



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Kurt Lamb, Board President
Louisville Public Schools
202 W. 3rd Street, Box 489
Louisville, NE 68037

Dear President Lamb:

As you may know, the Auditor of Public Accounts ("APA") received questions and concerns regarding certain expenditures made by the Louisville Public Schools ("LPS"). The APA obtained and reviewed limited financial information for the period September 1, 2010, through July 31, 2012. LPS was provided a draft of this letter and its responses have been included. The following issues were identified:

1. Board Approval of Expenditures

The School Board Secretary and President are not signing all checks, as required by State statute. Instead, the LPS Superintendent has been allowed to sign a significant number of checks for payment.

The APA reviewed LPS bank account statements between September 1, 2010, through July 31, 2012, and discovered that checks for the following three accounts and/or funds were not signed by the Board President or Secretary.

Account/Fund	FY 2012 Expenditures (1)		FY 2011 Expenditures		Total
Reimbursement Account	\$ 30,903.21	Exhibit A	\$ 17,684.68	Exhibit B	\$ 48,587.89
Activity Fund	\$ 188,944.35	Exhibit C	\$ 219,831.93	Exhibit D	\$ 408,776.28
Lunch Fund	\$ 224,639.89	Exhibit E	\$ 200,746.22	Exhibit F	\$ 425,386.11
Total	\$ 444,487.45		\$ 438,262.83		\$ 882,750.28

(1) FY 2012 expenditures are only for the partial year September 1, 2011, through July 31, 2012.

The APA selected a small sample of purchases made from each of these three accounts and verified that the expenditures were not included in the listing of school expenses provided for approval at each regular Board meeting and, therefore, were not officially approved by the Board.

The Reimbursement Account included in the table above is part of LPS's General Fund bank account; however, a separate checkbook is used by LPS for this Reimbursement Account that does not require the same signatures as the regular General Fund checks. According to the Assistant to the Superintendent for LPS, the Reimbursement Account was used to pay bills that were due prior to a Board meeting or to make purchases that were immediately necessary, such as point-of-sale purchases. The Superintendent was primarily responsible for signing the checks and making any such pre-approval payments. None of these items were reported or provided to the Board for approval. See **Exhibits A & B** for a complete listing of the Reimbursement Account expenditures during the period investigated.

The Activity Fund is used to account for revenues and expenditures related to all LPS-sponsored student activities, such as athletics, band, clubs, concessions, etc. The Superintendent was primarily responsible for signing the checks related to this fund, as well. None of these items were reported or provided to the Board for approval. See **Exhibits C & D** for a complete listing of the Activity Fund expenditures during the period investigated.

As implied by its name, the Lunch Fund is used to make purchases related to LPS lunches, including food and payroll for lunchroom staff. Two signatures, those of both the Superintendent and the Lunch Accounts Administrative Assistant, were generally required for all disbursements from the Lunch Fund. None of these items were reported or provided to the Board for approval. See **Exhibits E & F** for a complete listing of the Lunch Fund expenditures during the period investigated.

Neb. Rev. Stat. § 79-575 (Cum. Supp. 2010) provides:

“The secretary of a school district shall draw and sign all orders upon the treasurer for all money to be disbursed by the district and all warrants upon the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer and shall present the same to the president to be countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be issued until so countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be countersigned by the president until the amount for which it is drawn is written upon its face. Facsimile signatures of board members may be used, and a person or persons delegated by the board may sign and validate all warrants, checks, and other instruments drawn upon bank depository funds of the district.” (Emphasis added.)

This statute states clearly that both the Secretary and the President of a school district must sign any "warrant, check, or other instrument" responsible for the disbursement of school funds. The final sentence of the statute appears to allow for printed or stamped signatures of the Secretary and President, along with a live signature of "a person or persons" delegated by the school board.

