

**Education Audit Appeals Panel
State of California**

Appeal of 2006-07 Audit Findings 07-18,
07-23, 07-25, 07-27, and 07-33 by:

Vallejo City Unified School District,
Appellant.

EAAP Case No. 09-23

OAH No. 2009091101

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 24, 2011.

IT IS SO ORDERED.

October 24, 2011

Date

Original Signed

Diana L. Ducay, Chairperson
for Education Audit Appeals Panel

BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of the Appeal of Fiscal Year
2006-07 Audit Findings 07-18, 07-23, 07-25,
07-27 and 07-33 by:

VALLEJO CITY UNIFIED SCHOOL
DISTRICT,

Appellant.

Case No. 09-23

OAH No. 2009091101

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 17-20 and 24, 2010. Attorney Gary D. Hori represented State Controller John Chiang. Deputy Attorney General Sarah E. Kurtz represented the Department of Finance, which intervened as a party pursuant to Education Code section 41344.1. N. Eugene Hill and Richard C. Miadich, Attorneys at Law, Olson, Hagel & Fishburn LLP, represented appellant Vallejo City Unified School District.

The record remained open for the parties to submit additional evidence (none was offered) and written briefs, which were timely filed. The District's opening brief was marked Exhibit J. With its opening brief, the District submitted a five-binder appendix consisting of excerpts from Exhibit I, which was admitted into evidence at hearing; the binders were marked Exhibits K1, K2, K3, K4 and K5. The State Controller's Office submitted a separate brief for each audit finding; the briefs relating to Audit Findings 07-18, 07-23, 07-25 and 07-33 were marked Exhibits 9 through 12, respectively. The Department of Finance's brief was marked Exhibit 13. The District's reply brief, received on December 8, 2010, was marked Exhibit M. (A courtesy copy of the District's reply brief was received by fax on December 7, 2010.) The record closed and the matter was submitted on December 8, 2010.

The record was reopened by the administrative law judge to allow the parties to submit further evidence and argument regarding Audit Finding 07-23. Further hearing was held on May 24, 2011. The record remained open for the parties to submit written briefs. The District's opening brief was marked Exhibit N. The brief of the State Controller's Office was marked Exhibit 14, and the brief of the Department of Finance was marked Exhibit 15. The District's reply brief was marked Exhibit O. The record again closed and

the matter was deemed resubmitted on June 30, 2011, the date the fax copy of the District's reply brief was filed.

SUMMARY

The State Controller's Office performed an audit of the Vallejo City Unified School District for the 2006-07 fiscal year. The District appeals from four of the audit findings.

Audit Finding 07-18 disallows over one-half of the average daily attendance reported by the District for Jesse Bethel High School, on the ground that the District reported attendance for students who did not attend class. The District's appeal from this finding is granted and the disallowance is reduced to \$0.

Audit Finding 07-23 disallows average daily attendance in the District's Long-Term and Short-Term Independent Study Programs. The disallowance in the long-term program is based upon the District's failure to maintain student work samples that are signed or initialed, and dated, by the teacher. Although the District failed to comply strictly with this legal requirement, it substantially complied. The disallowance for the long-term program is reduced to \$126,153.

Audit Finding 07-27 disallows average daily attendance associated with the District's continuation education program. The District's appeal from this finding is denied.

Audit Finding 07-33 disallows average daily attendance associated with the District's community day school. The District's appeal from this finding is granted and the disallowance is reduced to \$0.

FACTUAL FINDINGS

1. In June 2004, the State of California made a \$60 million emergency loan to appellant Vallejo City Unified School District (District), which was in fiscal crisis. In accordance with the terms of that loan, the State Controller's Office (SCO) conducted a financial and compliance audit of the District for the 2006-07 fiscal year. The audit was conducted in accordance with the K-12 Audit Guide published by the Education Audit Appeals Panel. (Cal. Code Regs., tit. 5, § 19810 et seq.) SCO issued its audit findings in February 2009. The District appealed from Audit Findings 07-18, 07-23, 07-25, 07-27, and 07-33. At hearing, SCO withdrew Audit Finding 07-25, leaving four audit findings at issue. SCO's audit findings constitute the statement of issues under Government Code section 11504.

APPORTIONMENT FUNDING AND ATTENDANCE REPORTING

2. California school districts receive apportionment funding from the State of California based upon reports of average daily attendance (ADA) they submit to the California Department of Education (CDE). The reports cover three periods. The first principal apportionment (P-1) covers the period of July 1 to December 1; the second principal apportionment (P-2) covers the period between July 1 and April 15; and the annual principal apportionment (Annual) covers the period July 1 to June 30. The apportionments paid to the district are determined by the ADA reported and the "revenue limit" associated with each educational program.

AUDIT FINDING 07-18: ATTENDANCE REPORTING AT JESSE BETHEL HIGH SCHOOL

3. Audit Finding 07-18 concerns attendance reporting in the regular classroom program at Jesse Bethel High School. The audit finding disallows 54.44 percent of the ADA reported by the District for that school, on the ground that the District reported attendance to CDE for students who did not attend school. The finding equates to a loss of approximately \$3.8 million in apportionment funding.

