361.

Additionally, instructions provided by the Pennsylvania Department of Education (PDE) to complete the Summary of Students Transported form (PDE-2089) specify that districts are to report the total number of nonpublic students transported to and from school.

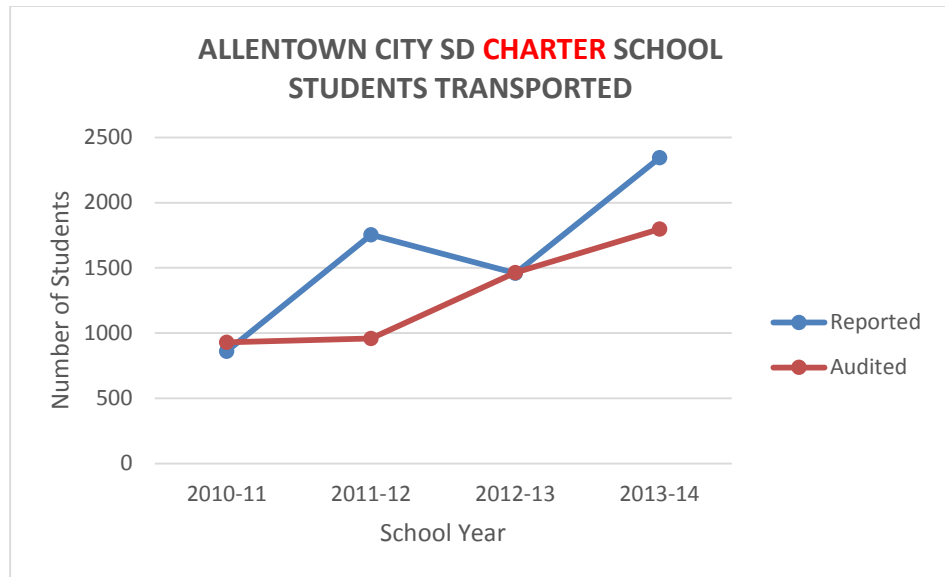
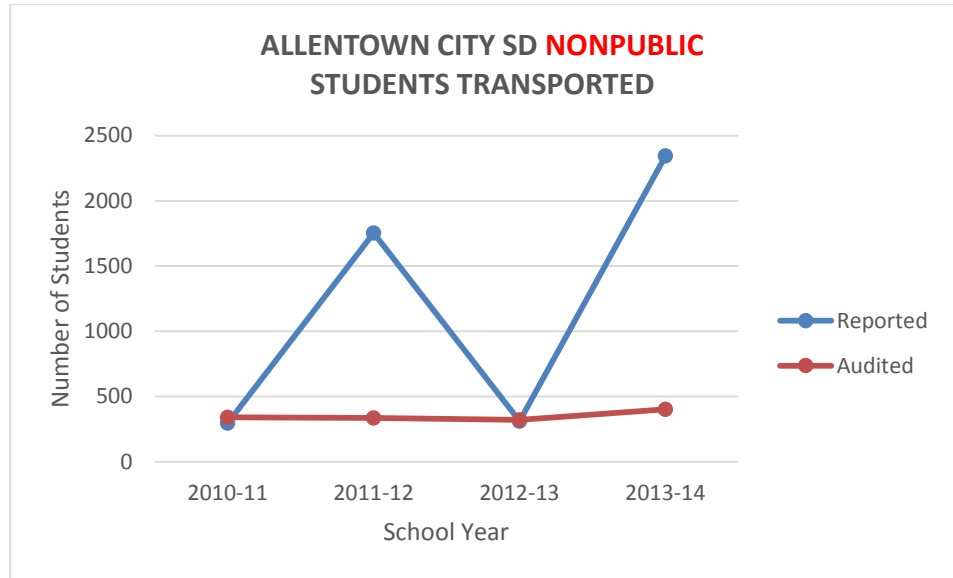
The District was overpaid a total of \$1,760,990 in transportation reimbursement from PDE. This overpayment was due to the District improperly reporting the number of nonpublic and charter school students transported by the District during the 2010-11, 2011-12, 2012-13, and 2013-14 school years. PDE will recoup the overpayment by reducing the District's future transportation reimbursements.

According to the PSC, a nonpublic school is defined, in part, as a nonprofit school other than a public school within the Commonwealth.² The PSC requires school districts to provide transportation services to students who reside in its district and who attend nonpublic schools, providing for a reimbursement from the Commonwealth of \$385 for each nonpublic school student transported by the district. PDE also reimburses school districts this same amount for the transportation of charter school students pursuant to an equivalent provision in the Charter School Law (CSL) that refers to Section 2509.3 of the PSC.

Our review of the District's transportation data reported to PDE for the 2010-11 through 2013-14 school years found significant fluctuations in the categories of nonpublic and charter school students. When we disclosed these fluctuations to the District, the District performed their own detailed review. The District revised the student counts and provided us with documentation to support the revisions. We reviewed the documentation and confirmed the accuracy of the revised nonpublic and charter school student counts for the 2010-11 through 2013-14 school years.

² See Section 922.1-A(b) (pertaining to "Definitions") of the PSC, 24 P.S. § 9-922.1-A(b).

