

**Education Audit Appeals Panel
State of California**

Appeal of 2006-07 Audit Finding 2007-3
by:

Eagles Peak Charter School,
Appellant.

EAAP Case No. 09-02

OAH No. 2010011283

Decision

The Education Audit Appeals Panel has adopted the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter.

Effective date: January 12, 2011.

IT IS SO ORDERED.

January 12, 2011
Date

Original Signed
Diana L. Ducay, Chairperson
for Education Audit Appeals Panel

BEFORE THE
EDUCATION AUDITS APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of the Appeal from the 2006-07
Revised Audit Finding #2007-3 by:

EAGLES PEAK CHARTER SCHOOL,

Appellant,

v.

OFFICE OF THE CONTROLLER,
STATE OF CALIFORNIA,

Respondent,

and

DEPARTMENT OF FINANCE,
STATE OF CALIFORNIA,

Intervener.

Case No. 09-02

OAH No. 2010011283

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 18, 19, and 20, 2010, in San Diego, California.

Rufino S. Diaz, Attorney at Law, represented Appellant, Eagles Peak Charter School.

John F. Dickerson, Staff Counsel, Office of the Controller, represented Respondent, Office of the Controller, State of California.

Tracey L. Angelopoulos, Deputy Attorney General, Department of Justice, State of California, represented Intervener, Department of Finance, State of California.

The matter was submitted on November 15, 2010, following the submission of written argument in the matter.

FACTUAL FINDINGS

The Education Audit Appeals Panel

1. Under the Education Code, independent audits of publically funded schools are conducted to determine whether a local educational agency has disbursed and expended public funds as required by law. (Ed. Code, § 14501.) The Office of the Controller is responsible for overseeing the auditing of local education agencies. (Ed. Code, § 14500.)

Education Code section 41344.1 was enacted in 2002. That statute established the Education Audit Appeals Panel (the panel), which hears appeals filed by a local educational agency from audits or reviews conducted by the Office of the Controller, certified public accountants or public accounting firms, or governmental agencies.

2. This matter involves Eagles Peak Charter School's appeal from a revised audit report authored by Nigro Nigro & White, which concluded that Eagles Peak Charter did not provide auditors with verification of the pupil/teacher ratio for the 2006-07 fiscal year and that charter ADA funding for 2006-07 year, amounting to \$12,158,708, was "questionable."

The Obligation to Comply with Legal Requirements as a Condition of Funding

3. Under Education Code section 41344.1, a local educational agency must comply with all legal requirements as a precondition to receiving funding from the State of California.

The Requirement to Annually Report Full-Time Certificated Employee to Student Ratio

4. At issue in this appeal is the application of Education Code section 51745.6, which provides:

(a) The ratio of average daily attendance for independent study pupils 18 years of age or less to school district full-time equivalent certificated employees responsible for independent study, calculated as specified by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the school district. The ratio of average daily attendance for independent study pupils 18 years of age or less to county office of education full-time equivalent certificated employees responsible for independent study, to be calculated in a manner prescribed by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the high school or unified school district with the largest average daily attendance of pupils in that county. The computation of those ratios

shall be performed annually by the reporting agency at the time of, and in connection with, the second principal apportionment report to the Superintendent of Public Instruction.

5. California Code of Regulations, title 5, section 11704 (as it read after an amendment that became operative on December 6, 2005) provides in part:

In a charter school . . . the ratio of average daily attendance for independent study pupils . . . to full-time equivalent (FTE) certificated employees responsible for independent study shall not exceed a pupil-teacher ratio of 25:1 or the ratio of pupils to full-time equivalent certificated employees for all other educational programs operated by the largest unified school district, as measured by average daily attendance . . . Units of average daily attendance for independent study that are ineligible for apportionment . . . shall also be ineligible for funding . . . For purposes of this section, a "full-time certificated employee" means an employee who is required to work a minimum six-hour day and 175 days per fiscal year. Part-time positions shall generate a partial FTE on a proportional basis.

Under California Code of Regulations, title 5, section 19853, a charter school must verify the accuracy of its pupil-teacher ratio calculated under section 11704. An independent auditor conducting an audit of a charter school must use professional judgment when conducting an audit. (Cal. Code Regs., tit. 5, §§ 19810 and 19814.)

Grounds for Appeal from an Audit

6. Education Code section 41344 provides that a local educational agency may present evidence or arguments to the panel if the local educational agency believes that the final audit report contains any finding that "was based on errors of fact or interpretation of law, or if the local educational agency believes in good faith that it was in substantial compliance with all legal requirements."

"Substantial compliance" is defined in Education Code section 41344.1, subdivision (c) as follows:

A condition may be deemed satisfied if the panel finds there has been compliance or substantial compliance with all legal requirements. "Substantial compliance" means nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local educational agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of

funding. The panel may further define “substantial compliance” by issuing regulations or through adjudicative opinions, or both.

Burden of Proof and Issues

7. The Education Audit Appeals Panel designated its Decision in *In the Matter of the Appeal of: FRESNO COUNTY OFFICE OF EDUCATION*, Case No. 0-03, OAH No. N2000050273 as a Precedential Decision. That decision places the burden of proof on an audit appellant.