According to its August 8, 2011, meeting minutes, the LPS Board ("Board") has exercised its prerogative under § 79-575 by delegating to the Superintendent authority to make purchases of up to \$5,000. Those Board meeting minutes contain the following:

“Board member Sparks made a motion to allow Superintendent Shepard to approve purchases, up to a \$5,000.00 maximum, without prior board approval; seconded by Minchow. Motion carried 6-0.”

However, such a delegation of authority, as reflected in the meeting minutes, does not relieve the Board of its ultimate responsibility to review all expenditures of LPS. As provided under Neb. Rev. Stat. § 79-526 (Reissue 2008):

“The school board or board of education of a Class I, II, III, IV, or VI school district has responsibility for the general care and upkeep of the schools, shall provide the necessary supplies and equipment . . .”¹

Permitting the Superintendent to make purchases *prior to approval* by the Board indicates that subsequent Board affirmation is still needed in those special instances when a bill comes due or a purchase is needed preceding a Board meeting.

We recommend the Board ensure compliance with State statute and implement procedures for reviewing and formally approving all

¹ In Op. Att’y Gen. 02004 (Jan. 31, 2002), the Nebraska Attorney General explained that the language of § 79-526 requires "school districts to pay only for expenses which are 'necessary' rather than optional." This would appear to entail a formal determination of some sort by the Board.

expenditures of LPS funds – no matter when, by whom, or the particular accounts out of which those expenditures were made.

LPS Response: The school district will review its policies, practices, and procedures to ensure that all school district disbursements comply with state law.

2. Improper Expenditures

Because of the lack of Board approval for expenditures discussed above, the APA completed a more detailed analysis of the expenditures made from the Reimbursement Account. That analysis revealed certain types of purchases that do not appear to be allowable uses of public funds according to State statute.

The Local Government Miscellaneous Expenditure Act ("Act"), which is set out at Neb. Rev. Stat. §§ 13-2201 through 13-2204 (Reissue 2007, Cum. Supp. 2010), specifies various expenditures, aside from those otherwise authorized by law, that constitute allowable uses of public funds by designated political subdivisions. The provisions of the Act are made applicable to school districts, among numerous other entities, by both subsections (2) and (3) of § 13-2202.²

The following LPS purchases appear to have been made in violation of the Act.

Flower Purchases

LPS made the following purchases for flowers between September 1, 2010, and July 31, 2012:

Date	Check	Vendor	Account Description	Total Paid
6/15/2011	POS	FTD online	Business Supplies	\$ 65.98
7/6/2011	POS	1800Flowers.com	Business Supplies	\$ 94.98
10/31/2011	POS	1800Flowers.com	Business Supplies	\$ 105.96
11/10/2011	POS	FTD online	Business Supplies	\$ 80.98
11/16/2011	POS	FTD online	Business Supplies	\$ 59.98
12/12/2011	POS	FTD online	Instruction Supplies	\$ 59.98
				\$ 467.86

On September 17, 1993, the Nebraska Accountability and Disclosure Commission ("NADC") issued "A Guideline to the Use of Public Funds by Cities and Villages" ("Guideline"). This document attempts to answer some commonly asked questions regarding the appropriate use of public funds. Though written principally for the benefit of cities and villages, the advice provided in the Guideline is equally applicable to school districts – which, as pointed out already, are also covered under the Act.

One of the issues addressed in the Guideline is the purchase of flowers, as follows:

"Question #6 – May municipal funds be expended for flowers and memorials for deceased elected officials, employees, or their families?"

Response – No."

The above conclusion is based upon the fact that § 13-2203 enumerates specifically all allowable expenditures of public funds under the Act. Buying flowers for a funeral is not included among such statutorily approved purchases.

² Section 13-2202(2) states: "Governing body shall mean . . . in the case of a school district, the school board . . ." Subsection (3) of that same statute provides: "Local government shall mean . . . school districts . . ."

Interestingly, LPS Board Policy 1-16, Government Miscellaneous Expenditures Act, under the heading "Amenities" (revised September 2004) ("Policy"), states:

"The Board authorizes the expenditure of funds for flowers or memorials to immediate families of district employees or board members for illness, injury, or death not to exceed \$50.00 per occurrence."