4. SCO Auditor Richard Haseltine was assigned to perform the field audit at Jesse Bethel High School. This was Haseltine's first school audit. Haseltine is now a certified public accountant, but he was not a CPA at the time of the audit.

5. Section 19817.1 of the EAAP Audit Guide requires the auditor to take certain steps to reconcile the reports of attendance that a district submits to CDE with the district's supporting documentation. Subdivision (b)(3) directs the auditor to perform the following procedures:

Verify that the monthly site summaries used for summarizing attendance provide accurate information, by selecting a representative sample of schools and performing the following procedures:

[¶] . . . [¶]

(3) Select a representative sample of classes (teachers) and trace the monthly totals from the monthly report to the data origination documentation. Verify the mathematical accuracy of the attendance registers, scantron summaries, or other data arrays.

6. In 2006-07, District teachers entered attendance into a computer terminal in their rooms or in the District office. Attendance was reported on a "negative" basis. Teachers entered the names of those students who were absent; any student not marked absent was reported as present.

7. Haseltine performed the procedures required by the EAAP Audit Guide. He randomly selected a month ("Month 3" of the school year), a sample of teachers and 26 students. He then traced the attendance totals from the monthly attendance report to the teachers' attendance registers for Month 3. These procedures did not expose any errors between the data origination documentation and the District's monthly attendance report. Haseltine's audit procedures did not establish any basis for a disallowance of ADA in the regular classroom program at Jesse Bethel High School.

8. Although the District's records satisfied the audit procedures in the EAAP Audit Guide, certain entries "did not look right" to Haseltine. The 26 students in the sample accounted for 338 days of attendance. Haseltine noted that 12 students in the sample were indicated as "present" on days when they attended school for only one or two periods, and had been absent from school before and after those days. Of the 338 days of attendance in the sample, there were 50 days – about 15 percent – on which a student was marked present for only one or two periods. Haseltine noted these days as "exceptions" in his work papers.

There were 105 days on which the 12 students were marked present for more than two periods. Haseltine did not note those days as an exception. He did not identify as exceptions any day of attendance on which a student was marked present for more than two periods.

9. There is nothing wrong with a district claiming apportionment for a student who attends school for only one period; Education Code section 46013.3 provides that a district may claim ADA for any student who attends at least one period of instruction in a given day. Haseltine, however, felt it was improbable that a student would attend school for only one or two periods, particularly if the periods were not consecutive and the attendance day was preceded and followed by absences. Haseltine's manager, Senior Management Auditor Carolyn Baez, is experienced in school audits and she shared his view.

10. Haseltine spoke to the school's attendance officer, Laurie Griffin, and the school's principal, Lilli Rollins, about his observations. Haseltine's notes of his conversation with Griffin state:

Laurie Griffin stated that the attendance recordings of only 1 or 2 periods in a day were incorrect. The teacher most likely did not mark the student absent. Teachers make errors by not recording the absence for that student. She could tell by the attendance history of the 5 students displayed that they were truant^[1] problems, she most likely has sent letters to the parents, and subsequently, the students end up leaving school. She

¹ A "truant" is defined as a student "who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than any 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof." (Ed. Code, § 48260.)

stated that this happens frequently. Other days that show only 1 period attending when the student has been absent the day(s) before and day(s) after are attendance mistakes.

According to Haseltine's notes of his conversation with Principal Rollins, she "generally agreed." Rollins thought that the "errors" might have been committed by substitute teachers, or by new teachers who had not yet been trained on "Aeries," the online attendance system.

Haseltine did not speak to any District teachers about his observations.

11. The text of Audit Finding 07-18 states that when the auditor discussed his observations with the attendance officer and the principal, "they agreed that the days of attendance for the 12 students who attended only one or two periods each day were reported in error because the students identified were known to have truancy problems." The Department of Finance (DOF) relies on this statement to support its claim that the students who were marked present for only one or two periods were truants.

The statement in the audit report is critically ambiguous. According to Haseltine's notes of his conversations with Griffin and Rollins, he only identified five of the 12 students to Attendance Officer Griffin; his notes state that he "displayed" the names of five of the 12 students to her, and Griffin identified those five students as having truancy problems. It is true, therefore, that the "students identified" to Griffin were known to have truancy problems. It is not true that all 12 students were identified to Griffin, or that she identified all 12 students as having truancy problems.

12. After consulting with Senior Management Auditor Baez, Haseltine decided to take another sample to, in Baez's words, "validate the initial sample." Unlike the first sample, in which students were selected at random, the second sample consisted of 26 students who were known to have high absenteeism and who were selected because of that attribute; it was what Haseltine referred to as a "judgmentally-selected" sample. Haseltine examined the attendance history of the 26 judgmentally-selected students for the entire school year.

Haseltine found that, of the 2,817 days of attendance claimed for these 26 students, there were 451 days – about 16 percent – on which a student was present for only one or two periods.