8. Appellant, Eagles Peak Charter School, has the burden of establishing in this proceeding by a preponderance of the evidence that revised audit report finding #2007-3 was based on errors of fact, on an erroneous interpretation of law, or, in the alternative, that Eagles Peak in good faith substantially complied with all legal requirements related to its reporting of the full-time certificated employee to student ratio in the 2006-07 fiscal year.

Eagles Peak Charter School

9. The Mission Statement of Eagles Peak Charter School provided:

Eagles Peak Charter School is a parent choice school where the community is the classroom. Our mission is to foster the innate curiosity of our students, empower their parents, and promote optimum learning by collaboratively developing a personalized learning program for each student.

A review of Eagles Peak Charter School’s history is helpful to understanding some issues and concerns that Appellant raised in this appeal. The following historical information has been drawn primarily from the Extraordinary Audit of the Eagles Peak Charter School provided by MGT of America, Inc., to the San Diego County Office of Education.

In December 1999, the Julian Union High School District issued a five-year charter to Eagles Peak. Although charter documents stated that the day-to-day operation of Eagles Peak was to be provided by the Eagles Peak Corporation and its governing board, Innovative Education Management, Inc. (IEM) actually provided most administrative services, including finance, personnel, human resources, insurance and reporting functions in return for a fixed percentage of Eagles Peak’s funding.

In February 2003, a group of parents and Eagles Peak administrators removed IEM as the school’s management company and made the decision to become self-governing. In December 2003, parents and Eagles Peak’s executive director formed Eagles Peak Corporation Managing Board, an entity separate from the parent council. Eagles Peak Managing Board confirmed the appointment of the executive director, who hired several individuals and formed a core management team.

In 2004, the Julian Union High School District renewed the Eagles Peak charter for an additional five-year term, through June 30, 2009.

Eagles Peak offered a mix of innovative home-school programs and learning centers to students living in San Diego, Riverside, Imperial, and Orange Counties. Eagles Peak's novel educational programs led to the dramatic growth of its student enrollment, resulting in the hiring of more certificated and classified staff and the creation of a series of learning centers where part-time, classroom-based training or educational services were provided to complement home-school and independent study programs. The expense related to the development of these new programs and facilities exceeded the revenue generated by new student enrollment.

By the 2004-2005 fiscal year, more than half of Eagles Peak's students lived in Riverside County, which required Eagles Peak to seek and maintain a charter in Riverside County. There was disagreement related to the joint management of the San Diego County and the Riverside County charter school operations. Efforts to reach an agreement by which a single board would provide administrative and management functions for the charter schools became problematic.

In November 2006, tensions reached a peak and a group of concerned parents confronted sitting board members and the executive director. After that meeting, and without providing notice of what she intended to do, Eagles Peak's executive director had several staff and management personnel remove student and employee records for students and staff who were assigned to Eagles Peak's Riverside County operations. The governing board placed the executive director on paid administrative leave following a November 13, 2006, emergency board meeting. The Riverside County operation soon became independent of the San Diego County operation. The executive director took over the Riverside County operation.

In the aftermath of the separation, a settlement agreement was reached that finalized the split of the two organizations. Following the settlement, Eagles Peak (San Diego County) requested that the San Diego County Office of Education (SDCOE) investigate the possible misconduct of the (prior) executive director. SDCOE retained MGT of America, Inc., a national management research and consulting firm, to conduct an extraordinary audit.

MGT's final report was dated December 4, 2007. The audit team found that Eagles Peak had incorrectly reported attendance data, resulting in a \$1.2 million audit finding which was ultimately corrected before an independent financial audit in 2005. The audit team also found that the (previous) executive director terminated Eagles Peak employees and had them sign general release agreements without authorization. The audit team further found that the (previous) executive director leased a beachfront condominium that some school employees used for their own personal use. Finally, the audit team found that the (previous) executive director negligently supervised and negligently allowed subordinates to violate the Public Contract Code by improperly entering into a construction contract for facility improvements.

The MGT's audit team did not investigate or comment upon the manner in which Eagles Peak calculated the student/teacher ratio for the 2006-07 school year, which is the subject of the present proceeding.

The Julian Union High School District refused to renew Eagles Peak's charter in July 2009, and Eagles Peak went out of business. Elsie Baldwin was appointed Eagles Peak's Special Administrator and was directed to wind up Eagles Peak's affairs after the Julian Unified High School District declined to renew the charter.

The Original 2006-2007 Audit Report

10. On June 30, 2007, Nigro Nigro & White (NN&W), a Southern California CPA firm, issued an independent auditor's report related to Eagles Peak Charter School's operations for the fiscal year ending June 30, 2007. Christy White, a highly experienced certified public accountant and an NN&W principal, prepared that report.

Ms. White gathered information in accordance with generally accepted accounting principles and under applicable federal and state regulations. NN&W filed the report with the Office of the Controller, which, following a desk review, certified that the audit report conformed to reporting standards. Among other matters, the audit report found that Eagles Peak enjoyed an average daily attendance of 2,060.

Section III of the audit report, entitled "State Award Findings and Questioned Costs," stated:

There were no audit findings and questioned costs related to state awards during 2006-2007. (Original emphasis.)