The Policy appears to conflict with the plain language of the Act, as pointed out years ago by the Guideline. In addition, all six Reimbursement Account expenses related to the purchase of flowers exceeded the \$50 limitation set by the Policy.

We recommend the Board work with its legal counsel to re-evaluate the Policy, which allows for the purchase of flowers up to \$50 per occurrence. This provision appears to conflict with the Act.

LPS Response: You cite "A Guideline to the Use of Public Funds by Cities and Villages" from the Nebraska Accountability and Disclosure Commission dated September 17, 1993 for the proposition that school districts are prohibited from spending public funds for flowers and memorials for deceased elected officials, employees, and their families. The school district respectfully disagrees. The school district has an obligation to its students that is not shared by a city or village.

NEB. REV. STAT. § 79-405 states: "Every duly organized school district shall be a body corporate and possess all the usual powers of a corporation for public purposes."

A public purpose corporation "has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, the power ... [t]o make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest." See, NEB. REV. STAT. § 21-1928(13). A purpose corporation also has the power "[t]o do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation." See, NEB. REV. STAT. § 21-1928(17).

*According to the United States Supreme Court, the purpose of public education in America is to teach fundamental values. See, **Bethel School Dist. No. 403 v. Fraser**, 478 U.S. 675, 106 S. Ct. 3159 (1986). The Supreme Court stated:*

The role and purpose of the American Public School System were well described by two historians, who stated: "[P]ublic education must prepare pupils for citizenship in the Republic ... It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation."

***Bethel School Dist. No. 403 v. Fraser**, 478 U.S. 675, 681, 106 S. Ct. 3159, 3163 (1986), citing **C. Beard & M. Beard, New Basic History of the United States**, 228 (1986). The court continued:*

The process of educating our youth for citizenship in public schools is not confined to books, the curriculum and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers--and indeed the older students-- demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models.

Id. at 683-85, 106 S. Ct. at 3164-65.

The school district has chosen to model "shared values of civilized social order," educate its students about honoring the dead, and inculcate them with appropriate values by expending public funds for flowers for the deceased. However, the school district will review Board Policy 1-16 and its related practices and procedures in ensure future compliance with the policy and state law.

APA Response: While appreciative of the State statutes and case law cited in support of the practice and policy of expending public funds to purchase flowers for private purposes, the APA finds the school's argument unpersuasive.

To start, both statutory provisions referenced, Neb. Rev. Stat. § 21-1928 (13) & (17) (Reissue 2012), contain the identical qualifying language: "not inconsistent with law." However, as made clear in this letter, conflicting State law does, in fact, exist. Specifically, § 13-2203 designates, without any ambiguity whatsoever, the precise types of expenditures permitted by the governing bodies of local governments – among which school districts and school boards are explicitly included under § 13-2202(2) & (3) (Reissue 2012), respectively. Flower purchases, regardless of the reason or occasion, are not found among that select statutory list of allowable expenditures.

Clearly applicable here is the legal principle of "expressio unius est exclusio alterius" (the expression of one thing is the exclusion of the others), which "recognizes the general principle of statutory construction that an expressed object of a statute's operation excludes the statute's operation on all other objects unmentioned by the statute." *Chapin v. Neuhoff Broadcasting-Grand Island, Inc.*, 268 Neb. 520, 527, 684 N.W.2d 588, 594 (2004). Because § 13-2203 does not expressly include the purchase of flowers among the permissible expenditures listed, such purchase must be considered disallowed – which is unquestionably inconsistent with the broad interpretation of § 21-1928 suggested.

