



Marlboro Central School District District Officials' Outside Business Activities

Report of Examination

Period Covered:

July 1, 2011 — November 14, 2013

2014M-241



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	1
INTRODUCTION	2
Background	2
Objective	2
Scope and Methodology	2
Comments of District Officials and Corrective Action	2
DISTRICT OFFICIALS' OUTSIDE BUSINESS ACTIVITIES	4
Superintendent	5
Assistant Superintendent	6
Professional Services	7
Recommendations	8
APPENDIX A Response From District Officials	9
APPENDIX B Audit Methodology and Standards	11
APPENDIX C How to Obtain Additional Copies of the Report	12
APPENDIX D Local Regional Office Listing	13

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

February 2015

Dear School District Officials:

A top priority of the Office of the State Comptroller is to help school district officials manage their districts efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support district operations. The Comptroller oversees the fiscal affairs of districts statewide, as well as districts' compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving district operations and Board of Education governance. Audits also can identify strategies to reduce district costs and to strengthen controls intended to safeguard district assets.

Following is a report of our audit of the Marlboro Central School District, entitled District Officials' Outside Business Activities. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for district officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Marlboro Central School District (District) is located in the Town of Marlborough, Ulster County. The District is governed by the Board of Education (Board) which comprises seven elected members. The Board is responsible for the general management and control of the District's financial and educational affairs. The Superintendent of Schools (Superintendent) is the District's chief executive officer and is responsible, along with other administrative staff, for the District's day-to-day management under the Board's direction. The Assistant Superintendent of Personnel and Technology (Assistant Superintendent) is responsible for implementing human resources and technology policies and procedures and is also involved in the hiring process.

The District operates three schools with approximately 2,000 students and 319 employees. The District's budgeted appropriations for the 2013-14 fiscal year were \$50.6 million, which were funded primarily with State aid, real property taxes and grants.

Objective

The objective of our audit was to review the internal controls over the District's financial activities. Our audit addressed the following related question:

- Did District officials' outside business activities align with their responsibilities to procure services in the District's best interest?

Scope and Methodology

We examined the internal controls over the District's financial transactions for the period July 1, 2011 through November 14, 2013. To gain an understanding of District officials' outside business activities, we extended our scope back to 2007.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

Comments of District Officials and Corrective Action

The results of our audit and recommendations have been discussed with District officials, and their comments, which appear in Appendix A, have been considered in preparing this report. District officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

The Board has the responsibility to initiate corrective action. Pursuant to Section 35 of General Municipal Law, Section 2116-a (3) (c) of the New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, with a copy forwarded to the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The Board should make the CAP available for public review in the District Clerk's office.

District Officials' Outside Business Activities

The Board has adopted a code of ethics policy that all Board members and employees are expected to abide by.¹ The policy requires, among other things, that Board members and District employees, whether paid or unpaid, who participate in the discussion or give an opinion to the Board on any resolution before the Board must publicly disclose the nature and extent of any direct or indirect financial or other private interest they have in the resolution. School district officials have a responsibility to exercise and perform their official powers and duties in the best interest of their district. Thus, when procuring goods and services for a school district, it is important for district officials to avoid even an appearance of impropriety. To avoid an appearance of impropriety in procurements involving a district official's private business associate, the district official should disclose the relationship and, if possible, not participate in the decision making process.

Both the Superintendent and Assistant Superintendent have a private interest in a company that conducted business with the District. Therefore, we question whether they adequately complied with the District's ethics policy.

We sent financial disclosure forms to all of the District's decision-making officials to determine if they had any interest in contracts with vendors or companies who conducted business with the District. The responses from and subsequent discussions with the Superintendent and the Assistant Superintendent showed that they had an ownership interest in a limited liability company (LLC) that had previously contracted with the District to provide software and technical support for online report cards.² In at least one year after the LLC discontinued providing the service, the Superintendent recommended to the Board, and the Board approved, a contract with the LLC's principal owner to provide services similar to what the LLC had previously provided.

Specifically, the District paid the LLC \$45,342 between February 3, 2006 and April 18, 2008 and paid the principal owner (personally) \$28,800 between March 2010 and June 2013 for online report card software and support services. Also, District records showed that the

¹ The code of ethics was written to conform to General Municipal Law (GML).

² The Superintendent told us the LLC started doing business with the District during the 2005-06 school year and he became a member of the LLC sometime during the 2007-08 school year. The Assistant Superintendent refused to tell us when he became a member of the LLC. The LLC ceased doing business with the District during the 2007-08 school year. The Superintendent informed us that the LLC is now dissolved, but did not provide documentation relating to the dissolution.

