

LEHIGH VALLEY CHARTER HIGH SCHOOL
FOR THE PERFORMING ARTS
NORTHAMPTON COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT

JANUARY 2013



**Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, Pennsylvania 17120-0018**

**JACK WAGNER
AUDITOR GENERAL**

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

Mr. Mario Acerra, Board President
Lehigh Valley Charter High School
for the Performing Arts
675 East Broad Street
Bethlehem, Pennsylvania 18018

Dear Governor Corbett and Mr. Acerra:

We conducted a performance audit of the Lehigh Valley Charter High School for the Performing Arts (LVPA) to determine its compliance with applicable state laws, contracts, grant requirements, and administrative procedures. Our audit covered the period November 17, 2007 through October 29, 2010, except as otherwise indicated in the report. Additionally, compliance specific to state subsidy and reimbursements was determined for the school years ended June 30, 2008 and June 30, 2007. Our audit was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit found that the LVPA complied, in all significant respects, with applicable state laws, contracts, grant requirements, and administrative procedures, except as detailed in three findings noted in this report. In addition, we identified one matter unrelated to compliance that is reported as an observation. A summary of these results is presented in the Executive Summary section of the audit report.

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

Sincerely,

/s/

JACK WAGNER
Auditor General

January 3, 2012

cc: **LEHIGH VALLEY CHARTER HIGH SCHOOL FOR THE PERFORMING ARTS**
Board of Trustees



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Executive Summary

Audit Work

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

Our audit scope covered the period November 17, 2007 through October 29, 2010, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. Compliance specific to state subsidy and reimbursements was determined for school years 2007-08 and 2006-07.

LVPA School Background

The LVPA, located in Northampton County, Pennsylvania opened in July of 2003. It was originally chartered on July 1, 2003, for a period of five years by the Bethlehem Area, Nazareth Area and the Bangor Area school districts. Northampton Area School District granted it a charter for a period of four years, and then re-chartered LVPA for the period July 1, 2007 through June 30, 2012. LVPA's mission states, "It seeks to provide a rich and comprehensive educational program for students with talents and potential in dance, instrumental music, vocal music, theatre, figure skating, or visual art. This model of instruction enables each student to maximize his or her talents. LVPA believes their graduates will increase

the quality of their life, the lives of the people who surround them, and the communities of the Lehigh Valley." During the 2009-10 school year, the LVPA provided educational services to 439 pupils from 45 sending school districts through the employment of 46 teachers, 4 full-time and part-time support personnel, and 4 administrators. The LVPA received approximately \$4.3 million in tuition payments from school districts required to pay for their students attending the LVPA in school year 2009-10.

Adequate Yearly Progress

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

AYP is a key measure of school performance established by the federal No Child Left Behind Act (NCLB) of 2001 requiring that all students reach proficiency in Reading and Math by 2014. For a school to meet AYP measures, students in the school must meet goals or targets in three areas: (1) Attendance (for schools that do not have a graduating class) or Graduation (for schools that have a high school graduating class), (2) Academic Performance, which is based on tested students' performance on the Pennsylvania System of School Assessment (PSSA), and (3) Test Participation, which is based on the number of students that participate in the PSSA. Schools are evaluated for test performance and test participation for all students in the tested grades (3-8 and 11) in the school. AYP measures determine

whether a school is making sufficient annual progress towards the goal of 100 percent proficiency by 2014.

Audit Conclusion and Results

Our audit found that the LVPA complied, in all significant respects, with applicable state laws, contracts, grant requirements, and administrative procedures. However, as noted below, we identified three compliance-related matters reported as findings and one matter unrelated to compliance that is reported as an observation.

Finding No 1: Certification Deficiencies and Failure to Comply with the 75 Percent Certified Staff Requirement of the Charter School Law.

Our review of professional employees' certification and assignments for the period November 1, 2007 through June 30, 2010, was performed in order to determine compliance with the requirements of the of the Law, the Public School Code, Chapter 711 of the Pennsylvania Code, the federal No Child Left Behind Act, and Certification and Staffing Policies and Guidelines issued by the Pennsylvania Department of Education's (PDE) Bureau of School Leadership and Teacher Quality (see page 10).

Finding No 2: Unmonitored Vendor System Access and Logical Access Control Weaknesses.

We noted that the LVPA personnel should improve controls over remote access to its computers. In particular, controls should be strengthened over outside vendor access to their student accounting applications (see page 14).

Finding No. 3: Public Official and Employee Ethics Act Violations.

Our audit of LVPA records for the calendar

years ending December 31, 2009, 2008 and 2007 found that several board members failed to file their Statement of Financial Interests form or they filed them incompletely (see page 18).

Observation: Annual Reports Not Filed Timely.

Our audit of the LVPA records found that LVPA did not file their annual report with the PDE and the chartering school districts for the school years 2009-10, 2007-08 and 2006-07. By not filing this report by August 1st, the chartering school districts may not have ample time to review and assess the report to ensure the LVPA is meeting the goals of its charter and also to be considered for granting a renewal of the charter (see page 22).

