



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

JENNIFER M. GRANHOLM
GOVERNOR

September 10, 2003

MEMORANDUM

TO: State Board of Education

FROM: Thomas D. Watkins, Jr., Chairman

SUBJECT: Report on Michigan Department of Education Charter School Review

Mrs. Mary Wood, a citizen from Warren, Michigan, has offered comments during public participation at nearly every meeting of the State Board of Education I have chaired over the past 28 months. Ms. Wood has expressed numerous concerns about the extent to which certain charter schools have been adhering to their authorizing contract or state laws regarding charter schools.

On behalf of the State Board of Education, I asked that an independent study be conducted of the concerns presented by Mrs. Wood. For this purpose, the Department contracted with a private consultant, Ms. Julia Ashworth of Improvement Solutions, Inc., to meet with Mrs. Wood, examine the information Mrs. Wood possessed surrounding her concerns, and develop a report (Attachment A).

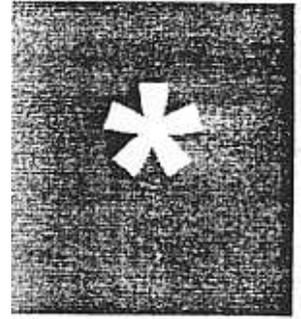
In an attempt to focus fact finding, Mrs. Wood's concerns were collected and categorized under eight major recurring themes. The report examines each of those eight themes separately. In addition to the attached report, there are voluminous pages of documentation and supporting material that were submitted to Ms. Ashworth by Mrs. Wood or supplied to Ms. Ashworth as part of her fact finding study. For purposes of summarization, supporting documents are not attached but are available for review in the State Board of Education Office.

It is the view of Ms. Ashworth that the Public School Academy Program, Michigan Department of Education, Authorizers or others have made appropriate action to address the concerns expressed. Ms. Ashworth is also satisfied that between the oversight provided by the Authorizing institutions, and the Michigan Department of Education/Public School Academy Program, public school academies will continue to improve in their practice as well as providing quality education for students.

STATE BOARD OF EDUCATION

KATHLEEN N. STRAUS – PRESIDENT • SHARON L. GIRE – VICE PRESIDENT
CAROLYN L. CURTIN – SECRETARY • HERBERT S. MOYER – TREASURER
MARIANNE YARED MCGUIRE – NASBE DELEGATE • JOHN C. AUSTIN • ELIZABETH W. BAUER • EILEEN LAPPIN WEISER

608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909
www.michigan.gov/mde • (517) 373-3324



REPORT TO MICHIGAN DEPARTMENT OF EDUCATION

Charter School Review

August 29, 2003

Julia E. Ashworth Ed.S

Improvement Solutions

Contents of Report

Part 1: History

Part 2: Amendments to Contracts

Part 3: Boards/Public School Academy

Part 4: Collective Bargaining

Part 5: Conflicts of Interest/Public School Academies

Part 6: Multiple Sites

Part 7: Public School Academy Oversight

- **Authorizers Oversight of Public School Academies**
- **Michigan Department of Education Oversight of Authorizers**

Part 8: Special Education Issues

Part 9: Conclusion

History

For four years now, a concerned citizen advocate has been researching multiple themes and issues around Public School Academies. This research has involved examination of authorizing contracts, attendance at Public Board meetings, exploration of schools, meetings with authorizers, meetings with Michigan Department of Education officials, and delivering public statements at the State Board of Education meetings.

Through hundreds if not thousands of hours over the years, the research this individual has conducted has made a difference in the Public School Academy Program. As a result of the advocate's focus on issues (such as: contracts, policy, and School Code) the Michigan Department of Education analyzed, reassessed and altered their practice, bringing together groups working with Public School Academies to reflect on practice. Their goal was to improve in making schools more accountable and more efficient in their operation. It is important that the research that this individual has conducted be recognized and validated. Without the efforts of this individual, many issues that existed in Public School Academies may have been overlooked. Thanks to this work, corrective action has been made where necessary, to ensure good educational and business practice in the Public School Academy Program.

In June of 2003, State Superintendent Thomas Watkins requested that a study be conducted regarding the concerns this citizen advocate has raised regarding irregularities in Public School Academies. The State Board of Education, which had been noting the frequent and fervent calls for exploration of the issues, responded with support for a study to put to rest once and for all, the issues of concern that were continuously expressed. It is the responsibility of the State Board and Superintendent Watkins to respond to the concerns expressed. This report is the response to those concerns.

Under the supervision of Dr. Jeremy Hughes, Chief Academic Officer/Deputy Superintendent and C. Gregory Olszta, Public School Academy Liaison, the citizen advocate and this consultant were contracted, jointly, to conduct this study. The purpose was very specific in nature:

Review the research conducted by the citizen advocate

Determine what the issues are

- Represent findings regarding these issues
- Develop a report.

When these tasks are accomplished, Dr. Hughes and Mr. Olszta will have a report on the basis of which they will be able to make recommendations to the State Superintendent and the State

Board of Education.

In order to facilitate this work the following steps have been taken:

- **Meetings among the State Superintendent, the Chief Academic Officer, the Public School Academy Liaison, the citizen advocate and consultant.**

Meetings between citizen advocate and consultant.

Meetings with multiple Authorizers.

- **Voice, electronic and fax communications.**
- **Research by citizen advocate.**
- **Research by consultant.**

Compilation of data and reports.

By the time this report is presented, hundreds of hours will have been spent by the involved parties to ensure quality, timeliness and accuracy of this report. It should be noted that the citizen advocate has spent thousands of hours conducting her research. While her knowledge is deep, her passion runs deeper. Because of this passion, it became important to have an independent review of the research conducted, to ensure that the report was free of bias and did not hold emotional attachment. Much work has been done on a very strenuous time schedule to complete this report. At the conclusion, it is expected that the concerns expressed by the citizen advocate can be laid to rest.

Structure of Report

Upon identification of the "recurring themes" that the citizen advocate has brought forth, studies were conducted around each theme. The documentation of the validity of the theme and action conducted around the theme were also reviewed. Each tab represents a specific theme. Each theme contains the following:

- **A narrative explaining why this is a "recurring theme".**
- **A list of the primary issues around the theme.**

Findings

- **Michigan Department of Education, Public School Academy Program responsiveness to the theme.**

Conclusions

- Supportive Documentation.

The supportive documentation at the conclusion of each tab is placed chronologically. Entire documents were not reproduced. Instead, specific portions of documents with credits given were replicated to ease weight of report. All of the documentation used in this report were provided by the Public School Academy Program, Authorizing Agents, the Citizen Advocate, and taken from material available on-line. Readers can obtain copies of complete reports upon request.

Credits

It is important to recognize that in supporting this study, the State Board of Education has responded to the on-going concerns expressed by the citizen advocate. At the conclusion of this study it is hoped and expected that, there will be closure on the issues received by the citizen advocate at the State Board of Education meetings.

The officials at the Michigan Department of Education have been most helpful in providing necessary documents, providing assistance in understanding the issues, in providing forums to meet with Authorizing Agents and critical review of the report. These officials have been most generous with time and resources to bring this project to a conclusion.

A number of Authorizing Agencies met with this consultant under very rigid time frames and also, were most generous in providing information, documentation and consideration to this project.

Finally, Mrs. Mary T. Wood should be recognized for the contribution she has made to the children in the Public School Academies, in assisting and insisting that their programs be of high integrity, accountability and quality. Mrs. Wood should also feel validated that her voice has been heard at the highest level of Public Education in the State of Michigan, as well as by Authorizers and the Public School Academies. She is to be commended for her work, and can rest well recognizing the impact she has had. It is hoped that she can now be at peace regarding this mission.

Documents used to develop this report:

1. Performance Audit of the Office of Education Options, June 2002.
 2. Follow up Review of the Carter School Office and Michigan Resource Center for Charter Schools--CMU, August 2002.
 3. Charter Schools Oversight Model--CMU, 2003.
 4. Draft of amendments suggested to Senate Bill 393.
 5. Special Education Compliance Monitoring of Michigan's Public School Academies, by Mark Mlawer.
 6. Charter Schools in Michigan. The report of the Commission on Charter Schools to the Michigan Legislature: April 2002 (McPherson Report).
 7. Public School Academy Authorizers Contracts.
 8. Paper complaints, data provided by Ms. Wood.
 10. Written conversation with authorizers.
 11. Revised School Code.
 12. Status Report of Office of Education Options, Public School Academy Program, January 2003.
 13. Attorney General's written opinions.
 14. Dykema and Gossett P. C. A Frame For Oversight.
-

Recurring Theme:

Amendments to Contracts

Why Is This A Recurring Theme?

During the course of an existing authorizing contract that may run over multiple years, it may be necessary to make changes based on circumstances that were not anticipated when the original contract was initiated. There are many reasons for the need to change a contract: to add grades, change curriculum, or to revise a service provider. Typically if both parties who originally entered into the contract are in agreement, the change to the contract is made via the "amendment process."