The Revised Audit 2006-2007 Report

11. In early 2008, the Office of the Controller requested that NN&W review its June 30, 2007, audit report and determine how and on what documentation Eagles Peak calculated its full-time equivalent student/teacher ratio.

12. On November 28, 2008, following its audit and investigation, NN&W issued a Revised Eagles Peak Charter School 2006-07 Audit Report. Ms. White's cover letter to that revised audit report was directed to the California Department of Education. It stated:

The audit report was revised to include a state compliance finding #2007-3. As auditors, we were unable, despite repeated client requests made over the past 8 months, to audit the charter's pupil/teacher ratio calculation, as required by Section 19852 of the *Standards and Procedures for Audits of California K-12 Education Agencies*. Eagles Peak Charter School did not provide us with the pupil/teacher ratio computation and the supporting documentation. We were unable to

determine whether there is ineligible ADA due to non-compliance with Education Code section 51745.6(b) in the fiscal year 2006-07.

In the revised audit report, various matters were discussed at Section III, matters which were not included in the original report.

Specifically, Finding #2007-3 Independent Study Pupil/Teacher Ratio (40000) stated:

Criteria: For charter schools, Title 5, Division 1, Article 3, Section 11704 requires that, "the ratio of average daily attendance for independent study pupils to full-time (FTE) certificated employees responsible for independent study shall not exceed a pupil-teacher ratio of 25:1 or the ratio of pupils to full-time certificated employees for all other educational programs operated by the largest unified school district in the county." Section 19852 of the *Standards and Procedures for Audits of California K-12 Education Agencies* requires the auditor to "verify the charter school's calculation, made pursuant to Section 11704, of ineligible Average Daily Attendance, generated through full-time independent study."

Condition: Eagles Peak Charter School was unable to provide the auditors with the pupil/teacher ratio and the supporting documentation.

Cause: It appears to the auditors that the Charter is unable to compute FTE's, which is defined by Section 11704 as a certificated employee "working a minimum of six-hour day and 175 days per fiscal year", due to the methodology in which teachers were paid in 2006-07, which was based on student case load and not a minimum number of hours worked.

ADA Impact: All Charter ADA amount to 2,060 at P-2 is questionable, which amounts to \$12,158,708 in Charter Block Grant Funding for 2006-07. This is because the auditor was unable to determine how much ADA, if any, was in excess of the maximum pupil/teacher ratio defined by Section 11704. Education Code section 51745.6(b) states that, "only those units of average daily attendance for independent study that reflects a pupil-teacher ratio that does not exceed the ratio described in subdivision (a) shall be eligible for apportionment."

Recommendation: We recommend the Charter revise their 2006-07 P2 and Annual attendance reports to exclude any ineligible ADA in accordance with Section 11704. We also recommend that the Charter

work with the CDE and the Education Appeals Panel to resolve this finding and quantify ineligible ADA, if any.

Charter Response: Response will be forwarded by the Eagles Peak Charter School to county and state agencies under separate cover.

13. A copy of Ms. White's letter and a copy of NN&W's revised audit report were sent to the Office of the Controller, the San Diego County Office of Education, and Eagles Peak Charter School.

Ms. White's Methodology

14. Ms. White did not speak with teachers or review any board policy when drafting the original audit report. Ms. White did not investigate or seek independent verification of Eagles Peak's representations related to its pupil/teacher ratio when she prepared the original audit report; rather, she simply relied on the representations provided, and using those representations, she determined that Eagles Peak's mathematical calculation of the pupil/teacher ratio was correct.

15. In the subsequent audit and investigation that followed the publication of the original audit report, Ms. White specifically asked Eagles Peak staff to provide her with documentation that would establish that a full-time equivalent Eagles Peak teacher worked a minimum six hours a day, 175 days a year.

Eagles Peak did not provide Ms. White with source documentation that showed that each Eagles Peak FTE actually worked a minimum six hours a day, 175 days a year; instead Eagles Peak provided Ms. White with evidence of teacher compensation, which was based upon the number of students assigned to each teacher, and from that information and the teacher's salary Eagles Peak calculated that its pupil/teacher ratio was 22:1 pupils to one FTE teacher. Ms. White concluded that Eagles Peak had "backed into" this pupil/teacher ratio and that Eagles Peak's calculation was based upon an assumption that the amount of salary a teacher received was in some fashion equivalent to the actual time that a teacher had provided services. Eagles Peak did not provide Ms. White with employment contracts or any other documentation to establish that an Eagles Peak FTE was required to work six hours a day, 175 days a year. Nor did Eagles Peak provide Ms. White with employee time records that established that an Eagles Peak FTE worked six hours a day, 175 days a year.

Ms. White communicated with Julie Kimbrell, Eagles Peak's business manager, throughout the audit as directed by Eagles Peak administrators. Ms. White asked Ms. Kimbrell for records to verify the time teachers were supposed to spend or actually spent at work on numerous occasions, but source documentation was not provided. Ms. Kimbrell did not refer Ms. White to Mr. Graves or Dr. Townley¹ for guidance.

¹ These two individuals are identified and their testimony summarized in Findings 17 and 18.