The auditors felt that the second study validated the initial sample. Neither the audit nor the auditors' testimony explains what they mean by "validated."

13. After reviewing the second sample, Haseltine performed several additional procedures.

a. Haseltine reviewed the District's truancy records. He found that the District had established truancy files for three of the students in the initial sample; in one of those files, he found a note stating that the student stopped coming to schools after classes were assigned. Haseltine found truancy files for six of the students in the second, judgmentally-selected sample. Haseltine reviewed the files and concluded that the District was not following the truancy response procedures set forth in the Education Code, such as advising the student's parent that the student is a truant.

b. Haseltine reviewed the District's attendance policies. He found that school site attendance staff did not review teachers' weekly attendance reports. He criticized staff for not "following up" on attendance reported for days when a student only attended one or two periods; the staff, the audit states, was "aware of the reporting errors, but did not take any action to correct them."

c. Haseltine reviewed the school's attendance files to see if there were absence notes or telephone log entries to show that the students who attended only one or two periods had a valid excuse for missing their other classes on those days. He found no, or very few, excuse notes. He concluded that the school was not enforcing certain policies, such as requiring students to bring excuse notes when returning to school after absences.

Haseltine also examined excuse notes to see if the District had claimed attendance for students who were absent. Of all the additional procedures performed by Haseltine, this is the only procedure that is authorized by the EAAP Audit Guide. (Cal. Code Regs., tit. 5, § 19817.1, subd. (c).) This procedure revealed that in 99 percent of the cases Haseltine reviewed, the District's attendance reporting was accurate; that is, that the District did not improperly claim attendance for students who were absent.

d. Haseltine analyzed teacher assignments to see if the "error" of reporting students present when they attended only one or two periods per day was attributable to substitute teachers. Haseltine found that he could not attribute the reporting to substitute teachers, as both regular and substitute teachers reported days on which certain students attended only one or two periods.

14. After performing these additional procedures, Haseltine and his managers decided to disallow all of the days of attendance claimed for those students in the initial study who were reported present for only one or two periods. The disallowance is not limited to the days on which the students were reported present for only one or two periods; the audit disallows all of the days of attendance for those students, even if attendance records showed they were present for three, four, five or six periods:

Due to the high error rates identified in our initial sample, which was validated by the errors identified in the additional sample and the results of the truancy testing, and because of the systemic internal control deficiencies identified in this finding,

we disallowed all days of attendance claimed for the 14^[2] of 26 students in our initial sample which equates to 184 days of attendance; an error rate of 54.44% (184 divided by 338 days claimed).

The auditors then extrapolated this “error rate” of 54.44 percent to the total attendance claimed by the District for Jesse Bethel High School during the 2006-07 fiscal year, resulting in a disallowance of approximately \$3.8 million in apportionment funding.

15. Audit Finding 07-18 rests fundamentally on the auditors’ conclusion that when the students in the initial sample were marked present for only one or two periods, they were in fact absent from school. The evidence does not support the auditors’ conclusion.

In evaluating the strength of the evidence presented, the greatest weight must be given to the contemporaneous attendance reports of the classroom teachers. The reason for this, as SCO asserts in its defense of Audit Finding 07-18, is that “the teachers are the ones taking roll and are the eye-witnesses to a pupil’s presence or absence in the classroom.” The purpose of the audit procedure established by the EAAP Audit Guide and performed by auditor Haseltine was to trace the District’s attendance claim for Jesse Bethel High School to the teachers’ attendance reports. Haseltine performed that audit procedure and found no discrepancies between the District’s attendance records and its attendance reporting to CDE.

When auditor Haseltine observed that some students in the initial study were marked present based upon their attendance in only one or two periods, Haseltine decided that the attendance records were “unreasonable” and noted those attendance days as exceptions, without any further evidence to support his belief. It is not questioned that Haseltine had reason to be suspicious of what he and Baez found to be an unusual attendance pattern. Haseltine, however, noted the days as exceptions before he investigated the accuracy of this theory.

SCO and DOF rely heavily on the statements of Attendance Officer Griffin and Principal Rollins. The statements attributed to Griffin reflect no personal knowledge of the attendance of seven of the 12 students noted as exceptions in the initial sample; it appears that Griffin was only shown the names of five of the 12 students. The statements attributed to Rollins reveal no personal knowledge regarding the attendance of the 12 students. Rollins’ belief that the attendance records reflected errors by substitute teachers was not borne out by auditor Haseltine’s subsequent testing. Neither Griffin nor Rollins appeared at

² There were 12 students in the initial sample, not 14, who were reported present on various days for only one or two periods. One of the audit working papers (1D) explains how the number of students in the initial study whose attendance was at issue expanded from 12 to 14. It states that one student with a one-period attendance day was overlooked in the initial sample, and that “one student was not counted in the [initial] sample and, instead, counted in the truancy sample because of a higher number of exception days.” The explanation for adding the 14th student is not clear.

hearing. Because the basis for their statements to auditor Haseltine is unclear, and because they did not appear at hearing to explain and be cross-examined on their statements, the hearsay statements of Griffin and Rollins are entitled to little weight.