During the course of Ms. Wood's research, a number of changes to original contracts were noted. Ms. Wood correctly identifies that the practice of filing these amendments to contracts is inconsistent among authorizers.

Primary Issues

Can Public School Academy boards approve as a board action, amendments to contracts when less than the minimum number of board members as identified in the contract are present?

- Can the President of an authorizing institution appoint a designee to approve amendments in his/her stead?
- Why is the bidding process required for goods but not services when a specified amount is to be spent?
- Can action taken by a Public School Academy be approved retroactively by a board or authorizing agency?

Findings

- There is evidence that an authorizing body retroactively approved prior action taken by a Public School Academy board.
- There is evidence that four (4) members of a five (5) member board approved an amendment to a Public School Academy contract when the contract called for five

board members to do so.

It is questionable whether amendments to contracts must be filed within the ten day regulation outlined by Section 503(3) of the Revised School Code.

- While initially the President of the Authorizing Body had to approve the amendment to a contract, changes were made to allow the President or a "designee" to approve contract amendments.

Action has been taken by authorizers to seek bids when boards are looking to enter into contracts with Educational Management Organizations.

Michigan Department of Education/Public School Academy Program Response

One of the issues raised here relates to another issue raised in the section of this document on "Boards and Quorum". So long as there is a quorum of the board of directors of an academy (as determined by the authorizing contract, bylaws, and or/articles of incorporation, or quorum as defined in MCL 450.2523) in any meeting that results in actions taken by a vote of the board, then those actions are legal and binding. The minimum number of board members identified in the authorizing contract does not in itself, define the number of board members required to have a quorum in a meeting of directors.

The process for amending an authorizing contract, the approval of contract amendments, and who may approve those amendments, must be detailed in the authorizing contract and the policy and procedures of the authorizing body. In the cases cited by Ms. Wood concerning academies authorized by Central Michigan University, the authority to approve contract amendments by the University Board may be delegated to the director of the Charter Schools Office.

- Part 6a of the Revised School Code requires that authorizing contracts (new and reauthorized) must be filed with the State Board of Education (SBE) within ten days of their issue by the authorizer, Section 380.503(3). The law does not similarly require that contract amendments be filed with the State Board of Education of the Michigan Department of Education within ten days of issue. This was an item noted in Finding 12(d) of the Performance Audit by the Auditor General. Specific language to revise Part 6a of the School Code to require that amendments be submitted to the Michigan Department of Education within ten days of issue has been recommended by the Michigan Department of Education to the Legislature for insertion in Senate Bill 393 or other future proposed charter school legislation. The Public School Academy Program has discussed this issue with the Office of the Attorney General and the agreed upon

recommendation to address this issue at this time is that the Michigan Department of Education/Public School Academy Program will send a letter to the authorizing bodies advising that they file all such amendments with the Michigan Department of Education within ten days of issue.

The question is raised by Ms. Wood concerning the submission of contract amendments to the Michigan Department of Education by an authorizing body that are indicated to have an effective date that precedes the date of approval of the amendment by the authorizer and the academy. The legality of this issue was raised by the Public School Academy Program with the Office of the Attorney General. From discussion with the assigned assistant attorney general, there is not a clear guideline in the law as to whether this is prohibited or permissible. Authorizing bodies have indicated that there is often a lag-time between when an amendment is proposed and the time it takes to get through interim steps for final approval. The importance of this issue is obviously heightened if the amendment is an approval adding grades to an existing academy, or a change or addition in the physical location or site. An amendment to a contract that changes the location of the site, or adds a site, requires additional approval by the Bureau of Construction Codes and Fire and Safety, and possible assignment of a new building code all of which require additional time to obtain. Failing to get the approval for occupancy by the Bureau of Construction Codes and Fire Safety can delay the ability of a school to receive its state school aid payments. Timely submission of contract amendments that address these changes are a first order priority. Amendments that address other issues that are significant but do not require the involvement of other agencies or have less impact upon the overall functioning of the school should be submitted within a reasonable time period. In the past, amendments have been submitted six months or later after an event has occurred. It is easy to question the "reasonableness" of submission of amendments with effective dates of six months or more that could have been submitted in a more timely way. A letter will be sent to authorizing bodies advising that they minimize the time between initiation of a contract amendment and the final approval date to reduce the post-dating of amendments.

In a more serious example noted by the Performance Audit of the Auditor General, one academy moved its physical site and both the academy and the authorizer failed to provide the Michigan Department of Education with this information and failed to provide a contract amendment. The Public School Academy Program is confident that this level of noncompliance with the law is not a recurrent theme or issue.

Ms Wood has raised the question regarding why competitive bidding does not occur in the contracting process between public school academies and educational management organizations that operate many of the schools. Competitive bidding is required by the Revised School Code, Section 380.1274, before purchase of "supplies, materials and

equipment" that exceed a specific value to ensure fair market value in the purchasing process. The ceiling for the cost of goods is indexed each year to consider the cost of inflation. While the law requires a bidding process for purchase of goods, it does not require a bidding process for the purchase of services. Thus, the contracting process for Public School Academies in their decision to contract for services is simplified and not subject to the same level of scrutiny as the purchasing process for supplies, materials and equipment. A recommendation to the legislature to mandate a requirement for competitively bidding out the purchase of educational management services, to ensure fair market value in their procurement, will be considered by the Michigan Department of Education.

- Ms. Wood's valid concern is that representatives of management companies are often the original applicants to an authorizing body in creation of a Public School Academy. As the original applicant, the management company is in the position of recommending the appointment of the initial board of directors to the authorizer. This provides a potential conflict of interest without an appropriate check and balance in the contracting process in selection of an educational management organization to operate the Public School Academy. Requiring a bid procurement process may provide some check on a "sweetheart" contract awarded by an overly friendly Public School Academy board to a management company that initiated the creation of the academy and recommend its directors.

Ms. Wood cites that in the contract issued by Central Michigan University dated July 31, 2003 reauthorizing the Central Academy, that the Public School Academy Board must obtain legal counsel to ensure that past actions taken by the Board without a quorum present were legal and properly ratified. Ms. Wood notes that Central Michigan University Charter School Office, failed to document or identify in a timely fashion actions by the Public School Academy Board that were made without a legal quorum present. Insertion of contractual language requiring review by counsel of the Public School Academy Board, and requiring corrective action in the reauthorization contract, acknowledges the actions of the Board that were outside the legal requirements and mandates correction indicating due diligence by the authorizer. Ms. Wood has questioned the legal repercussions of the decisions of the Board while it acted without a quorum and this is worthy of further follow-up by the Public School Academy Program with regard to the outcome of the findings of legal counsel to the Public School Academy Board and what corrective actions were taken if any. The Public School Academy Program will ask the Central Michigan University Charter School Office for an update on their findings.

Conclusions

This was a recent issue that was presented by Ms. Wood as a recurring theme. Until June of this year, little of the communications over the four year period of her research indicated that there were issues around contract amendments. There is justification for the questions around

the inconsistencies applied by the authorizers in filing the amendments with Michigan Department of Education. The Michigan Department of Education may wish to clarify with authorizers their understanding regarding the filing of amendments to contracts.

It is clear that a quorum may indeed approve amendments to contracts. This was determined in another portion of this document. One authorizer has in fact made changes to its practices by determining that a designee may approve amendments to contracts.

Supportive Documentation

Article IX Amendment/CMU.

Performance Audit of the Office of Education Options/Department of Education, June 2002

Central Michigan University Contract Amendment No. 1, Academy of Inkster

Memo from Mary Wood.

Letter from Mary Wood to Greg Olszta.

Recurring Theme:

Boards and Quorum

Why Is This A Recurring Theme?

A pivotal issue for Ms. Wood is her contention that if any Public School Academy conducts board business with less than the required number of board members appointed, and quorum is present based upon that minimum as stated in the authorizing contract, that the board is in fact conducting business illegally. Whether the issue is borrowing money, providing services or approving curriculum, if there isn't the number of board members present that the authorizing contract outlines, then the board is not able to conduct business.

There is conflicting evidence in this regard. Please refer to documentation to see the conflict.

Primary Issues

- A contract is a legally binding document. If a contract states that a board will consist of five members, then less than five conducting business would be in violation of the contract. The Revised School Code, MCL 380.503 (4) provides:

“An authorizing body shall adopt a resolution establishing the method of selection, length of term, and number of members of the board of directors of each Public School Academy subject to its jurisdiction.”

- The bylaws and articles of incorporation of the academy generally restate the minimum and maximum number of board members or positions that are to be filled. In most cases, the bylaws of the academy and the authorizing contract provide for definition of a quorum.
- The Nonprofit Corporation Act 162 MCL 450.2523 indicates that a board may conduct business when their membership is less than the contractually stated minimum provided that they have a quorum. (Quorum is defined as one more than half, “unless the vote of a larger number is required by this act, the articles, or the bylaws”.)

