BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of:	)	EAAP No.: 02-13
	)	
Visalia Unified School District,	)	OAH No.: N-2002100180
	)	
Appellant.	)	
	)	
	)	
	)	

DECISION

The attached Proposed Decision of Administrative Law Judge Jaime Rene Roman is hereby adopted by the Education Audit Appeals Panel as its Decision in the above-entitled matter.

This Decision shall become effective on 28 February 2005.

IT IS SO ORDERED 28 Feb. 2005.

Thomas E. Dithridge, Chairperson

BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of: VISALIA UNIFIED SCHOOL DISTRICT, Respondent.	Case No. 02-13 OAH No. N2002100180

PROPOSED DECISION

This matter came on for hearing[1] before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on November 3, 2004.

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

Julie Weng-Gutierrez, Deputy Attorney General, Department of Justice, State of California, represented the California Department of Finance.

Banks & Watson, Attorneys at Law, by James J. Banks, Esq., and Eva G. Abrams, Esq., represented respondent Visalia Unified School District.

Evidence was received and, to permit exhibit review or submission, and the submission of written argument, the matter was deemed submitted as of December 13, 2004.

FACTUAL FINDINGS

1. Vavrinek, Trine, Day & Co., LLP, Certified Public Accountants, completed and submitted an Audit Report of the general purpose and financial statements of respondent Visalia Unified School District (the District) as of and for the year ended June 30, 2001.

2. The Audit Report set forth Finding 2001-10, relating to Independent Study – Golden Valley High School, noted "an instructor that did not certify the 'Independent Study

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

Assignment and Work Record Form' as well as date and note the attendance credit to be received for the term." The cause of the reported deficiency, an observed isolated incident attributed to a single instructor, Bev Blaswich, arose from a lack of specific training in District document completion. The deficiency removed 12.31 ADA[2] for the P-2 with a concomitant fiscal impact of $54,816 owed by the District.

3. The District filed a timely appeal to Audit Finding 2001-10.

4. In conducting the audit and review of the District, the auditor applied, inter alia, Generally Accepted Accounting Standards (GAAS), Generally Accepted Accounting Principles (GAAP),[3] or Generally Accepted Government Auditing Standards (GAGAS).[4] In addition, the auditor utilized an Agency Guide[5] promulgated by the California State Controller. The purpose of this audit or review is to ascertain a District's compliance with legal requirements.[6]

5. The auditor, in determining the deficiency, relied, inter alia, on California Code of Regulations, title 5, section 11703, subdivision (b)(3). The section sets forth, in pertinent part:

> "Records shall include but not be limited to: 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, of that he or she has personally reviewed the evaluations made by another certificated teacher."

Lacking signed or initialed and dated work products in the representative samples of the District's Independent Study records, the auditor determined the reported deficiency.

6. The auditor, incident to conducting the District audit, reviewed and relied on the Agency Guide.[7] Believing that the Guide's express reference to section 11703 (i.e., ineligible apportionment) mandated a deficiency quantification, the auditor determined the $54,816 fiscal

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[2] ADA denotes Average Daily Attendance.

[3] "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.

[4] OMB Circular A-133; see also Education Code section 14503, subdivision (a).

[5] *Standards and Procedures for Audits of California K-12 Local Education Agencies,* April 2001. See Education Code section 14502.1.

[6] Education Code section 41344.1, subdivision (c).

[7] *Standards and Procedures for Audits of California K-12 Local Education Agencies,* April 2001, p. 77.

obligation owed by the District. The auditor candidly admits that but for the Guide's regulatory reference, this deficiency quantification would not have issued.

7. Christine Statton, CPA, an Internal Auditor subsequently employed by the District,[8] became concerned with the import of the Audit Report and obtained the complete Independent Study records of Ms. Blaswich for the audit period. Observing that Ms. Blaswich's records were both disorganized and hardly compliant with the regulatory mandate of section 11703, subdivision (b)(3); Ms. Statton was nevertheless able to ascertain that Ms. Blaswich had contemporaneously retained and maintained the complete records of each of her students during the audit period; including, but not limited to, student work records, work assignments, and teacher attendance records. Ms. Statton, acknowledging that she is not a certificated teacher, provided no qualitative review of the affected student's work product.[9]

8. Ms. Statton, in further reviewing and comparing the Audit Report and Ms. Blaswich's contemporaneous records, found both an arithmetical over-calculation by the auditor of 26 days and signed credit records amounting to 213. The sum of the two numbers, 239, when divided by 180 days annual ADA, yields 1.33. This number, 1.33, when multiplied by the revenue limit apportionment of 4453 reflects a determination of $5,922.

9. The District submits Ms. Statton's undisputed determination of $5,922 from the actual Blaswich Independent Study source documents, retained and maintained by the District, should at the very least be applied against the Audit Report's $54,816 fiscal deficiency. The District further submits that the Guide's reference to section 11703 as mandating deficiency quantification by the auditor was erroneous. Finally, the District concludes that the actual Independent Study source documents, while admittedly not consistent in all respects with the regulatory provisions of section 11703, are sufficiently extant and complete to warrant appropriate salutary consideration to compel dismissal of the determined deficiency and concomitant fiscal disallowance.

LEGAL CONCLUSIONS

1. It is axiomatic that 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.[10]

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[8] Ms. Statton's experience, prior to employment by and with the District, included conducting audits and reviews of school districts.

[9] Education Code section 51747.5, subdivision (b) provides: "School districts and county offices of education may claim apportionment credit for independent study only to the extent of the time value of pupil or student work products, as personally judged in each instance by a certificated teacher."

[10] Education Code section 14501, subdivision (b).

This appeal arises pursuant to Education Code section 41344.1. The Panel hears appeals filed pursuant to Education Code section 41344. An "audit or review" pursuant to section 41344 is conducted by either the Controller's office, a certified public accountant or a public accountant.[11] Simply put, an audit or review seeks to ascertain whether reports or expenses submitted by a District can be verified.[12] Such audit does not purport to review all District documents but, consistent with GAAP, GAAS, or GAGAS, a representative sample.[13] Where and when a deficiency is observed, more scrutiny is focused by an auditor in an effort to determine both the scope and extent of the deficiency.[14] As set forth herein, the determined deficiency arose from a single teacher.

The District submits that the auditor relied on the Agency Guide's reference to section 11703 in quantifying the deficiency. The salient sentence sets forth: "The independent study of pupils whose products have not been personally judged in each instance by an individual specified in statute is not eligible for apportionment (Title 5, CCR, Section 11703)."[15]

Without first addressing the propriety of the deficiency, the undersigned focuses on the District's objection toward deficiency quantification. To that end, the State Controller and Department of Finance both submit that quantification, even if not expressly compelled by the provisions of section 11703, are mandated pursuant to Education Code section 14503. Section 14503, subdivision (a), states, "If a local education agency is not in compliance with a requirement that is a condition of eligibility for the receipt of state funds, the audit report shall include a statement of the number of units of average daily attendance, if any, that were inappropriately reported for apportionment." It is not ignored that both ADA and apportionment have a fiscal nexus and, if ineligibility is determined, a fiscal consequence.[16] While the District's argument is an interesting exercise of sophistry, it is of little significance to the import of the State's audit function; namely, to ascertain whether funds have been inappropriately apportioned to the District.[17] Accordingly, the District's objection is dismissed.

The District next poses whether a remission of the deficiency is compelled by both an arithmetical error and a complete review of the Blaswich Independent Study records which establish, at least, some partial compliance with section 11703. Mindful of the import of this proceeding; namely, to properly disburse funds where such funds are properly compelled, the uncontroverted evidence establishes that Ms. Statton's work has born salutary fruit. The

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[11] Education Code section 41344, subdivision (e).

[12] See also Melvyn I. Weiss and Elizabeth A. Berney, *Restoring Investor Trust in Auditing Standards and Accounting Principles*, 41 Harv. J. on Legis. 29 (2004). See also *Bily, supra* at p. 380.

[13] *Bily, supra*: "[A]n audit rarely, if ever, examines every accounting transaction in the records of a business."

[14] *Bily, supra.*

[15] *Standards and Procedures for Audits of California K-12 Local Education Agencies,* April 2001, p. 77.

[16] See also Education Code sections 51747 and 51747.5.

[17] Education Code section 14500, et seq.; 41344, et seq.; and 51747, et seq.

Audit Report's reported deficiency obligation of $54,816 is reduced by an additional $5,922, to $48,894.

Of salient import is the scope and extent of section 11703 against the auditing function. It is readily acknowledged that an audit and review are not complete and thorough reviews of all salient documents, but only a review of representative samples.[18] The issue posed before the undersigned therefore is whether the complete original source documents, presented at hearing, require not only consideration but also, to the extent sufficient to establish substantial compliance, compel salutary consideration sufficient to meet the Constitutional, statutory and regulatory mandates imposed on the Panel.[19]

California Code of Regulations, title 5, section 11703, subdivision (b) observes, "Records *shall include but not be limited to.*" [Emphasis mine] It is accordingly not ignored that the reference to specific enumerated documents and processes as set forth in section 11703, subdivision (b)(3) is not all-inclusive. In other words, other and varied evidence may function to meet the records required for apportionment. That being said, such records must, however, meet audit requirements.[20] In the present matter, it has been competently and credibly established that Ms. Blaswich's contemporaneous maintenance and retention of all documents relative to each student, albeit voluminous, demonstrated the quantity of work performed by each student, and associated attendance sufficient to meet audit[21] and source documentation requirements.[22] What is lacking, however, even by the testimony of Ms. Statton, is competent testimony or other evidence that would have sufficed to qualitatively establish "the extent of the time value of pupil or student work products."[23] The District appears to confuse "the quality of a district's recordkeeping" with the quality review required to be ascribed by a certificated teacher to a student's work product that would establish a quantifiable "time value."

