REPORT NO. 2012-116
MARCH 2012

# MARION COUNTY

## DISTRICT SCHOOL BOARD

## Operational Audit

STATE OF FLORIDA
AUDITOR GENERAL
DAVID W. MARTIN, CPA

## BOARD MEMBERS AND SUPERINTENDENT

Board members and the Superintendent who served during the 2010-11 fiscal year are listed below:

| | District No. |
|---|---|
| Judith Zanetti, Vice Chair to 11-15-10, Chair from 11-16-10 | 1 |
| Jacqueline Porter | 2 |
| Bobby L. James | 3 |
| Angie Boynton from 11-16-10 | 4 |
| Sue Mosley to 11-15-10, Chair | 4 |
| Ronald B. Crawford, Vice Chair from 11-16-10 | 5 |

James M. Yancey, Jr., Superintendent

The audit team leader was John Davisson, CPA, and the audit was supervised by Philip B. Ciano, CPA. For the information technology portion of this audit, the audit team leader was Bill Allbritton, CISA, and the supervisor was Heidi G. Burns, CPA, CISA. Please address inquiries regarding this report to Gregory L. Centers, CPA, Audit Manager, by e-mail at gregcenters@aud.state.fl.us or by telephone at (850) 487-9039.

This report and other reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 487-9175; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

# MARION COUNTY

District School Board

## SUMMARY

**Our operational audit disclosed the following:**

PERSONNEL AND PAYROLL

**Finding No. 1: The Board had not adopted formal policies and procedures for ensuring that a portion of each instructional employee's compensation is based on performance pursuant to Section 1012.22(1)(c)2., Florida Statutes (2010), and documenting the differentiated pay process of instructional personnel and school-based administrators using the factors prescribed in Section 1012.22(1)(c)4., Florida Statutes (2010).**

FACILITIES ADMINISTRATION AND MONITORING

**Finding No. 2: The District did not always procure construction management services in accordance with Section 287.055, Florida Statutes.**

**Finding No. 3: Controls over facilities construction and maintenance activities could be enhanced.**

**Finding No. 4: Improvements could be made in the administration of guaranteed maximum price construction contracts.**

EXPENDITURES

**Finding No. 5: District records did not evidence the authorized public purpose served by incurring legal fees for a lawsuit by a District employee against an individual.**

INFORMATION TECHNOLOGY

**Finding No. 6: The District had not developed a written, comprehensive information technology (IT) risk assessment.**

**Finding No. 7: Some inappropriate and unnecessary IT network access privileges existed.**

**Finding No. 8: The District had not implemented a comprehensive IT security awareness training program.**

**Finding No. 9: The District's IT security controls related to user authentication, data loss prevention, and environmental safeguards needed improvement.**

## BACKGROUND

The Marion County School District (District) is part of the State system of public education under the general direction of the Florida Department of Education. Geographic boundaries of the District correspond with those of Marion County. The governing body of the District is the Marion County District School Board (Board), which is composed of five elected members. The elected Superintendent of Schools is the executive officer of the Board.

During the 2010-11 fiscal year, the District operated 46 elementary, middle, high, and specialized schools; sponsored 3 charter schools; and reported 41,331 unweighted full-time equivalent students.

The results of our audit of the District's financial statements and Federal awards for the fiscal year ended June 30, 2011, were presented in a separate report.

## FINDINGS AND RECOMMENDATIONS

### Personnel and Payroll

### Finding No. 1: Compensation and Salary Schedules

Section 1001.42(5)(a), Florida Statutes, requires the Board to designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees, subject to the requirements of Chapter 1012, Florida Statutes. Section 1012.22(1)(c)2., Florida Statutes (2010),[1] provided that, for instructional personnel, the Board must base a portion of each employee's compensation on performance. In addition, Section 1012.22(1)(c)4., Florida Statutes (2010), required the Board to adopt a salary schedule with differentiated pay for instructional personnel and school-based administrators. The salary schedule was subject to negotiation as provided in Chapter 447, Florida Statutes, and was required to provide differentiated pay based on District-determined factors, including, but not limited to, additional responsibilities, school demographics, critical shortage areas, and level of job performance difficulties.

While compensation of instructional personnel is typically subject to collective bargaining, the Board had not adopted formal policies and procedures to ensure that a portion of each instructional employee's compensation was based on performance pursuant to Section 1012.22(1)(c)2., Florida Statutes (2010). Such policies and procedures could establish and communicate the performance measures affecting instructional employee compensation. In addition, the Board had not adopted formal policies and procedures establishing the documented process to identify the instructional personnel and school-based administrators entitled to differentiated pay using the factors prescribed in Section 1012.22(1)(c)4., Florida Statutes (2010). Such policies and procedures could specify the prescribed factors to be used as the basis for determining differentiated pay, the documented process for applying the prescribed factors, and the individuals responsible for making such determinations.

The 2010-11 fiscal year union contract for instructional personnel and salary schedules for instructional personnel and school-based administrators provided pay levels based on various factors such as job classification, years of experience, level of education, and other factors. However, the District's procedures for documenting compliance with Section 1012.22(1)(c), Florida Statutes (2010), could be improved, as follows:

- **Instructional Personnel.** The union contract provided that instructional personnel who received an overall satisfactory or above rating on their annual performance assessment would advance to the next step of the salary schedule in the following fiscal year. District personnel indicated that the performance pay procedure was discontinued due to the lack of funding for the 2009-10 and 2010-11 fiscal years; however, contrary to Section 1012.22(1)(c)2., Florida Statutes, District records did not evidence that a portion of the compensation of each instructional employee was based on performance.