Section 6a of the charter school legislation does not require a minimum number of board positions.

Findings

There are conflicting statements regarding issue 1. A memo from Greg Olszta dated May 28, 2003 states:

“As I interpreted our earlier discussion, a board that conducts business when it has less than the contractually required number of board members does so illegally, in violation of its authorizing contract”.

Under the nonprofit Corporation Act (MCL 450.2523 Act 162) a Public School Academy may continue to legally conduct business when its membership is less than the contractually stated minimum; provided they have a quorum.

Bullets one and two are in direct conflict with one another.

- **Greg Olszta, of the Michigan Department of Education/Public School Academy Program, has requested clarification on this issue from the Office of the Attorney General.**

Michigan Department of Education/Public School Academy Program Response

The Michigan Department of Education Public School Academy Program (PSAP) has taken Ms. Wood’s concerns about this issue quite seriously and sought the counsel of the Office of the Attorney General for clarification. If indeed Ms. Wood was correct in her interpretation, the implications for Public School Academy board operations would be far reaching. In seeking legal counsel, the Public School Academy Program at first incorrectly interpreted the advice received. Later discussions with the Assistant Attorney General assigned to work with Michigan Department of Education; have resulted in a more clear understanding of the law and the issue that Ms. Wood raises.

According to Part 6a of the Revised School Code, MCL 380.502(1), Public School Academies are organized under the Michigan Nonprofit Corporation Act No. 162, MCL 450.2101 to 450.3192. MCL 450.2523 provides that:

"A majority of the members of the board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business, provided that the articles of incorporation or bylaws may provide for a larger number, and provided further that in any corporation where there are more than 7 directors, the articles of incorporation or bylaws may provide that less than a majority, but in no event less than 1/3 of the directors, may constitute a quorum of the board.

The vote of the majority of the members present at a meeting at which a quorum is present constitutes the action of the board or of the committee, unless the vote of a larger number is required by this act, the articles, or the bylaws."

Public School Academies contracts may differ in their articles of incorporation and bylaws of the organization. Boilerplate language used in many contracts, bylaws and articles of incorporation typically state:

"The number of members of the Academy Board shall not be less than X, or more than Y."

Ms. Wood's contention is that any academy that conducts business with less than X number of members appointed to the board of directors operates in violation of the contract. Therefore, any actions of that board are not legally binding for the time period that there were less than X members appointed to the board.

The Office of the Attorney General provided to the Public School Academy Program that the issue are not so "black and white."

- Public school academies may continue to conduct business with less than the contractually stated minimum number of appointed board members as provided for in MCL 450.2523.**

The caveat is that the authorizing contract, bylaws of the organization, or articles of incorporation, does not more narrowly define a quorum than MCL 450.2523. Thus, to look at the number of board members currently in office and compare them to the stated minimum number in the authorizing contract, bylaws or articles of incorporation, overly simplifies the ability to make a determination as to whether the board of directors acts are legal and binding.

To make this determination requires detailed knowledge of each Public School Academy:

- Contract, amendments to the contract, articles of incorporation, bylaws of the organization, definition of a quorum for that board.**

Knowledge about the board members' terms of office, the number of voting members and members present at each board meeting.

Responsibility, for ensuring that a Public School Academy complies with the authorizing contract and the law in all of its board operations, rests with the authorizing body. The Michigan Department of Education/Public School Academy Program lacks the resources, staff and authority to monitor this level of oversight of the schools. Michigan Department of Education's responsibility is for oversight of the authorizing bodies, to ensure that they have adequate systems in place to monitor compliance. As the Auditor General noted in the Performance Report, the Michigan Department of Education/Public School Academy

Program continues to lack the capacity to provide and implement a systematized protocol for monitoring the oversight processes used by the authorizing bodies.

The Michigan Department of Education/Public School Academy Program is satisfied that Ms. Wood's broad allegations are based upon a misinterpretation of the laws pertaining to the Public School Academy and board operations. In each specific case that Ms. Wood cited, questioning the legality of board operations, the authorizing body has provided assurances that the Public School Academy has operated in overall compliance with the law to the satisfaction of the authorizer. The Public School Academy Program is satisfied that the authorizing bodies involved, in particular Central Michigan University, have provided oversight adequate to ensure that boards have operated with sufficient numbers of board members, as to ensure a quorum, and to conduct business in accordance with the law and the authorizing contract.

It is worth noting that the Performance Audit of the Auditor General did not cite this specific issue as an audit exception. Though the Auditor General scrutinized board meeting minutes and the terms of the members present to assess whether boards of directors were meeting and acting with a quorum present, this item was not noted as an audit exception. If the Attorney General had determined that Public School Academy boards were meeting and acting to make legally binding decisions without a required quorum present, this would have been a major material finding of the audit.

Conclusion

Until the Attorney General's office provides legal counsel with supporting documentation, Ms. Wood will have a legitimate question. However, the Office of the Attorney General has advised the Public School Academy Program that Ms. Wood's interpretation of the law is not accurate and that the position taken by CMU, based on their legal counsel is likely correct. Because Nonprofit Corporation Act 162 and the binding issues of a legal contract are in conflict with one another, a decision is necessary. This is beyond the scope of the Michigan Department of Education/Office of Education Options. This is an issue that must be looked at legislatively, or legally.

Because the charter schools are organized as nonprofit organizations, the definition of quorum allows them to operate and conduct business based on Nonprofit Corporation Act 162. Without the ability to use this clause, some Public School Academy could not operate. Invoking this clause allows the Public School Academies to pay monthly bills (lights, heat, salaries) without the 5 required members as Ms. Wood contends. It would be a travesty, if in fact Public School Academy was to be shut down because 5 board members were not present, even when a quorum did exist.

Supportive Documentation

Nonprofit Corporation Act 162 (1982), MCL 450.2523.

CMU/CSO response to questions by J. Ashworth, August 2003.

Mary Wood presentation to SBE, Oct. 24, 2002.

Memo Mary Wood July 15, 2003 .

Authorizing Contract between CMU/Connor Creek Academy, March 1999.

Recurring Theme:

Collective Bargaining

Why Is This A Recurring Theme?

In the authorizing contract between the Detroit Public Schools and the Universal Academy, it states that "the employees of the academy shall be covered by collective bargaining agreements," and "...the Universal Academy shall employ classroom teachers who meet the certification requirements..." (see section 11.1 of authorizing contract). Detroit Public Schools authorized the Universal Academy in 1998. The academy contracts with Hamadeh Educational Services to operate the academy and employ educational staff. The Revised School Code further requires that public school academies hire certified teachers and cover them under the collective bargaining agreement MCL 380.503 (5)(e). Numerous allegations and complaints against the Universal Academy were made in 1999 and 2000. Among the complaints made are that staff was unfairly discharged and that a stressful work environment contributed to a high staff turnover.

Ms. Mary T. Wood has asked the question: "Is the academy in compliance with the Revised School Code, MCL 380.503(5)(e)?" Ms. Wood also notes that a management company shall not hire staff, that the academy itself shall hire staff (June 2, 2003 Mary Wood memo to G. Olszta).

While this question and statement above are not one of Ms. Wood's primary areas of concern, through the research this consultant has done, this is an issue that Michigan Department of Education may choose to address.

Primary Issues

- Ms Wood alleges that there is a discrepancy between the authorizing contract by Detroit Public Schools and the practices applied by the Educational Management Organization hired to run the charter schools within the Detroit Public Schools boundaries.
- Michigan Attorney General's opinion (6915, September 4, 1995) states that a Public School Academy may enter into contracts for teaching staff, unlike a school district, which must employ their teachers.
- The Detroit Public Schools' authorizing contract states that employees shall be covered under collective bargaining. The Detroit Public Schools' legal counsel however, says the staff at the Public School Academy are not employees of the Public School Academy. Instead they are employees of the Educational Management Organization.

Findings

If Section 11.1 of the authorizing Contract with the Universal Academy is interpreted literally, then there is a discrepancy between what the authorizer wrote into the contract and the action the authorizer actually took.

- As an authorizing agent, Detroit Public Schools is in violation of Revised School Code 6a Section 503 (5)(e) requiring local school districts that authorize Public School Academies to operate in their geographic boundaries, and that employees shall be covered under collective bargaining agreements.