Even if the "not inconsistent with law" language were absent from § 21-1928, the definitive parameters established by § 13-2203 would govern nonetheless. The Nebraska Supreme Court has explained a fundamental rule of statutory construction as follows: "To the extent there is conflict between two statutes on the same subject, the specific statute controls over the general statute." *Jeffrey B. v. Amy L.*, 283 Neb. 940, 951, 814 N.W.2d 737, 746, (2012). While § 21-1928 deals with the "general powers" of all nonprofit corporations, § 13-2203 places specific limitations upon the spending authority of the governing bodies of local governments – including, as pointed out already, school boards. Accordingly, there can be no question that the specific restrictions in § 13-2203 take clear precedent over the far more general provisions of § 21-1928.

Food Purchases

The following table illustrates several questionable food purchases that do not appear allowable under the Act.

Date	Check	Vendor	Description	Total Paid	Purchase	Louisville Explanation
5/12/2011	3350	C-Anna Cakes LLC	Ed's retirement party	\$ 270.00	12 sheet cakes	Our superintendent of 22 years was retiring, the school hosted an open house, and the entire staff, board and community were invited. It was held in the board room from noon – 7:00 pm.
12/8/2011	3387	HyVee	one act breakfast before state	\$ 88.44	Orange juice, sausage, syrup, etc	Our One Act play team made it to the state competition (45 students + 2 coaches). The superintendent made pancakes and sausage for them before they boarded the bus to go to Kearney to compete.

Date	Check	Vendor	Description	Total Paid	Purchase	Louisville Explanation
12/10/2011	3388	[Name Removed]	reimb supplies	\$ 256.43	Reimbursed \$70 for Omaha steaks	Our principal held lunch meeting with contractors in regards to construction. Approx 6 people.
12/15/2011	3391	Sam's Club #8146	storage shelves/santa items	\$ 817.68	In addition to storage there was \$147.84 for plain M&Ms, \$35.48 for peanut M&Ms, and \$34.44 for Hershey's nuggets.	Storage shelves for our testing records, Holiday items are candy canes/M&M's to the approx elem students are 225; the nuggets are the candies the Superintendent's office/my office have out for the MS/HS kids when they visit.
2/23/2012	3397	Subway	interviews	\$ 84.51	One 6 foot giant sub	During the interview process for our new MSHS principal candidates we provided dinner for those community members, students, admin, and staff that were part of the final interview process. There were 18 invited interviewers plus many community members.
5/8/2012	3416	Subway	negotiations meeting	\$ 75.86	Two party platters and 10 bags of chips (plus tax)	The board provided two sandwich trays for the 3 board negotiators and 4 teacher negotiators during their meeting on the new contract negotiations.
			Total	\$1,592.92		

The APA also noted the following food purchases for “inservice days,” which also give rise to questions as to whether such occasions are covered under the Act.

Date	Check	Vendor	Description	Total Paid	Purchase	Louisville Explanation
3/7/2011	3338	Sunrize Donuts	inservice 3/10	\$ 95.58	9 dozen donuts and rolls	Teacher inservice; school provided donuts for breakfast, approx 82 staff members.
8/10/2011	3361	HyVee	maintenance lunch	\$ 135.43	Potato chips, cole slaw, potato salad, and misc purchase from HyVee kitchen	This is the end of summer inservice for employees that work over the summer. A recap of what future expectations are of building maintenance. This is for approx 10-12 maintenance workers and 6 admin team members.
8/12/2011	3362	Chubb Enterprises	new teacher luncheon	\$ 161.75	15 entrees and 9 drinks	This is a continuation of the inservice day for new teaching staff, the admin, mentors, and new staff attend That year it was approx 14 people.
8/15/2011	3363	Sunrize Donuts	2nd day breakfast	\$ 65.88	Unknown (no itemized receipt)	The school provided donuts for the second inservice day of the new school year. This included all staff, admin, and classified staff. Approx 82 people.
11/7/2011	3380	Sam's Club #8146	shelving	\$ 781.49	In addition to shelving there was \$151.61 in food for items such as peanut oil, caramel syrup, m&m's, hershey's nuggets, pretzels, and irish cream.	This is a Thanksgiving/Fall holiday inservice day. All staff, admin, board and classified staff attend. Approximately 86 people. The school admin provided the items mentioned and everyone else brings a covered dish.