Status of Prior Audit Findings and Observations.

With regard to the status of our prior audit recommendations to the LVPA from an audit we conducted of the 2005-06, 2004-05, and 2003-04 school years, we found the LVPA had not taken appropriate corrective action in implementing our recommendations pertaining to certification and ethics act violations. We found that the LVPA had taken appropriate corrective action in implementing our recommendations related to lack of Memorandum of Understanding and inaccurate reporting of retirement wages (see page 24).

Background Information on Pennsylvania Charter Schools

Description of Pennsylvania Charter Schools:

Charter and cyber charter schools are taxpayer-funded public schools, just like traditional public schools. There is no additional cost to the student associated with attending a charter or cyber charter school. Charter and cyber charter schools operate free from many educational mandates, except for those concerning nondiscrimination, health and safety, and accountability.

Pennsylvania ranks high compared to other states in the number of charter schools:

According to the Center for Education Reform, Pennsylvania has the 7th highest charter school student enrollment, and the 10th largest number of operating charter schools, in the United States.

Source: "National Charter School and Enrollment Statistics 2010." October, 2010.

Pennsylvania Charter School Law

Pennsylvania's charter schools were established by the Charter School Law (Law), enacted through Act 22 of 1997, as amended. In the preamble of the Law, the General Assembly stated its intent to provide teachers, parents, students, and community members with the opportunity to establish schools that were independent of the existing school district structure.¹ In addition, the preamble provides that charter schools are intended to, among other things, improve student learning, encourage the use of different and innovative teaching methods, and offer parents and students expanded educational choices.²

The Law permits the establishment of charter schools by a variety of persons and entities, including, among others, an individual; a parent or guardian of a student who will attend the school; any nonsectarian corporation not-for-profit; and any nonsectarian college, university or museum.³

Applications must be submitted to the local school board where the charter school will be located by November 15 of the school year preceding the school year in which the Charter School will be established,⁴ and that board must hold at least one public hearing before approving or rejecting the application.⁵ If the local school board denies the application, the applicant can appeal the decision to the State Charter School Appeal Board,⁶ which is comprised of the Secretary of Education and six members appointed by the Governor with the consent of a majority of all of the members of the Senate.⁷

¹ 24 P.S. § 17-1702-A.

² *Id.*

³ 24 P.S. § 17-1717-A(a).

⁴ *Id.* § 17-1717-A(c).

⁵ *Id.* § 17-1717-A(d).

⁶ *Id.* § 17-1717-A(f).

⁷ 24 P.S. § 17-1721-A(a).

With certain exceptions for charter schools within the School District of Philadelphia, initial charters are valid for a period of no less than three years and no more than five years.⁸ After that, the local school board can choose to renew a school's charter every five years, based on a variety of information, such as the charter school's most recent annual report, financial audits, and standardized test scores. The board can immediately revoke a charter if the school has endangered the health and welfare of its students and/or faculty. However, under those circumstances, the board must hold a public hearing on the issue before it makes its final decision.⁹

Act 88 of 2002 amended the Law to distinguish cyber charter schools, which conduct a significant portion of their curriculum and instruction through the Internet or other electronic means, from brick-and-mortar charter schools that *operate in buildings similar to school districts*.¹⁰ Unlike brick-and-mortar charter schools, cyber charter schools must submit their application to the Pennsylvania Department of Education (PDE), which determines whether the application for a charter should be granted or denied.¹¹ However, if PDE denies the application, the applicant can still appeal the decision to the State Charter School Appeal Board.¹² In addition, PDE is responsible for renewing and revoking the charters of cyber charter schools.¹³ Cyber charter schools that had their charter initially approved by a local school district prior to August 15, 2002, must seek renewal of their charter from PDE.¹⁴

Funding of Pennsylvania Charter Schools:

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

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

Pennsylvania Charter School Funding

The Commonwealth bases the funding for charter schools on the principle that the state's subsidies should follow the students, regardless of whether they choose to attend traditional public schools or charter schools. According to the Charter School Law, the sending school district must pay the charter/cyber charter school a per-pupil tuition rate

⁸ 24 P.S. § 17-1720-A(a).

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

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

¹¹ 24 P.S. § 17-1745-A(d).

¹² *Id.* § 17-1745-A(f)(4).

¹³ 24 P.S. § 17-1741-A(a)(3).

¹⁴ 24 P.S. § 17-1750-A(e).

based on its own budgeted costs, minus specified expenditures, for the prior school year.¹⁵ For special education students, the same funding formula applies, plus an additional per-pupil amount based upon the sending district's special education expenditures divided by a state-determined percentage specific to the 1996-97 school year.¹⁶ The Charter School Law also requires that charter schools bill each sending school district on a monthly basis for students attending the charter school.¹⁷

Typically, charter schools provide educational services to students from multiple school districts throughout the Commonwealth. For example, a charter school may receive students from ten neighboring, but different, sending school districts. Moreover, students from numerous districts across Pennsylvania attend cyber charter schools.