  The instructional personnel salary schedule and union contract provided salary supplements for additional responsibilities beyond the standard workday, such as supplements for coaching athletic activities and supervising student clubs, and for critical shortage areas of English as a Second or Other Language (ESOL) endorsement or certification, and provisional substitutes. However, District records did not evidence the basis for identifying the ESOL and provisional substitute positions as critical shortage areas. To evidence this, the District could document a historical trend of a minimal number of applicants, high personnel turnover rates, or other factors demonstrating the difficulty of hiring and retaining these personnel. In addition, District personnel informed us that at-risk schools and schools with larger demographics are allocated additional staff to meet those needs, and that personnel

[1] Section 1012.22, Florida Statutes, was amended by Chapter 2011-1, Laws of Florida, effective July 1, 2011. For the 2011-12 fiscal year, pursuant to Section 1012.22(1)(c)4.b., Florida Statutes, the District must base a portion of each employee's compensation upon performance demonstrated under Section 1012.34, Florida Statutes, and provide differentiated pay for instructional personnel and school administrators based upon district-determined factors, including, but not limited to, additional responsibilities, school demographics, critical shortage areas, and level of job performance difficulties.

are given additional compensation for working extended hours; however, District records did not evidence consideration of differentiated pay based on school demographics and level of job performance difficulties, contrary to Section 1012.22(1)(c)4., Florida Statutes (2010).

- **School-based Administrators.** The salary schedule for school-based administrators evidenced consideration of differentiated pay for additional responsibilities beyond the standard workday, such as supplements for coaching athletic activities and supervising student clubs, and for school demographics and job performance difficulties based on the type school (e.g., elementary, middle, or high). However, the salary schedule did not evidence consideration of differentiated pay based on critical shortage areas, contrary to Section 1012.22(1)(c)4., Florida Statutes (2010).

District personnel indicated that salary schedule revisions to comply with the statutory performance pay requirements were delayed to ensure consistency with Federal Race-to-the-Top grant requirements, which are subject to approval by the Florida Department of Education for the 2011-12 fiscal year. However, without Board-adopted policies and procedures for ensuring that a portion of each instructional employee's compensation is based on performance, and sufficiently identifying the basis for differentiated pay, the District may be limited in its ability to demonstrate that each instructional employee's performance correlates to their compensation and the various differentiated pay factors are consistently considered and applied.

**Recommendation: The Board should adopt formal policies and procedures for ensuring that a portion of each instructional employee's compensation is based on performance, and differentiated pay of instructional personnel and school-based administrators is appropriately identified on salary schedules, consistent with Section 1012.22(1)(c), Florida Statutes.**

## Facilities Administration and Monitoring

### Finding No. 2: Construction Management Services

Pursuant to Section 1013.45(1), Florida Statutes, the District may contract for construction services using various delivery methods, including construction management. Section 1013.45(1)(c), Florida Statutes, authorizes the District to select a construction management entity (CME) pursuant to Section 255.103, Florida Statutes, or the process provided by Section 287.055, Florida Statutes, as an alternative to the competitive bidding process. Section 287.055(3), Florida Statutes, requires that the District publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project in which the basic construction cost is estimated by the agency to exceed $325,000. Sections 287.055(4) and (5), Florida Statutes, require the District to select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services for each proposed project and then negotiate a contract with the most qualified CME. Should the District be unable to negotiate a satisfactory contract with the firm considered to be the most qualified the District must then undertake negotiations with the remaining selected CMEs, in the order they were ranked, until a satisfactory contract is negotiated.

Pursuant to Section 255.103(4), Florida Statutes, the District may enter into a continuing contract with a CME for construction projects in which the estimated construction cost of each individual project under the contract does not exceed $2 million. Further, this statute requires that the continuing contract be for work during a defined period. Our inquiry and review of District records disclosed that for construction projects with individual project costs less than $2 million (minor projects), the Board periodically advertised the need for CME services, interviewed CME firms that submitted proposals, initially competitively negotiated with selected firms, and entered into continuing contracts with selected firms.

For the 2010-11 fiscal year, District personnel indicated that the Board previously entered into continuing contracts with six CME firms, and five of the firms were used on six minor projects with anticipated costs ranging from approximately

$150,000 to $700,000, or an average of approximately $365,000 per project. The Board competitively negotiated and initially contracted with four of the five firms. Each of the contracts, executed in October 2006, was for a one-year term and provided the Board the option to renew the contracts for two additional one-year extensions. The Board exercised this option and extended the contracts of the four firms for one-year periods starting October 2007 and August 2008, respectively. Subsequently, the Board entered into new one-year contracts with the four firms in September 2009, September 2010, and June 2011; however, District records did not evidence that the required competitive selection process was performed after the contracts expired in September 2009.

District personnel indicated that CMEs were assigned projects based on suitability, considering their current and upcoming workload, and that the District attempted to alternate use of the CMEs to involve all CMEs with continuing contracts. When a CME is selected for a project, an amendment is sent to the Board for the contract cost of that project, which includes the construction management fee based on a percentage of the project cost that is the same for all CMEs. However, as the Board entered into the new contracts without using the competitive selection procedures prescribed in Section 287.055, Florida Statutes, District records did not evidence that the most highly qualified CMEs were selected for the new continuing contracts.

District personnel further indicated that the provisions of Section 287.055(2)(g), Florida Statutes, allowed continuing contracts for professional services to be renewed without a time limit; however, the provisions of that section do not apply to CME services. As Section 255.103(4), Florida Statutes requires continuing contracts of CMEs to be for a defined period, after such periods expire, the District is responsible for competitively selecting CME services consistent with the provisions of Section 287.055, Florida Statutes, prior to entering into new continuing contracts for such services.