The following graphs show both the large fluctuations from year to year in the nonpublic and charter school student numbers reported to PDE as well as the audited numbers that should have been reported to PDE.



**Allentown School District
Board Policy relevant to the
finding:**

Board Policy #810 states:

The superintendent or his/her designee shall:

Maintain such records and make such reports regarding school transportation as are required by the State Board of Education.

These errors occurred because the District did not compare current nonpublic and charter school transportation data to the previous year's data or complete a trend analysis of the annual transportation reimbursement received from PDE. Also, the procedure for budgeting transportation reimbursement did not include using the actual nonpublic and charter school student counts that were reported to PDE. In addition, we found that the former Assistant Business Administrator failed to maintain accurate lists of nonpublic and charter school students transported by the District in each school year.

The following chart summarizes the District's reporting errors by school year and student classification and the resulting cumulative overpayment:

(OVER)/UNDER REPORTING OF STUDENTS BY YEAR				
School Year	Nonpublic	Charter	Total	Under/(Excess) Subsidies ³
2010-11	45	70	115	\$44,275
2011-12	(1,419)	(793)	(2,212)	(\$ 851,620)
2012-13	11	4	15	\$5,775
2013-14	(1,944)	(548)	(2,492)	(\$959,420)
Total	(3,307)	(1,267)	(4,574)	(\$1,760,990)

The charter school students reported to PDE for transportation reimbursement in the 2011-12 and 2013-14 school years exceeded the total number of District charter school students enrolled in brick and mortar schools. This error would have been easily identified if an adequate review process had been conducted.

The District was proactive and developed new procedures in August 2015 to help ensure that all nonpublic and charter school students who are provided transportation by the District are properly accounted for and accurately reported to PDE. As a result of our audit, the District strengthened their procedures to further ensure that data reported to PDE is accurate. According to the District, the following new procedures were implemented during the 2015-16 school year:

- Using standardized transportation enrollment forms.

³ Calculated by multiplying the total column by \$385, which is the amount PDE reimburses a school district for providing transportation service to each nonpublic and charter school student.

- Verifying the residency of each student transported by the District.
- Verifying the daily mileage for each student transported by the District.
- Creating and maintaining independent student roster spreadsheets to account for every nonpublic and charter school student who was transported at least one day during each school year.
- Conducting multiple reconciliations of independent student roster spreadsheets and transportation contractor student roster reports during each school year.

We provided PDE with discrepancy reports detailing the errors for the 2010-11, 2011-12, 2012-13, and 2013-14 school years.⁴ PDE will use these reports to verify the overpayment to the District. The District's future transportation subsidies will then be reduced by the amount of the overpayment.

Recommendations

The *School District of the City of Allentown* should:

1. Conduct a multi-year trend analysis of student data and transportation reimbursements to help ensure the accuracy of nonpublic and charter school students reported to PDE.
2. Maintain accurate lists of nonpublic and charter school students who were provided transportation, by building, for each school year.
3. Implement a monitoring process to ensure that its newly developed procedures, including the student roster reconciliations, are consistently followed.

⁴ The 2014-15 school year transportation reimbursement is not paid by PDE until the 2015-16 fiscal year. Therefore, the final transportation reports were not available for audit at the time of our review. We will confirm the accuracy of the 2014-15 numbers during our next audit.

The *Pennsylvania Department of Education* should:

4. Adjust the District's allocations to recover the net transportation reimbursement overpayment of \$1,760,990.

Management Response

Management agreed with the finding and provided the following response:

The management of school district transportation and the reporting of data to the state in order to qualify for the reimbursement of eligible costs has become more complex with the district now transporting over 6,000 students. Because of this, the School Board approved the hiring of a full-time Assistant Manager for Transportation to give this area the attention it needed. The position became effective this school year.

In July/August of 2015, the district became aware of transportation reporting errors dating back almost 3 to 5 years as noted in the Auditor General's report. These were found while reviewing several years of prior reports on the PDE's eTran Pupil Transportation System as we entered data for the 2014-15 school year report. It should be noted that staff received training on the complete and accurate reporting of district data in the eTran system as well as procedures to assure the district was receiving full reimbursement for all eligible costs. The 2014-15 report was submitted accurately and staff is now compiling data for the submission of the 2015-16 report.

In reviewing prior years' reports, we found large variances in the number of nonpublic and charter school students that indicated numbers were not categorized appropriately. We also determined that the transportation provider was not supplying the detailed breakout of the transportation information needed to report accurate data to the PDE. In fact, the data breakout that was provided had been done incorrectly. This situation has since been remediated by the vendor and will be closely monitored by the district.

As stated in the Auditor General's report, ASD is using the standard PDE Act 372 enrollment forms as has been prior practice. However, this year, we began collecting new forms for every student every year. We have eliminated

the past practice of rolling over enrollment from one year to the next to avoid errors that may arise due the extremely high mobility of our student population and the increasingly large population of charter school students we are now required to transport. New students are not transported until new forms are properly completed, submitted, and residency has been confirmed. This procedure is coordinated with the charter school enrollment process where we frequently have to send out the district School Community Worker to verify addresses. Our Special Education Department confirms the need for transportation from each student's IEP's and has direct online access to the transportation provider's system to make these arrangements.

