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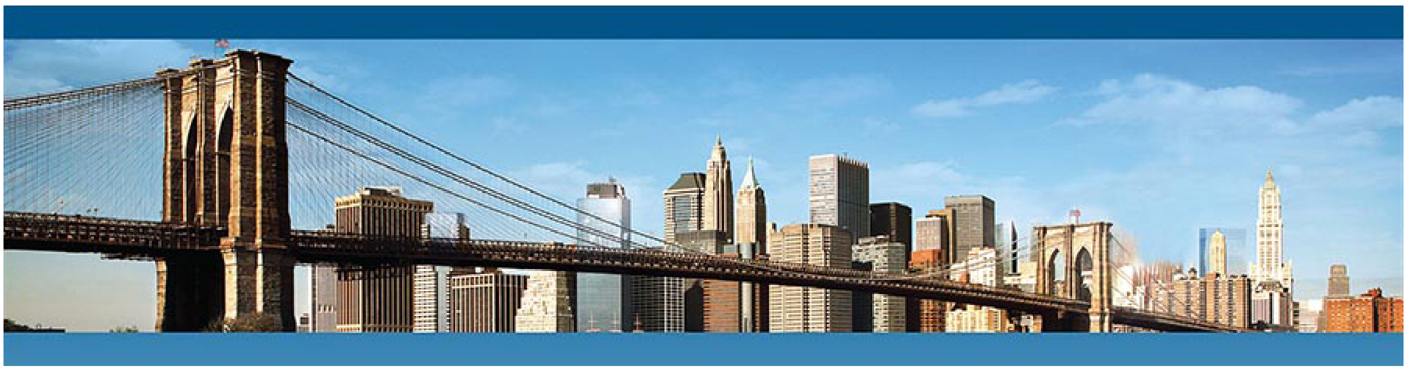

MANAGEMENT AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Oversight of the Financial Operations of the Merrick Academy Queens Public Charter School

MH15-093A

June 22, 2016

http://comptroller.nyc.gov

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

June 22, 2016

To the Residents of the City of New York:

My office has audited Merrick Academy Queens Public Charter School (Merrick) to determine whether Merrick exercised adequate oversight over its fiscal affairs; maintained a system of internal controls sufficient to ensure that funds were appropriately expended, authorized, valid and reasonable; accurately recorded and reported transactions; and adequately approved and disclosed in its financial statements potential conflicts of interest and related party transactions. The scope of this audit covered Fiscal Years 2013 and 2014 (July 1, 2012, through June 30, 2014). We audit charter schools to ensure transparency, accountability and that funds are used appropriately and in the best interest of the public and children's education.

Our audit found that Merrick failed to adequately oversee its fiscal affairs during the period under review. Specifically, the audit found that Merrick modified its Management Services Agreement with Victory Schools, Inc. without memorializing the modifications in writing. As a result, there was inadequate documentation to establish that payments of $1.2 million to Victory were necessary, appropriate, valid and reasonable. Merrick also failed to consistently use contracts or purchase orders as required, ensure that payments made to vendors were adequately supported and properly authorized, or ensure that invoices were paid in a timely manner. We also found insufficient evidence that major decisions were adequately reviewed and voted on by the Board of Trustees. Merrick also failed to consistently adhere to New York State Education Law requirements for employees' criminal background checks.

The audit makes seventeen recommendations including that Merrick ensure that modifications to its Management Services Agreement are documented in writing, that adequate documentation is retained to support purchases and payments made to its vendors, that appropriate authorizers approve all purchases and payments, and that vendors are paid in a timely manner. Further, Merrick should ensure that the Board of Trustees vote on all significant matters pertaining to the financial and operational practices of the school and that the Board's minutes adequately record those votes. Finally, Merrick should ensure that required criminal background clearances are obtained for individuals before allowing them to work at the school.

The results of this audit have been discussed with Merrick officials and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

Scott M. Stringer

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OFFICE OF THE COMPTROLLER
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MH15-093A

EXECUTIVE SUMMARY

Charter schools are independent public schools governed by Boards of Trustees and managed under contracts, also known as "charter agreements." The authority to establish charter schools is found in Article 56 of the New York State (NYS) Education Law, also known as the Charter Schools Act (the Act), which first became law in December 1998. Pursuant to the Act, in order for a charter school to be created in New York City, it must have been approved by one of three possible authorizing entities: the Board of Trustees of the State University of New York (SUNY Trustees), the New York State Education Department (NYSED) and, for schools operating within the five boroughs of New York City (City), the City's Department of Education (DOE).

Merrick Academy Queens Public Charter School (Merrick) is a SUNY-authorized charter school located at 136-25 218th Street in the Springfield Gardens section of Queens. Merrick was granted its first provisional charter by SUNY's Charter Schools Institute (the SUNY Institute), which acts on behalf of the SUNY Trustees (its authorizer) and was operating under its third charter renewal (July 11, 2011) during our scope period and served students in grades K-6. Its charter was renewed again on February 3, 2015, for another five-year term to serve grades K-5.

During Fiscal Years (FYs) 2013 (July 1, 2012, through June 30, 2013) and 2014 (July 1, 2013, through June 30, 2014), Merrick had a management service agreement (the Management Services Agreement) with Victory Schools, Inc. (Victory), to manage the school's operations. Pursuant to this agreement, Victory had broad responsibility for the management and operation of the school. In exchange, Merrick agreed to pay Victory $2,739 per enrolled student, which amounted to approximately $2.6 million over two years. During school year 2012–2013 Merrick enrolled 499 students and reported revenue of $7,080,658, while during school year 2013-2014, Merrick enrolled 500 students and reported revenue of $7,139,811. Most of this revenue—$6,704,641 in FY 2013 and $6,878,345 in FY 2014—represents per-pupil payments received from DOE. The remainder came from federal, State, and local grants and other private sources.

Audit Findings and Conclusions

Merrick failed to adequately oversee its fiscal affairs during the period under review. Although the school had established policies and procedures designed to facilitate fiscal management and oversight, we found that Merrick failed to consistently follow them. Specifically, we found that Merrick modified its Management Services Agreement with Victory without, as required by the contract, memorializing the modifications in writing. As a result, there was inadequate documentation to establish that payments of $1.2 million to Victory in FYs 13 and 14 were necessary, appropriate, valid and reasonable. We also found that Merrick failed to consistently use contracts or purchase orders as required by the school's operating procedures, and did not consistently ensure that payments made to vendors were adequately supported and properly authorized, or that invoices were paid in a timely manner.

We found that Merrick lacked sufficient evidence that major decisions were adequately reviewed and voted on by the Board. The Board is the steward of public funds and under a duty to manage the business affairs of the school to ensure its financial and operational success. It is further under a duty to memorialize its work in the publicly available minutes. Its failure to provide evidence that it carried out its fiduciary duties raises serious concerns of whether it did in fact properly carry out its duties here.

In addition, we found that Merrick did not maintain a current inventory of fixed assets nor did it have evidence that a periodic physical inventory count of such assets was performed as required by its written operating procedures at the end of FYs 2013 and 2014. We also found that Merrick failed to consistently ensure that New York State Education Law requirements for employees' criminal background checks were adhered to and as a result, we found that of 29 sampled employees, Merrick did not have evidence that background checks were performed prior to the employment start date for 23 (79 percent) of them. In addition, we found that five sampled employees worked for the school without a clearance from approximately six months to over 4.5 years. Finally, Merrick did not have the required financial disclosure forms for all of its trustees for FY 2013 and FY 2014.

Audit Recommendations

Based on our findings, we made seventeen recommendations to Merrick Academy, including the following:

- Merrick should ensure any modifications to its Management Services Agreement are documented in a formal writing.
- Merrick should ensure that it obtains approval for changes to its Management Services Agreement from the SUNY Institute.
- Merrick should ensure that a contract, purchase order or work order has been approved in connection with the procurement of all goods and services.
- Merrick should retain adequate documentation to support purchases and payments made to its vendors.
- Merrick should ensure that the appropriate authorizers approve all purchases and payments.
- Merrick should ensure that it pays its vendors in a timely manner.

- Merrick should ensure that the Board of Trustees reviews and considers all significant matters relating to the financial and operational practices of the school, and that the Board's minutes adequately record the applicable discussions.
- Merrick should ensure that the Board of Trustees votes on all significant matters pertaining to the financial and operational practices of the school and that the Board's minutes adequately record those votes.
- Merrick should ensure that it obtains required criminal background clearances for employees before allowing them to work at the school and that all evidence of criminal background inquiries and clearances are maintained in employees' personnel files.

Agency Response

Merrick agreed with the audit's 17 recommendations. However, Merrick expressed concerns about the accuracy of some of our findings. Merrick's concerns are based largely on its claims that (1) its inadequately documented actions were justified because they resulted in positive outcomes, and (2) a lack of documentation does not mean a lack of appropriate actions. However, we found no basis for many of the asserted positive outcomes and appropriate actions. Furthermore, we note that as a publically funded institution, Merrick is required to maintain adequate documentation of expenditures and operations to ensure transparency and accountability. After carefully considering Merrick's comments, we find no basis to alter any of the report's findings.

The full text of the Merrick response is included as an addendum to this report.

AUDIT REPORT

Background

Charter schools are independent public schools governed by Boards of Trustees and managed under contracts, also known as "charter agreements." The authority to establish charter schools stems from the Charter School Act, Article 56 of the NYS Education Law, also known as the Act, which became law in December 1998. Pursuant to the Act, in order for a charter school to be created in New York City, it must have been approved by one of three possible authorizing entities: SUNY Trustees, NYSED and, for schools operating within the City, DOE.[1]

Charter agreements allow charter schools to receive government funding through local school districts but to operate independently from the school districts in most respects. As a result, charter schools are not subject to most of the pedagogical mandates, oversight and regulation that govern traditional public schools. A substantial portion of charter schools' revenue comes from per-pupil payments made by the local school districts.[2] DOE's operating budget for the 2015-2016 school year includes $1.5 billion for charter schools. Charter schools may also receive federal and State funding under various programs, as well as revenue from fundraising and other school activities.