Under the Public School Code of 1949, as amended, the Commonwealth also pays a reimbursement to each sending school district with students attending a charter school that amounts to a mandatory percentage rate of total charter school costs.¹⁸ Commonwealth reimbursements for charter school costs are funded through an education appropriation in the state's annual budget. However, the enacted state budget for the 2011-12 fiscal year eliminated funding of the Charter School reimbursement previously paid to sending school districts.¹⁹

¹⁵ See 24 P.S. § 17-1725-A(a)(2).

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

¹⁷ See 24 P.S. § 17-1725-A(a)(5).

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

¹⁹ Please note that the general funding provision referenced above (24 P.S. § 25-2591.1) has not been repealed from the Public School Code and states the following: "For the fiscal year 2003-2004 and each fiscal year thereafter, if insufficient funds are appropriated to make Commonwealth payments pursuant to this section, such payments shall be made on a pro rata basis." Therefore, it appears that state funding could be restored in future years.

Audit Scope, Objectives, and Methodology

Scope

What is a school performance audit?

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

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

Our audit covered the period November 17, 2007 through October 29, 2010.

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

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

Objectives

What is the difference between a finding and an observation?

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

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

- ✓ Was the charter school in overall compliance with the Public School Code of 1949²⁰ (PSC) and the Charter School Law²¹ (Law)?

²⁰ 24 P.S. § 1-101 *et seq.*

²¹ 24 P.S. § 17-1701-A *et seq.*

- ✓ Did the charter school have policies and procedures regarding the requirements to maintain student health records and perform required health services, and keep accurate documentation supporting its annual health services report filed with the Department of Health to receive state reimbursement?
- ✓ Did the charter school receive state reimbursement for its building lease under the Charter School Lease Reimbursement Program, was its lease agreement approved by its board of trustees, and did its lease process comply with the provisions of the Public Official and Employee Ethics Act?²²
- ✓ Did the charter school comply with the open enrollment and lottery provisions of the Law?
- ✓ Does the charter school provide the services required for its special education students through outside agencies and/or through properly certified professional staff with the required instructional hours and/or training?
- ✓ Did the charter school board of trustees and administrators, and the chartering school board members comply with the PSC, the Public Official and Employee Ethics Act, and the Sunshine Act?
- ✓ Were at least 75 percent of the charter school's teachers properly certified and did all of its noncertified teachers meet the "highly qualified teacher" requirements?
- ✓ Did the charter school require its noncertified professional employees to provide evidence that they are at least 18 years of age, a U.S. citizen, and certified by a licensed Pennsylvania physician to be neither mentally nor physically disqualified from successful performance of the duties of a professional employee of the charter school?
- ✓ Did the charter school accurately report its membership numbers to PDE and were its average daily membership and tuition billings accurate?

²² 65 Pa.C.S. § 1101 *et seq.*

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

Methodology

What are internal controls?

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

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

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

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

²³ 22 Pa. Code § 11.24.

Any significant deficiencies found during the audit are included in this report.

Our audit examined the following:

- Records pertaining to professional employee certification, student health services, special education, lease agreements, open enrollment, vendor contracts, and student enrollment.
- Items such as board of trustees' meeting minutes, pupil membership records, IRS 990 forms, and reimbursement applications.
- Tuition receipts and deposited state funds.

Additionally, we interviewed selected administrators and support personnel associated with LVPA operations.

Findings and Observations

Finding No. 1

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

Charter School Law (Law) and Public School Code (PSC) relevant to the finding:

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

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

Section 17-1724-A(a) of the CSL, 24 P.S. § 17-1724-A(a) , provides, in part:

”. . . At least seventy-five per centum of the professional staff members of a charter school shall hold appropriate State certification.”

Our review of professional employees’ certification and assignments for the period November 1, 2007 through June 30, 2010, was performed in order to determine compliance with the requirements of the Law, the PSC, Chapter 711 of the Pennsylvania Code, the federal No Child Left Behind Act, and Certification and Staffing Policies and Guidelines (CSPG) issued by the Pennsylvania Department of Education’s (PDE) Bureau of School Leadership and Teacher Quality (BSLTQ).

Principal Certification Requirement

Our audit found that one principal and one assistant principal were not certified during the 2007-08 school year. For the 2008-09 and 2009-10 school years, one assistant principal did not hold a principal certificate, which is required by the State Board of Education.

All principals must hold appropriate state certification and cannot be part of the 25 percent noncertified professional staff allowed at charter and cyber charter schools.

Our prior audit for the school years 2005-06, 2004-05 and 2003-04 found similar errors.

Information pertaining to these deficiencies was submitted to PDE’s BSLTQ for its review. On September 18, 2011, the BSLTQ determined that these two individuals employed by the Lehigh Valley Charter High School for the Performing Arts (LVPA) were not properly certified for their positions for the school years noted. Unlike traditional school districts, charter schools are not subject to subsidy forfeitures for certification deficiencies. As such, the BSLTQ issued a citation, but no monetary penalties were imposed upon the LVPA.