We are now initiating a procedure to physically verify mileage of the bus routes to confirm the transportation provider's mileage data for students transported. The Assistant Manager for Transportation has developed a master spreadsheet which keeps a running list of students transported along with verified addresses, school information, and other relevant data. We will be able to compare this with the new monthly reports that are coming from the contractor's router in Montana to account for every student who was transported. Student rosters were reconciled in early September with the building administrators and we are now able to reconcile contractor data with district data periodically.

The district accepts the recommendations from the audit report related to the finding and they have already been implemented.

1. Recommendation to conduct a multi-year trend analysis:

The district began conducting the multi-year trend analysis in August 2015, well before the auditors arrived and we will continue this annual process. The exponential growth of charter schools has impacted the nonpublic as well as district enrollment and created unusual shifts in the transportation patterns which must be constantly monitored.

2. Recommendation to maintain accurate lists:

The spreadsheet developed prior to the audit and maintained by the Assistant Manager for Transportation accurately lists all students who were provided transportation and identifies their building. It correctly differentiates between the nonpublic and charter school students as well. This is able to be coordinated and verified with the monthly reports we are receiving from the contractor and we will continue in this manner.

3. Recommendation to implement a monitoring process:

These procedures are currently being followed by the district and this process will continue to be monitored by the Assistant Business Administrator as part of their regular duties. They were developed prior to and not as a result of the audit.

The implementation of a full-time Assistant Manager for Transportation has allowed the district to accurately manage the transportation reporting process and address numerous other busing concerns. There has been a major drop in transportation related complaints and a significant improvement in responsiveness to parents and building administrators. Accurate data reporting will actually result in a maximized reimbursement from the state. The auditors were able to meet with district staff and observe the implementation of these procedures during their visit.

Auditor Conclusion

We are pleased that the District agrees with our finding and recognizes the significance and importance of the reporting errors noted for the 2010-11, 2011-12, 2012-13, and 2013-14 school years. The District was proactive in taking the necessary corrective actions to ensure transportation data will be reported accurately to PDE for reimbursement. During our next audit, we will determine the effectiveness of the District's corrective actions.

Observation

The District Deprived the Public of Full Transparency in Its Dealings with a Local Developer and May Have Failed to Comply with the Sunshine Act

Criteria relevant to the observation:

The legislative intent of the Sunshine Act (Act), 65 Pa.C.S. § 701 *et seq.*, is as follows: “(a) Findings.--The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process and that **secrecy in public affairs undermines the faith of the public in government** and the public’s effectiveness in fulfilling its role in a democratic society. (b) Declarations.--The General Assembly hereby declares it to be the **public policy** of this Commonwealth to **insure the right of its citizens to have notice of and the right to attend all meetings of agencies** at which any agency business is discussed or acted upon as provided in this chapter.” [Emphases added.] *See* 65 Pa.C.S. § 702.

Section 703 of the Act defines “Official action” as: “(1) Recommendations made by an agency pursuant to statute, ordinance or executive order. (2) The establishment of policy by an agency. (3) The decisions on agency business made by an agency. (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.” *See* 65 Pa.C.S. § 703.

On January 29, 2015, the Board took official action on a lease and a charter school application during a public meeting. Both of these transactions involved a local property developer (Developer) who supported the approval of the charter school applicant (Charter School Applicant). The Board and the current Superintendent (Superintendent) were not transparent to the public and may not have complied with the Sunshine Act when they did not make the public aware of certain promises made by the Developer.

We examined an undated letter (Verification Letter) that summarized a conversation between the Developer and the Superintendent and noted specific commitments made by the Developer to the District. We found that during an executive session, which was held just prior to the aforementioned public meeting, the District solicitor provided board members with information about the Developer’s commitments. According to the solicitor, the information was provided during what he refers to as an “informational session” within the executive session of the public meeting, and because the information was not “deliberated or discussed” by the Board, it did not have to disclose the information during the public meeting.

We focus our concern on the fact that the public was “kept in the dark” about the Developer’s promises after the executive session ended and before the respective board voted on the lease and the charter school application. The Board should have been more fully transparent and forthright with the public regarding the Developer’s commitments. This transparency would be consistent with open meeting best practices, and at the very minimum, in keeping with the spirit of the Sunshine Act as contained in its preamble. The legislative intent of the Sunshine Act is clear when it states that “secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.”⁵

⁵ 65 Pa.C.S. § 701 *et seq.*

Criteria relevant to the observation (continued):

Further, pursuant to Section 706(3) of the Act, the minutes must contain the “substance of all official actions and a record by individual member of the roll call votes taken.” *See* 65 Pa.C.S. § 706(3).

Section 708(b) of the Act provides: “(b) Procedure.--The executive session may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time. **The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session.** If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.” [Emphasis added.] *See* 65 Pa.C.S. § 708(b).