Michigan Department of Education/Public School Academy Program Response

Michigan Department of Education has posed the question raised by Ms. Wood to the Detroit Public Schools (DPS) regarding compliance with MCL 380.503(5)(e) by the Universal Academy and the other academies authorized by Detroit Public Schools (January 27, 2003 letter to Mr. Sterling C. Jones, Jr.). The letter of April 22, 2003 from Mark K. Schrupp, Assistant General Counsel for Detroit Public Schools, details the opinion and findings of Detroit Public Schools as authorizing body for the academies. In short, the authorizing body has determined that the seven academies authorized by Detroit Public Schools are in compliance with the authorizing contracts and MCL 380.503(5)(e). In response to Ms. Wood's query, the Public School Academy Program (PSAP) has sought the guidance of the Office of the Attorney General. The Michigan Department of Education/Public School Academy Program has been provided verbal counsel advising that, as the authorizing body is satisfied that the academy is in compliance with its authorizing contract, and with the Revised School Code, the Michigan Department of Education does not have reason or authority to take further action in regard to the question based solely on the information presented. The language contained in the contracts (Section 11.1) is open to interpretation. The authorizing body has interpreted the language such that it is satisfied that the authorized public school academies are in compliance with both the law and the contract.

Conclusion

This is a complex issue that the Michigan Department of Education/Superintendent of Public Instruction has not the authority to resolve. There is nothing in the research that would indicate that Michigan Department of Education has any authority to oversee the contracts between employer and employee. The law is clear in stating that, "local school districts that authorize Public School Academies must cover employees under collective bargaining." The Attorney Generals' view is clear that Public School Academy may enter into agreements with management companies to hire staff for schools. In the case of Detroit Public Schools, these two issues are in conflict with one another. Through legal clarification, this issue should be

resolved. Ms. Wood's contention that this is an issue is valid. Perhaps the more appropriate vehicle for resolution might be a court of law, if an affected employee chose to litigate the issue.

Supportive Documentation

Detroit Public Schools' letter from General Counsel April 22, 2003.
Charter Schools in Michigan, "The Report of the Commission on Charter Schools to the Michigan Legislature," (McPherson Commission Report, 2002)
Legislature (April 2002) *referred to in text as the "McPherson report"*
Communications from Mary Wood, Greg Olszta.
Contract for Universal Academy

Recurring Theme:

Conflicts of Interest

Why Is This A Recurring Theme?

The Office of the Auditor General's *Performance Audit of the Department of Education, Office of Education Options* (June, 2002) identified a number of areas where there was a "potential conflict of interest" in the operation of public school academies. The findings included that authorizers did not receive adequate guidance from the Michigan Department of Education (MDE) and the MDE "did not seek legislative changes to address potential conflicts of interests". The Auditor General's on-site visits revealed that some authorizers were not aware of potential conflicts of interests. Pages 31-32 of the Auditor General's report identify specific "related party transactions" where possible conflicts of interest might exist. As a result of the on-site visits, many authorizers have strengthened their oversight policies, procedures and authorizing contracts, to avoid potential conflicts of interest in the future. The *Charter School in Michigan Report (McPherson Commission, April, 2002)* also noted similar potential conflicts of interests, and recommended stronger oversight on the part of Michigan Department of Education.

When an identified related party transaction occurs, it is vital that there be documentation that no more than "fair market value" has been paid for the goods or services purchased, or lease of property expenditures paid. Also, to be considered is whether related parties have identified a potential conflict of interest to others and taken appropriate steps to avoid conflict in decisions affecting the Public School Academy. What entity makes the determination that "fair market value" has been paid, when a related party transaction occurs, is an issue of some disagreement between Michigan Department of Education staff and several authorizing bodies.

This continues to be a significant theme for Ms. Wood in regards to numerous other issues, including that Public School Academies pay "fair market value" for goods/services, that Educational Management Organization services be open to competitive bidding and that Educational Management Organizations are slating their board of directors with members who will support their personal/professional/financial advancement.

Primary Issues

- Lack of available resources and staff in the Public School Academy Program impedes the ability and effectiveness of Michigan Department of Education to coordinate and implement procedural and policy changes that address all of the findings contained in the Performance Report of the Auditor General.

It is important to ensure that authorizers take corrective action when problems are revealed.

In many cases, the applicant for a charter school is a representative of an Educational

Management Organization (EMO). Ms. Wood contends that this is not appropriate.

In many instances, Public School Academy buildings are owned by the Educational Management Organization under contract to the academy, or by an affiliated or subsidiary corporate entity. This presents potential for conflict of interest and may result in the academy being overly dependent upon the Educational Management Organization.

- If an Educational Management Organization is the original applicant for a charter and it makes the original recommendation of members for the board of directors to the authorizing body, there is a potential for appointment of members who have supportive affiliations to the Educational Management Organization directors/staff.

Findings

- The Performance Report of the Auditor General's findings indicate some identified conflicts of interest due to related party transactions and a potential for conflict due to appearances. The report further indicates that in some cases, the authorizer has been unaware of these conflicts of interest.
- After the Auditor General's onsite visits, Public School Academies and authorizers set about immediate corrective action and further tightened up policy and procedures to ensure that in the future a conflict of interest could be avoided.
- Corrective action has been reported in the follow up audit by all of the authorizers cited in the Performance Audit. Satisfaction was indicated with the corrective action taken. Responses to the audit exceptions, noted in the Performance Report, have been received by all but one of the authorizer's whose academy was cited in the report. That authorizing body, Detroit Public Schools, revoked the charter contract of the cited academy in August 2002. It indicates financial irregularities, inappropriate related party transactions and conflicts of interest among board members as reasons, among others, for the revocation.
- Many Educational Management Organizations operate with the intent of providing an alternative educational experience for students. This has resulted in the advent of "themed" Public School Academies (i.e. an academy of arts and sciences, or an academy of the performing arts). The curriculum is based on one of these themes, and the management company is forwarding this theme as being one that would support students in a community. Therefore it makes sense that the Educational Management Organizations of certain themes would thrive in particular environments. There is no language that this consultant is aware of, that would prohibit an Educational Management Organization for application of a charter from an authorizer.
- Regarding site acquisition and leasing agreements, legal counsel has indicated that "the board" is a public body that may enter into contractual agreements to acquire sites for conducting school.

One authorizer has supplied the methodology of selection and appointment of board members.

Michigan Department of Education/Public School Academy Program Response

The Michigan Department of Education is in agreement with the recommendation of the Auditor General's Performance Audit (page 33) that the Michigan Department of Education should provide guidance to authorizing bodies to help ensure that Public School Academy boards remain independent of educational management companies under contract to a Public School Academy.

In August 2002, the Michigan Department of Education initiated workgroups with representatives of the authorizing bodies through the Michigan Council of Charter School Authorizers, to address the findings and recommendations of the Auditor General. Though not all of the work groups completed their tasks, many useful recommendations were made to the Department for implementation. In follow-up, the Michigan Department of Education recently initiated a contract with the Upjohn Corporation to build upon the efforts of the work groups and finalize recommendations for policy, procedure and possible legislative changes to Part 6a of the Revised School Code.

- House Bill 4800 introduced into the Michigan House of Representatives in 2002, suggested legislative language to amend Part 6A and reduce potential conflict of interest. Though the Michigan Department of Education opposed the recommendations contained in the proposed legislation to lift the "cap" on state public university authorized Public School Academies, the department supported most of the reforms contained in the proposed legislation.

In its January 23, 2003, *Status Report of the Office of Education Options, Public School Academy Program* to the State Board of Education, the Michigan Department of Education recommended that:

"Statutory and rule making authority be granted to the department to clarify the responsibilities and procedures for oversight of the authorizers and their authorized Public School Academies."

- "Up to one-half of one-percent of the 3 percent oversight fees paid to authorizing bodies are redirected to support the Michigan Department of Education Public School Academy Program and its oversight of authorizers' activities."

"The recommendations of the *McPherson Commission* be codified as statute in future legislative initiatives to ensure that specific, identified familial, and other relationships between Public School Academy board members, executives/owners/shareholders and employees of educational management companies, be prohibited, and that authorizers spell out prohibited relationships in their authorizing contracts."

- The Michigan Department of Education, Office of Audits works with the authorizers to determine that "related party" transactions identified in the annual school audit, submitted to the Michigan Department of Education were for the "fair market value" of goods or services. The

Office of Audits reviews the audit to ensure that required disclosures were made to the Public School Academy board, and that the related party abstained from voting on the transactions. There has been resistance by some authorizers to determine “fair market value” of identified related party transactions when asked to do so by the Office of Audits and the Public School Academy Program. Some authorizers indicate that they have no statutory authority and/or responsibility for making this determination. Some authorizers maintain that this is the responsibility of the academy board and not the authorizer.

- The Michigan Department of Education has submitted recommendations to the Legislature to amend Part 6A of the Revised School Code to require that authorizers provide to the department when requested:

The methodology for determination that the fees charged to a Public School Academy by an educational management company, as indicated in the Revised School Code, Sec. 501(2)(e) and Sec. 1320(4)(a) are fair and reasonable and reflect fair market value.

The methodology used to detect conflicts of interest and to determine that the purchase price for goods or services paid by a Public School Academy reflects fair market value.