The Evidence Offered by Eagles Peak

16. David E. Guthrie, Ph.D., a Public Education consultant with considerable education, training, and experience, discussed the establishment, organization, and funding of charter schools. Charter schools were originally exempt from most Education Code reporting requirements incumbent upon public schools under a “mega waiver,” but the “mega waiver” was abandoned and charter schools ultimately became accountable to meet reporting requirements that mirrored the requirements imposed on traditional public schools.

Dr. Guthrie was generally familiar with auditing standards, but he was not a certified public accountant and he had never conducted an annual financial audit. Dr. Guthrie served Eagles Peak as a consultant in 2004 and he later served as Eagles Peak’s interim business director. Dr. Guthrie provided a management audit for Eagles Peak, but Dr. Guthrie never performed a financial audit and he was not qualified to do so. Dr. Guthrie did not assist anyone at Eagles Peak in calculating the pupil/teacher ratio.

Dr. Guthrie offered no testimony to support the assertion that Eagles Peak substantially complied with statutory requirements related to funding. Dr. Guthrie’s testimony did not establish that finding #2007-3 was based on erroneous facts or an erroneous interpretation of law.

17. Arthur Townley, Ed.D., is a distinguished academic who served for decades as a Professor of Education at California State University, Long Beach. Dr. Townley twice served as Eagles Peak’s executive director, the first time from November 2006 through June 2007, when Eagles Peak was separating from the Riverside organization. Dr. Townley was responsible for requesting the SDCOE extraordinary audit. In May 2008, Dr. Townley was once again asked to serve as Eagles Peak’s executive director as a result of the incompetence of the (then) director of finance. Dr. Townley’s second term as executive director extended through June 2009. According to Dr. Townley, during his second term, Eagles Peak experienced significant difficulties resulting from poor financial management. In addition, there were allegations of a hostile work environment. Finally, during Dr. Townley’s second term, Eagles Peak’s received a “cure and correct” letter from the Julian Union High School District which threatened to withdraw its charter support.

Dr. Townley testified that no one from NN&W ever told him about the problem with the calculation of the pupil/teacher ratio, and that he was not aware of a serious problem until December 1, 2008. After reading the revised audit report, Dr. Townley made it a board agenda item and he recommended that David Graves, who was serving as Eagles Peak’s Chief Business Officer, follow up on the issue.

Dr. Townley offered no testimony to support the assertion that Eagles Peak substantially complied with statutory requirements related to funding. Nor did his testimony support a finding that finding #2007-3 was based on errors of fact or upon an erroneous interpretation of law

18. David Graves is a part-time certified public accountant who served as Eagles Peak's Chief Business Officer in 2008 and 2009. Before his assignment at Eagles Peak, Mr. Graves worked at NN&W. He knew Ms. White and believed she was a forthright individual.

In late 2008, Dr. Arthur Townley directed Mr. Graves to look into the pupil/teacher ratio issue that was raised by NN&W's revised audit report. Mr. Graves contacted Ms. White, who told him that Eagles Peak was unable to provide her with the information and verification that she had requested that related to Eagles Peak's calculation of the pupil/teacher ratio.

Mr. Graves reviewed the teacher and student records that were available to him, as well as board policies and some employment contracts; he admitted that "gathering the information was difficult." Eagles Peak had only one spreadsheet that related to attendance, and that spreadsheet was helpful.

Mr. Graves sought additional documentation to verify that funding for each Eagles Peak FTE was based upon an Eagles Peak FTE educator working six hours per day, 175 days a year. Mr. Graves determined that Eagles Peak had used an OASIS data system in the 2006-07 school year, and that Eagles Peak thereafter lost the OASIS data when it converted to a Pathways data system. Mr. Graves contacted OASIS. OASIS told him that OASIS maintained the information he sought and that OASIS would make that information available to Eagles Peak for one week at a charge of \$5,000.

After Eagles Peak paid OASIS \$5,000 to provide the documentation, Mr. Graves reviewed the OASIS data and submitted a plan of correction. Based on his review of all information, including the OASIS data, Mr. Graves concluded that Eagles Peak maintained an adequate pupil/teacher ratio and that FTE funding was based upon an Eagles Peak FTE teacher working at least six hours a day, 175 days a year.

Mr. Graves prepared a voluminous document entitled "Eagles Peak Charter School Independent Study Student/Teacher Ration 6/30/07" (Exhibit 11), which was based on his review of all available data. Mr. Graves calculated an independent study student/teacher ratio of 24.74 students/one FTE by "using salary divided by FTE salary except for home school and career path; used avg teacher enrollment to determine FTE." Mr. Graves also calculated a 21.19 independent study student/teacher ratio using "salary divided by FTE salary." Mr. Graves used a "benefits" memo he found to assist him in his calculations and he used another memo which indicated that a teacher was required to meet with an independent study student at least one hour a week.

Mr. Graves' calculations of the student/teacher ratio evolved over time. His calculations concerning the amount of time an FTE employee worked were based upon assumptions because there were no employment contracts and no time records. One calculation proceeded upon the assumption that if a teacher was responsible for the education of 25 independent study students, that teacher necessarily worked at least 30 hours a week.

Another calculation proceeded on the assumption that an FTE salary would be equivalent to 25 students/teacher ratio.