The Sunshine Act, 65 Pa.C.S. § 708(a), provides for “executive sessions” within the structure of a public meeting (i.e., prior or subsequent to) for six narrow reasons including one or more of the following: (1) personnel matters, (2) collective bargaining agreements and labor relations, (3) purchases and leases of real property, (4) litigation matters, (5) privileged and confidential business, and (6) academic admissions or standing at a state-owned, state-aided, or state-related college or university.

Background. The Developer has been a strong proponent of charter schools and has facilitated numerous charter school openings by providing financing and building leases. The Developer had been supporting the new Charter School Applicant whose application had been previously denied two times by the District. During this same time period, the District had been searching for a building to lease so it could open its new alternative, career-based high school, known as “Building 21.” The District’s search led it to the building at 265 Lehigh Street, which was owned by the Developer. Meanwhile, the Developer was considering a lease for 265 Lehigh Street with an organization that wanted to open another charter school in the District.

Appeal and Review of Charter School Applicant. Our review of the District’s charter school approval process found the District had twice denied the application of the Charter School Applicant. The final denial noted the charter application did not contain the necessary demonstrated sustainable support by teachers, parents, other community members, and students, as required by law.

The representatives of the Charter School Applicant then filed an appeal with the Charter Appeal Board (CAB) because it felt adequate support had been documented. The District filed a motion to dismiss the appeal, but the CAB denied the dismissal. The District’s solicitor then reviewed prior CAB decisions and other case law and ultimately recommended the District approve the charter application so that certain concessions that had been negotiated would remain in the charter, such as enrollment caps, peer accreditation requirements, and the purchase of business services to be provided by the District.

The Board’s Decisions. In the meantime, according to the Developer’s Verification Letter, the Developer and the Superintendent had met to discuss the lease and the charter school applications. According to the letter, the Superintendent agreed to the following with the Developer:

1. The Board will enter into a lease of the Developer’s property at 265 Lehigh Street for mutually agreed upon terms.

2. The Superintendent will recommend approval of the application for the Charter School Applicant provided an agreement is reached with the applicant on charter modifications.

The Developer’s Commitments. The Developer committed to the following actions:

1. The Developer would request the board of the Charter School Applicant to withdraw its application.
2. Neither the Developer, nor companies that the Developer controlled, would seek to develop properties or support future applications for charter schools in the geographic boundaries of the District provided that the District is a tenant in good standing in 265 Lehigh Street.
3. Developer would commit to the promotion and advertising of the Building 21 program through the advertising companies that the Developer controlled through a donation of advertising services with an approximate value of \$150,000.

The letter concludes with the statement below and is memorialized by the signature of the Developer:

“We understand that the actual occurrence of these recommendations are mutually binding conditions. Further, I understand that the promises I have made with regard to future charter schools and promotional support will be relied upon by the school district in its lease of 265 Lehigh Street and that I expect to be legally bound.”

The Sunshine Act and the District’s Lack of Transparency. The Sunshine Act defines “official action” as, in part: “(3) the decisions on agency business made by an agency.”⁶ As indicated by the Pennsylvania Supreme Court, “openness” and not “secrecy” is to be observed by any public entity in its decision-making process under the Sunshine Act.⁷ In reviewing the minutes of the Board’s January 29, 2015 public meeting, we found no evidence of

⁶ See 65 Pa.C.S. § 703.

⁷ *Smith v. Township of Richmond*, 623 Pa. 209, 223, 82 A.3d 407, 416 (2013).

the public disclosure of the Developer's commitments regarding the Board's official actions taken at the meeting.

The January 29th executive session was announced as having been held prior to the public meeting to discuss matters pertaining to "Labor Relations, Legal Matters, Litigation, Personnel and Confidential matters pertaining to students and school related business." We believe that a lack of an acknowledgement of the Developer's commitments amounted to a lack of transparency and accountability to the public and may have been in noncompliance with at least the spirit of the Sunshine Act.

Although the Developer's Verification Letter was reported by the solicitor to have been signed on January 30th, the day after the meeting where the Board voted on the lease and the new charter school, we reiterate our belief that the board members knew of the contents of the letter, or more importantly, they knew of the Developer's commitments regarding the lease, the charter school applications, and the advertising service donation, and they should have at least acknowledged these commitments, however briefly, during the public meeting.

Recommendation

The *School District of the City of Allentown* should:

Ensure it maintains the highest standard of transparency and accountability to the public when it conducts its public meetings, informational sessions, and executive sessions, and it should be mindful of all provisions of the Sunshine Act, including its preamble.

Management Response

District management disagreed with the observation and provided the following response:

The School District cannot disagree with the Auditor General that full transparency in its public business is a worthy goal. As with any public body, however, unqualified transparency in all business is neither realistic nor desirable for the public interest. The Sunshine Law itself recognizes this by making exceptions for legal advice, collective bargaining, personnel, real estate transactions, and confidential matters relating to students. Accordingly,

in the business of governing school districts, there is a necessary absence of transparency in many areas. In this instance, the Auditor General faults the School District for not making known extra contractual promises from a prospective landlord, where this information was related to the board by their legal counsel in closed session.