Seventy-Five Percent Certification Requirement

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

Additionally, we found that the LVPA did not meet the Law's requirement to have at least 75 percent of its professional staff appropriately certified in their area of administrative responsibility or subject area in which they teach during the 2009-10, 2008-09 and 2007-08 school years. Instead, 66 percent of the charter school's professional staff had state certification in the 2009-10 school year, 74 percent of the staff had state certification in the 2008-09 school year and 74 percent of the staff had state certification in the 2007-08 school year.

LVPA's failure to employ at least 75 percent certified professional staff and certified school principals could result in the LVPA's students not receiving the quality education to which they are entitled. In addition, noncompliance with the requirements of the Law may force a chartering school district to revoke or not renew a charter because the charter school has not fulfilled its obligations, such as providing the required percentage of certified teachers and employing a certified school principal.

Recommendations

The *Lehigh Valley Charter High School for the Performing Arts* should ensure that:

1. Professional employees are properly certified for their area of administrative responsibility or subject in which they teach, for the entire school year, in compliance with the Law and PDE's CSPGs.
2. The individuals cited in this finding obtain proper certification or are re-assigned to a position for which proper certification is held.
3. Administrative personnel are provided with sufficient training in order to understand and manage charter school certification requirements as defined by the Law and PDE's CSPGs.

As the authorizing school district, the *Northampton Area School District* should:

4. Follow-up with the LVPA regarding these individuals' future teaching assignments and certification status.
5. Ensure that the LVPA is meeting the Law's requirement to employ at least 75 percent certified staff.
6. Review the charter of the LVPA and determine whether the LVPA is violating certification terms of its approved charter with the District.

Management Response

Management stated the following:

LVPA is in basic agreement with the findings. The former Superintendent was the person responsible for monitoring certification. I assumed the position of Executive Director on July 1, 2010. My response to the findings are as follow:

#1: Certification Violations: LVPA's inability to meet the 75% requirements in 2007-08, 2008-09 and 2009-10 were due to several factors: 1) There is no certification available for two of the arts programs, dancing and figure skating. In order to offer these arts programs, we hire artistic teachers who have excellent credentials in their areas of expertise. Without PDE certification for dance and figure skating, it will not be possible to meet the certification requirements in these areas. 2) LVPA believes that students benefit a

great deal from being taught by professional artists practicing in the performing art world. Although these teachers are not certified by PDE, they possess Master and Doctoral degrees. 3) LVPA had to utilize several of the non-certificated artistic directors for more teaching than had originally been anticipated.

To correct this finding, LVPA is working with East Stroudsburg University to create a program in which LVPA teachers will receive the necessary professional development and instruction to become eligible for certification in every area in which certification is available.

#2: Principal Certificates: The former Superintendent held a high school principal certificate and therefore believed that the Vice Principal and Principal did not need a certificate. [He] retired in June 2010.

To correct this finding, the current LVPA principal does have a high school Principal certificate and the Vice Principal completed her Master's degree in Education Leadership in December 2009 and has filed for an Emergency Permit/Act 97 Waiver Agreement Form PDE 338E. She is preparing to take the praxis exams in January 2011 to receive certification.

Auditor Conclusion

In response to management's reply regarding the artistic teachers, our finding pertained to the fact that LVPA did not meet the CSL's requirement to employ at least 75 percent certified staff. The artistic teachers can be part of the allowable 25 percent non-certified staff, but the LVPA must still meet the overall 75 percent certified requirement. Additionally, hiring certified school principals will assist the LVPA in meeting this requirement.

Finding No. 2

Unmonitored Vendor System Access and Logical Access Control Weaknesses

What is logical access control?

“Logical access” is the ability to access computers and data via remote outside connections.

“Logical access control” refers to internal control procedures used for identification, authorization, and authentication to access the computer systems.

The Lehigh Valley Charter High School for the Performing Arts (LVPA) uses software purchased from an outside vendor for its critical student accounting applications (membership and attendance). Additionally, the LVPA’s entire computer system, including all its data and the above vendor’s software are maintained on the vendor’s servers which are physically located at the vendor’s location. The LVPA has remote access into the vendor’s network servers. The vendor also provides the charter school with system maintenance and support.

Based on our current year procedures, we determined that a risk exists that unauthorized changes to the LVPA’s data could occur and not be detected because the LVPA was unable to provide supporting evidence that they are adequately monitoring all vendor activity in their system. Further, the LVPA does not perform formal, documented reconciliations between manual records and computerized records for membership and attendance. Since the LVPA does not have adequate manual compensating controls in place to verify the integrity of the membership and attendance information in its data base, the risk of unauthorized changes is increased.

Reliance on manual compensating controls becomes increasingly problematic if the LVPA would ever experience personnel and/or procedure changes that could reduce the effectiveness of the manual controls. Unmonitored vendor system access and logical access control weaknesses could lead to unauthorized changes to the LVPA’s membership information and result in the LVPA not receiving the funds to which it was entitled from the state.

