

**Education Audit Appeals Panel
State of California**

Fiscal Year 2002-03 Audit Appeal by:

Mare Island Technology Academy,
Appellant.

EAAP Case No.: 05-14

OAH No.: N2005080385

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: October 30, 2006.

IT IS SO ORDERED.

October 30, 2006
Date

(Original Signed)
Thomas E. Dithridge, Chairperson
for Education Audit Appeals Panel

**BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA**

In the Matter of:

**MARE ISLAND TECHNOLOGY
ACADEMY,**

Appellant,

v.

OFFICE OF THE STATE CONTROLLER,

Respondent,

And

**DEPARTMENT OF FINANCE, STATE OF
CALIFORNIA,**

Intervenor.

Case No. 05-14

OAH No. N2005080385

PROPOSED DECISION

This matter came on for hearing¹ before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on May 18, 2006.

Spector, Middleton, Young & Minney, LLP, Attorneys at Law, by Jerry W. Simmons, Esq., represented appellant Mare Island Technology Academy.

Gary D. Hori, Staff Attorney, State Controller's Office, represented Steve Westley, California State Controller.

Claire P. LeFlore, Deputy Attorney General, Department of Justice, State of California, represented the California Department of Finance.

Evidence was received and, to permit the submission of written argument, the matter deemed submitted on September 8, 2006.

¹ This is a proceeding conducted pursuant to the administrative adjudication provisions of the Administrative Procedure Act. Education Code section 41344.1, subdivision (b).

FACTUAL FINDINGS

1. On March 30, 2005, Goodell, Porter & Fredericks, LLP, Certified Public Accountants, completed and submitted an Audit Report of the general purpose and financial statements of appellant Mare Island Technology Academy (MITA) as of and for the academic year ended June 30, 2003.
2. MITA is a charter school with a student population of 390 students.
3. In conducting MITA's audit, John Goodell, CPA, on behalf of Goodell, Porter & Fredericks, LLP, largely applied Generally Accepted Accounting Standards (GAAS), Generally Accepted Accounting Principles (GAAP),² Generally Accepted Government Auditing Standards (GAGAS).³ In addition, he utilized the State Controller Agency Guide.⁴ The purpose of a school audit is to ascertain the District's compliance with legal requirements.⁵ Such "audit or review" may be conducted by the Controller's Office, a certified public accountant or a public accountant.⁶ No audit purports to review all school documents but, consistent with GAGAS, a representative sample.⁷ When however a deficiency is discovered, more scrutiny is focused by an auditor in an effort to determine both the scope and extent of the deficiency.⁸
4. The Audit Report set forth Finding 2003-3, relating to Non-Credentialed Teachers. The report found that "two (2) core subject teachers at the middle school did not hold valid teaching credentials for the entire fiscal year 2002-03." The draft report originally found four non-credentialed teachers. Confronted with the reports, appellant MITA's personnel succeeded in reducing the four-teacher deficiency to two teachers. MITA obtained State funds for instructional minutes taught by these two teachers, Kelly Marie Sunseri and Sue Ann Steele.
5. Seeking to allocate an apportioned reduction in State sums paid to MITA for the use of two non-credentialed teachers, the Audit Report found that during "the 2002-2003 school year the Charter School offered 175 days consisting of periods of 105 minutes, and 5 minimum days with periods of 78 minutes." Students were provided 56,300 annual instructional minutes, exceeding the State's requirement of 54,000 minutes.

² "The GAAP are an amalgam of statements issued by the American Institute of Certified Public Accountants (AICPA) through the successive groups it has established to promulgate accounting principles: the Committee on Accounting Procedure, the Accounting Principles Board, and the Financial Accounting Standards Board. Like GAAS, GAAP include broad statements of accounting principles amounting to aspirational norms as well as more specific guidelines and illustrations." *Bily v. Arthur Young & Co.* (1992) 3 Cal. 4th 370, 382.

³ OMB Circular A-133; see also Education Code sections 14503, subdivision (a), and 41020; California Code of Regulations, title 5, sections 19812 and 19814.

⁴ *Standards and Procedures for Audits of California K-12 Local Education Agencies*. See Education Code section 14502.1, and *Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365.

⁵ Education Code section 41344.1, subdivision (c).

⁶ Education Code section 41344, subdivision (e).

⁷ *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 382: "[A]n audit rarely, if ever, examines every accounting transaction in the records of a business."

⁸ *Bily*, *supra* at p. 380.