Date	Check	Vendor	Description	Total Paid	Purchase	Louisville Explanation
11/20/2011	3382	HyVee	staff Thanksgiving dinner	\$ 213.79	Chips, condiments, soda, and meat	Same explanation as 11/7/2011 above.
12/14/2011	3390	Subway	grazing day	\$ 236.94	Three 6 foot giant subs	This is holiday season inservice. The school provides the sandwiches and all staff contribute their favorite holiday snack. All staff, admin, classified and board members attend. Approximately 87 people.
1/25/2012	3394	Yotes BBQ Pizzaria	ECNC computer training	\$ 112.00	Eight 18" pizzas	We held an inservice for all conference admin, ADs, and coaches. It was over the dinner hour so pizza was provided. Approx 35 were planned for.
3/13/2012	3402	[Name Removed]	board retreat dinner	\$ 132.00	Meatloaf, parmesan smashed potatoes, strawberry Spinach salad, iced tea, chocolate chip cheesecake and earl grey creme da le crème	This was dinner for the 6 board members and 4 administrators at their yearly retreat/inservice to compile board/admin goals.
6/12/2012	3420	Platte River State Park	end of year event	\$ 647.00	71 lunches each and 50 charges for the shooting complex	This is the end of the year all staff inservice/team building exercise. Approx 87 staff, admin, classified and board members were to attend.
			Total	\$2,581.86		

Section 13-2203(1)(b) of the Act states:

"Authorized expenditures shall not include expenditures for meals of paid members of a governing body provided while such members are attending a public meeting of the governing body unless such meeting is a joint public meeting with one or more other governing bodies[.]"

However, § 13-2203(1)(a) does permit:

"The expenditure of public funds for the payment or reimbursement of actual and necessary expenses incurred by elected and appointed officials, employees, or volunteers at educational workshops, conferences, training programs, official functions, hearings, or meetings, whether incurred within or outside the boundaries of the local government, if the governing body gave prior approval for participation or attendance at the event and for payment or reimbursement either by the formal adoption of a uniform policy or by a formal vote of the governing body."

Such permissible expenditures include, under § 13-2203(1)(a)(iii):

"Meals and lodging at a rate not exceeding the applicable federal rate unless a fully itemized claim is submitted substantiating the costs actually incurred in excess of such rate and such additional expenses are expressly approved by the governing body[.]"

Additionally, § 13-2203(2)(b)(iii) allows the expenditure of public funds for "[n]onalcoholic beverages and meals":

"Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers of the local government. The maximum cost per person for such dinner shall be established by formal action of the governing body, but shall not exceed twenty-five dollars. An annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of them in combination, if authorized by the governing body[.]"

In contrast to these clear statutory parameters, the Policy states simply:

“The Board authorizes the expenditure of funds for refreshments or meals for staff or patrons involved in activities, such as committee or advisory groups, not to exceed \$25.00 per person per occurrence.”

The Policy also provides:

“It shall be the policy of the Board of Education to, from time to time, make provisions for meals, refreshments and other amenities when to do so assists employees, Board members, advisory committees and others engaged in the business of accomplishing the mission and role of Louisville Public Schools.”

The food purchases included in the above tables appear questionable in light of the above statutory criteria. Specifically, due to insufficient documentation, the APA could not verify that the food purchases were for either "educational workshops, conferences, training programs, official functions, hearings, or meetings," as specified under § 13-2203(1)(a), or the "one recognition dinner each year," which is sanctioned by § 13-2203(2)(b)(iii).

Furthermore, the Policy lacks specificity as to the types of events or functions for which public funds may be expended on food and nonalcoholic beverages. It is unclear, therefore, whether the Policy operates in accordance with – or in contravention of – the applicable provisions of the Act.

