PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

AUDITOR GENERAL, EUGENE A. DEPASQUALE

A Performance Audit:

WELLSBORO AREA SCHOOL DISTRICT

ALTERED SUPERINTENDENT EMPLOYMENT CONTRACT BUY-OUT

MAY 2013

Commonwealth of Pennsylvania
Department of the Auditor General
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EUGENE A. DePASQUALE
AUDITOR GENERAL

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

Mr. Craig West, Board President
Wellsboro Area School District
227 Nichols Street
Wellsboro, Pennsylvania 16901

Dear Governor Corbett and Mr. West:

The enclosed report contains the results of the Department of the Auditor General's (Department) performance audit of Wellsboro Area School District's (District) altered superintendent employment contract. This performance audit covered the period April 22, 2010 through January 5, 2012, and was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. This performance audit is separate and distinct from the District's cyclical performance audits, which the Department conducts approximately every three years. The District's last cyclical performance audit was released on January 29, 2010.

Our audit found that the District complied, in all significant respects, with the applicable state laws, contracts, and administrative procedures related to our objectives. However, we identified one matter unrelated to compliance that is reported as an observation. A synopsis of our results is presented in the Executive Summary section of this audit report.

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

Sincerely,

EUGENE A. DEPASQUALE
Auditor General

May 23, 2013

cc: **WELLSBORO AREA SCHOOL DISTRICT** Board of School Directors

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Executive Summary

Audit Work

In August 2011, the Department of the Auditor General began immediately auditing instances where local education agencies (LEA) prematurely ended or altered the employment contracts of their chief administrators. These performance audits do not replace the regular cyclical performance audits that the Department conducts of all Commonwealth LEAs. Instead, the Department performs these audits in addition to each LEA's regular review. The Department will still continue to audit the early separations of all other contracted administrators as part of each LEA's regular cyclical performance audit.

The Department made this policy change because LEAs that prematurely end or alter their chief administrator's contracts frequently spend large sums of taxpayer dollars without receiving any services in return. In addition, these arrangements often involve confidentiality clauses that prevent the public from learning why the LEA undertook such an action. Conducting a performance audit of these agreements as soon as the LEAs execute them, helps to ensure that taxpayers have more information about these arrangements and that these facts are available as quickly as possible.

LEA Background

The Wellsboro Area School District (District) encompasses approximately 330 square miles. According to 2010 federal census data, it serves a resident population of 11,800. According to District officials, the District provided basic educational services to 1,531 pupils through the employment of 133 teachers, 94 full-time and part-time support personnel, and 10 administrators during the 2009-10 school year. Lastly, the District received $8.5 million in state funding in the 2009-10 school year.

Audit Conclusion and Results

Our performance audit found that the District complied, in all significant respects, with the applicable state laws, contracts, and administrative procedures related to our objectives (see pages 3-4). However, we identified one matter unrelated to compliance that is reported as an observation.

Observation: The Board of School Directors Did Not Include Adequate Provisions in its Former Superintendent's Employment Contract, Leading to a Costly Buy-out and Additional Projected Costs to the School District Totaling $136,976. On April 22, 2010, the District and its former Superintendent entered into an agreement that stipulated that the former Superintendent's employment would terminate on June 30, 2010. The agreement required the District to make payments valued at $136,976. Our audit found that the former Superintendent was essentially paid this amount to leave the District. These payments might have been avoided or reduced if the former Superintendent's contract had premature termination provisions (see page 6).

Audit Recommendations

The *Wellsboro Area School District's* Board of School Directors should:

1. Enter into employment contracts with prospective superintendents at the three-year minimum term permitted by state law, in order to limit potential financial liability by the District and its taxpayers.

2. Ensure that future employment contracts with prospective administrators contain adequate termination provisions sufficient to protect the interests of the District and its taxpayers in the event that the employment ends prematurely for any reason.

3. Provide as much information as possible to the District's taxpayers explaining the reasons for the termination of the Superintendent and justifying the District's expenditure of public funds to buy-out the contract.

Audit Scope, Objectives, and Methodology

Scope

What is a cyclical performance audit?