In 2013, the Pennsylvania Supreme Court in *Smith v. Township of Richmond*, the Court addressed precisely the same transparency argument made by the Auditor General in his "observation." In *Smith* the Court rejected the notion that the Sunshine Law requires disclosure of all information upon which a public official may have based a public vote. The Court made it clear that despite the desiderata of complete transparency expressed in the Sunshine Law prefatory provisions, the legislature saw fit to define "openness" in terms of whether "discussion", "deliberation," or "action" taken in a closed session. The Auditor General's "observation" recognizes that there were no discussions or deliberations by the ASD Board on what amounts to gratuitous promises of largess by the Developer. The Board had no authority to make public these promises and no wish to diminish the possibility of their ultimate performance by the developer by an impetuous disclosure of information provided in confidence by legal counsel.

Under the holding in *Smith* and the plain language of the Sunshine Law the School District believed and continues to believe that receiving information in the manner that it did was fully in compliance with letter of the Sunshine law.

The Auditor General's "observation" impugning the Board's compliance with the Sunshine Law is misplaced, hypercritical, and based on questionable legal analysis. Nevertheless, the Board accepts the Auditor General's recommendation as a goal to be sought in all its public business. At the same time the Board will be guided by the standards as written by legislature and interpreted by the courts as it continues to do the business of educating the City's children with all the challenges that entails.

Auditor Conclusion

We are glad that the District and its Board acknowledge the importance of full transparency as a goal in its school governance and agree that the Sunshine Act (Act) explicitly exempts six narrow reasons from the purview of open

meetings.⁸ However, we strongly disagree that our Department has in any way faulted the district merely because its legal counsel recounted a local property developer's commitments to the Board during an executive session of a public meeting. Instead, our finding focuses on the fact that the public had the right to know of the discussions the Superintendent and the legal counsel had with the Developer, later committed to writing, and the Board's awareness of these discussions regarding his building lease, the charter school application approval, and advertising service donation.

As stated in the finding, we believe that the District and the Board did not follow best open meeting practices and at the very minimum, the spirit of the Act when it did not at least acknowledge the Developer's commitments, however briefly, during the public meeting.

Furthermore, we believe that the District's reliance on the Pennsylvania Supreme Court's decision in *Smith v. Township of Richmond*⁹ is misdirected for defending its actions. In *Smith*, the "gatherings" in the case were "fact-finding" in nature rather than an "executive session"¹⁰ of a public meeting as in this matter. The case is further distinguishable for the following additional reasons: **First**, the Supreme Court affirmed the Commonwealth Court's decision that having private closed-door gatherings with outside groups did not violate the Act because they were held solely for informational purposes and did not involve deliberations. **Second**, both appellate courts didn't even address the issue of "executive sessions" given that the Commonwealth Court determined that while the township solicitor had portrayed the meetings as "executive

⁸ The six exceptions are: (1) personnel matters; (2) collective bargaining agreements and labor relations; (3) purchases and leases of real property; (4) litigation matters; (5) privileged and confidential business; and (6) certain academic admissions or standing. 65 Pa.C.S. § 708(a).

⁹ 623 Pa. 209, 82 A.3d 407 (2013).

¹⁰ "Executive sessions" are defined as "[a] meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting." Therefore, executive sessions are meetings open only to agency members and, in some circumstances, other people, such as legal counsel, whose presence is necessary to conduct the business of the meeting. 65 Pa.C.S. § 703.

sessions,” in actuality they were not.¹¹ **Third**, the facts in Smith are unlike those in this matter because it involved township supervisors having closed-door gatherings for the purpose of collecting information with members of a citizens group and representatives of a local company.

Further, as to management’s critique of our finding as being “misplaced, hypercritical, and based on questionable legal analysis,” we note that as the commonwealth’s *chief fiscal watchdog* for protecting the interests of the state taxpayers, we believe that our Department’s finding is appropriate, necessary, and offers a reasonable legal interpretation of the Act.

Under Section 1921(a) of the Statutory Construction Act, “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to **all** its provisions.”¹² While it is fairly uncommon for the General Assembly to explicitly state its intentions in its enacted legislation, the Act is a rare and shining exception given that the General Assembly added a separate section for the preamble of the Act. This section, entitled “Legislative findings and declaration” provides all public entities in the commonwealth with guidance as to the vital importance of the Act to its citizens. The General Assembly clearly intended for the Act to greatly restrict secrecy in public affairs.¹³

In sum, we believe that the District’s actions in keeping the public “in the dark” regarding the Developer’s promises during the public meeting regarding his building lease, the charter school application approval, and the advertising service donation exhibited a lack of full transparency to the public and may have failed to comply, at minimum, with the spirit of the Act.

¹¹ The Commonwealth Court observed that “Although the Solicitor described the meetings as ‘executive sessions’, in actuality they were not. The meetings were conducted so that the individual Supervisors could learn about Lehigh Cement’s quarry operations and listen to citizen concerns about those operations. The meetings did not constitute a ‘meeting’ of any type governed by the Sunshine Act.” See *Smith I*, 54 A.3d 404, 410-411 (Cmwlth. 2012). The Supreme Court observed in footnote 4 that the Commonwealth Court “determined that the discussions did not constitute ‘executive sessions’ as the solicitor had claimed, and thus, they were not exempt from Section 704’s open-meeting requirement on that basis....Although the Township Parties argue that such holding was in error, the issue is not within the scope of the questions we accepted for review....Accordingly, the Commonwealth Court’s ruling in this respect remains undisturbed...” See *Smith II*, 623 Pa. 209, 225, 82 A.3d 407, 417, Footnote 4 (2013).