We recommend the Board clarify its Policy to ensure compliance with the Act by restricting the expenditure of LPS funds for food and nonalcoholic beverages to qualifying events or functions only. Additionally, we recommend the Policy be enhanced by requiring supporting documentation to verify that all food-related purchases are for qualifying events or functions, as specified under the Act.

LPS Response: The school district believes that most, if not all, of these expenditures are authorized by law including, but not necessarily limited to, NEB. REV. STAT. § 13-2203, § 79-405, and 79-526. However, the school district will review its policies, practices, and procedures with legal counsel and appropriate governmental entities to ensure that all food purchases, and documentation of those purchases, comply with state law.

Sales Tax Paid

As pointed out earlier, aside from paying bills that come due prior to a Board meeting, the Reimbursement Account is used to make point-of-sale purchases. Thus, there is an increased risk that sales tax will be improperly paid on such transactions. In fact, we found that sales tax had been collected on nine purchases paid from the Reimbursement Account. The following table details these nine purchases, which resulted in sales tax payments totaling \$57.63.

Date	Check	Vendor	Description	Total Paid	Tax Paid
8/10/2011	3361	HyVee	maintenance lunch	\$ 135.43	\$ 8.71
8/12/2011	3362	Chubb Enterprises	new teacher luncheon	\$ 161.75	\$ 8.35
9/20/2011	3369	Walmart Stores, Inc.	gas grill	\$ 158.36	\$ 10.36
9/28/2011	3373	Walmart Stores, Inc.	shrubs	\$ 148.26	\$ 9.70
9/30/2011	3374	Lowe's Business Account	ornamental grass	\$ 57.65	\$ 3.77
10/4/2011	3377	Walmart Stores, Inc.	box fans	\$ 119.93	\$ 6.25
2/23/2012	3397	Subway	interviews	\$ 84.51	\$ 5.53
5/8/2012	3416	Subway	negotiations meeting	\$ 75.86	\$ 4.96
			Total	\$ 941.75	\$ 57.63

Title 316 NAC 1-092.01, which was promulgated by the Nebraska Department of Revenue, states:

“The following educational institutions will be exempt from payment of the Nebraska sales and use tax after the institution has applied for and received a certificate of exemption. a) A Nebraska public school district . . .”

We recommend both the Board and the administrative staff at LPS work to ensure that Nebraska sales tax is not paid on any purchase made by the school district, regardless of the account or fund used for the purchase.

LPS Response: The school district will review its policies, practices, and procedures to ensure that it does not pay sales tax on future purchases.

Supporting Documentation

The APA found eight instances in which no supporting documentation was provided for payments made from the Reimbursement Account. Those occurrences, which totaled \$643.10, are described below.

Date	Check	Vendor	Description	Total Paid
9/1/2010	POS	Scripps National Spelling Bee	registration	\$ 84.00
11/17/2010	ACH	Harland Clarke Check Order	check order for reimbursement checks	\$ 14.38
3/3/2011	3335	Waverly High School	speech meet entries	\$ 207.00
12/5/2011	POS	Quality Inn Kearney	T. Hagge workshop	\$ 115.73
12/5/2011	POS	VideoMaker	M. Moore supplies	\$ 24.99
12/12/2011	POS	FTD online	C. Lansman baby	\$ 59.98
12/13/2011	POS	Paypal	gripcase	\$ 136.02
5/24/2012	3418	Sarpy RR Co	lease on building	\$ 1.00
			Total	\$ 643.10

Additionally, there were 17 instances in which the available documentation failed to indicate adequately the goods or services purchased. Those occurrences, which totaled \$3,005.02, are described below.