Six teachers who taught at Jesse Bethel during the 2006-07 fiscal year, John Allen Steen, Major Woolard, Reyna Rodriguez, Gary Wayne Grout, Ronald Wayne Garrison, and Melba Cayme, testified at hearing. These teachers testified that, unfortunately, it was not uncommon for some students to attend school sporadically, appearing for particular classes and then leaving school again for days or weeks. The first-hand observations of these witnesses were credible and their testimony was uncontradicted. Neither SCO nor DOF presented any evidence to rebut the teachers' testimony.

At hearing, the auditors contended that their second sample of high-absenteeism students "validated" their initial study. The auditors do not explain what they mean by "validate." Neither study can prove whether students who were reported as present were in fact absent from school. DOF argues that if students with high-absenteeism are marked present for only one or two periods, then it is unlikely that a random sample of students would be present for only one or two periods. This argument, however, assumes the truth of the proposition DOF wants to prove. The evidence does not establish that the students in the second sample or the initial sample were absent from school on the days they were marked present for one or two periods.

SCO argues that the additional procedures performed by auditor Haseltine prove that the students were absent from school on the days they were reported present for one or two periods. SCO relies on the auditor's assertion that staff did not follow up on attendance reported for only one or two periods. But the auditor's criticism of the attendance staff is based on his belief that the reports of one- or two-period attendance were errors, a belief that is not supported by the evidence. SCO argues that the District's lax enforcement of truancy procedures and the absence of any excuse notes for the students in the initial study suggest that the students were absent from school on the days they were marked present. It is equally likely, however, that students with poor attendance do not bother with excuse notes, and that the District's lax enforcement of truancy policies allowed those students to come and go as they pleased.

The evidence is not sufficient to establish that the students in the initial sample were absent from school on the days they were reported present for only one or two periods. There is no basis for disallowing the District's ADA claim for those days of attendance, and no basis for extrapolating that disallowance to the District's ADA claim for Jesse Bethel High School.

16. The disallowance in Audit Finding 07-18 is not limited to those days that the students in the initial sample were reported present for only one or two periods; that percentage would be about 15 percent. The audit finding goes further and disallows all of the attendance reported for those students, days on which they were reported present for three, four, five or six periods; in effect, the audit concludes that those students were absent

from school during all of Month 3. This results in a disallowance of 54.44 percent. There is no factual or legal basis for this disallowance.

The statements of Griffin and Rollins provided some evidence, albeit weak, that the students in the initial study were absent from school on the days they were reported present for one or two periods. There is no credible evidence, however, that those students were absent from school on the days they were present for more than two periods. The auditors never suspected that those attendance days were reported in error, never investigated whether those days were reported in error, and never claimed that those days were reported in error. No school site personnel stated that those days were reported in error. The auditors performed no tests or procedures to determine whether those days were reported in error.

The audit states that the auditors decided to reject all of the students' days of attendance "because of the high error rates identified in our initial sample, which was validated by the errors identified in the additional sample" The "high error rate" referred to is the percentage of attendance days based on attendance for one or two periods of attendance, about 15 percent. The evidence fails to establish that those days were reported in error.

The audit states that the auditors decided to reject all of the students' days of attendance because of "the results of the truancy testing." The truancy testing failed to establish that the students were absent from school on the days they were reported present for one or two periods, much less that they were absent on the days they were reported present for more than two periods.

The audit states that the auditors decided to reject all of the students' days of attendance because of "the systemic internal control deficiencies identified in this finding." Once again, the internal control deficiencies cited failed to establish that the students in the initial study were absent on the days they were reported present for one or two periods, let alone the days they were reported for three or more periods. Neither the audit nor the auditors' testimony cites any legal basis for a disallowance of 54.44 percent of Jesse Bethel's ADA, based solely upon the internal control deficiencies identified in the audit. Only one of the additional procedures performed by Haseltine is authorized by the EAAP Audit Guide. That procedure – the testing of absence notes against the District's attendance claims – was fundamentally favorable to the District.

SCO argues that the "auditors determined that the entire attendance reporting by Jesse Bethel was systemically flawed, above and beyond the over-reporting for students credited with 1 or 2 periods of attendance." Auditor Haseltine made a similar claim at hearing; he testified that, after performing the additional procedures, he felt he could "no longer rely" on the school's attendance system. The audit contains no determination that Jesse Bethel's "entire attendance reporting" is systemically flawed or unreliable. Such a determination, if supported by the evidence, would demand a total disallowance of the school's ADA, which the audit does not propose. It is plain that the disallowance of 54.44 percent is not based upon systemic flaws in the entire attendance system, but on the auditors' decision to reject

the attendance claims for certain students. There is, however, no factual basis to conclude that the students were absent from school on the days that the auditors rejected.