Mr. Graves testified that he was “not given the opportunity” to respond to NN&W’s revised audit report in a timely fashion, and that prejudice resulted from his not being provided with that opportunity. However, Mr. Graves admitted that while he was not given enough time to respond to a deadline that had passed two weeks before his assignment, it took Mr. Graves two additional years to gather the information that he believed he required and to arrive at his calculations of the student/teacher ratios.

Mr. Graves’ testimony concerning the pupil/teacher ratio was based on assumptions that were not supported by a preponderance of the evidence. It cannot be concluded that Mr. Graves’ calculations, set forth in Exhibit 11, constituted substantial compliance with the legal requirements related to the calculation of the pupil/teacher ratio for funding purposes. Those calculations were not provided to Ms. White in the many months she requested verification and they were not supported by source documents. Mr. Graves’ testimony did not support the proposition that the final audit report contained a finding based either on errors of fact or an erroneous interpretation of law.

19. Eagles Peak provided testimonies of several witnesses that were very relevant to the value of the educational services provided by Eagles Peak and the dedication and concern of its educators and staff.

Linda Neely holds a multiple subject teaching credential with a supplemental authorization in English. Eagles Peak employed Ms. Neely full-time from 2001 through 2008. Ms. Neely met with students and their families at their homes or at learning center sites at least once every 20 days. The meetings lasted at least an hour. Ms. Neely provided her students with guidance and instruction in several academic areas including Mathematics, Language Arts, Social Studies, Science, and Life Skills. Ms. Neely and her students entered relevant data into a “learning record” that tracked each student’s educational progress. Student portfolios were filed with Ms. Neely twice a year. Ms. Neely evaluated and graded her students’ work. According to Ms. Neely, Eagles Peak administrators expected her to work at least 40 hours a week, 175 days a year, and she worked far more than that. Ms. Neely was not required to fill out time slips or otherwise document her time at work.

Eagles Peak employed Jennifer Gianelli, who holds a multiple subject teaching credential, on a full time basis for seven years at its dual language academy. That academy provided educational services to students enrolled from kindergarten through 5th grade. In the 2006-2007 school year, the dual language academy was in session all day on Mondays through Thursdays, and students had an option of home schooling on Fridays. Ms. Gianelli met with parents at least once a month in parent teacher meetings, and she made contact with them by email or telephone as often as necessary. Ms. Gianelli was responsible for the education 20 to 25 students in the classroom, and she estimated that she worked 50 to 60 hours a week. Four other teachers were employed at the dual language academy. Ms. Gianelli was not required to fill out time slips or otherwise document her time at work.

Eagles Peak employed Elmer Lee, who holds a single subject teaching credential in English with a supplemental authorization in Government, as a substitute teacher in the 2005-2006 school year and then as a full time teacher in the 2006-2007 school year at Renaissance High School in Wildomar, Riverside County. Mr. Lee was in the classroom at the Wildomar learning center two days a week, and he provided home school support three days a week. He maintained records and contact with students through the "Moodle" instant messaging system. Outside the classroom, Mr. Lee and others attended professional development, planned curriculum, and attended staff meetings. Mr. Lee spent five and a half hours in support of each student each month. Mr. Lee said he was expected to work 40 hours a week, but he actually worked 50 to 60 hours a week. Four high school teachers at Wildomar taught core subjects. Mr. Lee was not required to fill out time slips or otherwise documents his time at work.

Craig Van Houten has worked in the field of education for more than 30 years. Mr. Van Houten founded Eagles Peak Career Path High School, which was designed to benefit underserved youth by providing them with vocational programs in their areas of interest. Career Path began as a pilot program in spring 2004, and it reached an enrollment of 645 students and 45 staff members when it was acquired by National University. Teachers employed at Career Path taught in all four core subject areas and had 25 to 27 students. Each teacher met with a student on a 1:1 basis for an hour at least once a week. In the 2006-2007 school year, each teacher's pay was based upon the number of students taught. In addition to direct instruction, each teacher participated in professional development and staff training. Mr. Van Houten estimated that each Career Path teacher was present at the learning center seven hours a day, four days a week, and that teachers' other responsibilities resulted in their working at least 40 hours a week. Mr. Van Houten was understandably proud about how hard Career Path teachers worked and the extraordinary services they provided to the students and the community. While records of attendance were maintained whenever a teacher attended professional development classes, no records were kept for the time teachers actually provided instructional services.

Eagles Peak employed Maria Kirkbride from 2001 through 2008. Ms. Kirkbride was first employed at the Wildomar Learning Center, and then became Director, Home School Program. Ms. Kirkbride testified that each full-time educational specialist (ES) in the home school program was assigned 25 students. Each ES was required to meet with a student's family for one hour every four weeks (once every 20 days). Each ES assigned and reviewed his or her students' work, prepared and submitted reports to a database, assisted students in creating a portfolio, attended monthly staff meetings, attended professional development meetings, placed orders, attended IEP meetings, and communicated with parents at least once a week when not meeting with them personally. "Learning records" were maintained by OASIS, although Ms. Kirkbride did not describe the content of those records. In the 2006-2007 school year, the pay of each ES was based on the number of students that ES taught. If an ES met assigned deadlines, it was assumed that the ES was putting in the required time. ES employees were not required to fill out time slips or otherwise document their time at work.

