

SCHEDULE OF AUDIT FINDINGS AND RESPONSES

1. East Valley School District received basic enrollment apportionment funding for students who also paid tuition to a private school.

Background

East Valley School District provides basic educational opportunities to kindergarten through eighth grade students through the District's KEYS program at Saint Charles Catholic School (St. Charles), which is a private school where students also pay tuition, attend classes on the premises and are taught by the St. Charles certificated staff.

East Valley School District received the state's basic enrollment apportionment funding for students enrolled full-time in the District's KEYS Program at St. Charles. During the 2012-2013 school year, the District entered into an agreement with St. Charles where the East Valley School District was to provide enhanced educational opportunities for St. Charles students. For each full-time basic enrollment student claimed for funding, \$5,000 per year is provided to St. Charles for use of facility, instructional materials, technology, testing and instructional staff as described in the letter of agreement. East Valley School District contracted with St. Charles certificated instructors on average four hours per week for basic enrollment instruction over the course of the school year. St Charles also received tuition from families participating in the KEYS Program.

Description of Condition

East Valley School District provided public apportionment funding to the operation of the KEYS program located at St. Charles School where students also paid private school tuition.

Our audit identified the following concerns:

- The District contracted less than full-time with St. Charles certificated staff to provide basic enrollment instruction; however, the District claimed full-time instruction for students who also paid private school tuition. State law does not allow contractors to charge students for tuition and requires admission to public school districts to be tuition free.
- The District could not provide documentation to differentiate between public and private education services. Review of St. Charles calendar identified religious instruction provided during the school day as well as before and after school. The Washington State Constitution prohibits the spending of public money to support religious establishments.

Cause of Condition

East Valley School District determined it had adequate documentation to distinguish the portion of education services that were claimed by the District for state basic education funding, even though these students were enrolled in a tuition-based private religious school.

Effect of Condition and Questioned Costs

The District received approximately \$1,010,766 in basic enrollment apportionment funding for 194.25 full-time equivalent students in the KEYS Program for the 2012-2013 school year for which it was not eligible. This represents approximately \$5,203 in basic apportionment funding per full-time student.

Recommendation

We recommend the District perform the following:

- Comply with state laws and regulations for reporting and receiving basic enrollment funding and provide tuition free education to district students.
- Comply with the Washington State Constitution and ensure that public funds do not support a religious establishment.
- Work with the Office of Superintendent of Public Instruction regarding repayment of the questioned costs

District's Response

I am providing this letter on behalf of East Valley School District in connection with the audit of the District for the period from September 1, 2012 through August 31, 2013. Specifically, the District is responding to the Auditor's concerns that it received full-time basic enrollment apportionment for students who paid fees to Saint Charles Catholic School and that public funds may have been used to support a religious establishment.

With regard to a possible finding regarding the matter above, the District initially responds as follows. First, the District does not believe that its contracts with individuals to provide basic education services to students at Saint Charles required that Saint Charles be prohibited from charging students fees for separate non-basic education services. Second, the District does not believe that its contract with Saint Charles for the use of its facilities, equipment and instructional materials in providing the basic education program constituted unlawful support of a religious establishment.

As an innovative program seeking to enhance student education, the District proactively sought the assistance and advice of the Office of Superintendent of Public Instruction (OSPI) and the State Auditor regarding its operation of the program at Saint Charles. Both OSPI and the Auditor advised the District that the operation of the program at Saint Charles would

not be a problem under the state constitution or state law. Thus, the District relied upon OSPI and the Auditor to share with it any concerns it had about the program.

It seems the Auditor is concerned that religious instruction provided by Saint Charles to students changed from being solely provided before and after the basic education instructional time to also being provided in between basic education instructional time that school year. That scheduling change occurred sometime in March 2013. In the District's view, the scheduling change does not materially alter the reasonableness of its reliance on the advice provided by OSPI and Auditor that the District's basic education program at Saint Charles would not be a problem under the state constitution or state law. After all, if it was not a problem for religious instruction to occur before and after basic education instructional time – it should not be a problem for it to occur in between basic education instructional time. Indeed, it's the District's understanding that students may be excused for religious instruction during any of its programs.