**Recommendation: The District should ensure that CMEs are ranked and competitively selected using the process prescribed by Section 287.055, Florida Statutes.**

## Finding No. 3: Facilities Management

The facilities department is responsible for managing construction and renovation projects. During the 2010-11 fiscal year, the facilities department employed nine full-time employees, and the department's operating cost was approximately $639 thousand. Also, during this fiscal year, the District had expenditures totaling approximately $37 million for capital projects fund construction and renovation projects and, as shown on the District's Five-Year Facilities Work Plan as approved by the Board on September 14, 2010, the District planned to spend an additional $188 million on these projects over the next four years. At June 30, 2011, the historical cost of the District's educational and ancillary facilities was approximately $653 million and, as shown in the Florida Department of Education's Florida Inventory of School Houses data, District facilities had an average age of 27 years.

The technical services department is responsible for maintenance and repair services of schools and ancillary facilities. The technical services department performed heating, ventilating, air-conditioning (HVAC); electrical; plumbing; and other maintenance-related jobs. During the 2010-11 fiscal year, the technical services department employed 127 employees, and the department's operating cost was approximately $10 million.

Given the significant commitment of public funds to construct and maintain educational facilities, it is important that the District establishes procedures to evaluate the effectiveness and efficiency of facility operations at least annually using performance data and established benchmarks. Such procedures could include written policies and procedures documenting processes for evaluating facilities construction methods and maintenance techniques before commitment of significant resources to the most cost effective and efficient method or technique. In addition, performance evaluations could include established goals for facility and maintenance operations and measurable objectives or benchmarks that are clearly defined to document the extent to which goals are achieved and accountability for facilities and maintenance

department employees. While our review of facilities management procedures indicated that procedures were generally adequate, we noted the following procedural enhancements could be made:

- **Alternative Construction Methods or Maintenance Techniques.** The District primarily awards construction contracts to design professionals and construction contractors using traditional design-bid-build methods and guaranteed maximum price construction methods. In addition, maintenance-related jobs, such as HVAC replacement and repair, are routinely performed by technical services department personnel based on safety and suitability priorities. District personnel indicated that they had not established written policies and procedures for evaluating the various construction methods or maintenance-related job techniques and, while they consider alternative methods and techniques, they have not documented an evaluation of the various approaches to determine for each major construction project or significant maintenance-related job which would be most cost effective and beneficial. Without Board-approved policies and procedures, and documented evaluations, there is an increased risk that the District may not use the most cost-effective and beneficial construction method or maintenance technique.

- **Accountability.** The District's facilities and technical services departments have established various goals; however, our review disclosed that these goals did not address accountability for these departments. For example, goals of the facilities department included developing a learning environment that can accommodate changing methods of instruction; improving the general safety of students and staff; and improving the cost efficiency and quality of construction projects. The technical services department goals were to provide safe, well maintained buildings and equipment that are fundamental to a healthy academic environment while reducing the operational cost and extending the useful life of facilities. However, the goals of these departments did not sufficiently identify efficiency or cost-effectiveness outcomes.

  To adequately establish outcome measures, the departments could set goals such as completing construction or maintenance projects that meet or exceed building code industry standards at the lowest possible cost. Progress in attaining the goals could be measured by developing accountability systems to monitor work orders for return assignments or corrective action because a project did not initially meet building code requirements, and to compare project costs to industry standards for similar work. Additional goals could include setting benchmark time frames for routine projects or jobs, and progress toward meeting the goals could be measured by comparing project or job completion times to industry standards for similar work. Establishing goals that focus on accountability and measureable objectives and benchmarks could assist the District in determining whether its facilities and technical services departments are operating as effectively and cost-efficiently as possible.

**Recommendation: The District should develop written policies and procedures requiring periodic evaluations of alternative facilities construction methods and techniques for performing significant maintenance-related jobs, and document these evaluations. In addition, the District should develop additional goals and objectives for the facilities and technical services departments to identify efficiency or cost-effectiveness outcomes for department personnel.**

## Finding No. 4: Construction Expenditures

Section 1013.45(1)(c), Florida Statutes, authorizes the District to contract for the construction or renovation of facilities with a construction management entity (CME). The CME would be responsible for all scheduling and coordination in both design and construction phases and is generally responsible for the successful, timely, and economical completion of the construction project. The statute further provides that the CME may be required to offer a guaranteed maximum price (GMP). The GMP provision allows for the difference between the actual cost of the project and the GMP amount, or the net cost savings, to be returned to the District. Our review of four projects (Evergreen Elementary School classroom additions, original cost of $2.6 million; Fort McCoy School (k-8) New Classroom Building, original cost of $2.4 million; South Ocala Elementary School, original cost of $13.9 million; and Elementary School U, original cost of $14.3 million) with total original costs of $33.2 million disclosed that improvements were needed in the District's monitoring procedures over construction projects, as follows:

**Labor Burden**. One of the components of GMP contracts are general conditions, which include provisions for personnel costs. Personnel costs include an indirect salary cost element commonly referred to as the labor burden that typically includes social security, Medicare and unemployment taxes, medical insurance, workers' compensation, and various company paid benefits. Labor burden should be based on the actual cost of labor and should not include any mark-up or profit to the construction manager.

During the GMP negotiation process, the District accepted labor burden rates proposed by construction managers for the four projects we reviewed. While our review disclosed that the rates were comparable to those published by the United States Department of Labor, Bureau of Labor Statistics, the District did not have documentation in its construction project files in support of their negotiation of the labor burden rates, the individual components of the rates proposed by the construction managers, or a determination of the reasonableness of the rates. Effectively negotiating and documenting the reasonableness of the labor burden costs are essential to ensuring that potential cost savings are realized under GMP contracts. Without such, the rate may not be based on actual costs and may result in excessive costs to the District. A similar finding was noted in our report No. 2009-028.

**Pay Applications**. During the construction process, District personnel attended subcontractor bid openings to confirm selection of subcontractors based on low and best bids and other considerations, and reconciled subcontractor costs to original bid and contract documents. In addition, the CME generally submitted monthly pay requests (i.e., applications) to the District for costs incurred for performing the construction services. We reviewed one pay application for each of the four projects reviewed to evaluate the adequacy of documentation in the District's records supporting the costs paid to the CME. For three of the pay applications reviewed, totaling approximately $1.3 million, the applications were generally supported by documentation such as subcontractor pay certifications and payroll records; however, District records for the Evergreen Elementary School Classroom Additions project pay application No. 6, totaling $271,750, disclosed the following:

- District personnel indicated that the CME observed that subcontractor work for the project was completed; however, the pay application included a CME advance payment of $109,000 for subcontractor work and the payment was not supported by subcontractor pay certifications.
- The pay application included costs totaling $68,195 for windows, acoustical ceiling, and doors and hardware subcontracts; however, there was no documentation, such as subcontractor pay certifications, to support subcontractor costs totaling $52,595.
- For the electrical subcontractor, the pay application included costs-to-date of $229,450; however, the subcontractor certification identified costs-to-date for work completed of only $176,367, or $53,083 less than the pay application.
- The CME requested payment for general conditions costs totaling approximately $20,272; however, District records only contained support for $3,462 of these costs, or $16,810 less than the pay application.

Although District personnel indicated that reliance was placed on the architect's certification that the construction work was done, records were not provided to justify the advance payment or differences identified above. District personnel indicated that, due to staffing constraints, the verification of GMP construction invoices to supporting documentation is not performed until the end of the project. However, without timely reconciliation of the invoices to construction pay requests during the course of the project, the District's ability to realize cost savings for the GMP contract may be limited. A similar finding was noted in our report No. 2009-028.

**Recommendation: The District should implement procedures requiring documentation of the reasonableness of the labor burden rates included in GMP contracts and review documentation supporting payments to construction managers prior to payment.**

## Expenditures

### Finding No. 5: Legal Fees

Included in the Board's stewardship responsibilities associated with public resources is the responsibility to ensure that management controls provide for the effective and efficient use of resources in accordance with applicable laws, rules, and other guidelines. Because of its fiduciary responsibilities associated with the handling of public funds, it is important that the District records demonstrate that such funds were properly utilized in carrying out its legally established duties.

Pursuant to Board Policy 2.41, the Superintendent may obtain legal counsel for any legal matter regarding the performance of the Superintendent's duties when special counsel is needed beyond the service normally provided by the Board attorney. As of December 31, 2011, the District had paid fees totaling approximately $60,000 to two attorneys for an employee's prosecution of a civil lawsuit against an individual (Defendant) for damages because of alleged defamatory statements made by the Defendant and to enjoin the Defendant from publishing false statements that diminish the employee's professional reputation. The Superintendent authorized the legal action initially filed in December 2008 against the Defendant in response to the Defendant allegedly sending defaming e-mails about the employee, who was the former principal of the Defendant's child. While the Superintendent's attorney, and the Superintendent, have indicated that the payments of legal fees in this instance serve a public purpose and that the legal action is necessary to protect the employee due to circumstances arising from his public employment, District records did not evidence that the expenditure of public funds for the prosecution of a civil action by a District employee served an authorized public purpose or interest. While the Board discussed this litigation during its March 9, 2010, meeting in the context of approving the agreement for legal services with the Board's attorney, District records did not evidence that the Board approved such litigation or that the Board had made a determination that such litigation served an educational and public purpose.

Section 111.07, Florida Statutes, provides, in part, that any agency of the State, or any county, municipality, or political subdivision of the State, is authorized to provide an attorney to "defend" any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents for an act or omission arising out of and in the scope of his or her employment or function. Additionally, Florida courts have recognized that, in addition to this statutory right of public employees and officers to have legal representation at public expense, such a right exists pursuant to common law and independent of any statutory authorization. The Florida Supreme Court stated in *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914 (1990), "Florida courts have long recognized that public officials are entitled to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose. The purpose of this common law rule is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently. This entitlement to attorney's fees arises independent of statute, ordinance, or charter. For public officials to be entitled to representation at public expense, the litigation must (1) arise out of or in connection with the performance of their official duties and (2) serve a public purpose."

While there is both a statutory and common law right to legal representation for public officials at public expense to defend themselves against litigation arising from the performance of their official duties if the litigation serves a public purpose, we are not aware of any case or Attorney General opinion that has approved the use of public funds for an employee or officer to initiate a lawsuit against an individual.

**Recommendation: The Board should document in its official records the authorized public purpose served by the litigation described above. Absent such a determination, the Board should discontinue the expenditure of public funds in support of this litigation.**

## Information Technology

### Finding No. 6: Risk Assessment

Management of information technology (IT) risks is a key part of enterprise IT governance. Incorporating an enterprise perspective into day-to-day governance actions helps an entity understand its greatest security risk exposures and determine whether planned controls are appropriate and adequate to secure IT resources from unauthorized disclosure, modification, or destruction. IT risk assessment, including the identification of risks and the evaluation of the likelihood of threats and the severity of threat impact, helps support management's decisions in establishing cost-effective measures to mitigate risk and, where appropriate, formally accept residual risk.

Although the District had informally considered external and internal risks and identified security controls such as selected configuration settings and policies and procedures to mitigate these risks, the District had not developed a written, comprehensive IT risk assessment. The absence of a written, comprehensive IT risk assessment may lessen the District's assurance that all likely threats and vulnerabilities have been identified, the most significant risks have been addressed, and appropriate decisions have been made regarding which risks to accept and which risks to mitigate through security controls.

**Recommendation: The District should develop a written, comprehensive IT risk assessment to provide a documented basis for managing IT related risks.**

### Finding No. 7: Access Privileges

Access controls are intended to protect data and IT resources from unauthorized disclosure, modification, or destruction. Effective access controls provide employees access to IT resources based on a demonstrated need and restrict employees from performing incompatible functions or functions outside of their areas of responsibility. For example, within an entity's IT department, domain administrator access privileges are typically limited to employees who are responsible for performing network administration duties or services that require complete access to network and server resources.

Our test of access privileges associated with the domain administrator group that were used to administer the District's network disclosed that the IT director was granted access within the group, contrary to an appropriate separation of duties. The access was unnecessary for the IT director's assigned responsibilities, which encompassed management of the IT department but not network administration, which was performed by other District employees who reported to the IT director.

District personnel indicated, and records evidenced, that various controls compensate, in part, for the deficiencies noted above. For example, District procedures include supervisory review and approval of employee work activities; timely, independent bank reconciliations; supervisory review and approval of transactions such as journal entries and electronic funds transfers; and restricted access to unused checks. However, domain administrator access privileges allow an individual complete control over network servers, including the ability to render a network unavailable for use. Further, the complete network access capabilities provided by the domain administrator group indicated a need for the District to review the responsibilities of each employee in the group and determine if an additional access group or groups with more limited network access capabilities would be warranted. When complete network access privileges are unnecessarily granted, the risk is increased that unauthorized or unintentional network hardware, software, or configuration changes may occur and not be timely detected.

**Recommendation: The District should review the appropriateness of network access privileges provided by the domain administrator group to determine if an additional access group or groups with more limited network access capabilities would be warranted.**

**Finding No. 8: Security Awareness Training Program**

A comprehensive security awareness training program apprises new employees of, and reemphasizes to current employees, the importance of preserving the confidentiality, integrity, and availability of data and IT resources entrusted to them. Significant nonpublic records (e.g., student record information and other records that contain sensitive information) are included in the data maintained by the District's IT systems. Although the District informs new employees of acceptable security practices during orientation, the District had not developed a comprehensive security awareness training program to facilitate all applicable employees' ongoing education and training on security responsibilities, including acceptable or prohibited methods for storage and transmission of data, password protection and usage, copyright issues, malicious software and virus threats, workstation controls, and handling of confidential information. The lack of a comprehensive security awareness training program increases the risk that the District's IT resources could be unintentionally compromised by employees while performing their assigned duties.

**Recommendation: The District should promote security awareness through a comprehensive security awareness training program to ensure that all applicable employees are aware of the importance of information handled and their responsibilities for maintaining its confidentiality, integrity, and availability.**

**Finding No. 9: Security Controls – User Authentication, Data Loss Prevention, and Environmental Safeguards**

Security controls are intended to protect the confidentiality, integrity, and availability of data and IT resources. Our audit disclosed certain District security controls related to user authentication, data loss prevention, and environmental safeguards that needed improvement. We are not disclosing specific details of the issues in this report to avoid the possibility of compromising District data and IT resources. However, we have notified appropriate District management of the specific issues. Without adequate security controls related to user authentication, data loss prevention, and environmental safeguards, the confidentiality, integrity, and availability of data and IT resources may be compromised, increasing the risk that District data and IT resources may be subject to improper disclosure, modification, or destruction.

**Recommendation: The District should improve security controls related to user authentication, data loss prevention, and environmental safeguards to ensure the continued confidentiality, integrity, and availability of District data and IT resources.**

## PRIOR AUDIT FOLLOW-UP

Except as discussed in the preceding paragraphs, the District had taken corrective actions for findings included in our report No. 2009-028.

## OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from January 2011 through October 2011. 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.

The objectives of this operational audit were to: (1) obtain an understanding and make overall judgments as to whether District internal controls promoted and encouraged compliance with applicable laws, rules, regulations, contracts, and grant agreements; the economic and efficient operation of the District; the reliability of records and reports; and the safeguarding of assets; (2) evaluate management's performance in these areas; and (3) determine whether the District had taken corrective actions for findings included in previous audit reports. Also, pursuant to Section 11.45(7)(h), Florida Statutes, our audit may identify statutory and fiscal changes to be recommended to the Legislature.

The scope of this operational audit is described in Exhibit A. Our audit included examinations of various records and transactions (as well as events and conditions) occurring during the 2010-11 fiscal year.

Our audit methodology included obtaining an understanding of the internal controls by interviewing District personnel and, as appropriate, performing a walk-through of relevant internal controls through observation and examination of supporting documentation and records. Additional audit procedures applied to determine that internal controls were working as designed, and to determine the District's compliance with the above-noted audit objectives, are described in Exhibit A. Specific information describing the work conducted to address the audit objectives is also included in the individual findings.

## AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

David W. Martin, CPA
Auditor General

## MANAGEMENT'S RESPONSE

Management's response is included as Exhibit B.