At the start of the 2015-2016 school year, there were 205 charter schools operating in the City, with 82 in Brooklyn, 59 in the Bronx, 45 in Manhattan, 15 in Queens and 4 in Staten Island. These schools collectively serve over 95,000 students, representing approximately 8.6 percent of the City's 1.1 million public school students. Approximately 6 percent of charter school students are English Language Learners and 16 percent receive special education services.[3]

For a school to receive a charter, it must be a tax-exempt, not-for-profit educational corporation under section 501(c)(3) of the Internal Revenue Code. The Act imposes responsibility for oversight of the school's fiscal and operational affairs on the school's Board of Trustees (the Board). Approximately half of all New York City charter schools contract with separate management companies to perform the schools' administrative and/or pedagogical functions. Services provided by management companies vary from school to school and responsibilities range from having full operational control of the school's daily functions to providing administrative services only.

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[1] The Charter School Act of 1998, which amended the New York State's Education Law, authorized several government bodies to be "chartering entities" or "authorizers" that can approve applications for charters and then oversee those charter schools: the NYS Board of Regents; the Board of Trustees of the State University of New York: and all local boards of education for their respective school districts (NYS Education Law, §2851(3)). Amendments to the Act in 2010 removed the authority of local boards of education to approve applications for new charters, but retained their authority to oversee the charter schools they had previously authorized. This change most directly affected the New York City and the Buffalo Board of Education, the only local school districts that had exercised the option to approve charter schools in their districts. In 2015, the Act was further amended to restrict the issuance of charters to the State Board of Regents upon applications directly to the Board of Regents or on recommendations of the SUNY Trustees (NYS Education Law, §2852 (9-a)). However, schools chartered by local boards of education or the SUNY Trustees continued to have the monitoring authority over existing charter schools they authorized.

[2] Charter schools receive per-pupil funding based on the number of students enrolled in the school. The per-pupil amount is calculated based on a rate determined by the New York State Education Department and is based on a formula used for all traditional public school districts. Different rates are paid for special needs children than for those who do not require special services.

[3] English Language Learners are students who speak a language other than English at home and score below proficient on English assessments.

Merrick is a SUNY-authorized charter school located at 136-25 218th Street in the Springfield Gardens section of Queens. The school moved to its current location during our audit scope period (July 1, 2012, through June 30, 2014). Merrick was granted its first provisional charter by the SUNY Institute, which acts on behalf of the SUNY Trustees (its authorizer).[4] Merrick was operating under its third charter renewal (July 11, 2011) during our scope period and served students in grades K-6. Its charter was renewed again on February 3, 2015, for another five-year term to serve grades K-5.[5]

The school's charter and its renewal agreements set forth numerous operational, organizational, academic, and regulatory requirements for the school. Among other things, the school's charter requires that Merrick maintain appropriate management and financial controls. This includes monitoring "budgeting, regulatory, financial, compliance, and academic performance." It is also responsible for hiring and overseeing the work of the school's principal and its teachers.

During FYs 2013 (July 1, 2012, through June 30, 2013) and 2014 (July 1, 2013, through June 30, 2014), Merrick had a Management Services Agreement with Victory, an educational services provider, to manage the school's operations. Under the Management Services Agreement, Victory had broad responsibility for the management and operation of the school under the agreement. In exchange, Merrick agreed to pay Victory $2,739 per enrolled student, which totaled approximately $1.3 million per year.

During school years 2012–2013 and 2013–2014, Merrick enrolled 499 and 500 students, respectively. The school reported total revenue of $7,080,658 for the former and $7,139,811 for the latter on its certified financial statements. Most of this revenue—$6,704,641 in FY 2013 and $6,878,345 in FY 2014—represents per-pupil payments received from DOE. The remainder came from federal, State, and local grants and other private sources. For that same period, Merrick's total expenses were $6,889,772 in FY 13 and $7,836,683 in FY 14, resulting in a surplus of $190,886 in FY 2013 and an operational deficit of $696,872 in FY 2014. In FY 2014, the school also incurred a non-recurring loss of $815,058, resulting in a total deficit of $1,511,930. The non-recurring losses reported by Merrick were related to the expenses it incurred as a result of the decision to move the school to its current location. In FY13, program expenses totaled $5,589,100 (81 percent) and management and general administrative expenses totaled $1,300,672 (19 percent). Similarly, in FY14, program expenses totaled $6,790,876 (87 percent) and management and general administrative expenses totaled $1,045,807 (13 percent). In FY 2013, Merrick classified the $600,000 it paid to Victory as management service fees as general administrative expenses. In FY 2014, it classified $58,394 (9 percent) out of the $624,000 it paid to Victory as management service fees.

Objectives

The objectives of this audit were to determine whether Merrick:

- exercised adequate oversight of the school's fiscal affairs;

[4] The Charter Schools Institute was created by the SUNY Trustees in 1999 to assist them in carrying out their responsibilities under the Act. The Institute is charged with evaluating initial applications for the opening of charter schools, ongoing monitoring of student academic performance and overall school operations, and for presenting findings and recommendations regarding the renewal of a school's charter to the SUNY Trustees.

[5] Upon initial approval, charter schools receive a provisional charter, under which they have the authority to operate for a period of five years. Prior to the end of the five-year period, the charter school has the right to apply to its authorizer for renewal of the provisional charter for another term of up to five years. There are no limits to the number of renewal periods a charter school may receive.

- maintained a system of internal controls sufficient to ensure that funds were appropriately expended, authorized, valid, and reasonable;
- accurately recorded and reported transactions; and
- adequately approved and disclosed in its financial statements potential conflicts of interest and related-party transactions.

Scope and Methodology Statement

We conducted this audit 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 audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered Fiscal Year 2013 (July 1, 2012, through June 30, 2013) and Fiscal Year 2014 (July 1, 2013, through June 30, 2014). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results with Merrick

The matters covered in this report were discussed with Merrick officials during and at the conclusion of this audit. A preliminary draft report was sent to Merrick and discussed at an exit conference held on April 22, 2016. On May 3, 2016, we submitted a draft report to Merrick with a request for comments. We received a written response from Merrick on May 17, 2016.

Merrick agreed with the audit's 17 recommendations and stated that the school "is committed to benefiting from [the audit's input] and is already in the process of bolstering its practices in response to the Comptroller's findings. … In that light, the School considers the audit an opportunity to further strengthen the organization." However, Merrick expressed its concerns about the accuracy of some of our findings based, in large part, on claims that the audit findings of inadequate documentation were misplaced because (1) outcomes were positive, and (2) a lack of documentation does not mean a lack of appropriate actions. For example, Merrick contends that "too often in the Draft report the Comptroller seems to presume that missing paperwork constitutes inaction or misdeeds." However, this argument reflects a misunderstanding of the audit findings. The audit report never states or implies that the lack of documentation is a definitive sign of inaction or that misdeeds occurred. Rather, in accordance with generally accepted government auditing standards, our audit conclusions are based on evidence. The lack of documentation maintained by Merrick precludes us from being reasonably assured that all purchases were properly authorized and that payments for goods or services were appropriate, valid or reasonable; that Merrick's Board adequately considered major decisions and thereby adhered to its fiduciary responsibilities; or that Merrick's property and equipment were being adequately safeguarded against misappropriation and theft. As a publically funded institution, Merrick is required to maintain adequate documentation of expenditures and operations to ensure transparency and accountability.

Merrick officials also draw attention to the report's cover page, mistakenly arguing that it is in error. Officials stated that "the Draft Report seems to be mislabeled. The title page and page 1 of the

Draft Report use the term ‘Management Audit.’ This is incorrect, given that the audit conducted was a financial one.” Merrick officials go on to request that the wording be changed. However, the term “Management Audit” merely refers to the group within the Audit Bureau that conducted the audit. The substance of the audit remains unchanged by that designation. Consequently, no change is warranted.

After carefully consideration of Merrick’s arguments, we find no basis to change the findings of this report. The full text of the Merrick response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Merrick's oversight of its fiscal affairs for the period reviewed was inadequate. Although the school has established policies and procedures designed to facilitate fiscal management and oversight, we found that these policies and procedures were not consistently followed. As a result, we found the deficiencies identified in this report, including the following:

- Merrick modified its Management Services Agreement with Victory without memorializing the modifications in writing, as is required by its contract with Victory. The current Board members and Victory management were unable to specifically identify the modifications made to the Management Services Agreement.
- Merrick also failed to seek approval of the changes to its Management Services Agreement from the SUNY Institute, as is required by its charter agreement.
- Merrick did not consistently use contracts or purchase orders that were required per the school's operating procedures for the procurement of goods or services. This included renovations done for over $300,000 at the school's new location. Although there were indications of some type of written agreement with the prime contractor, Merrick did not provide us with a copy of the agreement so we do not know what it covered or even if it was signed.
- Merrick did not consistently ensure that payments made to vendors were adequately supported and properly authorized, or that invoices were paid in a timely manner.
- Merrick lacked sufficient evidence that major decisions were adequately reviewed and voted on by the Board, including evidence of appropriate Board review and approval of Merrick's decisions to move to a new location, to expend significant sums for renovation work at the new location, and to modify its management service agreement with Victory.
- Merrick did not maintain a current inventory of fixed assets nor did it have evidence that a periodic physical inventory count of such assets was performed as required by its written operating procedures at the end of FYs 2013 and 2014.
- Despite New York State Education Law requirements that all school employees undergo criminal background checks, 23 of the 30 sampled employee files reviewed did not have evidence that clearances were obtained prior to the employment start date.[6] Of the 23 files, 14 contained evidence that clearances were obtained after the employees' start date, while two did not have any evidence that an OSPRA application for a criminal background check was ever completed and submitted to NYSED and seven had no evidence of clearances having been obtained at all. Although five of the seven employees are no longer employed at the school, they worked without a clearance from approximately six months to over 4.5 years. For the one employee who was still at the school, there was no evidence indicating that a clearance was obtained since her original hire date in August 2002.
- Merrick did not have the required financial disclosure forms for all of its trustees for FY 2013 and FY 2014.
- Merrick did not post its annual reports on the school's website, as required, and did not properly report its management service fees in its annual financial report for FY 2014.

[6] One of the 30 sampled employees was not required to have a background clearance.

These matters are discussed in greater detail below.

Insufficient Evidence of Required Documentary Support for Expenditures

Merrick failed to consistently follow fiscal and operational requirements designed to ensure adequate controls over its expenditures of public funds. As detailed below, notwithstanding procedures set forth in its charter and its own policies, Merrick expended funds without evidence of written contracts, written contract amendments and/or purchase orders, and adequate supporting documentation for payments.