During our review, we found the LVPA had the following weaknesses over vendor access to the LVPA’s system:

1. The LVPA does not have a formal contract with the vendor to provide student accounting applications and related information technology services.
2. The LVPA does not have a current contract with the vendor; the contract period has expired.

3. The contract with the vendor was not reviewed by the LVPA's legal counsel.
4. The LVPA does not have current information technology (IT) policies and procedures for controlling the activities of vendors/consultants, nor does it require the vendor to sign the LVPA's Acceptable Use Policy.
5. The LVPA does not require written authorization before adding, deleting, or changing a userID.
6. The LVPA does not maintain proper documentation to evidence that terminated employees were removed from the system in a timely manner.
7. The LVPA has certain weaknesses in logical access controls. We noted that the LVPA's system parameter settings do not require all users, including the vendor, to change their passwords every 30 days.
8. The LVPA has certain weaknesses in logical access controls. We noted that the LVPA system parameter settings do not require all users, including the vendor, to use passwords that are a minimum length of eight characters.
9. The LVPA has certain weaknesses in logical access controls. We noted that the LVPA system parameter settings do not require all users, including the vendor to use passwords that include alpha, numeric and special characters.
10. The vendor uses a group userID rather than requiring that each employee has a unique userID and password.
11. The vendor has unlimited access (24 hours a day/7 days a week) into the LVPA's system.
12. The LVPA does not have evidence to support they are generating or reviewing monitoring reports of user access and activity on the system (including vendor and charter school employees). There is no evidence to support that the LVPA is performing any procedures in order to determine which data the vendor may have

altered or which vendor employees accessed their system.

13. The LVPA is not backing up the application(s) before placing program changes into production.
14. The LVPA does not have a list of personnel with authorized access to the area where the servers with the membership/attendance data reside.

Recommendations

The *Lehigh Valley Charter High School for the Performing Arts* should:

1. Develop an agreement with the vendor to provide student accounting applications and related IT services. The agreement should cover legal, financial, organizational, documentary, performance, security, intellectual property, and termination responsibilities and liabilities (including penalty clauses). All contracts and contract changes should be reviewed by legal advisors.
2. Ensure that its contract with the vendor is kept current.
3. Ensure the contract with the vendor be reviewed by legal counsel.
4. Establish separate IT policies and procedures for controlling the activities of vendors/consultants and have the vendor sign this policy, or the charter school should require the vendor to sign the LVPA's Acceptable Use Policy.
5. Develop policies and procedures to require written authorization when adding, deleting, or changing a userID.
6. Maintain documentation to evidence that terminated employees are properly removed from the system in a timely manner.
7. Implement a security policy and system parameter settings to require all users, including the vendor, to change their passwords on a regular basis (i.e., every 30 days).

8. Implement a security policy and system parameter settings to require all users, including the vendor, to use passwords that are a minimum length of eight characters.
9. Implement a security policy and system parameter settings to require all users, including the vendor, to use passwords that include alpha, numeric and special characters.
10. Require the vendor to assign unique userIDs and passwords to vendor employees authorized to access the charter school system. Further, the charter school should obtain a list of vendor employees with access to its data and ensure that changes to the data are made only by authorized vendor representatives.
11. Only allow access to their system when the vendor needs access to make pre-approved changes/updates or requested assistance. This access should be removed when the vendor has completed its work. This procedure would also enable the monitoring of vendor changes.
12. Generate monitoring reports (including firewall logs) of vendor and employee access and activity on their system. Monitoring reports should include the date, time, and reason for access, change(s) made and who made the change(s). The charter school should review these reports to determine that the access was appropriate and that data was not improperly altered. The charter school should also ensure it is maintaining evidence to support this monitoring and review.
13. Back up the application(s) before placing program changes into production to ensure it could recover if problems are encountered.
14. Develop and maintain a list of authorized individuals with access to the hardware (servers) that contains the membership/attendance data.

Management Response

Management waives the opportunity to reply at this time.

Finding No. 3

Public Official and Employee Ethics Act Violations

Relevant statutory provisions and related criteria:

When enacting the Public Official and Employee Ethics Act (Ethics Act), 65 Pa.C.S. §1101 *et seq.*, our General Assembly stated the following: “Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this chapter shall be liberally construed to promote **complete** financial disclosure as specified in this chapter.” (See 65 Pa.C.S. § 1101.1(a)).

The Ethics Act requires all candidates for public office, public officials, and certain public employees to complete a Statement of Financial Interests for the preceding calendar year annually, no later than May 1st of each year they hold their positions and of the year after leaving such positions. (See 65 Pa.C.S. § 1104(a)).

Section 1104(d) of the Ethics Act, 65 Pa.C.S. §1104(d), which pertains to the failure to file the required Statement of Financial Interests, provides in pertinent part, as follows:

“No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests. . . .”

Section 1104(e) of the Ethics Act, 65 Pa.C.S. §1104(e), states, in pertinent part:

“All statements of financial interests . . . shall be made available for public inspection. . . .”