## EXHIBIT A
## AUDIT SCOPE AND METHODOLOGY

| Scope (Topic) | Methodology |
|---|---|
| Information technology (IT) logical access controls and user authorization. | Reviewed selected operating system, network, and application security settings to determine whether authentication controls were configured and enforced in accordance with IT best practices. |
| IT access privileges and separation of duties. | Reviewed procedures for maintaining and reviewing access to IT resources. Tested selected access privileges over the operating system, network, and the finance application to determine the appropriateness based on the employees' job functions and responsibilities and adequacy with regard to preventing the performance of incompatible duties. |
| IT policies and procedures. | Reviewed written policies and procedures to determine whether certain important IT control functions were addressed. |
| IT data loss prevention. | Reviewed written policies, procedures, and programs in effect governing the classification, management, and protection of sensitive and confidential information. |
| IT security incident response. | Reviewed written policies and procedures related to security incident response and reporting. |
| IT risk management and assessment. | Reviewed the District's risk management and assessment processes and security controls intended to protect the confidentiality, integrity, and availability of data and IT resources. |
| IT disaster recovery planning. | Determined whether a written disaster recovery plan was in place and had been recently tested. |
| IT environmental controls. | Determined whether a fire suppression system had been installed in the data center. |
| Fraud policy and related procedures. | Examined written policies, procedures, and supporting documentation related to the District's fraud policy and related procedures. |
| Financial condition. | Applied analytical procedures to determine whether the General Fund total unassigned and assigned fund balances at June 30, 2011, to the fund's revenues was less than the percents specified in Section 1011.051, Florida Statutes. Analytical procedures were also applied to determine the reasonableness and ability of the District to make its future debt service payments. |
| Qualified depositories. | Determined whether the District secured its deposits in depositories designated as qualified public depositories by the State Treasury pursuant to Section 280.03, Florida Statutes. |

## EXHIBIT A (CONTINUED)
## AUDIT SCOPE AND METHODOLOGY

| Scope (Topic) | Methodology |
|---|---|
| Limitations on investment types. | Examined written policies, procedures, and supporting documentation to determine compliance with Section 218.415, Florida Statutes. |
| Restrictions on use of nonvoted ad valorem tax levy proceeds and Public Education Capital Outlay (PECO) funds. | Tested payments made from nonvoted ad valorem tax levy proceeds and PECO funds, and examined supporting documentation to determine whether the District complied with requirements related to the use of nonvoted ad valorem tax levy proceeds and PECO funds. |
| Inventories. | Reviewed the District's controls over safeguarding transportation department parts inventories. |
| Restrictions on use of Workforce Development funds. | Applied analytical procedures to determine whether the District used funds for authorized purposes (i.e., not used to support K-12 programs or District K-12 administrative costs). |
| Adult general education program enrollment reporting. | Tested adult education students from Florida Department of Education (FDOE) records and examined supporting documentation at the District to determine whether the District reported instructional and contact hours in accordance with FDOE requirements. |
| Social security numbers. | Examined records to determine whether the District had provided individuals with a written statement as to the purpose of collecting social security numbers pursuant to Section 119.071(5)(a), Florida Statutes. |
| Performance assessments. | Examined supporting documentation to determine whether the District had established adequate performance assessment procedures for instructional personnel and school administrators based on student performance and other criteria in accordance with Section 1012.34(3), Florida Statutes. |
| Compensation and salary schedules. | Examined supporting documentation to determine whether the Board, for instructional personnel, based a portion of each employee's compensation on performance, and adopted a salary schedule with differentiated pay for both instructional personnel and school-based administrators based upon District-determined factors, including, but not limited to, additional responsibilities, school demographics, critical shortage areas, and level of job performance difficulties. |
| Overtime payments. | Reviewed District policies, procedures, and supporting documentation evidencing the approval of and necessity for overtime payments. |
| Board member compensation. | Examined supporting documentation to determine whether Board members' salaries were in compliance with Section 1001.395, Florida Statutes. |
| John M. McKay Scholarships for Students with Disabilities Program. | Examined records to determine whether parents and guardians were notified annually of the John M. McKay Scholarships for Students with Disabilities Program pursuant to Section 1002.39(5)(a), Florida Statutes. |

## EXHIBIT A (CONTINUED)
## AUDIT SCOPE AND METHODOLOGY

| Scope (Topic) | Methodology |
|---|---|
| Construction processes. | Examined records and evaluated construction planning processes to determine whether processes were comprehensive, including consideration of restricted resources and other alternatives to ensure the most economical and effective approach, and met the District's short term and long-term needs. |
| Monitoring progress of construction projects. | Tested selected construction project records to determine whether projects progressed as planned and were cost effective and consistent with established benchmarks, and whether contractors performed as expected. |
| Evaluation of maintenance department staffing needs. | Reviewed procedures for evaluating maintenance department staffing needs. Determined whether such procedures included consideration of appropriate factors and performance measures that were supported by factual data. |
| Identifying and prioritizing facility maintenance needs, and tracking maintenance jobs. | Evaluated procedures for identifying facility maintenance needs including identification and timely resolution of health and safety deficiencies, and establishing resources to address those needs. Compared maintenance plans with needs identified in safety inspection reports, reviewed inspection reports for compliance with Federal and State inspection requirements and timely resolution of deficiencies identified during inspections. |
| Electronic funds transfers and payments. | Reviewed District policies and procedures relating to electronic funds transfers and payments, and determined whether controls were designed properly and operating effectively. |
| Wireless communication devices. | Reviewed policies and procedures to determine whether the District limited the use of, and documented the level of service for, wireless communication devices. |
| Purchasing card transactions and other expenditures. | Tested transactions to determine whether the purchasing card program and other expenditures were reasonable and administered in accordance with applicable laws and rules. |
| Charter school administrative fee. | Examined records to determine whether the District properly withheld the charter school administrative fee pursuant to Section 1002.33(20)(a), Florida Statutes. |
| Direct-support organizations and charter school audits. | Reviewed the audit reports for the District's direct-support organization and charter school to determine whether the audits were performed pursuant to Chapters 10.700 and 10.850, Rules of the Auditor General, and Section 1001.453, Florida Statutes. |

## EXHIBIT B
## MANAGEMENT'S RESPONSE

www.marion.k12.fl.us
512 SE Third Street • Ocala FL 34471-2212
PO Box 670 • Ocala FL 34478-0670
(352) 671-7700 • Fax (352) 671-7788
FRS (800) 955-8770 (voice) • (800) 955-8771 (TTY)

March 1, 2012

David W. Martin, Auditor General
111 West Madison Street
Tallahassee, FL 32399-1450

In response to the auditors' comments relative to the operational audit of our district, we offer the following:

**Finding #1 Compensation and Salary Schedules**

The District is in the process of developing plans and procedures to implement the Federal "Race-To-The-Top" grant requirements as well as the requirements of Senate Bill 736. These requirements, coupled with the requirements of Florida Statutes (2010) Section 1012,(1)(c)2 related to instructional employee compensation based on performance, and the requirements of Florida Statutes (2010) Section 1012,(1)(c)4 related to the differentiated pay process of both instructional personnel and school-based administrators will require a full revision of the existing evaluation and compensation programs. The District has developed timelines and goals to provide future compliance to these requirements.

**Finding #2 Construction Management Services**

The District has ensured that Construction Management Entities (CME) are ranked and competitively selected using the process prescribed by Sections 287.055 and 255.103 Florida Statutes. The ranking process for the CMEs selected in 2006 was provided. In 2009 the District required additional annual CMEs to meet its needs. A selection process was completed to add two firms to the available CME pool. The original four CME firms' contracts with the District were not impacted. The ranking process that resulted in the added two firms was provided. The language noted in the original four contracts is correct. However, Florida Statute 287.055(2)(g) states "… with the contract being for a fixed term or with **no time limitation except that the contract must provide a termination clause**…" (Emphasis added). Such a termination clause exists in Article 14.2 Termination by the Owner for Cause. The District followed this Statute in extending the contracts beyond the originally designated time period. As noted in your comment, the contracts were presented annually to the Board and approved. Additionally, the District has supplied our construction attorney's opinion that supports our position and interpretation of the Statutes.

| James M. Yancey, Jr. | Judi Zanetti | Jacqueline Porter | Bobby L. James | Angie Boynton | Ronald B. Crawford |
|---|---|---|---|---|---|
| Superintendent | District 1 | District 2 | District 3 | District 4 | District 5 |

*- An Equal Opportunity School District & Drug-Free Workplace -*

*SAVE-A-FRIEND Hotline 1-877-7FRIEND*

## EXHIBIT B
## MANAGEMENT'S RESPONSE (CONTINUED)

Page 2 of 5
March 1, 2012
Response to Auditor General's Operational Audit

In as much as the current contract conflicts with the "no time limitation" clause and since the District has been developing new contracts to better serve the District in the future; it is the intent of the District to complete a selection process in the summer of 2012 for CME annual contracts and to enter into new contracts with selected firms. All existing firms will be required to resubmit through the competitive selection process. The District will ensure this process and any subsequent contracts are in compliance with Sections 287.055 and 255.103, Florida Statutes.

**Finding #3 Facilities Management**

The District will consider allocating resources to develop written policies and procedures for evaluating the various construction methods or maintenance-related job techniques and document the evaluations. There is documentation to support the setting of priorities and the District's position on construction delivery methods. Over the last 10 years many studies that have been conducted to compare construction delivery methods have been reviewed by the District. Multiple work sessions with the Board have been held to discuss and acquire the Board's direction on which method they prefer. The research and discussions are general in nature and relate to different types of job scopes (i.e. new schools vs. renovations vs. remodeling) and unnecessary at a project specific level. The only way that the District could possibly know the most cost effective way to deliver the construction for a specific project would be to release the job for competition under various methods, (i.e. Design-Bid-Build, Design-Build, and CM at Risk). Not only would this be impractical, but contractors would probably balk. Over the years, the Board has agreed, in general, new construction will be performed by a Construction Manager. There have been occasions in which the Board has taken the position to try Design-Bid-Build, bending to traditional thinking. In 2008 the first set of 5 elementary school wings, a cafeteria at North Marion Middle, and a Bus Compound were delivered under this method. After reviewing the pricing and quality of work, in 2009 the Board gave direction to use the Construction Management delivery system for the last 6 elementary classroom wings.

The District utilizes industry cost publications such as RS Means Building Construction Cost Data and also compares project costs to previously completed costs by the District of similar scope and size. Since the District has implemented the use of construction management delivery methods as one of its project delivery methods, the District has been able to benefit from the "open book" approach of construction management and has been able to select contractors based in part on their expertise with schools particularly with regard to the project being advertised, all while capturing the lowest possible construction costs. This is because the construction managers are required by the District's contracts to pre-qualify subcontractors and hold official bid openings where subcontractors are engaged in a competitive price bid situation. The end result is that the actual work to be performed on a project is obtained through a competitive bid process while the entire project is managed by a construction manager, selected in part due to its expertise and experience with similar projects while the profit margin is locked in early in the project.

The Department conducts regular review sessions on all projects where input is given by technical services technicians, energy management personnel, risk management and safety personnel, as well as input by the District's Building Code Compliance Office. In addition, life cycle cost studies are done on the major renovation and new facility projects in order to allow the District to review various systems for cost performance in the long run. This has a direct impact on the goal of maintenance efficiencies. Many departments with varying fields of expertise and interest are invited to participate in the plan

## EXHIBIT B
## MANAGEMENT'S RESPONSE (CONTINUED)



review processes. These same departments are often invited to participate in discussions with the contractors and architects during the design phase to help ensure that decisions that are made with regard to the project benefit the District.