The District did not intend to unlawfully support a religious establishment by paying Saint Charles for the use of its facilities, equipment and instructional materials in providing the basic education program. Instead, the District viewed this payment as being fair and neutral. In other words, the District would not expect any other private entity to allow it to use its facilities and equipment without payment. Payment to Saint Charles for these purposes should not be considered support of a religious establishment because that would not be fair or neutral.

*In addition, as the Auditor knows, case law has established a clear trend of increasing tolerance of public school district relationships with private religious schools. For example the United States Supreme Court held that a public school district could legally furnish a sign language interpreter for a deaf student attending a Catholic school. *Zobrest v. Catalina Foothills School District*, 509 U.S. 1,14 (1993). Similarly, OSPI regulations no longer prohibit public funding from being used to educate disabled students enrolled by their parents in private religious schools. Admittedly, this area of the law is a bit complicated; however, there is a clear trend of increasing tolerance of public school district relationship with religious schools.*

For the above reasons and others, the District would not agree with a finding in this matter. This District program was extremely effective in improving student performance. The District, of course, respects and appreciates the Auditor's concerns and is willing to take steps to avoid these concerns in the future.

Auditor's Remarks

We appreciate the District's response and recognize that the District is committed to ongoing improvements to its compliance processes and procedures for enrollment reporting. This is the first time the State Auditor's Office has audited the East Valley KEYS program at St. Charles. During the audit, we communicated with staff at OSPI who previously expressed their concerns regarding the program in a October 3, 2013 letter sent to East Valley School District.

We thank the District for its cooperation and assistance and will review the status of this issue during our next audit.

Applicable Laws and Regulations

Article 1, Section 11 of the Washington State Constitution states:

. . . No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment.

Article 9, Section 4 states:

All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

RCW 28A.225.210 Admission of district pupils tuition free

Every school district shall admit on a tuition free basis: (1) All persons of school age who reside within this state, and do not reside within another school district carrying the grades for which they are eligible to enroll: PROVIDED, That nothing in the subsection shall be construed as affecting RCW 28A.225.220 or 28A.225.250; and (2) all students who meet the definition of children of military families in transition under Article II of RCW 28A.705.010 who are in the care of a noncustodial parent or other person standing in loco parentis and who lives in another state while the parent is under military orders.

WAC 392-121-188 Instruction provided under contract.

School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the

requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

- (1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion. A board adopted resolution is not required for online courses purchased by the school district from an online provider approved by the superintendent of public instruction under RCW 28A.250.020;
- (2) The school district retains full responsibility for compliance with all state and federal laws;
- (3) The contractor complies with all relevant state and federal laws that are applicable to the school district;
- (4) The contractor provides instruction free of sectarian or religious influence or control;
- (5) The contractor charges the student no tuition for enrollment;
- (6) Enrollment is voluntary;
- (7) No student or person is unlawfully excluded from participation on the grounds of race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap;
- (8) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;
- (9) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section;
- (10) The curriculum is approved by the district. District approval for online course curriculum is not required for online courses offered by an online provider approved by the superintendent of public instruction under RCW 28A.250.020;
- (11) The contractor provides enrollment reports to the school district that comply with this chapter;
- (12) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and

financial data including all revenues and expenditures pertaining to the contract with the school district;

- (13) As of October 1st, if a contractor certificated employee employed by a contractor other than an institution of higher education spends more than twenty-five percent of a full-time equivalent time with students for a given school district, the school district must report the individual contractor certificated employee as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;
- (14) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district. School districts that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;
- (15) The school district and contractor establish a process for periodic monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor. School districts that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;
- (16) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;
- (17) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and
- (18) Full-time equivalent enrollment reported for students served under contract with a community or technical college as defined in RCW 28B.50.030 shall be based on the credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:
 - (a) The student is earning credits applicable to a high school diploma.
 - (b) The program is focused on serving credit deficient students.
 - (c) The student population served is considered at-risk and meet the following criteria:
 - (i) The students have already dropped out of high school; or

(ii) The students have not demonstrated success in the traditional high school environment.

- (19) The school district requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the school district under contract.