¹² 1 Pa.C.S. § 1921(a). [Emphasis added.]

¹³ 65 Pa.C.S. § 702.

Status of Prior Audit Findings and Observations

Our prior audit of the District released on September 26, 2013, resulted in four findings and one observation. 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 in September 26, 2013

Prior Finding No. 1: The District Failed to Maintain Supporting Documentation Required for its State Transportation Subsidy (Resolved)

Prior Finding Summary:

Our prior audit found that the District could not provide documentation supporting the data in the District's 2008-09 and 2009-10 school years' student transportation reports. This supporting documentation was necessary to demonstrate that the District's transportation reports submitted to the PDE were accurate and that the District received the correct amount of state transportation subsidy. Without this supporting documentation, we were unable to verify the District's entitlement to transportation subsidies of \$1,918,702 and \$1,933,739 for the 2008-09 and 2009-10 school years, respectively, totaling \$3,852,441.

Prior Recommendations:

We recommended that the District should:

1. In accordance with Section 518 of the PSC and Section 23.4 of the Regulations of the State Board of Education of Pennsylvania, require that District personnel maintain a complete record of the transportation contractor's data, including the number of students transported to and from school and the total mileage driven.
2. Establish an internal control process for reviewing the data that the District's transportation contractor provides and verify the data for accuracy before making payments to the contractor and before sending reports to PDE.

We also recommended that the *Pennsylvania Department of Education* should:

3. Monitor the District to ensure it is maintaining sufficient and appropriate evidence to justify its receipt of state funds.
4. Review the propriety of the District's transportation subsidy of \$1,918,702 and \$1,933,739 for the 2008-09 and 2009-10 school years, respectively.

Current Status:

During our current audit, we found that the District did implement our recommendations. The District hired a full-time transportation coordinator in August 2015, who has implemented protocols to ensure that appropriate documentation is maintained and stored in a retrievable format. In addition, Section 8 of the renewed contract with the transportation provider requires the contractor to provide the District with detailed monthly invoices and all necessary documentation, including the number of students transported to and from school and the total mileage driven.

Also, as of April 26, 2016, PDE has not made any adjustments to the District's subsidies based on the failure to maintain adequate transportation documentation for the 2008-09 or 2009-10 school years.

While the District resolved the prior issue of not maintaining documentation to support the transportation data submitted to PDE, we found during this current audit that the District incorrectly reported data to PDE that resulted in a \$1.7 million transportation subsidy overpayment. (See Finding, beginning on page 6)

Prior Finding No. 2: Student Membership Reporting Errors Resulted in the District Not Receiving \$47,015 in State Subsidy (Resolved)

Prior Finding Summary:

Our prior audit of student membership reports submitted by the District to PDE for the 2008-09 and 2009-10 school years found reporting errors in the 2008-09 school year. In addition, the auditors identified a lack of internal controls over the District's reporting of resident and nonresident membership.

Prior Recommendations:

We recommended that the District should:

1. Establish internal controls over the District's process for collecting and reporting membership data, including establishing

requirements that staff reconcile the District's documentation to the data that is uploaded to PDE.

2. Verify that the preliminary reports from PDE are correct and, if not, correct, revise, and resubmit child accounting data to PDE.

We also recommended that the *Pennsylvania Department of Education* should:

3. Adjust the District's payments to correct the underpayment of \$47,015.

Current Status:

During our current audit, we found that the District did implement our recommendations. Prior to the completion of the previous audit, the District hired a full-time PIMS coordinator who has developed procedures and worked with staff on all levels to eliminate the problems that previously existed. Training is provided to child accounting staff to ensure the collection and reporting of membership data is completed properly. Staff from the District's Office of Accountability also reviews reported data for accuracy.

As of February 16, 2016, PDE had not resolved the underpayment in the amount of \$47,015. We once again recommend PDE correct the underpayment.

Prior Finding No. 3: Continued Certification Deficiencies (Resolved)

Prior Finding Summary:

Our prior audit of the District's professional employees' certification and assignments for the period August 1, 2010 through April 16, 2013, found three certification deficiencies.

Prior Recommendations:

We recommended that the District should:

1. Require the Human Resource Manager to implement a process for regularly reviewing the records of all employees with provisional certificates to ensure that these individuals obtain their permanent certificates in a timely manner.
2. Require the Human Resource Office to keep on file a copy of all valid Pennsylvania certificates held by its professional employees.

We also recommended that the *Pennsylvania Department of Education* should:

3. In conjunction with PDE's Bureau of School Leadership and Teacher Quality's determination, adjust the District's allocations to recover any subsidy forfeitures deemed necessary.

Current Status:

During our current audit, we found that the District did implement our recommendations. The Human Resource Manager revised the certification monitoring procedures, established a review process to ensure that individuals with provisional certification obtain permanent certification in a timely manner, and maintains copies of all valid Pennsylvania certificates held by professional employees.

PDE recovered the subsidy forfeiture in the amount of \$8,325 on December 26, 2013.

Prior Finding No. 4: Lack of Documentation Needed to Verify Bus Drivers' Qualifications (Resolved)

Prior Finding Summary:

Our prior audit found that the District failed to obtain and retain the required documentation for nine contracted bus drivers.

Prior Recommendations:

We recommended that the District should:

1. Immediately obtain, from the transportation contractor, the remaining missing documentation referred to in our finding in order to ensure that drivers transporting students in the District possess proper qualifications.
2. Ensure that the District's transportation coordinator reviews each driver's qualifications prior to that person transporting students.
3. Maintain files, separate from the transportation contractors, for all District drivers and work with the contractors to ensure that the District's files are up-to-date and complete.
4. Obtain "Arrest/Conviction Report and Certification" forms as required by the PSC.
5. Put policies and procedures in place to ensure all employees comply with the PSC requirement to provide written notice within 72 hours after an arrest or conviction.

Current Status:

During our current audit, we found that the District did implement our recommendations. The District properly obtained all missing documentation for the nine bus drivers noted in the prior audit to ensure they had the required qualifications. The District also hired a full-time transportation coordinator in August 2015, who has implemented procedures to ensure that appropriate documentation will be maintained and stored in a retrievable format. This coordinator also provides the contractor with assurances of acceptable FBI background checks for prospective drivers after discussing possible issues with the District's human resources department and solicitor. In addition, Section 10 of the renewed contract with the transportation provider requires that the contractor maintain copies of all bus driver documentation as well.

Prior Observation:

The District Financed Some of Its Debt with Interest-Rate Management ("Swap") Agreements (Resolved)

Prior Observation Summary:

On April 28, 2009 and April 28, 2010, the District entered into "Swap" Agreements that related to its issuance of \$34,750,000 and \$34,750,000 of the District's General Obligation Notes, 2009 and 2010 Series, respectively. We believe that District's should not enter into "Swaps" due to the volatile nature and large potential costs associated with these agreements.

Prior Recommendations:

We recommended that the District should:

Consider all the risks, including potential termination fees, when entering into any new "Swap" Agreements in the future.

Current Status:

During our current audit, we found that the District did implement corrective action. The District did not enter into any new "Swap" Agreements since the conclusion of our last audit. Currently, the District has the two active "Swaps" cited in the previous audit. The District plans to divest of these agreements when financially beneficial for the District.

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, PDE, and other concerned entities.

Our audit, conducted under authority of Section 403 of The Fiscal Code,¹⁴ is not a substitute for the local annual financial audit required by the PSC 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, 2015. In addition, the scope of each individual audit objective is detailed on the next page.

The District's management is responsible for establishing and maintaining effective internal controls¹⁵ 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, 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.

¹⁴ 72 P.S. § 403.

¹⁵ Internal controls are processes designed by management to provide reasonable assurance of achieving objectives in areas such as: effectiveness and efficiency of operations; relevance and reliability of operational and financial information; and compliance with certain relevant state laws, regulations, contracts, grant requirements, 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, financial reports, annual budgets, and new or amended policies and procedures. 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:

- ✓ Contracting
- ✓ Financial Stability
- ✓ Administrator Contract Buy-out
- ✓ School Safety
- ✓ Charter School Review and Approval Process
- ✓ Sunshine Act
- ✓ Conflicts of Interests
- ✓ Transportation of Nonpublic and Charter School Students

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

- ✓ Did the District ensure that its significant contracts were current and were properly Board approved, executed, and monitored? Did the District monitor transactions with vendors when there was no formal contract in place?
 - To address this objective, we reviewed the District's procurement and contract monitoring policies and procedures. We obtained a list of vendor payments for goods and services during 2014-15 school year. We judgmentally selected 37 out of the 2,585 vendors to determine if contracts existed for those vendors. We then selected 7 of those 37 vendors who had contracts with the District for further review and analysis. Testing included a review of the procurement documents to determine if the contract was procured in accordance with the PSC and District policies. We also reviewed documents to determine if the District properly monitored the selected contracts. Finally, we reviewed board meeting minutes and the board member's Statements of Financial Interest to determine if any board member had a conflict of interest in approving the selected contracts.

- ✓ Based on an assessment of fiscal 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, independent auditor's reports, summary of child accounting, and general ledger for the five fiscal years 2009-10 through 2013-14. The financial and statistical data was used to calculate ratios and trends for 22 benchmarks which were deemed appropriate for assessing the District's financial stability. The benchmarks 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.

- ✓ 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 current employment contracts contain adequate termination provisions?
 - To address this objective, we reviewed the contracts, employment agreements, and payroll records for the two administrators with individual employment contracts who retired or separated from employment with the District during the period July 1, 2010 through January 11, 2013. We reviewed these two former administrator's contracts to determine, whether the contract contained adequate termination provisions, and whether the termination provisions were followed.