In short, the 54.44 percent disallowance imposed by Audit Finding 07-18 is arbitrary. There is no factual or legal justification for disallowing all of the days of attendance of any student in the initial study who was ever marked present for only one or two periods, and no basis for extrapolating that result to the District's entire ADA claim for Jesse Bethel High School.

AUDIT FINDING 07-23: LONG-TERM INDEPENDENT STUDY

17. This audit finding disallows ADA associated with the District's Long-Term Independent Study Program, based upon the District's failure to maintain samples of the students' work that are signed and dated by the students' teachers.³

18. The state makes apportionment payments to a school district based upon the ADA of students enrolled in independent study, provided that the district meets certain requirements established by state law. (Ed. Code, § 51745 et seq.) One such requirement is that a district may claim apportionment credit "only to the extent of the time value of pupil or student work products, as personally judged in each instance by a certificated teacher." (Ed. Code, § 51747.5.) The term "work product" is defined by regulation to mean "that which results from a pupil's . . . efforts and actions to complete or perform the assignments given and which is subsequently evaluated by a certificated teacher." (Cal. Code Regs., tit. 5, § 11700.)

19. CDE requires that each school district maintain independent study records "to meet audit requirements." (Cal. Code Regs., tit. 5, § 11703.) The records that must be maintained include "[a] file of all agreements, including representative samples of each pupil's . . . work products bearing signed or initialed and dated notations by the supervising teacher indicating that he or she has personally evaluated the work . . ." (Cal. Code Regs., tit. 5, § 11703, subd. (b).)

20. The EAAP Audit Guide directs the auditor to

[t]race each pupil's . . . attendance from the attendance records to the teacher's register, record of the pupil's . . . work completed, and the corresponding work assignment record. Verify that evaluated pupil . . . work samples, bearing signed or initialed and dated notations by the supervising teacher

³ Audit Finding 07-23 sets forth a disallowance of ADA based upon deficiencies in the District's Short-Term Independent Study Program as well, but those portions of the audit finding are not challenged by the District.

indicating that he or she personally evaluated the work, . . . have been retained in the file.

(Cal. Code Regs., tit. 5, § 19819, subd. (c)(9).)

21. In 2006-2007, the District operated a long-term independent study program for grades 1 through 6 called "Home Outreach Program for Education" (HOPE), and a long-term independent study program for grades 5 through 12 on the campus of Farragut School.⁴

22. Independent study takes place outside the normal classroom environment. In the District, a long-term independent study student meets once per week with his or her teacher for a one-on-one meeting. At that meeting, the teacher assigns homework for the following week on a "weekly assignment contract." On the contract, the teacher fills in his or her own name; the student's name; the duration of the contract, typically one week, by date; the assignment for each course for that week; and the date, time and place of the next meeting. When the student returns for his or her next appointment, the teacher receives and evaluates the student's work from the prior week, and enters the grades for those assignments on the weekly assignment contract. The teacher and student then enter into another weekly assignment contract for the next week.

23. SCO Staff Management Audit Specialist Joel James oversaw the field work on this audit finding. Following the procedures set forth in section 19819 of the EAAP Audit Guide, an SCO auditor examined four student files from the HOPE program and found no evidence that the supervising teacher had evaluated the students' work products. The auditor examined 48 student files from Farragut and found that, for 22 student files, there was no evidence that the teacher had personally evaluated the students' work products.

24. Because of the errors noted, James expanded SCO's testing by using statistical sampling. The auditors examined 242 student files, 10 from HOPE and 232 from Farragut, containing 2,695 work samples. The auditors noted that 1,499 of the 2,695 work samples did not contain evidence that the supervising teacher personally evaluated the students' work products, as required by section 11703. Among the 1,499 work samples that were found noncompliant because they did not bear the teacher's signature/initials and date, there were 242 work samples that did not correlate with the students' weekly assignment contracts.

25. At HOPE, 93 out of 107 work samples were found noncompliant while at Farragut, 1,406 out of 2,588 work samples were found noncompliant. Based upon these findings, the auditors calculated an error rate of 87 percent for HOPE and 54 percent for Farragut. Applied to the District's ADA claim for the two programs, this resulted in a state funding disallowance of \$636,790 at P-2 and \$709,872 at Annual.

⁴ The audit refers to the program at Farragut as "Long-Term Independent Study," but the parties' refer to it as the "Farragut" program in their briefs; the parties' convention will be followed.

26. The District argues that 38 work samples from Farragut students, found to be noncompliant by the auditors, comply with the requirements of section 11703. SCO agrees. This reduces the total number of exceptions for Farragut from 1,406 to 1,368.

27. The District argues that the auditors improperly examined all of the work samples in each student's file, instead of examining only the samples that comply with the requirements of section 11703. The student files include as few as two and as many as 62 work samples; some student files contain both compliant and noncompliant work samples. CDE regulations, the District argues, do not specify how many samples of a student's work product must be maintained. The District contends that so long as some samples comply with the requirements of section 11703, the District should not be penalized for maintaining other samples.