We have historically seen little difference in cost, and find the "open book" concept required by the contractor to be a positive in protecting the taxpayer and District. Additionally, savings are returned to the District, which would not be the case under Design-Bid-Build. Also, due to the lack of staff in Facilities and the positive results from local construction management firms, the Board is supportive of the annual contracts for projects under $2 million. From a maintenance perspective, staff is constantly acquiring training on the latest technology and techniques to improve operations. The highest priority of the technical services department is safety repairs and renovations and ADA compliance. Both of these needs are thoroughly documented through annual and on-going reviews and reports. Beyond that, any new major replacement or repair are reviewed by staff, contracted professional engineers and architects to make sure proper methods are followed for the long term benefit of the District.

**Finding #4 Construction Expenditures**

While we are glad it was noted that the labor burden rates were comparable with industry standards, the District will improve the documentation of negotiated rates. The newly implemented Construction Management contract will also improve transparency of approved rates.

Construction is normally a fluid, long-term process that involves multiple entities with unique bookkeeping systems. The Architect's signature as to the percentage of work complete was the approval used for payment. If the District had unduly withheld payment, we had concerns of being out of compliance with the Prompt Payment Act, which carries potential financial penalties. As was noted during the audit, all appropriate paperwork was reconciled for the project before final payment was delivered. However, the District has implemented a new contract format that will improve the support documentation needed for a draw request to be valid. The District will implement additional procedures to ensure draw request are properly supported to avoid an inappropriate or advanced payment.

**Finding #5 Legal Fees**

As the finding correctly points out, Board Policy 2.41 authorizes the Superintendent to employ counsel to represent him in any legal matter regarding the performance of his duties when special counsel is needed beyond the service normally rendered by the School Board attorney. In this instance, an administrative employee, an elementary school principal, acting within the proper scope of his duties, was publicly libeled by a parent. The school in which the principal was based is a magnet school whose student population depends, in substantial part, on its reputation and standing in the community. The false statements made about the principal reflected adversely on the administration of that school. The Superintendent sought an injunction to prevent the parent from further publishing false statements about the principal or the school. However, Florida case law does not permit an action for an injunction unless a separate cause of action can also be stated. In this case, in order to obtain an injunction, an action for damages for the parent's libelous statements was required in order to enjoin the parent from making further libelous statements.

## EXHIBIT B
## MANAGEMENT'S RESPONSE (CONTINUED)

Page 4 of 5
March 1, 2012
Response to Auditor General's Operational Audit

Suit was filed in 2008 naming the principal as plaintiff. The suit was financed under the authority of Board Policy 2.41 and 2.42(II). The suit was ultimately successful; the jury found the character and reputation of the principal had been harmed and awarded the principal $75,000 in damages. Immediately upon the jury's verdict, the court issued an injunction against the parent from further libeling the principal. The principal assigned the entire money judgment to the School Board of Marion County, Florida, retaining for himself only the injunction and the right to enforce it against the parent.

There is no dispute that a school principal acting in his official capacity is a public official who is entitled under common law to payment of fees in defense of an action against him. *Leon County v. Dobson*, 917 So.2d 278 (Fla. 1st DCA 2005).

Attorney's fees paid for by a public body for a public official as a plaintiff, rather than as a defendant, have been authorized by the Supreme Court of Florida in *Thornber v. City of Fort Walton Beach*, 568 So.2d 914 (1990). That case authorized fees for officials as plaintiffs under the common law after a recall petition against them had been filed. The Court stated that attorney's fees for *offensive* litigation presented "an unusual twist" in that the public officials were not defendants in an action against them. While the Court described the officials as "defending against a recall petition, albeit in an offensive posture," the Court did not state that the recall petition context was the only situation in which fees for an offensive position in defense of a public official are authorized under the common law.

The Auditor General takes the position that *Thornber* does not authorize fees for an offensive position other than in connection with a recall petition. That is not what *Thornber* states; rather, *Thornber* merely states that payment of fees for an offensive lawsuit is "an unusual twist." We believe that until case law establishes that *Thornber's* holding is limited to recall petitions, *Thornber* stands for authority to expend public funds for fees for the lawsuit described above. Certainly there has been no case holding that such fees are not authorized.

To remedy the Auditor General's concerns, on February 28, 2012, the School Board by unanimous vote of those in attendance, accepted the assigned money judgment from the principal, declared the public purpose served by the lawsuit, and ratified the use of School Board funds. The School Board declared that the public purpose served by the lawsuit was to defend the character and reputation of a school administrator properly performing his official duties for the School Board from false and defamatory statements published about him by a parent.

**Finding #6 Risk Assessment**

The district is currently working on a comprehensive IT risk assessment.

**Finding #7 Access Privileges**

The IT director was removed from the domain administrator group.

**Finding #8 Security Awareness Training Program**

The District will develop and implement an annual comprehensive security awareness training program for all employees. District will implement the security awareness training for the 2012-13 school year.

## EXHIBIT B
## MANAGEMENT'S RESPONSE (CONTINUED)

Page 5 of 5
March 1, 2012
Response to Auditor General's Operational Audit

**Finding #9 Security Controls – User Authentication, Data Loss Prevention, and Environmental Safeguards**

The District made changes to user authentication requirements in September 2011 and believes the current settings are sufficient for user authentication and security purposes. The District will enhance its operating procedure regarding data loss prevention. The District will request a feasibility study for environmental safeguards be initiated for the 2012-13 school year. The last known study was for the 2005-06 school year and it was determined that it was cost prohibitive.

Sincerely,

James M. Yancey, Jr.
Superintendent