Our audit of the Lehigh Valley Charter High School for the Performing Arts (LVPA) for the calendar years ending December 31, 2009, 2008 and 2007 found that one board member filed a Statement of Financial Interests form late for 2009; two board members and one administrator failed to file their Statement of Financial Interests form and three board members’ Statement of Financial Interests forms were filed incomplete for 2008; and five board members failed to file a Statement of Financial Interests form and four board members’ Statement of Financial Interests forms were filed incomplete for 2007.

Our prior audit for the calendar years ending December 31, 2006, 2005 and 2004 found similar errors.

Board members and administrators, including the chief executive officer and all other employees of a charter school who by virtue of their positions exercise management or operational oversight responsibilities, are considered “public officials” under the Charter School Law²⁴ and are, therefore, subject to the Ethics Act.

Statements of Financial Interests are intended to provide those charged with governance with information about the existence or nonexistence of relationships between public officials and parties with whom the charter school transacts business.

The LVPA’s failure to maintain the required Statements of Financial Interests for all administrators and board members means that this information is not available for public inspection and copying as required under Section 1104(e) of the Ethics Act. Consequently, members of the general public and others, such as the chartering school district, would not be provided with complete and accurate information regarding financial disclosures and potential conflicts of interest involving the LVPA’s administrators and board members.

Public office is a public trust sustained by assuring the taxpayers of the impartiality and honesty of public officials

²⁴ See 24 P.S. § 17-1715-A(11), (12).

Section 1105(a) of the Ethics Act, 65 Pa.C.S. §1105(a), which requires the filing of a statement of financial interest, states, in part:

“All information requested on the statement shall be provided to the best of the knowledge, information and belief of the person required to file and shall be signed under oath or equivalent affirmation.”

Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), which specifies required information on a statement of financial interest form, includes requirements to list any office, directorship or employment of any nature whatsoever in any business entity and any financial interest in any legal entity engaged in business for profit.

Section 1109(b) of the Ethics Act, 65 Pa.C.S. §1109(b), provides that any person who is required to file a Statement of Financial Interests but fails to do so may be found guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Section 1109(f), 65 Pa.C.S. § 1109(f), provides, in pertinent part that any person who is required to file a Statement of Financial Interests but fails to do so in a timely manner or who files a deficient Statement of Financial Interests may be subject to a civil penalty at a rate of not more than \$25 for each day such statement remains delinquent or deficient, with a maximum penalty under this chapter or \$250.

and public employees. Accordingly, the Ethics Act requires all candidates for public office, public officials, and certain public employees to annually complete a Statement of Financial Interests for the preceding calendar year, by no later than May 1st of each year they hold their positions and the year after leaving such positions.

The Ethics Act specifically requires public officials and certain public employees to disclose matters on the Statement of Financial Interests that currently or potentially create conflicts of interest with their public duties. When a public official does not properly file a required disclosure, the public and others cannot examine the disclosure in order to determine whether conflicts of interest exist. This in turn erodes the public’s trust. In addition, an individual’s failure to file and/or failure to file complete and accurate Statements of Financial Interests may constitute violations of the Ethics Act that are subject to fines and penalties, or both.

For example, Section 1104(d) of the Ethics Act, which pertains to the failure to file the required Statement of Financial Interests, provides, in pertinent part, as follows:

“No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests as required. . . .”²⁵

Likewise, Section 1109(b) of the Ethics Act provides, in pertinent part, that any person who is required to file a Statement of Financial Interests, but fails to do so may be found guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than one year.²⁶

Finally, Section 1109(f) of the Ethics Act provides, in pertinent part, that any person who is required to file a Statement of Financial Interests but fails to do so in a timely manner or who files a deficient Statement of Financial Interests may be subject to a civil penalty, at a rate of not more than \$25 for each day such statement

²⁵ 65 Pa.C.S. § 1104(d).

²⁶ 65 Pa.C.S. § 1109(b).

remains delinquent or deficient, with a maximum penalty under this chapter of \$250.²⁷

A copy of this finding will be forwarded to the State Ethics Commission for additional review and whatever action it deems necessary.

Recommendations

The *Lehigh Valley Charter High School for the Performing Arts* board of trustees should:

1. Seek the advice of the State Ethics Commission in regard to the board of trustees' responsibility when administrators and board members fail to file or file incomplete Statements of Financial Interests.
2. Develop procedures to ensure that all individuals required to file their Statement of Financial Interests form do so in compliance with the Ethics Act.

Management Response

Management stated the following:

The former Superintendent was the person responsible for the administration of the Lehigh Valley Charter High School for the Performing Arts since its inception and retired on June 30, 2010. I assumed the position of Executive Director on July 1, 2010. My response to the finding, "Public Official and Employee Ethics Act Violations" is as follows:

LVPA received a letter from the State Ethics Commission on August 2, 2010 requesting completed "Statements of Financial Interest" for LVPA board members and administrators for 2007, 2008, and 2009. The completed statements were sent with a list of board members and administrators for 2007, 2008, and 2009 on August 20, 2010. A subsequent letter from the State Ethics Commission dated August 30, 2010 requested "Statements of Financial Interest" from additional staff members holding Director positions. These additional "Statements of Financial Interest" were sent to the State Ethics Commission on September 20, 2010. All LVPA board members and staff members holding Director positions during 2007, 2008, and 2009 have filed "Statement of Financial Interest."

²⁷ 65 Pa.C.S. § 1109(f).

Auditor Conclusion

Although the LVPA responded to the Ethics Commission's request, several board members continued to remain noncompliant and did not file their Statement of Financial Interests form. Therefore, the finding will stand as presented.

Observation →

Charter School Law relevant to the observation:

Section 17-1728-A(b) of the Law, 24 P.S. § 17-1728-A(b), requires each charter school to submit an annual report no later than August 1st of each year to the local board of school directors of the authorizing school district and the secretary of the Department of Education in the form prescribed by the secretary.

Annual Reports Not Filed Timely

Our audit of the Lehigh Valley Charter High School for the Performing Arts (LVPA) records found that it did not file annual reports with the Pennsylvania Department of Education (PDE) and the chartering school districts for the school years 2006-07, 2007-08, and 2009-10 by August 1st as required by the Law. Also, we were unable to verify that the annual reports filed with PDE after the filing deadline were ever provided to the chartering school districts.

Charter schools are required to file an annual report on a form prescribed by PDE by August 1st of each year with the authorizing school district(s) and PDE. The purpose of the annual report is to facilitate the chartering school district's required annual review of whether the charter school is meeting the goals of and is in compliance with its approved charter.

By not filing its annual reports by August 1st, the chartering school district(s) may not have had ample time to review and assess the reports to ensure that the LVPA was meeting the goals of its charter before the start of a new school year. Moreover, if the annual reports were never provided to the authorizing school district(s) as required, then these reports were not available to the local school board(s) when considering granting a renewal of the charter.

According to the LVPA, the annual report for the 2006-07 school year was filed late due to a delay in its final approval by the board of directors. In the 2007-08 school year, the LVPA was experiencing technical difficulties, which resulted in the annual report being filed late. For the 2009-10 school year, the LVPA's former superintendent retired on June 30, 2010, and the new executive director started on July 1, 2010. The new executive director became aware of the report deadline in late July and filed as quickly as feasible. The annual report for 2008-09 school year was filed on time.

Recommendations

The *Lehigh Valley Charter High School for the Performing Arts* should:

1. Prepare and submit its annual report to the chartering school district(s) and the PDE by the August 1st filing deadline each year as required by the Law.
2. Adopt a board policy requiring the administration to review and verify the information provided in the annual report and to ensure that it is timely filed prior to the August 1st deadline.

Management Response

Management stated the following:

The Charter School Annual Report for the Lehigh Valley Charter High School for the Performing Arts (LVPA) was filed on August 9, 2010 rather than on the due date of August 1, 2010. [The] founder and former Superintendent of LVPA retired from LVPA on June 30, 2010 and had been responsible for the filing of all of the previous Charter School Annual Reports. I became the new Executive Director at LVPA on July, 1, 2010. As the Director, I became aware of the report and the deadline for the report in late July 2010. No work had been done on the report prior to my arrival and I did not have the information required to complete and submit the 2010 report. I completed the report as quickly as I was able to locate all of the required information and it was submitted to PDE on August 9, 2010.

In the future, the Charter School Annual Report will be completed and submitted on or prior to the due date.

Status of Prior Audit Findings and Observations

Our prior audit of the Lehigh Valley Charter High School for the Performing Arts (LVPA) for the school years 2005-06, 2004-05 and 2003-04 resulted in four findings, as shown in the following table. As part of our current audit, we determined the status of corrective action taken by the LVPA to implement our prior recommendations. We performed audit procedures, and questioned charter school personnel regarding the prior findings. As shown below, we found that the LVPA did not implement recommendations related to certification violations and public official employees' ethic act violations. However, LVPA did implement our recommendations relating to their Memorandum of Understanding with law enforcement and reporting of retirement wages.

School Years 2005-06, 2004-05 and 2003-04 Auditor General Performance Audit Report

Finding No. 1: Certification Violations

Finding Summary: The LVPA was in violation of the Charter School Law (Law) and the Pennsylvania Department of Education's (PDE) Certification and Staffing Policies and Guidelines (CSPG) No. 24 requiring at least 75 percent of the professional staff to hold appropriate state certification in their area of administrative responsibility or subject area in which they teach. Eleven non-certified teachers lacked certificates and all four principals did not have a principal's certificate.

Recommendations: Our audit finding recommended that the LVPA:

1. Assign positions to professional personnel in compliance with the Law and CSPG No. 24 requiring at least 75 percent of the professional staff to hold appropriate state certification in their area of administrative responsibility or subject in which they teach.
2. Implement a system of internal controls that would ensure all documents required for non-certified teachers pursuant to Section 1724-A(b) of the Law are obtained prior to the date of hire.
3. Ensure that all non-certified teachers without a required physician's certificate obtain one.