The District's argument is not persuasive. The evident purpose of the section 11703 is to require teachers to demonstrate that they have personally reviewed the work sample. It would be contrary to that purpose to disregard work samples that have not been signed or initialed and dated by the teacher.

28. The District argues that, even if it did not strictly comply with the requirements of section 11703, it substantially complied with the state's independent study requirements. Education Code section 41344.1, subdivision (c), defines "substantial compliance" as follows:

[N]early 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 that it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding. The [Education Audit Appeal Panel] may further define "substantial compliance" by issuing regulations or through adjudicative opinions, or both. . . .

The term "substantial compliance" has not been defined by regulation or precedential decision.

29. Under Education Code section 41344.1, substantial compliance is measured against the "material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose." The fundamental requirement for independent study is that pupil work product must be "personally judged in each instance by a certificated teacher." (Ed. Code, § 51747.5.) The reason for this requirement is that a district may claim apportionment for independent study "only to the extent of the time value of pupil . . . work products" as personally judged by the teacher.

30. The District argues that, for those retained work samples that correlate with a student's weekly assignment contract, it has substantially complied with this requirement. The weekly assignment contract contains the grade for each assignment, the teacher's name or initials, and the date of the contract. Since independent study assignments were graded on the last day of each weekly assignment contract, when the students came to school for their weekly meetings with their teachers, the weekly assignment contracts reveal the date of the teachers' evaluation. Thus, the District argues, when the weekly assignment contract and the work sample are read together, they establish that the teacher personally judged the work sample and the date of the teacher's evaluation.

31. SCO asserts, correctly, that filling out the weekly assignment contract is not "a substitute for the requirement that a teacher must personally evaluate each student's work product and sign/initial and inscribe the date of such evaluation." But the grade for each assignment on the weekly assignment contract reveals that the teacher evaluated the student's work, and the contract contains the teacher's name and the date. It is true that the work sample lacks either the teacher's name/initials, or date, or both, and thus does not comply with the requirements of section 11703. The issue here, however, is not strict compliance with section 11703, but whether the documents demonstrate that the District's teachers substantially complied with the requirement to personally judge their students' work.

SCO argues that the weekly assignment contract contains more than one assignment and that "although there may be six work samples associated with each weekly assignment contract, the District contends that the teacher need not personally evaluate each student's work product because there is a date on the weekly assignment contract." SCO misstates the District's argument. There is no question that, as a condition of receiving apportionment funding for independent study, a teacher must personally evaluate each student's work product. The District contends that the corresponding weekly assignment contract for the work sample, which bears a grade for the work sample, demonstrates that the teacher evaluated the student's work.

SCO asserts, again correctly, that the weekly assignment contract is not a student's work product, and that it is the work product that must be judged. Even section 11703, however, does not require the teacher to put the student's grade on the retained samples of work product. The law requires that the teacher personally judge the student's work. Except for those work samples which do not correlate to weekly assignment contracts, the work sample and the contract demonstrate the teacher's personal evaluation of the student's work product.

32. The District's argument is persuasive. As to those retained student work samples that correlate with the student's weekly assignment contract, the District has demonstrated that it substantially complied with the requirements of Education Code section 51747.5, and the audit requirements of section 11703. No ADA should be disallowed for those work samples.

33. The District identifies 26 work samples which do not correlate with weekly assignment contracts, but which bear some notation indicating that the teacher read them. Most of those samples bear a check mark by the teacher. Only eight contain a grade or a score and only one bears a date. These work samples do not substantially comply with the material requirements of independent study.

34. It is undisputed that, of the 93 work samples from HOPE for which exceptions were noted, 83 of those samples correlate with the students' weekly assignment contracts. It is also undisputed that, of the 1,368 work samples from Farragut for which exceptions were noted, 1,073 of those samples correlate with the students' weekly assignment contracts.⁵

35. While the parties disagree on whether the District has demonstrated substantial compliance, it is undisputed that, if substantial compliance is found, the disallowance of ADA should be calculated using the methodology set forth in the table below. Applying that methodology, it is determined that the total disallowance for the District's Long-Term Independent Study Program under Audit Finding 07-23 should be reduced to \$126,153:

	HOPE	Farragut
Exceptions identified by audit	93	1,406
Exceptions withdrawn by SCO	0	38
Work samples that correlate w/ weekly assignment contracts	83	1,073
Sustained exceptions: no actual or substantial compliance	10	295
Total work samples maintained	107	2,588
Percent of work samples disallowed	9%	11%
ADA claimed	7.31	201.54
ADA disallowed	0.65	22.17
Base Revenue Limit	\$5,528.17	\$5,528.17
Amount disallowed	\$3,593	\$122,560
Total disallowed (HOPE + Farragut)	\$126,153	

⁵ SCO maintains that, even though all her work samples correspond with weekly assignment contracts, the 11 work samples of student Jasmine W. should not be included because of an "invalid" parent signature on her master independent study agreement. On Jasmine W.'s master agreement there are two lines that call for a parent signature. There is a signature on each line; the two signatures are different, and one of the signatures is similar in appearance to the student's handwriting. The EAAP Audit Guide states that the master agreement must be signed by "the pupil's parent, legal guardian, or caregiver . . ." (Cal. Code Regs., tit. 5, § 19819, subd. (c)(7)(I)2.) Two parent signatures are not required. Even assuming that one signature is invalid, neither the auditor nor the audit explains why the other signature fails to satisfy audit requirements. SCO's argument that Jasmine W.'s work samples should be disregarded is not persuasive.