Cyclical performance audits allow the Department of the Auditor General to determine whether local education agencies (LEAs) are spending their state funds, including school subsidies, 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 LEA. The Department shares the results of these audits with LEA management, the Governor, the Pennsylvania Department of Education, and other concerned entities. According to the Public School Code, LEAs include all school districts, charter and cyber charter schools, intermediate units, and career and technical schools.

This performance audit, conducted under 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, or for the Department's regular cyclical performance audit (see text box left). This performance audit focused exclusively on the circumstances surrounding the early separation of the local education agencies (LEA) top administrator. This audit was completed in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit covered the period April 22, 2010 through January 5, 2012.

While all LEAs have the same school years, some have different fiscal years. Therefore, for the purposes of our audit work and to be consistent with Pennsylvania Department of Education 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 a performance audit?

Performance audits allow the Department of the Auditor General to immediately review instances where local education agencies prematurely ended or altered the employment contracts of their chief administrators. These audits do not replace the Department's regular cyclical audit, but are instead, performed in addition to that review.

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

- ✓ Did the employment contract with the top administrator contain adequate separation provisions sufficient to protect the interests of the LEA, its students, and its taxpayers in the event the employment of the administrator ends prematurely for any reason?

- ✓ Did the LEA provide as much information as possible to its taxpayers explaining the reasons for the top administrator's separation and justifying the expenditure of funds by or through the LEA, in order to terminate the contract early?

- ✓ Did the District enter into employment contracts with the superintendent at the three-year minimum provided by state law in order to limit potential financial liability by the District and its taxpayers in the event financial liability was not adequately limited through contract provisions?

- ✓ What was the total financial cost of the top administrator's early contract termination, including funds received by the LEA from private individuals or other entities to facilitate the buy-out?

- ✓ Was the separation agreement transparent and without confidentiality clauses so taxpayers are aware of why the termination occurred?

Methodology

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

> *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.

The LEA's management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the LEA is in compliance with applicable laws, contracts, and administrative procedures. In conducting our audit, we obtained an understanding of the LEA's internal controls, including any information technology controls, as they relate to the LEA's compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures that we consider to be significant within the context of our audit objectives. We assessed whether those controls were properly designed and implemented. Any deficiencies in internal control that were identified during the conduct of our audit and determined to be significant within the context of our audit objectives are included in this report.

As part of our audit procedures, we obtained copies of employment agreements and other relevant documents associated with the top administrative official's employment. We also interviewed select administrators and support personnel associated with the LEA's operations.

Findings and Observations

Observation

The Board of School Directors Did Not Include Adequate Provisions in its Former Superintendent's Employment Contract, Leading to a Costly Buy-Out and Additional Projected Costs to the School District Totaling $136,976

Superintendent Contract Buy-Outs:

The taxpayers have the right to be informed of an early termination of a superintendent, the reason for the termination and the financial effect the buy-out has on the district. If this information is public, then the taxpayers can consider such information when determining if the board members have done what is best for them and the district.

On December 4, 2007, the Wellsboro Area School District's (District) Board of School Directors (Board) entered into an employment contract (Contract) with the former Superintendent, for a term of four years, from July 1, 2008 through June 30, 2012. The former Superintendent's previous contract had been for three years (July 1, 2005 through June 30, 2008). The Contract stated that if the former Superintendent's performance was satisfactory he must be compensated as follows: a 3 percent increase over the previous year's base salary of $99,500 for the 2008-09 school year and then a 2 percent increase over the previous year's base salary for the 2009-10 and 2010-11 school years. In the 2011-12 school year, the former Superintendent would receive a 1 percent increase over the previous year's base salary. In the terms of the Contract, the former Superintendent would also receive a variety of fringe benefits, including additional compensation based on a performance evaluation, which would become part of his base salary. The Contract stated that termination procedures would follow the applicable provisions in the Public School Code (PSC).

On January 12, 2010, the former Superintendent submitted a resignation letter to the board indicating his last day would be July 1, 2011. On April 20, 2010, the Board held a special meeting and voted to accept the former Superintendent's resignation. A subsequent Resignation and Early Buy-Out Agreement (Agreement) was signed by the Board and the former Superintendent on April 22, 2010. No vote was recorded for the approval of the Agreement. The Agreement stipulated that the former Superintendent's employment would terminate on June 30, 2010, not July 1, 2011, as stated in the former Superintendent's resignation letter.

The Agreement required the District to make the following payments to the former Superintendent, the projected value of which we calculated to be $136,976:

- Salary for the period from July 1, 2010 through June 30, 2011 ($104,030).

- Payment for 10 unused vacation days at the daily rate of $452.30 ($4,523) and 55 unused sick days at the daily rate of $40 ($2,200).

- Medical, dental, and vision benefits for the Superintendent and his spouse for the periods July 1, 2010 through June 30, 2011 ($12,716) and July 1, 2011 through June 30, 2012 ($13,111).

- Payment for six months of a life insurance policy ($396).

Essentially, the former Superintendent was paid a year's salary and benefits to leave the District. This buy-out may have been averted, or the costs significantly reduced, if the District had included provisions in its original employment contract with the former Superintendent regarding the compensation and benefits payable upon the premature termination of the contract. The time to negotiate those terms is at the outset of the employment relationship, not when matters turn potentially hostile between the parties. The Agreement does not provide a reason for the buy-out. Auditors requested an explanation from the District. The explanation provided stated that the former Superintendent's annual evaluations indicated a steady decline in his willingness and ability to provide the leadership necessary to meet the goals established by the Board and the Commonwealth of Pennsylvania. The Board felt that waiting for the final year of the contract to expire would be detrimental to the future development and growth of the District's educational environment.

Recommendations

The *Wellsboro Area School District* should:

1. Enter into employment contracts with prospective superintendents at the three-year minimum term permitted by state law, in order to limit potential financial liability by the District and its taxpayers.

2. Ensure that future employment contracts with prospective superintendents, and other administrators, contain adequate termination provisions sufficient to protect the interests of the District and its taxpayers in the event that the employment ends prematurely for any reason.

Management Response

Management stated the following:

"The Wellsboro School District Board of Directors offered [former Superintendent] a contract buy-out agreement with the intent of immediately removing [the former Superintendent] from the position of District Superintendent, whereby providing the Board of Directors with the opportunity to fill that position with a person willing and capable of providing educational leadership and consistent achievement of its mission. The Board was desirous of obtaining a Superintendent who would provide leadership in developing the district's educational programs; organizational and financial plans with the Board of Directors, Administration, and Professional Staff; bring reason and optimism to a district that was experiencing a shrinking budget and battles over whether and how much it should be punished for falling short of achievement goals; and carry out plans and policies authorized by the Board of Directors.

[The former Superintendent's] annual evaluations indicated a steady decline in his willingness and ability to provide the leadership necessary to meet the goals established by the Board of Directors and the Commonwealth of Pennsylvania.

The Board of Directors felt that waiting for the final year of [the former Superintendent's] contract to expire would be detrimental to the future development and growth of the district's educational environment. The Board recognized the need to address current and identified future challenges facing public school systems within the Commonwealth of Pennsylvania and did not feel that [the former Superintendent] was capable of meeting those challenges at this stage of his career.

The Early Buy-Out Agreement, dated April 22, 2010, stipulated that [the former Superintendent's] term of employment as Superintendent of the Wellsboro Area School District would terminate on June 30, 2010. Between the dates of July 1, 2010 and June 30, 2011, the former Superintendent was to be paid an annual salary of $104,030 per the Early Buy-Out Agreement. Between the dates of July 1, 2010 and June 30, 2011 the District provided Medical, Prescription Drug, and Dental Insurance coverage for [the former Superintendent] and his wife at no cost to [the former Superintendent]."

Auditor Conclusion

Based on our review, we concluded that the District essentially paid the former Superintendent a year's salary and benefits to leave the District because of his poor performance. His original contract did not include provisions regarding the compensation and benefits payable upon the premature termination of the contract. Had these provisions been included in the contract, the District may have avoided the costly agreement, which was not a prudent use of taxpayer funds. This agreement was not a prudent use of taxpayer funds, especially in a District experiencing shrinking funding.

Distribution List

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

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