Superintendent signed an agreement for \$7,800 for the LLC's principal owner to provide online software support and report card services for the 2013-14 school year. Similarly, the Assistant Superintendent signed an agreement for \$5,800 for the LLC's principal owner to provide a similar type of service during the 2011-12 school year. We found no evidence that the District requested proposals or solicited quotes procuring this service.

When District officials or employees recommend a business associate to the Board to conduct business with the District, the public may question the appropriateness of the transactions. Such transactions may create the appearance of impropriety and/or may result in a loss of public confidence in the administration of the District's fiscal affairs.

Superintendent

The Board originally hired the Superintendent in 2002 as the Director for Curriculum and Instruction. He was later promoted to Assistant Superintendent for Curriculum in July 2006 and to Superintendent, effective July 1, 2008.

The Superintendent told us that he met the LLC's principal owner during the 2005-06 school year.³ At the time, he was the Director for Curriculum and Instruction and was in charge of a committee assigned to recommend services to be procured for the District. A copy of the minutes of the Board meeting that the Superintendent provided showed that he introduced the LLC's principal owner to the Board on October 20, 2005 regarding the LLC providing service to the District. However, he did not provide any documentation to show a Board decision awarding a contract to the LLC.

The Superintendent said that he joined the LLC sometime during the 2007-08 school year with 24 percent ownership and was responsible for reviewing and assisting with the creation of standards-based report card rubrics for school districts other than the Marlboro School District. He identified the principal member and the current Assistant Superintendent as the other LLC owners.⁴

The Superintendent told us that during the 2007-08 school year his attorneys advised him to "break away from the LLC."⁵ Thereafter,

³ The Superintendent told us that he did not have a relationship with the LLC or its principal owner prior to becoming a member sometime during the 2007-08 school year.

⁴ It is unclear precisely when the Assistant Superintendent became a member of the LLC.

⁵ The Superintendent also told us that he sought legal advice from the District's attorney and his private attorney as to whether he could join the LLC. In any event, the Superintendent did not relinquish his ownership interest in the LLC as a result of the legal advice he obtained.

the service the LLC provided to the District was reassigned and performed by the principal owner in his personal capacity. The Superintendent also said that he received no compensation from the principal owner or the LLC for any work done for the District and he verbally discussed his business relationship with the LLC with the superintendent and Board members who were in place at the time.

Subsequent to our exit conference, District officials presented us with accounting records indicating that the District made payments totaling \$45,342 to the LLC between February 3, 2006 and April 18, 2008. However, they did not present supporting documentation, such as paid checks or executed purchase orders signed by authorized District officials, for the \$27,012 in total payments made between February 3, 2006 and June 30, 2007. In addition, we were not presented with a contract with the LLC or any relevant document indicating that the Board authorized service transactions amounting to the \$45,342.

Of the \$45,342, the District paid the LLC \$18,330 between December 12, 2007 and April 18, 2008 for “report card services.” The \$18,330 included \$9,740 which District records showed the Superintendent adjusted and initialed.⁶ In addition, according to Board minutes, when services were no longer provided by the LLC, the Superintendent recommended and the Board approved the LLC’s principal owner to continue providing the District with a similar service. The District paid the principal owner \$28,800 between March 2010 and June 2013. We also found that the Superintendent signed an agreement for \$7,800 for the 2013-14 school year for online software support and report card services provided by his business associate, the LLC’s principal owner.

Assistant Superintendent

The current Assistant Superintendent, who is responsible for the District’s personnel and technology activities, was also an LLC owner. District records and subsequent discussion with the Assistant Superintendent showed that, while he was an LLC owner, he signed an order authorization agreement for \$5,800 for the LLC’s principal owner to provide report card service for the 2011-12 school year. The Assistant Superintendent’s financial disclosure information states that he was “a partner” in the LLC. The Assistant Superintendent told us that signing the agreement was not part of his regular responsibilities and he did so as a favor for another District official.

The Superintendent acknowledged that he made recommendations to the Board to contract with the LLC’s principal owner, even though the

⁶ According to the Superintendent, he adjusted and initialed the order authorization agreement to reduce the District’s payment. He also told us that his initials were not required to permit payment to be made.

principal owner was his business associate.⁷ Similarly, the Assistant Superintendent took official action on an agreement with the LLC's principal owner when the principal owner was his business associate. Given the Superintendent's and Assistant Superintendent's business relationship with the LLC's principal owner, these actions raise questions of whether they were acting in the District's best interest. To avoid any appearance of partiality or self-interest, the Superintendent and Assistant Superintendent, as District officials, should not have participated in matters affecting their business associate.

Professional Services

GML requires school districts to adopt a written procurement policy and procedures for the purchase of goods and services that do not require competitive bidding. Accordingly, the Board has adopted a procurement policy that states that "goods and services which are not required by law to be procured pursuant to competitive bidding must be procured in a manner so as to assure the prudent and economical use of public moneys, in the best interest of taxpayers and to guard against favoritism, improvidence, extravagance, fraud and corruption." The appropriate use of competition provides District taxpayers with assurance that services are procured in a prudent and economical manner without favoritism. A request for proposal (RFP) process is one way of ensuring that the District receives the desired services for the best price. In addition, written contracts between the District and professional service providers give both parties a clear understanding of the services the professionals are expected to provide and how they will be compensated for these services. Therefore, it is important for the Board to enter into written contracts with professional service providers that indicate the contract period, the services to be provided and the basis for compensation for those services.

While GML permits local governments to set forth in their procurement policies the circumstances when or the types of procurements for which the local government has determined that a competitive process is not in the best interests of the local government, we believe using a competitive process, such as an RFP process, helps ensure that the District obtains needed qualified services upon the most favorable terms and conditions and in the best interest of the taxpayers. District officials did not award the contract to the LLC or the principal owner based on an RFP or any other competitive process.⁸ Absent a

⁷ We note that the District's code of ethics requires District employees to publically disclose their financial and other private interests in any resolution before the Board. Because the code does not define the nature of the private interests requiring disclosure, it is unclear whether the code required the Superintendent to disclose his business relationship with the LLC's principal owner.

⁸ Prior to November 2013, it appears that the District's purchasing policy did not address the use of a competitive process for acquisitions of professional services. Starting in November 2013, the District's procurement policy provides for professional services to be procured without a competitive process.

competitive process, the awarding of contracts to the LLC's principal owner is susceptible to being viewed as having been made on the basis of a private relationship, rather than in the best interest of the District and its taxpayers.

We also found no evidence in the Board minutes that the District entered into formal contracts with the LLC and between the principal owner that provided the necessary details of service and compensation. During our audit, we made several requests for written contracts between the District and the LLC and between the District and the principal owner. District officials did not provide any detailed contracts. Instead, they provided simple one or two page agreements signed by the Superintendent, the Assistant Superintendent and sometimes by the previous District business official. The Superintendent told us he had never seen a contract with the LLC or the LLC's principal owner.

Given the Superintendent's and Assistant Superintendent's relationship with the LLC, without a competitive process, the Board and District taxpayers cannot be certain that they received the best value for the District's resources. In addition, without formal contracts detailing the agreed-upon services and compensation, there is an increased risk that the District will pay for services that it has not received or for services that the Board did not authorize.

Recommendations

The Board should:

1. Ensure that District officials do not participate in the process of awarding contracts to their private business associates.
2. Evaluate the contract with the LLC's principal owner and determine whether it is in the best interests of the District.
3. Seek competition from potential vendors and award the contract for the report card service on the basis of a competitive process.
4. Enter into written agreements with all professional service providers. Such agreements, at a minimum, should identify the service to be provided and the basis for compensation.

APPENDIX A

RESPONSE FROM DISTRICT OFFICIALS

The District officials' response to this audit can be found on the following page.

MARLBORO CENTRAL SCHOOL DISTRICT

**21 Milton Turnpike, Suite 100
Milton, New York 12547**

*BOARD OF EDUCATION
William (Bill) Bell, President
Russell Conley, Vice President*

*BOARD MEMBERS
Susan Horton
James Kuha
Frank J. Milazzo
JoAnn Reed
Jeffrey Walker*

*Raymond Castellani
Superintendent of Schools
(845) 236-5802, 5804
FAX (845) 795-5904
e-mail: ray.castellani@marlboroschools.org*

December 1, 2014

[REDACTED]
Examiner In Charge
Office of the State Comptroller
33 Airport Center Drive, Suite 103
New Windsor, NY 12553

Dear [REDACTED]

The Board of Education of the Marlboro Central School District thanks the NYS Comptroller for its time and efforts in reviewing and evaluating the District's internal controls of financial activities in connection with the procurement of certain professional services. We have had an opportunity to review this draft audit and discuss the findings and the recommendations with the Comptroller's examining team. We have taken, and will continue to take, steps to address the Comptroller's recommendations.

Sincerely,



William (Bill) Bell
President, Board of Education
Marlboro Central School District

Cc: All Board Trustees, Raymond Castellani

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard District assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial oversight, cash receipts and disbursements, purchasing, payroll and personal services.