The teachers and staff who testified were dedicated to their students and to the teaching profession. Without doubt, the teachers who testified in this matter supplied outstanding services to their students and their families. The educational programs – particularly Career Paths – were innovative and provided valuable educational opportunities to students who might fail in a traditional setting. Any school – public or private – would benefit by having these talented individuals on staff. The testimony of these teachers and administrators established the quality of educational services that were provided, but did not establish that Eagles Peak substantially complied with statutory reporting requirements that were related to ADA funding or that Eagles Peak maintained reliable documentation that verified the time teachers were actually engaged in their teaching responsibilities.

20. Angela Keller was Eagles Peak's Human Resources Coordinator during the 2006-2007 school year. There was a system in place that measured attendance at Eagles Peak's learning centers, but that system was designed to provide coverage only in those instances when a teacher might be absent, not to track the number of hours a teacher worked. Ms. Keller believed that there was some method by which attendance could be tracked for independent study teachers, but she was not certain what that system entailed. She was not aware of any method Eagles Peak had to determine how many hours a teacher worked in the 2006-2007 school year.

In order to qualify for full-time benefits, a certificated employee had to maintain a 22:1 student/teacher ratio. The benefit qualification system essentially involved self-reporting, and while tracking was possible through a student information system, the details of that system were unknown to Ms. Keller. According to Ms. Keller, "Some directors spot-checked to see if the teachers were working full time."

Eagles Peak maintained a benefits qualifications schedule in which 180-day home school teachers were given 1 FTE benefit if they had at least 22 students; 180-day Career Path teachers were given 1 FTE benefit if they had at least 15 students; and Renaissance Academy teachers were given 1 FTE benefit for at least 90 students. The school year lasted 175 days, but teachers were required to work more days than that.

The Employee Handbook stated, "*Classified Full-time Status* refers to an employee who is regularly scheduled to work 35 hours or more per week and is eligible for full benefits." It also stated, "*Certificated Full-time Status* refers to a credentialed employee who meets the requirements for full time status with a Full Time Equivalency (FTE) which equals 1.00 (one) and is eligible for full time benefits." An hourly requirement was not set forth for certificated employees. The handbook stated that "exempt employees" were paid a salary and were exempt from overtime provisions of the Fair Labor Standards Acts (FLSA). Non-exempt employees were covered by FSLA and state wage orders; they could be paid on an hourly or salaried basis, and all of them would receive overtime as required by law. The handbook stated that all non-exempt employees were required to complete time cards accurately, indicating time worked, vacation/sick time used, and lunch time taken. All time

cards were to be provided directly by the supervisor to payroll. Exempt employees, including teachers, were not required to complete time cards.

Ms. Keller's testimony did not support the assertion that Eagles Peak substantially complied with statutory requirements related to funding, that Eagles Peak maintained documentation related to the time an FTE teacher was required to teach, or that the finding #2007-3 was based on errors of fact or an erroneous interpretation of law

21. Danielle Hooper became an Eagles Peak board member in 2005. She was elected board President in November 2006. On November 13, 2006, the Eagles Peak board published a letter that stated that Eagles Peak expected that an employee holding a full time position with Eagles Peak would not engage in other remunerative activities during his or her working hours. The letter did not state how many hours an employee was expected to work, however.

In order to establish that the current board and administration were not responsible for Eagles Peak's financial difficulties or for the allegations related to fraud, Ms. Hooper directed Dr. Townley to request an extraordinary audit. The findings arising out of that audit dispelled any concerns about a whitewash and cleared the sitting Eagles Peak board and its director who requested the extraordinary audit of any wrongdoing.

Ms. Hooper was unaware that Eagles Peak may not have been in compliance with the legal requirements related to its reporting until NN&W released its revised audit report.

Ms. Hooper testified that Eagles Peak measured the time a teacher spent in instructional and related activities in an indirect fashion, through student performance and the records that the teacher maintained. She had no idea if those records were provided to the auditor or to the Office of the Controller. Ms. Hooper was not aware of the requirement that under the law the funding of an FTE required a teacher to work six hours a day, 175 days a year.

Ms. Hooper's testimony did not support the assertion that Eagles Peak substantially complied with statutory requirements related to ADA funding or that Eagles Peak maintained reliable documentation related to the time teachers were actually engaged in their teaching responsibilities. Ms. Hooper's testimony did not support the proposition that audit finding #2007-3 was based on factual errors or an erroneous interpretation of law

22. Elise Baldwin served as Dr. Townley's assistant. She was on Eagles Peak's board from May 2009 through August 2009. She is now Eagles Peak's Special Administrator.

After Eagles Peak closed its doors, Mountain Peak, another charter school unrelated to Eagles Peak, took over Eagles Peak's student records. National University took over the operation of the Career Path High School. Eagles Peak continues to maintain employee and business records. It has some funds on deposit.

Ms. Baldwin is a highly intelligent woman who holds a bachelor's degree in English. Ms. Baldwin was given the responsibility of winding up Eagles Peak's business affairs after the Julian Unified High School District refused to extend the Eagles Peak charter and she was assigned the task of dealing with the audit appeal in this matter.

Ms. Baldwin considered the NN&W revised audit report finding #2007-3 to be a "default finding" that did not take into account any of the time Eagles Peak teachers actually provided in the education of Eagles Peak students. On that basis alone, she concluded that finding #2007-3 was untrustworthy and fundamentally unfair. Ms. Baldwin was confident that the student enrollment used in Eagles Peak's calculations was correct. She spoke with former employees, including many teachers, and she reviewed Mr. Graves' work, in an effort to establish how much time an FTE worked at Eagles Peak. In the course of her review, Ms. Baldwin found an independent study policy that Mr. Graves had not reviewed. Based on her review, Ms. Baldwin concluded that the evidence she had reviewed resulted in an appropriate calculation of a pupil/teacher ratio of 24:1 and that the default finding was erroneous.

On cross-examination, Ms. Baldwin admitted that she was not a certified public accountant and that she had no bookkeeping experience. Ms. Baldwin testified that 2,200 student learning records were available for review, that those records may have disclosed the number of days the students attended Eagles Peak in 2006-2007, but that she did not review those records because they were so voluminous.

Ms. Baldwin's testimony did not support the assertion that Eagles Peak substantially complied with statutory reporting requirements related to ADA funding or that Eagles Peak maintained reliable documentation related to the time teachers were actually engaged in their teaching responsibilities. Ms. Baldwin's testimony did not support the proposition that finding #2007-3 was based on errors of fact or an erroneous interpretation of law

23. Appellant did not offer any contract of employment for any certificated employee that provided that the employee was required to work at least six hours a day, 175 days a year. Appellant did not offer any board policy that specifically stated that an FTE required a certificated employee to work at least six hours a day, a week, 175 days a year.

24. Appellant did not offer the student learning records in this matter for the 2006-2007 school year.

The Testimony of Joel James

25. The Office of the Controller employs Joel James as an audit specialist. Mr. James has a bachelor's degree in Accounting from California State University, Sacramento. Mr. James has engaged in and has reviewed numerous audits.

Mr. James reviewed NN&W's revised audit report, which contained finding #2007-3. He found no deficiencies in that report. He also reviewed the audit work papers prepared by

Ms. White. Those papers supported revised audit finding #2007-3. According to Mr. James, what stood out most in his review of the materials was the weak internal control system at Eagles Peak, which cast doubt on all Eagles Peak data.

According to Mr. James, a school district or local educational agency must maintain contemporaneous documentation that verifies the amount of time an FTE employee works, those records should be maintained for at least three years after an audit, and they should be made available to an auditor during a financial audit.

Mr. James had been involved in many educational audits before his testimony in this matter, including an audit of a charter school with an independent study program. In those audits, the local educational agency provided the auditor with teacher contracts, position control forms (specifications for employment that identified a full-time or part-time position), teacher assignment sheets, and evaluations to support their ADA reporting and the amount of time an FTE worked. Those kinds of documents constituted pure source documentation that the teachers were employed on a full-time basis. Appellant did not provide those kinds of documents.

Mr. James sat through Appellant's presentation during the administrative hearing, and he observed that Appellant provided no pure source documentation to establish that FTEs at Eagles Peak were required to work (or in fact worked) at least six hours a day, 175 days a year. Appellant failed to provide any document that established the hours an Eagles Peak teacher actually worked or was required to work in the 2006-2007 school year.

On cross-examination, Mr. James admitted that he had never seen a local education agency produce time cards for certificated employees. Mr. James conceded that he had not read the MGT extraordinary audit report in full. Mr. James admitted that the panel did not provide charter schools with detailed information concerning the kinds of records they were required to document the amount of time FTE actually worked.

Mr. James' testimony supported the following conclusions: the final audit report did not contain a finding that was based on errors of fact; the final audit report did not contain a finding that was based on an erroneous interpretation of law; Appellant had no reason to believe that it had substantially complied with all legal requirements when it claimed ADA funding for the 2006-07 year.

Arguments

26. Appellant raises several claims. First, Appellant claims that NN&W lacked the authority to decertify the original report - which concluded there were no ADA funding issues - and that the NN&W original audit report must therefore be presumed to be correct. Second, Appellant argues that during the re-audit, NN&W failed to notify Eagles Peak's interim executive director or its board of her difficulty in obtaining documentation to support Eagles Peak's claim to ADA funding, and that NN&W's "lack of diligence . . . resulted in an erroneous finding." Appellant asserts that had the auditor made her needs known in a timely

fashion, relevant OASIS data could have been accessed and provided in a timely fashion to support Eagles Peak's claim to ADA funding. Third, Appellant contends that using formulas based upon a teacher's student load was a valid manner to calculate the ADA student/teacher ratio, and that Eagles Peak's policy and practice of defining an FTE for funding purposes as a teacher with 22/25 students was reasonable and was supported by the testimony of teachers and administrators. Fourth, Appellant argues that the Education Code and the California Code of Regulations provided so little guidance to assist a charter school in calculating FTE for funding purposes that, in light of varying employment practices, deference should be given to the employing entity's explanation of its own employment practices. Finally, Appellant suggests that in order to sustain an audit claim, "it must be established that Eagles Peak was in fact out-of-compliance with state law."

27. Respondent and Intervener assert that Eagles Peak was required to calculate the ratio of students to full-time equivalent teachers, to maintain contemporaneous records that verified compliance with state law, and to provide those records to an auditor upon request. Intervener observed that Eagles Peak's excuses for its failure to provide any records supporting its calculation of the ratio of students to full-time-equivalent teachers kept changing, that Eagles Peak improperly blamed prior administrators, that the chaos that followed following the division of Eagles Peak's San Diego and Riverside County operations did not excuse the failure to maintain proper documentation, that Eagles Peak's lack of access to OASIS data had no impact on any outcome, that the auditor was diligent and professional, and that Eagle Peak simply disregarded the rules and regulations it was required to follow to obtain funding. Respondent and Intervener observed that Eagles Peak did not provide the NN&W auditor with documentation that verified the amount of time each teacher actually worked because Eagles Peak did not have a system in place to capture that time. In the face of that dilemma, Eagles Peak resorted to the use of calculations and formulas based upon unproven assumptions. Finally, Respondent and Intervener argue that Eagle Peak's computation of an FTE in this matter - based upon a teacher's student load - was improper because the regulation specifically defined an FTE to mean a certificated employee who was "required to work six hours a day and 175 days."

Evaluation

28. A preponderance of the evidence does not establish that finding #2007-3 was based on any error of fact or an erroneous interpretation of law. The audit was properly conducted in accordance with generally accepted accounting principles and to determine Eagle Peak's compliance with existing law. An FTE was required to work six hours a day, 175 days a year, and documentation of that was required. Eagles Peak had no method by which to capture this required information, and the omission did not result in an error of fact or law. Eagle Creek's failure to understand the laws under which it was governed and funded did not constitute an error of fact or law. The mistakes of prior administrators and the turmoil following the division of Eagles Peak's San Diego and Riverside County operations did not result in an error of fact or law. Eagles Peak's lack of access to OASIS data did not result in any factual errors, because even after Eagle Peak obtained and reviewed that data,

Eagle Peak was unable to provide documentation verifying the number of hours an FTE actually worked.

A legal requirement to receive funding may be deemed satisfied if the panel finds compliance or substantial compliance with all legal requirements. "Substantial compliance" is defined by statute to mean "nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose." Minor or inadvertent noncompliance may be grounds for a finding of substantial compliance if the local educational agency demonstrates that it acted in good faith with the legal conditions necessary for apportionment of funding.

Eagles Peak did not substantially comply with state law. Eagles Peak did not provide NN&W with verification sufficient to establish that an Eagles Peak FTE actually worked six hours a day, 175 days a year. Appellant's assertion that the original NN&W audit report should be "presumed correct" when the audit underlying that report did not consider or examine this issue is patently without merit. Appellant's argument that NN&W's auditor was less than diligent in her dealings with Eagles Peak because she did not speak with various persons is unfounded. The persons Appellant suggested the auditor should have contacted actually testified in this matter, and their testimony regarding the time an FTE worked was based on the unsupported assumption that a teacher's student load directly established the number of hours a teacher actually worked. Eagle Peak's use of a formula based upon a teacher's student load to calculate the ADA student/teacher ratio is not recognized by any statute or regulation and is invalid. The suggestion that deference should be given to a charter school's explanation of its employment practices and to its unique definition of an FTE for funding purposes is unreasonable and thwarts the fundamental purpose behind the statute requiring that charter schools comply with the law and undergo an independent audit of their operations on an annual basis to ensure observance of the law.

The appeal must be dismissed.

LEGAL CONCLUSIONS

1. Education Code section 51745.6 requires that the ratio of average daily attendance for independent study pupils to full-time equivalent certificated teachers be performed annually by the reporting agency. Under California Code of Regulations, title 5, section 11704, charter schools cannot exceed a pupil-teacher ratio of 25:1 and a full-time equivalent certificated employee is "an employee who is required to work a minimum six-hour day and 175 days per fiscal year." California Code of Regulations, title 5, section 19853, applicable to the 2006-07 audit, required the auditor to verify the accuracy of the charter school's pupil-teacher ratio. Auditors were required to use professional judgment during an audit. (Cal. Code Regs., tit. 5, §§ 19810 and 19814.)

2. Under Education Code sections 41344 and 41344.1, appeals in audit findings are limited to a finding based on errors of fact or interpretation of law, or if the local

educational agency believes in good faith that it was in substantial compliance with all legal requirements.

3. Appellant failed to establish by a preponderance of the evidence that Nigro Nigro & White's (revised) audit report finding #2007-3 for the 2006-07 year was based on errors of fact or interpretation of law, or that Eagles Peak Charter School substantially complied with all legal requirements in calculating the pupil-teacher ratio for ADA funding purposes. Eagles Peak did not provide adequate verification of its pupil-teacher ratio calculation; in fact, no pure source documentation was provided; Eagles Peak's calculations were based upon an assumption that related an FTE to a teacher's student load, which was improper and not recognized by statute or regulation.

This conclusion is based on all factual findings and on all legal conclusions.

ORDER

The appeal of Eagles Peak Charter School is DISMISSED.

Dated: 12/14/2010.

Original Signed

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings