

STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

Report No. 2023-131
March 2023

DEPARTMENT OF EDUCATION

Charter School Administration
and Prior Audit Follow-Up



Sherrill F. Norman, CPA
Auditor General

Commissioner of the Department of Education

Pursuant to Article IX, Section 2 of the State Constitution and Section 20.15, Florida Statutes, the State Board of Education supervises the system of free public education and is the head of the Department of Education. The State Board of Education appoints the Commissioner of Education who serves as the Executive Director of the Department. Richard Corcoran served as Commissioner of Education during the period of our audit.

The team leader was Clint Boutwell, CPA, and the audit was supervised by Christi Alexander, CPA.

Please address inquiries regarding this report to Christi Alexander, CPA, Audit Manager, by e-mail at christialexander@aud.state.fl.us or by telephone at (850) 412-2786.

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DEPARTMENT OF EDUCATION

Charter School Administration and Prior Audit Follow-Up

SUMMARY

This operational audit of the Department of Education (Department) focused on charter school administration. The audit also included a follow-up on Findings 13 through 15 noted in our report No. 2021-029. Our audit disclosed the following:

Charter School Administration

Finding 1: The Department, as the State Education Agency and grantor of State and Federal funds to public schools, including charter schools, is uniquely positioned to work with charter school sponsors and, as necessary, the Legislature, to promote an appropriate level of operational oversight regarding potential charter school conflict of interest, related party, and separation of duty issues, and encourage transparency in the use of for-profit and nonprofit management organizations by charter schools.

Finding 2: Department controls need enhancement to ensure that members of the Charter School Appeals Commission document that they are independent of, and have no conflicts of interest related to, the charter school appeals they review and recommend to the State Board of Education to either uphold or deny.

Finding 3: The Department did not always substantively review charter school governance training plans for compliance with governing laws and rules.

Finding 4: The Department is distinctively positioned as a recipient of all charter school board member governance training records to assess through periodic reviews whether the governance accountability standards set in State law are being sufficiently evaluated by sponsors and adhered to on a Statewide basis.

Information Technology Controls

Finding 5: The organizational placement of the Department's Information Security Manager (ISM) did not effectively promote the independence of the ISM function and ISM appointments were not made in accordance with State law. A similar finding was noted in our report No. 2021-029.

Finding 6: Certain security controls related to user authentication and logging and monitoring need improvement to ensure the integrity and availability of Department data and related IT resources.

BACKGROUND

Pursuant to State law,¹ the Department of Education (Department) is to assist in providing professional leadership and guidance and in carrying out the policies, procedures, and duties authorized by law or by the State Board of Education or found necessary by it to attain the purposes and objectives of the Florida

¹ Section 1001.20(2), Florida Statutes.

Early Learning-20 Education Code.² Under the direction of the State Board of Education and executive oversight of the Commissioner of Education, the Department plans, administers, and delivers its programs and services through eight divisions and three offices, including the Office of Independent Education and Parental Choice, whose mission is to support quality public and private educational choice programs, including charter schools, K-12 private schools, and virtual education.

The Department serves as the single repository of education data from school districts, State and community colleges, universities, and independent postsecondary institutions. According to Department records, as of August 2022, the Department served approximately 2.8 million students, 4,400 public schools, 28 colleges, 202,500 instructional staff, 46,000 college professors and administrators, and 340,000 full-time staff throughout the State.

FINDINGS AND RECOMMENDATIONS

CHARTER SCHOOL ADMINISTRATION

Charter schools are tuition-free public schools that are part of the State's program of public education and may be formed by creating a new school or converting an existing public school to charter status.³ Charter schools are to:⁴

- Improve student learning and academic achievement.
- Increase learning opportunities for all students, with special emphasis on low-performing students and reading.
- Encourage the use of innovative learning methods.
- Require the measurement of learning outcomes.

In addition to typical startup charter schools, there are several types of specialized charter schools, including: alternative charter schools that provide dropout prevention and academic intervention services;⁵ Schools of Hope;⁶ and high-performing charter schools that meet certain performance and financial criteria and are allowed to more easily increase their enrollment and expand grade levels, as well as establish and operate new charter schools that replicate their educational programs.

A charter school must be organized as, or operated by, a nonprofit organization and may be operated by a municipality or other public entity.⁷ Charter schools operate under a performance contract, or "charter", with a sponsoring school district or State university⁸ which exempts them from many of the laws and rules that govern the operations of their sponsor and other public schools. The charter contract between the charter school governing board and the sponsor is to detail the school's mission, program, goals, students

² Chapters 1000 through 1013, Florida Statutes.

³ Section 1002.33(1) and (9)(d), Florida Statutes.

⁴ Section 1002.33(2)(b), Florida Statutes.

⁵ Section 1008.341(2), Florida Statutes.

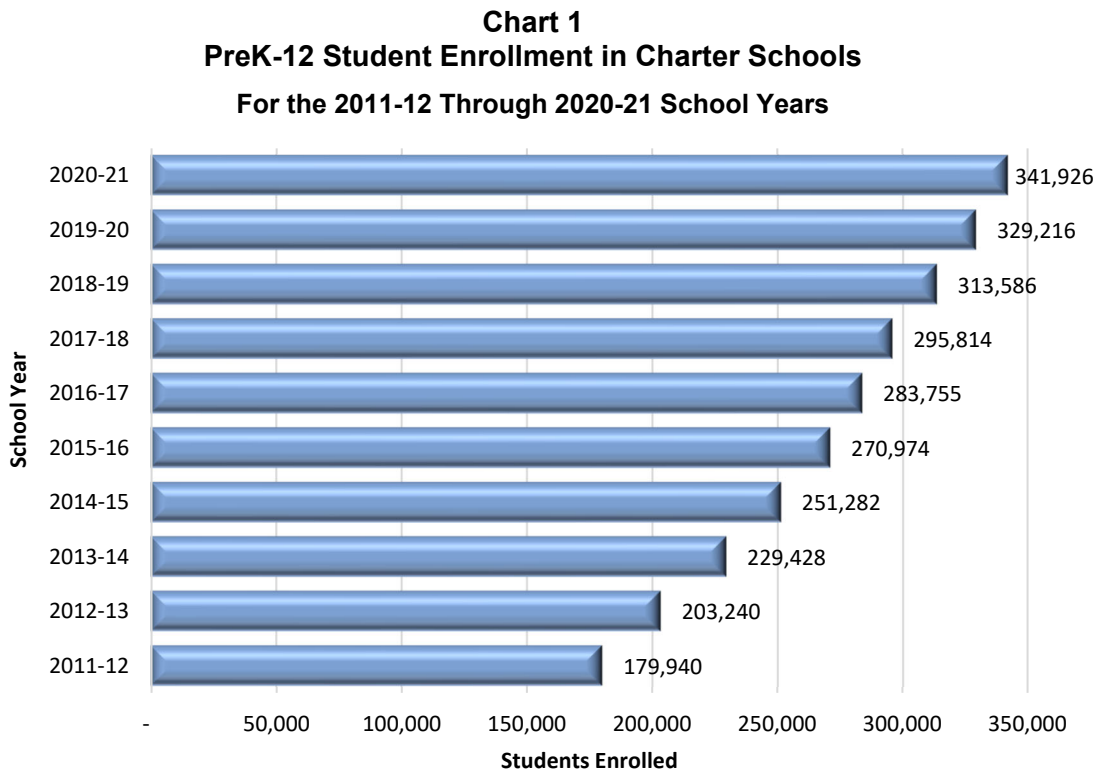
⁶ Schools of Hope are operated by hope operators and serve students from one or more persistently low-performing schools and students who reside in a Florida Opportunity Zone, are located in a Florida Opportunity Zone or in close proximity, and are Title I eligible.

⁷ Section 1002.33(12)(i), Florida Statutes.

⁸ Pursuant to Section 1002.32, Florida Statutes, State universities may grant charters to developmental research (lab) schools.

served, methods of assessment, and ways to measure success. The length of time for which charters are granted varies, but most are granted for 5 years. While charter schools are exempt from many traditional public school laws and rules, a sponsor may close a charter school if the school fails to meet agreed upon student performance outcomes, fails to meet generally accepted standards of fiscal management, violates the law, or shows other good cause. Additionally, charter schools are evaluated and assigned a school grade using the same standards and criteria as traditional public schools.

As depicted in Chart 1, the number of students enrolled in charter schools has steadily increased from 179,940 students enrolled during the 2011-12 school year to 341,926 students enrolled during the 2020-21 school year.



Source: Department records.

Charter schools are funded through the Florida Education Finance Program (FEFP) in the same way as all other State public schools, receiving operating funds based on the number of full-time equivalent students enrolled. Funds provided for capital outlay purposes are allocated to eligible charter schools based on a statutory formula⁹ which considers each school's student enrollment in the elementary, middle, and high school grade levels. Charter schools may also access Federal funds through the Charter School Program (CSP). To provide financial assistance for the planning, program design, and initial implementation of charter schools and to expand the number of high-quality charter schools in the State, the Department annually administers and awards CSP Planning and Implementation grants (CSP grants) through a request for proposal (RFP) process. For the 2020-21 school year, charter schools

⁹ Section 1013.62, Florida Statutes.

served 341,926 students at a cost of approximately \$2.9 billion. **EXHIBIT A** to this report provides, by school district and lab school, funding and enrollment data for the 2020-21 school year.

Finding 1: Charter School Oversight

As charter schools are statutorily required to be organized as, or operated by, a nonprofit organization, or operated by a public entity, they are permitted access to a wide range of Federal education programs.¹⁰ Under Federal law,¹¹ only public or private nonprofit organizations can receive Federal CSP grant funding. Notwithstanding these restrictions, the Department's standard charter contract allowed charter school governing bodies to contract with for-profit and nonprofit management organizations (MOs), including management companies, education service providers, or parent organizations, to manage the day-to-day operations of the charter school. Federal guidance¹² provides that strong fiscal monitoring and oversight of public charter schools is critical to ensuring that charter schools have appropriate internal controls regarding the use of Federal funds. Considering the increased use of MOs, Federal guidance strongly encourages that the relationship of charter schools to MOs be transparent and that State Education Agency (SEA) (i.e., Department) operational oversight of charter schools include, in addition to regular independent audits, a review of charter school governing boards for conflicts of interest, related party transactions, and an appropriate separation of duties, to ensure that MOs provide effective and efficient management services to charter schools at a reasonable cost.

State law¹³ requires each charter school to maintain a Web site that enables the public to obtain specified information, including information regarding any MOs associated with the school. Department guidance¹⁴ required recipients of Federal or State funds to establish safeguards prohibiting employees from using their position for purposes that may constitute or appear to present a conflict of interest. Further, State law¹⁵ referenced in the Department's standard charter contract bans charter school governing board members from participating in transactions posing a risk of a conflict of interest (related-party transactions), including:

- Purchasing, renting, or leasing any realty, goods, or services from a business entity of which the board member, or a close family member, is an officer, partner, director, or has any material interest.
- Holding any employment or contractual relationship with any business entity doing business with the charter school.
- Voting on any matter that the board member knows would inure to his or her special gain or loss.

As part of our audit, we reviewed State law, inquired of Department management, and evaluated Department charter school oversight processes and controls and found that, while State law and the Department's standard charter contract established certain operating transparency requirements and

¹⁰ Available Federal education programs include, but are not limited to, Titles I and III under the Elementary and Secondary Education Act of 1965, formula grant funds under Part B of the Individuals with Disabilities Education Act, and Charter School Program grant funds to support new and substantially expanding charter schools.

¹¹ Title 20, Section 7221i(5) and (6), United States Code.

¹² United States Department of Education Dear Colleague letter dated September 28, 2015.

¹³ Section 1002.33(9)(p)1., Florida Statutes.

¹⁴ *Project Application and Amendment Procedures for Federal and State Programs (Green Book)*.

¹⁵ Sections 112.313(2), (3), (7) and (12), 112.3143(3), and 1002.33(26)(a), Florida Statutes.

prohibitions against related-party transactions, the Department's oversight role in these areas was limited, as sponsors were responsible for overseeing charter school compliance. Our examination of audited financial statements¹⁶ for 40 of the 706 charter schools active during the 2021-22 school year found that:

- Of the 19 charter schools that had contracted out their operations to for-profit MOs:
 - Department of State, Division of Corporations records indicated that 1 charter school had been incorporated as a nonprofit organization by an agent of the for-profit MO it had contracted with to operate the school.
 - Contrary to State law, 2 charter schools did not disclose on their Web sites the MO's association with the schools.
 - The for-profit MO, or a company related to the for-profit MO, was either the lessor or lessee of the premises for 12 charter schools.
 - For 10 charter schools, material related-party transactions between the schools and the for-profit MOs were disclosed in the schools' financial statements, in addition to the lease arrangements previously noted.
- Public entities had issued bonds in excess of \$126 million on behalf of 3 charter schools that had contracted out their operations to a for-profit MO.

While we recognize that sponsors are responsible for ensuring charter school compliance with the provisions of their charter contract and applicable laws, rules, and other guidelines, the existence of the noted relationships suggests that the Department, as the SEA and grantor of State and Federal funds to public schools, including charter schools, is uniquely positioned to work with sponsors and, as necessary, the Legislature, to promote an appropriate level of operational oversight regarding potential charter school conflict of interest, related party, and separation of duty issues, and encourage transparency in the use of MOs by charter schools.

Recommendation: Consistent with Federal guidance, we recommend that Department management work in concert with charter school sponsors and, as necessary, the Legislature, to enhance the oversight of potential charter school conflict of interest, related party, and separation of duty issues, and encourage transparency in the use of for-profit and nonprofit MOs by charter schools.

Follow-Up to Management's Response

Department management indicated in their written response that the standard charter agreement between charter schools and their sponsors includes various provisions regarding the employment of management companies and that it is misleading for the audit to assert that either the agreement or Department rules regulate the profit-making status of charter management companies. While we acknowledge the various charter contract provisions governing relationships with management companies, such requirements do not adequately substitute for appropriate oversight activities. Additionally, the purpose of citing the standard charter contract was not to assert that either the contract or any Department rule could regulate the profit-making status of a charter management company, but

¹⁶ Section 218.39(1), Florida Statutes, requires each charter school to annually obtain an independent financial audit of its accounts and records.

instead was to establish that charter schools could contract with such companies, regardless of their profit-making status. Consequently, the finding and related recommendation stand as presented.

Finding 2: Charter School Appeal Commission Independence

State law¹⁷ establishes a Charter School Appeal Commission (Commission) to assist the Commissioner of Education (Commissioner) and the State Board of Education (SBE) with a fair and impartial review of appeals by applicants whose charter applications are denied or whose charter contracts are not renewed or are terminated by their sponsors. The Commissioner is to appoint a number of members to the Commission sufficient to ensure that no potential conflict of interest exists for any Commission appeal decision. Of the Commission members hearing an appeal, half must represent currently operating charter schools and half must represent sponsors, with the Commissioner, or his or her designee, serving as Commission Chair. The Commission is to review all appeals and recommend to the SBE to either uphold or deny an appeal. In making its decision, the SBE must consider the Commission's recommendation but is not bound by it.

We examined Department records for the two appeals presented to the Commission during the period July 2020 through December 2021 to determine whether Department controls promoted, and Department records demonstrated, that the Commission was constituted in accordance with State law and that Commission members were free from any actual or potential conflicts of interest. Our examination disclosed that the Department had not obtained or retained evidence to demonstrate that the eight Commission members who served on the Commission during the period July 2020 through December 2021 and who heard one or both of the appeals were free from any actual or potential conflicts of interest. While Department management indicated in response to our audit inquiry that the Commission Chair and Department General Counsel performed independence checks prior to requesting Commission members participate in a hearing, documentation of these checks was not maintained.

Documentation demonstrating that Commission members have disclosed any actual or potential conflicts of interest would provide greater assurance that Commission appeal reviews are conducted in an independent and impartial manner.

Recommendation: We recommend that Department management enhance controls to ensure that Commission members disclose, in writing, all possible actual or potential conflicts of interest related to appeal reviews and recuse themselves from participating in any review where a conflict of interest is encountered.

Finding 3: Governance Training Plans

Pursuant to State law,¹⁸ every charter school governing body member is required to participate in Department-approved governance training.¹⁹ Each charter school is responsible for contracting with or

¹⁷ Section 1022.33(6)(e), Florida Statutes.

¹⁸ Section 1002.33(9)(j)5., Florida Statutes.

¹⁹ At a minimum, the governance training must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

providing a trainer to deliver the training. The Department established rules²⁰ for the approval of charter school governing board training, including rules requiring:

- Potential training providers to submit a training plan approval application for review and approval by the Department.
- Training plans to include measurable performance objectives, instructional content, delivery strategies, learning activities, and an assessment of whether statutory requirements for charter school governing board instruction were satisfied.
- All training plans be reviewed for compliance with applicable requirements within 30 days of submittal by a team appointed by the Commissioner with collective knowledge in education, finance, governance, and law, and the review team was to recommend plan approval or denial to the Commissioner.
- Training plans be approved for no more than 2 years and providers to submit renewal applications no earlier than 6 months prior to plan expiration for Department review of the plan's continued compliance with Department requirements.
- The names of approved providers be posted on the Department's Web site.

As part of our audit, we inquired of Department management and examined records related to the Department's review and approval of charter school governance training plans and found that, although governing laws and rules affecting required training had been revised since the initial adoption of the rules in July 2008, the training plans for seven providers listed on the Department's Web site as of March 30, 2022, had not been substantively reviewed by the Department for continued compliance. Specifically, the Department had not substantially reviewed the training plans since August 2008 (two plans), September 2008 (two plans), July 2012 (one plan), and October and November 2017 (one plan, respectively). According to Department management, the Department approved the plans without substantive review for compliance with current requirements because the providers did not identify any changes to the instructional content of the plans submitted for renewal.

Absent periodic substantive reviews of charter school governance training plans, the Department lacks assurance that the training delivered to charter school governing boards is consistent with State law and Department rules.

Recommendation: We recommend that Department management ensure that charter school governance training plans are substantively reviewed for compliance with governing laws and rules prior to renewal.

Finding 4: Governance Training Oversight

Department rules²¹ specify that each charter school governance training provider offering an approved training program is to submit a report of each governing board's training to the Department and the charter school's director within 30 days of the training.²² According to Department rules:²³

²⁰ Department Rule 6A-6.0784, Florida Administrative Code.

²¹ Department Rule 6A-6.0784(5)(a), Florida Administrative Code.

²² The charter school director is to provide a copy of the report to the school's sponsor within 10 days of receiving the report.

²³ Department Rule 6A-6.0784(1), Florida Administrative Code.

- Each governing board member must complete within 90 days of joining the charter school board a minimum of 4 hours of instruction focusing on government in the sunshine, conflicts of interest, ethics, and financial responsibility.
- After the initial 4-hour training, each member is required, within the subsequent 3 years and for each 3-year period thereafter, to complete a 2-hour refresher training.
- Any member who fails to obtain the 2-hour refresher training within any 3-year period must take the 4 hours of instruction again to remain eligible as a charter school board member.

As part of our audit, we interviewed Department management, evaluated Department charter school governance training oversight controls, and examined the training records submitted to the Department for one board member each from 40 of the 706 charter schools active during the 2021-22 school year. Our audit procedures disclosed that the Department's governance training oversight role was limited, as Department management indicated that sponsors were responsible for verifying charter school compliance with training requirements pursuant to the charter contract. However, we also noted that:

- 2 of 25 applicable board members had not received the required refresher training. As of December 31, 2021, the members' training had been delinquent for 432 and 1,994 days, respectively.
- 2 of 15 applicable board members did not receive the initial 4-hour training within 90 days of appointment to the charter school board. The members received the training 124 and 412 days after their appointments.

While we acknowledge the governance training oversight responsibility of sponsors, in light of the noncompliance noted on audit regarding charter school board member training, the Department is distinctively positioned as a recipient of all training records to assess whether the governance accountability standards established in law are being sufficiently evaluated by sponsors and adhered to on a Statewide basis.

Recommendation: To promote the adequate oversight of governance training requirements by sponsors and Statewide compliance, we recommend that Department management periodically review submitted charter school governance board training records for adherence to applicable requirements.

INFORMATION TECHNOLOGY CONTROLS

State law²⁴ requires State agencies to establish information technology (IT) security controls to ensure the security of agency data, information, and IT resources. Additionally, Department of Management Services (DMS) rules²⁵ establish minimum security standards for ensuring the confidentiality, integrity, and availability of State agency data, information, and IT resources.

Finding 5: Information Security Manager

State law²⁶ requires each State agency head to designate an Information Security Manager (ISM) to administer the agency's cybersecurity program. State agencies are to provide ISM designations to the

²⁴ Section 282.318(4), Florida Statutes.

²⁵ DMS Rules, Chapter 60GG-2, Florida Administrative Code.

²⁶ Section 282.318(4)(a), Florida Statutes.

DMS annually in writing by January 1. State law specifies that, for information security duty purposes, the ISM is to report directly to the agency head. Best practices provide that organizational placement of the ISM outside the line of authority of those responsible for the Department's daily IT operations is essential to ensuring appropriate separation of duties between daily IT operations and the assessment and oversight of IT system security controls.

As part of our audit, we evaluated the Department's information security program and found that, while the ISM reported to the Commissioner for information security duty purposes, organizationally, the ISM reported to the Deputy Commissioner of Technology and Innovation (DCTI) who was responsible for the Department's daily IT operations. Additionally, contrary to State law, the DCTI and not the Commissioner designated the ISM for the 2020, 2021, and 2022 calendar years.

Appropriate organizational placement and ISM designations in accordance with State law promote the independence of the ISM function and accountability for the administration of the Department's cybersecurity program. A similar finding was noted in our report No. 2021-029 (Finding 13).

Recommendation: We continue to recommend that Department management take steps to ensure that the ISM is organizationally placed outside the line of authority of those responsible for the Department's daily IT operations and that ISM designations are made by the Commissioner in accordance with State law.

Finding 6: Security Controls – User Authentication and Logging and Monitoring

Security controls are intended to protect the confidentiality, integrity, and availability of data and IT resources. Our audit procedures disclosed that certain security controls related to user authentication and logging and monitoring need improvement. We are not disclosing specific details of the issues in this report to avoid the possibility of compromising Department data and related IT resources. However, we have notified appropriate Department management of the two findings in the areas needing improvement.

Without appropriate security controls related to user authentication and logging and monitoring, the risk is increased that the integrity and availability of Department data and related IT resources may be compromised.

Recommendation: We recommend that Department management improve certain security controls related to user authentication and logging and monitoring to ensure the integrity and availability of Department data and related IT resources.

PRIOR AUDIT FOLLOW-UP

Except as discussed in the preceding paragraphs, the Department had taken corrective actions for the applicable findings included in our report No. 2021-029.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant

information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from January 2022 through September 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the Department of Education (Department) focused on charter school administration. For that area, the objectives of the audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed into operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

Our audit also included steps to determine whether management had corrected, or was in the process of correcting, applicable deficiencies noted in our report No. 2021-029 (Findings 13 through 15).

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in internal controls significant to our audit objectives; instances of noncompliance with applicable governing laws, rules, or contracts; and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, rules, Department policies and procedures, and other guidelines, and interviewed Department personnel to obtain an understanding of Department controls for and responsibilities related to administering charter schools.
- Inquired of Department management regarding whether the Department made any expenditures or entered into any contracts under the authority granted by an applicable state of emergency during the period July 1, 2020, through February 2, 2021.
- Obtained an understanding of selected Department information technology (IT) controls, assessed the risks related to those controls, evaluated whether selected general and application IT controls for the Florida Charter School Program (FLCSP.org) application were in place, and tested the effectiveness of the selected controls.
- Performed inquiries of Department personnel and examined Department records to determine whether the Charter School Appeal Commission (Commission) was established in accordance with Section 1022.33(6)(e)3., Florida Statutes.
- From the population of 22 Commission expenditure transactions, each exceeding \$20 and totaling \$2,782, incurred during the period July 2020 through December 2021, examined Department records for 15 selected expenditure transactions totaling \$2,077 to determine whether the expenditures were necessary, served an authorized Commission public purpose, and were made in accordance with Section 1022.33(6)(e)3., Florida Statutes.
- Examined Department records for the two appeals reviewed by the Commission during the period July 2020 through December 2021 to determine whether the appeal reviews were conducted in accordance with Section 1002.33(6)(e), Florida Statutes.
- Performed inquiries of Department personnel and examined Department records to determine whether the Department ensured that charter school information was appropriately disseminated and reported to the public, charter school sponsors, charter school management, and those charged with governance in accordance with Sections 1002.33(21) and 1008.22(3), Florida Statutes.
- From the population of 16 Charter School Program Planning and Implementation grants awarded during the period July 2020 through December 2021 and totaling \$13.2 million (10 to new charter school operators and 6 to established operators), examined Department records for 6 selected grant awards (4 to new operators and 2 to established operators), totaling \$4.5 million, to determine whether the Department ensured that grant awards were made in accordance with applicable State and Federal laws, grant Requests For Proposals, and other guidelines, and grant expenditures were properly recorded, reconciled, and closed out in accordance with Department guidelines and grant terms and conditions.
- From the population of 141 Charter Schools Program grants for Remote Learning and Access Due to COVID-19 awarded during the period July 2020 through December 2021 and totaling \$18.5 million, performed inquiries of Department personnel and examined Department records for 25 selected awards totaling \$2,441,245 to determine whether the Department ensured that grant awards were made and monitored in accordance with applicable State and Federal laws, Requests For Applications, and other guidelines.
- From the population of 706 charter schools active during the 2021-22 school year, examined Department records for 1 board member each from 40 selected charter schools to determine whether the board members received appropriate and timely training and whether Department

records evidenced Department efforts to ensure compliance with applicable laws, rules, and other guidelines.

- Performed inquiries of Department personnel and examined Department records to determine whether the Department ensured that charter school governance training plans were reviewed in accordance with Department Rule 6A-6.0784, Florida Administrative Code.
- From the population of 706 charter schools active during the 2021-22 school year, examined audited financial statements and charters for 40 selected charter schools to evaluate the adequacy of Department procedures for identifying and mitigating the risks of related-party transactions.
- Evaluated Department actions to correct Findings 13 through 15 noted in our report No. 2021-029. Specifically, we performed inquiries of Department personnel and examined Department records to determine whether the:
 - Organizational placement, reporting lines, and designation of the Department's information security manager was in accordance with Section 282.318(4)(a), Florida Statutes.
 - Department had adequately designed and implemented controls to ensure that appropriate security awareness training was provided to all users of Department IT resources.
 - Department had adequately designed and implemented controls to ensure that educational institution Florida Equity Act annual equity plan updates were timely obtained and reviewed.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is fluid and cursive, with the first name being the most prominent.

Sherrill F. Norman, CPA
Auditor General

EXHIBIT A

CHARTER SCHOOL FUNDING AND ENROLLMENT DATA BY SCHOOL DISTRICT AND LAB SCHOOL

2020-21 SCHOOL YEAR

School District/ Lab School	Direct FEFP ^a Payments	Non-FEFP Payments	Total Payments for Charter Schools	Count of Charter School Students
Alachua	\$ 11,367,642	\$ 2,139,333	\$ 13,506,975	1,628
Bay	34,164,865	7,093,631	41,258,497	4,995
Brevard	56,853,710	5,220,943	62,074,653	7,436
Broward	349,328,460	21,714,837	371,043,296	48,379
Charlotte	6,073,385	728,999	6,802,384	863
Citrus	798,075	53,025	851,100	123
Clay	12,129,379	1,042,308	13,171,687	1,702
Collier	28,038,757	2,151,220	30,189,977	3,262
Columbia	4,153,364	664,639	4,818,004	588
Miami-Dade	557,213,711	65,176,760	622,390,470	74,563
Dixie	1,002,140	353,304	1,355,444	122
Duval	148,357,359	22,141,985	170,499,344	19,435
Escambia	6,086,810	508,050	6,594,859	807
Flagler	6,716,428	(90,869)	6,625,559	852
Franklin	2,932,913	1,035,242	3,968,155	345
Gadsden	3,100,068	890,536	3,990,604	561
Glades	1,789,134	100,370	1,889,505	246
Hernando	2,104,901	282,095	2,386,996	436
Hillsborough	230,286,479	21,912,297	252,198,776	31,099
Indian River	16,801,206	3,209,304	20,010,509	2,306
Jefferson	6,457,036	960,029	7,417,065	705
Lake	55,914,554	4,060,176	59,974,730	7,221
Lee	81,244,372	8,339,984	89,584,356	11,322
Leon	12,551,072	2,223,777	14,774,849	2,184
Levy	1,408,249	99,882	1,508,131	181
Madison	3,783,558	554,891	4,338,449	517
Manatee	54,926,485	11,633,038	66,559,523	7,898
Marion	2,789,773	594,522	3,384,295	413
Martin	12,163,259	534,398	12,697,656	1,335
Monroe	12,838,462	1,105,285	13,943,747	1,090
Okaloosa	9,507,762	1,895,551	11,403,313	1,287
Orange	136,716,473	11,962,168	148,678,642	15,896
Osceola	114,250,769	6,117,337	120,368,106	15,587
Palm Beach	167,808,324	30,995,277	198,803,601	21,545

EXHIBIT A

CHARTER SCHOOL FUNDING AND ENROLLMENT DATA BY SCHOOL DISTRICT AND LAB SCHOOL - CONTINUED

2020-21 SCHOOL YEAR

School District/ Lab School	Direct FEFP ^a Payments	Non-FEFP Payments	Total Payments for Charter Schools	Count of Charter School Students
Pasco	\$ 50,907,536	\$ 25,005,601	\$ 75,913,137	6,750
Pinellas	50,277,959	4,798,612	55,076,571	6,944
Polk	130,694,507	9,521,542	140,216,049	16,933
Putnam	3,736,835	942,955	4,679,791	498
Santa Rosa	980,100	49,181	1,029,281	101
Sarasota	46,694,705	14,517,846	61,212,551	6,067
Seminole	19,071,442	1,857,108	20,928,550	2,481
St. Johns	2,302,702	29,826	2,332,528	170
St. Lucie	31,354,683	3,435,862	34,790,545	4,485
Sumter	19,903,750	12,209,466	32,113,216	3,319
Volusia	19,141,313	1,049,251	20,190,564	2,560
Wakulla	1,091,284	328,139	1,419,423	173
Walton	4,566,146	600,387	5,166,533	548
FAU	10,955,725	-	10,955,725	1,439
FSU	19,787,215	-	19,787,215	2,529
Totals	<u>\$2,563,124,836</u>	<u>\$311,750,100</u>	<u>\$2,874,874,936</u>	<u>341,926</u>

^a Florida Education Finance Program

Source: Department records.

MANAGEMENT'S RESPONSE



FLORIDA DEPARTMENT OF
EDUCATION
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State Board of Education

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
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Monesia Brown
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Grazie Pozo Christie
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Manny Diaz, Jr.
Commissioner of Education

February 20, 2023

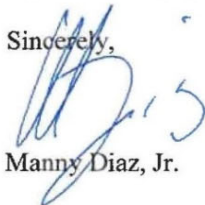
Sherrill F. Norman, CPA
Florida Auditor General
Claude Pepper Building, Suite G74
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Ms. Norman:

Please find attached the Department of Education's response to the Auditor General's preliminary and tentative findings of the operational audit of the Department of Education, Charter School Administration and Prior Audit Follow-Up.

If you have any questions, please contact Mike Blackburn, Inspector General, at 850-245-0403.

Sincerely,



Manny Diaz, Jr.

MD/br

Enclosure

cc: Mike Blackburn, Inspector General
Suzanne Pridgeon, Deputy Commissioner, Division of Finance and Operations
Janice Brown, Assistant Deputy Commissioner, Division of Finance and Operations
Andre Smith, Deputy Commissioner, Division of Technology and Innovation
Adam Emerson, Executive Director, Office of Independent Education and Parental Choice

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Finding 1: Charter School Oversight

The Department, as the State Education Agency and grantor of State and Federal funds to public schools, including charter schools, is uniquely positioned to work with charter school sponsors and, as necessary, the Legislature to promote an appropriate level of operational oversight regarding potential charter school conflict of interest, related party, and separation of duty issues, and encourage transparency in the use of for-profit and nonprofit management organizations by charter schools.

Response

The Department has been responsive to the federal guidance identified in the explanation of this finding and the recommendation in the preliminary and tentative audit finding, and it has done so with the authority granted by the Legislature. It must be noted that the vast majority of sponsors in Florida are distinct constitutional entities, school districts, that have the express authority to operate the day-to-day operational control of public schools which include charter schools. The Department has vigorously implemented the authority it has been granted and diligently works to see that its efforts are adhered to by the schools and the school districts. Additional legislative authority is required to further address the recommendation made in the report.

Consistent with its statutory authority the State Board of Education has adopted in rule several model forms that all charter schools and their sponsors must use. These forms include a standard charter agreement between the parties.

Section 9.E. of that standard agreement contains the following provisions regarding the employment of management companies:

- A. *If an organization (management organization), including but not limited to: 1) a management company, 2) an educational service provider, or 3) a parent organization, will be managing or providing significant services to the School, the contract for services between the management organization and the Governing Board shall be provided to the Sponsor and attached as an appendix to this Charter. Any contract between the management organization and the School must ensure that:*
 - 1. *Members of the Governing Board or their spouses will not be employees of the management organization, nor should they be compensated for their service on the Board or selected to serve on the Board by the management organization.*
 - 2. *The Governing Board retains the right to hire an independent attorney, accountant, and audit firm representing and working for, or on behalf of, the School. Notwithstanding, the Governing Board and the management organization may contract for such services as determined by the management agreement and as otherwise allowed by law. The Governing Board shall use*

an audit firm that is independent from the management organization for the purposes of completing the annual financial audit required under section 218.39, Florida Statutes.

3. *The contract will clearly define each party's rights and responsibilities including specific services provided by the management organization and the fees for those services and specifies reasonable and feasible terms under which either party may terminate the contract.*
 4. *All equipment and furnishings that are purchased with public funds will be the property of the School, not the management organization and any fund balance remaining at the end of each fiscal year will belong to the School, not the management organization.*
 5. *All loans from the management organization to the School, such as facility loans or loans for cash flow, will be appropriately documented and will be repaid at a rate no higher than market rates at the time of the loan.*
 6. *A copy of any material changes to the contract between the management organization and the Governing Board shall be submitted to the District within five (5) days of execution. The Sponsor shall have 30 days to review the material changes. If the changes violate the terms of this Charter or applicable law the Sponsor shall provide written notice to the School which shall include a description of the violations. The School may address the concerns or initiate the dispute resolution process included in this Charter.*
 7. *The management organization will perform its duties in compliance with this Charter.*
- B. *Any default or breach of the terms of this Charter by the management company shall constitute a default or breach under the terms of this Charter by the School unless the School cures such breach after written notice.*

This language has been in State Board rule since December 2014. Also adopted in State Board rule is a model charter school application that must be used for any charter proposal submitted to a sponsor in Florida. That application contains a section on Education Service Providers and demands that an applicant seeking to work with a management company explain why that company was selected, document the company's track record, describe its legal and organizational relationship with the school and provide evidence that the school's governing board will have an arms-length relationship with and independence from the company. Further, the application demands that the prospective school must show its sponsor how it will oversee and evaluate the work of the management company.

Also, if the school's governing board intends to enter into a financing agreement with the management company, it must:

- Ensure that agreements are or will be separately documented;
- Provide evidence that the agreement was or will be reviewed by the governing board's independent legal counsel; and
- Describe how such agreements will be repaid.

The completed and approved application also is incorporated into the standard charter agreement. Failure to adhere to the claims in the application or to the provisions in the executed charter agreement may provide grounds for the termination of the charter.

Further, it is misleading to assert, as this audit does, that “the Department’s standard charter contract allowed charter school governing bodies to contract with for-profit and nonprofit management organizations, education service providers, or parent organizations, to manage the day-to-day operations of the charter school.” Neither the standard charter agreement nor the rule in which it is incorporated could regulate the profit-making status of a charter management company or an education service provider. Only the legislature can do that. Moreover, some of the specific findings regarding charter schools and their management companies referenced in this audit would have to be addressed by the legislature, and not the sponsor or the Department.

For example, the audit states that 12 charter schools leased their premises from the management company with whom they contracted, or leased facility space from a subsidiary to that management company. In previous legislative sessions, lawmakers proposed amendments to statute to regulate this practice, but those proposals were never adopted in law. Neither the Department nor any charter school sponsors can sidestep the legislature in this regard.

In fact, the only finding from the Auditor General examination of 40 charter schools identified here that is explicitly governed by state law is the failure of two charter schools to disclose on their websites their association with a management company.

The Department has committed to providing training and rigorous professional development to charter school sponsors for the past decade. In 2014 and 2015, the Department developed and published the *Florida Principles and Standards for Quality Charter School Authorizing*. This document has formed the basis of all our technical assistance to sponsors. The Department will continue to provide sponsors the training and development they need to ensure not only that the charter schools in their portfolio are and remain high-quality, but that they are compliant with all applicable law and with the provisions in the charter agreement.

Finding 2: Charter School Appeal Commission Independence

Department controls need enhancement to ensure that members of the Charter School Appeals Commission document that they are independent of, and have no conflicts of interest related to, the charter school appeals they review and recommend to the State Board of Education to either uphold or deny.

Response:

The Department's Office of Independent Education and Parental Choice (IEPC) has developed a conflict-of-interest form that each member has to complete before participating in a charter school appeal hearing. Before scheduling the most recent meeting of the commission in September 2022, we required that members complete the form. In the future, The Department will retain the completed forms as recommended.

Finding 3: Governance Training Plans

The Department did not always substantively review charter school governance training plans for compliance with governing laws and rules.

Response:

IEPC has begun plans to conduct more rigorous evaluations of approved governing board trainers seeking to renew their work, even if they state that there is no change to their previously approved plans. At the conclusion of the 2023 legislative session, IEPC will begin rule development to revise Rule 6A-6.0784, F.A.C., Approval of Charter School Governance Training, and its incorporated forms to update and make clear any new evaluation criteria along with any other new changes to statute.

Finding 4: Governance Training Oversight

The Department is distinctively positioned as a recipient of all charter school board member governance training records to assess through periodic reviews whether the governance accountability standards set in State law are being sufficiently evaluated by sponsors and adhered to on a Statewide basis.

Response:

IEPC is drafting and will distribute annually to all charter schools and their sponsors a communication that outlines the governing board training requirements of section 1002.33(9)(j)5., F.S., and Rule 6A-6.0784. The Department is developing procedures to randomly cross-check the records IEPC has on governing board membership at individual schools with the reports trainers provide to the Department pursuant to 6A-6.0784(5)(a), F.A.C. IEPC will document how this work is being performed.

Finding 5: Information Security Manager

The organizational placement of the Department's Information Security Manager (ISM) did not effectively promote the independence of the ISM function and ISM appointments were not made in accordance with State law. A similar finding was noted in our report No. 2021-029.

Response:

In accordance with Florida Statute 282.318, The Florida Department of Education's Information Security Manager (ISM) reports directly to the Commissioner of Education with respect to the duties of the (ISM). Although the current incumbent of the ISM position also functions as the Executive Staff Director in the Division of Technology and Innovation (DTI), it is for the duties of the Executive Staff Director that the incumbent reports to the Deputy Commissioner of Technology and Innovation. Thus, functionally and organizationally, the ISM position is independent of DTI and is in compliance with state statute.

With respect to the Information Security Manager designation letter, the Florida Department of Education, on December 15, 2022, submitted its annual designation letter to the Chief Information Security Office of the Florida Digital Service designating the ISM and was signed by the Commissioner of Education, complying with statute.

Finding 6: Security Controls – User Authentication and Logging and Monitoring

Certain security controls related to user authentication and logging and monitoring need improvement to ensure the integrity and availability of Department data and related IT resources.

Response:

The Office of Independent Education and Parental Choice (IEPC) has already begun discussions with the Department's Division of Technology & Innovation (DTI) to conduct a risk categorization of the IT resources IEPC employs for select charter schools. IEPC will immediately comply with any recommendations or directives from DTI.