During the initial assessment, we interviewed appropriate District officials, performed limited tests of transactions and reviewed pertinent documents such as District policies and procedures manuals, Board minutes and financial records and reports. In addition, we obtained information directly from the computerized financial databases and analyzed it electronically using computer-assisted techniques. This approach provided us with additional information about the District's financial transactions as recorded in its databases. Further, we reviewed the District's internal controls and procedures over the computerized financial databases to help ensure that the information produced by such systems was reliable.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft and professional misconduct. We then decided on the reported objective and scope by selecting for audit the area most at risk. We selected procurement for further audit testing.

We interviewed District officials who were directly responsible or involved in the respective scope areas, such as the Superintendent and the Assistant Superintendent. We obtained relevant documentation regarding the outside employment of the Superintendent and Assistant Superintendent. We reviewed the District's code of ethics and obtained legal guidance on the issues discussed in this report.

We conducted this performance audit in accordance with GAGAS. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX C

HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

To obtain copies of this report, write or visit our web page:

Office of the State Comptroller
Public Information Office
110 State Street, 15th Floor
Albany, New York 12236
(518) 474-4015
<http://www.osc.state.ny.us/localgov/>

APPENDIX D
OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Andrew A. SanFilippo, Executive Deputy Comptroller
Gabriel F. Deyo, Deputy Comptroller
Nathalie N. Carey, Assistant Comptroller

LOCAL REGIONAL OFFICE LISTING

BINGHAMTON REGIONAL OFFICE

H. Todd Eames, Chief Examiner
Office of the State Comptroller
State Office Building - Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313
Email: Muni-Binghamton@osc.state.ny.us

Serving: Broome, Chenango, Cortland, Delaware,
Otsego, Schoharie, Sullivan, Tioga, Tompkins Counties

BUFFALO REGIONAL OFFICE

Jeffrey D. Mazula, Chief Examiner
Office of the State Comptroller
295 Main Street, Suite 1032
Buffalo, New York 14203-2510
(716) 847-3647 Fax (716) 847-3643
Email: Muni-Bufferalo@osc.state.ny.us

Serving: Allegany, Cattaraugus, Chautauqua, Erie,
Genesee, Niagara, Orleans, Wyoming Counties

GLENS FALLS REGIONAL OFFICE

Jeffrey P. Leonard, Chief Examiner
Office of the State Comptroller
One Broad Street Plaza
Glens Falls, New York 12801-4396
(518) 793-0057 Fax (518) 793-5797
Email: Muni-GlensFalls@osc.state.ny.us

Serving: Albany, Clinton, Essex, Franklin,
Fulton, Hamilton, Montgomery, Rensselaer,
Saratoga, Schenectady, Warren, Washington Counties

HAUPPAUGE REGIONAL OFFICE

Ira McCracken, Chief Examiner
Office of the State Comptroller
NYS Office Building, Room 3A10
250 Veterans Memorial Highway
Hauppauge, New York 11788-5533
(631) 952-6534 Fax (631) 952-6530
Email: Muni-Hauppauge@osc.state.ny.us

Serving: Nassau and Suffolk Counties

NEWBURGH REGIONAL OFFICE

Tenneh Blamah, Chief Examiner
Office of the State Comptroller
33 Airport Center Drive, Suite 103
New Windsor, New York 12553-4725
(845) 567-0858 Fax (845) 567-0080
Email: Muni-Newburgh@osc.state.ny.us

Serving: Columbia, Dutchess, Greene, Orange,
Putnam, Rockland, Ulster, Westchester Counties

ROCHESTER REGIONAL OFFICE

Edward V. Grant, Jr., Chief Examiner
Office of the State Comptroller
The Powers Building
16 West Main Street – Suite 522
Rochester, New York 14614-1608
(585) 454-2460 Fax (585) 454-3545
Email: Muni-Rochester@osc.state.ny.us

Serving: Cayuga, Chemung, Livingston, Monroe,
Ontario, Schuyler, Seneca, Steuben, Wayne, Yates Counties

SYRACUSE REGIONAL OFFICE

Rebecca Wilcox, Chief Examiner
Office of the State Comptroller
State Office Building, Room 409
333 E. Washington Street
Syracuse, New York 13202-1428
(315) 428-4192 Fax (315) 426-2119
Email: Muni-Syracuse@osc.state.ny.us

Serving: Herkimer, Jefferson, Lewis, Madison,
Oneida, Onondaga, Oswego, St. Lawrence Counties

STATEWIDE AUDITS

Ann C. Singer, Chief Examiner
State Office Building - Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313