Merrick Substantially Modified Its Contract With Victory Without Amending the Contract in Writing or Obtaining the Approval of SUNY

Merrick and Victory entered into a five-year *Charter School Renewal Management Agreement* effective on July 1, 2010. Pursuant to this contract, Merrick Academy agreed to pay Victory Partners an annual amount equal to the student enrollment multiplied by $2,739, or approximately $1.3 million (based on an enrollment of approximately 500 students during the 2012–2013 and 2013–2014 school years). However, we found that total payments to Victory in FYs 2013 and 2014 were $600,000 and $624,000, respectively. Although we were informed that both parties had agreed to significant revisions to the terms of the Management Services Agreement, Merrick and Victory never amended that agreement in writing. In addition, Merrick did not seek or obtain the required approval from the SUNY Institute for the changes. Thus, the Management Services Agreement was never properly modified and there is insufficient evidence that the payments made to Victory were necessary, appropriate, valid and reasonable.

According to the Management Services Agreement, Victory was supposed to provide services that included:

- Providing for the education of the students by designing educational programs and selecting and acquiring curriculum materials, equipment and supplies;
- Delivering professional development and teacher coaching services;
- Creating and implementing a student learning and achieving assessment system;
- Engaging in personnel recruitment activity, including the recruitment, evaluation, and assessment of teachers and non-teacher administrators;
- Evaluating principal and business manager (Director of Operations) candidates and making recommendations to the Board;
- Managing the school's administrative and financial operations, including its accounting and legal services, preparing budgets, establishing management controls and managing personnel and payroll.

In exchange, Merrick agreed to pay Victory approximately $1.3 million a year.

However, as noted above, Merrick only paid Victory a total of $600,000 in FY 2013 and $624,000 in FY 2014. We were told that these lesser payments were based on a verbal agreement between Merrick and Victory whereby Victory was to reduce its scope of services. We were further told that this verbal agreement was never memorialized in writing, notwithstanding the specific requirement in the Management Services Agreement that "[t]he parties may not amend, modify, supplement, or discharge this Agreement, except by written agreement of the parties that identifies itself as an amendment, modification, rescission, supplementation, termination or discharge of this Agreement."

In addition, the SUNY Institute's charter agreement specifically requires Merrick to seek approval from the SUNY Institute before any changes are made to its Management Service Agreement with Victory. This too was not done. In its *Renewal Recommendation Report—Merrick Academy-Queens Public Charter School* (Charter Renewal Report), issued on January 23, 2015, the SUNY Institute also notes that the school "did not appropriately seek an amendment to its charter from SUNY" with regard to its modification of the Management Services Agreement with Victory.

We were never provided with a list of agreed upon modifications to the Management Services Agreement or a statement as to the value of the reduced and remaining services to be provided. Rather, in separate meetings with the Board Chair and Victory officials, we were merely given general verbal descriptions of the services that were no longer provided, such as "payroll." Moreover, since itemized invoices from Victory to Merrick were not required or provided, we were not able to get any additional information about the scope of services for which Victory was paid.

During the course of our audit fieldwork that included a review of the school's payroll and personnel records, we were able to confirm that Victory no longer handled the school's payroll. We also learned that Victory no longer provides professional consulting services for teacher training and development as well. However, we were unable to ascertain the value placed by the Management Services Agreement on either of those services which would be a necessary part of establishing the reasonableness and validity of the payments made to Victory by Merrick.[7]

In the absence of both a written agreement that clearly sets forth Victory's obligations to Merrick and revised fee structure, and itemized invoices from Victory that clearly stated the services provided, Merrick was significantly hindered in its ability to ensure that payment was properly made for services rendered. Moreover, these deficiencies limited its ability to enforce contract terms in the event that services were not adequately performed and recoup any overpayments if necessary. As a result, there was an increased risk that Merrick could have paid Victory for services not provided. Further, it severely reduced the ability of oversight agencies and the taxpayers to see how public funds are being spent.

> ***Merrick Response***: "Merrick takes note of these concerns, but calls the Comptroller's attention to the obvious fact that, far from taking additional funds from the School, the vendor here took substantially less funds. In fact, Merrick paid the vendor about half of the fee originally set forth in the contract for substantially the same services. These reduced payments saved the School more than $3 million dollars over a five-year period."
>
> ***Auditor Comment***: Merrick is mistaken in its contention that our audit did not consider the reduction of fees paid to Victory. That fact is irrelevant to our audit findings, however. Rather, we found that Merrick's acknowledged lack of written documentation of what services were required under the revised contract increased the risk that Merrick paid for services that were not provided. When you combine this with the fact that Victory did not

[7] Merrick entered into a new management service agreement with Victory that went into effect on July 1, 2014 (FY 2015), subsequent to the scope of this audit. However, this agreement does not address the period during our audit that the school and Merrick had changed their contract terms but not formalized the change.

provide invoices to identify the services it in fact provided to Merrick, as we note in a subsequent section of the report, Merrick's risk of paying for services not provided is significantly increased.

Merrick Maintained Insufficient Evidence of Required Contracts, Purchase Orders or Work Orders

We selected all 54 vendors[8] during our scope period whose services required contracts, purchase orders or work orders and who received payments totaling $10,000 or more. These vendors received total payments of $2,363,287.51. We found that for 16 vendors who received a total of $907,198 (38 percent), there was no evidence of contracts, purchase orders or work orders. Of this group, the majority of payments—$722,011 to 11 vendors—were made in FY 2014.

Additionally, we found that two of the 16 vendors reportedly worked on the renovations at the school's new location. One of these two vendors, Everlast Solutions Corp. (Everlast) received $302,000 out of the $431,699 that appears to have been spent for renovations. Although there were indications in the records that a written agreement with Everlast existed, we were never provided with a copy of any such agreement or any work orders. In addition, Sceptre Mechanical Consultants, another sampled vendor for which no written agreement was provided, also appears to have performed renovation work at the school, and was paid $15,280. In the absence of formal written agreements, we are unable to verify that the goods or services were provided in accordance with the terms agreed upon or that the procurements were properly authorized.

Merrick's *Principal's Manual 3: Accounting & Finance–Policies, Procedures, and Controls* (policies and procedures manual) states that the school should contract for recurring provisions of goods or services (e.g., food service, maintenance, professional development services) or for services expected to last for more than one year (except those for general school operations, such as utilities, etc.). All other purchases should be accompanied by a purchase order. In addition, the policies and procedures manual also requires that "a signed work order must be completed for services performed, such as support technicians and contract works such as electricians."

In the absence of a contract, purchase order or work order, we have limited assurance that its purchases were properly authorized and that payments for goods or services were appropriate, valid or reasonable.

Failure to Consistently Comply With Procurement Policies and Procedures

Merrick does not ensure that its procurement policies and procedures were consistently followed. Our review found that Merrick does not consistently ensure that it supported its expenses adequately, that its purchases were appropriately authorized, and that its vendors were paid in a timely manner.

Payments Not Adequately Supported

As a standard fiscal control, Merrick's policies and procedures manual requires that payment packages include certain documents, such as the invoice or check request form, the reason for the payment, the approver's signature, and verification that the goods or services were received.

[8] Our review excluded vendors who received payments of a recurring nature, such as rent and utilities.

However, we found that 10 percent of our sample did not have the required supporting documentation. In the absence of adequate documentation to support these payments, we could not determine whether these funds were appropriately expended, authorized, valid or reasonable.

We selected 181 payment packages to review from the 511 payments totaling $4,598,885 made by Merrick during FYs 2013 and 2014. The sampled payments totaled $2,968,598.[9] Our review found that Merrick had adequate supporting documentation for 162 (90 percent) of the transactions. The 19 sampled payments which did not have sufficient documentation accounted for $644,232 (22 percent) of the funds expended. These packages had no contracts or purchase orders, no evidence that the purchases were authorized, no invoices, and no verification that the goods or services were received. After multiple requests to Merrick regarding the missing documentation, Merrick was able to provide invoices only for nine of the 19 transactions, but those packages still were missing other required documentation such as approvals and proof that the goods and services were satisfactorily received.

Of the remaining 10 payments that were missing invoices and other required documentation, three totaling $528,272 were made to Victory. This is of particular concern since as discussed above, the absence of a written contract modification that sets forth the work Victory was required to perform, and the absence of the required payment records to support these $528,272 in payments, means that there is no evidence of what services Victory was paid for. Our concern is magnified by the fact that Victory authorized and executed its own payments as is permitted under the Management Services Agreement with Merrick. Thus, there was a lack of independent review. In addition to the payments made to Victory, seven payments, totaling $70,982, were for utilities and health insurance. Although payments for utilities and health insurance generally do not require a multi-level approval process, some type of documentation (e.g., an invoice) should have been retained as evidence that these were school-related expenses only and that they did not include payments for employees' personal expenses.

> ***Merrick Response***: "The School contends that the Comptroller is overstating this matter to some degree. For example, the Comptroller was initially unable to locate certain check requests, but members of the Victory team did provide the requested documents to the Comptroller. The Comptroller did not acknowledge receipt of these documents, and those documents remain classified as 'missing' by the Comptroller. Furthermore, the Comptroller listed as 'missing' at least three check requests that did not actually require check requests, as there was a separate contract (which was approved by the New York State Education Department) that did not entail check requests."

> ***Auditor Comment***: Merrick's response misstates the audit findings; we do not cite the payment packages for missing "check requests." As we clearly state in the audit report above, for nine of the 19 transactions cited, although Merrick eventually provided the invoices, the packages were still missing other required documentation such as approvals and proof that the goods and services were satisfactorily received. The remaining 10 payments were missing invoices in addition to the other required documentation.

Improper Payment Authorization

According to Merrick's policies and procedures, the school's "business manager must obtain authorizing signatures" based on the purchase amount before a check request can be issued for processing. Once the check request is authorized, Victory issues the payment. However, we

[9] Our sample includes payments made to Victory.

found that this policy was not followed consistently. Our review of a sample of 119 non-recurring payments totaling $1,437,541 in FYs 2013 and 2014 found that 13 payments worth $311,338 (22 percent) had not been authorized by persons at the appropriate approval level. Failure to ensure that all payments are authorized at the proper level increases the risk that funds may be disbursed inappropriately.

Late Payments to Vendors

Merrick's policies and procedures manual states the school should: "Pay vendors in a timely manner for goods that have been appropriately approved for purchase and for goods that are actually received." For FYs 2013 and 2014, we reviewed 162 payment packages to determine whether payments to vendors took place timely. We could not establish a reasonable due date for 14 payments because the documentation did not specify either the invoice date or the payment due date. Of the remaining 148 payments, which totaled $2,186,991, we found that all or part of 69 payments were not paid timely, representing $753,472 (34 percent) of the sample payments.[10] The payments were late anywhere from 1 to 231 days, with the breakdown as follows:

- 33 invoices, totaling $245,077, were paid 1-30 days late;
- 26 invoices, totaling $339,892, were paid 31-60 days late;
- 6 invoices, totaling $107,150, were paid 61-90 days late; and
- 8 invoices, totaling $61,353, were paid more than 90 days late.[11]

Merrick paid $343 in late payment fees for the sample payments we reviewed.

By failing to pay bills timely, Merrick increases its risk of damaging its creditworthiness, which may force the school to pay above-market prices for goods and services. Further, the school may accrue additional lateness charges that could be avoided.

Recommendations

1. Merrick should ensure any modifications to its Management Services Agreement are documented in a formal writing.

   Merrick Response: "Merrick concurs with this recommendation and fully intends to document future modifications to its Management Services Agreement with Victory Schools, Inc. ("Victory") in formal writing. The most recent such modification, of October 2014, was so documented."

2. Merrick should ensure that it obtains approval for changes to its Management Services Agreement from the SUNY Institute.

   Merrick Response: "Merrick concurs with this recommendation and fully intends to obtain approval for future changes to its Management Services Agreement from the SUNY Institute."

[10] One payment can represent multiple invoices with different due dates, some of which may have been paid on time or late.
[11] Some payments made to vendors included payments for multiple invoices that were due. As a result, the number of invoices found to be late will not equal the number of payments made.

3. Merrick should ensure that a contract, purchase order or work order has been approved in connection with the procurement of all goods and services.

   Merrick Response: "Merrick concurs with this recommendation and has made considerable improvements with respect to financial documentation since the scope period. To wit, a purchase order system was implemented in fiscal year 2015 and remains in place. However, certain vendors do not accept purchase orders. In these rare cases, the expense is known prior to the expenditure, the expense is approved by the appropriate signatory, a check request is processed, and the documentation thereof is retained by the School."

4. Merrick should retain adequate documentation to support purchases and payments made to its vendors.

   Merrick Response: "Merrick concurs with this recommendation and takes records retention very seriously, particularly with respect to financial documentation. As described above, documentation practices have already improved considerably since the scope period. To further bolster such practices, as of May 2016 the Board of Trustees (the "Board") is in advanced discussions with Victory to begin using an external service, Bill.com, to streamline its financial operations and ensure that financial records are securely retained. The Board further plans to supplement the use of Bill.com with a robust document retention policy, which will apply both to the entire staff of the School and to our service providers at Victory. The Board expects both the services provided through Bill.com and the document retention policy to be fully implemented by the end of fiscal year 2016. The Board thanks the Comptroller for identifying weaknesses in Merrick's past records production and retention practices."

5. Merrick should ensure that the appropriate authorizers approve all purchases and payments.

   Merrick Response: "Merrick concurs with this recommendation and has successfully implemented it since the scope period. Proper approvals now take place in alignment with Merrick's fiscal procedures manual."

6. Merrick should ensure that it pays its vendors in a timely manner.

   Merrick Response: "Merrick concurs with this recommendation and has successfully implemented it since the scope period. Vendor payments are processed at least weekly to ensure timely payment. The streamlining of financial operations enabled by Bill.com promises to further ensure that payments are timely made."

Insufficient Evidence of Board Review and Approval of Major Decisions

During the period covered by this audit, Merrick relocated the school and in the process, as discussed below, it incurred $4,570,326 in added expenses. In addition, during the audit scope period, as discussed above, Merrick modified the terms of its Management Services Agreement with Victory without memorializing the new terms in writing or identifying clearly how the services that had been previously provided by Victory would thereafter be met and any fees associated with the changes. However, our review of the minutes for Board meetings held during this period found little evidence that the Board had detailed discussions regarding these decisions and no evidence that the Board held votes prior to these actions being taken. In the absence of other corroborating evidence that would confirm that it adequately considered the issues and voted to approve these matters, we have no assurances that Merrick's Board adequately considered these decisions and thereby adhered to its fiduciary responsibilities.

According to Merrick's by-laws, the Board's duties include managing and controlling the business affairs of the school; ensuring its academic, financial and operational success; setting policy and taking "ultimate responsibility for the management of the affairs, property and business" of the school. The by-laws also require that minutes be kept "in written form, correct and complete…of the meetings of the Board of Trustees, the Executive Committee and other standing committees." The minutes, however, reflect that the Board did not adequately carryout its oversight responsibilities.

Insufficient Evidence of Advance Board Review and Final Approval to Relocate to a New Location

As of January 2013, Merrick's monthly rent for school space was $23,714. These payments were for two leases: one for a two-story commercial space at 207-01 Jamaica Avenue, Queens Village, to house the school, which had been rented by Merrick since 2001, and another for space in an adjacent premise that had been rented since 2006. During the audit's scope period, Merrick was leasing both properties pursuant to renewal provisions and both leases were set to expire in 2015. However, Merrick could have extended the leases to July 31, 2020 had it elected to exercise the lease renewal provision.

The Board Chair told us that the two leased spaces were not adequate and so in January 2013, Merrick entered into a 10-year lease with the Roman Catholic Church of St. Mary Magdalene for a property located at 136-25 218th Street in Springfield Gardens, Queens. According to Victory, the old school used to be a former shooting range and was not designed to house a school. The new premises were built as a school and used by the Catholic Church for that purpose.

Pursuant to the lease for the new space, monthly rent payments started at $61,530, with yearly increases of 2.5 percent. In the final year of the lease (2022), monthly rental payments would be $76,842. Two five-year lease renewal options with 2.5 percent yearly rental increases are included in the lease. If both options are exercised, the lease will run until December 31, 2032, at which time the monthly lease payments will be $98,365.

Although Merrick's rental payments for the new property commenced in January 2013, it did not move in until January 2014 because the building needed renovations totaling $431,699.[12] Throughout 2013, the school paid rent for two properties. In order to terminate the leases for the previous site, Merrick Academy paid $534,646 to the landlord as part of the lease surrender agreement.

As a result of its decision to move, Merrick is slated to incur $4,570,326 in additional expenses during the period covered under its prior lease agreements, as shown in Table I below.[13]

[12] As discussed above, we found inadequate documentation to support most of the payments relating to these renovations.

[13] Our calculation is based on the assumption that Merrick Academy would remain at its new location until July 31, 2020, which is the date its leases for the previous location would have expired had the school exercised its 5-year lease extension option.

Table I

<u>Additional Costs Incurred by Merrick as a Result of its Relocation</u>

Expense Type		Amount
Renovation Expenses (new premises)		$431,699
Lease Surrender Costs (old lease)		$534,646
Moving Expenses		$81,681
• Total rental payments through 2020 under new lease	$5,838,580	
• Less: Total rental payments through 2020 under old lease	$2,316,280	
Additional Rental Expenses to be Incurred		$3,522,300
Total Additional Costs Incurred as a Result of Relocation		**$4,570,326**

* The new school premises remained unoccupied from January 2013, when it signed the new lease, until January 2014. Merrick continued to pay rent on both premises during that period.

This relocation had a significant impact on Merrick's finances and, therefore, the entire Board should have considered and approved the decision to move prior to signing the new lease. However, Board minutes for the period prior to and including January 2013 (when the lease for the new location was signed) showed little evidence that the relocation's financial implications had been discussed and no evidence that the trustees voted to approve the relocation.

Instead, our review found evidence of only a few cursory discussions prior to signing the lease for the new premises. The minutes did not reference any cost-benefit analysis that had been done on the move, considerations of alternate proposals or options, or votes taken by the Board on any related proposals.

Subsequent to the signing of the lease, the Board minutes reference a number of discussions regarding concerns about the relocation. For example, the April 16, 2013 minutes state that the move will not take place in May 2013 as planned because of construction issues. Those minutes also contain the cost estimate quotes for renovations from contractors—ranging from $193,000 to $418,000—for the construction work that would be required to meet the building code. The minutes for a November 19, 2013, Board meeting record a discussion about the continued delays with the move and about an offer by the City to take over the old leases. The minutes also noted that "ball-park figures" were provided by the Board Chair in response to inquiries by the Board regarding the "price/cost" of the City buying out the old leases. The actual figures were not recorded.

The record does not provide a basis for us to question the decision to move to the new location. However, the absence of evidence that documents a thorough review by the Board of the costs associated with the move and a careful consideration of possible alternative courses of action is of concern. The Board is the steward of public funds and under a duty to manage the business affairs of the school to ensure its financial and operational success. It is further under a duty to memorialize its work in the publicly available minutes. Its failure to provide evidence that it carried out its fiduciary duties raises serious concerns of whether it did in fact properly carry out its duties here.

Our findings are consistent with conclusions reached by the SUNY Institute when it reviewed Merrick's operations in connection with considering Merrick's application to renew its charter in

2015. In its Charter Renewal Report, the SUNY Institute cited the Board for its failure to keep appropriate minutes and noted, "the Board admitted that it had no record of detailed meeting minutes demonstrating discussions, resolutions, and/or votes on pertinent governance matters including records of votes to approve the new facility lease." In addition, the "Institute found that the Board Chair entered into a facility lease without a full vetting by the Board of Trustees or a fair market analysis of the cost" and that this "reflects less than adequate internal controls and governance."