- ✓ Did the District take appropriate actions to ensure it provided a safe school environment?
 - To address this objective, we reviewed a variety of documentation including, safety plans, training schedules, anti-bullying policies, and after action reports. In addition, we conducted on-site reviews at 4 out of the District's 22 school buildings (one elementary school, one middle school, and two high schools) to assess whether the District had implemented basic safety practices.

- ✓ Did the District ensure the District's charter school application determination process is adequate, complies with the CSL, and is consistently followed?
 - To address this objective, we obtained and reviewed the District's policies and procedures related to its charter school application review and approval process. We obtained and reviewed all six of the charter school applications received by the District from July 1, 2012 through June 30, 2015. We then selected the most recently approved charter school application for further analysis. This analysis consisted of reviewing the application, denials, revised applications, appeals, and final approval of the charter to ensure that the District complied with the deadlines established by the PSC and CSL.

- ✓ Did the District ensure it has documented board policies and administrative procedures to ensure that compliance with the Sunshine Act, if the policies and procedures are adequate and appropriate, and have been implemented?
 - To address this objective, we interviewed District officials about the publicly known undated verification letter between a local property developer and the District (discussed in more detail in the Observation, beginning on page 13). We selected 5 of the 15 board meetings from December 19, 2013 through January 29, 2015, where discussion of the Arts Academy Elementary Charter School occurred. We reviewed these five board meetings to ensure that the meetings were made known to the public, written minutes were kept, and these minutes contained the elements required by the Sunshine Act. We also reviewed these board meetings to ensure that if the District went into executive session, official action was only taken on the discussion in a public meeting, and that the public had a reasonable opportunity for public comments.

- ✓ Did the District ensure its board members and contracted administrators have filed their Statements of Financial Interest and are in compliance with the PSC and the Public Official and Employee Ethics Act?
 - To address this objective, we reviewed Statements of Financial Interest forms for all board members and all contracted administrators for the 2012, 2013, and 2014 calendar years. We interviewed District administration, reviewed board meeting minutes, and vendor lists to see if board members or contracted administrators did business with the District.

- ✓ Did the District correctly report nonpublic and charter school students transported, and did the District receive correct reimbursement from PDE for nonpublic and charter school students transported? Did the District develop and implement adequate internal controls, including any written policies and procedures, for documenting and reporting to PDE the number of nonpublic and charter school students transported?
 - To address this objective, we reviewed the transportation data reported to PDE for the 2010-11, 2011-12, 2012-13, and 2013-14 school years to determine the accuracy of the reported number of nonpublic and charter school students the District transported. We reconciled nonpublic and charter school students' lists with bus rosters to letters from nonpublic schools requesting transportation for their students or with charter school enrollment forms.

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
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Harrisburg, PA 17120

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

ⁱ Source: School district, PDE, and U.S. Census data.

ⁱⁱ Source: Information provided by the District administration.

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

^{iv} PSSA stands for the Pennsylvania System of School Assessment (PSSA), which is composed of statewide, standardized tests administered by PDE to all public schools and the reporting associated with the results of those assessments. PSSA scores in the tables in this report reflect Reading and Math results for the “All Students” group for the 2011-12 and 2012-13 school years.

^v PSSA scores, which are Pennsylvania’s mandatory, statewide academic test scores, are issued by PDE. However, the PSSA scores issued by PDE are collected by an outside vendor, Data Recognition Corporation (DRC). The Pennsylvania Department of the Auditor General and KPMG issued a material weakness in internal controls over PDE’s compilation of this academic data in the Single Audit of the Commonwealth of Pennsylvania for the fiscal year ended June 30, 2014, citing insufficient review procedures at PDE to ensure the accuracy of test score data received from DRC.

^{vi} In the 2011-12 school year, the state benchmarks reflect the Adequate Yearly Progress targets established under No Child Left Behind. In the 2012-13 school year, the state benchmarks reflect the statewide goals based on annual measurable objectives established by PDE.

^{vii} SPP stands for School Performance Profile, which is Pennsylvania’s new method for reporting academic performance scores for all public schools based on a scale from 0% to 100% implemented in the 2012-13 school year by PDE.

^{viii} *Id.* Additionally, federal Title I designations of Priority, Focus, Reward, and No Designation are new federal accountability designations issued by PDE to Title I schools only beginning in the 2012-13 school year. Priority schools are the lowest 5%, focus schools are the lowest 10%, and reward schools are the highest 5% of Title I schools. All Title I schools not falling into one of the aforementioned percentage groups are considered “No Designation” schools. The criteria used to calculate the percentage rates is determined on an annual basis by PDE.

^{ix} Title I Federal accountability designations for Title I schools originate from PDE and are determined based on the number of students at the school who receive free and/or reduced price lunches. School lunch data is accumulated in PDE’s CN-PEARS system, which is customized software developed jointly with an outside vendor, Colyar, Inc. The Pennsylvania Department of the Auditor General and KPMG issued a significant deficiency in internal controls over the CN-PEARS system in the Single Audit of the Commonwealth of Pennsylvania for the fiscal year ended June 30, 2014.