The Office of Audits also performs quality control reviews of the school's audits completed by public accounting firms and, as part of the review, determines whether the auditors properly tested for related party transactions. The Office of Audits provides training and in-services at the Michigan Association of Certified Public Accountants Governmental Accounting and Auditing Conferences on identifying and disclosing related party transactions. The Office of Audits has addressed, related party transactions in an Accounting and Auditing Alert, issued by the Michigan Department of Education.

Michigan Department of Education is supportive of training provided by the National Charter Schools Institute (NCSI) for Public School Academy board members regarding conflict of interest and Public School Academy board responsibilities for fiscal integrity, accountability and compliance with the law. Many authorizers pay for NCSI training for the board members of the Public School Academies that they authorize, and they encourage the members to attend the trainings that are offered throughout the year.

The Revised School Code does not prohibit representatives of Educational Management Organizations from being the initial applicant for a charter school. It is recognized by the Michigan Department of Education that this presents the potential for conflict of interest in several ways: the appointment of boardmembers to the initial board of directors based upon recommendations of the applicant/EMO, and those same board members determining the subsequent decision by the Public School Academy to contract with an Educational Management Organization to operate the academy. It is the responsibility of the authorizing body to ensure that safeguards are in place so that the academy remains an autonomous body.

- The Michigan Department of Education Office of Audits, in its audit review of the annual school audits, regularly reviews the fees paid to Educational Management Organizations by the academies. When fees paid to the Educational Management Organization exceed the traditional

pricing model of 10-14% of revenue, the Michigan Department of Education asks that the authorizing body make a determination as to whether the fees paid are for “fair market value” and whether amounts in excess may be justified.

- Michigan law does not require that school districts or Public School Academies purchase services using a competitive bid process. While Public School Academies and their authorizing bodies have a responsibility to ensure that no more than “fair market value” is paid for educational management and other services, there is not law or rule that requires that a bid process be used.

Conclusion

Legislative language has been suggested by the Michigan Department of Education/Public School Academy Program on more than one occasion to assist in resolving this issue of conflicts of interest. Until the Michigan Department of Education is given rule-making authority by the Legislature as identified by both the Auditor General, and the Michigan Department of Education, there may be little more that can be done. It is evident that on the part of many authorizers, corrective actions have been made that satisfied the Auditor General. Potential conflicts of interest are a serious issue. The evidence would suggest that as irregularities are identified, that corrective actions are put into immediate practice, to resolve conflicts of interest.

Supportive Documentation

Performance Audit of the Department of Education Options (June 2002).

CMU/CSO Public School Academy Board of Directors, Method of Selection and Appointment (January 2003).

Follow up Review of CSO and Michigan Center for Charter Schools, CMU, Auditor General, (August 2002).

Response to ESO inquiry from Gutman & Bigelman, P.C. (May 2003).

Suggested language to SB 393 (May 2003).

Status Report of the Office of Education Options, Public School Academy Program (to the State Board of Education, January 23, 2003).

Communication from CMU to J. Ashworth (August 2003).

Recurring Theme:

Multiple Sites

Why Is This A Recurring Theme?

In 1993, then State Superintendent of Public Schools Robert Schiller stated in a press release that, "The law is clear that an academy shall not operate at a site other than a single site" (Oct. 17, 2002 memo provided by M. Wood). This has created the foundation for the belief that if an application did not include a specific address of the site of the Public School Academy or that more sites were to be added at a later time, then there is a violation of law. (April 15, 2003 memo provided by M. Wood) Finally that there is a difference of opinion between Ms. Wood's interpretation of the Attorney General's opinion and the interpretation of the Attorney General's opinion by the Michigan Department of Education.

Primary Issues

- That an address be listed in the application for charter, and the final contract.

The application of Attorney General's opinion by the Michigan Department of Education and Ms. Wood's interpretation.

- The ability for Public School Academies to provide expanded services based on need.

Findings

- A specific request from Representative Lisa Wojno to the Attorney General Michael Cox asked that he opine on the following issue, "Under revised school code may a Public School Academy operate at more than one site?"
- Key words in the opinion from Attorney General Cox are "configuration of grades" and "sites". The Attorney General's opinion clearly states "the Legislature has limited the number of sites at which a Public School Academy may conduct its operation to a single site for each configuration of grades."

(From 2003 Office of the Attorney General 7126) "It is my opinion therefore, that under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body."

- Ms. Wood's e-mail to Mr. Watkins (4-2-03) referencing that the Attorney General opinion says site must be identified in application and contract. If this were held to be steadfast, then for example; if an authorizer issues a contract in year 1 based on a K-5 academic program and at the end of 2 years expands to grades 6-8 based on request of parents and community, would violate the original contract. Expanding to another site because of the number of students that must be accommodated would further be illegal because in the original application another site was not identified.
- This belief neglects the ability commonly held, that contracts may be amended to accommodate the needs of both parties, so long as they are in agreement with the boundaries of the amendment.
- Based on the Attorney General's opinion, the specification for a charter school to expand to an additional site so long as the grade configurations are different would be an appropriate course of action of the authorizer in order to meet the needs of the children, parents, and community served.
- With the Attorney General's opinion in place, Mr. Watkins' memo to the State Board of Education, and Mr. Olszta's response to Ms. Wood's inquiry, Ms. Wood still questions the application of the Office of the Attorney General's opinion by Michigan Department of Education. The specific allegation continues to be from Ms. Wood, that unless the site address is included on the original application and contract that additional sites are illegal. This disregards the ability to amend contracts as commonly applied not simply in educational circumstances, but in business and other circumstances.

Michigan Department of Education/Public School Academy Program Response

Based upon the counsel of the Office of the Attorney General, the Michigan Department of Education stands by the interpretation provided in Superintendent Watkins' memorandum of March 18, 2003 to the State Board of Education. Office of the Attorney General's opinion 7126, permits public school academies to operate at multiples sites, provided that there is no duplication of grade configuration, and the multiples sites are authorized by the authorizing body through issuance of the original contract, an amendment to the contract, or reauthorization of a contract identifying additional sites. There is no legal basis to Ms. Woods' concern about multiple sites for Public School Academies. The Michigan Department of Education is satisfied that this is a closed issue.

Conclusion

It is the opinion of this consultant that the issue regarding multiple sites is closed. The

evolution of the operations of Public School Academies since 1993 and their needs have changed dramatically since Superintendent Schiller's original statement. The authorizers have reacted to the needs of the students and community, and the ability to amend contracts allows authorizers the authority to expand operations to meet the needs of the students they serve. The need of the Public School Academy to meet the requests of their constituents requires that expansion (or reduction) of sites may be necessary.

Defining a specific address in applications and original contracts is an appropriate request on the part of authorizers. However, a potential site that originally may have appeared to meet the needs of the applicant, may have turned out to be in sincere deficit for a number of reasons, requiring applicant to select a different site. Suggesting that after a number of years of operation, that the original site identified in the application and contract will be sufficient to meet the educational needs of the students, limits the ability of the school and the authorizer to meet the needs of the students, parents and community. It further neglects the commonly held practice to amend contracts to meet the evolving needs of the institution.

Finally, the Attorney General opinion clearly allows for Public School Academy to operate at multiple sites as long as the grade configurations are not replicated.

Supportive Documentation

Communication from Ms. Wood.

Office of the Attorney General's opinion (2003 Office of the Attorney General 7126) March 6, 2003.

Memo from Superintendent Watkins March 18, 2003.

April 15 memo from C. Gregory Olszta to Mary Wood.

Recurring Theme:

Authorizer's Oversight of Public School Academy

Why Is This A Recurring Theme?

When Ms. Wood began her inquiries regarding Public School Academies, she very specifically held concern around the Public School Academy that her daughter was going to attend. Believing that the Public School Academy was a better educational option for her daughter, Ms. Wood was grievously discouraged at the troubles the school had when trying to open. There were a number of issues that faced the Academy, including not having approval from fire and safety inspectors. Ms. Wood further was troubled by two issues: 1. That in the Contract between Central Michigan University and this Public School Academy, the minimum of 5 board members were not identified. 2. Academy failed to open for operations in the provided time frame.

From the onset of her research, Ms. Wood contends that if authorizers were providing appropriate oversight of Public School Academies, then the issues that she was compelled to deal with when she sought to have her daughter attend a Public School Academy, would never have existed.

Throughout the course of study of Ms. Wood's allegations, it is clear that in Ms. Wood's opinion, if authorizers were providing appropriate oversight of Public School Academies, problems and irregularities noted throughout this report would cease to exist.

Primary Issues

Contracts are written without the required items, including a proposed list of the Board of Directors, description of and address of proposed physical plant, and name of applicant.

- Oversight is inadequate, resulting in less than the minimum number of Board members, as identified in the authorizing contract.
- Oversight is inadequate, resulting in conflicts of interest.
- Oversight is inadequate: resulting start up issues, finance issues, and curriculum issues.
- Reauthorization occurs without documented corrective action being taken.

Public School Academies are not in compliance with their Contracts, the Code and other "applicable law."

There should be stricter oversight of Public School Academies by authorizers as recommended by the *McPherson Commission* Report and the Auditor General's report.

Findings

There are contracts written without the minimum number of board members, or the name of the applicant. While physical plant is identified, it may change shortly after the contract is issued.

- The rationale for issuing a contract with the “less than minimum” number of board members is to allow for an interested parent or community member to join the Board when the school is established.

There is evidence of conflicts of interest in contracts between a Public School Academy and the contracted service providers (custodial, child care). Authorizers attest to the fact that they were not always aware of contracts entered into between public School Academies and providers. Authorizers further report, that upon finding such conflicts, corrective action was immediately taken and authorizers took action to tighten up requirements regarding the contracted service providers.

- Problems regarding physical plant approval, curriculum and finance issues existed in a number of the Public School Academies. Authorizers have in place, processes and procedures to assist in minimizing these issues. While start up is a tricky process, in many of the Public School Academies, the start up issues were corrected in a timely basis, allowing the school to operate.
- The evidence indicates that authorizers are satisfied with corrective actions taken by Public School Academies during the course of the review process. Authorizers conduct an in depth review of finance, operations, curriculum, and compliance with Code. The process is extensive. Reauthorization is issued, when satisfaction of correctives, is met.
- Irregularities were noted in the area of contract compliance, School Code and other “applicable laws.” Where these irregularities were discovered, appropriate correctives were directed by authorizers and carried out by the Public School Academies.
- As a result of the Auditor General’s recommendations and the *McPherson Commission Report*, authorizers revised process and procedure regarding finance, operations and compliance with Code.

Michigan Department of Education/Public School Academy Program Response

- The quality and integrity of authorizing contracts over the past ten years have varied significantly with a steady trend toward improvement and greater compliance with the “letter and intent of the law.”

One of the Michigan Department of Education/Authorizer collaborative workgroups, that was initiated last year, in response to the Auditor General’s Performance Audit of the Office of Education Options, developed a “contract checklist” for use by authorizing bodies and the Michigan Department of Education/Public School Academy. The checklist, finalized, and implemented in May 2003, assures that the contracts include items mandated by the Revised School Code, Part 6a. The checklist is completed by the authorizing body and sent to the

Michigan Department of Education/Public School Academy at the time that the authorizing contract, or reauthorization contract, is submitted to the Superintendent of Public Instruction. The checklist then becomes a reviewer guide for use by the authorizer and Michigan Department of Education staff. Items that are identified as missing or lacking in completeness in the Michigan Department of Education review of the contract are requested of the authorizer to ensure completeness and compliance with the law. (See attached checklist).

When it is noted, that there are fewer appointed Public School Academy board members than indicated in the authorizing resolution (contract, bylaws and/or articles of incorporation) Michigan Department of Education staff contacted the authorizing body to inquire as to whether this is an oversight or a temporary, intentional omission.

- Some authorizing bodies have indicated that they have intentionally appointed fewer than the minimum number of Public School Academy board members indicated in the contract documents at the time of the initial appointment of board members. The reason for this is to hold open Public School Academy board vacancies, to be filled by parents of students that will attend the school when it opens. Unless this action results in fewer than the minimum number of board members required to constitute a quorum of the board, this practice does not violate the law. The intent of the contract allows the board to conduct the business of the academy, pending the appointment of additional board members.
- At times the site identified in an authorizing contract has changed, between the time the contract is filed with the office of the Superintendent of Public Instruction, and the actual opening of the Public School Academy. This has resulted in some confusion to interested parties, and at times, in the disappointment of parents and the community when the actual location of the school has moved from one community to another. Authorizing bodies indicate that this has occurred for a variety of reasons:
 - The inability to finalize purchase of land and/or buildings.
 - The inability to finalize lease agreements.
 - Difficulties with ensuring that initial sites/buildings may be adapted for suitable and safe use as a school building.
- On several occasions a newly authorized Public School Academy has relocated its site and the Michigan Department of Education has not been informed of the change until weeks or even months after this has occurred. The current law does not provide any required advance notification of such a site change, but the change in site must be reflected in an amendment to the authorizing contract and it must meet approval for occupancy by the Department of Consumer & Industry Services, Bureau of Construction Codes and Fire Safety. Authorization for payment of state school aid then will be made to the Public School Academy.
- Documented instances of conflict of interest occurring in board operations were noted by the *McPherson Commission* and the Auditor General in the Performance Audit. This information has been widely shared with the authorizing bodies and legislative amendments have been

proposed by the Legislature, and supported by the Michigan Department of Education, to revise the School Code to address this. Proposed amendments have been included in House Bill 4800 introduced in 2002 and in House Bill 4148 and Senate Bill 393 in 2003.

- Many of the authorizing bodies have attempted to address the potential for conflicts of interest:

By strengthening their policy and procedures for background checks on persons nominated to Public School Academy boards.

- By educating board members about what constitutes a conflict and how to avoid a conflict. In some cases, authorizing bodies have requested the resignation of board members when a conflict has been identified. Some authorizing bodies have also advised that the Public School Academy board to take action to remove a board member, as a way of eliminating a conflict.
- Those bodies, that have authorized multiple Public School Academies, and with the most experience, have developed more sophisticated oversight protocols and procedures that effectively address problem issues. They also monitor Public School Academy compliance with the law and contract more effectively.

With adequate resources, including staff, the Michigan Department of Education/Public School Academy Program could more effectively take a leadership role in oversight and monitoring of the effectiveness of the authorizers in their oversight role and activities. Provision of technical assistance to the least experienced authorizing bodies should be a vital function of the Michigan Department of Education/Public School Academy Program.

- Michigan Department of Education and representatives of the authorizing bodies that make up the Michigan Council of Charter School Authorizers formed work groups following release of the findings of the Auditor General's Performance Audit of the Michigan Department of Education Office of Education Options. These work group were to provide a consensually agreed upon oversight framework for use in the Public School Academy Program. While these work groups did not provide consistent agreement in an approach to oversight, they did provide the groundwork for finalizing future guidelines and standards.
- The Michigan Department of Education has consistently supported Legislative initiatives that would implement the recommendations of the *McPherson Commission*, the Michigan Department of Education believes in increasing its oversight authority through statute and administrative rule, making authority if granted, to the Department by the Legislature.
- The Michigan Department of Education has made its recommendations known to the Legislature regarding specific amendments to the Revised School Code, and the need to provide increased oversight, authority and resources to the Michigan Department of Education to accomplish this.

In addition to those identified in the Auditor General's Performance Report, and the *McPherson Commission* Report, key issues that need resolution include the role and responsibilities of the authorizers for:

- Compliance with the No Child Left Behind Act.

Oversight of the start-up and closing of Public School Academies

- Determination of fair market value of Public School Academy purchased goods and services.
- There remains a need for enhanced procedural guidelines for both the authorizing bodies and the Michigan Department of Education. The Michigan Department of Education has contracted with a consultant to finalize proposed recommendations for procedures, rules and legislation, as necessary.
-
- Michigan Department of Education recognizes that in the ten years since charter schools became part of the public education system in Michigan, there has been significant change in oversight expectations by authorizers, and authorizers have grown more sophisticated in their approach to oversight.

Conclusion

Public School Academies are a fairly recent phenomenon in the arena of public education. Organization and operation of new public school academies require extreme attention to detail. From application to opening, the start up of a new school requires inordinate amount of effort to simply ensure that the physical plant is up to code, let alone finance, curriculum, enrollment, advertising and meeting the stringent standards of the authorizing body.

Many of the issues that face Public School Academies when trying to open don't exist in the traditional public school setting. Because traditional schools have facilities, programs, curriculum, financial stability, elected boards, transportation, etc,... the operations are ingrained and part of the standard operating procedures of the institution. For a Public School Academy this is all new territory. When irregularities and violations were noted in the research, it was very apparent that the authorizing body took appropriate action with the Public School Academy to correct the violation and then to amend their procedures to ensure that the violation would not occur in the future.

Specific violations that Ms. Wood referred to in verbal and written communication might exist in a traditional public school as well. The scrutiny that the Public School Academy Program has been under due to Ms. Wood's research has not crossed over into the traditional public school. If we were to scrutinize traditional public schools the same way the Public School Academies have been scrutinized, we might find the same kinds of irregularities. No school, district, Public School Academy, or department is perfect. The question becomes, "how do we get better"? In the case of authorizers, corrective action and continuous improvement is evident.

Supportive Documentation

Letter from David Winters to CSO Feb. 16, 2000.

Oversight Checklists, CMU, FSU, Wood.

Letter from Harry Ross to Ronal Jaworowski, March 28, 2002.

Letters from Greg Olszta to Cindy Schumacher, April-June 2003.

Board vacancy oversight process flowchart, CMU August 2002.

Michigan Council of Charter School Authorizers –Process for review presentation, June 2003.

Communication from Mary T. Wood January 2002.

Letter from Deputy Attorney General William J. Richards July 2000.

CSO master Calendar of Reporting Requirements: CMU July 2003.

Description of Primary Oversight Responsibilities: CMU 2002-03.

Schedule 4 oversight agreement: CMU 2003.

SVSU Oversight Model: August, 2003

Recurring Theme:

Michigan Department of Education Oversight of Authorizers

Why is this a Recurring Theme?

During the course of her research, Ms. Wood correctly identifies that Section 502 (5) of the School Code and Executive Order, provides the Superintendent of Public Instruction the authority to suspend the power of an authorizing institution to issue new contracts. It is the authorizer's primary responsibility to oversee the charter school board of directors' compliance with the contract, and all applicable law. "The accountability of charter schools to meet the requirements of law, finance and other state requirements rests in large part with the procedures of the authorizing institution." MCL 380.502(4) mandates, "...oversight shall be sufficient to ensure that the authorizing body can certify that the PSA is in compliance with statute, rules and the terms of the contract." The notion that the authorizers are not accountable to Michigan Department of Education is one issue. Ms. Wood contends that if an authorizer is not providing adequate oversight to schools, then the Superintendent of Public Education can and should suspend the authorizing institutions ability to issue new contracts.

Primary Issues

- The Revised School Code, Section 380.502(5) provides the Superintendent of Public Instruction with the authority to suspend the power of an authorizing body to issue new contracts if "an authorizing body is not engaging in appropriate continuing oversight of one or more public school academies operating under a single contract issued by the authorizing body."
- The Revised School Code requires that authorizers methods of oversight are "sufficient to ensure" and "certify" compliance by the public school academy with Code, rule and contract.
- The ability to develop an appropriate process that may be used to initiate and complete the suspension process.
- What criteria should the Superintendent of Public Instruction/Michigan Department of Education use to determine when suspension of the authorizers right to issue a new contract should occur?

What “due process” should be in place to ensure the integrity of the process and the rights of the affected authorizing body?

There is a lack of policies and procedures in place to certify authorizers.

There is no administrative rule making authority granted to the Michigan Department of Education

The Michigan Department of Education's inability to effectively oversee authorizers due to limited staff and funding.

- Ms. Wood perceives that authorizers are not accountable to Michigan Department of Education.

Findings

The *Charter Schools in Michigan Report (McPherson 2002)* included recommendations to expand the responsibilities of the Superintendent of Public Instruction. It includes “establishing a process for the periodic certification of authorizers”, as well as the suspension of the ability of an authorizing body to issue new contracts.

The Status Report of Office of Education Options Public School Academy Program, provided to the State Board of Education affirms the recommendations of the *McPherson Report*.

The Superintendent of Public Instruction/Michigan Department of Education has made the recommendation to redirect a small percentage of state school aid dollars to the Department of Education to assist in Public School Academy Programs oversight of authorizers. Currently, these dollars are paid to the authorizing bodies, as their oversight fees.

The Revised School Code does not provide the Superintendent of Public Instruction or the Michigan Department of Education sufficient direction to act to suspend the power of an authorizer to issue new contracts and provides no authority for a “certification” process.

- The law does not provide the Michigan Department of Education with rule making authority to address this issue. Neither does the law provide other specific authority or direction in the provision of charter school oversight.
- The Michigan Department of Education is in process of developing policy and

procedures to address these and other issues. This will be accomplished through adoption as policy by the State Board of Education and through recommendations for legislative change and rule making authority.

The Michigan Department of Education has made specific proposals to the Legislature in the form of amendments to Senate Bill 393. These amendments to the Revised School Code would address the certification of authorizing bodies and provide a process for suspension of an authorizing body's right to issue new contracts.

- The Upjohn Institute has been contracted to assist the Michigan Department of Education in writing recommendations for policy, law or rules to address the above issues.

Michigan Department of Education/Public School Academy Program Response

- The Michigan Department of Education has made several requests to the Legislature to clarify rule making authority and/or specific amendment to the Revised School Code. If these recommendations were implemented via Code or rule, they will provide processes for both certification of the authorizing bodies and for the suspension of the right of an authorizer to issue new contracts.

The Michigan Department of Education has recommended specific language to amend the Code through insertion of language in Senate Bill 393 introduced in the Michigan Senate earlier this year.

- The Michigan Department of Education has requested that language be inserted in Senate Bill 393 to redirect one quarter of one percent (¼%) of state school aid, currently paid to authorizing bodies, to the Michigan Department of Education to provide staff and resources to the Public School Academy Program in oversight of authorizers.
- The Michigan Department of Education has contracted with the Upjohn Institute to assist them in writing recommendations for additional procedures, law or rules specific to the Public School Academy Program and its oversight operations and responsibilities.

The Revised School Code needs to be amended as suggested through Senate Bill 393. This will provide authority and responsibility to the authorizers for responsibility to ensure that schools identified as not meeting adequate yearly progress (AYP), as required by the No Child Left Behind Act of 2001, follow the corrective action requirements that traditional public schools districts are required to follow.

- The Michigan Department of Education supports enactment of revisions to the School

Code which would incorporate the recommendations of the McPherson Commission for increased accountability by Public School Academies, educational management companies and authorizing bodies.

- The Michigan Department of Education continues to actively work with authorizing bodies to strengthen existing policy and procedures that ensure compliance by the Public School Academies and their contracted management companies. The Department will continue to actively work with authorizers to raise standards of accountability through “best practices,” and by authorizing contracts that “raise the bar” in regard to accountability.
- The Michigan Department of Education continues to hold authorizing bodies accountable. The department continues to address identified problems and makes sure that authorizers implement corrective action in a timely and effective manner.

Conclusion

In responding to the *McPherson Report* and the Auditor General’s Performance Audit, the January 23, 2003 “Status Report” to the State Board of Education and the recommended Revisions to the School Code, indicate that the Michigan Department of Education has taken the appropriate proposed steps to address those recommendations. Until action is taken legislatively, there is no established policy, authority or process for which the Superintendent of Public Education can certify authorizers. There is need for a process to evaluate the adequacy of oversight by the authorizing bodies, and this process needs to determine as to when and how the Michigan Department of Education shall recommend action to the Superintendent of Public Instruction when suspending the right of an authorizer to issue new charter contracts.

The perceived lack of accountability of the authorizers to Michigan Department of Education may be legitimate as there is limited legal authority granted to the Superintendent of Public Instruction/Michigan Department of Education. However, the same argument could be made regarding traditional public school districts.

In reviewing the files generated around this and all of the recurring themes, when requested to provide information to Michigan Department of Education, the authorizers were responsive (in varying degrees). Without a procedure or process in place to review authorizers’ oversight of the schools, it would not be prudent for the Superintendent of Public Instruction to invoke the language of school code section 502(5) and act to suspend the right of an authorizing body, except in exigent conditions.

Supportive Documentation

Charter Schools in Michigan, "The Report of the Commission on Charter Schools to the Michigan Legislature," April 2002, (referred to as the *McPherson Report*).

Update on Public School Academies: Memo from Superintendent Watkins to the State Board of Education, January 2003.

Status Report of Office of Education Options, Public School Academy Program, January 23, 2003; Report to the State Board of Education.

Selected items from recommendations to State Board regarding Senate Bill 393.

Communications from Mary T. Wood.

Communications from CMU, EMU, DPS.

Letter from G. Olszta to CMU/CSO April 16, 2003.

Recurring Theme:

Special Education

Why Is This A Recurring Theme?

Although Public School Academies were created in part, to allow for greater experimentation and freedom in public education, concern has been raised that some students with disabilities are discouraged from attending Public School Academies due to a lack of availability of special education programs and services. An additional source of concern is that some Public School Academies lack a thorough understanding of the requirements of federal and state special education laws and thus, may not be meeting the needs of some special education students (see *McPherson Commission Report, 2002*).

While this has not traditionally been a talking point for Ms. Wood, a number of reports have been released that indicate that this is an area that will require additional attention from the Michigan Department of Education, Office of Special Education, and the Office of Education Options.

Primary Issues

- According to the Michigan Department of Education (December, 2000) 1.3 percent of traditional schools provide no special education service, while 27.5 percent of Public School Academies do not provide these services.

There appears to be a significantly lower number of students classified as in need of special education services enrolled in Public School Academies than in the traditional schools.

- Effective action has not taken place to ensure that Public School Academies implement Individualized Education Plans (IEP) of students with disabilities.
- Public School Academies do not always sign agreements to follow their Intermediate School District's (ISD) special education plan. When such agreements do exist, the authorizers of the Public School Academies are not always aware of the plans and do not monitor the implementations.

Findings

Public School Academies must accept students with disabilities. It is illegal for Public School Academies to categorically exclude all students with disabilities, or students with certain disabilities.

- It is illegal for Public School Academies to explicitly or implicitly encourage students

with disabilities and their parents who are interested in enrolling their children in a Public School Academy, to abandon special education services as a condition of enrollment.

Any Public School Academy, which accepts federal and state special education grant dollars, has agreed to abide by the federal and state laws pertaining to special education. The School Code specifically includes Public School Academies in the jurisdiction of the Intermediate School District for the provision of special education services.

- When the individualized education planning committee (IEPC) in a Public School Academy cannot agree whether or not the child is eligible for services, or if eligible, as to the appropriate educational and related services to be provided the child, the law provides for a hearing process to resolve these issues. The Individuals with Disabilities Act (IDEA) of 1997 includes a procedure whereby the parties' disagreements can be heard by an impartial mediator.
 - While the due process hearing requirements are designed to resolve disputes between schools and parents regarding either eligibility or placement, they are not intended to resolve disputes regarding whether or not a school is complying with an individualized education plan or with system wide compliance with IDEA's procedural safeguards.
- IDEA permits parents and organizations to file complaints regarding compliance issues through a variety of organizations.
 - Complaints can be filed with the Michigan Department of Education and may be investigated by the Department itself, or referred to the Intermediate School District in which the school is located.

Michigan Department of Education/Office of Special Education/Public School Academy Program Response

- The Michigan Department of Education supports the recommendations of the *McPherson Commission Report* and corresponding amendments to the Revised School Code in Senate Bill 393 mandating that Public School Academies actively advertise to attract students with special education needs.
- The Office of Special Education determined that in the 2003-04 school year, enrollment procedures of students entering Public School Academies will be monitored by the Intermediate School Districts and/or the Office of Special Education. This is a proactive step to utilize equitable special education enrollment procedures in Public School Academies. This further allows the Public School Academy to design the programming necessary to meet the needs of the children enrolled with disabilities.
- The Michigan Department of Education holds that authorizers are responsible for assuring that charter school personnel are educated, have knowledge of, and comply with special education law and policies as well as the following: ongoing training for

new board members as to their responsibilities in developing, implementing and reviewing individualized education plans and Section 504 plans for students who require services. Authorizers are further responsible to assist Public School Academies in accessing services of Intermediate School District staff and other available resources to implement the plans.

Conclusions

One of the most complicated and troublesome areas for schools to address is special education and the availability and distribution of special education services. “In Public School academies this has been one of the most difficult issues in the debate over Public School Academies” (McPherson Commission Report, 2002). Despite all of these issues, Public School Academies are readily accepting the challenges of educating students with disabilities.

Much has been resolved in the last few years between the Public School Academies and their authorizing bodies. The Intermediate School Districts, the Office of Special Education, and the Michigan Department of Education have provided information, suggestions, and resources to Public School Academies in addressing the complications of providing special education services. The following reflects some of these accomplishments:

In an effort to better serve the schools they oversee, authorizing agencies in cooperation with the Charter Schools Development and Performance Institute, commissioned the law firm of Dykema and Gossett P.C., to issue a discussion paper regarding special education and Public School Academies. The purpose of this paper has been to help Public School Academy staff to be knowledgeable in the area of special education. Additionally, because special education laws are complicated, some authorizers have employed the services of field representatives to visit the Public School Academies, providing guidance with special education processes, procedures and requirements.

The Michigan Department of Education has provided Public School Academy teachers and administrators with education and understanding of special education law and the obligations of Public School Academies to serve students with disabilities and training to assist them in efforts to serve their students. A series of regional in-services were provided to Public School Academy staff across the state early in 2002. The Office of Education Options, the Michigan Council of Charter School Authorizers, and the Michigan Association of Public School Academies, have initiated top-level dialogue with Intermediate School District Superintendents through the Interagency Council of the Michigan Association of School Administrators (MASA) regarding the development of procedures and recommendations to improve the working relationship between Public School Academies and Intermediate School Districts.

In the past, there has been an inconsistency in the Intermediate School Districts regarding assistance to Public School Academies in understanding the requirements of both federal and state law with regard to special education services. However, this is rapidly changing as the Michigan Department of Education continues to advise all Intermediate School Districts of their obligation to assist Public School Academies in

accessing resources, special education funding and special education related services and programming. There are now ongoing professional development and in-service opportunities in the Intermediate School District regions to provide training for traditional as well as Public School Academy staff on special education issues. The Intermediate School Districts have staff with experience in these matters, so their assistance and advice have been invaluable to the Public School Academies. Authorizers have also been involved in establishing effective working relationships with their local and Intermediate School District officials as well as the Michigan Department of Education.

Intermediate School Districts monitor all traditional schools and Public School Academies for special education compliance. Any noncompliant issues must have corrective action, and be in compliance in the year of monitoring according to special education law.

- Public School Academies are often created to allow for different educational approaches than those found in traditional public schools. Of course, Public School Academies may reduce the number of children in special education if they can demonstrate convincingly that their approach to education can serve particular children with disabilities, effectively without resorting to special education services.

The Least Restrictive Environment portion of special education law (LRE), applies to administrators of Public School Academies, assuring any parent that the school is meeting the needs of the child in the general education environment to the extent it can provide services and is appropriate for the child.

Through the use of IEPs, approximately 8 percent or 5,000 Public School Academy students have been identified for services. (This compares to 13.5 percent in traditional public schools.) This certainly is a much-improved percentage since 1999.

Supportive Documentation

Special Education: Compliance Issues for Charter Public Schools, August 1999.

Special Education Compliance Monitoring of Michigan's Public School Academies, January 2003.

Twenty-Six Years of Special Education in Michigan: Statistical Tables of the Special Education Unduplicated Child Count from 1975-2001.

Draft Amendments to Senate Bill 393

Key Issues and Recommendations: Special Education Services, *McPherson Commission Report 2002.*

Special Education meeting with David Brock, MDE/OSE, 2003.

Charter School meeting with CMU, 2003.

Conclusion

In the ten-year history of the Public School Academy movement, many exciting and wonderful educational programs have been initiated to provide the children in the State of Michigan with alternative education options. Conversations with parents, children and staff that work in these successful programs reflect great satisfaction with the excellent education children are receiving. There is data around these successful Academies which indicate that students achieve at high levels; that students thrive socially and emotionally and that there is an environment that allows the children to foster their skills. These success stories are the reason that the supporters of the Public School Academy movement continue to hold it in the political forefront.

When a new program is initiated there will also be “bumps in the road.” The Public School Academy Program has faced many challenges since its existence. There are many challenges that faced a number of schools while they were trying to open. The unfortunate circumstances that faced schools like Connor Creek existed in other schools as well. As the movement has progressed, mistakes have been made. Irregularities that exist in operations of these new schools have been examined. Process and procedures have changed. The question this consultant continued to ask is “how are we getting better at what we are doing?”

Mary T. Wood has spent thousands of hours over a four year period researching, asking questions, bringing issues forward that needed to be addressed by the Michigan Department of Education, Authorizers of Public School Academies, and the Academies themselves. Through the course of her research, she has brought a number of concerns to the forefront, which have resulted in corrective action, changes in process or procedure, opinions from the Attorney General, and responses from the State Superintendent of Public Instruction and the State Board of Education. These actions have resulted in better oversight of Public School Academies and better operations of the schools themselves. Ms. Wood continues to bring forward issues within specific Public School Academies. The mantra of “corrective action” seems to have little or no weight with Ms. Wood. Even though many institutions have made changes as a result of her pointing out problems, Ms. Wood continues to contend that if the Michigan Department of Education or the Superintendent of Public Instruction were to invoke the extreme arm of their authority that these issues would not exist.

Problematic in this philosophy is that all who work in public education are continuously looking to be “better at what we do”. The public education system will never be free of problems, issues or irregularities. The intense scrutiny that has been placed on these schools, while warranted and certainly have resulted in improvement, must be viewed with the same lens that we look at traditional public schools.

It is anticipated that this report will not diminish the passion that Ms. Wood holds for these issues. Consequently, the Office of Education Options and ultimately the Superintendent for Public Instruction and the State Board of Education will have to determine how to respond to her issues. The bottom line is that all of the issues that Ms. Wood continues to raise fall under the umbrella of the themes outlined in this report. In all cases, the Public School Academy

Program, Michigan Department of Education, Authorizers or others have made appropriate action to address the concerns expressed. Policy, practice, legislation and law all require patience and understanding. As institutions evolve, change will occur for the growth of the organization.

This consultant is satisfied that between the oversight provided by the Authorizing institutions, and the Michigan Department of Education/Public School Academy Program will continue to improve in their practice as well as providing quality education for students. It is unfortunate that the academic achievement of students in Public School Academies was not the focus of Ms. Woods' research. In working with the officials who insist that the education of children be the primary focus of the Public School Academy Program, I have found that the details that have been waded through here, are not what they should be about....the academic achievement of students. The variables outlined in this report do not address the real issues of schools...student achievement.

Thank you for the opportunity to work with you to improve education options for the children of the State of Michigan.