> ***Merrick Response***: "In interviews with the auditors, most recently on a call with the Comptroller's office last week, Merrick representatives have made it clear that this issue was indeed addressed at meetings of the Board. Individuals who, at the time the facilities move was being considered, were community members of the School and who are now members of the Board offered to describe those meetings and the consideration given by the Board to the facilities issues. The Comptroller has declined to speak with these Board members about this matter or to consider the input of these individuals who have personal knowledge of the Board's actions.
>
> Despite statements from the School's Board Chair (the sole remaining Board member from the audit period) describing the Board's review and consideration of all aspects of the move, including its financial impact on the School, the Comptroller focuses solely on gaps in the record of Board minutes and concludes that such discussions did not take place. Merrick believes this portion of the Draft Report misrepresents the circumstances and to once again equate an incomplete documentary record with inaction or misdeeds.
>
> In the Draft report, the Comptroller also appears to question the benefits and appropriateness of the School's decision to move to its new facility."
>
> ***Auditor Comment***: As we informed Merrick officials, we had previously met with the two individuals to whom they refer in their response. However, both stated that they were not on the Board during that period and one expressly stated that she did not recall any conversations about the move to the new location. Subsequent to our meeting with these two individuals, we received an email from Merrick's attorney offering that we re-interview them because they "conveyed that they were present at the Board meeting at which this was voted on and approved by the Board." However, as we state above, the Board minutes do not record such a vote taking place. According to Merrick's Board Chair, the vote and approval took place during an Executive Session of the Board, which is not open to the public. This is in contrast with a previous statement by Merrick's attorney that no votes were ever taken during Executive Sessions and, as a result, no minutes were ever recorded of those sessions. These contradictory statements lead us to question the accuracy of all statements provided to us. If a vote did in fact take place during an Executive Session, there is no record that the two individuals in question, who were not Board Trustees at the time, were present at any of the Executive Sessions. Consequently, any statements they would make relating to any votes taken would be of questionable reliability.
>
> Further, Merrick misstates the audit findings in several instances. Among other things, we do not state that discussions did not take place at all. Rather, we state that we found evidence of only a few cursory discussions; the minutes do not record any substantive discussions or votes being taken on the move. We also never questioned the benefits or appropriateness of Merrick's decision to move to a new facility. Rather, we state that the absence of evidence that the Board thoroughly reviewed the merits of such a move is of

concern. Finally, Merrick fails to note that it was cited by the SUNY Institute for the same issue. Consequently, we find no basis to modify this finding.

Insufficient Evidence of Board Approval to Modify the Service Agreement with Victory Partners

There is similarly insufficient evidence that the Board reviewed or voted on the changes to Merrick's Victory Partners' Management Services Agreement. According to Victory officials and the Merrick Board Chair, during our scope period Victory and Merrick agreed to amend the terms of their Management Services Agreement to reduce services provided and fees paid for them. However, the Board's minutes did not document discussions by the trustees assessing specific proposals to modify the agreement's terms or any trustee votes to approve those changes.

While the Board's minutes contain some discussions regarding dissatisfaction with Victory and a possible reduction in services, there is no evidence of Board approval of revisions or even of what the revisions would be. Specifically, the minutes for a December 2012 meeting reflect that certain trustees complained about Victory's billing and accounting practices, and questions were raised regarding possible "double billing." Significantly, due to the lack of a written agreement or detailed invoices that reflected the services billed by Victory, neither we nor the Board were able to determine this claim's validity. The minutes noted, "Those in attendance could not understand how a huge company could not do itemized billing." The minutes noted that the Board Chair favored choosing two other service providers in order to "diminish what is needed from Victory."

The minutes for an April 2013 Board meeting include further discussions regarding dissatisfaction with Victory's services. For example, the minutes include a statement that the Board Chair "will cut and paste what he feels is appropriate to go forward in terms of services from Victory and send out to everyone and have them vote in terms of yea or nay what services we should use from Victory." However, there is no indication in the minutes for this meeting or subsequent ones that the Chair ever did prepare the description of specific services from Victory and disseminate it to other members of the Board. In addition, the Director of Curriculum noted teacher dissatisfaction with respect to Victory's teacher development program.

The minutes record some frustration regarding the quality of service Victory provided. However, they do not document any discussions on specific proposed changes to the terms of the agreement or any votes taken to approve those changes. Therefore, we could not determine the extent of the Board's consideration of the modifications because Merrick could not produce evidence that the Board discussed particular line-item modifications or agreed to them.

Recommendations

7. Merrick should ensure that the Board of Trustees reviews and considers all significant matters relating to the financial and operational practices of the school, and that the Board's minutes adequately record the applicable discussions.

   Merrick Response: "Merrick concurs with this recommendation. The School takes Board governance very seriously, has substantially improved governance, and is working diligently to make further improvements. Merrick currently has a capable Board and benefits from outside consulting services to further strengthen its financial and operational practices."

8. Merrick should ensure that the Board of Trustees vote on all significant matters pertaining to the financial and operational practices of the school and that the Board's minutes adequately record those votes.

   Merrick Response: "Merrick concurs with this recommendation and takes Board governance very seriously. Merrick currently has a capable Board and benefits from outside consulting services to further strengthen its financial and operational practices. Under a new secretary, who joined the Board after the audit period, the Board's minutes adequately record Board votes."

Equipment Inventory Procedures Not Followed

We found that Merrick had not followed its own written inventory procedures requiring that the school maintain a current inventory of fixed assets. Merrick officials did not provide us with a comprehensive inventory list of assets in their possession at the school or with evidence that periodic physical counts had been conducted of all fixed assets, equipment and supplies at the school. In the absence of a comprehensive inventory list or a tracking system, we requested a breakdown of the assets included in the '*Property and Equipment'* asset line on the Financial Statement for FY 2015. However, we did not receive such a breakdown.

According to the school's policies and procedures manual, the school "must maintain a current inventory annually of all fixed assets [defined as durable goods costing more $500] and curriculum materials." In addition, all fixed assets purchased "must first be tagged or identified in accounting records by a control number. All numbers must be accounted for as they identify the assets as belonging to the school." The manual additionally states, "As the school acquires and replaces items, the inventory must be updated. A physical count of all items must be made annually to confirm the inventory is consistent with the school's property."

Merrick's Financial Statements for FYs 2013 and 2014 reported $2.7 million and $1.3 million worth of property and equipment for each year (excluding depreciation). Of those amounts, $640,046 and $664,708 of computer and office equipment (excluding depreciation) were reported, respectively.

As part of its inventory control process, Merrick's teachers are supposed to get a list at the start of each school year of all fixed assets and curriculum materials distributed to the classroom. Teachers must sign off on the list, indicating that they take responsibility for those items. At the end of the school year, teachers are supposed to inventory the quantity and the condition of actual items in their classrooms by entering the information in an *End of Year Classroom/Office Inventory* form and compare it to the list completed at the beginning of the year. The policies and procedures manual states that the purpose of the classroom inventory control process is to plan for the replacement of classroom items and to "address any unusual levels of material loss."

Merrick officials could not provide evidence that these lists were completed during our scope period. They were able to provide us with the completed forms for the 2014-2015 school year only. According to the school's Director of Operations, the school began using these forms after she assumed her position in 2014.

Merrick did provide a list of individuals who were assigned laptops. However, the list did not show the laptop recipients' signatures acknowledging receipt of these items or the dates that the laptops were assigned or returned. The list was inadequate evidence of a sound inventory control process for the laptops.

Without an effective inventory tracking system, there is limited assurance that Merrick's property and equipment are adequately safeguarded against misappropriation and theft. For the current school year and moving forward, the Director of Operations informed us that this was something she was currently in the process of establishing at the school.

Recommendations

9. Merrick should adhere to its inventory policy requiring the tracking of its assets and the maintenance of a current inventory list.

   Merrick Response: "Merrick concurs with this recommendation and notes that the Comptroller's Report has demonstrated that inventory practices are much improved, to wit that the annual End of Year Classroom/Office Inventory form system used by staff members has been in place since the scope period. To further bolster Merrick's asset inventory practices, the School is currently working with Victory to potentially implement a barcode system for all fixed assets costing more than $500."

10. Merrick should ensure that a physical inventory count and validation of its assets is conducted periodically.

    Merrick Response: "Merrick concurs with this recommendation. The School plans to commence random physical inventory checks on a quarterly basis beginning in the 2017 fiscal year. Documentation of the same will be maintained by the Director of Operations and submitted to Victory."

Inadequate Evidence of Required Background Checks

For the 30 sampled employees,[14] one employee did not require a background clearance because the employee performed maintenance work after school hours when no children were on the premises. Of the remaining 29 employees, Merrick did not have evidence that background checks were performed prior to the employment start date for 23 (79 percent) of them. Failure to perform such checks, which include fingerprinting employees to check for criminal histories, increases the risk that inappropriate individuals could have contact with the school children.

According to New York State Education Law §2854(3)(a-1) requirements and SUNY Institute's Guidelines for Conducting Employee Criminal Background Checks, charter schools should "ensure that all school personnel have been cleared for employment through the appropriate fingerprint process or update of a prior clearance [from the Office of School Personnel Review and Accountability (OSPRA)], including janitors, security personnel and cafeteria workers who are present when children are in the school building." In addition, the guidelines accept "conditional or, in limited circumstances, emergency conditional appointments for employees." This conditional appointment must be approved by OSPRA and the school's Board "prior to the employee's first day of employment in a school with children present." According to the guidelines, "These emergency appointments are only valid for 20 business days, and must be renewed on a timely basis until the employee receives appropriate clearance or denial from OSPRA. The guidelines also specify that the school should maintain a copy of each employee's clearance information on file. Merrick's Employee Policy and Procedures Manual further requires

[14] We took a sample of 30 out of Merrick's approximately 129 employees working during the audit scope period and reviewed their files.

the school to implement background check procedures, including fingerprinting, of all school employees and prospective employees.

Of the 29 employees for whom clearances were required, we found that only six (21%) had evidence that the school received their clearances prior to their employment start date. Of the remaining 23 employees' files, seven contained an application to NYSED indicating that an attempt was made to obtain clearances; however, there was no evidence that clearances were ever obtained. For 14, there was evidence in the files that clearances had been obtained; however, those clearances were not obtained prior to their employment start date and there was no evidence that Merrick obtained clearance for emergency conditional appointments. For the remaining two, there was no evidence that an OSPRA application was completed and submitted to NYSED or that clearances were ever obtained.

With regard to the seven employees whose files had no evidence that background clearances had ever been obtained, Merrick officials told us that six out of the seven are no longer employed by the school. Five of the six employees no longer at the school worked without a clearance from approximately six months to over 4.5 years. (The end date for the sixth employee no longer at the school was not in her personnel file.) According to the same officials, the remaining employee had documentation indicating that fingerprints had been submitted. However, Merrick officials did not provide us with any evidence that it received an actual clearance from the State for that employee. Furthermore, that employee had previously worked at the school from August 2002 until June 2010, before being rehired in September 2010, and her personnel file contained no evidence that she was cleared by OSPRA during her employment.

Failure to perform the required background checks increases the risk that persons who might be deemed ineligible to work at the school are nevertheless allowed to do so, creating a potentially unsafe environment for students.

> ***Merrick Response***: "Merrick does believe, however, that this is an area of inquiry that falls outside the scope of the Comptroller's audit. As its title indicates, this is an "Audit Report on the Oversight of the Financial Operations" of the School. It is based on the objectives listed on pages 5 and 6, all of which are financial in nature. In contrast, criminal background checks, as described in the Draft Report, relate to a risk that "persons who might be deemed ineligible to work at the school are nevertheless allowed to do so…" No link between this metric and financial concern is offered by the Comptroller."
>
> ***Auditor Comment***: We disagree with Merrick's position. One of the objectives of this audit was to determine whether Merrick maintained a system of internal controls sufficient to ensure that funds were appropriately expended and valid. As part of our efforts to ensure that personnel funds were expended appropriately, we assessed whether persons hired were appropriately cleared in accordance with employee background-check requirements.

Recommendations

11. Merrick should ensure that background checks are immediately submitted for any current employee whose files lack evidence that a criminal background check was attempted.

Merrick Response: "Merrick concurs with this recommendation and has successfully implemented it since the scope period. Every employee currently on staff has had criminal background checks completed and documentation thereof included in his/her personnel files, and Merrick intends to fully comply with this practice going forward."

12. Merrick should follow up with OSPRA to determine the status of the one employee identified in this report for whom a clearance was requested but never received.

    Merrick Response: "Merrick will implement this recommendation pending the Comptroller's notifying the Director of Operations of the identity of the relevant employee."

    Auditor Comment: The identity of the employee had been provided to Merrick numerous times during the course of this audit. We urge Merrick to implement this recommendation.

13. Merrick should ensure that it obtains required criminal background clearances for employees before allowing them to work at the school. If circumstances exist such that a person must be hired before a clearance is obtained, Merrick should obtain a conditional clearance for that person prior to the employee's start date.

    Merrick Response: "Merrick concurs with this recommendation and has successfully implemented it since the scope period. Every employee currently on staff has had criminal background checks completed and documentation thereof included in his/her personnel files, and Merrick intends to fully comply with this practice going forward."

14. Merrick should ensure that all evidence of criminal background inquiries and clearances are maintained in employees' personnel files.

    Merrick Response: "Merrick concurs with this recommendation and has successfully implemented it since the scope period. Every employee currently on staff has had criminal background checks completed and documentation thereof included in his/her personnel files, and Merrick intends to fully comply with this practice going forward."

Lack of Evidence that Financial Disclosure Reports Were Submitted

The New York State 2013-2014 Annual Report Guidelines for New York State Charter Schools (updated June 2014) requires that the Board of Trustees of all charter schools complete the Disclosure of Financial Interest Form for each trustee who served on the school's board during the school year. According to Section 2.10 (g) of the Charter Agreement, "the school board shall require that each school trustee who has served on the school board during a school year shall file annually a disclosure report with [the SUNY Institute]." The SUNY Institute allows for electronic submission of this form, which is an attestation by the trustee that the person or an immediate family member was not engaged in a transaction with the charter school or was associated with a party doing business with the school during the time the trustee served on the board.

Based on our review, we found that only two of the six Board members—one trustee and the Board Chair—submitted disclosures in FY 2013, while four Board members submitted a form in FY 2014. However, when we directly contacted the SUNY Institute and NYSED, they provided us with copies of the financial disclosure forms submitted by all the Board members for FY 2014, with the one exception being the Board Chair.

> ***Merrick Response***: "… the Comptroller asserts that it was unable to obtain from the School a complete set of trustee financial disclosure reports that the School was required to provide to SUNY under state rules. The Comptroller then offers a recommendation that 'Merrick trustees should adhere to the charter agreement requirement that they complete and submit financial disclosure forms annually' despite the fact that it also notes that 'when we directly contacted the SUNY Institute, they provided us with copies of the financial disclosure forms submitted by all the Board members' except one. Here again, the Draft Report identifies a gap in the School's records and appears to conclude that this presumptively indicates inaction or misdeeds. In instances such as this, data within the report shows such presumptions to be inflated and inaccurate.
>
> ***Auditor Comment***: Merrick again misstates the audit findings. Merrick's quote of the report omits the key phrase "for FY 2014" in an apparent attempt to give the impression that all of the forms (except one) for both years were provided. In fact, as we state in the report, out of the 11 required disclosure filings for both years, five were not submitted.

Recommendation

15. Merrick trustees should adhere to the charter agreement requirement that they complete and submit financial disclosure forms annually.

    Merrick Response: "Merrick concurs with this recommendation and its Board intends to strictly enforce this requirement going forward."

Other Matters

Annual Reports Not Posted on School's Website

According to the Act of 1998, "Each charter school shall submit to the charter entity and to the board of regents an annual report. Such report shall be issued no later than the first day of August of each year for the preceding school year and shall be made publicly available by such date and shall be posted on the charter school's website."

Our review of Merrick Academy School's website determined that the annual reports were not posted as required. These reports contain various types of information about the academic and fiscal condition of the school, including its progress towards meeting State and other goals, its graduation rates and dropout rates. The purpose of posting such information is to provide stakeholders (i.e., parents, SUNY and the community as a whole) full transparency regarding the governance and operation of the school. In addition, posting such information on its website can facilitate a more constructive dialogue between the school and the stakeholders on how the school can better achieve its goals.

Improper Classification of Expenses

In its financial statement for FY 2014, Merrick improperly classified a portion of the management service fees it paid to Victory as Support Services (administrative). Out of the $624,000 that Merrick reported as management fees, it allocated $58,394 as administrative.

According to the NYSED 2013-2014 Annual Report Guidelines for New York State Charter Schools, all charter schools must make public the classification of their expenditures. Each school must complete and submit the Schedule of Functional Expenses, which covers the portion of its expenses that are classified as Regular Education, Special Education, Other Program services, Fundraising & Special Events, and Management & General expenses. The school is supposed to include this breakdown in its financial statement.

In its FYs 2012 and 2013 financial statements, we found that Merrick appropriately classified the full amount of the fees it paid to Victory under its management service agreement as Management and General expenditures. However, in Merrick's FY 2014 financial statement the school changed its prior practice and classified a portion of those fees to educational support services rather than classifying the entire portion as Management and General expenditures. According to the 2013-2014 annual report guidelines:

> Administration and management of the charter school includes the activities and personnel of the offices of the chief school officers, the treasurer, the finance or business offices, the purchasing unit, the employee personnel offices, the records management offices, or a public information and services office. It also includes those administrative and management services provided by other organizations or corporations on behalf of the charter school for which the charter school pays a fee or other compensation.

A Victory official informed us that the reason it classified part of the service fee as Regular and Special Education was because Victory "couldn't just lump the entire service fee into Administration, when [it] doesn't truly represent the service agreement or the work being done. It would skew the ratios and not be indicative of the operations of the school." However, this explanation fails to provide sufficient justification for classifying any portion of its management service fees as educational and program services, especially in light of the fact that its service agreement was significantly revised and not memorialized in writing.

Moreover, the guidelines appear clear and to leave little room for interpretation. We note that for the two previous years, the school correctly reported the management fees in its entirety as Management & General expenditures. By reporting a portion of its management fees as educational and program support expense, it gives the incorrect impression that that portion was used for educational/pedagogical purposes, when in fact it was an administrative cost specifically used for supporting the administrative operations of Merrick.

Recommendations

16. Merrick should post its annual reports on its website as required by the Charter School Act.

    Merrick Response: "Merrick concurs with this recommendation and has come into compliance. To wit, the most recent annual reports, from 2014-15 and 2013-14, have been posted to the School's website. Merrick will continue to post annual reports as they become available."

17. Merrick should adhere to charter school guidelines requiring management service fees to be fully attributed to administrative support services.

    Merrick Response: "Merrick concurs with this recommendation and will enforce its compliance going forward."

DETAILED SCOPE AND METHODOLOGY

We conducted this audit 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 audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope period was Fiscal Years 2013 and 2014 (July 1, 2012, to June 30, 2014).

To achieve our audit objectives and gain an understanding of the regulations governing Merrick Academy's fiscal operations, we reviewed the New York State Education Law (the Charter Schools Act of 1998); the school's charter renewal agreements with the SUNY Trustees; Victory Education Partners executed Charter School Services Agreement; the school by-laws; Board minutes; Federal Tax Forms 990; certified financial statements; the Merrick Academy Principal's Manual 3: Accounting & Finance Policies, Procedures, and Controls; the Employee Policy and Procedures Manual; the Code of Ethics and Conflicts of Interest policy; SUNY Charter Schools Institute's Guidelines for Conducting Employee Criminal Background Checks; and 2013-2014 Annual Report Guidelines for New York State Charter Schools.

To gain an understanding of the school's financial practices and operations, we interviewed the school's Board Chairman and three trustees currently serving on the Board, the Principal, the Director of Operations (Business Manager), the Operations Manager in charge of Human Resources, and the Student Services Coordinator. From Victory, we met with its Chief Executive Officer, Controller, Regional Director, and payroll team. We also conducted a conference call with representatives of the SUNY Institute.

To gain an understanding of the lease payments and calculate the costs the school incurred as a result of its decision to relocate, we reviewed all the lease agreements Merrick Academy had with the Roman Catholic Church of St. Mary Magdalene, 208-01 Jamaica Avenue Realty, Inc., and KC & Sons Realty Corporation.

To determine the reliability and completeness of Merrick's financial records, we reconciled the schools' general ledger and trail balances to the audited financial statements for both fiscal years to identify differences. In addition, we traced bank statements to the cash receipt and disbursement transactions reported in the school's books and records to see if they matched.

To ascertain whether payments recorded in its books were accurate, appropriate and timely, and whether those payments were adequately supported, we judgmentally selected a sample of 181 payments made during the two years that totaled $2,968,598: and stratified the sample into three distinctive groups: 75 payments to vendors, each of which was over $35,000; 84 payments between $5,000 and $35,000; and 22 payments that were $5,000 or below. We then retrieved the payment packages associated with each of those payments to determine whether there was sufficient evidence supporting each payment transaction, such as purchase orders, contracts, invoices, check requests, delivery receipts, statements on the purpose or need for the purchases, and the appropriate authorizations. We then reviewed the documents to determine whether the payments adhered to the school's procurement and accounting policies and procedures relating to procurements and disbursements, recordkeeping and contract requirements, and transaction authorizations.

To determine whether the payments made to the school's vendors were paid on time, we conducted a timeliness test of invoice payments that had a clear indication of a due date on the invoice, purchase order, or contract. For this test, we excluded 19 payments which did not have documentation and another 14 payments where a due date was not available, leaving us with148 payments worth $2,186,991. For each transaction we compared the due date to the date the payment was made to calculate the number of days the invoice was paid late. Since some payments covered multiple invoices that were due or past due, we calculated timeliness for each invoice based on its due date.

To determine whether the school adhered to its procurement policy requiring that a purchase order (or contract, depending on certain criteria) be used for all purchases, we selected 54 vendors who received payments of $10,000 or more in each of the two fiscal years covered by the audit scope. (The total payments made to the 54 sampled vendors during the two-year period was $2,363,287.) We then requested copies of the purchase orders, contracts, or written agreements associated with the vendors who received the payments. We also reviewed any correspondence that indicated that there was a mutual agreement for the scope of services and/or goods and an agreed-upon price.

To determine whether Merrick maintained adequate controls and safeguards over its assets, particularly electronic, video, office, and classroom equipment and furniture, we requested the inventory list for fixed assets for FYs 2013 and 2014. In the absence of such a list, we reviewed supplemental information and interviewed officials to ascertain the school's procedures and practices for tracking and reconciling its assets inventory during FY 2015.

To determine whether the appropriate background checks and fingerprinting clearances were performed, we reviewed the personnel folders for 30 randomly selected employees. We checked to see that a clearance form was submitted for each sampled employee who was required to have a clearance and that clearance was received by the school prior to the commencement of employment. In addition, for 21 of the 30 sampled employees who were instructors, we determined whether the appropriate teacher certifications were in their personnel folders and whether the school was adequately tracking its teacher certifications to ensure that it was meeting the SUNY charter agreement requirement that there be no more than five uncertified instructors.

To determine whether Merrick trustees submitted the required financial disclosure forms for FYs 2013 and 2014 to SUNY, we reviewed SUNY Institute's and NYSED's website where such forms are posted. We also contacted SUNY Institute and NYSED officials to obtain additional financial disclosure information.

To determine whether there was sufficient evidence that the school's Code of Ethics was distributed to its employees, we reviewed the personnel folders of the 30 sampled employees for evidence of distribution. For the Board of Trustees members and the Principal and the Director of Operations, we requested any evidence indicating that they received the Code of Ethics and that they completed the Conflicts of Interest disclosure forms.

To verify the school's enrollment for the 2012–2013 and 2013–2014 school years, we randomly selected 42 student files for review from the Department of Education's Automate the Schools student enrollment system. We selected three students from each of the seven grade levels for each of the two school years and reviewed the files for evidence of enrollment, such as admission forms, birth certificates, proof of residency, etc.

To determine whether Merrick Academy properly classified its Management Services Agreement payments to Victory as administrative expenses (Other Program Services), we obtained the worksheets prepared by Victory Partners reflecting its classification of expenses. We did not evaluate the accuracy or appropriateness of the other expense classifications.

The results of these tests, while not projectable to the population of receipts and disbursements in FYs 2013 and 2014, provided sufficient, competent evidence to support our findings and conclusions about Merrick's financial operations and management.

MERRICK ACADEMY – QUEENS PUBLIC CHARTER SCHOOL
RESPONSE TO DRAFT AUDIT REPORT OF THE NEW YORK CITY OFFICE OF THE COMPTROLLER

MAY 2016

Merrick Academy – Queens Public Charter School ("Merrick" or the "School") submits this response (the "Response") to the Draft Audit Report on the Oversight of the Merrick Academy – Queens Public Charter School (the "Draft Report") provided to the School by the City of New York Office of the Comptroller (the "Comptroller") on May 3, 2016. The School appreciates the opportunity to review the Draft Report and to provide feedback to the Comptroller.

GENERAL RESPONSE

It is important to note the following at the outset as context for any discussion of Merrick: For the majority its 16 years, Merrick has outscored nearby Queens traditional public schools on the New York State ELA and math exams, despite lower funding from the city per student and despite the need to pay for its own building. Merrick has earned a full five-year charter renewal from the State University of New York ("SUNY") three times, most recently last year. Merrick is debt-free with well over a million dollars of cash on-hand and has received clean financial audits by an independent accounting firm every year of its existence.

Late in 2014, Merrick was contacted by the Comptroller and informed that the School was to be one of four charter school organizations that would be subjected to a financial audit. In an initial meeting with the Comptroller, the School sought to understand why it was among the several schools selected for such an audit. The Comptroller articulated no rationale for selecting Merrick, but also indicated that the selections were not made at random. Despite this troubling lack of clarity as to the goals and motivations of the Comptroller in making this analysis, Merrick fully cooperated with the audit, which took place over the course of more than a year.

To be clear, the School welcomes the Comptroller's feedback on its fiscal practices. Merrick is committed to benefiting from this input and is already in the process of bolstering its practices in response to the Comptroller's findings. In fact, Merrick had already identified and resolved many areas in need of improvement before the Comptroller began its review of the School. This includes most of the substantive issues outlined in the Draft Report. That said, the intense, forensic audit of numerous transactions, financial records, protocols and practices over a two-year audit period inevitably turned up gaps, inefficiencies and areas of weakness. In that light, the School considers the audit an opportunity to further strengthen the organization. Nonetheless, Merrick has a range of concerns about the accuracy of certain statements and determinations expressed in the Draft Report, and these are articulated in the sections below.

It is important to note several considerations that pertain to the entire report.

First, Merrick was pleased, albeit not surprised, that the Comptroller found no evidence of fraud, financial misfeasance or intentional wrongdoing. The Draft Report is largely focused on record-keeping inconsistencies. In a number of instances, the Comptroller notes that in the absence of a complete record of receipts, invoices, and other financial documentation, it is impossible for it to get a clear picture of the relevant circumstances.

The School acknowledges that there may be gaps in parts of its records and thanks the Comptroller for identifying them. Unfortunately, too often in its Draft Report the Comptroller seems to presume that missing paperwork constitutes inaction or misdeeds. For example, on pages 11 and 12 it points out that it "could not establish a reasonable due date" for payments to vendors based on available documentation and that for 148 payments, "payments were late anywhere from 1 to 231 days." The Comptroller goes on to warn that such late payments can result in lateness charges. But the Draft Report also notes that Merrick paid only $343 in late fees on payments to vendors totaling more than $750,000 during the two-year audit period. It also notes that over the audit period only 14 invoices were paid in excess of 61 days late.

Similarly, on pages 17 and 18 of the Draft Report the Comptroller asserts that it was unable to obtain from the School a complete set of trustee financial disclosure reports that the School was required to provide to SUNY under state rules. The Comptroller then offers a recommendation that "Merrick trustees should adhere to the charter agreement requirement that they complete and submit financial disclosure forms annually" despite the fact that it also notes that "when we directly contacted the SUNY Institute, they provided us with copies of the financial disclosure forms submitted by all the Board members" except one. Here again, the Draft Report identifies a gap in the School's records and appears to conclude that this presumptively indicates inaction or misdeeds. In instances such as this, data within the report shows such presumptions to be inflated and inaccurate.

Second, at various points in the narrative the present tense is used in describing circumstances as they existed as of the audit period, such as "Merrick does not ensure that..." This is confusing and may not reflect steps the School has already taken to strengthen its practices.

Therefore, Merrick requests that the past tense be uniformly used to describe practices during the audit period.

As an appendix to this response, the School has included a point-by-point response to each of the Comptroller's recommendations. These responses collectively demonstrate steps that Merrick had already taken in advance of the Draft Report and continues to take to address areas in need of strengthening.

SPECIFIC RESPONSES

Title of Report

The Draft Report seems to be mislabeled. The title page and page 1 of the Draft Report use the term "Management Audit." This is incorrect, given that the audit conducted was a financial one. It may be that the title inadvertently uses the wrong wording. The wording here is in contrast with that of a similar Comptroller audit report recently issued for South Bronx Charter School for International Cultures and the Arts, which contains the term "Financial Audit" in the same places that reference the Merrick audit as being a Management Audit. Therefore, Merrick requests that the wording be corrected in the final report.

Source of Authority for Audit

Page 6 of the Draft Report cites the New York City Charter as authority for conducting this audit. It fails to also note that the audit is authorized and constrained by provisions of the New York Charter Schools Act of 1998, as amended.

Modification of Contract with Service Provider

On pages 8 and 9 and 14-15 of the Draft Report, the Comptroller takes note of a variance between the annual fee payable by the School to Victory Schools, Inc. ("Victory") under a contract in place during the audit period. That contract anticipated charges of approximately $1.3 million for management services, but actual invoices and payments totaled roughly half of that amount. In the absence of a revised contract addressing this change, the Comptroller determined that "Merrick could have paid Victory for services not provided and limits its ability to identify and recoup any overpayments." Merrick takes note of these concerns, but calls the Comptroller's attention to the obvious fact that, far from taking additional funds from the School, the vendor here took substantially less funds. In fact, Merrick paid the vendor about half of the fee originally set forth in the contract for substantially the same services. These reduced payments saved the School more than $3 million dollars over a five-year period. As discussed with the Comptroller during its review of the matter, the reduced figure was in part due to a modification in services provided and in part to a voluntary reduction in the rates charged by Victory in response to market conditions at the time of service delivery. The language in the Draft Report characterizing this situation is misleading and inappropriate. That said, the School agrees that it is good practice to ensure that all vendor modifications are memorialized in writing.

Records Supporting Payments

Pages 9-12 of the Draft Report address inconsistencies in the supporting documentation maintained by the School and Victory for various payments. For example, the Draft Report states that auditors reviewed numerous payment packages made by Merrick during the audit period and found some to be incomplete in one respect or another. The School contends that the Comptroller is overstating this matter to some degree. For example, the Comptroller was initially unable to locate certain check requests, but members of the Victory team did provide the requested documents to the Comptroller. The Comptroller did not acknowledge receipt of these documents, and those documents remain classified as "missing" by the Comptroller. Furthermore, the Comptroller listed as "missing" at least three check requests that did not actually require check requests, as there was a separate contract (which was approved by the New York State Education Department) that did not entail check requests. Such oversights by the Comptroller paint a misleading picture as to the School's record-keeping and document retention practices.

Nonetheless, records production and retention are an area of concern and one that Merrick is already addressing by bolstering its recordkeeping practices. It should be noted, however, that according to the Comptroller's analysis, 90% of the records reviewed were complete. The same is true with authorizations for payments. Of the samples reviewed by the Comptroller, roughly 90% contained records of full authorizations.

Documentation of Board Decision-making

On pages 12-15 of the Draft Report, the Comptroller describes what it considers to be insufficient documentation of actions by the School's Board of Trustees (the "Board") in several instances. These include the relocation of the School from one facility to another and the reduction of the fees paid to Victory (see section above). Here, again, the Comptroller appears to conclude that the absence of a complete documentary record is evidence of inaction or misdeeds, even in the face of information to the contrary.

For many years prior to the actual building move, the Merrick Board, school leadership and parents had discussed the possibility of, and, in fact, had actively looked for another facility to house its school. The Merrick Board, school leadership and parents were all in agreement that the former Merrick facility did not offer the types of amenities (e.g. cafeteria, gymnasium, large classrooms) or safety (i.e. in a neighborhood versus on a major thoroughfare) that was appropriate for (what was then) a K-8 school. Many years after such considerations by the School community, the Comptroller now cites the lack of any Board minutes referencing the discussion of or action on this issue as evidence that this important issue may have been appropriately addressed by the School's board. In interviews with the auditors, most recently on a call with the Comptroller's office last week, Merrick representatives have made it clear that this issue was indeed addressed at meetings of the Board. Individuals who, at the time the facilities move was being considered, were community members of the School and who are now members of the Board offered to describe those meetings and the consideration given by the Board to the facilities issues. The Comptroller has declined to speak with these Board members about this matter or to consider the input of these individuals who have personal knowledge of the Board's actions. Merrick believes this portion of the Draft Report misrepresents the circumstances and once again equates an incomplete documentary record with inaction or misdeeds.

Move to the New Facility

On pages 12-14 of the Draft Report, the Comptroller addresses the financial impact of the School's move from one facility to another. Despite statements from the School's Board Chair (the sole remaining Board member from the audit period) describing the Board's review and consideration of all aspects of the move, including its financial impact on the School, the Comptroller focuses solely on gaps in the record of Board minutes and concludes that such discussions did not take place. Merrick believes this portion of the Draft Report misrepresents the circumstances and to once again equate an incomplete documentary record with inaction or misdeeds.

In the Draft Report, the Comptroller also appears to question the benefits and appropriateness of the School's decision to move to its new facility. Merrick sought to move to a new facility in order to give Merrick students a better educational environment – a school environment with larger classrooms, a dedicated cafeteria, a large gymnasium, a stage for student performances, and a safer neighborhood. In fact, for many years Merrick had saved funds (upwards of $1 million) for such a move to a better facility. The new facility has been a tremendous benefit to the students and families whom the School serves.

Background Checks

On pages 16 and 17 of the Draft Report, the Comptroller discusses the School's progress regarding documentation of employee criminal background checks. Merrick takes the matter of employee criminal background checks very seriously and had already thoroughly addressed this issue before the Comptroller began its audit. In short, Merrick performs a criminal background check on each employee and contractor in accordance with state requirements before the employee or contractor begins working at the school. Merrick does believe, however, that this is an area of inquiry that falls outside the scope of the Comptroller's audit. As its title indicates, this is an "Audit Report on the Oversight of the Financial Operations" of the School. It is based on the objectives listed on pages 5 and 6, all of which are financial in nature. In contrast, criminal background checks, as described in the Draft Report, relate to a risk that "persons who might be deemed ineligible to work at the school are nevertheless allowed to do so…" No link between this metric and financial concern is offered by the Comptroller.

This is an issue that the School has raised with the Comptroller several times to date. In each instance, Merrick has pointed out that the SUNY Charter Schools Institute, as authorizer of the School, has the authority to hold all charter schools it oversees accountable for staff fingerprinting and that it is simply beyond the scope of the Comptroller's purview. Nevertheless, the Draft Report offers no justification for its inclusion in the audit. Therefore, Merrick requests that references to this matter and recommendations 11, 12, 13 and 14 which relate to it, be removed from the report.

Merrick is committed to doing all it can to effectively serve its students and their families. As a public school, students are enrolled at all academic levels. Still, since 20017, our graduating class has outscored their counterparts at local traditional district schools 84% of the time in both math and ELA.

The School appreciates the feedback and recommendations offered by the Comptroller through its audit and in its Draft Report. As noted above, the School itself identified and has already addressed many of the issues raised by the Comptroller and will continue to take steps to bolster its administrative functioning. Merrick thanks the Comptroller and its auditors for their efforts in the interest of the public and for their professionalism in carrying out this audit.

MERRICK ACADEMY – QUEENS PUBLIC CHARTER SCHOOL

APPENDIX A

Merrick Responses to Auditor Recommendations

Comptroller's Recommendation	**School's Response**
1. Merrick should ensure any modifications to its Management Services Agreement are documented in a formal writing.	Merrick concurs with this recommendation and fully intends to document future modifications to its Management Services Agreement with Victory Schools, Inc. ("Victory") in formal writing. The most recent such modification, of October 2014, was so documented.
2. Merrick should ensure that it obtains approval for changes to its Management Services Agreement from the SUNY Institute.	Merrick concurs with this recommendation and fully intends to obtain approval for future changes to its Management Services Agreement from the SUNY Institute.
3. Merrick should ensure that a contract, purchase order or work order has been approved in connection with the procurement of all goods and services.	Merrick concurs with this recommendation and has made considerable improvements with respect to financial documentation since the scope period. To wit, a purchase order system was implemented in fiscal year 2015 and remains in place. However, certain vendors do not accept purchase orders. In these rare cases, the expense is known prior to the expenditure, the expense is approved by the appropriate signatory, a check request is processed, and the documentation thereof is retained by the School.
4. Merrick should retain adequate documentation to support purchases and payments made to its vendors.	Merrick concurs with this recommendation and takes records retention very seriously, particularly with respect to financial documentation. As described above, documentation practices have already improved considerably since the scope period. To further bolster such practices, as of May 2016 the Board of Trustees (the "Board") is in advanced discussions with Victory to begin using an external service, Bill.com, to streamline its financial operations and ensure that financial records are securely retained. The Board further plans to supplement the use of Bill.com with a robust document retention policy, which will apply both to the entire staff of the School and to our service providers at Victory. The Board expects both the services provided through Bill.com and the document retention policy to be fully implemented by the end of fiscal year 2016. The Board thanks the Comptroller for identifying weaknesses in Merrick's past records production and

	retention practices.
5. Merrick should ensure that the appropriate authorizers approve all purchases and payments.	Merrick concurs with this recommendation and has successfully implemented it since the scope period. Proper approvals now take place in alignment with Merrick's fiscal procedures manual.
6. Merrick should ensure that it pays its vendors in a timely manner.	Merrick concurs with this recommendation and has successfully implemented it since the scope period. Vendor payments are processed at least weekly to ensure timely payment. The streamlining of financial operations enabled by Bill.com promises to further ensure that payments are timely made.
7. Merrick should ensure that the Board of Trustees reviews and considers all significant matters relating to the financial and operational practices of the school, and that the Board's minutes adequately record the applicable discussions.	Merrick concurs with this recommendation. The School takes Board governance very seriously, has substantially improved governance, and is working diligently to make further improvements. Merrick currently has a capable Board and benefits from outside consulting services to further strengthen its financial and operational practices.
8. Merrick should ensure that the Board of Trustees vote on all significant matters pertaining to the financial and operational practices of the school and that the Board's minutes adequately record those votes.	Merrick concurs with this recommendation and takes Board governance very seriously. Merrick currently has a capable Board and benefits from outside consulting services to further strengthen its financial and operational practices. Under a new secretary, who joined the Board after the audit period, the Board's minutes adequately record Board votes.
9. Merrick should adhere to its inventory policy requiring the tracking of its assets and the maintenance of a current inventory list.	Merrick concurs with this recommendation and notes that the Comptroller's Report has demonstrated that inventory practices are much improved, to wit that the annual End of Year Classroom/Office Inventory form system used by staff members has been in place since the scope period. To further bolster Merrick's asset inventory practices, the School is currently working with Victory to potentially implement a barcode system for all fixed assets costing more than $500.
10. Merrick should ensure that a physical inventory count and validation of its assets is conducted periodically.	Merrick concurs with this recommendation. The School plans to commence random physical inventory checks on a quarterly basis beginning in the 2017 fiscal year. Documentation of the same will be maintained by the Director of Operations and submitted to Victory.
11. Merrick should ensure	Merrick concurs with this recommendation and has

that background checks are immediately submitted for any current employee whose files lack evidence that a criminal background check was attempted.	successfully implemented it since the scope period. Every employee currently on staff has had criminal background checks completed and documentation thereof included in his/her personnel files, and Merrick intends to fully comply with this practice going forward.
12. Merrick should follow up with OSPRA to determine the status of the one employee identified in this report for whom a clearance was requested but never received.	Merrick will implement this recommendation pending the Comptroller's notifying the Director of Operations of the identity of the relevant employee.
13. Merrick should ensure that it obtains required criminal background clearances for employees before allowing them to work at the school. If circumstances exist such that a person must be hired before a clearance is obtained, Merrick should obtain a conditional clearance for that person prior to the employee's start date.	Merrick concurs with this recommendation and has successfully implemented it since the scope period. Every employee currently on staff has had criminal background checks completed and documentation thereof included in his/her personnel files, and Merrick intends to fully comply with this practice going forward.
14. Merrick should ensure that all evidence of criminal background inquiries and clearances are maintained in employees' personnel files.	Merrick concurs with this recommendation and has successfully implemented it since the scope period. Every employee currently on staff has had criminal background checks completed and documentation thereof included in his/her personnel files, and Merrick intends to fully comply with this practice going forward.
15. Merrick trustees should adhere to the charter agreement requirement that they complete and submit financial disclosure forms annually.	Merrick concurs with this recommendation and its Board intends to strictly enforce this requirement going forward.
16. Merrick should post its annual reports on its website as required by the Charter School Act.	Merrick concurs with this recommendation and has come into compliance. To wit, the most recent annual reports, from 2014-15 and 2013-14, have been posted to the School's website. Merrick will continue to post annual reports as they

	become available.
17. Merrick should adhere to charter school guidelines requiring management service fees to be fully attributed to administrative support services.	Merrick concurs with this recommendation and will enforce its compliance going forward.