Date	Check	Vendor	Description	Amount	APA Notes
9/29/2010	3316	Opera Omaha	Voice's in the Classroom	\$ 300.00	No itemized receipt (only an email from Shureen Seery asking for a \$300 check for the presentation tomorrow).
12/21/2010	3323	[Name Removed]	storm tree damage removal	\$ 50.00	No itemized receipt (only a hand-written note dated 12/21/10 for the removal of storm work for \$50).
1/6/2011	POS	The Black Book Depot	speech folders	\$ 204.54	No itemized receipt (only an email from paypal with total, but no indication of what was purchased).
1/12/2011	3328	[Name Removed]	refund of 1:1 deposit	\$ 35.00	No itemized receipt (only an email from Shureen Seery indicating a student had dropped out and didn't receive a laptop and to return the insurance fee to them).
3/7/2011	3337	Conestoga High School	Speech meet entries	\$ 126.00	No itemized receipt (only an email from Nick Krause with a note on what his calculation of the entry fee would be).
3/22/2011	3341	Nebraska Wesleyan University	Quiz Bowl entries	\$ 100.00	No itemized receipt (only an email dated 3/22/11 from Nick Krause stating, "Got confirmation for Friday. 100 dollars for two teams.").
6/28/2011	3358	Menards	building supplies	\$ 57.14	No itemized receipt (credit card statement only - shows two purchases; one on 5/14/11 for \$8.93, and one on 5/14/11 for \$48.21).
8/15/2011	3363	Sunrize Donuts	2nd day breakfast	\$ 65.88	No itemized receipt (receipt from Sunrize Donuts only says "Subtotal \$65.88").

Date	Check	Vendor	Description	Amount	APA Notes
10/21/2011	POS	Superior Training Solutions	supervisor training cd's	\$ 82.00	No itemized receipt (receipt did not include amount at all or any description of what was purchased).
11/28/2011	3383	Menards-Omaha	supplies	\$ 147.95	No itemized receipt (credit card statement only - statement shows 2 separate purchases for \$92.35 and \$55.60).
12/10/2011	3388	[Name Removed]	reimb supplies	\$ 30.00	No itemized receipt for part of reimbursement (one receipt from Omaha Steaks indicates \$59.99 was spent, but only \$40 was reimbursed; and another \$30 was reimbursed without any receipt).
3/13/2012	3402	[Name Removed]	board retreat dinner	\$ 132.00	No itemized receipt (receipt was only a handwritten note indicating various food items with a charge of \$12 per person for 11 people).
3/22/2012	3404	Chubb Enterprises	staff appreciation certificates	\$ 1,000.00	No itemized receipt (receipt was voided \$10 gift certificate and list of 96 individuals).
3/26/2012	3405	Nick Krause	reimb state speech meals	\$ 363.00	No itemized receipt for part of reimbursement (only credit card receipt provided for HuHot Mongolian Grill for \$315.48 plus \$47.52 tip totaling \$363 - unknown if sales tax was paid).
5/7/2012	3412	Lincoln Museum	8th grade trip	\$ 216.00	No itemized receipt (receipt was just an email from Shureen Seery requesting \$216 be paid to the Lincoln Museum).
5/7/2012	3413	Historic Sites Trust Fund	8th grade field trip	\$ 60.00	No itemized receipt (receipt was just an email from Shureen Seery requesting \$60 be paid to Historic Sites Trust Fund for Old State Capitol).
6/19/2012	3422	Menards	elementary shelves	\$ 35.51	No itemized receipt (credit card statement only - statement shows a balance of \$35.51 as of 6/7/2012).
			Total	\$ 3,005.02	

We recommend the Board ensure detailed documentation is required and maintained to support all expenditures of LPS funds.

LPS Response: The school district will review its policies, practices, and procedures to ensure that all school district purchases are supported by adequate documentation.

3. Potential Conflicts of Interest

Xplosive Edge Referrals

The APA received concerns regarding a possible conflict of interest arising from the current Superintendent's alleged involvement in steering high school athletes to Xplosive Edge, a private, Omaha-based athletic training company which is owned, in part, by the Superintendent's son-in-law.

During the period reviewed, LPS made two payments to Xplosive Edge (aka USPI, LLC). The first, which was for the purchase of used athletic equipment costing \$7,000, was approved by the Board at its August 29, 2011, meeting. The second payment was for the athletic performance testing of 65 students for \$1,050 and was not approved by the Board; rather, it was paid from the reimbursement account and was signed by the Superintendent only.

The Nebraska Political Accountability and Disclosure Act (Act) is set out at Neb. Rev. Stat. §§ 49-1401 to 49-14,141 (Reissue 2010, Supp. 2011). Section 49-1499.03(2)(a) of the Act addresses potential conflicts of interests among public servants, including school officials. That statute provides:

“Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner . . .” (Emphasis added.)

It should be noted that the above statutory language is not applicable to the Superintendent. To start, the Superintendent does not hold an elective office of either the City or its school district. Similarly, the son-in-law does not qualify as a member of the Superintendent's immediate family. This is because § 49-1425 of the Act defines "immediate family" in the following manner:

"Immediate family shall mean a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes."

Although not a violation of § 49-1499.03(2)(a), the Superintendent's activity in relation to Xplosive Edge could give rise to the appearance of impropriety nonetheless. This is especially true when the Board does not formally approve all payments arising from that activity, as has occurred already.

In order to avoid any potential appearance of impropriety, we recommend the Board monitor the Superintendent's activity in relation to Xplosive Edge. Furthermore, we recommend that the Board formally approve all expenditures arising from that activity.

LPS Response: As you state in your letter, this situation does not constitute a conflict of interest under the Nebraska Political Accountability and Disclosure Act for multiple reasons. However, as indicated above, the school district will review its policies, practices, and procedures to ensure that all school district disbursements comply with state law.

Gym Floor Refurbishing Payments

The APA was also asked to examine the propriety of payments made to Greg Shepard, Superintendent, to refurbish the high school gymnasium floor during the past two summers. The APA noted that LPS paid the Superintendent \$3,800 in July of both 2011 and 2012, for a total of \$7,600, for the refinishing work. Both LPS checks were made to "Greg Shepard dba Shep Brothers Gym Floor Refinishing." According to its meeting minutes, the Board approved the payments.

The Board's formal purchasing policy, shown below, does not appear to prohibit engaging the Superintendent to carry out the refinishing work:

“Quality and price considered, items shall be purchased locally if possible. The Superintendent in the case of the activity and general funds shall have the right to issue orders for purchases locally or outside of town as long as they do not exceed the budget. No purchases are to be made without prior approval from the administration.”

The work performed by the Superintendent does give rise, however, to some concern regarding § 49-14,102(1) of the Act, which states:

"Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process." (Emphasis added.)

Under this statutory language, the Superintendent would qualify as a "public employee," LPS would be considered the "government body," and the Board agreeing to make the \$3,800 payments for services rendered would, in essence, be the same as entering "into a contract."

Therefore, in light of the fact that the \$3,800 payments made by the Board were well in excess of the \$2,000 statutory threshold, the 2011 and 2012 agreements between the Superintendent and the Board appear to have been subject to the requirements of § 49-14,102(1).

We recommend that the Board take action to ensure full compliance with § 49-14,102, as well as any other applicable provisions of the Act, when entering into agreements with LPS officials or employees. Because a violation of the Act may have occurred regarding the Board's agreements with the Superintendent, we are referring this matter to the Nebraska Accountability and Disclosure Commission.

LPS Response: This concern involves two payments to Superintendent Greg Shepard for refinishing the gym floors. Payment in the amount of \$3,800 was made in July of both 2011 and 2012 for a total of \$7,600.

We believe that the school district acted appropriately and in compliance with all applicable laws. We look forward to reviewing this matter with the Nebraska Accountability and Disclosure Commission.

The Board should take, in a timely fashion, whatever action it deems appropriate to address and resolve the issues addressed in this letter – thereby, both protecting the finances of LPS and ensuring compliance with applicable Nebraska laws.

If you have any questions regarding the above information, please contact our office.

Sincerely,

SIGNED ORIGINAL ON FILE

Mike Foley
State Auditor

Enclosure

cc: School Board Members and Superintendent
Accountability and Disclosure Commission