- A. Teacher 1: Kelly Marie Sunseri.
Ms. Sunseri's non-credentialed status affected 65 MITA students. Her status impacted 29.7 percent of these students' total instructional minutes. MITA having been appropriated \$220,889.50 for these students, the Audit Report concluded that MITA was overpaid \$65,758.80 and should be penalized in that amount.
- B. Teacher 2: Sue Ann Steele.
Ms. Steele's non-credentialed status affected 64 MITA students. Her status impacted 28.35 percent of these students' total instructional minutes. MITA having been appropriated \$217,491.20 for these students, the Audit Report concluded that MITA was overpaid \$61,658.75 and should be penalized in that amount.
- C. Combined Instruction by Ms. Sunseri and Ms. Steele.
Ms. Sunseri and Ms. Steele had 15 students for combined instruction. This impacted 62.38 percent of these students' total instructional minutes. MITA having been appropriated \$50,974.50 for these students, the Audit Report concluded that MITA was overpaid \$31,797.89 and should be penalized in that amount.

Combining these amounts, the Audit Report concluded that MITA should reimburse the State of California in the sum of \$159,215.

6. MITA filed a timely appeal to Audit Finding 2003-3 pursuant to Education Code section 41344.1.
7. Both Ms. Sunseri and Ms. Steele possessed appropriate credentials at MITA for the 2001-2002 academic year. Following initial notification by Mr. Goodell of the 2002-2003 deficiencies relating to both teachers, MITA's Director, Louise Santiago, directed both teachers to obtain their appropriate credentials. Both Ms. Sunseri and Ms. Steele have obtained and maintain appropriate credentials for the 2003-2004, and later, academic years at MITA.
8. In a 2001-2002 Audit Report, Mr. Goodell reported, "The Charter School should implement procedures to ensure that personnel files are reviewed and teaching credentials are monitored for renewal."
9. Through and until the 2001-2002 academic year, MITA was reliant on the Vallejo Unified School District (VUSD) for the administrative monitoring of teacher credentials. While the Solano County Office of Education (SCOE) also monitors each public school teacher's credentials, SCOE notifications of any credential deficiencies were routed through VUSD to be forwarded to MITA. Ms. Santiago testified that some fiscal and administrative tension existed. She also hinted that some lapses in VUSD competencies

impeded the orderly flow of information, reports, or funds from VUSD to MITA.

10. Pursuant to a Memorandum of Understanding, MITA assumed increasing administrative responsibilities in the 2002-2003 academic year. Such responsibilities included the monitoring of teacher credentials. Ms. Santiago, without seeking to excuse the Audit Report deficiencies relating to her two teachers, acknowledges that staff was less than capable during this transition period.

11. The joint and several contributions of Ms. Sunseri and Ms. Steele, both of whom continue to teach at MITA, have elevated student performances and achieved continued proven performance honors for MITA.

12. MITA is now independent of VUSD. It employs its own personnel who monitor teacher credentialing compliance, and has formed a professional working relationship with SCOE.

LEGAL CONCLUSIONS

1. The State of California, its political subdivisions, to include school districts, possesses limited resources. The Education Audit Appeals Panel (the Panel) has a constitutional, statutory and regulatory obligation to properly ascertain that the State's limited resources are properly disbursed and expended as required by both law and regulation.⁹

2. "Charters schools are 'part of the Public School System,' but 'operate independently from the existing school district structure.'"¹⁰ Fiscal apportionment for charter schools is based on average daily attendance and instructional minutes.¹¹ Education Code section 47612.5, subdivision (a)(1)(C), sets forth, in pertinent part: "[A]s a condition of apportionment, a charter school shall for each fiscal year, offer at a minimum, to pupils in grades 4 to 8, inclusive, 54,000 minutes."¹²

3. MITA appeals, contending:

A. Education Code section 47610 provides a legislative exemption to Charter Schools from the teacher credentialing standards applicable to school districts.

Education Code section 47610 sets forth, in pertinent part:

⁹ Education Code sections 14501, subdivision (b), 14502.1, 41344, and 41344.1; and California Code of Regulations, title 5, section 19814.

¹⁰ Education Code sections 47615, subdivision (a)(1), and 47601.

¹¹ Education Code section 41420; California Code of Regulations, title 5, section 11960.

¹² 54,000 instructional minutes is also applicable to public schools. Education Code section 46201, subdivision (a)(3).

“A charter school shall comply with this part¹³ and all of the provisions set forth in its charter, but is otherwise exempt from the laws governing school districts, except all of the following:

- (a) As specified in Section 47611.¹⁴
- (b) As specified in Section 41365.¹⁵
- (c) All laws establishing minimum age for public school attendance.”

Appellant submits the penalty associated with the audit filing inaccurately interprets law. Appellant argues that Education Code section 47610 provides a legislative exemption to Charter Schools from the teacher credentialing standards applicable to school districts. Rather, contends appellant, apportionment is expressly limited to only those specific references “clearly identifying compliance as a condition of apportionment” as set forth in the Act.

Notwithstanding appellant’s argument, Respondent correctly observes, Education Code section 47612.5, subdivision (e)(1), provides, “as a condition of apportionment” that “‘classroom-based instruction’ in a charter school, for the purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the charter school who possesses a valid teaching certification in accordance with subdivision (l) of Section 47605.” Section 47605, subdivision (l), provides, in pertinent part, “Teachers in charter schools shall hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school.”

Appellant, during the period found in the compliance audit, permitted two teachers to render instructional minutes to pupils. These two teachers lacked properly certificated credentials. Cause, accordingly, exists to deny the appeal of appellant pursuant to the provisions of Education Code sections 14500, 14501, 14503, 41020, 41341, 41344, 41344.1, in conjunction with California Code of Regulations, title 5, section 11960, and Education Code sections 47605, subdivision (l), and 47612.5, and as set forth in Findings 1 through 12.

- B. MITA substantially complied with Education Code section 47605, subdivision (l).

“Compliance with all legal requirements is a condition to the state’s obligations to make apportionments.”¹⁶

¹³ This “part” refers to the Charter Schools Act of 1992 (the Act). Education Code section 47600, et seq.

¹⁴ Education Code section 47611 references the choice of retirement plan availability to a charter school.

¹⁵ Education Code section 41365 references the creation, availability, apportionment or transfer of funds from the Charter School Revolving Fund.

¹⁶ Education Code section 41344.1, subdivision (c).

Education Code section 41344.1, subdivision (c), further provides, in pertinent part, “A condition may be deemed satisfied if there has been compliance or substantial compliance with all legal requirements.” As set forth in Legal Conclusion 1.A, appellant did not comply with all legal requirements. Appellant therefore submits that it has substantially complied with Education Code section 47605, subdivision (1).

“‘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.” If there has been substantial compliance, the reimbursement or penalty amount may be waived or reduced.¹⁷

The Audit Report specifically found that “two (2) core subject teachers [Ms. Sunseri and Ms. Steele] at the middle school did not hold valid teaching credentials for the entire fiscal year 2002-03.” Notwithstanding the State’s 54,000 minutes requirement, appellant’s students received 56,300 annual instructional minutes. During this salient period, Ms. Sunseri’s non-credentialed status affected 65 students, while Ms. Steele’s non-credentialed status affected 64 students. In addition, the two had 15 students for combined instruction.

In the prior academic year, both teachers possessed appropriate credentials. Following notification of the Audit Report’s found deficiency, the teachers obtained and maintained appropriate credentials for each year successive to the audit period.

In the 2001-2002 Audit Report, the auditor observed, “The Charter School should implement procedures to ensure that personnel files are reviewed and teaching credentials are monitored for renewal.” Through and until the 2001-1002 academic year, appellant was reliant on VUSD for the administrative monitoring of teacher credentials. In addition, SCOE also monitored each public school teacher’s credentials. However, SCOE notifications of any credential deficiencies were routed through VUSD before being forwarded to appellant. It was unrefuted that fiscal and administrative tension existed between VUSD and appellant. In the 2002-2003 academic year, appellant assumed responsibility for the monitoring of teacher credentials. Operating pursuant to a memorandum of agreement with VUSD, it is equally unrefuted that appellant’s staff was not fully competent to undertake such responsibility. When confronted with the auditor’s original findings that found four improperly credentialed teachers, appellant’s personnel were able to locate sufficient information to reduce the 4-teacher deficiency in credentials to two teachers, Ms. Sunseri and Ms. Steele.

The Audit Report fiscal penalty is being assessed against appellant’s instructional minutes—not the State’s 54,000-minute requirement. This has the effect of reducing the percentage of the claimed apportionment reimbursement.

¹⁷ Education Code section 41344.1, subdivision (c).

Appellant's claim of substantial compliance requires, at a minimum, some evidence of good faith.¹⁸ Other than a memorandum of understanding between itself and VUSD, appellant presented no evidence that indicated what good faith efforts it made to obtain credential compliance of and for its teaching staff. Not until a deficiency was discovered, did appellant's staff undertake a review of records to reduce the number of teachers affected by the audit's initial findings. While it is clear that appellant's administrative personnel evidently lacked the appropriate training or experience to conduct a credential check of its teaching staff, such failure does not function to supplant its statutory obligations commensurate with its receipt of State funds.

Cause accordingly exists to deny the appeal of appellant pursuant to the provisions of Education Code sections 14500, 14501, 14503, 41020, 41341, 41344, 41344.1, in conjunction with California Code of Regulations, title 5, section 11960, and Education Code sections 47605, subdivision (l), and 47612.5, and as set forth in Findings 1 through 12.

ORDER

The appeal of appellant Mare Island Technology Academy is DENIED.

Dated: September 29, 2006

(Original Signed)
JAIME RENE ROMAN
Administrative Law Judge
Office of Administrative Hearings

¹⁸ Education Code section 41344.1, subdivision (c).