Current Status: During our current audit procedures, we found that the LVPA did not implement our recommendations. One principal and one assistant principal were not certified during the 2007-08 school year. For the 2008-09 and 2009-10 school years, one assistant principal did not hold a principal's certificate, which is required by the State Board of Education.

Furthermore, the LVPA did not meet the 75 percent certification requirement for its professional staff during the 2009-10, 2008-09 and 2007-08 school years. Consequently, the LVPA continues to violate the Law and PDE's CSPG No. 24 by not employing at least 75 percent of its professional staff with appropriate state certification in their area of administrative responsibility or subject area in which they teach. (See Finding No. 1, page 10.)

Finding No. 2: Public Official and Employee Ethics Act Violations

Finding Summary: Our audit of LVPA records for the calendar years ended December 31, 2006, 2005, 2004 and 2003 found that 16 of 19 board members, the superintendent and 3 of 4 school principals, who served some time during this audit period, failed to file their Statements of Financial Interests with the State Ethics Commission. None of the board members filed for the calendar year ended December 31, 2003. Additionally, the superintendent and one principal failed to file their Statements of Financial Interests forms on time for one year during the audit period.

Recommendations: Our audit finding recommended that the LVPA:

1. Seek the advice of the State Ethics Commission in regard to the board of trustees' responsibility when administrators and members fail to file Statements of Financial Interests forms.
2. Develop procedures to ensure that all individuals required to file Statements of Financial Interests forms do so in compliance with the Ethics Act.

Current Status: During our current audit procedures, we found that the LVPA did not implement our recommendations. Our audit of the calendar years ending December 31, 2009, 2008 and 2007 found board members failed to file or filed incomplete Statements of Financial Interests forms. (See Finding No. 3, page 18.)

Finding No. 3: Lack of Memorandum of Understanding

Finding Summary: Our audit of the LVPA's records found that it did not have a signed Memorandum of Understanding (MOU) available for audit.

Recommendations: Our audit finding recommended that the LVPA board of trustees develop and implement a MOU between the charter school and appropriate local

law enforcement agency(ies) and/or the Pennsylvania State Police as required by Section 13-1303-A (c) of the Public School Code.

Current Status: During our current audit procedures, we found that the LVPA did implement our recommendations.

Finding No. 4: Inaccurate Reporting of Retirement Wages

Finding Summary: Our audit of the LVPA's superintendent employment contract, the professional employees' contracts, and payroll and retirement records found that some retirement wages may have been overstated in reports submitted to the Public School Employees' Retirement System (PSERS) for the 2003-04, 2004-05, 2005-06 and 2006-07 school years. Charter school personnel incorrectly included payments in lieu of benefits, which are ineligible for retirement purposes, as retirement wages. The total possible ineligible payments reported for the superintendent and teaching staff was \$52,758.

Recommendations: Our audit finding recommended that the LVPA board, in conjunction with PSERS' determination, should ensure that charter school personnel report to PSERS only those wages allowable for retirement purposes, as stated in PSERS Reference Manual for Reporting.

Public School Employees' Retirement System should:

1. Review the compensation reported for the superintendent and the teaching staff for the 2003-04, 2004-05, 2005-06 and 2006-07 school years and render an opinion on the propriety of the wages reported by the charter school.
2. Make the necessary correction to the pension benefits and contributions if any part of the payments is determined to be ineligible for retirement.

Current Status: During our current audit procedures, we found that the LVPA did implement our recommendations.

Distribution List

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

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

The Honorable Ronald J. Tomalis
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. Nichole Duffy
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. Tom Templeton
Assistant Executive Director
School Board and Management Services
Pennsylvania School Boards Association
P.O. Box 2042
Mechanicsburg, PA 17055

Ms. Marlene Kanuck
Attention: Charter and Cyber Charter
Schools
Pennsylvania Department of Education
333 Market Street, 8th Floor
Harrisburg, PA 17126

Mr. John J. Contino
Executive Director
State Ethics Commission
Room 309 – Finance Building
Harrisburg, PA 17108

Dr. Joseph J. Roy, Superintendent
Bethlehem Area School District
Education Center
1516 Sycamore Street
Bethlehem, PA 18017

Mr. Michael E. Faccinetto, Board President
Bethlehem Area School District
Education Center
1516 Sycamore Street
Bethlehem, PA 18017

Dr. Dennis L. Riker, Superintendent
Nazareth Area School District
One Education Plaza
Nazareth, PA 18064

Mr. Lorin B. Bradley, Board President
Nazareth Area School District
One Education Plaza
Nazareth, PA 18064

Dr. Frank J. DeFelice
Acting Superintendent
Bangor Area School District
123 Five Points Richmond Road
Bangor, PA 18013

Mrs. Pamela Colton, Board President
Bangor Area School District
123 Five Points Richmond Road
Bangor, PA 18013

Mr. Joseph Kovalchik, Superintendent
Northampton Area School District
2014 Laubach Avenue
Northampton, PA 18067

Mr. David Gogel, Board President
Northampton Area School District
2014 Laubach Avenue
Northampton, PA 18067

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