It is fundamental that in an administrative proceeding, the hearing does not need to "be conducted according to technical rules relating to evidence and witnesses."[24] Indeed, hearsay is admissible; however, upon a properly interposed objection, it may be limited in scope.[25] In balancing the respective evidence provided by each party, the undersigned applied, in part, the criteria set forth at Evidence Code sections 412[26] and 413.[27] While the District competently

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[18] *Bily, supra.*
[19] Education Code section 14500, et seq.; and 41344, et seq.
[20] California Code of Regulations, title 5, section 11703, subdivision (a).
[21] California Code of Regulations, title 5, section 11703, subdivision (a).
[22] California Code of Regulations, title 5, section 11703, subdivision (b).
[23] Education Code section 51747.5, subdivision (b).
[24] Government Code section 11512, subdivision (c).
[25] Government Code section 11513, subdivision (d).
[26] Evidence Code section 412 provides, "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

established the quantity of student work product, it provided no competent and credible evidence of its qualitative nature. The import of section 11703 is to provide competent evidence, upon an audit or other review, that a certificated teacher has, in fact, personally reviewed the student work product and thereby provided that qualitative review that thereafter ascribes a "time value" upon which a school district or county office of education may thereupon "claim apportionment credit for independent study."[28] Ms. Blaswich did not provide evidence of such personal review.

Accordingly, cause, in part, exists to grant the appeal of respondent from Finding 2001-10 of the Audit Report to the sum of $5,922, and to otherwise deny the appeal of respondent to Finding 2001-10 pursuant to the provisions of Education Code sections 14500, 14501, 14503, 41344, 41344.1, 51747, and 51747.5, in conjunction with California Code of Regulations, title 5, section 11703, as set forth in Findings 2 through 9.

2. The District filed a Notice of Defense wherein it raised several affirmative defenses, each of which must be addressed.

A. The District first alleges that Finding 2001-10 "is minor and inadvertent."

This allegation by the District wholly ignores, inter alia, the import of Education Code sections 14500, et seq.; 41344, et seq.; and 51747, et seq.; and California Code of Regulations, title 5, section 11703. An obligation is imposed upon the District and its credentialed teachers in the conduct of an Independent Study program. Ms. Blaswich, for reasons candidly attributed to a lack of appropriate training, singularly failed to comply with all recording requirements. To her credit, she retained and maintained all source documents relevant to the Independent Study program she administered; however, the deficiency with its concomitant fiscal effect can hardly be said to be both "minor and inadvertent." This allegation is dismissed.

B. The District alleges that having met the requirements of Education Code section 51747, the Audit Report therefore misapplies the applicable Audit Guide in determining the $54,816 deficiency.

Sadly, the District, whether in its cross-examination of a State Controller auditor or in its submission, attempted to point to a single statute or regulation and claim that such statute or regulation failed to categorically require or mandate a particular course of conduct. The effort was clearly specious. To effectuate the mandate imposed upon the Panel by the

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[27] Evidence Code section 413 provides, "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."

[28] Education Code section 51747.5, subdivision (b).

Legislature, statutes and regulations are read and applied in a broad context. Accordingly, the District's effort to claim compliance with Education Code section 51747 overlooks that section's interaction with other provisions of the Education Code as more particularly set forth in Legal Conclusion 1. The allegation by the District is dismissed.

C. The District alleges that the auditor erred in Finding 2001-10 as the District's recordkeeping fully complied with California Code of Regulations, title 5, section 11703.

As set forth in Legal Conclusion 1, it is firmly established that the auditor did not err with respect to Finding 2001-10 and the auditor's determination that the District failed to comply with the expressed requirements of California Code of Regulations, title 5, section 11703, subdivision (b)(3). Indeed, even Ms. Statton's in-depth review and competent examination of the original source documents, combined with her own licensure as a CPA and prior experience, provided evidence that sufficiently supports the determination set forth in Legal Conclusion 1.

D. The District alleges that the Audit Guide is an "underground regulation."

Notwithstanding the District's contention, *Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365 renders this contention moot. What appears to be lost on the District is both the import of Education Code section 14503, subdivision (a), and the standard accounting principles that function to establish a district's compliance with statutory and regulatory requirements.

ORDER

The appeal of respondent Visalia Unified School District from Finding 2001-10 is granted as to $5,922; and denied in all other respects.

Dated: 1-3-05

JAIME RENÉ ROMAN
Administrative Law Judge
Office of Administrative Hearings