36. This audit finding concerns a review of attendance records for the District's continuation school. SCO auditor Ken Harris performed the audit and concluded that the District did not maintain valid weekly attendance reports to support all of its attendance claim for continuation education students at Peoples Continuation School. This resulted in a disallowance of 82.41 ADA at P-2, which equates to \$455,576, and a disallowance of 63.40 ADA at Annual, which equates to \$350,486.

37. The EAAP Audit Guide establishes procedures to verify attendance claims for continuing education students. (Cal. Code Regs., tit. 5, § 19820.) Among other required procedures, the auditor must "[s]elect a representative sample of pupils and . . . (1) Trace each pupil's attendance in the weekly attendance records to the teacher's attendance register or other approved record." (Cal. Code Regs., tit. 5, § 19820, subd. (d)(1).)

38. Auditor Harris selected a sample of students and requested their teachers' weekly attendance reports from the school site. The school site could not provide complete weekly attendance reports for any of the 13 teachers for the first 22 weeks of the school year. For one teacher, the site was missing two weeks of reports. For another teacher, the site was missing four weeks of reports. For another teacher the site was missing nine weeks of reports. And for ten teachers the site was missing 19 weeks of attendance reports. For the remainder of the school year, the site could provide complete weekly attendance reports for all but two of the 13 teachers. The auditor disallowed all attendance claims that were based on missing weekly attendance reports, and allowed all attendance that was supported by weekly attendance reports provided by the school site.

39. In January 2008, Harris informed District staff that the school site did not maintain all of the required attendance records and that he could not perform all of the required audit procedures. The District's Director of Compliance and Audit, Cleo Chaney, looked for the documents but could not find the school site-level documents. In April 2008, Chaney printed out district-level attendance records from the District's online attendance system and gave them to Harris. Harris compared these documents with the weekly attendance reports that were available from the school site and found discrepancies, including discrepancies in the names and numbers of students listed on the reports, section numbers, course numbers and titles. Harris told Chaney that he was not satisfied with the district-level printouts.

40. About a month later, in May 2008, Chaney provided Harris with another printout of district-level documents that purported to be the missing weekly assignment sheets. Harris found that these documents contained discrepancies nearly identical to those in the records that were produced in April.⁶

⁶ At hearing, Michael Cheap, the District's Director of Assessment and Program Evaluation, testified that Chaney inadvertently printed out the wrong information, but that

41. The audit states, "Since the discrepancies identified in both sets of the reports provided by the district [*sic*] and because the reports were not signed and dated by the teachers, we cannot determine the validity and accuracy of the reports provided by the district."

42. The District asserts that no provision of the Education Code or the EAAP Audit Guide requires weekly attendance reports to be signed and dated by the teacher. SCO provides no authority to the contrary. The lack of a teacher signature and date, however, is not the sole basis for this audit finding. SCO sought to trace each student's attendance to the teachers' records, and the school site was unable to produce copies of the teachers' records for many weeks of the year. While the District sought to supply the auditors with the missing data by producing district-level documents, the district-level documents were inconsistent with those records that the school site could produce. The auditors properly rejected the district-level documents as unreliable.

AUDIT FINDING 07-33: ATTENDANCE AT COMMUNITY DAY SCHOOL

43. This audit finding concerns the District's attendance claim for its community day school. SCO Auditor Kyle Eurie performed the audit and concluded that the District did not maintain contemporaneous records of attendance to verify attendance in the fifth and sixth hours at the community day school. (Six clock hours or more of attendance in a community day school is necessary to constitute one day of attendance to receive what the Education Code refers to as "additional funding.") This resulted in a disallowance of 67.64 ADA at P-2, which equates to \$186,963, and a disallowance of 67.19 ADA at Annual, which equates to \$185,719.

44. The Audit Guide requires the auditor to "select a representative sample of pupils who were enrolled in the district's . . . community day school and . . . Trace the credit reported for the sampled pupil's attendance in the fifth and sixth hours of attendance back to the record prepared by the classroom teacher." (Cal. Code Regs., tit. 5, § 19825, subd. (e)(1).)

45. The teachers at the Community Day School enter attendance data into the District's online system, as opposed to keeping pen-and-paper attendance rosters. According to Eurie's audit notes, he called the attendance clerk at Peoples, Kathy Martin, and asked "if she knew if the daily/weekly attendance rosters were printed for the 2006-07 school year." Martin told him that they had not been printed. She told Eurie that she "could print out the rosters and just date them with the current date." Eurie told her that if it was necessary, he would ask her to do so.

46. Eurie concluded that he could not perform the procedures required by the Audit Guide, because the school site could not provide attendance reports that were

the correct information is stored in the District's computer and could be produced if necessary. No new documents were offered.

contemporaneously signed and dated by the teachers. At hearing, Eurie confirmed that Audit Finding 07-33 is based solely on the District's inability to provide weekly attendance records signed and dated by the teachers.

From his audit work papers, it appears that Eurie imposed this requirement based upon a February 14, 2008 letter from CDE to county and district superintendents. (CD 16.) Eurie quotes the letter as follows:

'While supportive of streamlining administrative duties at the local level, the Code's primary concern is to ensure integrity of attendance accounting in public education. Currently, we require that teachers manually sign and date attendance registers within a specified time frame, depending on the type of *attendance accounting system used*. For online attendance accounting systems, teachers generally sign and date a weekly printout of attendance records entered online during the previous week. As the eye-witness to a pupil's presence of [*sic*] absence, a teacher's dated signature provides a valid, contemporaneous record of attendance, ensuring a pupil's compliance with compulsory attendance laws and providing the basis for over \$30 billion in kindergarten through twelfth grade apportionment funding'

The letter from CDE is dated after the 2006-07 fiscal year, the audit period at issue here. There is no evidence of a similar directive from CDE prior to the start of the 2006-07 fiscal year.

47. SCO argues that "the EAAP Audit Guide requires that verification of on-line attendance must be supported by or tied to the weekly attendance rosters/records that were signed and dated by the teachers" SCO cites to no provision of the Audit Guide that imposes such a requirement, and none has been found. SCO cites no legal authority, other than the 2008 CDE letter and the EAAP Audit Guide, for the proposition that the records must be signed and dated by the teachers.

48. SCO correctly argues that, under the EAAP Audit Guide, "[t]o verify student attendance at the community day school site, the attendance must be supported by the record prepared by the classroom teacher." In this case, however, the record prepared by the classroom teacher was available; all that was necessary was for the school site to print it out. The auditor refused to accept the printouts based upon a requirement that is not in the Audit Guide, that is, that the printout must be contemporaneously signed and dated by the teacher.

49. The school site was ready, willing and able to print out the teachers' attendance rosters. The auditor rejected the school site's offer solely on the ground that the printouts would not have been contemporaneously signed and dated by the teachers who

inputted the attendance data. The evidence fails to establish, however, that the teachers were obligated to do so during the 2006-07 school year.

50. SCO argues that Chaney, the District's Director of Compliance and Audit, "admits that Community Day incorrectly took attendance from August 29, 2005 through the week ending January 17, 2009." As SCO acknowledges, however, the Chaney email addressed an audit finding for fiscal year 2005-06, not fiscal year 2006-07. Her admission in that email related to attendance ending January 17, 2006, not January 17, 2009. In this finding, the District is not accused of taking attendance incorrectly; it is accused of failing to produce attendance reports signed and dated by the teachers. As noted above, SCO has identified no legal basis for such a requirement.

LEGAL CONCLUSIONS

1. The District bears the burden of proving that the audit findings are based on "errors of fact or interpretation of law." (Ed. Code, § 41344, subd. (d); Evid. Code, § 500.)

2. Education Code section 41344.1, subdivision (c), states that "[c]ompliance with all legal requirements is a condition to the state's obligation to make apportionments." That section goes on to state, however, that EAAP may waive or reduce the reimbursement if it finds that there has been "substantial compliance" with all legal requirements.

3. Audit Finding 07-18 is based upon errors of fact and interpretation of law. (Findings 15 & 16.) The evidence fails to establish that the District improperly reported attendance for students who were absent from school. No disallowance may be imposed for this finding.

4. It was not established that Audit Finding 07-23 is based on errors of fact or interpretation of law. The evidence did establish, however, that the District substantially complied with the requirements of Education Code section 51747.5, and the audit requirements of section 11703. (Findings 26, 28 through 35.) The disallowance associated with the District's ADA claim for Long-Term Independent Study should be reduced to \$126,153.

5. The District did not establish that Audit Finding 07-27 is based on errors of fact or interpretation of law. (Finding 42.)

6. Audit Finding 07-33 is based on errors of fact or interpretation of law. (Findings 48 through 50.) The auditors declined to consider attendance documents tendered by the District because the documents were not signed and dated by the teachers, a requirement that has no legal basis. No disallowance may be imposed for this finding.

ORDER

1. The District's appeal of Audit Finding 07-18 is granted. The disallowance associated with this audit finding is reduced to \$0.
2. The District's appeal of Audit Finding 07-23 is granted. The disallowance of ADA for Long-Term Independent Study is reduced to \$126,153.
3. The District's appeal of Audit Finding 07-27 is denied.
4. The District's appeal of Audit Finding 07-33 is granted. The disallowance associated with this audit finding is reduced to \$0.

DATED: July 26, 2011

Original Signed
DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings